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WITNESS INDEX

WITNESSES

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FORM 2

P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY: Good
3 morning. My name is Charles Rainey, and I'm the
4 Administrative Law Judge who has been assigned to this
5 matter.

6 And this is the matter of the investigation into
7 financial and collection issues regarding the Philadelphia
8 Gas Works at Docket Nos. P-00042090, R-00049157, M-00021612
9 and P-00032061.

10 I am going to give the parties an opportunity to
11 identify themselves for the record. And we'll start with
12 Philadelphia Gas Works.

13 MR. CLEARFIELD: Good morning, Your Honor. This is
14 Dan Clearfield on behalf of Philadelphia Gas Works.

15 JUDGE RAINEY: Thank you.

16 Office of Trial Staff?

17 MR. KANASKIE: Good morning, Your Honor. This is
18 Rick Kanaskie.

19 JUDGE RAINEY: Thank you.

20 Office of Consumer Advocate?

21 MR. KEENE: Good morning, Your Honor. This is
22 Steve Keene.

23 JUDGE RAINEY: Thank you.

24 Philadelphia Industrial and Commercial Gas Users
25 Group?

1 MS. MINCAVAGE: Good morning, Your Honor. This is
2 Charis Mincavage.

3 JUDGE RAINEY: PECO Energy Company?

4 MR. KANAGY: Good morning, Your Honor. This is
5 Anthony Kanagy.

6 JUDGE RAINEY: Senator Vincent Fumo, et al.?

7 MR. WARNAGIRIS: Good morning, Your Honor.
8 Mike Warnagiris.

9 JUDGE RAINEY: Thank you.

10 Action Alliance, et al.?

11 MR. BERTOCCI: Good morning, Your Honor. This is
12 Philip Bertocci and Laura Moskowitz.

13 JUDGE RAINEY: Thank you.

14 And Philadelphia Housing Authority?

15 MR. BRIDGES: Good morning, Your Honor. A. Wesley
16 Bridges, from the law offices of Fox Rothschild.

17 JUDGE RAINEY: Thank you.

18 MR. GRAY: And last but not least, Your Honor,
19 Steve Gray on behalf of OSBA.

20 JUDGE RAINEY: Oh, Mr. Gray. Sorry. I was going to
21 come back. Thank you, Mr. Gray.

22 MR. GRAY: Certainly.

23 JUDGE RAINEY: Let me just note for the record that
24 in response to my prehearing conference order dated June 2,
25 2004, I received prehearing conference memoranda from

1 Philadelphia Gas Works, Office of Trial Staff, Office of
2 Consumer Advocate, Office of Small Business Advocate, Action
3 Alliance, et al., Senator Vincent Fumo, et al., the
4 Philadelphia Industrial & Commercial Gas Users Group, PECO
5 Energy Group, and the Philadelphia Housing Authority.

6 We'll move into the issues that are to be addressed
7 in this proceeding. And those issues are the ones that the
8 Commission referred to in its Order entered June 2, 2004.
9 And they are as follows:

10 A, is senior citizen discount. The senior citizen
11 discount issues are included in the Commission's Order
12 entered May 18, 2004, at Docket Nos. M-00021612 and
13 P-00032061.

14 Those issues are, one: Does any utility regulated by
15 this Commission other than PGW have a program to provide
16 discounts limited to senior citizens?

17 If so, what percentage is the discount, and what are
18 the income limitations; that is, percentage of federal
19 poverty level?

20 Two: Does any other utility in Pennsylvania have a
21 customer assistance program for which customers are above
22 150 percent of the federal poverty level are eligible?

23 Three: What does the average residential PGW
24 customer pay a month to fund customer assistance programs?

25 Four: How is the 20-percent discount derived?

1 Five: While the settlement petition states that the
2 yearly cost of the means-tested senior citizen discount
3 would be between \$366,500 and \$371,216, it fails to estimate
4 the total cost of the program for the general body or
5 ratepayers in later years?

6 What is the estimated cumulative cost for the means-
7 tested senior citizen discount program in each year through
8 2020?

9 What is the combined estimated cumulative of the
10 means-tested senior citizen discount program and the non-
11 means-tested senior citizen discount program in each year
12 through 2020?

13 What are the anticipated costs of the proposed audit
14 and efficacy calculation of the means-tested senior citizen
15 discount program, and how was this amount developed?

16 Six: What is the estimated cost per MCF of the
17 means-tested senior citizen discount and non-means-tested
18 senior citizen discount for each year through 2020?

19 What is the monthly average consumption CCF per
20 residential heating and non-heating customers?

21 Seven: How did PGW determine the new means-tested
22 senior citizen discount would result in 1,300 applicants
23 being enrolled each year?

