

September 1, 2004

ORIGINAL

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

Filed by Federal Express

**DOCUMENT
FOLDER**

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

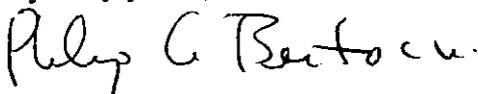
Dear Secretary McNulty:

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

Enclosed please find for filing an original and nine (9) copies of the Exception of Action Alliance et al. to the August 10, 2004 Recommended Decision in this proceeding.

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

Very truly yours,


PHILIP A. BERTOCCI

Attorney for Action Alliance et al.

cc: Certificate of Service
Administrative Law Judge Charles E. Rainey, Jr.
Cheryl W. Davis, Director, Office of Special Assistants

Enclosures

SEP 1 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

61

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECORDED

SEP 1 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

EXCEPTION OF ACTION ALLIANCE et al.

DOCKETED
SEP 03 2004

I. Introduction

Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now (ACORN) and Tenants' Action Group (TAG)(collectively "Action Alliance et al.") hereby submit the following Exception to the Recommended Decision ("R.D.") of Administrative Law Judge (ALJ) Charles E. Rainey, Jr. issued by the Office of Administrative Law Judge on August 10, 2004.

This proceeding originated on June 2, 2004, when the Pennsylvania Public Utility Commission ("Commission") entered an Order opening this Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works.¹ In its June 2 Order, the Commission consolidated under this broader Investigation several ongoing proceedings involving PGW. Those proceedings included:

¹ Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, Docket Nos. P-00042090, R-00049157, M - 0021612 and P-00032061 (Opinion and Order entered June 2, 2004) ("June 2 Order").

**DOCUMENT
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- PGW's 2004-2005 Gas Cost Rate Proceeding (Docket No. R-00049157);
- the Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause, Docket No. P-00042090 (which had been previously consolidated with the GCR proceeding);
- a remand from the Commission for further factual findings concerning PGW's Petition for Rescission and Amendment (seeking authorization to implement a means-tested Senior Citizen Discount) (Docket Nos. M - 00021612/P-00032061)("Senior Citizen Discount Petition");
- a remand from the Commonwealth Court of contested rulings concerning provisions in PGW's Restructuring Tariff addressing treatment of Liens and Judgments and the imposition of a Residential Field Charge (Docket No. M - 00021612);²
- a new inquiry concerning "the adequacy, cost effectiveness and management of PGW's collection practices," with the specification that if PGW promptly filed a Petition seeking waiver of Commission regulations concerning collections standards, that Petition would also be considered as part of the Investigation.³
- a new inquiry concerning "the level of PGW's universal service costs as well as the cost effectiveness and management of these programs."⁴

² See, Commission's Secretarial Letter dated May 14, 2004, at Docket No. 00021612.

³ On June 16, 2004, PGW filed the Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations.

⁴ June 2 Order at 6,7.

The Commission envisaged that three different orders issued at different times would result from this Investigation: (1) an Order concerning PGW's Gas Cost Rate; (2) an Order concerning PGW's Petition to Establish a Cash Receipts Reconciliation Clause; and (3) an Order addressing the remaining issues, including, inter alia, the Senior Citizen Discount Petition and the restructuring issues remanded from Commonwealth Court. The August 10, 2004 R.D. makes recommendations concerning this third Order.

With regard to the Senior Citizen Discount Petition, the R.D., on the basis of record testimony, duly makes the appropriate findings on the issues identified by the Commission in its May 18, 2004 Order remanding that Petition for further record development, and also makes the recommendation that the Commission approve the proposed means-tested Senior Citizen Discount program as "just and reasonable."⁵ This recommendation is supported by all parties except the Office of Trial Staff – including the Philadelphia Public Officials.⁶

In this connection, Action Alliance et al. respectfully call the Commission's attention to their request that the Commission make a definitive order on the Joint Petition filed with PGW for Interlocutory Review and Answer to Material Question thereby authorizing PGW to grant an interim Senior Citizen Discount to those senior applicants who have applied for the discount since September 1, 2003 but have not been granted the

⁵ R.D. at 12-21.

⁶ R.D. at 20.

discount pending Commission approval of the modified Senior Citizen Discount program.⁷

The R.D. adopts most of the recommendations of Action Alliance et al. and represents a balanced response to PGW's extreme proposals concerning Chapter 56 waivers. Action Alliance et al. take exception to only one recommendation, which involves the recommended approval of the Residential Field Charge. Action Alliance et al. respectfully submit that the Commission should not approve the Residential Field Charge because it is not consistent with Chapter 56, because PGW already recovers the same costs through its reconnection fee and its late payment charges, and because the proposed charge has broader applicability than the charge contained in PGW's pre-restructuring Tariff.

II. Exception. The ALJ Erred in His Recommendation That the Commission Approve the Proposed Tariff Section That Would Allow PGW to Collect a \$10.00 Charge for Residential Field Visits That Are Part of the Termination Process. R.D. at 42-45 and 96 (Ordering Paragraph 3); Action Alliance et al. Main Brief at 44-47.

The R.D. proposes that the Commission order that the "Philadelphia Gas Works"

⁷ Petition for Rescission and Amendment of Philadelphia Gas Works, Docket Nos. M - 00021612, P- 00032061 (Opinion and Order, May 18, 2004), at 6; see Action Alliance et al. Main Brief, at 56, 58. At that time in the Senior Citizen Discount proceedings, Action Alliance, TAG, ACORN and CEPA were identified as "CEPA et al." As the R.D. recognizes, these consumer groups, minus CEPA, which is no longer active, are now identified as Action Alliance et al. R.D. at 9, n.7.

proposed tariff section that would allow it to collect a \$10.00 charge for residential field visits that are part of the termination process is approved.”⁸

Action Alliance et al. take exception to approval of the Residential Field Charge because it is not consistent with Chapter 56, because PGW already recovers the same costs through its reconnection fee and its late payment charges, and because the charge has broader applicability than the charge contained in PGW’s pre-restructuring Tariff.

PGW’s Compliance Tariff filed August 29, 2003 contained the following provision concerning the Residential Field Charge:

5.14. Residential Field Charge. When PGW makes a field visit at the service address, pursuant to the Company’s rules regarding Termination of Service (Section 5.3), PGW will assess a field charge of \$10.

In contrast, PGW’s pre-restructuring Tariff contained the following provision concerning the Field Collection Charge:

~~4.28. FIELD COLLECTION CHARGE~~

~~When PGW makes a field visit at the service address, pursuant to Regulation 4.24 or 4.25, PGW will assess a field collection charge, the amount of which shall be set forth in the schedule of service charges and fees published pursuant to regulation 14.2. This charge shall only apply in the event that actual personal contact has been previously made, either by telephone or by a prior field visit.~~

In its October 10, 2003 Compliance Order, the Commission rejected the Residential Field Charge, as follows:

⁸ R.D., Ordering Paragraph 3, at 96. The ALJ also recommends: “The Philadelphia Gas Works shall include the following in its next base rate case filing: ...(b) detailed exhibits showing the cost components and calculations of its charges for residential field visits, late payment and reconnection.” R.D. Ordering Paragraph 5(b), at p. 96. Action Alliance et al. do not take exception to this part of the ALJ’s Order concerning the Residential Field Charge.

§5.14. Residential Field Charge – The costs of field visits are recovered through late payment charges, and the Company is permitted to assess a reconnection fee. PGW shall not collect an additional charge for field visits that are part of the collection process.⁹

However, after PGW appealed this issue to the Commonwealth Court, the Commission and PGW agreed to remand the issue to the Administrative Law Judge for further development of the record.¹⁰

The Residential Field Charge is not consistent with Chapter 56. The ALJ does not address this issue in the R.D. However, the Commission's disallowance of the Field Charge was based squarely upon Chapter 56 and long standing Commission policy. As explained in the Bureau of Consumer Services Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, February, 1992, Chapter 56 provides just two individualized "charges" applicable to customers who pay late or who are terminated. There is the late payment charge and there is the reconnection charge. The "late payment charge," assessable at the rate of 1.5% per month with a total annual rate not to exceed 18%, is not a "finance charge." Rather, the purpose of the "late payment charge" is to compensate utility companies for the cost of collections and for other costs the companies incur when payment for service is made late. Therefore, the

⁹ Compliance Tariff of Philadelphia Gas Works in Response to the Commission Restructuring Order as Modified on Reconsideration, M - 00021612 (Order entered October 10, 2003) at 7.

¹⁰ See, PUC Secretarial Letter dated May 14, 2004 at M - 00021612.

rate is not tied to current interest rates but to the costs of collection.¹¹ In other words, under Chapter 56, the late payment charge compensates the utilities for the carrying cost for short-term debt when customers pay late, as well as for other pre-termination collection costs. PGW may not be permitted to charge both a Residential Field Charge and Late Payment Charges to recover the same costs.

The record does not support allowance of the Residential Field Charge. The ALJ states that the record supports PGW's claim that PGW's Tariff provides for recovery of costs associated with non-payment/termination through three charges, and identifies the provisions in PGW's pre-restructuring Tariff which authorized such charges.¹² However, the issue in this case is not whether the pre-restructuring Tariff authorized such charges, but rather whether the Public Utility Code and PUC regulation authorizes the charges. In the Compliance Tariff at issue here, PGW has impermissibly attempted to incorporate the provisions of its pre-restructuring Tariff, with some enhancement, into its Restructuring Tariff— Section 4.3 (Finance Charge on Late Payments), Section 5.13 (Restoration Charge) and the Section 5.14 (Residential Field Charge).

¹¹ Bureau of Consumer Services Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, February, 1992, at 94.

¹² In the discussion of this issue, the R.D. (pp. 42-44) references the Sections of PGW's pre-restructuring Tariff containing the Finance Charge (Section 3.43), the Restoration Charge (Section 9.3) and the Field Collection Charge (Section 4.28). However, the pre-restructuring framework for recovery of costs associated with non-payment and termination/restoration is not relevant in the post-restructuring context. The purpose of the restructuring proceeding was to align PGW's Tariff with the requirements of the Gas Choice Act, including Chapter 56. 66 Pa.C.S. §2212(h)(1).

Moreover, PGW's claim that if the Residential Field Charge is disallowed, it will have a \$600,000 "hole" in its revenues is without merit. The whole point of the Restructuring Case was to restructure PGW's Tariff to comply with the Gas Choice Act and Commission regulations. Even if PGW neglected to provide for the recovery of the costs associated with its traditional Field Collection Charge within the Restructuring Case, it may not now retain a charge not authorized for PUC regulated utilities. Moreover, PGW's claim of the need to compensate for a "hole" in its revenues is inconsistent with the fact that it has increased its Reconnection Charge in the context of the Restructuring Case, without at the same time reducing base rates.¹³

Even if the Commission should decide to allow PGW to levy a \$10 Residential Field Charge until the next base rate case, it should limit the applicability of the charge to what was provided in PGW's pre-Restructuring Tariff.

The "Field Collection Charge" under PGW's prior Tariff was more restricted in application. Under prior Tariff Section 4.28, the historical Field Collection Charge could be levied

[w]hen PGW makes a field visit at the service address, pursuant to Regulations 4.24 or 4.25, PGW will assess a field collection charge This charge shall only apply in the event that actual personal contact has been previously made, either by telephone or by a prior field visit. (emphases added)¹⁴

¹³ PGW Gas Tariff - Pa. P.U.C. No. 2, Original Page No. 36, Section 5.13.A and Original Page No. 57, Section 12.2.

¹⁴ PGW Tariff Gas - Pa. P.U.C. No. 1, Original Page 39 (emphasis added). Sections 4.24 and Sections 4.25 address personal contact requirements at least 72 hours prior to termination

The Proposed Restructuring Tariff significantly broadens the circumstances under which a charge for field collections may be assessed, because it has eliminated the limitation to situations where actual personal contact had previously occurred.

Both Action Alliance et al. and OCA have opposed the Residential Field Charge throughout the PGW's restructuring proceedings. The R.D. repeats PGW's erroneous claim that no party has opposed the Residential Field Charge.¹⁵ However, this is incorrect both as to this Investigation and in the previous Restructuring Case. The OCA's Main Brief in this Investigation quotes verbatim the record testimony of its witness Barbara Alexander opining that the charge is not consistent with Chapter 56 and unduly burdens customers already struggling to avoid termination of service.¹⁶ Action Alliance et al. also opposed the Residential Field Charge in this Investigation.¹⁷ These parties also opposed the Residential Field Charge in the Restructuring Case as one of the virtually innumerable ways in which PGW's proposed Restructuring Tariff was not in compliance with Chapter 56.¹⁸

and immediately prior to termination. PGW Tariff Gas - Pa. P.U.C. No. 1, Original Pages 37, 38.

¹⁵ R.D., at 44.

¹⁶ OCA Main Brief, at 56.

¹⁷ Action Alliance et al. Main Brief, at 44-47.

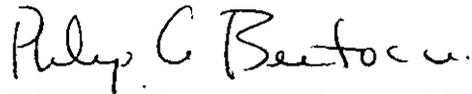
¹⁸ See, CEPA et al. Main Brief, filed December 12, 2002 (Restructuring Case, M - 00021612), at 48. In the Restructuring Case proper, Action Alliance, ACORN and Tenants' Action Group were part of the party referred to as "CEPA et al."

See also, Office of Consumer Advocate's Main Brief, filed December 12, 2002 (Restructuring Case, M - 00021612), at 32.

III. Conclusion

WHEREFORE, Action Alliance et al. respectfully except to the Administrative Law Judge's Recommended Decision and submit that the decision should be adopted as modified in consideration of the preceding discussion and Exception.

Respectfully submitted,



PHILIP A. BERTOCCI, ESQUIRE
LAURA MOSKOWITZ, ESQUIRE

Attorneys for Action Alliance of Senior
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September 1, 2004

CERTIFICATE OF SERVICE

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

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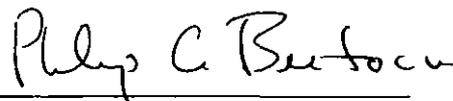
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September 2, 2004

ORIGINAL

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PA Public Utility Commission
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DOCKETED
SEP 03 2004

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:

Please be advised that the Office of Consumer Advocate will not be filing
Exceptions to the Recommended Decision in the above-referenced proceeding.

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

Sincerely,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosures

cc: All Parties of Record
Honorable Charles E. Rainey, Jr.
Office of Special Assistants

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**DOCUMENT
FOLDER**

SECRETARY'S BUREAU
2004 SEP -2 PM 4: 08
RECEIVED

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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 letter regarding Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of September, 2004.

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September 2, 2004

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ORIGINAL

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works, Docket
Nos. P-00042090, R-00049157, M-00021612, P-
00032061 and Petition of Philadelphia Gas Works
for Waiver of Public Utility Commission
Customer Service Rules, Docket No. P-00042117

DOCKETED
SEP 07 2004
DOCUMENT
FOLDER

Dear Secretary McNulty:

The Philadelphia Public Officials will not be filing Exceptions to the
Recommended Decision of Administrative Law Judge Charles E. Rainey in the above-
referenced matter.

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

Sincerely,

Renardo L. Hicks
Renardo L. Hicks, Esquire

cc: Hon. Charles E. Rainey, ALJ
Office of Special Assistants
Attached Certificate of Service

SECRETARY'S BUREAU

04 SEP -7 AM 9:33

5

CERTIFICATE OF SERVICE

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

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Dated: September 2, 2004

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Renardo L. Hicks

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September 2, 2004

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Issues Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Exceptions on behalf of the Office of Small Business Advocate to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr., issued August 13, 2004, 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.
Cheryl Walker Davis, Director

Parties of Record

Robert D. Knecht

RECEIVED
2004 SEP -2 PM 4:09
SECRETARY'S BUREAU

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

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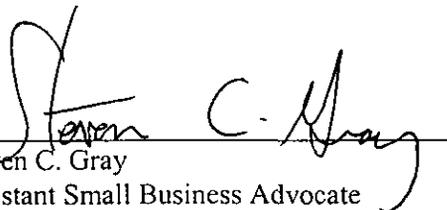
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Date: September 2, 2004

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

**EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

On June 14, 2004, the OSBA and other active parties filed main briefs regarding the CRRC. On June 22, 2004, the OSBA and other active parties filed reply briefs.

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

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

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

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

On July 16, 2004, the OSBA filed a main brief in this proceeding.

On July 23, 2004 the OSBA filed a reply brief in this proceeding.

On August 13, 2004, the ALJ issued his recommended decision (“RD”).

The OSBA submits these exceptions in response to the RD.

II. EXCEPTIONS

1. **The RD incorrectly concludes that the number of CRP participants should not be limited to 60,000. (RD at 32)**

The ALJ briefly considered and rejected the OSBA proposal to limit the number of participants in the Company's Customer Responsibility Program ("CRP") to 60,000.¹ The ALJ's reasoning apparently relies upon his interpretation of the Natural Gas Choice and Competition Act, 66 Pa. C.S. Ch. 22.

First, the ALJ observed:

The Gas Choice Act provides that universal service programs are to be made available to assist low income customers. See, 66 Pa. C.S. §2203(8).

RD, at 32. The ALJ is correct that Section 2203(8) requires that universal service programs be "appropriately funded and available." However, the record is replete with evidence that PGW has an extensive universal service program, which includes the CRP, the Conversation Works Program ("CWP"), and the Low-Income Home Energy Assistance Program ("LIHEAP") outreach.² Furthermore, even using the ALJ's definition of a universal service program (which eliminates the SCD program from the list)³, the Company spent \$41.4 million in 2003 on the CRP, the CWP, and the LIHEAP outreach.⁴ The OSBA proposal merely to cap the number of CRP participants does not make the PGW universal service programs "unavailable" or insufficiently funded.

Second, the ALJ observed:

¹ RD, at 32.

² RD, at 24.

³ Id.

⁴ Id.

The Gas Choice Act does not place a limit on the number of low-income customers who are to be assisted.

RD, at 32. The ALJ's observation may be accurate, but Section 2203(8) explicitly states:

Programs under this paragraph shall be subject to the administrative oversight of the commission, which shall ensure that the programs are operated in a cost-effective manner.

66 Pa. C.S. § 2203(8). Apparently the Commission itself was concerned with the administrative oversight of the CRP, because it stated:

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

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

Furthermore, the Commission correctly observed:

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

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

Thus, the OSBA respectfully suggests that the ALJ missed the point of this proceeding: to reach a balance between those who benefit from PGW's universal service programs and those who pay for those programs.

In addition, the ALJ apparently disregarded recent Commission decisions which demonstrate that the Commission is fully aware of the necessity of placing a cap on the number of participants in a universal service program. For example, Columbia Gas of Pennsylvania, Inc., had its Customer Assistance Program limited to 27,100 participants.⁵ Equitable Gas Company Division of Equitable Resources, Inc., had its Energy Assistance Program limited to 15,000 participants.⁶

Universal service programs must undergo a needs assessment, whereby the Commission determines the proper balance between the number of program participants and the amount of funding necessary to be provided from the non-participating customers. However, given the extremely high level of funding already being provided to PGW's universal service programs,⁷ that "proper balance" no longer exists – to the detriment of the Company's paying customers.

Therefore, the OSBA respectfully requests that the Commission reject the ALJ's decision and cap the number of CRP participants at 60,000. As the Commission stated in its June 2, 2004, order, some "balance" must be reached between the low-income

⁵ See Columbia CAP Order, Docket P-00032057 (Order Entered October 30, 2003), at 6.

⁶ See Order on Equitable's Joint Settlement, Docket P-00032070 (Order entered April 1, 2004), at 5.

⁷ "PGW's CRP program results in a universal service and energy conservation surcharge, now an eye-popping \$1.61 per Mcf, that exacerbates PGW's already-high gas distribution rates." See OSBA Statement No. 1, at 5.

program participants and the customers who pay for those low-income programs.⁸

Capping the number of CRP participants is a simple and effective way to begin to restore that balance.

2. The RD incorrectly concludes that universal service programs should be paid for by all customer classes. (RD at 32)

As discussed *supra*, the ALJ briefly considered and rejected the OSBA proposal to limit the number of CRP participants in the Company's program to 60,000.⁹ The ALJ also briefly considered and rejected the OSBA alternative to capping the number of CRP participants:

I also reject OSBA's alternative proposal that PGW's residential class customers solely bear CRP costs above 60,000 participants.

RD, at 32.

The ALJ's decision not to reallocate the universal service costs in this proceeding may (or may not) be consistent with the Commission's earlier decisions on this issue.¹⁰ Specifically, in PGW's restructuring case, the OSBA raised the issue of whether the prohibition in 66 Pa. C.S. § 2211(e) on interclass and intraclass cost shifting applied to

⁸ The ALJ also ignored the inequity inherent in the fact that PGW's full-tariff customers also tend to be relatively low-income, compared to other customers in the Commonwealth. "In the end, PGW ends up imposing a relatively large tax on a relatively poor customer group." See OSBA Statement No. 1, at 4.

⁹ RD, at 32.

¹⁰ Despite its prior decision to defer the universal service cost allocation issue to PGW's next base rates case, the Commission at least partially opened the door on considering this issue in this proceeding. As the Commission stated in its June 2, 2004, Order:

The Commission must ensure there is some balance between the interests of the beneficiaries and contributors to these programs.

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

PGW. The Commission ruled that the prohibition did, in fact, extend to PGW's restructuring case. The Commission stated:

As we have previously concluded, interclass and intraclass cost shifting is inappropriate in the context of natural gas restructuring cases. Such issues are more appropriately resolved in a base rate case.

PGW Restructuring Order, Docket M-00021612 (Order entered March 31, 2003), at 20.¹¹

Consequently, the Commission simply deferred the issue that the OSBA raised regarding the allocation of PGW's universal service charges. Therefore, under this Commission precedent, the issue of the proper allocation of the Company's base level of universal service costs waits for the filing of PGW's next base rates case.

Furthermore, the ALJ did not address the recent rise in the number of PGW's CRP participants, and he did not address PGW's stated assertion that it will aggressively seek to enroll more participants at a cost of up to \$30 million.¹² Thus, the OSBA respectfully suggests that if the Commission decides not to impose a participation cap, it should consider whether the *incremental* costs of the CRP program (brought on by PGW's new efforts to enroll eligible customers) would be more equitably and accurately assigned to only the residential class.

Even if the Commission decides to continue to defer the issue of allocating PGW's extraordinarily high and rising universal service charges to the next base rate case, the ALJ's *reasoning* for not reallocating these costs in this proceeding is not

¹¹ Unlike other natural gas distribution utilities, PGW is permitted to reconcile its universal service program cost recoveries on an annual basis. Thus, PGW can increase its universal service charge ("USC") without the need for a base rate case through the use of this reconciliation mechanism. Consequently, these costs are not necessarily best (or only) allocated in a base rate case.

¹² See OSBA Main Brief, at 8.

consistent with Commission precedent. Specifically, the ALJ concluded that universal service programs should be paid for “by all customer classes.”¹³ This conclusion contradicts a series of Commission decisions that address the funding of universal service programs for other natural gas distribution companies throughout the Commonwealth. In those other decisions, the Commission recognized that only residential customers should pay for universal service programs.

For example, in the *Petition of National Fuel Gas Distribution Corporation requesting Permission to Expand Participation in Low Income Residential Assistance (LIRA) Rate*, Docket No. P-00021945 (Order entered March 28, 2002), the Commission stated:

Furthermore, the allocation to the residential class only is consistent with Commission precedent. The Commission previously has allocated the costs of residential low-income gas service Customer Assistance Programs to the residential customer class only.

Petition of National Fuel Gas, at 14.

Therefore, the OSBA respectfully requests that the Commission explicitly reject the ALJ’s reasoning that would require all customer classes to pay the costs of any residential-only universal service program. In addition, the OSBA respectfully requests that the Commission consider in this proceeding whether the *incremental* costs of universal service programs should be assigned to only the residential class.

¹³ RD, at 32. The ALJ’s reasoning is not even consistent with PGW’s current operation. PGW’s larger industrial customers that take interruptible service are not subject to the USC.

3. **The RD incorrectly concludes that Section 2212(c) of the Public Utility Code grants the Commission the authority to waive any Chapter 56 provision requested by PGW. (RD at 56)**

Before considering each individual Chapter 56 waiver requested by PGW, the ALJ set forth the procedural history of the Chapter 56 Petition, as well as the legal basis upon which the waivers could be granted.¹⁴ In his consideration of the Commission's legal authority to grant the waivers, the ALJ quoted Section 2212(c) of 66 Pa. C.S. with emphasis¹⁵ and concluded:

Section 2212(c) of the Public Utility Code provides that upon PGW's request the Commission may suspend or waive any provision of the Public Utility Code. The Public Utility Code is the authoritative basis upon which the Commission's regulations are promulgated. I therefore find that the Commission may act on PGW's waiver petition on the basis of 66 Pa. C.S. §2212(c).

RD, at 56. The ALJ provided no additional legal analysis concerning the Commission's authority under Section 2212(c), nor did the ALJ explicitly consider any of the legal issues raised by the OSBA in its main brief.¹⁶

However, the ALJ at least partially reached his conclusion regarding the Commission's authority under Section 2212(c) based upon the fact that the "Public Utility Code is the authoritative basis upon which the Commission's regulations are promulgated."¹⁷ Unfortunately, the legal conclusion reached by the ALJ regarding

¹⁴ RD, at 52-57.

¹⁵ *Id.*, at 54.

¹⁶ See OSBA Main Brief, at 14-17.

¹⁷ RD, at 56.

Section 2212(c) is incorrect. As construed by the ALJ, Section 2212(c) 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.

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. The ALJ concludes, 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. The ALJ’s construction of Section 2212(c) would be contrary to the presumed legislative intent because such a construction would render the statute unconstitutional.

As set forth in *PPL Energyplus, LLC v. Commonwealth of Pennsylvania*, 814 A.2d 861 (Pa. Cmwlth. 2003), any delegation of power or discretion to an administrative agency is unconstitutional if the legislature fails to provide the necessary standards for the exercise of that power or discretion. The Court decided that the delegation in *PPL Energyplus* was constitutional because the Commission could exercise its discretion to impose sections of 66 Pa. C.S. on electric generation suppliers only “when such requirements are necessary to maintain the quality of service, to protect the public or to ensure the safety and reliability of electric service.” *PPL Energyplus*, at 865. In contrast, the ALJ’s decision would make the PUC’s discretion under §2212(c) unfettered — and, therefore, unconstitutional under *PPL Energyplus* — because there are no comparable

standards in Section 2212(c) to guide the PUC in deciding whether or not to grant a particular waiver request.

Therefore, the OSBA respectfully requests that the Commission reject the unconstitutional conclusion reached by the ALJ regarding the Commission's legal authority under Section 2212(c). In contrast, the Commission does have the authority to grant PGW's various requests for waiver under 52 Pa. Code § 56.222.¹⁸ Section 56.222(a) states that "[i]f unreasonable hardship . . . to a utility results from compliance with a section in this chapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements." PGW's Chapter 56 Petition sounds under Section 56.222(a).

¹⁸ This authority has been acknowledged by the Commission. See PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5, footnote 2.

III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission:

1. Overturn the ALJ's decision that rejects a cap on the number of participants in PGW's customer responsibility program, or in the alternative, overturn the ALJ's decision that rejects assigning the incremental costs of the universal service program to only the residential class;
2. Reject the ALJ's decision that would require all customer classes to pay the costs of any residential-only universal service program; and
3. Reject the ALJ's unconstitutional construction of the Commission's legal authority under 66 Pa. C.S. § 2212(c) and adjudicate the Company's Chapter 56 waiver requests under 52 Pa. Code § 56.222.

Respectfully submitted,



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Dated: September 2, 2004



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IN REPLY PLEASE
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September 2, 2004

ORIGINAL

James J. Mc Nulty, Secretary
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P.O. Box 3265
Harrisburg, PA 17105-3265

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

Docket No. P-00042090
R-00049157
M-00021612
P-00032061

Dear Secretary McNulty:

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

Copies are being served upon all active parties of record.

Very truly yours,

Johnnie E. Simms
Chief Prosecutor
Office of Trial Staff

c: Parties of Record
Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Charles E. Rainey, Jr., Presiding

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

**DOCUMENT
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EXCEPTIONS OF THE OFFICE OF
TRIAL STAFF TO THE RECOMMENDED
DECISION OF ADMINISTRATIVE LAW JUDGE
CHARLES E. RAINEY, JR.