24 Eight: In its petition at Docket No. R-00049157
25 seeking to adapt a cash receipts reconciliation clause, PGW

1 asserts that it is in a, quote, precarious financial
2 position, end quote.

3 Household business income levels continue to drop in
4 Philadelphia, making it increasingly difficult for the
5 company to absorb such increases in the commodities price of
6 gas. That's also a quote.

7 Another quote is: Price levels are projected to
8 remain at close to the current levels for the foreseeable
9 future.

10 Another quote is: Due to these persistently high
11 prices and increasing number of formerly good-paying
12 residential and small business customers are now having
13 difficulty paying their bills. Another quote, taken from
14 the CRRC petition.

15 And the Commission states: For purposes of this
16 proceeding the following assertions, these assertions in the
17 CRRC petition are relevant to whether the general body of
18 customers can afford to pay for the proposes means-tested
19 senior citizen discount. The parties should either
20 stipulate to these assertions or develop a record setting
21 forth their position on these allegations.

22 The next matter, C, has to do with commonwealth court
23 remand. The parties are to address the two issues raised in
24 the commonwealth court remand as defined in the Commission's
25 secretarial letter dated May 14, 2004, at Docket No.

1 M-00021612.

2 Those two issues involve PGW's request that the
3 Commission approve tariff provisions, one, allowing PGW to
4 collect a \$10 residential field visit charge; and two,
5 requiring applicants for service with existing civil
6 judgments against them for unpaid PGW balances to enter into
7 payment arrangements.

8 The next topical area, C, is PGW's collection
9 practices. We are to investigate the adequacy, cost
10 effectiveness and management of PGW's collection practices.

11 The next topical area, D, is PGW's universal service
12 costs. We are to investigate the level of PGW's universal
13 service cost as well as the cost effectiveness and
14 management of PGW's universal service program.

15 E has to do with PGW petition for waiver of certain
16 Commission regulations. And I understand from discussion
17 with Mr. Clearfield before going on the record today that
18 there will be a petition for waiver filed by PGW. And I'll
19 give Mr. Clearfield an opportunity a little later to discuss
20 that. It's my understanding that that finally will be made
21 next week.

22 We are to examine any petition filed by PGW for
23 waiver of certain Commission regulations. The Commission
24 requires -- and again, PGW's going to be filing that next
25 week, as I understand it.

1 The Commission requires any waiver petition filed by
2 PGW to include, one, the proposed duration of the waiver;
3 two, alternative standards or procedures that would apply in
4 place of the regulations; and three, any explanation of how
5 the alternative standard or procedure adequately balances
6 consumer protection rights with PGW's financial integrity.

7 And we also note that PGW and the parties should be
8 looking at 52 Pa. Code, Sections 5.43 regarding petitions
9 for issuance of waiver or repeal of regulations; and also
10 56.222 regarding applications for modification or exception.

11 Mr. Clearfield, let me just then ask you at this
12 point. Is my understanding correct that PGW will be making
13 a wavier petition filing next week?

14 MR. CLEARFIELD: Yes, Your Honor, that's our present
15 plan. And I don't see any reason why that wouldn't happen.

16 JUDGE RAINEY: All right.

17 Now, then moving on to discovery. We did have a
18 discussion with regard to a discovery also before going on
19 the record today.

20 And PGW, through Mr. Clearfield, raised the idea of
21 holding an informal discovery conference which he
22 anticipates calling soon in the near future and inviting the
23 parties to participate in that in order to get as much
24 information as possible that they need to put on their case.
25 And the parties are agreeable to that.

1 In addition to that, we're also going to establish a
2 little more formal discovery rules. And these are effective
3 beginning today.

4 A, answers to written interrogatories shall be served
5 in-hand within five calendar days after service of the
6 interrogatories.

7 B, the answering participant must make any objections
8 orally to the participant submitting the interrogatories
9 within two calendar days after service of the
10 interrogatories.

11 C, written objections shall be served on the parties,
12 filed with the Commission, and submitted to the Presiding
13 Officer within three calendar days after service of the
14 interrogatory.

15 D, motions to compel answers to interrogatories shall
16 be served on the parties, filed with the Commission, and
17 submitted to the Presiding Officer within two calendar days
18 after service of the written objections.

19 E, answers to motions to compel answers to
20 interrogatories shall be served on the parties, filed with
21 the Commission, and submitted to the Presiding Officer
22 within two calendar days after service of the motion to
23 compel.

24 F, rulings on motions to compel shall be made within
25 five days of the Presiding Officer's receipt of the motion

1 to compel if practicable.