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Dated: September 2, 2004

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AND NOW, comes the Office of Trial Staff (“OTS”), by its prosecutors, and files the following Exceptions to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr., dated August 10, 2004, and transmitted to the parties by cover letter of the Secretary of the Pennsylvania Public Utility Commission, dated August 13, 2004.

I. INTRODUCTION

Administrative Law Judge Rainey’s recommends approval of the Senior Citizens Discount (“SCD”) “in view of the totality of the evidence provided in the SCD proceeding and the current Commission Investigation”. While OTS has the uppermost respect for the Administrative Law Judge Rainey, we are compel to respectfully submit that the “totality of the evidence” does not support the recommendation to approve the SCD Program, particularly as it relates to the answers to the questions posed by the Commission. OTS has fully supported its answers to the Commission’s questions and thus recommended that the SCD Program should not be approved as requested by PGW. OTS’s answers to the Commission’s questions were fully supported in its Briefs and on the record. OTS’s specific Exceptions to these answers/conclusions presented in the Recommended Decision with which the Administrative Law Judge has reached a conclusion contrary to the record evidence are set forth below. These Exceptions are supplemental to the arguments presented in OTS’s Main and Reply Briefs, the relevant pages of which are cited under specific headings below in accordance

with the Commission's prescribed format for Exceptions and incorporated herein by reference. For ease of reference OTS by-and-large has utilized the same headings/questions as used in the Recommended Decision.

II. EXCEPTIONS

1. OTS Expects to the Recommended Decision Utilization of the Philadelphia Water Department and Other Non-Commission Jurisdictional Entities and Programs As Proxies To Support The Proposed SCD Program

1) Does any utility regulated by this Commission (other than PGW) have a program to provide discounts limited to senior citizens? If so, what percentage is the discount and what are the income limitations, (i.e., percentage of FPL)?

RECOMMENDED DECISION, page 12 through 13, inclusive.

PGW readily admitted that there are *no other utilities regulated by this Commission* that have a program to provide discounts limited to senior citizens.¹ In an attempt to negate the fact that there are *no other utilities regulated by this Commission* offering programs with specific discounts limited to senior citizens, PGW presented as evidence that other irrelevant programs were limited to senior citizens. Despite PGW's acknowledgment that no other utilities regulated by the

¹ PGW St. CP-2 at 4

Commission have a program to provide discounts limited to senior citizens, in support of his recommendation, the Administrative Law Judge relied upon the “irrelevant programs limited to senior citizens”. OTS respectfully submits that the presentation of other programs limited to senior citizens does not answer the Commission’s question and should not be relied upon in reaching a decision as to whether the means-tested SCD should be approved by the Commission. The best description for the irrelevant reference to other programs limited to senior citizens is that it is dictum. As an aside OTS responded to the irrelevant senior citizen programs, by suggesting that those programs are funded through the Pennsylvania Lottery.² Consequently, since the programs are funded through the Pennsylvania Lottery means that the contributions to the programs are voluntary, and not mandated as is proposed by PGW means-tested SCD program.

While OTS was under the opinion that any answer beyond the fact that no other utilities regulated by this Commission has a program to provide discounts limited to senior citizens should be considered dictum, the Recommended Decision gave credence to PGW’s dictum and used it as a basis for recommending approval of the means-tested SCD Program. In that regard, on page 21 of the Recommended Decision, the Administrative Law Judge wrote in pertinent part as follows:

I also note, as does Ms. Coltro, that there are a number and wide range of entities and programs that designate senior citizens for discounts. Among those entities is the Philadelphia

² OTS St. No. 1 at 14-15.

Water Department.

OTS respectfully submits that while the Administrative Law Judge and Ms. Coltro may “note that there are a number and wide range of entities and programs that designate senior citizens discounts”, *none* of those entities and programs are *other utilities regulated by this Commission*. Additionally, the Administrative Law Judge’s statement that the Philadelphia Water Department designates senior citizens discounts is irrelevant since this Commission does not regulate the Philadelphia Water Department. Accordingly, any reliance by the Administrative Law Judge that other entities and programs (not utilities regulated by the Commission), and the Philadelphia Water Department have senior citizens discounts is not germane to the question posed by the Commission and should not be given any evidentiary weight. There is no escaping the evidentiary record that there are no other utilities regulated by this Commission that have a program to provide discounts limited to senior citizens.

Consequently, the Administrative Law Judge erred by relying upon PGW’s presentation of irrelevant evidence, by focusing on the wide range of entities and programs that designate senior citizens for discounts, including the Philadelphia Water Department; however, the Administrative Law Judge failed to take into account the evidentiary record, which did answer the Commission’s question and concluded that there are no other utilities regulated by *this Commission* that have a program to provide discounts limited to senior citizens.

2. OTS Expects to the Recommended Decision's Recommended Adoption that the yearly cost of the Means-Tested SCD will Be between \$366,500 and \$371,316.

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

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

RECOMMENDED DECISION, pages 14-15, page 21 inclusive.

OTS MAIN BRIEF, pages 12- 14, inclusive.

OTS REPLY BRIEF, page 7.

The Administrative Law Judge erred when he concluded that based upon the testimony of PGW witness Coltro, the cumulative yearly cost of the means-tested SCD program will be \$365,999, which will have a negligible impact on the customer bills, when spread over by nearly 351, 000 customers.³ OTS respectfully submits that the Recommended Decision failed to recognize the evidentiary record in which PGW admitted that the "\$365,000" is an "average" of what is estimated to be the "first year" cost of the SCD Program.⁴ There is no evidentiary foundation that the cost for the SCD program is only "\$365,000" annually for the next fifteen years and will only have a negligible impact on customer bills. On the contrary, OTS is of the opinion that the estimated "\$365,000" will not be sufficient to cover the costs of the SCD program in the upcoming year of 2005 let alone be sufficient over the next fifteen years.

³ Recommended Decision at 21.

⁴ See Tr. 615.

In that regard, the Administrative Law Judge failed to examine the Company's own exhibit at "PGW Exhibit – CP/CC-2, which was reproduced as OTS Exhibit No. 1, Schedule 1. A close examination of "PGW Exhibit – CP/CC-2 show that in the year 2005, the cost for the closed grandfathered SCD program (column 5) is \$19,633,664 and the cost for a SCD program that includes the means-tested senior citizens (column 4) is \$20,838,373, which represents a difference between the two columns of \$1,204,709. Simply put, the evidentiary record indicates that in the year 2005, the cost associated with the reopening of the SCD program for the purpose of including means-tested senior citizens will cost non-senior customers an additional \$1,204,709 not the PGW estimate of \$365,000. By simply subtracting column 5 from column 4 in each of the years after 2005, it is clear that the total additional cost for reopening the SCD program to include means-tested senior citizens will be over \$60 million. OTS respectfully submits that PGW cannot afford a means-tested SCD out of fear that even more non-senior citizens' households close to the federal poverty level of 150 percent will face the inability to pay their gas bills, particularly with the increasing gas costs. Simply put, the non-senior citizens' households of Philadelphia cannot afford to pay an additional \$60 million over the next fifteen (15) years to fund a means-tested SCD Program.

3. OTS Excepts to the Recommended Decision's Recommended Determination that 1,300 applicants will be enrolled each year 2005-2020.

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

RECOMMENDED DECISION, pages 15-17, inclusive.
OTS MAIN BRIEF, pages 14-16, inclusive.

The Administrative Law Judge has determined that 1,300 applicants will be enrolled each year in the means-tested SCD program. The basis for the Administrative Law Judge's determination is the testimony of PGW witness Coltro and an analysis of Dr. Peach that was attached to the Coltro testimony. With respect to PGW witness Coltro calculation of 1,300, the record evidence reveals that she only took the difference between the number of participants in the means-tested SCD and number of participants in the grandfathered SCD and divided that by the number of years to come up with an average enrollment level per year.⁵ Of course, the 1,300 yearly enrollment into the SCD flies in the face of the impending baby-boom generation reaching the age of senior citizen, thus enters the report of Dr. Peach, who by the way was not presented as a witness in the instant proceeding. OTS submits that a close examination of a pertinent portion of Dr. Peach's Report suggests that conclusion is based on "the trend for movement of population out of the City, and federal policy that supports globalization". In other words, according to Dr. Peach in order to offset the baby-boom entrance into the SCD, a large segment of the baby-boomers would have to

⁵ Tr. 617.

move out of the City and County of Philadelphia.⁶ Such a movement, flies in the face of OTS Cross-Examination Exhibit No. 1, which was not discussed in the Recommended Decision. OTS Cross-Examination Exhibit No. 1, which is a U.S. Census Bureau Report, show that in the County of Philadelphia, in the age group 45 to 54 there is a population of 186,167 compared to the age group of 60-64 with a population of 56,709. In order to satisfy this movement cited in Dr. Peach's report, approximately 130,000 of the present 45 to 54 age group will have to move out of the County of Philadelphia. An acceptance of Dr. Peach's report will require an acceptance of this movement out of the County of Philadelphia in an age group with children going to college, upcoming retirement and having to buy homes in Chester, Bucks and Montgomery Counties. Simply put, "this movement" out of Philadelphia will not occur to the extent necessary to limit or suggest that enrollment will be limited to 1,300 participants per year beginning in the year 2011; to suggest otherwise defies logic. Generally speaking, individuals in the age group of 45 to 54 years old either have already moved or they are not going to move out of the County of Philadelphia, it is that simple.⁷ According to Dr. Peach's report "this movement of the baby-boomers will occur until at least 2020", coincidentally "2020" represents the last year in question in the proposed means-tested SCD proposal. OTS respectfully submits that PGW's estimate of

⁶ The County of Philadelphia is the City of Philadelphia.

⁷ In responding to the Commission's Question No. 8, PGW stipulated to the fact that Household and business income levels continue to drop in Philadelphia. OTS respectfully submits that if household income levels are decreasing in Philadelphia does not support the proposition that a large segment of the baby-boomers are moving out of the City into higher price housing markets in the surrounding counties.

1,300 participants per year and the Peach report to address the obvious upcoming bulge of baby-boomers are simply incorrect and should be rejected by the Commission.

There can be no dispute that when the baby-boomers begin to reach age 65 in 2011, the number of participants will be significantly more than 1,300 every year until 2020.

4. OTS Expects to the Recommended Decision that the Denial of the CRRC Proposal Makes the SCD Acceptable

8) In its Petition at Docket No. R-0004915 Seeking to Establish A “Cash Receipts Reconciliation Clause (“CRRC”), PGW Asserts That:

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

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

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

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

For purposes of this proceeding, the foregoing assertions in the CRRC Petition are relevant to whether the general body of customers can afford to pay for the proposed means-tested SCD. The parties should either stipulate to these assertions or develop a record setting forth their positions on the allegations. SCD Proceeding, (Order entered May 18, 2004) at 3-5.

**RECOMMENDED DECISION, pages 17 through 18, inclusive
OTS MAIN BRIEF, pages 16, through 21, inclusive**

PGW stipulated to the above quoted assertions from its CRRC Petition, and rationalized the affordability of the means-tested SCD on its estimated yearly cost of \$365,000. The Administrative Law Judge approved the means-tested SCD on the acceptance of the \$365,000 and the Commission's rejection of PGW CRRC Petition. *OTS as previously discussed in these Exceptions submits that the yearly cost of \$365,000 is incorrect and further submits that the Commission's rejection of PGW CRRC Petition does make the means-tested SCD affordable for the general body of customers.*

In that regard, as indicated by the stipulation "household income levels continue to drop in Philadelphia, making it increasingly difficult for those customers to absorb such increases in commodity price of natural gas." Additionally, as indicated by the stipulation, "price levels are projected to remain at the current level and those high prices are causing an increasing number of formerly good paying customers to experience difficulty in paying their gas bills." It should be clear that by forcing the general customers to pay for a means-tested SCD program which will cost substantially more than \$365,000 a year, while the Company has and more than likely will be experiencing collection problems, thereby creating a cash flow problem for the Company is not appropriate at this time.⁸ Simply put, the remaining general customers who are not senior citizens are not in a position to afford a means-tested SCD. Whatever may be the initial

⁸ The SCD program ended on September 1, 2003, by all indication PGW's collection are at historic levels of 92%, which suggests that those customers who became senior citizens after September 1 have continue to pay their bills in a timely manner.

cost of a means-tested program will increase overtime, and will have to be funded to its fullest level regardless of what the future cost may be and funded by this Commission and future Commissions into perpetuity.

Finally as an overview, the Administrative Law Judge placed great weight on the elective body of the City of Philadelphia. The problem with that analogy is that unless the Commission is going to distinguish between municipally-owned utilities and investor owned utilities, the Commission must look at the overall policy for every senior citizen in the Commonwealth who may be living between 150% and 250% of the poverty line. OTS respectfully submit that like the elective body of the City of Philadelphia, every local elected body would probably like to provide some energy assistance to its senior citizens on a means-tested basis. The question is whether the Commission is prepare to elevate this program across the Commonwealth or limit its access to only municipal owned utilities or reject the SCD means-tested program.

III. CONCLUSION

The Recommended approval of the Philadelphia Gas Works' means-tested Senior Citizens Discount Program and the Settlement should be rejected at this time as not being in the best interest of the Company with its cash flow problems and the remaining general customers who are presently facing increasing gas costs and declining income levels.

Respectfully submitted,


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Prosecutor

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Dated: September 2, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** of the Office of Trial Staff, dated September 2, 2004, either personally, by first class mail, electronic mail, express mail, or by fax upon the persons listed below:

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

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ORIGINAL

September 2, 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 and
Petition of Philadelphia Gas Works for Waiver of Public
Utility Commission Customer Service Rules,
Docket No. P-00042117

Dear Secretary McNulty:

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

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

Sincerely,

Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosures

cc: Hon. Charles E. Rainey, ALJ (w/enc)
Office of Special Assistants (w/enc. and disk)
Certificate of Service (w/enc)

DSH:52440.1/PHI211-220875

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Re: Petition of Philadelphia Gas Works for :
Waiver of Public Utility Commission : Docket No. P-00042117
Customer Service Rules :
:

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PHILADELPHIA GAS WORKS EXCEPTIONS

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**DOCUMENT
FOLDER**

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Appendix B – Standard & Poor’s Ratings Direct, PGW Summary (August 3, 2004)

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Appendix D – PGW Cross Exam Exh. CP-2

I. INTRODUCTION

The PUC must act to help PGW avert a financial disaster. The rating agencies are poised to rate its bonds at junk status. Such status means that the Company, which depends upon its long term debt as its only available, non-fully utilized source of outside financing, will likely lose access to the financial markets, or will only be able to obtain long term financing at extremely onerous terms. This, in turn, will threaten the Company's gas main replacement program and other capital projects as well as its ability to continue day-to-day operations at normal levels. To prevent this catastrophe, the rating agencies themselves have warned that PGW must materially improve its cash and collections in the near term – or be downgraded.

In the face of this crisis, the Recommended Decision endorses the *status quo* – no changes, no new measures, no help. In several cases, “collaboratives” are recommended to study various options. In the current crisis, such recommendations are not an option. The resultant question is: how can PGW materially improve its collections and cash working capital in the next 4-6 months? The possible answers are: 1) from paying customers via a collections tracker; 2) from the financial markets; 3) from an emergency rate increase or a base rate increase which could only go into effect some time next year; or 4) from the customers who used the gas, have failed or refused to pay for it, and by definition have the ability to pay. The PUC has rejected answer (1), by declining to adopt the CRRC. The financial markets, via the rating agencies, have rejected answer (2), by downgrading PGW's bonds and tremendously increasing the cost of its contemplated new issuance. The third option harms all for the sins of some, using a bazooka to kill a fly.

Accordingly, approving PGW's proposed Chapter 56 waivers, thus, giving PGW greater ability to make those who use gas pay for it, is the only realistic answer to PGW's financial crisis. This solution – which is simply a call for the Commission to assist PGW in enforcing the personal responsibility obligations of its customers – has been implicitly endorsed by the PUC, in its rejection

of the CRRC, and explicitly and loudly demanded by PGW's customers and public officials. Just one of the scores of customers voicing this sentiment was Mary Jane Hazell, who testified as follows:

If you do not pay your oil bill, the oil gets shut off. If you do not pay your electric bill, your electric bill gets shut off. If you do not pay your mortgage, the bank forecloses. Well, then, you know what, if they don't pay their gas bill, shut it off. We do not feel it is our responsibility to pay someone else's bill. Everyone has to be responsible for their own actions. There are some people who do not pay gas bills even when they have the money . . . so we have to pick it up for them. Philadelphia deadbeats, and there's no other words for them, have a good thing going for them.¹

Heeding this call, PGW has proposed a series of measured remedies to help it effectuate the people's prescription: make those who use the gas, pay for it and on a more regular basis. The proposals call for limited waivers of rules developed a quarter century ago based on a policy balance *that never contemplated its applicability to PGW and a service territory that is exclusively Philadelphia*. The waivers – which have been specifically endorsed by a consortium of state and local public officials – are designed to loosen the rules where they are outdated or tilted too far in favor of the non-paying customers, but only to the extent necessary, while preserving fundamental safeguards. In most respects they are very similar to the package of industry-wide Chapter 56 reforms recently enacted by the Pennsylvania House of Representatives.

Considering the imminent threats of the rating agencies, the room for error is exceedingly slim. As this Commission held the last time PGW's financial condition called for extraordinary measures: "Given the current tenor of the markets and the record evidence regarding PGW's liquidity crisis, our responsibility to the residential and business customers of PGW requires that we act now. We simply cannot wait until PGW collapses."² Once again, the time for action is now – the PUC must revise the

¹ CRRC Tr. 77 (Mary Jane Hazell). For similar statements from ratepayers, see CRRC Tr. 63-64 (Louis Rabonin), 102-03 (James Walsh), 188 (Mary Carroll).

² *Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002, Opinion and Order (April 12, 2002) ("Extraordinary Rate Order") at 15.

Recommended Decision and approve the requested waivers, as more specifically set forth in proposed revised ordering paragraphs attached hereto.³

II. EXCEPTIONS

A. **While the Recommended Decision Utilized the Appropriate Standard for Judging PGW's Chapter 56 Waiver Requests, the ALJ Erred by Completely Failing to Recognize That PGW's Current Need to Maintain its Financial Integrity Justified the Proposed Rule Modifications. (R.D. 59-95. Proposed Ordering Paragraph ("POP") 2).**

In the process of rejecting each and every one of PGW's nine requested Chapter 56 (or administrative rule) waiver requests, the ALJ concluded that "PGW did not meet its burden of proving that its proposed modification(s) adequately balances consumer protection rights with PGW's financial integrity."⁴ While this is the correct standard, not once in the entire discussion did the Recommended Decision actually weigh the effect of the requested modification on customers with the evidence of need for additional cash caused by the dire financial circumstances facing PGW. The Recommended Decision, instead, appeared to adopt the existing Chapter 56 rules as reflecting the appropriate balancing without considering PGW's special financial circumstances. As a matter of common sense and logic, the ALJ's steadfast defense of Chapter 56 as the correct "balancing" of consumer and utility interests in this instance can not stand because it failed to do what the ALJ himself admitted was necessary – actually consider whether the contemplated effect of the modification on PGW's cash working capital outweighed any negative effect on consumers resulting from the proposed change.

Chapter 56, as written, strikes a balance between the financial interests of utilities and their investors with the needs of consumers for fair procedures and reasonable service. But this balance obviously is a generic one, focusing on the typical investor-owned utility, the typical utility investor

³ Appendix "A" hereto. PGW is also filing a limited exception concerning the due date for the independent evaluation of PGW's low income assistance program – CRP (*see*, Exception "E" *infra.*), and an exception regarding the ability to condition service connection on the customer's agreement to enter into a payment agreement for amounts secured by liens or judgments. (Exception "F.")

⁴ *See, e.g.*, R.D. at 62.

and the typical customer base. For this standard to have any meaning in the specific context of this proceeding, the Commission must consider the financial circumstances of PGW at the present time, and consider the need to modify the general rules in light of those special facts. When that balancing occurs, it is simply impossible to come to any reasonable conclusion except that the general balancing must be modified to accommodate PGW's tremendous need to increase its collections and cash working capital in the near term or be downgraded to "junk" status. In summary, the facts justifying that conclusion include the following:

- As a result of a threatened downgrade by the rating agencies, PGW's owner, the City of Philadelphia, took the unprecedented step of waiving its legally authorized \$18 million annual fee for a period of 5 years, infusing the Company with an additional \$90 million over this period. In addition, it has voluntarily deferred a \$45 million cash working capital loan that it provided to PGW.⁵
- Notwithstanding that assistance, PGW's end of year cash levels have dipped to \$28 million (from the \$31-\$36 million predicted on the record in the CRRC proceeding), even including the waiver of the \$18 million City Payment and the effects of a \$34.5 million gas storage payment deferral transaction.⁶
- If the effects of the one-time, gas storage payment deferral transaction are excluded from the analysis, PGW would end the year with liquidity (cash and available short term borrowing) of **negative \$6.5 million**.⁷
- In PGW's next bond issuance – which is scheduled to be sold this month – it will be able to insure only a portion (\$120 million) of its contemplated \$150 million, meaning that the rest of the bonds would have to be issued at BBB- rates (one step above "junk").⁸

As PGW has explained, the principal reason for the Company's liquidity crisis is astronomically high natural gas prices, which have in turn increased the annual bills for PGW's

⁵ CRRC Proceeding, PGW St. CRRC-1R at 3.

⁶ CRRC Proceeding, PGW Petition For Reconsideration at ¶¶ 4-8, App. A.

⁷ *Id.*

⁸ Through a special arrangement, PGW has secured insurance for \$120 million of its \$150 million but at an extremely high cost (approximately \$8 million). PGW's current plan is to issue the remaining \$30 million on a variable rate basis but without insurance. The net effect is an increase in cost of some 350 basis points.

customers to unprecedented levels.⁹ As the average customer bill has shot up, PGW's collections levels have gone down, culminating in a FY 2003 collections percentage of just 87%.¹⁰

PGW did not sit back and ignore the crisis, nor did it choose to seek to burden its customers by further base rate increases – and it continues to seek ways to avoid yet another base rate or emergency rate increase request. Instead, it undertook to improve its collections through a massive “Collections Initiative” which totally revamped its collections process and added a host of new practices.¹¹ The result has been an amelioration of PGW's 2003 experience and a return to historic levels of collections – close to 92%.¹² But, notwithstanding these successes, PGW continues to stand close to the abyss. The agencies that rate PGW's long term debt continue to state publicly that notwithstanding even the most recent improvements in collections to 92%, its projected \$28 million end of year cash balance or the additional assistance of the City, PGW must still show a material improvement in its cash and collections in the “near term” – or be downgraded. Standard and Poor's has made this clear since this spring. In April, S&P lowered its rating on PGW senior revenue bonds to BBB-, the lowest investment grade rating.¹³ It cited “weakened liquidity position and declining credit measures fueled by collection rates that deteriorated appreciably in the last year.”¹⁴ As for PGW's outlook, S&P did not mince its words: if in the “near term” PGW's “collections and cash margins do not materially improve,” the Company's bond ratings “will be lowered further” to junk status.¹⁵

⁹ PGW St. CRRC-2.

¹⁰ PGW St. CRRC-1, Exh. JRB-1.

¹¹ PGW St. CRRC-3.

¹² PGW St. CRRC-1R at 2; PGW St. CP-1R at 6.

¹³ PGW St. CRRC-5, Exh. TEK-1.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 2.

Just a few weeks ago in August, after PGW was projecting that it would improve its collections back up to historic levels and received the first part of the assistance promised by the City, S&P was still saying the same thing – unless the Company improves its collections and cash working capital beyond that which it is projected to experience in FY 2004 it will be downgraded. S&P concluded with this statement:

The outlook on PGW is negative. Ratings will be lowered if PGW's financial profile weakens over the near term and collection rates and cash margins do not improve materially.¹⁶

The record is absolutely clear that PGW's proposed set of nine limited Chapter 56 waiver requests is the only realistic means of responding to the rating agencies' demands and staving off a disastrous bond rating downgrade to junk status. Such a downgrade would preclude PGW access to the long term capital market (except on extremely onerous and limited terms), threatening its capital programs, and rob the Company of its single remaining external source of operating capital (PGW's commercial paper is fully utilized; PGW is permitted to utilize the proceeds of its bonds for working capital so long as, by the end of the fiscal year, those amounts are either actually utilized to fund capital projects or returned to the capital fund.)¹⁷ A junk bond status would also likely cause most of its natural gas suppliers to either terminate their relationship, require prepayment of invoices or require onerous payment terms, and would likely plunge PGW into an emergency situation, where it would be forced to ask for emergency rate relief.¹⁸ In the recent past, the Commission determined that a downgrade of PGW's debt, below investment grade to junk status, would be so costly that it warranted rare and extraordinary relief from the Commission.¹⁹

¹⁶ Standard & Poor's Ratings Direct, PGW Summary (August 3, 2004), attached hereto as Appendix B; CRRC Proceeding, PGW's Answer to De Facto Motion to Strike at App. A.

¹⁷ PGW St. CRRC-1 at 7-8.

¹⁸ Certainly the storage gas pre-payment arrangement that PGW entered into this year, and which was the sole reason the Company finished the year with any positive cash flow, would be impossible if PGW were downgraded.

¹⁹ Extraordinary Rate Order at 15.

The Company has squeezed every dime out of its “business as usual” collections practices, going to unprecedented lengths to just get its performance back up to historic levels, a considerable achievement during a time of upwardly spiraling energy prices. The City has done all it can reasonably be expected to do to provide support – effectively foregoing receipt of \$135 million over the next 5 years. PGW has also exhausted its store of one-time fixes that it used in the past to survive immediate crises.²⁰

Thus, the question confronting the PUC is NOT whether PGW’s Chapter 56 waiver requests are appropriate as a general matter or in the abstract, but instead whether they are the least objectionable means of improving collections and cash working capital in the next six months, in light of PGW’s unique circumstances and the disastrous consequences of a bond downgrade for all involved. Unfortunately, the Commission does not have the luxury of simply not dealing with these current financial realities. Nor may the decision be made only by examining the effect of the waivers on consumer rights. PGW asserts that the risks of that approach are enormous and cannot be justified. As the Philadelphia Public Officials cogently stated:

PGW has demonstrated, and the Philadelphia Public Officials agree, that the loss of PGW’s investment grade bond rating would be a disaster for the Company, its employees and, most of all, its customers, dramatically increasing PGW’s cost of service at the least, and, at worst, threatening the Company’s ability to make the capital improvements necessary to continue to provide safe, reliable and adequate service.²¹

As a result of this conclusion, the Public Officials supported PGW’s Chapter 56 waiver requests as “reasonable and supported by the record evidence in the proceeding.”²²

²⁰ PGW St. CRRC-1R at 3; *see* PGW St. CRRC-5.

²¹ Public Officials MB at 4-5. The Public Officials are: Pennsylvania State Senators Vincent J. Fumo, Michael J. Stack and Anthony H. Williams, Philadelphia City Council President Anna C. Verna, and Philadelphia City Council Members James F. Kenney, Frank DiCicco, Michael A. Nutter, David Cohen, Joan L. Krajewski and Juan F. Ramos, and Philadelphia District Attorney, Lynne Abraham.

²² Public Officials MB at 5.

Accordingly, because of its failure to even consider the special and specific financial needs of PGW when weighing its waiver requests, the Commission must reject the Recommended Decision's finding that PGW had not met its burden of proving that its financial integrity justified the requested modifications. Instead, the Commission should approve the waiver requests on a two-year "pilot" basis, subject to monitoring and potential modification as experience with the revised procedures become available. As will be shown in the following discussion of the waiver requests, each is carefully crafted to affect customer interests only to the extent necessary, while still being fair to customers and preserving a consumer's procedural right. Most importantly, the effect of each request must be considered from the standpoint of whether it is reasonable in light of the need to increase PGW's collections and cash working capital and the absence of any other alternative means to do so and it was erroneous for the Recommended Decision to fail to do so.

B. The Recommended Decision Erred By Suggesting That PGW's Chapter 56 Waiver Requests, Would Not Improve Its Financial Integrity Because of the Lead Time Needed To Implement Them. (R.D. p. 53. POP ¶ 2).

As noted above, the ALJ did not weigh PGW's need for additional cash working capital when considering its Chapter 56 waiver requests. Indeed, the only comment on PGW's financial condition made in the Recommended Decision was a suggestion that "PGW admitted that, even if the Commission were to grant its Waiver Petition, there would not be any immediate impact on its cash flow crisis because it would take months for PGW to implement the modified rules..."²³

This was error. While PGW did indicate there would be lead time – 6 to 8 weeks – in initiating the changes in rules suggested by the waiver requests, it is not clear how the ALJ reached the conclusion that because of this short lag the changes would not have an immediate impact on PGW's cash flow. In fact, as PGW made clear in its earlier pleading,²⁴ granting the waiver requests will give

²³ R. D. at 53.

²⁴ In PGW's Motion to Certify, the Company pointed out that the Chapter 56 waiver requests would not be able to be implemented "with a flick of a switch." Motion at 2. As explained in Mr. Gyory's Statement, attached to the

PGW the ability to make an immediate improvement in its collections and cash working capital – albeit not as great as would have occurred if the PUC had acted earlier.²⁵ All of the requests will be able to be implemented by November at the latest, and, while clearly reducing the effect to some extent, will, nonetheless, provide a positive benefit to PGW’s collections and cash flow or a positive reduction in costs, at a time where such an infusion is desperately needed.²⁶

Further, PGW believes that the mere granting of the Company’s requests will have a salutary impact on the rating agencies because, at the very least, it will signal PUC support for the Company and its struggle to maintain an investment grade bond rating. Importantly, one of the concerns raised by S&P in its comments after the PUC’s Order denying the CRRC was a suggestion that the rejection of the CRRC pointed to a less supportive PUC relationship.²⁷

To the extent, therefore, that the ALJ rejected PGW’s Chapter 56 waiver requests based on a misunderstanding that they would not make a positive improvement on PGW’s financial condition, the Recommended Decision was in error. Even if the full effects are realized, that certainly can not

Petition for Waiver, implementation of the modified rules is expected to require at least six to eight weeks of preparation and training depending upon the complexities of the changes adopted by the Commission. The filing pointed out that the effort will require revising policies and procedures, developing new customer communications, and training collections and customer affairs personnel, as well as developing and implementing a community education program to ensure maximum benefit from the changes. Accordingly, PGW urged the Commission to act as quickly as possible: “Given the demands of the rating agencies for material improvement, and the promised action without it,” PGW suggested that waiting until September to afford the Company these new collections tools “may well be too late and not an option.” (*Id.* at 6). Thus, PGW’s request for fast action was based upon its concern that waiting until November or December to fully implement the waivers might not be sufficient to hold off rating agency action. Indeed, it is now known that the rating agencies have held off, at least until the Commission acts on PGW’s waiver requests in September.

²⁵ PGW Exh. CP-1at 4. The proposals are focused on raising additional cash in the next 4-6 months by improving collections or reducing costs. The Company showed that its waiver requests could raise as much as \$30 million. *Id.*

²⁶ Based upon representations by BCS witness Mumford, PGW has already begun to implement its request to modify BCS administrative guidelines involving payment agreements (item D.6, below) and the time permitted to effectuate a termination (item D.9).

²⁷ S&P Bulletin: “Adverse Regulatory Decision For Philadelphia Gas Works Detracts From Credit Quality,” July 9, 2004 (attached as Appendix C hereto).

constitute a reason for not considering the financial effect of the waivers and PGW's dire need for such cash infusions.

C. The Recommended Decision's Rejection of Each of PGW's Specific Waiver Requests Failed to Consider PGW's Unique Circumstances Which Justify Their Approval

In addition to the Recommended Decision's failure to consider PGW's acute financial needs, it also failed adequately to consider a number of other factors which, taken together, clearly justify a finding that loosening the PUC's rules, where they are outdated or tilted too far in favor of the non-paying customers, is necessary for PGW to achieve the cash "material" improvement, as demanded by the rating agencies.

First, the Recommended Decision uniformly failed to take account of PGW's unique demographics and status as a municipal utility. As a municipal utility, PGW has no shareholders and, in each instance in which PGW is prevented from enacting a practice that enhances the chances of receiving payment from non-payers, the burden of paying for the service transfers NOT to stockholder but to the remaining PGW customers. The OSBA astutely explained this reality in its brief:

PGW is a cashflow regulated utility. Moreover, its ongoing cash position is uncertain. As a cashflow regulated utility in financial difficulties, when some customers do not pay their bills other customers must make up the difference. Thus, the appropriate balance to be struck in this proceeding is between providing reasonable protection to payment troubled ratepayers and establishing just and reasonable rates for the customers who do pay their bills. . . . In any event, under cashflow regulation, the burden of [PGW's] collections problems falls on the paying customers and not on PGW 'shareholders.'²⁸

As OSBA has correctly pointed out, regardless of the Commission view of whether Chapter 56 presently provides the appropriate general "balance" between the rights of individual customers and the financial interests of the affected utilities, it should be clear that "PGW is a special case and should

²⁸ OSBA MB at 11-12 (emphasis added).

be treated as such when the Company's proposed waivers are examined; yet the Recommended Decision erroneously failed to acknowledge these unique circumstances.²⁹

Second, the Recommended Decision failed to give any consideration to PGW's relatively large volume of non-paying customers with which the Company must deal. In many instances, the Decision suggested that PGW could attempt to obtain the result it is seeking through its waiver request by applying for an individual, legal ruling from the PUC on a case-by-case basis. But the sheer volume of PGW's collections problem makes such an approach infeasible. Fully one-half of PGW's total customer base – 250,000 customers out of 510,000 – are payment troubled on a regular basis;³⁰ PGW had some 133,000 customers who were in arrears as of April,³¹ a number which has now grown to 150,000;³² it anticipates having to terminate some 30,000-35,000 customers by December 1;³³ and it has entered into some 54,000 payment agreements (91% of which, historically, have been broken within twelve months).³⁴ At the very least, all of these facts make it simply infeasible to attempt to deal with PGW's variety of problems and issues on a case-by-case basis, as the ALJ recommended.

Finally, the Recommended Decision consistently rejected PGW's proposed waiver requests because of a concern that customers who, while not satisfying the "low income" definition used by the PUC, would, because of their financial circumstances, have a harder time maintaining their gas service.³⁵ But, in light of the number of PGW customers that are low-income (some % have incomes

²⁹ OSBA MB at 12.

³⁰ PGW St. CP-1R at 12-13.

³¹ PGW Exh. CP-1, App. A at 5

³² PGW St. CP-1R at 27.

³³ PGW Exh. CP-1, App. A at 5.

³⁴ Tr. 685; PGW Exh. CP-1, App. A at 6.

³⁵ See, e.g., R.D. at 62.

under \$20,000),³⁶ adopting this approach means a massive burden imposed on remaining customers – something that has been universally rejected by customers,³⁷ public officials³⁸ and the Commission itself in its CRRC decision.³⁹ PGW submits that, especially considering its present circumstances, the PUC must approve rules that work toward assuring that all customers who can pay must pay, in order to relieve the very serious burden that non-payers are imposing on remaining customers. Customers who have an inability to pay should be protected via established federal and state low income assistance programs. Importantly, PGW believes that the only standard that properly may be used to designate customers with an inability to pay is the standard used to determine income eligibility for the PUC’s low income assistance program – CAP (referred to as “CRP” by PGW) – which sets the standard at 150% of the Federal Poverty Level or below (which is the same as LIHEAP). The Recommended Decision appears to have incorrectly and inappropriately adopted the arguments of several of the parties that suggested that the Commission should utilize a broader definition of “ability to pay,” to include the “working poor” and that Chapter 56 is designed to protect such customers. That broader definition goes well beyond existing standards and would be inconsistent with existing state and federal standards.⁴⁰ At least for a municipal utility such as PGW, it is both unfair and legally indefensible to create mechanisms that force the remaining general body of customers to subsidize

³⁶ PGW St. CRRC-5 at 16.

³⁷ CRRC Tr. 77 (Mary Jane Hazell). For similar statements from ratepayers, see CRRC Tr. 63-64 (Louis Rabonin), 102-03 (James Walsh), 188 (Mary Carroll).

³⁸ CRRC Tr. 42 (Hon. Angel Cruz), 44 (Hon. Brian J. O’Neill), 69 (Hon. Mark B. Cohen), 110 (Hon. Joan Krajewski), 132 (Dir. Lance Haver).

³⁹ CRRC Proceeding, Opinion and Order (July 8, 2004) at 18-20.

⁴⁰ *See, e.g.*, R.D. at 62, 84. The Commission has clearly delineated the groups of general customers who, in its view, are deserving of support in paying their utility bills – customers at the 150% of the FPL or less (income Levels 1 and 2 under the BCS income level standards). PGW MB at 22-23. Accordingly, PGW’s waiver requests should not have been rejected on the ground that some non-low income customers might have trouble maintaining service despite their inability or unwillingness to live up to their payment obligations. Just recently, in the now seminal *Frayne* decision, the Commission made clear that this obligation is at the heart of Chapter 56. *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Sept. 10, 2003). The Recommended Decision’s outcome does not reflect this seminal rule.

other, non-protected customers unless those customers fall into some other protected class, such as senior citizens.⁴¹

Taken together, PGW's unique characteristics clearly justify the carefully crafted modifications to the general Chapter 56 rules and administrative procedures and the Recommended Decision's consistent failure to take these special circumstances into consideration was error.

D. The ALJ Erred In Rejecting Each of PGW's Specific Waiver Requests.

1. Introduction.

As will be shown below, the Recommended Decision erred in rejecting each of the requested waivers. The waivers, as a whole, are designed to provide a positive improvement in PGW's collections and cash working capital in the next 4-6 months. Importantly, each waiver request was accompanied by a calculation of the cash working capital or collections infusion that would result if the waiver were adopted. While parties took issue with some of these calculations, they clearly show that each modification will be a positive step in improving PGW's financial situation and putting it on the path to financial normality. Moreover, PGW's proposals modify existing procedures and Chapter 56 rules only to the extent necessary to achieve the desired result. The waivers maintain consistency with the general goals of Chapter 56: to assure adequate provision of residential utility service, to restrict unreasonable termination or refusal to provide service, and to provide functional alternatives to termination.⁴² In no case is PGW's request fundamentally inconsistent with an existing Chapter 56 goal.

When balanced with PGW's acute financial needs, there is no question that PGW's requests should be granted in their entirety – and granted now. The Recommended Decision's promotion of a collaborative⁴³ to discuss the very same issues embodied in the specific waiver requests is simply not

⁴¹ PGW St. CP-1R at 11-12.

⁴² 52 Pa. Code § 56.1.

⁴³ R.D. at POP 11-13.

an option. The collaborative, the first meeting of which may not even occur until December 31, 2004, offers only the opportunity for more talk from the same parties, with little hope for changes in their respective positions, and no solutions to PGW's *immediate* need for material financial improvement. PGW is open, though, to a collaborative designed to address issues arising from the implementation of the approved waivers.

2. The ALJ Erred in Refusing to Permit PGW to Require Payment of the Full Balance and Related Charges to Restore Level 3 and 4 Customers Who Have Been Shut Off for Non-Payment. (Estimated Value: \$4.2 million). (R.D. 58-64.)

Under this proposal, PGW would be permitted to require customers to pay 100% of any outstanding arrearage as a condition of reinstating service after termination, for customers who are identified as income Level 3 (incomes of greater than \$28,275 and less than \$56,550 for a family of four) and 4 (income levels over \$56,550 for a family of four).⁴⁴ The present Chapter 56 rule, that a customer has a right to pay-off outstanding charges on an amortized basis,⁴⁵ would continue to apply to all other customers.

The Recommended Decision rejected this proposal, essentially concluding that the existing rules were a more reasonable way in which to deal with previously terminated customers with arrearages. The decision concluded that it would be unreasonable to deprive all PGW customers with incomes above 150% of the FPL, regardless of circumstances, the possibility of entering into a reasonable payment agreement in order to have payment restored, and found that PGW's proposal is inconsistent with Chapter 56, Section 56.191, which recognizes that "each situation is different."⁴⁶

But, the Recommended Decision failed fully to appreciate that revisions to existing rules that produce additional collections are crucial if the Company is to avoid a downgrade. The question then is not whether this rule revision is better or worse than the current rule in the abstract, but rather

⁴⁴ PGW CRRC-5, Exh. TEK-5.

⁴⁵ 52 Pa. Code § 56.191.

⁴⁶ R.D. at 62.

whether, considering the circumstances affecting PGW, it represents a reasonable way of increasing collections for PGW. Considering the facts presented on the record, the answer cannot be anything other than in the affirmative:

- The number of PGW customers in arrears is enormous: as of April 1st, 133,000 customers were subject to receiving service termination notices,⁴⁷ and by the time of the hearing in this proceeding that number was up to 150,000;⁴⁸
- Of those customers, some 54,000 or more will likely enter into payment arrangements;⁴⁹
- Most importantly, PGW's historic payment arrangement success rate is only 8-9%.⁵⁰ This means that of the 54,000 or more customers who will be given a payment arrangement to pay their past due utility bills, less than 10% will actually honor that good faith agreement.

While the PGW proposal would increase the payment that a non-low income customer would be required to remit to be reinstated, customers at these levels clearly have the ability – and must be expected – to pay, an assumption that, as discussed above, is reflected in PUC and national policy. Further, the fact that these customers are being reinstated for non-payment means that they have already had and discarded the opportunity to pay off the arrearage through a payment plan. Giving them what amounts to an additional payment agreement opportunity has led to the huge levels of accounts receivables that are at the heart of PGW's cash crisis.⁵¹

Moreover, just as the opposing parties did, the Recommend Decision made no distinction between a family making \$30,000/year or a family making \$100,000-200,000 year. Thus, all customers are entitled to receive service without paying their full arrearage, regardless of how well off

⁴⁷ PGW Exh. CP-1, App. A at 5.

⁴⁸ PGW St. CP-1R at 27.

⁴⁹ See, Tr. 685.

⁵⁰ PGW Exh. CP-1, App. A at 6.

⁵¹ PGW CRRC-1, Exh. JRB-2 (FY04 estimated net accounts receivable projected at \$114.5 million, a 58% increase over actual FY02).

they are. The Recommended Decision's failure to make any such distinction makes the entire recommendation unreasonable.⁵²

The Recommended Decision also raised the concern that Level 3 and 4 customers have average balances of \$620.00 and "many Level 3 and 4 customers may not be able to make a \$620.00 lump sum payment."⁵³ It suggests that the solution is to "intervene with the customer at the first sign that the customer is not making payments or is only making partial payments," and to "work with the customer to see whether the customer may be assisted by budget billing or is eligible for LIHEAP or USEF ..."⁵⁴ First, PGW in fact does all of those things now. At the first sign of a customer falling into arrearage, it undertakes a host of actions to attempt to keep a customer from slipping so far as to justify a termination notice.⁵⁵ Moreover, once a termination notice is issued, the first step – as mandated by Chapter 56 as well as prudent practice – is to attempt to negotiate a payment agreement. At present all customers entering into a payment agreement are also strongly encouraged to go on budget billing as part of the payment arrangement.⁵⁶ Finally, PGW's proposal is to require 100% payment of arrearages for reinstatement only for customers in Income Levels 3 or 4; such customers are not eligible for LIHEAP or USEF.

⁵² The best evidence in the record is that only about 41% of PGW's existing customer base has incomes above \$30,000 and only approximately 7% of its customers have incomes above \$40,000 (for a family of 4). PGW MB at 27. These statistics demonstrate two important points: (1) by focusing principally on income Level 3 and 4 customers, PGW has insulated the majority of customers in lower income categories from any adverse affects that may be possible from its proposal; and (2) if PGW's proposals are limited to just the highest income levels (for example families with incomes of \$40,000 and above), the reach of its proposals would be limited and would not provide the full benefit to PGW's collections and cash working capital that it so desperately needs.

⁵³ R.D. at 62-63. PGW's stated willingness to modify its proposal to permit customers subject to this rule to file an informal appeal with BCS not only if there was some billing error but also if the customer could show "extraordinary hardship." (PGW St. CP-1R at 13). In such a circumstance, the customer could be given one additional opportunity to pay off his/her arrears under some schedule established by BCS. But, if that customer breaks that agreement and is terminated, no further dispensation should be permitted.

⁵⁴ *Id.*

⁵⁵ PGW St. CP-1 at 8-10.

⁵⁶ Tr. 677-78.

By permitting this change, the Commission will increase the chances that the Company will collect a substantial portion (\$4.2 million) of its receivables from these customers. While current rules would give the Company the opportunity to demand 50-75% of these arrearages in upfront payments, those decisions frequently are reversed by BCS upon appeal.⁵⁷

Notwithstanding these facts, and without citation to any record evidence, the Recommended Decision suggested that PGW would somehow be better off if it continued to reinstate service by the payment of less than 100% of an arrearage and a small payment of the balance each month.⁵⁸ Contrary to this opinion, permitting a customer to get back on the system without paying his/her entire arrearage will put the Company in the position of losing a substantial portion of potential collections – in the form of smaller up-front payment – while likely failing to recover the remaining balance and having to once again supply and pay for gas service without being paid. Unmentioned by the ALJ was the unchallenged fact that more than 90% of all PGW payment agreements end up being defaulted. Thus, for 90% of the customers, under present rules, PGW reinstates the customer without full payment, the customer never pays the full amount they owe and PGW is forced again to attempt to terminate them. Meanwhile, PGW is forced to continue to expend dollars to provide the customer with natural gas service – which can amount to tens of millions of dollars. In another context, PGW estimated on the record that delaying termination activity for just an additional 30 days would result in PGW expending an additional \$20 million in natural gas expenditures.⁵⁹ Clearly, considering PGW's acute need to increase collections, requiring higher income customers who have already been terminated for non-payment to remit 100% of their past due balance as a condition of reinstatement is a reasonable

⁵⁷ For example, in the informal complaint resolution placed into the record, a non-CRP customer, and therefore one who was in an income Level 3 or 4, was permitted to receive service by paying a budget amount for current service together with just \$100/month even though the location had an arrearage of over \$7,000. (PGW Cross Exam Exh. CP-3).

⁵⁸ R.D. at 62-63.

⁵⁹ PGW projected that it would incur some \$20 million in additional natural gas costs if the termination process had to be repeated after 30 days. PGW Exh. CP-1, App. A at 14.

tightening of the existing general rule and fully justified under the circumstances. Unless some other means of producing an additional \$4.2 million in cash working capital is identified, the Commission should approve this waiver request.⁶⁰

3. The Recommended Decision Erred In Rejecting PGW's Proposed Waiver of the Winter Moratorium Shutoff Ban for Level 3 and 4 Customers. (Estimated Value: \$1 million) (R.D. 64-69.)

The Recommended Decision refused PGW's request for a waiver of the Chapter 56 general prohibition against winter terminations. This was error. Currently Chapter 56 prohibits PGW from terminating customers who are in arrears except in very limited and specific circumstances and only after receiving approval from the PUC.⁶¹ PGW proposed to establish a presumptive rule that customers that can be identified as falling into income Levels 3 or 4 would be subject to termination even in the winter, subject to the customer's right to file a complaint with the PUC demonstrating that extraordinary circumstances should prevent termination.⁶² The facts justifying this proposal are compelling:

- As indicated above, of the 54,000 or so customers who will be extended payment agreements in this fiscal year, 91% will break their agreement within 12 months. If such a high percentage of agreements break within 12 months, a significant portion will

⁶⁰ Notably the policy determination made by the Pennsylvania House in the Responsible Utility Customer Protection Act is consistent with PGW's proposal in that it requires full payment of any balance outstanding as a condition of reconnection of utility service for any customer whose income exceeds 150% of the Federal Poverty Level. S.B. 689, § 2807-D(C).

⁶¹ 52 Pa. Code § 56.100. Attached to the testimony of BCS Mumford is a Secretarial Letter issued in 1993 which sets forth the procedure and criteria by which a utility can petition for a waiver of the winter moratorium for individual customers. OTS St. 4, Exh. 4, Sch. 3. In addition to requiring a plethora of information from the utility about the individual customer, the Secretarial Letter prohibits a waiver request for any household where: (a) the household gross income is below 150% of the federal poverty level; (b) children under the age of 12 are in the house; (c) senior citizens are present (age 60 or over); (d) physically or mentally handicapped household members are living at the premises; (e) seriously ill household members reported by the customer during the most recent contact between the customer and the utility; and (f) no landlord/tenant relationship is affected by the proposed termination. *Id.*, p. 3. Characterizing a winter termination as "a serious penalty for those who do not pay their bills," the Secretarial Letter directs "strict adherence to the procedures outlined in this letter," and the Commission will entertain such petitions "only when the utility can clearly demonstrate that it has undertaken all other possible alternatives to elicit payment." *Id.*

⁶² PGW Exh. CP-1, App. A. at 5-7.

do so during the winter when PGW has no effective recourse other than to continue to provide them with service.⁶³

- PGW presented evidence showing that it has a significant number of customers who fail to pay during the winter and would otherwise be terminated but for the winter termination ban. Last winter, PGW had over 15,000 customers (all non-CRP), representing \$5.3 million of accounts receivable, who were on the system from December 1, 2003 through at least March 31, 2004, without paying a single cent toward their bills.⁶⁴ Without the winter moratorium, all of those customers would either have been forced to enter into a payment arrangement or would have been terminated. Instead, PGW had to absorb a \$5.3 million cash working capital loss as well as the cost of the gas provided to the non-paying customer.⁶⁵

The Recommended Decision rejected PGW's waiver request on the ground that the Company failed to take advantage of the present rule which permits the winter moratorium to be waived on a case-by-case basis.⁶⁶ But, the infeasibility of a case-by-case assessment is the reason PGW proposed the rules change in the first place. By any calculation, PGW is annually faced with thousands of customers who fail to pay or are paying only a small amount on their gas bills during the winter.⁶⁷ As a "cash flow" company, slow payment is just as harmful to the Company's cash working capital as non-payment is. The winter moratorium permits these customers to stop paying or stop paying on time, secure in the notion that their failure will not result in their losing gas service for months – a period that, as a practical matter, extends well beyond April 1 for most of those customers. Creating a general rule that such customers in the higher income levels (about 41% of PGW's customers) can be terminated in the winter without pre-approval of the PUC creates a potent collection tool, the existence of which in and of itself very likely will produce additional payments from customers.⁶⁸

⁶³ PGW MB at 28-29; PGW St. CRRC-5 at 16, Exh. TEK-5.

⁶⁴ PGW St. CP-1R at 14-15.

⁶⁵ *Id.*

⁶⁶ R.D. at 68-69.

⁶⁷ Looking only at the 15,000 customers who failed to pay anything on their gas bills last winter, if 41% have incomes in the Level 3 and 4 category this means that PGW would have had to use the "case-by-case" approach in 6,000 cases.

⁶⁸ PGW St. CP-1R at 14.

To protect against cases in which serious hardship could occur if the termination went forward, and to allow resort to social service and other alternative helping agencies, PGW proposed that customers subject to this rule should be permitted to file an informal appeal with BCS if the customer shows “extraordinary hardship.” Accordingly, there is no basis for suggesting, as the Recommended Decision did, that the adoption of a general waiver for high income customers would “unreasonably place at risk “ the health and safety of a customer’s household.⁶⁹ Further, there certainly must be some income level at which personal responsibility outweighs the need for the moratorium.

Considering PGW’s desperate need to add to its cash flow and increase collections, especially in the winter when PGW must pay for pipeline gas purchases as well as debt service on long term bonds, the financial needs of the Company outweigh the opposition to this change in the existing procedure, especially where claims of real hardship can be advanced to the PUC.⁷⁰

4. The Recommended Decision Erred By Refusing To Require a Flat Turn-On Deposit for All New/Restored Customers and Refusing the Right to Deny Service Until Deposit is Paid in Full. (Estimated Value: \$7.6 million) (R.D. 69-74.)

One of PGW’s most important proposals is to require all non-CRP customers to remit a deposit as a condition for new service. The deposit would represent two months of the system average monthly residential bills (\$250 for heating customers and \$100 for non-heating customers). The deposit will be held for one year and then credited to the customers who demonstrate that they pay on time. PGW’s proposal would replace or modify the Chapter 56 provisions with respect to deposits

⁶⁹ R.D. at 69.

⁷⁰ Again, the Company’s position is consistent with the revisions to Chapter 56 which were adopted by the State House. The Responsible Utility Customer Protection Act would actually eliminate the winter moratorium for all customers whose gross household income exceeds 150% of the FPL. S.B. 689, § 2806-D(f). The declaration of policy in Section 2802-D of the Act clearly states that the motive behind this proposed reduction of the winter moratorium’s reach is the implicit finding that customers have a personal responsibility to pay their utility bills and, absent recognized low income status, they must.

which actually prohibit a utility from demanding a deposit from a new customer in a variety of circumstances⁷¹

The Recommended Decision incorrectly rejected this proposal on the ground that “in an attempt to collect as much money as possible as soon as possible, PGW would forsake the rights of individuals.”⁷² In fact, PGW is indeed attempting to increase its cash flow and collections and to decrease uncollectibles, not to forsake the rights of customers but to keep the Company from sliding into financial disaster. Asking customers for a deposit as a condition of providing service can not, by any stretch be characterized as “forsaking” some immutable consumer right.

Indeed, uniform deposit requirements are the rule, not the exception, in many contexts. The justification for PGW’s deposit proposal is compelling:

- PGW has a massive number of customers who start service but who do not pay their bills or do not pay on time. Since the beginning of the fiscal year, PGW had some 68,000 customers initiate service (excluding those who were enrolled in CRP, who immediately entered into some kind of payment arrangement or had some other issue with respect to their account);⁷³
- Of this 68,000 starting service just this year, 18,466 (or 27%) were already in arrears when the record closed;⁷⁴
- PGW only secured 1,500 deposits from this group of customers, using its existing manual deposit procedures and Chapter 56 rules;⁷⁵
- If PGW’s deposit proposal had been in place from the beginning of the fiscal year, PGW would have a potential pool of \$4.6 million that could have been applied against customer non-payment or slow payment.⁷⁶

⁷¹ These include, where the customer’s prior utility credit history is adequate, where the applicant owns a home or has leased a residence for more than one year, or where the “applicant provides information demonstrating that he is not an unsatisfactory credit risk.” 52 Pa. Code § 56.32. Existing rules also allow a utility to require a deposit as a condition to reconnection of service following termination or, whether or not termination of service has occurred if a ratepayer fails to comply with a material term or condition of a settlement or payment agreement. 52 Pa. Code § 56.41.

⁷² R.D. at 73.

⁷³ PGW St. CP-1R, Exh. CP/RG-4.

⁷⁴ *Id.*

⁷⁵ *Id.*

As indicated, the ALJ's principal concern appeared to be that PGW's proposed flat turn-on deposit requirement will "forsake the rights of individuals and that the Company should instead pursue "credit scoring."⁷⁷ These arguments run completely counter to the following facts:

- Low income customers who are eligible for CRP would not be subject to the deposit requirements.
- Deposits are regularly required in all sorts of commercial transactions without regard to credit or income status, including leasing a house or apartment, leasing a car, renting an appliance or a garden tool, obtaining a cable box and many other examples. In many instances, they apply to "critical necessities of life" such as housing.
- Customers who pay on time will receive the deposit back with interest in the form of a credit.⁷⁸
- PGW indicated that it would be willing to permit customers to file complaints with the PUC if the deposit requirements would create significant hardship.⁷⁹ In such instances, the Commission could modify the deposit requirements by permitting the deposits to be paid out over time or to reduce it. PGW believes that only one such reduction or modification should be justified for each customer.

The need to improve PGW's collections and cash working capital outweigh any perceived reduction in existing consumer rights. PGW's proposal merely takes an existing security option (requiring a deposit) and expands the circumstances in which such an option can be exercised in order to meet its acute financial need to reduce the losses from nonpaying and slow paying customers. Most

⁷⁶ A second aspect of PGW's proposal is that the standard deposit amount be doubled for previously terminated customers applying for service in the winter months. The reason for this should be obvious: customers who are applying in the period October 1 through April 30 have the ability to immediately stop paying their utility bill and PGW will not be able to terminate them because of the winter moratorium. The evidence in the record shows that the shortest period of time by which PGW can terminate a customer after the initial provision of service is 80-82 days. PGW Cross Exam Exh. CP-2; Tr. 804-05. Thus, a customer starting service in December could exact a full 6 months or more of free service from the Company and its timely paying customers without any fear of loss of service. This is simply intolerable in light of the serious nature of PGW's plight and the customer's history of repeated instances of non-payment. PGW St. CP-1R at 17.