2 G, written responses to requests for documents, entry
3 for inspection, and other purposes, shall be served in-hand
4 within five calendar days after service of the request.

5 H, a participant desiring to take the deposition of a
6 person upon oral examination shall give seven days notice in
7 writing to the active participant and to the Presiding
8 Officer.

9 I, when a written request for admission is made,
10 matters are deemed admitted unless a request is answered in
11 writing within five days, or objected to within three days
12 after service of the request.

13 J, answers to on-the-record data requests shall be
14 served in-hand within three calendar days after the request
15 is made.

16 K, the parties are expected to cooperate with each
17 other in regard to discovery.

18 L, the parties are encouraged to amicably resolve
19 discovery disputes among themselves.

20 Does anyone have any questions or any comments with
21 regard to the discovery rules?

22 (No response.)

23 JUDGE RAINEY: Okay. If not, then moving on to the
24 hearing and briefing schedule.

25 The following hearing and briefing schedule was

1 established. The direct testimony of PGW is due in-hand on
2 June 17, 2004; the direct testimony of other parties is due
3 in-hand on June 28, 2004.

4 Evidentiary hearings will be held July 6 and 7, 2004.
5 Main briefs are due in-hand on July 14, 2004, and reply
6 briefs are due in-hand to the Presiding Officer and served
7 on the parties on July 20, 2004.

8 The evidentiary hearings will be held in an available
9 hearing room in the Philadelphia State Office Building,
10 Broad and Spring Garden Streets on the thirteenth floor.
11 The evidentiary hearings will begin at 10:00 a.m.

12 Briefs must follow the content and form for briefs as
13 set forth at 52 Pa. Code, Section 5.501. Briefs shall
14 include proposed findings of fact, conclusions of law, and
15 ordering paragraphs.

16 Briefs shall be as concise as possible, and shall be
17 limited to a total of 60 pages. Any unpublished opinions,
18 decisions or policies cited in briefs must be attached to
19 the brief.

20 Each of the issue topics referenced, that I
21 referenced earlier, and that is senior citizen discount,
22 commonwealth court remand, PGW's collection practices, PGW's
23 universal service costs, and PGW petition for wavier of
24 certain Commission regulations are to be addressed
25 separately within the brief and have a separate proposed

1 findings of fact, conclusions of law and ordering
2 paragraphs.

3 Are there any questions with regard or comments with
4 regard to the hearing and briefing schedule?

5 MR. KEENE: Yes, Your Honor. This is Steve Keene
6 with the OCA.

7 We would just note that the Commission's June 2 Order
8 stated that it believed it was necessary to take the
9 comprehensive approach to PGW's financial and collection
10 problems.

11 And in light of that, the OCA this morning filed a
12 motion to dispense with the preparation of a recommended
13 decision in this investigative procedure.

14 We believe that will allow the parties more time to
15 do such a comprehensive investigation.

16 We believe that the expedited schedule that's been
17 adopted here today prejudices the ability of the parties to
18 examine the issues raised by the Commission in this
19 investigation, and the ability for us to prepare our case.

20 So I would just like to note for the record the OCA's
21 objection to the schedule that's being adopted here this
22 morning. We believe it raises serious due process concerns.

23 MR. BERTOCCI: Action Alliance supports OCA on this
24 question.

25 JUDGE RAINEY: Anyone else?

1 MR. GRAY: The OSBA supports the OCA in this as well.

2 JUDGE RAINEY: Okay.

3 MR. BRIDGES: Philadelphia Housing Authority also
4 supports that position.

5 JUDGE RAINEY: Okay.

6 MS. MINCAVAGE: And PICGUG supports the OCA as well,
7 Your Honor.

8 JUDGE RAINEY: Okay.

9 MR. KANASKIE: As does OTS.

10 JUDGE RAINEY: Okay.

11 MR. CLEARFIELD: Your Honor, this is Dan Clearfield.
12 PGW, as I noted, is going to file its petition for waiver
13 next week. We plan to file at that time a petition along
14 with that to the Commission asking it to dispense with the
15 recommended decision with respect to the waiver, and to take
16 the record for the waiver petition directly and to
17 adjudicate it on the basis of comment/reply comment at the
18 same time that it considers and resolves the CRRC petition.

19 Once we file that, or barring that, we're going to
20 consider our position on OCA's motion.

21 JUDGE RAINEY: Okay.

22 All right. Moving then on to document submission.
23 Written testimony and briefs -- and I've made a concession
24 here that we talked about off the record with regard to
25 written testimony.

1 Written testimony can be emailed to me on the day
2 that it is due if it is then followed with an Express Mail
3 hard copy of the document.