⁷⁷ R.D. at 73. The ALJ's recommendation that PGW present a cost-benefit analysis of implementing a credit scoring model is unnecessary. PGW stated on-the-record that it was already planning to install the systems necessary to implement credit scoring but that it would not be able to even test such an approach until the 3rd quarter of 2005. CP-1R at 18. Obviously, credit scoring is not a useful means of dealing with the immediate crisis. If the Commission wishes to direct PGW and the parties to discuss in a collaborative, the results of credit scoring trial in addition to immediately implementing a uniform deposit requirement, PGW would not object.

⁷⁸ *Id.* at 17.

⁷⁹ *Id.*

significantly, the implementation of this one change is estimated to produce \$7.6 million in additional cash working capital for the Company; how else can PGW secure a comparable infusion of cash working capital (other than a base rate increase)? The PGW proposal should be adopted.⁸⁰

5. The ALJ Erred By Refusing PGW's Proposal to Require All Applicants To Establish Positive Identification And Require Applicants Who Are Identified As Previously Residing At That Location Be Held Responsible For Any Previous Arrearage During The Time They Resided There. (Estimated Value: \$1.8 million) (R.D. 74-78).

PGW proposes a two-fold addition to the service initiation requirements. First, an applicant would be required to establish positive identification; i.e., to prove to PGW that the applicant is who he or she says they are. This would be done by requiring a social security number or other identifying information which would then be checked against a standard credit reporting data base.⁸¹ No one disputed the appropriateness of requiring positive identification for new applicants to prevent fraud and “identify theft” (the ALJ did not discuss it but, nevertheless, rejected PGW’s entire proposal).

Second, PGW proposes to use the “skip trace” feature of its credit reporting service to identify the previous address of the customer who is applying for service. If these data indicate that the applicant lived at that same location during the time that an outstanding arrearage accrued, PGW proposes to assign that arrearage to the applicant, subject to the applicant’s right to produce evidence that he/she was not responsible for the arrearage for some reason or to file a complaint with the PUC. Thus, PGW proposes to require the applicant to take responsibility for the prior arrearage only if objective evidence indicates that the applicant is responsible and only for the period of time in which the customer resided at the same location for which service is being requested.⁸²

⁸⁰ Supporting this conclusion is the fact that the Responsible Utility Customer Protection Act would permit all utilities to demand a deposit from any new applicant, customers who were previously terminated for non-payment and other reasons, or any applicant who is unable to establish credit. S.B. 689, § 2804-D.

⁸¹ PGW Exhibit CP-1, App. A at 9, 10.

⁸² *Id.*

The Recommended Decision ruled against this proposal claiming that “PGW does not have the authority under law to make determinations regarding whether an applicant for service should be held liable for the outstanding account balance of a person with whom he or she has resided,” and that if PGW wants to combat instances of the “name game” being played it should continue to file informal complaints with the PUC and obtain a Commission determination of responsibility. Chapter 56 already has a provision which permits such an application when the PUC determines that the applicant is “legally obligated to pay for the service.”⁸³ The BCS already interprets Chapter 56.35 to permit it to assign a prior arrearage to a new applicant whenever the facts show that the new applicant benefited from the utility service and should be responsible for the past charges as was illustrated by the results of one informal complaint brought by PGW against a “name game” player.⁸⁴

But the ALJ’s decision misunderstood PGW’s proposal as well as why a case-by-case approach will not work. PGW’s proposal is that when objective evidence supports such a conclusion, the Company would establish a presumption that an applicant, applying for service at a location at which he is currently residing, was applying (rather than the previous customer who had run up a huge arrearage which, on average, totals some \$2,300) in order to avoid payment for the service that the applicant had used and enjoyed. By any other name, that’s fraud. The customer will be informed of his right to dispute this determination with the Company, and then with the PUC, if necessary.

Clearly, the PUC has the authority to approve this presumptive approach. It applies a standard legal concept – unjust enrichment⁸⁵ – to create presumptive responsibility, and will permit PGW to raise some \$1-2 million in additional cash working capital.⁸⁶

⁸³ 52 Pa. Code § 56.35.

⁸⁴ PGW Cross Exam Exh. 3; Tr. 831-33.

⁸⁵ In fact, the Company’s proposal to apply 52 Pa. Code § 56.35 in the manner requested is supported by the theory of quantum meruit or unjust enrichment. In order to establish a claim for quantum meruit or unjust enrichment, a plaintiff must prove: 1) a benefit was conferred on the defendant by the plaintiff; 2) appreciation of such benefit by the defendant; and 3) acceptance and retention of such benefit under circumstances that would create an inequity if the defendant retained the benefit without payment. When such is shown, courts regularly make the beneficiary

Moreover, the R.D.'s conclusion that the Company must follow the existing approach -- where deadbeats are presumed not to be responsible for such arrearages -- completely ignores reality and the evidence that this "case-by-case" approach is completely unworkable for PGW, given the sheer amount of "name game" fraud that likely is being conducted by customers. PGW witness Gyory testified that in FY 2003 alone almost 5,000 (4,800) terminated accounts at a particular location were reinstated shortly after termination under a new name.⁸⁷ If 10-20% of the total potential number of cases actually constituted such fraud attempts, PGW would be forced to try to bring before the PUC as many as 1,000 cases a year. While the present Chapter 56 rule would apparently permit PGW to seek a ruling from the PUC that each of these 1,000 applicants should be responsible for a prior arrearage (as it did in the informal complaint that was placed on the record in this proceeding),⁸⁸ the sheer volume of cases means that addressing them in this way would make this approach completely unworkable. The R.D.'s conclusion therefore was clearly in error.⁸⁹

6. The Recommended Decision Erred By Refusing to Allow PGW to Restrict Each Customer to Only One Payment Arrangement Unless There Is A Change In Circumstances Related To Income Level Which Places The Customer In A Lower BCS Income Level. (Estimated Value: \$7.25 million) (R.D. 78-85.)

liable for the value of the benefit received. When a customer is terminated, or threatened to be, for non-payment, and then avoids the arrearage by inducing someone else in the same household to apply for service, the customer is unjustly enriched vis a vis his receipt of gas service at that address on a going forward basis. Additionally, the new applicant is unjustly enriched to the extent that the new applicant resided at the same service address, and enjoyed gas service during the period in which the arrearage was incurred. See, legal discussion in PGW MB at 40-42.

⁸⁶ PGW Exh. CP-1, App. A at 9.

⁸⁷ PGW Exhibit CP-1, App. A at 10. Importantly, PGW does not know -- and never claimed to know -- how many of the accounts actually represented an instance of the "name game." Such information is extremely difficult to garner -- people are usually not very forthcoming when fraud is the motive. Since the close of record, the Company has done some random testing and believes that a 10-20% figure is likely accurate.

⁸⁸ See, PGW Cross Exam Exh. CP-3.

⁸⁹ Requiring applicants to take responsibility for charges that were accumulated during the time that they lived at the same location and enjoyed the benefits of the utility's service was affirmed as reasonable in the Responsible Utility Customer Protection Act. Indeed, under the legislation, an applicant is not even entitled to receive service if the applicant can not prove that he/she did not previously reside at the location for which service is sought. S.B. 689, § 2808-D.

PGW's proposal here was to establish clear rules for payment arrangements, both in terms of the number of payment arrangements a customer could obtain and the repayment schedule required. The key elements are that, ordinarily, customers would be entitled to only one payment arrangement, specific repayment schedules would be imposed depending on income and customers would only be permitted to enter into another payment arrangement if their income level dropped from one income level category to another.⁹⁰

Importantly, PGW's proposal is different only in a degree from the established interpretation of Chapter 56 requirements articulated in the *Frayne* decision.⁹¹

Perhaps miscomprehending the point of PGW's filing in this instance, the Recommended Decision rejected this proposal, stating that PGW "is required to recognize and respect the rights of individual customers to a reasonable opportunity to obtain and retain gas service [as reflected in

⁹⁰ Here are the specifics of the proposal. Absent specific changed circumstances, customers would be entitled to only one payment arrangement after they fail to live up to their obligation to pay for their natural gas service.

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

As noted, customers would only be permitted to enter into another payment arrangement if their income drops from one income level to another. PGW Exh. CP-1, App. A at 11.

⁹¹ *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Sept. 10, 2003). The Responsible Utility Customer Protection Act would mandate rules very similar to those requested here. *See*, S.B. 689, § 2805-D.

Chapter 56].”⁹² Again, the Recommended Decision’s conclusion shows that it did not apply the appropriate standard for considering this waiver request, that is: does the Company’s desperate need to increase collections and cash working capital justify a modification of the Chapter 56 rules with respect to the nature and level of payment arrangements? Since PGW is requesting a plenary waiver of Chapter 56, it is neither surprising nor relevant that its requests are inconsistent with other provisions of that Chapter.⁹³

Moreover, and contrary to the Recommended Decision, PGW’s unique circumstances and the facts of record justify these presumptive guidelines regarding payment arrangements. Most compelling is the fact that of the over 54,000 payment arrangements that PGW will enter into this year, only 8%-9% will actually be honored to completion if historical patterns hold.⁹⁴ PGW is thus massively hemorrhaging from customers who take public utility service, fail to pay for it and then, when given a second chance to meet their obligation, fail to honor that second obligation. PGW’s presumptive rules would establish “bright lines” which would limit the number of payment arrangements and allow PGW to process the tens of thousands of broken arrangements with which it is faced in a timely manner. This assures that the Company will either receive payment for the service that has been provided or have the ability to terminate the customer in a timely manner.

Rather than endorse a solution for these realities, the Recommended Decision instead proposed that PGW collaborate with BCS, OCA and others to determine whether PGW should implement a “multiple component payment arrangement approach” advocated as an alternative to the PGW proposal by an OCA witness.⁹⁵ But this proposal is not a substitute for PGW’s comprehensive payment arrangement schedule. It was proposed by OCA only to apply to the “working poor,” so that

⁹² R.D. at 84.

⁹³ See PGW MB at 9, n. 20.

⁹⁴ See, PGW Exh. CP-1 at 23; PGW St. CP-1R at 21-23.

⁹⁵ R.D. at 84.

it should not interfere with the PGW approach for high income customers – Level 4 at least.⁹⁶

Moreover, it simply offers an alternative payment schedule, requiring customers to pay just a small portion of a large arrearage over a short period of time.⁹⁷ If the customer satisfied this initial test, the customer apparently would then be eligible for a payment arrangement (or multiple payment arrangements) in accordance with the “case-by-case” approach that has proven ineffective for PGW. Thus, the proposal is hardly an alternative to the Company’s approach, crucially necessary under its dire financial circumstances.

7. The ALJ Erred By Refusing to Allow PGW to Make Friday Shutoffs. (Estimated Value: \$2.5 million) (R.D. 85-87.)

Currently both Chapter 56 and the Public Utility Code prohibit utilities from terminating a customer on Friday, Saturday, or Sunday.⁹⁸ This rule dates back to the late 1970s during which utility companies were almost never open on Saturdays and access to funds was also more difficult. Because the PUC has the legal discretion to modify sections of the Public Utility Code for PGW when such modifications are found to be in the public interest,⁹⁹ PGW’s proposal is eminently reasonable. No such “Friday Prohibition” rule exists in any other context, to PGW’s knowledge. For example, neither oil nor propane dealers are prohibited from refusing to deliver their product to non-payers (effectively terminating service) on any day of the week; nor is there a prohibition against eviction for non-payment from a rental home or apartment on any particular day. In all of these instances, customers must bear the consequences of waiting until after the fact to take action to respond to a non-payment problem.

⁹⁶ PGW St. CP-1R at 21; OCA St. FCI-1 at 38-40.

⁹⁷ OCA St. FCI-1 at 41-42.

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

⁹⁹ *See*, 66 Pa. C.S. § 2212(c).

Unfortunately, even this minor change was rejected by the Recommended Decision.¹⁰⁰ Instead, the ALJ recommended a collaborative be formed for the purpose determining whether there are sufficient resources available to customers on the weekend in the event of a Friday service termination.”¹⁰¹ But this recommendation failed to even discuss the substantial evidence in the record that justified an immediate waiver of the “no Friday Shut off” rule.

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

But even more important, unstated by any of the opponents was the fact that a customer is only terminated for non-payment some 3 weeks after the customer first receives a bill showing an overdue amount.¹⁰² While some of the opponents would only grudgingly admit that a customer should be aware that an overdue utility bill could result in termination of their service,¹⁰³ the fact remains that customers have some 20-22 days – over 3 weeks – to respond to an overdue bill prior to the time that shutoff actually occurs. Further, all customers also receive a 10 day termination notice. At a minimum, therefore, customers should be able to respond to the termination notice when given 10-12 days (counting the 48 hour notice) to do so. The Recommended Decision’s rejection of this proposal amounts to a claim that merely because some customer might wait until he/she is terminated to do

¹⁰⁰ R.D. at 86.

¹⁰¹ *Id.* at 87.

¹⁰² PGW Cross Exam Exh. CP-2. This exhibit (attached as Appendix D) shows that, on average, a customer receives a second bill, on which a past due amount would be listed, on day 30-31 after the first bill is sent. The soonest that termination could occur after that is day 50-52.

¹⁰³ *See*, Tr. 759-761.

anything about his/her overage and that the customer might turn to a response mechanism that might be closed on Saturday, PGW's request should be denied for all customers – unless PGW can prove that each and every response mechanism is available on the weekend! This is patently unreasonable when one considers that this one change offers the ability to collect an additional \$2.5 million at a time when PGW desperately needs additional cash flow and is having to look to remaining responsible customers to make up these differences. Again, the question is not whether this is a reasonable change generally or in the abstract, but whether it is reasonable given PGW's critical need. It clearly satisfies this standard.

8. Eliminate 48-Hour Notice Requirement During Shutoff Process. (Estimate Value: \$1 million) (R.D. 87-91.)

PGW's proposal here is similar to the proposal for allowing Friday shutoffs. PGW's proposal would eliminate the requirement, presently in Chapter 56, that, prior to actually terminating a customer, the utility is required to attempt to make "personal contact" with the customer and, if personal contact does not occur, the utility is required to post a notice indicating that service will be terminated in 48 hours.¹⁰⁴ PGW would still attempt to make personal contact but, if that attempt failed, it would nonetheless be permitted to terminate service.

The ALJ, once again, recommended rejection of PGW's proposal and called for yet another "collaborative" to study whether "existing termination procedural rules [could be modified] so that the rules are more cost effective for utilities without hurting consumer protection rights."¹⁰⁵ Again, the ALJ misses the point. PGW's proposal is specifically justified by its immediate need to expedite its collections and reduce costs. Eliminating this one part of the present termination process is estimated to save the Company over \$1 million.

¹⁰⁴ 52 Pa. Code § 56.95.

¹⁰⁵ R.D. at 90.

The 48-notice requirement is an unnecessary and costly burden on PGW because, in most cases, it requires two field visits, one of the most costly activities that PGW can undertake to effectuate a termination.¹⁰⁶ Since the present rules do not require that the Company actually make physical contact with the customer, the notice is simply another hurdle over which the utility must jump before it can actually terminate service and stop providing free gas service to customers who may have no intention of ever paying. In this instance, the savings to the Company (and, ultimately, the customer) justifies the potential additional burden on customers of a slightly shorter period in which to respond to non-payment. Customers would still have 20 days in which to take action and avoid termination from the time he/she receives their first overdue notice; plenty of time for a customer who is exercising personal responsibility.¹⁰⁷

9. The Recommended Decision Erred When It Refused to Waive the Administrative Rule Requiring 30 Day Maximum Period to Complete a Termination (During Non-CWIP Periods). (Estimated Value: \$1 million) (R.D. 91-93).

PGW proposed that the Commission acknowledge that terminations completed within 60 days from the time that the initial termination notice is provided would nonetheless be viewed as compliant with PGW's adequate service requirements and Chapter 56. Currently, a BCS administrative interpretation of the Public Utility Code and Chapter 56 requires terminations to be completed within 30 days from the notice; i.e., termination must occur within that period or else the entire process must begin again, or be viewed as suspect.¹⁰⁸ By assuring that customers can avoid termination merely by

¹⁰⁶ PGW St. CP-1R at 25. PGW customers have learned to refuse to answer when the PGW employee knocks to attempt to make contact the first time.

¹⁰⁷ S.B. 689 would permit termination after 10 days, without a 48 hour notice, but increases the number of telephone (or personal) contact attempts from 2 to 3 (Section 2806-D(b)).

¹⁰⁸ PGW Exh. CP-1 at 24.

paying the amount on the termination notice, even if their amount owing is much greater at the time of the termination attempt,¹⁰⁹ PGW has eliminated any negative effect of its proposal – perceived or real.

The ALJ again recommended that PGW meet with BCS and other interested parties “to discuss and determine what would constitute a reasonable period of time for PGW to effectuate service terminations”¹¹⁰ This is simply not adequate to address PGW’s immediate needs.¹¹¹

The reasons for requesting this clarification of BCS’s administrative rule is simple: of the more than 150,000 termination notices that have been sent out since April 1, almost one-third – 47,000 – had to be redone because PGW did not have the resources to permit it to complete them within the BCS’s mandated 30 day period. Rather than simply ignore the current BCS guidance, it repeated these terminations and gave customers additional time before they were terminated or had to pay their bill (and, in the process, provided additional gas service to customers, to the extent that any gas service was being used). This cost PGW several hundred thousand dollars in additional termination costs and several million in additional natural gas costs for service that had to be supplied to defaulted customers while the termination process was redone. Ironically, the Recommended Decision refused to approve PGW’s requested extension of the acceptable period from 30 to 60 days despite the fact that OCA witness Colton actually supported PGW’s request¹¹² and OTS witness Mr. Mumford questioned why

¹⁰⁹ PGW MB at 53. While the ALJ suggested that customers might take the threat of termination less seriously if they receive a bill that does not mention termination even after receiving a 10 day termination notice, PGW submits that customers are much more likely to lose confidence in the termination process if they receive multiple termination notices. Moreover, PGW plans to put a shut-off reminder notice in the bill informing the customer that he/she is still subject to termination if the customer does not pay the delinquent portion of the gas bill..

¹¹⁰ R.D. at 93.

¹¹¹ Waiting for the results of a “collaborative” is the same as condemning the Company to a downgrade. The Company demonstrated with clarity that it needed to make a material improvement in cash working capital in the near future. The bond rating agencies are not going to wait for yet another review of this matter, and none is necessary because PGW clearly demonstrated the reasonableness of its proposal.

¹¹² OCA St. FCI-1 at 48-49.

the Company has even asked for a waiver, since the 30 day rule is simply a BCS administrative guideline.¹¹³ Accordingly, this recommendation clearly requires reversal.¹¹⁴

10. The ALJ Erred in Refusing to Recommend That PGW Be Permitted to Complete Service Restorations from 24-Hours to Up to 7 Days During Non-CWIP Periods. (April 1 – November 30). (Estimated Value: N/A) (R.D. 93-95.)

PGW's proposal in this area is as follows: in instances in which PGW must physically dig up the customer service line to restore service, PGW is requesting that it be permitted to take up to 7 days to complete the task; and, in all other instances, it should be permitted 3 days, except where service has been terminated and the initial determination of the Commission is that the termination was inappropriate or in violation of the PUC or PGW rules or in cases in which medical emergencies exist.¹¹⁵ Chapter 56 requires that service be restored "by the end of the next business day."¹¹⁶

Again, the ALJ simply rejected PGW's request, finding that "customers should be rewarded with prompt service"¹¹⁷ and that "if customers were required to wait up to seven days for gas service after paying what was owed for restoration, customer confidence in PGW would be further eroded."¹¹⁸ But this finding completely overlooks PGW's special problems stemming from the massive number of terminations that it anticipates it will undertake by the end of the year (approximately 33,000),¹¹⁹ most of whom will be reinstated. Traditionally, many terminated customers wait until fall and the approach of cold weather before they seek to reinstate service. This means that the Company must reinstate

¹¹³ OTS St. 4 at 31. Based on Mr. Mumford's testimony, PGW is currently employing the "60 day" rule.

¹¹⁴ Again, PGW's request is consistent with the most recent legislative determinations; the Responsible Utility Customer Protection Act would make valid any termination that was completed within 60 days of the 10 day notice. S.B. 689, § 2806-D(b).

¹¹⁵ PGW Exh. CP-1, App. A at 16; This is more lenient than the requirements of S.B. 689, Section 2807-D.

¹¹⁶ 52 Pa. Code §§ 56.115, 56.191(1).

¹¹⁷ R.D. at 95.

¹¹⁸ *Id.*

¹¹⁹ PGW Exh. CP-1, App. A at 5.

service for a huge number of customers in a very short period of time. Compounding the problem is that PGW has a large number of service lines that are not equipped with curb valves, meaning that to terminate service some form of dig-up must occur. Restoring a dig up customer (and installing a curb valve) takes 4 times longer and is 4 times more expensive (about \$2,500) than a termination without installing a curb valve.¹²⁰ Considering this massive number of terminations, PGW simply can not physically complete all the restorations in the standard “end of next business day” mandated by Chapter 56. Thus, unless PGW is relieved of some other PUC regulatory requirement so that resources could be redeployed, its ability to satisfy the general rule does not exist without spending substantial sums to add additional workers or to otherwise outsource the activities. Under the present circumstances, adding to PGW’s already massive cost of service is simply not an option. Without this modification, PGW may well have to avoid terminating thousands of customers (in order to be able to manage the turn-on requirements within the rules). Therefore, it would be both reasonable and fair to recognize the Company’s limitations and acknowledge its restoration timeline as necessary under the circumstances.

E. The Recommended Decision Erred In its Proposal That PGW Be Required To Submit Its Impact Evaluation of the Company’s Universal Service Programs By March 1, 2005. (R.D. 32, POPs 6-8.)

While finding no issues or concerns regarding the cost effectiveness and reasonableness of PGW’s universal service programs, the ALJ did recommend that, after consulting with BCS, PGW shall contract with an independent third-party to conduct an impact evaluation of its universal service and energy conservation programs and provide a report with findings and recommendations to the Commission by March 1, 2005.¹²¹

¹²⁰ PGW St. 1R at 28 (\$500 verses \$2,500).

¹²¹ R.D., POP 6 (pg. 97.) The date is to coincide with PGW’s GCR filing. The ALJ set a similar date for the “companion report” that PGW was invited to submit in which it would have the opportunity to make suggestions for change in the program. *Id.*, POP 8.

PGW does not disagree with the recommendation that it have such a report prepared and submitted to the Commission. However it is unreasonable – and counter productive – to order that the report be submitted on March 1 of next year. OTS witness Hummel, on whose testimony the ALJ relied in making this recommendation, proposed that PGW have such a study conducted during calendar year 2005.¹²² Considering the scope and number of questions to be addressed in such a report, a useful product will require 4-6 months to complete once an independent evaluator is chosen. That means that PGW would be unlikely to be able to meet the ALJ's proposed deadline even if the Company started the process immediately. The more appropriate course is to mandate that the reports be completed and submitted to the Commission and interested parties no later than the end of 2005.¹²³ While this may make the report unavailable for the FY 2006 GCR/USC proceeding, it will definitely be available for subsequent GCRs.

F. The ALJ Erred in Rejecting PGW's Proposal to Require As A Condition of Reinstatement Payments of Arrearages Secured By Liens or Judgments. (R.D. 42-45, POP 4).

In its Restructuring Proceeding, PGW proposed to continue a long standing pre-PUC tariff provision which provided that, rather than foreclose on a customer's property, PGW would instead require a new applicant for service to enter into a payment agreement for repayment of the amounts covered by a previously secured lien or judgment. These liens and judgments are obtained by PGW through normal legal process with notice and opportunity to be heard afforded the customer or property owner.¹²⁴ PGW agreed that, once the customer entered into such an arrangement, it would

¹²² OTS St. 3 at 19-20; R.D. at 30.

¹²³ Also requiring revision is the proposal that PGW submit its report on its CWP program – presently scheduled to be completed in April 2005 – “shall be included in the review of the annual Gas Cost Rate filing Philadelphia Gas Works will make in March 2005.” R.D., POP 10. The ALJ may be contemplating that PGW will file the report in the FY 2006 GCR proceeding (to be filed on March 1). It would probably be better if the report were instead filed with the PUC and interested parties, and if any such party wishes to put it on the record in the FY 2006 GCR it may pursue such a course with the presiding officer.

¹²⁴ See, PGW MB at 79.

adhere to all applicable Chapter 56 rules with respect to the repayment and would not execute on the lien or judgment during the time the payment agreement was in effect. The approach is eminently reasonable and good for PGW's customers as well as the Company.¹²⁵ While the PUC rejected this tariff provision in the Restructuring Proceeding,¹²⁶ the Commission ordered a reexamination in this Investigation. However, the ALJ recommended that the Commission continue to reject tariff section 2.4.C.6,¹²⁷ concluding that: 1) PGW has presented evidence indicating that the lien and judgment program has helped PGW collect debts without foreclosure;¹²⁸ 2) the Commission would be placed in the position of sanctioning a collections process over which it has no control;¹²⁹ and 3) the rights of applicants for service would "possibly" be abridged.¹³⁰ Unfortunately, none of these observations is supported by the record. In fact, the evidence clearly shows the PGW proposal is a legally valid and reasonable means to gain payment of amounts that customers owe the Company without forcing PGW to resort to the draconian remedy of foreclosing on homes or seizing personal property.

The ALJ's threshold discussion concluded that "PGW has presented confusing and contradictory evidence in regard to tariff section 2.4.C.6,"¹³¹ pointing out that that the Company has

¹²⁵ Ironically, this was the single PGW proposal that even Action Alliance, *et al.*, supported. *See*, Action Alliance MB at 40-44 (Action Alliance supports this proposal if the requirements of 52 Pa. Code § 56.35 – 4 year time period – are applied to the language of Tariff Section 2.4.C.6. PGW agrees to this modification as discussed below).

¹²⁶ *Compliance Tariffs of Philadelphia Gas Works in response to the Commission Restructuring Order as modified on reconsideration*, Docket No. M-00021612, Order (Oct. 10, 2003) at 5.

¹²⁷ Specifically, tariff section 2.4.C.6. states:

2.4.C. Other Reasons for Rejecting an Application. PGW may also reject an application for Gas Service for any of the following reasons:

...

2.4.C.6. The Applicant fails to enter into a payment agreement for an outstanding lien or judgment of record in favor of PGW and against the Applicant.

¹²⁸ R.D. at 40.

¹²⁹ *Id.* at 41.

¹³⁰ *Id.*

¹³¹ *Id.* at 40.

had success in its collections program without executing on the liens or judgments. Indeed, in the past, PGW has successfully collected on some of its outstanding liens and judgments when title to a property has changed and the outstanding lien is satisfied at the time of settlement or when a customer, desiring a clean credit record, satisfies a record judgment in order to remove the judgment from his or her credit report.¹³² But this evidence of success does not at all contradict the fact that it has not been able to collect all of these outstanding amounts and, unless it is able to implement tariff section 2.4.C.6., it will be forced to execute upon the liens and judgments to increase its collections.

The ALJ's observation concerning PGW's partial success ignores the fact that PGW does not have any control over when a "liened" or "judged" customer decides to transfer title, re-mortgage a property, or clear up a poor credit record. As a result, a "liened" or "judged" customer can decide to transfer title, re-mortgage a property, or clear up a poor credit record in 1, 5, 10, 15, 20, or more years after a lien or judgment is attained. During the intervening years, and short of executing on the lien or judgment, PGW will not have any leverage to collect on these accounts without tariff section 2.4.C.6. As a result, PGW's cash flow will suffer due to non-payment of these grossly overdue accounts.

The ALJ also stated that PGW has not shown why it would not have continued success on liens and judgments without execution. But this misses the essential point. Of course, PGW will have some continued success in this program without execution due to title transfers, re-mortgaging and a desire to have clean credit. But, as shown above, the timing is absolutely unpredictable and puts off possible payment until the customer's subjective decision, thereby, negatively affecting cash flow. Rather than having to wait and hope that the customer sells their property or needs credit, tariff section 2.4.C.6. provides for interim payment of grossly overdue balances (as a condition of accepting an applicant and potentially suffering a new set of arrears), especially important right now when PGW needs to find ways to increase collections beyond historic levels.

¹³² *Id.*

Most importantly, PGW's proposal will allow it to avoid having to actually seize homes and personal property for non-payment of arrearages – the only course of action that will be open if the Commission does not approve PGW's tariff provision. This makes far more sense as a matter of public policy; PGW does not want to force Philadelphians from their homes nor force the loss of personal property. Moreover, execution is a costly procedure that often results in a lesser payment than the payment that can be secured through a tariff section 2.4.C.6. payment plan.¹³³ Using the service application process also permits the customer to pay off the arrearage with a payment plan whereas execution absolutely forecloses that possibility.¹³⁴

The Recommended Decision also concluded that the Commission would be placed in the position of sanctioning a collections process over which it has no control,¹³⁵ citing Mr. Gyory's testimony, that it is "the court, and not the Commission that has jurisdiction over any such claim involving a lien or judgment."¹³⁶ This misapprehends the conclusion that should be drawn with respect to PUC jurisdiction. As PGW carefully pointed out in its testimony and its briefs, PGW understands that the Commission does not have jurisdiction over the amount of a lien or a judgment, but such jurisdiction is unnecessary because PGW is voluntarily agreeing to subject the debt to the Chapter 56 rules and procedures. For example, PGW would adhere to the same payment arrangement parameters that would apply to any other prior arrearage and PGW will only insist on the payment of amounts that are four years old or less.¹³⁷ Therefore, even though the Commission does not have jurisdiction over the underlying lien or judgment amount – whether the customers actually owes the money – it clearly has jurisdiction over the terms and conditions of the agreement to repay the lien or judgment

¹³³ PGW St. CP-1 at 13.

¹³⁴ PGW St. CP-1 at 13.

¹³⁵ R.D. at 41.

¹³⁶ *Id.*

¹³⁷ PGW St. CP-1 at 14 (emphasis added).

amount for which PGW and the customer has entered a payment plan as a condition of service. For this reason, PGW is agreeable to modifying the language of tariff Section 2.4.C.6. in order to specifically apply the requirements of 52 Pa. Code 53.35 – i.e., a four year limitation – even though a general application exists in its current tariff.¹³⁸ In light of the foregoing discussion, the ALJ was incorrect in concluding that the PUC does not have jurisdiction and control of the lien and judgment collection process. As a result, by approving tariff section 2.4.C.6., the Commission will not be “sanctioning a collections process over which it has no control.”¹³⁹

PGW’s proposal is clearly the most logical and reasonable approach to dealing with arrearages secured by liens and/or judgments¹⁴⁰ and its tariff provision should be approved.

¹³⁸ PGW RB at 49-50.

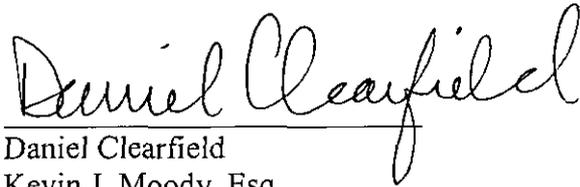
¹³⁹ R.D. at 41.

¹⁴⁰ The ALJ also suggested that the lien and judgment collection process “possibly abridg[es] the rights of applicants for service.” *Id.* PGW does not understand how this conclusion could be arrived at. Customers receive notice and full opportunity to be heard as part of the process of a lien being placed on a property or a judgment being entered. (See, PGW St. CP-1 at 13-14). Customers receive all rights to which they are entitled when they apply for service and Chapter 56 becomes applicable. Ironically, it is PGW’s position that is most protective of consumers’ rights, not the Recommended Decision, because PGW’s position permits customers to remain in their residence and keep *their personal property*. In other words, instead of taking a customer’s home for lack of payment, PGW is simply seeking to delay the provision of gas service until the arrangement of a payment agreement. Essentially, taking a home is a permanent termination of service whereas tariff section 2.4.C.6. delays gas service until a payment plan is arranged.

III. CONCLUSION

PGW respectfully requests that the ALJ's Recommended Decision be accepted in part and denied in part in accordance with the attached proposed Order (Appendix A).

Respectfully submitted,



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Date: September 2, 2004

APPENDIX A

APPENDIX A
PROPOSED REVISED ORDER¹

THEREFORE,

IT IS ~~RECOMMENDED~~ HEREBY ORDERED:

1. That Philadelphia Gas Works' proposed means-tested Senior Citizen Discount program and the associated Stipulation and Settlement at Docket Nos. M-00021612 and P-00032061 is approved.

2. That Philadelphia Gas Works' Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations is ~~denied~~ approved. The granted waivers shall remain in effect for not less than two years, and shall continue in effect thereafter until the issuance of an order by the Commission deeming the waivers expired.

3. That Philadelphia Gas Works' proposed tariff section that would allow it to collect a \$10.00 charge for residential field visits that are a part of the termination process is approved.

4. That Philadelphia Gas Works' proposed Tariff Section 2.4.C.6. that would require applicants for service who have Philadelphia Gas Works liens or judgments for any outstanding account with PGW which accrued within the past four years to enter into payment agreements as a condition of service is ~~denied~~ approved.

5. That Philadelphia Gas Works' shall include the following in its next base rate case filing:

- (a) an updated progress report on the adequacy, cost-effectiveness and management of its collection practices;

¹ Redlined version of ALJ Recommended Order.

(b) detailed exhibits showing the cost components and calculations of its charges for residential field visits, late payment and reconnection;

(c) a cost-benefit analysis regarding the implementation of a credit scoring model such as the Energy Risk Assessment Model (ERAM);

(d) a cost-benefit analysis of the implementation of a mandatory electronic fund transfer (EFT) program for customers with incomes above 250% of the federal poverty level who have delinquent gas account balances and want to enter into payment agreements; and

(e) a report with findings and recommendations regarding a program to educate the public about the benefits of Philadelphia Gas Works' budget billing plan.

6. That pursuant to 52 Pa. Code §62.6, Philadelphia Gas Works, after consulting with the Commission's Bureau of Consumer Services, shall contract with an independent third-party to conduct an impact evaluation of PGW's universal service and energy conservation programs and provide a report with findings and recommendations to the Commission by or before March 1/December 31, 2005, to coincide with and be included in Philadelphia Gas Works' next annual Gas Cost Rate filing.

7. That the questions to be answered by the study referenced in ordering paragraph 6 shall include, but not be limited to: (1) "How can Philadelphia Gas Works' universal service program be more cost effective and efficient?"; and (2) "How can Philadelphia Gas Works' Customer Responsibility Program be redesigned so that it is more cost-effective and efficient while still preserving customer protection rights?"

8. That in reference to ordering paragraphs 6 and 7, Philadelphia Gas Works may file pursuant to 52 Pa. Code §62.6(c) a companion report to the independent evaluator's report, also to be included in its March 1, 2005 Gas Cost Rate filing.

9. That Philadelphia Gas Works, after consulting with the Commission's Bureau of Consumer Services, shall include in the Report on its Conservation Works Program (CWP) that it will file with the Commission in April 2005, a cost-benefit analysis of Philadelphia Gas Works' present CWP, as well as cost-benefit analysis of CWPs that incorporate more of the usage reduction measures referenced in the Commission's LIURP regulations and that also include more eligible customers.

~~10. That in reference to ordering paragraph 9, the April 2005 CWP Report shall be included in the review of the annual Gas Cost Rate filing Philadelphia Gas Works will make in March 2005.~~

140. That the Commission's Office of Executive Director shall form a collaborative of all interested parties (the first meeting to be held before December 31, 2004) for the purpose of developing findings and recommendations on the issues specified in the following ordering paragraphs addressing any issues that may arise from the implementation of the approved waivers.

~~12. That the collaborative group referenced in ordering paragraph 11 shall address the Commission's termination procedural rules, including: (1) the best practices of Pennsylvania utilities in implementing the Commission's existing termination procedural rules; (2) the best termination procedural rules of other state commissions; (3) whether there are sufficient resources available to customers on the weekend to ensure that their rights are protected in the event of a Friday service termination; (4) how long, from beginning to end, should the termination process take, taking into account both customer rights and the financial integrity of Philadelphia Gas Works; and (5) how can the Commission's existing termination procedural rules be modified or revised to be more cost-effective for utilities while protecting customer rights.~~

~~13. That the collaborative group referenced in ordering paragraph 11 shall also address: (1) whether Office of Consumer Advocate witness Roger Colton's multiple component payment arrangement approach may be cost-effectively implemented; and (2) what ranges of~~

~~minimum monthly payments on payment agreements should be applied to each income level group.~~

114. That Philadelphia Gas Works shall continue to meet on a monthly basis with the Bureau of Consumer Services, the Office of Consumer Advocate and Philadelphia Community Legal Services for the purpose of providing progress reports and other data and answering questions about its collection practices.

12. That a copy of this Opinion and Order be served on parties of record at Docket Numbers P-00042090, R-00049157, M-00021612, P-00032061, and P-00042117.

BY THE COMMISSION,

James J. McNulty,
Secretary

ORDER ADOPTED:

ORDER ENTERED:

APPENDIX B

Research:**Summary: Philadelphia, PA; Utility, Gas**

Publication date: 03-Aug-2004

Credit Analyst: Jeanny Silva, New York (1) 212-438-1776; Aneesh Prabhu, New York (1) 212-438-1285

Credit Profile**AFFIRMED**

\$160.660 mil. Philadelphia gas wks rev bnds (1998 Gen Ordinance) ser A dtd 06/01/1998 due 07/01/1999-2014 2018 2026

AAA/BBB-(SPUR)

\$355.825 mil. Philadelphia gas wks

BBB-

\$103.550 mil. Philadelphia gas wks rev bnds (1998 Gen Ordinance) ser B dtd 06/01/1998 due 07/01/2014 2018 2028

AAA/BBB-(SPUR)

\$20.010 mil. Philadelphia gas wks rev bnds (Sub1998 Gen Ordinance) ser C dtd 06/01/1998 due 07/01/1999-2014

AAA/BB+(SPUR)

\$61.950 mil. Philadelphia gas wks rev bnds 16th ser dtd 05/07/1999 due 07/01/2000-2009 2013-2015

AAA/BBB-(SPUR)

\$112.245 mil. Philadelphia gas wks rev bnds 2nd ser dtd 05/07/1999 due 07/01/2000-2029

AAA/BBB-(SPUR)

\$120.225 mil. Philadelphia gas works rev bnds (1998 Gen Ordinance) third ser dtd 06/01/2001 due 08/01/2003-2019 2021 2031

AAA/BBB-(SPUR)

\$186.705 mil. Philadelphia gas works rev bnds seventeenth series (1975 Gen Ordinance) due 07/01/2005-2022 2026

AAA/BBB-(SPUR)

\$125.000 mil. Philadelphia gasworks rev bnds fourth series (1998 Gen Ordinance) due 08/01/2004-2022 2032

AAA/BBB-(SPUR)

OUTLOOK:

NEGATIVE

Rationale

The ratings on Philadelphia Gas Works' (PGW) senior revenue bonds (BBB-/Negative) and subordinate revenue bonds (BB+/Negative) reflect the weak demographics of the utility's service area, below-average collection rates, high debt levels, thin margins, and a strained liquidity position. These weaknesses are partially offset by a lack of competitors and modest levels of support from the city of Philadelphia, Pa.

PGW is the nation's largest municipally owned gas utility and the only local gas distributor serving Philadelphia. The utility serves 498,000 customers and has about \$1 billion in total debt outstanding.

The utility's weak service territory and its low collection rates pressure its liquidity. Demographics in the service territory are weak with a declining population and below-average wealth levels. During fiscal 2003, collection rates at PGW fell to 87% of billed gas revenues from a historical average of 92%. Low collection rates reduce the efficacy of the utility's gas cost recovery mechanism and expose PGW to fuel price risk.

Management's efforts to address these low collection rates have included a recent campaign to notify 130,000 delinquent customers of service termination in the event payment arrangements are not made and increasing eligible customer participation in federal home energy assistance programs such as the U.S. Department of Health and Human Services' Low Income Home Energy Assistance Program. The initiatives appear to be having a moderate effect on collection rates. For the first eight months of fiscal

2004, collection rates were up by 4% as compared with the same period in fiscal year 2003. Despite this positive trend, Standard & Poor's does not anticipate PGW's collection rate to exceed 90%-92% for the year.

PGW's debt per customer is currently about \$2,000, which is high when compared with other municipal utilities. Moreover, the utility's debt is expected to increase. PGW does not currently fund any of its capital expenditures with internal funds. PGW's collection problems contribute to thin cash margins. During 2003, cash flow from operations plus certain nonoperating revenues over fixed charges declined to 0.92x from 1.23x in 2002. Going forward, Standard & Poor's projects that, because of its collection problems, PGW's cash-basis coverage of fixed charges (excluding its annual payment to the city) will remain at or below 1x. As such, the utility's liquidity position is likely to remain challenged.

Historically, PGW has depended on a variety of one-time financial transactions to meet coverage of fixed charges, which, until recently, included a mandatory \$18 million payment to the city of Philadelphia. Other one-time financial transactions have included obtaining a \$45 million loan from the city and monetizing guaranteed investment contracts connected with a portion of PGW's sinking fund reserves.

PGW's competitive pressures are quite limited, which reduces the gas utility's business risk. Although PGW's customers have had retail choice since September 2003, the absence of alternate providers has effectively secured the utility's position as a regulated monopoly in Philadelphia. The utility's relationship to the City of Philadelphia also helps to reduce financial risk. Standard & Poor's assumes that the city will provide modest levels of operational support to PGW going forward. This support includes a suspension of PGW's annual payment to the city for the next five years and a deferral of PGW's \$45 million city loan-related bullet maturity until 2008.

Liquidity.

As of June 2004, PGW's unrestricted cash reserves were \$13.3 million, representing less than 10 days cash. Cash flow from operations is generally insufficient to cover the utility's fixed charges in high gas price years. PGW's liquidity position is challenged but currently adequate. Annual transfer-payment forgiveness from the City of Philadelphia, in the amount of \$18 million per year, has helped improve PGW's immediate liquidity position. Alternative sources of liquidity include an \$80 million commercial paper program, temporary access to capital improvement program funds, and the ability to enter into gas storage deferral contracts. PGW's commercial paper program, which is backed by a letter of credit from JP Morgan Chase Bank, is often fully drawn throughout the year. Currently, the utility has about \$20 million in commercial paper outstanding. This amount is expected to increase to nearly \$50 million by August 2004.

To meet its ongoing liquidity needs, PGW also regularly draws on funds from its capital improvement program. Timely access to the capital markets to fund this program is central to PGW's ability to maintain adequate liquidity. Although gas storage deferral contracts also add to PGW's liquidity by delaying cash outlays in liquidity-tight summer months, Standard & Poor's believes that these contracts increase PGW's cost structure, which, because of poor collection, ultimately reduce the utility's cash margins.

Outlook

The outlook on PGW is negative. Ratings will be lowered if PGW's financial profile weakens over the near term and collection rates and cash margins do not improve materially. Furthermore, any of the following events could have negative ratings implications: if access to short-term borrowing is restricted, suppliers place additional liquidity demands on PGW, or specified support from the city is not forthcoming. The current ratings are predicated on the city providing annual payment forgiveness to PGW for at least the next four year, and on the city allowing PGW to defer its \$45 million loan payable until 2008. In the absence of such support, the ratings will be lowered.

APPENDIX C



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

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

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

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

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

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

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APPENDIX D

The review of PGW's current collection's process/timeline provides the foundation for identifying collection initiatives.

Residential

DAY	OUTBOUND CALLING													FULLY OUTSOURCED
	PAYMENT ARRANGEMENTS						PARTIAL OUTSOURCING						POST-WRITE-OFF COLLECTION AGENCY REFERRAL	
EVENT	0	20	30-31	40	47	50-52	55 (0)	75 (20)	85 (30)	105 (50)	115 (60)	135 (80)	145 (90)	145+
Bill 1 Sent	Bill 1 Due Date	Bill 2 Sent (Day 30)	10 Day Notice of Termination (\$___ threshold)	72 Hr. AM & PM Outbound Call OR 72 Hr. Non-Phone Field Visit	Leave 48 Hour Notice or Service Shut-Off (Day 50) OR Final Service Shut-off (Day 52)	1 st Final Bill Sent	1 st Final Bill Due	2 nd Final Bill Sent	2 nd Final Bill Due	3 rd Final Bill Sent	3 rd Final Bill Due	Write-Off	Collection Agency Referral	
										DAY 100 (45) 1st W/O Letter Reminder	DAY 115 (60) 2nd W/O Letter Credit Rating	DAY 130 (75) 3rd W/O Letter Credit Referral		

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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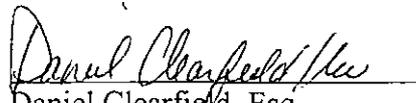
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ORIGINAL

September 8, 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

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SECRETARY'S BUREAU
L.P. P.U.C.

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works, Docket Nos.
P-00042090, R-00049157, M-00021612, P-00032061 and
Petition of Philadelphia Gas Works for Waiver of Public
Utility Commission Customer Service Rules,
Docket No. P-00042117

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works enclosed please find an original and nine copies of its Corrected Pages 11, 19, 22 and 34 to its Exceptions that were filed on September 2, 2004. The corrections fix minor typographical errors and corrections to three cites. We are also enclosing ten copies of a clean and corrected Philadelphia Gas Works' Exceptions in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated. If you have any questions, please contact me at your convenience.

Sincerely,

Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosures

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

DSH:53646.1/PHI211-220875

19

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Re: Petition of Philadelphia Gas Works for :
Waiver of Public Utility Commission : Docket No. P-00042117
Customer Service Rules :
:

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PHILADELPHIA GAS WORKS EXCEPTIONS

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I. INTRODUCTION

The PUC must act to help PGW avert a financial disaster. The rating agencies are poised to rate its bonds at junk status. Such status means that the Company, which depends upon its long term debt as its only available, non-fully utilized source of outside financing, will likely lose access to the financial markets, or will only be able to obtain long term financing at extremely onerous terms. This, in turn, will threaten the Company's gas main replacement program and other capital projects as well as its ability to continue day-to-day operations at normal levels. To prevent this catastrophe, the rating agencies themselves have warned that PGW must materially improve its cash and collections in the near term – or be downgraded.

In the face of this crisis, the Recommended Decision endorses the *status quo* – no changes, no new measures, no help. In several cases, “collaboratives” are recommended to study various options. In the current crisis, such recommendations are not an option. The resultant question is: how can PGW materially improve its collections and cash working capital in the next 4-6 months? The possible answers are: 1) from paying customers via a collections tracker; 2) from the financial markets; 3) from an emergency rate increase or a base rate increase which could only go into effect some time next year; or 4) from the customers who used the gas, have failed or refused to pay for it, and by definition have the ability to pay. The PUC has rejected answer (1), by declining to adopt the CRRC. The financial markets, via the rating agencies, have rejected answer (2), by downgrading PGW's bonds and tremendously increasing the cost of its contemplated new issuance. The third option harms all for the sins of some, using a bazooka to kill a fly.

Accordingly, approving PGW's proposed Chapter 56 waivers, thus, giving PGW greater ability to make those who use gas pay for it, is the only realistic answer to PGW's financial crisis. This solution – which is simply a call for the Commission to assist PGW in enforcing the personal responsibility obligations of its customers – has been implicitly endorsed by the PUC, in its rejection

of the CRRC, and explicitly and loudly demanded by PGW's customers and public officials. Just one of the scores of customers voicing this sentiment was Mary Jane Hazell, who testified as follows:

If you do not pay your oil bill, the oil gets shut off. If you do not pay your electric bill, your electric bill gets shut off. If you do not pay your mortgage, the bank forecloses. Well, then, you know what, if they don't pay their gas bill, shut it off. We do not feel it is our responsibility to pay someone else's bill. Everyone has to be responsible for their own actions. There are some people who do not pay gas bills even when they have the money . . . so we have to pick it up for them. Philadelphia deadbeats, and there's no other words for them, have a good thing going for them.¹

Heeding this call, PGW has proposed a series of measured remedies to help it effectuate the people's prescription: make those who use the gas, pay for it and on a more regular basis. The proposals call for limited waivers of rules developed a quarter century ago based on a policy balance that never contemplated its applicability to PGW and a service territory that is exclusively Philadelphia. The waivers – which have been specifically endorsed by a consortium of state and local public officials – are designed to loosen the rules where they are outdated or tilted too far in favor of the non-paying customers, but only to the extent necessary, while preserving fundamental safeguards. In most respects they are very similar to the package of industry-wide Chapter 56 reforms recently enacted by the Pennsylvania House of Representatives.

Considering the imminent threats of the rating agencies, the room for error is exceedingly slim. As this Commission held the last time PGW's financial condition called for extraordinary measures: "Given the current tenor of the markets and the record evidence regarding PGW's liquidity crisis, our responsibility to the residential and business customers of PGW requires that we act now. We simply cannot wait until PGW collapses."² Once again, the time for action is now – the PUC must revise the

¹ CRRC Tr. 77 (Mary Jane Hazell). For similar statements from ratepayers, see CRRC Tr. 63-64 (Louis Rabonin), 102-03 (James Walsh), 188 (Mary Carroll).

² *Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002, Opinion and Order (April 12, 2002) ("Extraordinary Rate Order") at 15.

Recommended Decision and approve the requested waivers, as more specifically set forth in proposed revised ordering paragraphs attached hereto.³

II. EXCEPTIONS

A. **While the Recommended Decision Utilized the Appropriate Standard for Judging PGW's Chapter 56 Waiver Requests, the ALJ Erred by Completely Failing to Recognize That PGW's Current Need to Maintain its Financial Integrity Justified the Proposed Rule Modifications. (R.D. 59-95. Proposed Ordering Paragraph ("POP") 2).**

In the process of rejecting each and every one of PGW's nine requested Chapter 56 (or administrative rule) waiver requests, the ALJ concluded that "PGW did not meet its burden of proving that its proposed modification(s) adequately balances consumer protection rights with PGW's financial integrity."⁴ While this is the correct standard, not once in the entire discussion did the Recommended Decision actually weigh the effect of the requested modification on customers with the evidence of need for additional cash caused by the dire financial circumstances facing PGW. The Recommended Decision, instead, appeared to adopt the existing Chapter 56 rules as reflecting the appropriate balancing without considering PGW's special financial circumstances. As a matter of common sense and logic, the ALJ's steadfast defense of Chapter 56 as the correct "balancing" of consumer and utility interests in this instance can not stand because it failed to do what the ALJ himself admitted was necessary – actually consider whether the contemplated effect of the modification on PGW's cash working capital outweighed any negative effect on consumers resulting from the proposed change.

Chapter 56, as written, strikes a balance between the financial interests of utilities and their investors with the needs of consumers for fair procedures and reasonable service. But this balance obviously is a generic one, focusing on the typical investor-owned utility, the typical utility investor

³ Appendix "A" hereto. PGW is also filing a limited exception concerning the due date for the independent evaluation of PGW's low income assistance program – CRP (*see*, Exception "E" *infra.*), and an exception regarding the ability to condition service connection on the customer's agreement to enter into a payment agreement for amounts secured by liens or judgments. (Exception "F.")

⁴ *See, e.g.*, R.D. at 62.

and the typical customer base. For this standard to have any meaning in the specific context of this proceeding, the Commission must consider the financial circumstances of PGW at the present time, and consider the need to modify the general rules in light of those special facts. When that balancing occurs, it is simply impossible to come to any reasonable conclusion except that the general balancing must be modified to accommodate PGW's tremendous need to increase its collections and cash working capital in the near term or be downgraded to "junk" status. In summary, the facts justifying that conclusion include the following:

- As a result of a threatened downgrade by the rating agencies, PGW's owner, the City of Philadelphia, took the unprecedented step of waiving its legally authorized \$18 million annual fee for a period of 5 years, infusing the Company with an additional \$90 million over this period. In addition, it has voluntarily deferred a \$45 million cash working capital loan that it provided to PGW.⁵
- Notwithstanding that assistance, PGW's end of year cash levels have dipped to \$28 million (from the \$31-\$36 million predicted on the record in the CRRC proceeding), even including the waiver of the \$18 million City Payment and the effects of a \$34.5 million gas storage payment deferral transaction.⁶
- If the effects of the one-time, gas storage payment deferral transaction are excluded from the analysis, PGW would end the year with liquidity (cash and available short term borrowing) of **negative \$6.5 million**.⁷
- In PGW's next bond issuance – which is scheduled to be sold this month – it will be able to insure only a portion (\$120 million) of its contemplated \$150 million, meaning that the rest of the bonds would have to be issued at BBB- rates (one step above "junk").⁸

As PGW has explained, the principal reason for the Company's liquidity crisis is astronomically high natural gas prices, which have in turn increased the annual bills for PGW's

⁵ CRRC Proceeding, PGW St. CRRC-1R at 3.

⁶ CRRC Proceeding, PGW Petition For Reconsideration at ¶¶ 4-8, App. A.

⁷ *Id.*

⁸ Through a special arrangement, PGW has secured insurance for \$120 million of its \$150 million but at an extremely high cost (approximately \$8 million). PGW's current plan is to issue the remaining \$30 million on a variable rate basis but without insurance. The net effect is an increase in cost of some 350 basis points.

customers to unprecedented levels.⁹ As the average customer bill has shot up, PGW's collections levels have gone down, culminating in a FY 2003 collections percentage of just 87%.¹⁰

PGW did not sit back and ignore the crisis, nor did it choose to seek to burden its customers by further base rate increases – and it continues to seek ways to avoid yet another base rate or emergency rate increase request. Instead, it undertook to improve its collections through a massive “Collections Initiative” which totally revamped its collections process and added a host of new practices.¹¹ The result has been an amelioration of PGW's 2003 experience and a return to historic levels of collections – close to 92%.¹² But, notwithstanding these successes, PGW continues to stand close to the abyss. The agencies that rate PGW's long term debt continue to state publicly that notwithstanding even the most recent improvements in collections to 92%, its projected \$28 million end of year cash balance or the additional assistance of the City, PGW must still show a material improvement in its cash and collections in the “near term” – or be downgraded. Standard and Poor's has made this clear since this spring. In April, S&P lowered its rating on PGW senior revenue bonds to BBB-, the lowest investment grade rating.¹³ It cited “weakened liquidity position and declining credit measures fueled by collection rates that deteriorated appreciably in the last year.”¹⁴ As for PGW's outlook, S&P did not mince its words: if in the “near term” PGW's “collections and cash margins do not materially improve,” the Company's bond ratings “will be lowered further” to junk status.¹⁵

⁹ PGW St. CRRC-2.

¹⁰ PGW St. CRRC-1, Exh. JRB-1.

¹¹ PGW St. CRRC-3.

¹² PGW St. CRRC-1R at 2; PGW St. CP-1R at 6.

¹³ PGW St. CRRC-5, Exh. TEK-1.

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 2.

Just a few weeks ago in August, after PGW was projecting that it would improve its collections back up to historic levels and received the first part of the assistance promised by the City, S&P was still saying the same thing – unless the Company improves its collections and cash working capital beyond that which it is projected to experience in FY 2004 it will be downgraded. S&P concluded with this statement:

The outlook on PGW is negative. Ratings will be lowered if PGW's financial profile weakens over the near term and collection rates and cash margins do not improve materially.¹⁶

The record is absolutely clear that PGW's proposed set of nine limited Chapter 56 waiver requests is the only realistic means of responding to the rating agencies' demands and staving off a disastrous bond rating downgrade to junk status. Such a downgrade would preclude PGW access to the long term capital market (except on extremely onerous and limited terms), threatening its capital programs, and rob the Company of its single remaining external source of operating capital (PGW's commercial paper is fully utilized; PGW is permitted to utilize the proceeds of its bonds for working capital so long as, by the end of the fiscal year, those amounts are either actually utilized to fund capital projects or returned to the capital fund.)¹⁷ A junk bond status would also likely cause most of its natural gas suppliers to either terminate their relationship, require prepayment of invoices or require onerous payment terms, and would likely plunge PGW into an emergency situation, where it would be forced to ask for emergency rate relief.¹⁸ In the recent past, the Commission determined that a downgrade of PGW's debt, below investment grade to junk status, would be so costly that it warranted rare and extraordinary relief from the Commission.¹⁹

¹⁶ Standard & Poor's Ratings Direct, PGW Summary (August 3, 2004), attached hereto as Appendix B; CRRC Proceeding, PGW's Answer to De Facto Motion to Strike at App. A.

¹⁷ PGW St. CRRC-1 at 7-8.

¹⁸ Certainly the storage gas pre-payment arrangement that PGW entered into this year, and which was the sole reason the Company finished the year with any positive cash flow, would be impossible if PGW were downgraded.

¹⁹ Extraordinary Rate Order at 15.

The Company has squeezed every dime out of its “business as usual” collections practices, going to unprecedented lengths to just get its performance back up to historic levels, a considerable achievement during a time of upwardly spiraling energy prices. The City has done all it can reasonably be expected to do to provide support – effectively foregoing receipt of \$135 million over the next 5 years. PGW has also exhausted its store of one-time fixes that it used in the past to survive immediate crises.²⁰

Thus, the question confronting the PUC is NOT whether PGW’s Chapter 56 waiver requests are appropriate as a general matter or in the abstract, but instead whether they are the least objectionable means of improving collections and cash working capital in the next six months, in light of PGW’s unique circumstances and the disastrous consequences of a bond downgrade for all involved. Unfortunately, the Commission does not have the luxury of simply not dealing with these current financial realities. Nor may the decision be made only by examining the effect of the waivers on consumer rights. PGW asserts that the risks of that approach are enormous and cannot be justified. As the Philadelphia Public Officials cogently stated:

PGW has demonstrated, and the Philadelphia Public Officials agree, that the loss of PGW’s investment grade bond rating would be a disaster for the Company, its employees and, most of all, its customers, dramatically increasing PGW’s cost of service at the least, and, at worst, threatening the Company’s ability to make the capital improvements necessary to continue to provide safe, reliable and adequate service.²¹

As a result of this conclusion, the Public Officials supported PGW’s Chapter 56 waiver requests as “reasonable and supported by the record evidence in the proceeding.”²²

²⁰ PGW St. CRRC-1R at 3; *see* PGW St. CRRC-5.

²¹ Public Officials MB at 4-5. The Public Officials are: Pennsylvania State Senators Vincent J. Fumo, Michael J. Stack and Anthony H. Williams, Philadelphia City Council President Anna C. Verna, and Philadelphia City Council Members James F. Kenney, Frank DiCicco, Michael A. Nutter, David Cohen, Joan L. Krajewski and Juan F. Ramos, and Philadelphia District Attorney, Lynne Abraham.

²² Public Officials MB at 5.

Accordingly, because of its failure to even consider the special and specific financial needs of PGW when weighing its waiver requests, the Commission must reject the Recommended Decision's finding that PGW had not met its burden of proving that its financial integrity justified the requested modifications. Instead, the Commission should approve the waiver requests on a two-year "pilot" basis, subject to monitoring and potential modification as experience with the revised procedures become available. As will be shown in the following discussion of the waiver requests, each is carefully crafted to affect customer interests only to the extent necessary, while still being fair to customers and preserving a consumer's procedural right. Most importantly, the effect of each request must be considered from the standpoint of whether it is reasonable in light of the need to increase PGW's collections and cash working capital and the absence of any other alternative means to do so and it was erroneous for the Recommended Decision to fail to do so.

B. The Recommended Decision Erred By Suggesting That PGW's Chapter 56 Waiver Requests, Would Not Improve Its Financial Integrity Because of the Lead Time Needed To Implement Them. (R.D. p. 53. POP ¶ 2).

As noted above, the ALJ did not weigh PGW's need for additional cash working capital when considering its Chapter 56 waiver requests. Indeed, the only comment on PGW's financial condition made in the Recommended Decision was a suggestion that "PGW admitted that, even if the Commission were to grant its Waiver Petition, there would not be any immediate impact on its cash flow crisis because it would take months for PGW to implement the modified rules... ." ²³

This was error. While PGW did indicate there would be lead time -- 6 to 8 weeks -- in initiating the changes in rules suggested by the waiver requests, it is not clear how the ALJ reached the conclusion that because of this short lag the changes would not have an immediate impact on PGW's cash flow. In fact, as PGW made clear in its earlier pleading, ²⁴ granting the waiver requests will give

²³ R. D. at 53.

²⁴ In PGW's Motion to Certify, the Company pointed out that the Chapter 56 waiver requests would not be able to be implemented "with a flick of a switch." Motion at 2. As explained in Mr. Gyory's Statement, attached to the

PGW the ability to make an immediate improvement in its collections and cash working capital – albeit not as great as would have occurred if the PUC had acted earlier.²⁵ All of the requests will be able to be implemented by November at the latest, and, while clearly reducing the effect to some extent, will, nonetheless, provide a positive benefit to PGW’s collections and cash flow or a positive reduction in costs, at a time where such an infusion is desperately needed.²⁶

Further, PGW believes that the mere granting of the Company’s requests will have a salutary impact on the rating agencies because, at the very least, it will signal PUC support for the Company and its struggle to maintain an investment grade bond rating. Importantly, one of the concerns raised by S&P in its comments after the PUC’s Order denying the CRRC was a suggestion that the rejection of the CRRC pointed to a less supportive PUC relationship.²⁷

To the extent, therefore, that the ALJ rejected PGW’s Chapter 56 waiver requests based on a misunderstanding that they would not make a positive improvement on PGW’s financial condition, the Recommended Decision was in error. Even if the full effects are realized, that certainly can not

Petition for Waiver, implementation of the modified rules is expected to require at least six to eight weeks of preparation and training depending upon the complexities of the changes adopted by the Commission. The filing pointed out that the effort will require revising policies and procedures, developing new customer communications, and training collections and customer affairs personnel, as well as developing and implementing a community education program to ensure maximum benefit from the changes. Accordingly, PGW urged the Commission to act as quickly as possible: “Given the demands of the rating agencies for material improvement, and the promised action without it,” PGW suggested that waiting until September to afford the Company these new collections tools “may well be too late and not an option.” (*Id.* at 6). Thus, PGW’s request for fast action was based upon its concern that waiting until November or December to fully implement the waivers might not be sufficient to hold off rating agency action. Indeed, it is now known that the rating agencies have held off, at least until the Commission acts on PGW’s waiver requests in September.

²⁵ PGW Exh. CP-1 at 4. The proposals are focused on raising additional cash in the next 4-6 months by improving collections or reducing costs. The Company showed that its waiver requests could raise as much as \$30 million. *Id.*

²⁶ Based upon representations by BCS witness Mumford, PGW has already begun to implement its request to modify BCS administrative guidelines involving payment agreements (item D.6, below) and the time permitted to effectuate a termination (item D.9).

²⁷ S&P Bulletin: “Adverse Regulatory Decision For Philadelphia Gas Works Detracts From Credit Quality,” July 9, 2004 (attached as Appendix C hereto).

constitute a reason for not considering the financial effect of the waivers and PGW's dire need for such cash infusions.

C. The Recommended Decision's Rejection of Each of PGW's Specific Waiver Requests Failed to Consider PGW's Unique Circumstances Which Justify Their Approval

In addition to the Recommended Decision's failure to consider PGW's acute financial needs, it also failed adequately to consider a number of other factors which, taken together, clearly justify a finding that loosening the PUC's rules, where they are outdated or tilted too far in favor of the non-paying customers, is necessary for PGW to achieve the cash "material" improvement, as demanded by the rating agencies.

First, the Recommended Decision uniformly failed to take account of PGW's unique demographics and status as a municipal utility. As a municipal utility, PGW has no shareholders and, in each instance in which PGW is prevented from enacting a practice that enhances the chances of receiving payment from non-payers, the burden of paying for the service transfers NOT to stockholder but to the remaining PGW customers. The OSBA astutely explained this reality in its brief:

PGW is a cashflow regulated utility. Moreover, its ongoing cash position is uncertain. As a cashflow regulated utility in financial difficulties, when some customers do not pay their bills other customers must make up the difference. Thus, the appropriate balance to be struck in this proceeding is between providing reasonable protection to payment troubled ratepayers and establishing just and reasonable rates for the customers who do pay their bills. . . . In any event, under cashflow regulation, the burden of [PGW's] collections problems falls on the paying customers and not on PGW 'shareholders.'²⁸

As OSBA has correctly pointed out, regardless of the Commission view of whether Chapter 56 presently provides the appropriate general "balance" between the rights of individual customers and the financial interests of the affected utilities, it should be clear that "PGW is a special case and should

²⁸ OSBA MB at 11-12 (emphasis added).

be treated as such” when the Company’s proposed waivers are examined; yet the Recommended Decision erroneously failed to acknowledge these unique circumstances.²⁹

Second, the Recommended Decision failed to give any consideration to PGW’s relatively large volume of non-paying customers with which the Company must deal. In many instances, the Decision suggested that PGW could attempt to obtain the result it is seeking through its waiver request by applying for an individual, legal ruling from the PUC on a case-by-case basis. But the sheer volume of PGW’s collections problem makes such an approach infeasible. Fully one-half of PGW’s total customer base – 250,000 customers out of 510,000 – are payment troubled on a regular basis;³⁰ PGW had some 133,000 customers who were in arrears as of April,³¹ a number which has now grown to 150,000;³² it anticipates having to terminate some 30,000-35,000 customers by December 1;³³ and it has entered into some 54,000 payment agreements (91% of which, historically, have been broken within twelve months).³⁴ At the very least, all of these facts make it simply infeasible to attempt to deal with PGW’s variety of problems and issues on a case-by-case basis, as the ALJ recommended.

Finally, the Recommended Decision consistently rejected PGW’s proposed waiver requests because of a concern that customers who, while not satisfying the “low income” definition used by the PUC, would, because of their financial circumstances, have a harder time maintaining their gas service.³⁵ But, in light of the number of PGW customers that are low-income (some % have incomes

²⁹ OSBA MB at 12.

³⁰ PGW St. CP-1R at 12-13.

³¹ PGW Exh. CP-1, App. A at 5

³² PGW St. CP-1R at 27.

³³ PGW Exh. CP-1, App. A at 5.

³⁴ Tr. 685; PGW Exh. CP-1, App. A at 6.

³⁵ See, e.g., R.D. at 62.

under \$20,000),³⁶ adopting this approach means a massive burden imposed on remaining customers – something that has been universally rejected by customers,³⁷ public officials³⁸ and the Commission itself in its CRRC decision.³⁹ PGW submits that, especially considering its present circumstances, the PUC must approve rules that work toward assuring that all customers who can pay must pay, in order to relieve the very serious burden that non-payers are imposing on remaining customers. Customers who have an inability to pay should be-protected via established federal and state low income assistance programs. Importantly, PGW believes that the only standard that properly may be used to designate customers with an inability to pay is the standard used to determine income eligibility for the PUC’s low income assistance program – CAP (referred to as “CRP” by PGW) – which sets the standard at 150% of the Federal Poverty Level or below (which is the same as LIHEAP). The Recommended Decision appears to have incorrectly and inappropriately adopted the arguments of several of the parties that suggested that the Commission should utilize a broader definition of “ability to pay,” to include the “working poor” and that Chapter 56 is designed to protect such customers. That broader definition goes well beyond existing standards and would be inconsistent with existing state and federal standards.⁴⁰ At least for a municipal utility such as PGW, it is both unfair and legally indefensible to create mechanisms that force the remaining general body of customers to subsidize

³⁶ PGW St. CRRC-5 at 16.

³⁷ CRRC Tr. 77 (Mary Jane Hazell). For similar statements from ratepayers, see CRRC Tr. 63-64 (Louis Rabonin), 102-03 (James Walsh), 188 (Mary Carroll).

³⁸ CRRC Tr. 42 (Hon. Angel Cruz), 44 (Hon. Brian J. O’Neill), 69 (Hon. Mark B. Cohen), 110 (Hon. Joan Krajewski), 132 (Dir. Lance Haver).

³⁹ CRRC Proceeding, Opinion and Order (July 8, 2004) at 18-20.

⁴⁰ See, e.g., R.D. at 62, 84. The Commission has clearly delineated the groups of general customers who, in its view, are deserving of support in paying their utility bills – customers at the 150% of the FPL or less (income Levels 1 and 2 under the BCS income level standards). PGW MB at 22-23. Accordingly, PGW’s waiver requests should not have been rejected on the ground that some non-low income customers might have trouble maintaining service despite their *inability* or unwillingness to live up to their payment obligations. Just recently, in the now seminal *Frayne* decision, the Commission made clear that this obligation is at the heart of Chapter 56. *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Sept. 10, 2003). The Recommended Decision’s outcome does not reflect this seminal rule.

other, non-protected customers unless those customers fall into some other protected class, such as senior citizens.⁴¹

Taken together, PGW's unique characteristics clearly justify the carefully crafted modifications to the general Chapter 56 rules and administrative procedures and the Recommended Decision's consistent failure to take these special circumstances into consideration was error.

D. The ALJ Erred In Rejecting Each of PGW's Specific Waiver Requests.

1. Introduction.

As will be shown below, the Recommended Decision erred in rejecting each of the requested waivers. The waivers, as a whole, are designed to provide a positive improvement in PGW's collections and cash working capital in the next 4-6 months. Importantly, each waiver request was accompanied by a calculation of the cash working capital or collections infusion that would result if the waiver were adopted. While parties took issue with some of these calculations, they clearly show that each modification will be a positive step in improving PGW's financial situation and putting it on the path to financial normality. Moreover, PGW's proposals modify existing procedures and Chapter 56 rules only to the extent necessary to achieve the desired result. The waivers maintain consistency with the general goals of Chapter 56: to assure adequate provision of residential utility service, to restrict unreasonable termination or refusal to provide service, and to provide functional alternatives to termination.⁴² In no case is PGW's request fundamentally inconsistent with an existing Chapter 56 goal.

When balanced with PGW's acute financial needs, there is no question that PGW's requests should be granted in their entirety -- and granted now. The Recommended Decision's promotion of a collaborative⁴³ to discuss the very same issues embodied in the specific waiver requests is simply not

⁴¹ PGW St. CP-1R at 11-12.

⁴² 52 Pa. Code § 56.1.

⁴³ R.D. at POP 11-13.

an option. The collaborative, the first meeting of which may not even occur until December 31, 2004, offers only the opportunity for more talk from the same parties, with little hope for changes in their respective positions, and no solutions to PGW's *immediate* need for material financial improvement. PGW is open, though, to a collaborative designed to address issues arising from the implementation of the approved waivers.

2. The ALJ Erred in Refusing to Permit PGW to Require Payment of the Full Balance and Related Charges to Restore Level 3 and 4 Customers Who Have Been Shut Off for Non-Payment. (Estimated Value: \$4.2 million). (R.D. 58-64.)

Under this proposal, PGW would be permitted to require customers to pay 100% of any outstanding arrearage as a condition of reinstating service after termination, for customers who are identified as income Level 3 (incomes of greater than \$28,275 and less than \$56,550 for a family of four) and 4 (income levels over \$56,550 for a family of four).⁴⁴ The present Chapter 56 rule, that a customer has a right to pay-off outstanding charges on an amortized basis,⁴⁵ would continue to apply to all other customers.

The Recommended Decision rejected this proposal, essentially concluding that the existing rules were a more reasonable way in which to deal with previously terminated customers with arrearages. The decision concluded that it would be unreasonable to deprive all PGW customers with incomes above 150% of the FPL, regardless of circumstances, the possibility of entering into a reasonable payment agreement in order to have payment restored, and found that PGW's proposal is inconsistent with Chapter 56, Section 56.191, which recognizes that "each situation is different."⁴⁶

But, the Recommended Decision failed fully to appreciate that revisions to existing rules that produce additional collections are crucial if the Company is to avoid a downgrade. The question then is not whether this rule revision is better or worse than the current rule in the abstract, but rather

⁴⁴ PGW CRRC-5, Exh. TEK-5.

⁴⁵ 52 Pa. Code § 56.191.

⁴⁶ R.D. at 62.

whether, considering the circumstances affecting PGW, it represents a reasonable way of increasing collections for PGW. Considering the facts presented on the record, the answer cannot be anything other than in the affirmative:

- The number of PGW customers in arrears is enormous: as of April 1st, 133,000 customers were subject to receiving service termination notices,⁴⁷ and by the time of the hearing in this proceeding that number was up to 150,000;⁴⁸
- Of those customers, some 54,000 or more will likely enter into payment arrangements;⁴⁹
- Most importantly, PGW's historic payment arrangement success rate is only 8-9%.⁵⁰ This means that of the 54,000 or more customers who will be given a payment arrangement to pay their past due utility bills, less than 10% will actually honor that good faith agreement.

While the PGW proposal would increase the payment that a non-low income customer would be required to remit to be reinstated, customers at these levels clearly have the ability – and must be expected – to pay, an assumption that, as discussed above, is reflected in PUC and national policy. Further, the fact that these customers are being reinstated for non-payment means that they have already had and discarded the opportunity to pay off the arrearage through a payment plan. Giving them what amounts to an additional payment agreement opportunity has led to the huge levels of accounts receivables that are at the heart of PGW's cash crisis.⁵¹

Moreover, just as the opposing parties did, the Recommend Decision made no distinction between a family making \$30,000/year or a family making \$100,000-200,000 year. Thus, all customers are entitled to receive service without paying their full arrearage, regardless of how well off

⁴⁷ PGW Exh. CP-1, App. A at 5.

⁴⁸ PGW St. CP-1R at 27.

⁴⁹ See, Tr. 685.

⁵⁰ PGW Exh. CP-1, App. A at 6.

⁵¹ PGW CRRC-1, Exh. JRB-2 (FY04 estimated net accounts receivable projected at \$114.5 million, a 58% increase over actual FY02).

they are. The Recommended Decision's failure to make any such distinction makes the entire recommendation unreasonable.⁵²

The Recommended Decision also raised the concern that Level 3 and 4 customers have average balances of \$620.00 and "many Level 3 and 4 customers may not be able to make a \$620.00 lump sum payment."⁵³ It suggests that the solution is to "intervene with the customer at the first sign that the customer is not making payments or is only making partial payments," and to "work with the customer to see whether the customer may be assisted by budget billing or is eligible for LIHEAP or USEF ..."⁵⁴ First, PGW in fact does all of those things now. At the first sign of a customer falling into arrearage, it undertakes a host of actions to attempt to keep a customer from slipping so far as to justify a termination notice.⁵⁵ Moreover, once a termination notice is issued, the first step – as mandated by Chapter 56 as well as prudent practice – is to attempt to negotiate a payment agreement. At present all customers entering into a payment agreement are also strongly encouraged to go on budget billing as part of the payment arrangement.⁵⁶ Finally, PGW's proposal is to require 100% payment of arrearages for reinstatement only for customers in Income Levels 3 or 4; such customers are not eligible for LIHEAP or USEF.

⁵² The best evidence in the record is that only about 41% of PGW's existing customer base has incomes above \$30,000 and only approximately 7% of its customers have incomes above \$40,000 (for a family of 4). PGW MB at 27. These statistics demonstrate two important points: (1) by focusing principally on income Level 3 and 4 customers, PGW has insulated the majority of customers in lower income categories from any adverse affects that may be possible from its proposal; and (2) if PGW's proposals are limited to just the highest income levels (for example families with incomes of \$40,000 and above), the reach of its proposals would be limited and would not provide the full benefit to PGW's collections and cash working capital that it so desperately needs.

⁵³ R.D. at 62-63. PGW's stated willingness to modify its proposal to permit customers subject to this rule to file an informal appeal with BCS not only if there was some billing error but also if the customer could show "extraordinary hardship." (PGW St. CP-1R at 13). In such a circumstance, the customer could be given one additional opportunity to pay off his/her arrears under some schedule established by BCS. But, if that customer breaks that agreement and is terminated, no further dispensation should be permitted.

⁵⁴ *Id.*

⁵⁵ PGW St. CP-1 at 8-10.

⁵⁶ Tr. 677-78.

By permitting this change, the Commission will increase the chances that the Company will collect a substantial portion (\$4.2 million) of its receivables from these customers. While current rules would give the Company the opportunity to demand 50-75% of these arrearages in upfront payments, those decisions frequently are reversed by BCS upon appeal.⁵⁷

Notwithstanding these facts, and without citation to any record evidence, the Recommended Decision suggested that PGW would somehow be better off if it continued to reinstate service by the payment of less than 100% of an arrearage and a small payment of the balance each month.⁵⁸ Contrary to this opinion, permitting a customer to get back on the system without paying his/her entire arrearage will put the Company in the position of losing a substantial portion of potential collections – in the form of smaller up-front payment – while likely failing to recover the remaining balance and having to once again supply and pay for gas service without being paid. Unmentioned by the ALJ was the unchallenged fact that more than 90% of all PGW payment agreements end up being defaulted. Thus, for 90% of the customers, under present rules, PGW reinstates the customer without full payment, the customer never pays the full amount they owe and PGW is forced again to attempt to terminate them. Meanwhile, PGW is forced to continue to expend dollars to provide the customer with natural gas service – which can amount to tens of millions of dollars. In another context, PGW estimated on the record that delaying termination activity for just an additional 30 days would result in PGW expending an additional \$20 million in natural gas expenditures.⁵⁹ Clearly, considering PGW's acute need to increase collections, requiring higher income customers who have already been terminated for non-payment to remit 100% of their past due balance as a condition of reinstatement is a reasonable

⁵⁷ For example, in the informal complaint resolution placed into the record, a non-CRP customer, and therefore one who was in an income Level 3 or 4, was permitted to receive service by paying a budget amount for current service together with just \$100/month even though the location had an arrearage of over \$7,000. (PGW Cross Exam Exh. CP-3).

⁵⁸ R.D. at 62-63.

⁵⁹ PGW projected that it would incur some \$20 million in additional natural gas costs if the termination process had to be repeated after 30 days. PGW Exh. CP-1, App. A at 14.

tightening of the existing general rule and fully justified under the circumstances. Unless some other means of producing an additional \$4.2 million in cash working capital is identified, the Commission should approve this waiver request.⁶⁰

3. The Recommended Decision Erred In Rejecting PGW's Proposed Waiver of the Winter Moratorium Shutoff Ban for Level 3 and 4 Customers. (Estimated Value: \$1 million) (R.D. 64-69.)

The Recommended Decision refused PGW's request for a waiver of the Chapter 56 general prohibition against winter terminations. This was error. Currently Chapter 56 prohibits PGW from terminating customers who are in arrears except in very limited and specific circumstances and only after receiving approval from the PUC.⁶¹ PGW proposed to establish a presumptive rule that customers that can be identified as falling into income Levels 3 or 4 would be subject to termination even in the winter, subject to the customer's right to file a complaint with the PUC demonstrating that extraordinary circumstances should prevent termination.⁶² The facts justifying this proposal are compelling:

- As indicated above, of the 54,000 or so customers who will be extended payment agreements in this fiscal year, 91% will break their agreement within 12 months. If such a high percentage of agreements break within 12 months, a significant portion will

⁶⁰ Notably the policy determination made by the Pennsylvania House in the Responsible Utility Customer Protection Act is consistent with PGW's proposal in that it requires full payment of any balance outstanding as a condition of reconnection of utility service for any customer whose income exceeds 150% of the Federal Poverty Level. S.B. 689, § 2807-D(C).

⁶¹ 52 Pa. Code § 56.100. Attached to the testimony of BCS Mumford is a Secretarial Letter issued in 1993 which sets forth the procedure and criteria by which a utility can petition for a waiver of the winter moratorium for individual customers. OTS St. 4, Exh. 4, Sch. 3. In addition to requiring a plethora of information from the utility about the individual customer, the Secretarial Letter prohibits a waiver request for any household where: (a) the household gross income is below 150% of the federal poverty level; (b) children under the age of 12 are in the house; (c) senior citizens are present (age 60 or over); (d) physically or mentally handicapped household members are living at the premises; (e) seriously ill household members reported by the customer during the most recent contact between the customer and the utility; and (f) no landlord/tenant relationship is affected by the proposed termination. *Id.*, p. 3. Characterizing a winter termination as "a serious penalty for those who do not pay their bills," the Secretarial Letter directs "strict adherence to the procedures outlined in this letter," and the Commission will entertain such petitions "only when the utility can clearly demonstrate that it has undertaken all other possible alternatives to elicit payment." *Id.*

⁶² PGW Exh. CP-1, App. A. at 5-7.

do so during the winter when PGW has no effective recourse other than to continue to provide them with service.⁶³

- PGW presented evidence showing that it has a significant number of customers who fail to pay during the winter and would otherwise be terminated but for the winter termination ban. Last winter, PGW had over 15,000 customers (all non-CRP), representing \$5.3 million of accounts receivable, who were on the system from December 1, 2003 through at least March 31, 2004, without paying a single cent toward their bills.⁶⁴ Without the winter moratorium, all of those customers would either have been forced to enter into a payment arrangement or would have been terminated. Instead, PGW had to absorb a \$5.3 million cash working capital loss as well as the cost of the gas provided to the non-paying customer.⁶⁵

The Recommended Decision rejected PGW's waiver request on the ground that the Company failed to take advantage of the present rule which permits the winter moratorium to be waived on a case-by-case basis.⁶⁶ But, the infeasibility of a case-by-case assessment is the reason PGW proposed the rules change in the first place. By any calculation, PGW is annually faced with thousands of customers who fail to pay or are paying only a small amount on their gas bills during the winter.⁶⁷ As a "cash flow" company, slow payment is just as harmful to the Company's cash working capital as non-payment is. The winter moratorium permits these customers to stop paying or stop paying on time, secure in the notion that their failure will not result in their losing gas service for months – a period that, as a practical matter, extends well beyond April 1 for most of those customers. Creating a general rule that such customers in the higher income levels (about 41% of PGW's customers) can be terminated in the winter without pre-approval of the PUC creates a potent collection tool, the existence of which in and of itself very likely will produce additional payments from customers.⁶⁸

⁶³ PGW MB at 26; PGW St. CRRC-5 at 16, Exh. TEK-5.

⁶⁴ PGW St. CP-1R at 14-15.

⁶⁵ *Id.*

⁶⁶ R.D. at 68-69.

⁶⁷ Looking only at the 15,000 customers who failed to pay anything on their gas bills last winter, if 41% have incomes in the Level 3 and 4 category this means that PGW would have had to use the "case-by-case" approach in 6,000 cases.

⁶⁸ PGW St. CP-1R at 14.

To protect against cases in which serious hardship could occur if the termination went forward, and to allow resort to social service and other alternative helping agencies, PGW proposed that customers subject to this rule should be permitted to file an informal appeal with BCS if the customer shows “extraordinary hardship.” Accordingly, there is no basis for suggesting, as the Recommended Decision did, that the adoption of a general waiver for high income customers would “unreasonably place at risk “ the health and safety of a customer’s household.⁶⁹ Further, there certainly must be some income level at which personal responsibility outweighs the need for the moratorium.

Considering PGW’s desperate need to add to its cash flow and increase collections, especially in the winter when PGW must pay for pipeline gas purchases as well as debt service on long term bonds, the financial needs of the Company outweigh the opposition to this change in the existing procedure, especially where claims of real hardship can be advanced to the PUC.⁷⁰

4. The Recommended Decision Erred By Refusing To Require a Flat Turn-On Deposit for All New/Restored Customers and Refusing the Right to Deny Service Until Deposit is Paid in Full. (Estimated Value: \$7.6 million) (R.D. 69-74.)

One of PGW’s most important proposals is to require all non-CRP customers to remit a deposit as a condition for new service. The deposit would represent two months of the system average monthly residential bills (\$250 for heating customers and \$100 for non-heating customers). The deposit will be held for one year and then credited to the customers who demonstrate that they pay on time. PGW’s proposal would replace or modify the Chapter 56 provisions with respect to deposits

⁶⁹ R.D. at 69.

⁷⁰ Again, the Company’s position is consistent with the revisions to Chapter 56 which were adopted by the State House. The Responsible Utility Customer Protection Act would actually eliminate the winter moratorium for all customers whose gross household income exceeds 150% of the FPL. S.B. 689, § 2806-D(f). The declaration of policy in Section 2802-D of the Act clearly states that the motive behind this proposed reduction of the winter moratorium’s reach is the implicit finding that customers have a personal responsibility to pay their utility bills and, absent recognized low income status, they must.

which actually prohibit a utility from demanding a deposit from a new customer in a variety of circumstances⁷¹

The Recommended Decision incorrectly rejected this proposal on the ground that “in an attempt to collect as much money as possible as soon as possible, PGW would forsake the rights of individuals.”⁷² In fact, PGW is indeed attempting to increase its cash flow and collections and to decrease uncollectibles, not to forsake the rights of customers but to keep the Company from sliding into financial disaster. Asking customers for a deposit as a condition of providing service can not, by any stretch be characterized as “forsaking” some immutable consumer right.

Indeed, uniform deposit requirements are the rule, not the exception, in many contexts. The justification for PGW’s deposit proposal is compelling:

- PGW has a massive number of customers who start service but who do not pay their bills or do not pay on time. Since the beginning of the fiscal year, PGW had some 68,000 customers initiate service (excluding those who were enrolled in CRP, who immediately entered into some kind of payment arrangement or had some other issue with respect to their account);⁷³
- Of this 68,000 starting service just this year, 18,466 (or 27%) were already in arrears when the record closed;⁷⁴
- PGW only secured 1,500 deposits from this group of customers, using its existing *manual deposit procedures and Chapter 56 rules*;⁷⁵
- If PGW’s deposit proposal had been in place from the beginning of the fiscal year, PGW would have a potential pool of \$4.6 million that could have been applied against customer non-payment or slow payment.⁷⁶

⁷¹ These include, where the customer’s prior utility credit history is adequate, where the applicant owns a home or has leased a residence for more than one year, or where the “applicant provides information demonstrating that he is not an unsatisfactory credit risk.” 52 Pa. Code § 56.32. Existing rules also allow a utility to require a deposit as a condition to reconnection of service following termination or, whether or not termination of service has occurred if a ratepayer fails to comply with a material term or condition of a settlement or payment agreement. 52 Pa. Code § 56.41.

⁷² R.D. at 73.

⁷³ PGW St. CP-1R, Exh. CP/RG-4.

⁷⁴ *Id.*

⁷⁵ *Id.*

As indicated, the ALJ's principal concern appeared to be that PGW's proposed flat turn-on deposit requirement will "forsake the rights of individuals and that the Company should instead pursue "credit scoring."⁷⁷ These arguments run completely counter to the following facts:

- Low income customers who are eligible for CRP would not be subject to the deposit requirements.
- Deposits are regularly required in all sorts of commercial transactions without regard to credit or income status, including leasing a house or apartment, leasing a car, renting an appliance or a garden tool, obtaining a cable box and many other examples. In many instances, they apply to "critical necessities of life" such as housing.
- Customers who pay on time will receive the deposit back with interest in the form of a credit.⁷⁸
- PGW indicated that it would be willing to permit customers to file complaints with the PUC if the deposit requirements would create significant hardship.⁷⁹ In such instances, the Commission could modify the deposit requirements by permitting the deposits to be paid out over time or to reduce it. PGW believes that only one such reduction or modification should be justified for each customer.

The need to improve PGW's collections and cash working capital outweigh any perceived reduction in existing consumer rights. PGW's proposal merely takes an existing security option (requiring a deposit) and expands the circumstances in which such an option can be exercised in order to meet its acute financial need to reduce the losses from nonpaying and slow paying customers. Most

⁷⁶ PGW St. CP-1R at 17. A second aspect of PGW's proposal is that the standard deposit amount be doubled for previously terminated customers applying for service in the winter months. The reason for this should be obvious: customers who are applying in the period October 1 through April 30 have the ability to immediately stop paying their utility bill and PGW will not be able to terminate them because of the winter moratorium. The evidence in the record shows that the shortest period of time by which PGW can terminate a customer after the initial provision of service is 80-82 days. PGW Cross Exam Exh. CP-2; Tr. 804-05. Thus, a customer starting service in December could exact a full 6 months or more of free service from the Company and its timely paying customers without any fear of loss of service. This is simply intolerable in light of the serious nature of PGW's plight and the customer's history of repeated instances of non-payment.

⁷⁷ R.D. at 73. The ALJ's recommendation that PGW present a cost-benefit analysis of implementing a credit scoring model is unnecessary. PGW stated on-the-record that it was already planning to install the systems necessary to implement credit scoring but that it would not be able to even test such an approach until the 3rd quarter of 2005. CP-1R at 18. Obviously, credit scoring is not a useful means of dealing with the immediate crisis. If the Commission wishes to direct PGW and the parties to discuss in a collaborative, the results of credit scoring trial in addition to immediately implementing a uniform deposit requirement, PGW would not object.

⁷⁸ *Id.* at 17.

⁷⁹ *Id.*

significantly, the implementation of this one change is estimated to produce \$7.6 million in additional cash working capital for the Company; how else can PGW secure a comparable infusion of cash working capital (other than a base rate increase)? The PGW proposal should be adopted.⁸⁰

5. The ALJ Erred By Refusing PGW's Proposal to Require All Applicants To Establish Positive Identification And Require Applicants Who Are Identified As Previously Residing At That Location Be Held Responsible For Any Previous Arrearage During The Time They Resided There. (Estimated Value: \$1.8 million) (R.D. 74-78).

PGW proposes a two-fold addition to the service initiation requirements. First, an applicant would be required to establish positive identification; i.e., to prove to PGW that the applicant is who he or she says they are. This would be done by requiring a social security number or other identifying information which would then be checked against a standard credit reporting data base.⁸¹ No one disputed the appropriateness of requiring positive identification for new applicants to prevent fraud and “identify theft” (the ALJ did not discuss it but, nevertheless, rejected PGW’s entire proposal).

Second, PGW proposes to use the “skip trace” feature of its credit reporting service to identify the previous address of the customer who is applying for service. If these data indicate that the applicant lived at that same location during the time that an outstanding arrearage accrued, PGW proposes to assign that arrearage to the applicant, subject to the applicant’s right to produce evidence that he/she was not responsible for the arrearage for some reason or to file a complaint with the PUC. Thus, PGW proposes to require the applicant to take responsibility for the prior arrearage only if objective evidence indicates that the applicant is responsible and only for the period of time in which the customer resided at the same location for which service is being requested.⁸²

⁸⁰ Supporting this conclusion is the fact that the Responsible Utility Customer Protection Act would permit all utilities to demand a deposit from any new applicant, customers who were previously terminated for non-payment and other reasons, or any applicant who is unable to establish credit. S.B. 689, § 2804-D.

⁸¹ PGW Exhibit CP-1, App. A at 9, 10.

⁸² *Id.*

The Recommended Decision ruled against this proposal claiming that “PGW does not have the authority under law to make determinations regarding whether an applicant for service should be held liable for the outstanding account balance of a person with whom he or she has resided,” and that if PGW wants to combat instances of the “name game” being played it should continue to file informal complaints with the PUC and obtain a Commission determination of responsibility. Chapter 56 already has a provision which permits such an application when the PUC determines that the applicant is “legally obligated to pay for the service.”⁸³ The BCS already interprets Chapter 56.35 to permit it to assign a prior arrearage to a new applicant whenever the facts show that the new applicant benefited from the utility service and should be responsible for the past charges as was illustrated by the results of one informal complaint brought by PGW against a “name game” player.⁸⁴

But the ALJ’s decision misunderstood PGW’s proposal as well as why a case-by-case approach will not work. PGW’s proposal is that when objective evidence supports such a conclusion, the Company would establish a presumption that an applicant, applying for service at a location at which he is currently residing, was applying (rather than the previous customer who had run up a huge arrearage which, on average, totals some \$2,300) in order to avoid payment for the service that the applicant had used and enjoyed. By any other name, that’s fraud. The customer will be informed of his right to dispute this determination with the Company, and then with the PUC, if necessary.

Clearly, the PUC has the authority to approve this presumptive approach. It applies a standard legal concept – unjust enrichment⁸⁵ – to create presumptive responsibility, and will permit PGW to raise some \$1-2 million in additional cash working capital.⁸⁶

⁸³ 52 Pa. Code § 56.35.

⁸⁴ PGW Cross Exam Exh. 3; Tr. 831-33.

⁸⁵ In fact, the Company’s proposal to apply 52 Pa. Code § 56.35 in the manner requested is supported by the theory of quantum meruit or unjust enrichment. In order to establish a claim for quantum meruit or unjust enrichment, a plaintiff must prove: 1) a benefit was conferred on the defendant by the plaintiff; 2) appreciation of such benefit by the defendant; and 3) acceptance and retention of such benefit under circumstances that would create an inequity if the defendant retained the benefit without payment. When such is shown, courts regularly make the beneficiary

Moreover, the R.D.'s conclusion that the Company must follow the existing approach – where deadbeats are presumed not to be responsible for such arrearages – completely ignores reality and the evidence that this “case-by-case” approach is completely unworkable for PGW, given the sheer amount of “name game” fraud that likely is being conducted by customers. PGW witness Gyory testified that in FY 2003 alone almost 5,000 (4,800) terminated accounts at a particular location were reinstated shortly after termination under a new name.⁸⁷ If 10-20% of the total potential number of cases actually constituted such fraud attempts, PGW would be forced to try to bring before the PUC as many as 1,000 cases a year. While the present Chapter 56 rule would apparently permit PGW to seek a ruling from the PUC that each of these 1,000 applicants should be responsible for a prior arrearage (as it did in the informal complaint that was placed on the record in this proceeding),⁸⁸ the sheer volume of cases means that addressing them in this way would make this approach completely unworkable. The R.D.'s conclusion therefore was clearly in error.⁸⁹

6. The Recommended Decision Erred By Refusing to Allow PGW to Restrict Each Customer to Only One Payment Arrangement Unless There Is A Change In Circumstances Related To Income Level Which Places The Customer In A Lower BCS Income Level. (Estimated Value: \$7.25 million) (R.D. 78-85.)

liable for the value of the benefit received. When a customer is terminated, or threatened to be, for non-payment, and then avoids the arrearage by inducing someone else in the same household to apply for service, the customer is unjustly enriched vis a vis his receipt of gas service at that address on a going forward basis. Additionally, the new applicant is unjustly enriched to the extent that the new applicant resided at the same service address, and enjoyed gas service during the period in which the arrearage was incurred. See, legal discussion in PGW MB at 40-42.

⁸⁶ PGW Exh. CP-1, App. A at 9.

⁸⁷ PGW Exhibit CP-1, App. A at 10. Importantly, PGW does not know – and never claimed to know – how many of the accounts actually represented an instance of the “name game.” Such information is extremely difficult to garner – people are usually not very forthcoming when fraud is the motive. Since the close of record, the Company has done some random testing and believes that a 10-20% figure is likely accurate.

⁸⁸ See, PGW Cross Exam Exh. CP-3.

⁸⁹ Requiring applicants to take responsibility for charges that were accumulated during the time that they lived at the same location and enjoyed the benefits of the utility's service was affirmed as reasonable in the Responsible Utility Customer Protection Act. Indeed, under the legislation, an applicant is not even entitled to receive service if the applicant can not prove that he/she did not previously reside at the location for which service is sought. S.B. 689, § 2808-D.

PGW's proposal here was to establish clear rules for payment arrangements, both in terms of the number of payment arrangements a customer could obtain and the repayment schedule required. The key elements are that, ordinarily, customers would be entitled to only one payment arrangement, specific repayment schedules would be imposed depending on income and customers would only be permitted to enter into another payment arrangement if their income level dropped from one income level category to another.⁹⁰

Importantly, PGW's proposal is different only in a degree from the established interpretation of Chapter 56 requirements articulated in the *Frayne* decision.⁹¹

Perhaps miscomprehending the point of PGW's filing in this instance, the Recommended Decision rejected this proposal, stating that PGW "is required to recognize and respect the rights of individual customers to a reasonable opportunity to obtain and retain gas service [as reflected in

⁹⁰ Here are the specifics of the proposal. Absent specific changed circumstances, customers would be entitled to only one payment arrangement after they fail to live up to their obligation to pay for their natural gas service.

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

As noted, customers would only be permitted to enter into another payment arrangement if their income drops from one income level to another. PGW Exh. CP-1, App. A at 11.

⁹¹ *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Sept. 10, 2003). The Responsible Utility Customer Protection Act would mandate rules very similar to those requested here. *See*, S.B. 689, § 2805-D.

Chapter 56].”⁹² Again, the Recommended Decision’s conclusion shows that it did not apply the appropriate standard for considering this waiver request, that is: does the Company’s desperate need to increase collections and cash working capital justify a modification of the Chapter 56 rules with respect to the nature and level of payment arrangements? Since PGW is requesting a plenary waiver of Chapter 56, it is neither surprising nor relevant that its requests are inconsistent with other provisions of that Chapter.⁹³

Moreover, and contrary to the Recommended Decision, PGW’s unique circumstances and the facts of record justify these presumptive guidelines regarding payment arrangements. Most compelling is the fact that of the over 54,000 payment arrangements that PGW will enter into this year, only 8%-9% will actually be honored to completion if historical patterns hold.⁹⁴ PGW is thus massively hemorrhaging from customers who take public utility service, fail to pay for it and then, when given a second chance to meet their obligation, fail to honor that second obligation. PGW’s presumptive rules would establish “bright lines” which would limit the number of payment arrangements and allow PGW to process the tens of thousands of broken arrangements with which it is faced in a timely manner. This assures that the Company will either receive payment for the service that has been provided or have the ability to terminate the customer in a timely manner.

Rather than endorse a solution for these realities, the Recommended Decision instead proposed that PGW collaborate with BCS, OCA and others to determine whether PGW should implement a “multiple component payment arrangement approach” advocated as an alternative to the PGW proposal by an OCA witness.⁹⁵ But this proposal is not a substitute for PGW’s comprehensive payment arrangement schedule. It was proposed by OCA only to apply to the “working poor,” so that

⁹² R.D. at 84.

⁹³ See PGW MB at 9, n. 20.

⁹⁴ See, PGW Exh. CP-1 at 23; PGW St. CP-1R at 21-23.

⁹⁵ R.D. at 84.

it should not interfere with the PGW approach for high income customers – Level 4 at least.⁹⁶

Moreover, it simply offers an alternative payment schedule, requiring customers to pay just a small portion of a large arrearage over a short period of time.⁹⁷ If the customer satisfied this initial test, the customer apparently would then be eligible for a payment arrangement (or multiple payment arrangements) in accordance with the “case-by-case” approach that has proven ineffective for PGW. Thus, the proposal is hardly an alternative to the Company’s approach, crucially necessary under its dire financial circumstances.

7. The ALJ Erred By Refusing to Allow PGW to Make Friday Shutoffs. (Estimated Value: \$2.5 million) (R.D. 85-87.)

Currently both Chapter 56 and the Public Utility Code prohibit utilities from terminating a customer on Friday, Saturday, or Sunday.⁹⁸ This rule dates back to the late 1970s during which utility companies were almost never open on Saturdays and access to funds was also more difficult. Because the PUC has the legal discretion to modify sections of the Public Utility Code for PGW when such modifications are found to be in the public interest,⁹⁹ PGW’s proposal is eminently reasonable. No such “Friday Prohibition” rule exists in any other context, to PGW’s knowledge. For example, neither oil nor propane dealers are prohibited from refusing to deliver their product to non-payers (effectively terminating service) on any day of the week; nor is there a prohibition against eviction for non-payment from a rental home or apartment on any particular day. In all of these instances, customers must bear the consequences of waiting until after the fact to take action to respond to a non-payment problem.

⁹⁶ PGW St. CP-1R at 21; OCA St. FCI-1 at 38-40.

⁹⁷ OCA St. FCI-1 at 41-42.

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

⁹⁹ *See*, 66 Pa. C.S. § 2212(c).

Unfortunately, even this minor change was rejected by the Recommended Decision.¹⁰⁰ Instead, the ALJ recommended a collaborative be formed for the purpose determining whether there are sufficient resources available to customers on the weekend in the event of a Friday service termination.”¹⁰¹ But this recommendation failed to even discuss the substantial evidence in the record that justified an immediate waiver of the “no Friday Shut off” rule.

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

But even more important, unstated by any of the opponents was the fact that a customer is only terminated for non-payment some 3 weeks after the customer first receives a bill showing an overdue amount.¹⁰² While some of the opponents would only grudgingly admit that a customer should be aware that an overdue utility bill could result in termination of their service,¹⁰³ the fact remains that customers have some 20-22 days – over 3 weeks – to respond to an overdue bill prior to the time that shutoff actually occurs. Further, all customers also receive a 10 day termination notice. At a minimum, therefore, customers should be able to respond to the termination notice when given 10-12 days (counting the 48 hour notice) to do so. The Recommended Decision’s rejection of this proposal amounts to a claim that merely because some customer might wait until he/she is terminated to do

¹⁰⁰ R.D. at 86.

¹⁰¹ *Id.* at 87.

¹⁰² PGW Cross Exam Exh. CP-2. This exhibit (attached as Appendix D) shows that, on average, a customer receives a second bill, on which a past due amount would be listed, on day 30-31 after the first bill is sent. The soonest that termination could occur after that is day 50-52.

¹⁰³ *See*, Tr. 759-761.

anything about his/her overage and that the customer might turn to a response mechanism that might be closed on Saturday, PGW's request should be denied for all customers – unless PGW can prove that each and every response mechanism is available on the weekend! This is patently unreasonable when one considers that this one change offers the ability to collect an additional \$2.5 million at a time when PGW desperately needs additional cash flow and is having to look to remaining responsible customers to make up these differences. Again, the question is not whether this is a reasonable change generally or in the abstract, but whether it is reasonable given PGW's critical need. It clearly satisfies this standard.

8. Eliminate 48-Hour Notice Requirement During Shutoff Process. (Estimate Value: \$1 million) (R.D. 87-91.)

PGW's proposal here is similar to the proposal for allowing Friday shutoffs. PGW's proposal would eliminate the requirement, presently in Chapter 56, that, prior to actually terminating a customer, the utility is required to attempt to make "personal contact" with the customer and, if personal contact does not occur, the utility is required to post a notice indicating that service will be terminated in 48 hours.¹⁰⁴ PGW would still attempt to make personal contact but, if that attempt failed, it would nonetheless be permitted to terminate service.

The ALJ, once again, recommended rejection of PGW's proposal and called for yet another "collaborative" to study whether "existing termination procedural rules [could be modified] so that the rules are more cost effective for utilities without hurting consumer protection rights."¹⁰⁵ Again, the ALJ misses the point. PGW's proposal is specifically justified by its immediate need to expedite its collections and reduce costs. Eliminating this one part of the present termination process is estimated to save the Company over \$1 million.

¹⁰⁴ 52 Pa. Code § 56.95.

¹⁰⁵ R.D. at 90.

The 48-notice requirement is an unnecessary and costly burden on PGW because, in most cases, it requires two field visits, one of the most costly activities that PGW can undertake to effectuate a termination.¹⁰⁶ Since the present rules do not require that the Company actually make physical contact with the customer, the notice is simply another hurdle over which the utility must jump before it can actually terminate service and stop providing free gas service to customers who may have no intention of ever paying. In this instance, the savings to the Company (and, ultimately, the customer) justifies the potential additional burden on customers of a slightly shorter period in which to respond to non-payment. Customers would still have 20 days in which to take action and avoid termination from the time he/she receives their first overdue notice; plenty of time for a customer who is exercising personal responsibility.¹⁰⁷

9. The Recommended Decision Erred When It Refused to Waive the Administrative Rule Requiring 30 Day Maximum Period to Complete a Termination (During Non-CWIP Periods). (Estimated Value: \$1 million) (R.D. 91-93).

PGW proposed that the Commission acknowledge that terminations completed within 60 days from the time that the initial termination notice is provided would nonetheless be viewed as compliant with PGW's adequate service requirements and Chapter 56. Currently, a BCS administrative interpretation of the Public Utility Code and Chapter 56 requires terminations to be completed within 30 days from the notice; i.e., termination must occur within that period or else the entire process must begin again, or be viewed as suspect.¹⁰⁸ By assuring that customers can avoid termination merely by

¹⁰⁶ PGW St. CP-1R at 25. PGW customers have learned to refuse to answer when the PGW employee knocks to attempt to make contact the first time.

¹⁰⁷ S.B. 689 would permit termination after 10 days, without a 48 hour notice, but increases the number of telephone (or personal) contact attempts from 2 to 3 (Section 2806-D(b)).

¹⁰⁸ PGW Exh. CP-1 at 24.

paying the amount on the termination notice, even if their amount owing is much greater at the time of the termination attempt,¹⁰⁹ PGW has eliminated any negative effect of its proposal – perceived or real.

The ALJ again recommended that PGW meet with BCS and other interested parties “to discuss and determine what would constitute a reasonable period of time for PGW to effectuate service terminations”¹¹⁰ This is simply not adequate to address PGW’s immediate needs.¹¹¹

The reasons for requesting this clarification of BCS’s administrative rule is simple: of the more than 150,000 termination notices that have been sent out since April 1, almost one-third – 47,000 – had to be redone because PGW did not have the resources to permit it to complete them within the BCS’s mandated 30 day period. Rather than simply ignore the current BCS guidance, it repeated these terminations and gave customers additional time before they were terminated or had to pay their bill (and, in the process, provided additional gas service to customers, to the extent that any gas service was being used). This cost PGW several hundred thousand dollars in additional termination costs and several million in additional natural gas costs for service that had to be supplied to defaulted customers while the termination process was redone. Ironically, the Recommended Decision refused to approve PGW’s requested extension of the acceptable period from 30 to 60 days despite the fact that OCA witness Colton actually supported PGW’s request¹¹² and OTS witness Mr. Mumford questioned why

¹⁰⁹ PGW MB at 53. While the ALJ suggested that customers might take the threat of termination less seriously if they receive a bill that does not mention termination even after receiving a 10 day termination notice, PGW submits that customers are much more likely to lose confidence in the termination process if they receive multiple termination notices. Moreover, PGW plans to put a shut-off reminder notice in the bill informing the customer that he/she is still subject to termination if the customer does not pay the delinquent portion of the gas bill.

¹¹⁰ R.D. at 93.

¹¹¹ Waiting for the results of a “collaborative” is the same as condemning the Company to a downgrade. The Company demonstrated with clarity that it needed to make a material improvement in cash working capital in the near future. The bond rating agencies are not going to wait for yet another review of this matter, and none is necessary because PGW clearly demonstrated the reasonableness of its proposal.

¹¹² OCA St. FCI-1 at 48-49.

the Company has even asked for a waiver, since the 30 day rule is simply a BCS administrative guideline.¹¹³ Accordingly, this recommendation clearly requires reversal.¹¹⁴

10. The ALJ Erred in Refusing to Recommend That PGW Be Permitted to Complete Service Restorations from 24-Hours to Up to 7 Days During Non-CWIP Periods. (April 1 – November 30). (Estimated Value: N/A) (R.D. 93-95.)

PGW's proposal in this area is as follows: in instances in which PGW must physically dig up the customer service line to restore service, PGW is requesting that it be permitted to take up to 7 days to complete the task; and, in all other instances, it should be permitted 3 days, except where service has been terminated and the initial determination of the Commission is that the termination was inappropriate or in violation of the PUC or PGW rules or in cases in which medical emergencies exist.¹¹⁵ Chapter 56 requires that service be restored "by the end of the next business day."¹¹⁶

Again, the ALJ simply rejected PGW's request, finding that "customers should be rewarded with prompt service"¹¹⁷ and that "if customers were required to wait up to seven days for gas service after paying what was owed for restoration, customer confidence in PGW would be further eroded."¹¹⁸ But this finding completely overlooks PGW's special problems stemming from the massive number of terminations that it anticipates it will undertake by the end of the year (approximately 33,000),¹¹⁹ most of whom will be reinstated. Traditionally, many terminated customers wait until fall and the approach of cold weather before they seek to reinstate service. This means that the Company must reinstate

¹¹³ OTS St. 4 at 31. Based on Mr. Mumford's testimony, PGW is currently employing the "60 day" rule.

¹¹⁴ Again, PGW's request is consistent with the most recent legislative determinations; the Responsible Utility Customer Protection Act would make valid any termination that was completed within 60 days of the 10 day notice. S.B. 689, § 2806-D(b).

¹¹⁵ PGW Exh. CP-1, App. A at 16; This is more lenient than the requirements of S.B. 689, Section 2807-D.

¹¹⁶ 52 Pa. Code §§ 56.115, 56.191(1).

¹¹⁷ R.D. at 95.

¹¹⁸ *Id.*

¹¹⁹ PGW Exh. CP-1, App. A at 5.

service for a huge number of customers in a very short period of time. Compounding the problem is that PGW has a large number of service lines that are not equipped with curb valves, meaning that to terminate service some form of dig-up must occur. Restoring a dig up customer (and installing a curb valve) takes 4 times longer and is 4 times more expensive (about \$2,500) than a termination without installing a curb valve.¹²⁰ Considering this massive number of terminations, PGW simply can not physically complete all the restorations in the standard “end of next business day” mandated by Chapter 56. Thus, unless PGW is relieved of some other PUC regulatory requirement so that resources could be redeployed, its ability to satisfy the general rule does not exist without spending substantial sums to add additional workers or to otherwise outsource the activities. Under the present circumstances, adding to PGW’s already massive cost of service is simply not an option. Without this modification, PGW may well have to avoid terminating thousands of customers (in order to be able to manage the turn-on requirements within the rules). Therefore, it would be both reasonable and fair to recognize the Company’s limitations and acknowledge its restoration timeline as necessary under the circumstances.

E. The Recommended Decision Erred In its Proposal That PGW Be Required To Submit Its Impact Evaluation of the Company’s Universal Service Programs By March 1, 2005. (R.D. 32, POPs 6-8.)

While finding no issues or concerns regarding the cost effectiveness and reasonableness of PGW’s universal service programs, the ALJ did recommend that, after consulting with BCS, PGW shall contract with an independent third-party to conduct an impact evaluation of its universal service and energy conservation programs and provide a report with findings and recommendations to the Commission by March 1, 2005.¹²¹

¹²⁰ PGW St. CP-1R at 28 (\$500 versus \$2,500).

¹²¹ R.D., POP 6 (pg. 97.) The date is to coincide with PGW’s GCR filing. The ALJ set a similar date for the “companion report” that PGW was invited to submit in which it would have the opportunity to make suggestions for change in the program. *Id.*, POP 8.

PGW does not disagree with the recommendation that it have such a report prepared and submitted to the Commission. However it is unreasonable – and counter productive – to order that the report be submitted on March 1 of next year. OTS witness Hummel, on whose testimony the ALJ relied in making this recommendation, proposed that PGW have such a study conducted during calendar year 2005.¹²² Considering the scope and number of questions to be addressed in such a report, a useful product will require 4-6 months to complete once an independent evaluator is chosen. That means that PGW would be unlikely to be able to meet the ALJ's proposed deadline even if the Company started the process immediately. The more appropriate course is to mandate that the reports be completed and submitted to the Commission and interested parties no later than the end of 2005.¹²³ While this may make the report unavailable for the FY 2006 GCR/USC proceeding, it will definitely be available for subsequent GCRs.

F. The ALJ Erred in Rejecting PGW's Proposal to Require As A Condition of Reinstatement Payments of Arrearages Secured By Liens or Judgments. (R.D. 42-45, POP 4).

In its Restructuring Proceeding, PGW proposed to continue a long standing pre-PUC tariff provision which provided that, rather than foreclose on a customer's property, PGW would instead require a new applicant for service to enter into a payment agreement for repayment of the amounts covered by a previously secured lien or judgment. These liens and judgments are obtained by PGW through normal legal process with notice and opportunity to be heard afforded the customer or property owner.¹²⁴ PGW agreed that, once the customer entered into such an arrangement, it would

¹²² OTS St. 3 at 19-20; R.D. at 30.

¹²³ Also requiring revision is the proposal that PGW submit its report on its CWP program – presently scheduled to be completed in April 2005 – “shall be included in the review of the annual Gas Cost Rate filing Philadelphia Gas Works will make in March 2005.” R.D., POP 10. The ALJ may be contemplating that PGW will file the report in the FY 2006 GCR proceeding (to be filed on March 1). It would probably be better if the report were instead filed with the PUC and interested parties, and if any such party wishes to put it on the record in the FY 2006 GCR it may pursue such a course with the presiding officer.

¹²⁴ See, PGW MB at 79.

adhere to all applicable Chapter 56 rules with respect to the repayment and would not execute on the lien or judgment during the time the payment agreement was in effect. The approach is eminently reasonable and good for PGW's customers as well as the Company.¹²⁵ While the PUC rejected this tariff provision in the Restructuring Proceeding,¹²⁶ the Commission ordered a reexamination in this Investigation. However, the ALJ recommended that the Commission continue to reject tariff section 2.4.C.6,¹²⁷ concluding that: 1) PGW has presented evidence indicating that the lien and judgment program has helped PGW collect debts without foreclosure;¹²⁸ 2) the Commission would be placed in the position of sanctioning a collections process over which it has no control;¹²⁹ and 3) the rights of applicants for service would "possibly" be abridged.¹³⁰ Unfortunately, none of these observations is supported by the record. In fact, the evidence clearly shows the PGW proposal is a legally valid and reasonable means to gain payment of amounts that customers owe the Company without forcing PGW to resort to the draconian remedy of foreclosing on homes or seizing personal property.

The ALJ's threshold discussion concluded that "PGW has presented confusing and contradictory evidence in regard to tariff section 2.4.C.6,"¹³¹ pointing out that that the Company has

¹²⁵ Ironically, this was the single PGW proposal that even Action Alliance, *et al.*, supported. *See*, Action Alliance MB at 40-44 (Action Alliance supports this proposal if the requirements of 52 Pa. Code § 56.35 – 4 year time period – are applied to the language of Tariff Section 2.4.C.6. PGW agrees to this modification as discussed below).

¹²⁶ *Compliance Tariffs of Philadelphia Gas Works in response to the Commission Restructuring Order as modified on reconsideration*, Docket No. M-00021612, Order (Oct. 10, 2003) at 5.

¹²⁷ Specifically, tariff section 2.4.C.6. states:

2.4.C. Other Reasons for Rejecting an Application. PGW may also reject an application for Gas Service for any of the following reasons:

...

2.4.C.6. The Applicant fails to enter into a payment agreement for an outstanding lien or judgment of record in favor of PGW and against the Applicant.

¹²⁸ R.D. at 40.

¹²⁹ *Id.* at 41.

¹³⁰ *Id.*

¹³¹ *Id.* at 40.

had success in its collections program without executing on the liens or judgments. Indeed, in the past, PGW has successfully collected on some of its outstanding liens and judgments when title to a property has changed and the outstanding lien is satisfied at the time of settlement or when a customer, desiring a clean credit record, satisfies a record judgment in order to remove the judgment from his or her credit report.¹³² But this evidence of success does not at all contradict the fact that it has not been able to collect all of these outstanding amounts and, unless it is able to implement tariff section 2.4.C.6., it will be forced to execute upon the liens and judgments to increase its collections.

The ALJ's observation concerning PGW's partial success ignores the fact that PGW does not have any control over when a "liened" or "judged" customer decides to transfer title, re-mortgage a property, or clear up a poor credit record. As a result, a "liened" or "judged" customer can decide to transfer title, re-mortgage a property, or clear up a poor credit record in 1, 5, 10, 15, 20, or more years after a lien or judgment is attained. During the intervening years, and short of executing on the lien or judgment, PGW will not have any leverage to collect on these accounts without tariff section 2.4.C.6. As a result, PGW's cash flow will suffer due to non-payment of these grossly overdue accounts.

The ALJ also stated that PGW has not shown why it would not have continued success on liens and judgments without execution. But this misses the essential point. Of course, PGW will have some continued success in this program without execution due to title transfers, re-mortgaging and a desire to have clean credit. But, as shown above, the timing is absolutely unpredictable and puts off possible payment until the customer's subjective decision, thereby, negatively affecting cash flow. Rather than having to wait and hope that the customer sells their property or needs credit, tariff section 2.4.C.6. provides for interim payment of grossly overdue balances (as a condition of accepting an applicant and potentially suffering a new set of arrears), especially important right now when PGW needs to find ways to increase collections beyond historic levels.

¹³² *Id.*

Most importantly, PGW’s proposal will allow it to avoid having to actually seize homes and personal property for non-payment of arrearages – the only course of action that will be open if the Commission does not approve PGW’s tariff provision. This makes far more sense as a matter of public policy; PGW does not want to force Philadelphians from their homes nor force the loss of personal property. Moreover, execution is a costly procedure that often results in a lesser payment than the payment that can be secured through a tariff section 2.4.C.6. payment plan.¹³³ Using the service application process also permits the customer to pay off the arrearage with a payment plan whereas execution absolutely forecloses that possibility.¹³⁴

The Recommended Decision also concluded that the Commission would be placed in the position of sanctioning a collections process over which it has no control,¹³⁵ citing Mr. Gyory’s testimony, that it is “the court, and not the Commission that has jurisdiction over any such claim involving a lien or judgment.”¹³⁶ This misapprehends the conclusion that should be drawn with respect to PUC jurisdiction. As PGW carefully pointed out in its testimony and its briefs, PGW understands that the Commission does not have jurisdiction over the amount of a lien or a judgment, but such jurisdiction is unnecessary because PGW is voluntarily agreeing to subject the debt to the Chapter 56 rules and procedures. For example, PGW would adhere to the same payment arrangement parameters that would apply to any other prior arrearage and PGW will only insist on the payment of amounts that are four years old or less.¹³⁷ Therefore, even though the Commission does not have jurisdiction over the underlying lien or judgment amount – whether the customers actually owes the money – it clearly has jurisdiction over the terms and conditions of the agreement to repay the lien or judgment

¹³³ PGW St. CP-1 at 13.

¹³⁴ PGW St. CP-1 at 13.

¹³⁵ R.D. at 41.

¹³⁶ *Id.*

¹³⁷ PGW St. CP-1 at 14 (emphasis added).

amount for which PGW and the customer has entered a payment plan as a condition of service. For this reason, PGW is agreeable to modifying the language of tariff Section 2.4.C.6. in order to specifically apply the requirements of 52 Pa. Code 53.35 – i.e., a four year limitation – even though a general application exists in its current tariff.¹³⁸ In light of the foregoing discussion, the ALJ was incorrect in concluding that the PUC does not have jurisdiction and control of the lien and judgment collection process. As a result, by approving tariff section 2.4.C.6., the Commission will not be “sanctioning a collections process over which it has no control.”¹³⁹

PGW’s proposal is clearly the most logical and reasonable approach to dealing with arrearages secured by liens and/or judgments¹⁴⁰ and its tariff provision should be approved.

¹³⁸ PGW RB at 49-50.

¹³⁹ R.D. at 41.

¹⁴⁰ The ALJ also suggested that the lien and judgment collection process “possibly abridg[es] the rights of applicants for service.” *Id.* PGW does not understand how this conclusion could be arrived at. Customers receive notice and full opportunity to be heard as part of the process of a lien being placed on a property or a judgment being entered. (See, PGW St. CP-1 at 13-14). Customers receive all rights to which they are entitled when they apply for service and Chapter 56 becomes applicable. Ironically, it is PGW’s position that is most protective of consumers’ rights, not the Recommended Decision, because PGW’s position permits customers to remain in their residence and keep their personal property. In other words, instead of taking a customer’s home for lack of payment, PGW is simply seeking to delay the provision of gas service until the arrangement of a payment agreement. Essentially, taking a home is a permanent termination of service whereas tariff section 2.4.C.6. delays gas service until a payment plan is arranged.

III. CONCLUSION

PGW respectfully requests that the ALJ's Recommended Decision be accepted in part and denied in part in accordance with the attached proposed Order (Appendix A).

Respectfully submitted,



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Date: September 2, 2004

APPENDIX A

APPENDIX A
PROPOSED REVISED ORDER¹

THEREFORE,

IT IS ~~RECOMMENDED~~ HEREBY ORDERED:

1. That Philadelphia Gas Works' proposed means-tested Senior Citizen Discount program and the associated Stipulation and Settlement at Docket Nos. M-00021612 and P-00032061 is approved.

2. That Philadelphia Gas Works' Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations is ~~denied~~ approved. The granted waivers shall remain in effect for not less than two years, and shall continue in effect thereafter until the issuance of an order by the Commission deeming the waivers expired.

3. That Philadelphia Gas Works' proposed tariff section that would allow it to collect a \$10.00 charge for residential field visits that are a part of the termination process is approved.

4. That Philadelphia Gas Works' proposed Tariff Section 2.4.C.6. that would require applicants for service who have Philadelphia Gas Works liens or judgments for any outstanding account with PGW which accrued within the past four years to enter into payment agreements as a condition of service is ~~denied~~ approved.

5. That Philadelphia Gas Works' shall include the following in its next base rate case filing:

- (a) an updated progress report on the adequacy, cost-effectiveness and management of its collection practices;

¹ Redlined version of ALJ Recommended Order.

(b) detailed exhibits showing the cost components and calculations of its charges for residential field visits, late payment and reconnection;

(c) a cost-benefit analysis regarding the implementation of a credit scoring model such as the Energy Risk Assessment Model (ERAM);

(d) a cost-benefit analysis of the implementation of a mandatory electronic fund transfer (EFT) program for customers with incomes above 250% of the federal poverty level who have delinquent gas account balances and want to enter into payment agreements; and

(e) a report with findings and recommendations regarding a program to educate the public about the benefits of Philadelphia Gas Works' budget billing plan.

6. That pursuant to 52 Pa. Code §62.6, Philadelphia Gas Works, after consulting with the Commission's Bureau of Consumer Services, shall contract with an independent third-party to conduct an impact evaluation of PGW's universal service and energy conservation programs and provide a report with findings and recommendations to the Commission by or before March 1/December 31, 2005, to coincide with and be included in Philadelphia Gas Works' next annual Gas Cost Rate filing.

7. That the questions to be answered by the study referenced in ordering paragraph 6 shall include, but not be limited to: (1) "How can Philadelphia Gas Works' universal service program be more cost effective and efficient?"; and (2) "How can Philadelphia Gas Works' Customer Responsibility Program be redesigned so that it is more cost-effective and efficient while still preserving customer protection rights?"

8. That in reference to ordering paragraphs 6 and 7, Philadelphia Gas Works may file pursuant to 52 Pa. Code §62.6(c) a companion report to the independent evaluator's report, also to be included in its March 1, 2005 Gas Cost Rate filing.

9. That Philadelphia Gas Works, after consulting with the Commission's Bureau of Consumer Services, shall include in the Report on its Conservation Works Program (CWP) that it will file with the Commission in April 2005, a cost-benefit analysis of Philadelphia Gas Works' present CWP, as well as cost-benefit analysis of CWPs that incorporate more of the usage reduction measures referenced in the Commission's LIURP regulations and that also include more eligible customers.

~~10. That in reference to ordering paragraph 9, the April 2005 CWP Report shall be included in the review of the annual Gas Cost Rate filing Philadelphia Gas Works will make in March 2005.~~

~~11. That the Commission's Office of Executive Director shall form a collaborative of all interested parties (the first meeting to be held before December 31, 2004) for the purpose of developing findings and recommendations on the issues specified in the following ordering paragraphs addressing any issues that may arise from the implementation of the approved waivers.~~

~~12. That the collaborative group referenced in ordering paragraph 11 shall address the Commission's termination procedural rules, including: (1) the best practices of Pennsylvania utilities in implementing the Commission's existing termination procedural rules; (2) the best termination procedural rules of other state commissions; (3) whether there are sufficient resources available to customers on the weekend to ensure that their rights are protected in the event of a Friday service termination; (4) how long, from beginning to end, should the termination process take, taking into account both customer rights and the financial integrity of Philadelphia Gas Works; and (5) how can the Commission's existing termination procedural rules be modified or revised to be more cost effective for utilities while protecting customer rights.~~

~~13. That the collaborative group referenced in ordering paragraph 11 shall also address: (1) whether Office of Consumer Advocate witness Roger Colton's multiple component payment arrangement approach may be cost effectively implemented; and (2) what ranges of~~

~~minimum monthly payments on payment agreements should be applied to each income level group.~~

114. That Philadelphia Gas Works shall continue to meet on a monthly basis with the Bureau of Consumer Services, the Office of Consumer Advocate and Philadelphia Community Legal Services for the purpose of providing progress reports and other data and answering questions about its collection practices.

12. That a copy of this Opinion and Order be served on parties of record at Docket Numbers P-00042090, R-00049157, M-00021612, P-00032061, and P-00042117.

BY THE COMMISSION,

James J. McNulty,
Secretary

ORDER ADOPTED:

ORDER ENTERED:

APPENDIX B

Research:**Summary: Philadelphia, PA; Utility, Gas**

Publication date: 03-Aug-2004

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Credit Profile**AFFIRMED**

\$160.660 mil. Philadelphia gas wks rev bnds (1998 Gen Ordinance) ser A dtd 06/01/1998 due 07/01/1999-2014 2018 2026

AAA/BBB-(SPUR)
BBB-

\$355.825 mil. Philadelphia gas wks
\$103.550 mil. Philadelphia gas wks rev bnds (1998 Gen Ordinance) ser B dtd 06/01/1998 due 07/01/2014 2018 2028

AAA/BBB-(SPUR)

\$20.010 mil. Philadelphia gas wks rev bnds (Sub1998 Gen Ordinance) ser C dtd 06/01/1998 due 07/01/1999-2014

AAA/BB+(SPUR)

\$61.960 mil. Philadelphia gas wks rev bnds 16th ser dtd 05/07/1999 due 07/01/2000-2009 2013-2015

AAA/BBB-(SPUR)

\$112.245 mil. Philadelphia gas wks rev bnds 2nd ser dtd 05/07/1999 due 07/01/2000-2029

AAA/BBB-(SPUR)

\$120.225 mil. Philadelphia gas works rev bnds (1998 Gen Ordinance) thrd ser dtd 06/01/2001 due 08/01/2003-2019 2021 2031

AAA/BBB-(SPUR)

\$186.705 mil. Philadelphia gas works rev bnds seventeenth series (1975 Gen Ordinance) due 07/01/2005-2022 2026

AAA/BBB-(SPUR)

\$125.000 mil. Philadelphia gasworks rev bnds fourth series (1998 Gen Ordinance) due 08/01/2004-2022 2032

AAA/BBB-(SPUR)

OUTLOOK:

NEGATIVE

Rationale

The ratings on Philadelphia Gas Works' (PGW) senior revenue bonds (BBB-/Negative) and subordinate revenue bonds (BB+/Negative) reflect the weak demographics of the utility's service area, below-average collection rates, high debt levels, thin margins, and a strained liquidity position. These weaknesses are partially offset by a lack of competitors and modest levels of support from the city of Philadelphia, Pa.

PGW is the nation's largest municipally owned gas utility and the only local gas distributor serving Philadelphia. The utility serves 498,000 customers and has about \$1 billion in total debt outstanding.

The utility's weak service territory and its low collection rates pressure its liquidity. Demographics in the service territory are weak with a declining population and below-average wealth levels. During fiscal 2003, collection rates at PGW fell to 87% of billed gas revenues from a historical average of 92%. Low collection rates reduce the efficacy of the utility's gas cost recovery mechanism and expose PGW to fuel price risk.

Management's efforts to address these low collection rates have included a recent campaign to notify 130,000 delinquent customers of service termination in the event payment arrangements are not made and increasing eligible customer participation in federal home energy assistance programs such as the U.S. Department of Health and Human Services' Low Income Home Energy Assistance Program. The initiatives appear to be having a moderate affect on collection rates. For the first eight months of fiscal

2004, collection rates were up by 4% as compared with the same period in fiscal year 2003. Despite this positive trend, Standard & Poor's does not anticipate PGW's collection rate to exceed 90%-92% for the year.

PGW's debt per customer is currently about \$2,000, which is high when compared with other municipal utilities. Moreover, the utility's debt is expected to increase. PGW does not currently fund any of its capital expenditures with internal funds. PGW's collection problems contribute to thin cash margins. During 2003, cash flow from operations plus certain nonoperating revenues over fixed charges declined to 0.92x from 1.23x in 2002. Going forward, Standard & Poor's projects that, because of its collection problems, PGW's cash-basis coverage of fixed charges (excluding its annual payment to the city) will remain at or below 1x. As such, the utility's liquidity position is likely to remain challenged.

Historically, PGW has depended on a variety of one-time financial transactions to meet coverage of fixed charges, which, until recently, included a mandatory \$18 million payment to the city of Philadelphia. Other one-time financial transactions have included obtaining a \$45 million loan from the city and monetizing guaranteed investment contracts connected with a portion of PGW's sinking fund reserves.

PGW's competitive pressures are quite limited, which reduces the gas utility's business risk. Although PGW's customers have had retail choice since September 2003, the absence of alternate providers has effectively secured the utility's position as a regulated monopoly in Philadelphia. The utility's relationship to the City of Philadelphia also helps to reduce financial risk. Standard & Poor's assumes that the city will provide modest levels of operational support to PGW going forward. This support includes a suspension of PGW's annual payment to the city for the next five years and a deferral of PGW's \$45 million city loan-related bullet maturity until 2008.

Liquidity.

As of June 2004, PGW's unrestricted cash reserves were \$13.3 million, representing less than 10 days cash. Cash flow from operations is generally insufficient to cover the utility's fixed charges in high gas price years. PGW's liquidity position is challenged but currently adequate. Annual transfer-payment forgiveness from the City of Philadelphia, in the amount of \$18 million per year, has helped improve PGW's immediate liquidity position. Alternative sources of liquidity include an \$80 million commercial paper program, temporary access to capital improvement program funds, and the ability to enter into gas storage deferral contracts. PGW's commercial paper program, which is backed by a letter of credit from JP Morgan Chase Bank, is often fully drawn throughout the year. Currently, the utility has about \$20 million in commercial paper outstanding. This amount is expected to increase to nearly \$50 million by August 2004.

To meet its ongoing liquidity needs, PGW also regularly draws on funds from its capital improvement program. Timely access to the capital markets to fund this program is central to PGW's ability to maintain adequate liquidity. Although gas storage deferral contracts also add to PGW's liquidity by delaying cash outlays in liquidity-tight summer months, Standard & Poor's believes that these contracts increase PGW's cost structure, which, because of poor collection, ultimately reduce the utility's cash margins.

■ Outlook

The outlook on PGW is negative. Ratings will be lowered if PGW's financial profile weakens over the near term and collection rates and cash margins do not improve materially. Furthermore, any of the following events could have negative ratings implications: if access to short-term borrowing is restricted, suppliers place additional liquidity demands on PGW, or specified support from the city is not forthcoming. The current ratings are predicated on the city providing annual payment forgiveness to PGW for at least the next four year, and on the city allowing PGW to defer its \$45 million loan payable until 2008. In the absence of such support, the ratings will be lowered.

APPENDIX C



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

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

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

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

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APPENDIX D

The review of PGW's current collection's process/timeline provides the foundation for identifying collection initiatives.

Residential

		OUTBOUND CALLING													
		PAYMENT ARRANGEMENTS													
								PARTIAL OUTSOURCING					FULLY OUTSOURCED		
		DISCONNECT/RECONNECT Non-CRP/CRP Credit & Collection Paths				FINAL BILL/WRITE-OFF									POST-WRITE OFF COLLECTION AGENCY REFERRAL
DAY	EVENT	0	20	30-31	40	47	50-52	55 (0)	75 (20)	85 (30)	105 (50)	115 (60)	135 (80)	145 (90)	145+
	Bill 1 Sent	Bill 1 Due Date	Bill 2 Sent (Day 30)	10 Day Notice of Termination (\$__ threshold)	72 Hr. AM & PM Outbound Call OR 72 Hr. Non-Phone Field Visit	Leave 48 Hour Notice or Service Shut-Off (Day 50)	Final Service Shut-off (Day 52)	1 st Final Bill Sent	1 st Final Bill Due	2 nd Final Bill Sent	2 nd Final Bill Due	3 rd Final Bill Sent	3 rd Final Bill Due	Write-Off	Collection Agency Referral
										DAY 100 (45)	DAY 115 (60)	DAY 130 (75)			
										1st W/O Letter Reminder	2nd W/O Letter Credit Rating	3rd W/O Letter Credit Referral			

PGW CROSS EXH. CP-2

be treated as such” when the Company’s proposed waivers are examined; yet the Recommended Decision erroneously failed to acknowledge these unique circumstances.²⁹

Second, the Recommended Decision failed to give any consideration to PGW’s relatively large volume of non-paying customers with which the Company must deal. In many instances, the Decision suggested that PGW could attempt to obtain the result it is seeking through its waiver request by applying for an individual, legal ruling from the PUC on a case-by-case basis. But the sheer volume of PGW’s collections problem makes such an approach infeasible. Fully one-half of PGW’s total customer base – 250,000 customers out of 510,000 – are payment troubled on a regular basis;³⁰ PGW had some 133,000 customers who were in arrears as of April,³¹ a number which has now grown to 150,000;³² it anticipates having to terminate some 30,000-35,000 customers by December 1,³³ and it has entered into some 54,000 payment agreements (91% of which, historically, have been broken within twelve months).³⁴ At the very least, all of these facts make it simply infeasible to attempt to deal with PGW’s variety of problems and issues on a case-by-case basis, as the ALJ recommended.

Finally, the Recommended Decision consistently rejected PGW’s proposed waiver requests because of a concern that customers who, while not satisfying the “low income” definition used by the PUC, would, because of their financial circumstances, have a harder time maintaining their gas service.³⁵ But, in light of the number of PGW customers that are low-income (some % have incomes

²⁹ OSBA MB at 12.

³⁰ PGW St. CP-1R at 12-13.

³¹ PGW Exh. CP-1, App. A at 5

³² PGW St. CP-1R at 27.

³³ PGW Exh. CP-1, App. A at 5.

³⁴ Tr. 685; PGW Exh. CP-1, App. A at 6.

³⁵ See, e.g., R.D. at 62.

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do so during the winter when PGW has no effective recourse other than to continue to provide them with service.⁶³

- PGW presented evidence showing that it has a significant number of customers who fail to pay during the winter and would otherwise be terminated but for the winter termination ban. Last winter, PGW had over 15,000 customers (all non-CRP), representing \$5.3 million of accounts receivable, who were on the system from December 1, 2003 through at least March 31, 2004, without paying a single cent toward their bills.⁶⁴ Without the winter moratorium, all of those customers would either have been forced to enter into a payment arrangement or would have been terminated. Instead, PGW had to absorb a \$5.3 million cash working capital loss as well as the cost of the gas provided to the non-paying customer.⁶⁵

The Recommended Decision rejected PGW's waiver request on the ground that the Company failed to take advantage of the present rule which permits the winter moratorium to be waived on a case-by-case basis.⁶⁶ But, the infeasibility of a case-by-case assessment is the reason PGW proposed the rules change in the first place. By any calculation, PGW is annually faced with thousands of customers who fail to pay or are paying only a small amount on their gas bills during the winter.⁶⁷ As a "cash flow" company, slow payment is just as harmful to the Company's cash working capital as non-payment is. The winter moratorium permits these customers to stop paying or stop paying on time, secure in the notion that their failure will not result in their losing gas service for months – a period that, as a practical matter, extends well beyond April 1 for most of those customers. Creating a general rule that such customers in the higher income levels (about 41% of PGW's customers) can be terminated in the winter without pre-approval of the PUC creates a potent collection tool, the existence of which in and of itself very likely will produce additional payments from customers.⁶⁸

⁶³ PGW MB at 28-2926; PGW St. CRRC-5 at 16, Exh. TEK-5.

⁶⁴ PGW St. CP-1R at 14-15.

⁶⁵ *Id.*

⁶⁶ R.D. at 68-69.

⁶⁷ Looking only at the 15,000 customers who failed to pay anything on their gas bills last winter, if 41% have incomes in the Level 3 and 4 category this means that PGW would have had to use the "case-by-case" approach in 6,000 cases.

⁶⁸ PGW St. CP-1R at 14.

As indicated, the ALJ's principal concern appeared to be that PGW's proposed flat turn-on deposit requirement will "forsake the rights of individuals and that the Company should instead pursue "credit scoring."⁷⁷ These arguments run completely counter to the following facts:

- Low income customers who are eligible for CRP would not be subject to the deposit requirements.
- Deposits are regularly required in all sorts of commercial transactions without regard to credit or income status, including leasing a house or apartment, leasing a car, renting an appliance or a garden tool, obtaining a cable box and many other examples. In many instances, they apply to "critical necessities of life" such as housing.
- Customers who pay on time will receive the deposit back with interest in the form of a credit.⁷⁸
- PGW indicated that it would be willing to permit customers to file complaints with the PUC if the deposit requirements would create significant hardship.⁷⁹ In such instances, the Commission could modify the deposit requirements by permitting the deposits to be paid out over time or to reduce it. PGW believes that only one such reduction or modification should be justified for each customer.

The need to improve PGW's collections and cash working capital outweigh any perceived reduction in existing consumer rights. PGW's proposal merely takes an existing security option (requiring a deposit) and expands the circumstances in which such an option can be exercised in order to meet its acute financial need to reduce the losses from nonpaying and slow paying customers. Most

⁷⁶ PGW St. CP-1R at 17. A second aspect of PGW's proposal is that the standard deposit amount be doubled for previously terminated customers applying for service in the winter months. The reason for this should be obvious: customers who are applying in the period October 1 through April 30 have the ability to immediately stop paying their utility bill and PGW will not be able to terminate them because of the winter moratorium. The evidence in the record shows that the shortest period of time by which PGW can terminate a customer after the initial provision of service is 80-82 days. PGW Cross Exam Exh. CP-2; Tr. 804-05. Thus, a customer starting service in December could exact a full 6 months or more of free service from the Company and its timely paying customers without any fear of loss of service. This is simply intolerable in light of the serious nature of PGW's plight and the customer's history of repeated instances of non-payment. ~~PGW St. CP-1R at 17.~~

⁷⁷ R.D. at 73. The ALJ's recommendation that PGW present a cost-benefit analysis of implementing a credit scoring model is unnecessary. PGW stated on-the-record that it was already planning to install the systems necessary to implement credit scoring but that it would not be able to even test such an approach until the 3rd quarter of 2005. CP-1R at 18. Obviously, credit scoring is not a useful means of dealing with the immediate crisis. If the Commission wishes to direct PGW and the parties to discuss in a collaborative, the results of credit scoring trial in addition to immediately implementing a uniform deposit requirement, PGW would not object.

⁷⁸ *Id.* at 17.

⁷⁹ *Id.*

service for a huge number of customers in a very short period of time. Compounding the problem is that PGW has a large number of service lines that are not equipped with curb valves, meaning that to terminate service some form of dig-up must occur. Restoring a dig up customer (and installing a curb valve) takes 4 times longer and is 4 times more expensive (about \$2,500) than a termination without installing a curb valve.¹²⁰ Considering this massive number of terminations, PGW simply can not physically complete all the restorations in the standard “end of next business day” mandated by Chapter 56. Thus, unless PGW is relieved of some other PUC regulatory requirement so that resources could be redeployed, its ability to satisfy the general rule does not exist without spending substantial sums to add additional workers or to otherwise outsource the activities. Under the present circumstances, adding to PGW’s already massive cost of service is simply not an option. Without this modification, PGW may well have to avoid terminating thousands of customers (in order to be able to manage the turn-on requirements within the rules). Therefore, it would be both reasonable and fair to recognize the Company’s limitations and acknowledge its restoration timeline as necessary under the circumstances.

E. The Recommended Decision Erred In its Proposal That PGW Be Required To Submit Its Impact Evaluation of the Company’s Universal Service Programs By March 1, 2005. (R.D. 32, POPs 6-8.)

While finding no issues or concerns regarding the cost effectiveness and reasonableness of PGW’s universal service programs, the ALJ did recommend that, after consulting with BCS, PGW shall contract with an independent third-party to conduct an impact evaluation of its universal service and energy conservation programs and provide a report with findings and recommendations to the Commission by March 1, 2005.¹²¹

¹²⁰ PGW St. CP-1R at 28 (\$500 verses \$2,500).

¹²¹ R.D., POP 6 (pg. 97.) The date is to coincide with PGW’s GCR filing. The ALJ set a similar date for the “companion report” that PGW was invited to submit in which it would have the opportunity to make suggestions for change in the program. *Id.*, POP 8.

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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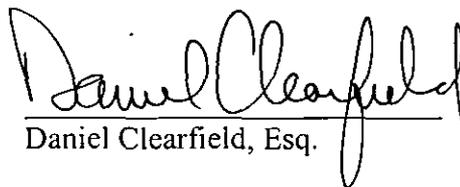
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