4 However, with regard to briefs, main briefs and reply
5 briefs, I do not want those submitted to me by electronic
6 mail or facsimile mail. Those documents are to be submitted
7 to me by either regular mail, overnight mail, or by hand
8 delivery.

9 The parties may enter into an agreement in regard to
10 the manner in which they will serve documents on each other.
11 The parties are otherwise required to serve documents on
12 each other consistent with the Commissions rules at Title 52
13 of the Pennsylvania Code.

14 Is there anything else that we need to take up here
15 this morning?

16 MR. GRAY: Your Honor, Steve Gray from the OSBA. As
17 you alluded to that we've talked about a number of things
18 off the record, one of the things we discussed was the
19 June 2 Order of the Commission on page four that mentioned
20 the consolidation of the records of four docket numbers.
21 And I can certainly read those into the record if you
22 prefer.

23 We discussed that off the record that the four
24 records in those dockets are incorporated into this
25 consolidated proceeding.

1 And the discussion went on further. Mr. Clearfield
2 had some suggestions on how to further handle that issue.

3 So what's your preference on how you'd like this
4 dealt with?

5 JUDGE RAINEY: Well, why don't we let Mr. Clearfield
6 talk about his proposal with regard to handling the
7 consolidated dockets.

8 MR. CLEARFIELD: Certainly, Your Honor.

9 PGW's view is that the CRRC docket and the senior
10 citizen petition, means-tested senior citizen petition
11 docket, are consolidated and available to be used to support
12 any position in the case and the reference in the brief.

13 With respect to the restructuring docket, my proposal
14 is that because that's an extensive, and because it's not
15 clear to me that the Commission intended to have that entire
16 record available, I would propose that with respect to the
17 restructuring docket, that if there are portions of that or
18 items that he parties wish to use, that they would designate
19 those portions, they would give other parties notice, and
20 that we would do it before the hearing, so that if there's a
21 need for anyone to respond, any party to respond to a
22 particular piece of evidence from the restructuring docket,
23 that party could do so on the record.

24 And specifically with respect to the universal
25 service cost investigation, there was an extensive record

1 developed in the restructuring case on that issue.

2 PGW would propose to identify portions of the
3 restructuring record that dealt with that issue, and to have
4 those portions available for support for whatever, for this
5 purpose, for this investigation.

6 And we would submit that to all the parties and give
7 people an opportunity to comment.

8 JUDGE RAINEY: And it was my understanding, Mr. Gray,
9 that that was acceptable to you. And I don't think that in
10 our discussion off the record that there were any objections
11 raised to by that any other parties.

12 MR. KEENE: Your Honor, this is Steve Keene from the
13 OCA. I guess upon reflection, I'm a little bit concerned
14 about being forced to designate parts of the record.
15 Because the tendency is going to be to over-designate.

16 A lot of times you really don't know what you're
17 going to use until you're sitting down there writing the
18 brief. And I don't want to be precluded from citing to
19 something in the restructuring docket about -- whether it's
20 universal service or one of the tariff issues or the senior
21 discount.

22 I don't want to be precluded from citing to that
23 simply because I failed to designate it earlier. If that's
24 the case, then we're probably going to designate large
25 portions of that record.

1 MR. CLEARFIELD: Well, Your Honor, that's exactly the
2 point. All the parties should be required to indicate what
3 portions will support their case, just as if they were
4 submitting testimony.

5 I think Mr. Gray's point was there is testimony in
6 the restructuring case that could be used to support a
7 position so that that testimony didn't have to be replicated
8 at the hearing.

9 Well, if that's the case, then it should have the
10 same due process rights; that is, that we should be able to
11 know about it before the hearing and be able to respond to
12 it on the record.

13 And you would be precluded from just plucking
14 something from the restructuring record in that case and
15 putting it in your brief, because it's unfair. Because we
16 need to have the -- potentially unfair. And it's for all
17 parties. PGW would be limited in the same way.

18 MR. KEENE: Well, Your Honor, it would be testimony
19 or exhibits that has already been subject to discovery.

20 JUDGE RAINEY: Well, that's fine, Mr. Keene. But as
21 I also stated in our discussion off the record, I was not a
22 part of those proceedings other than the CRRC proceeding, as
23 well as the GCR proceeding.

24 So even for my benefit, and I think the Commission's
25 benefit as well, that matters are not just for the first

1 time included in brief, and are, in fact, included in your
2 case as you put your case on; and that, again, any parts of
3 the records other than the CRRC and GCR, the documents
4 should also be made available to me so that I'm not
5 scrambling looking for what parties are referring to; and so
6 that those documents be included as part of your testimony
7 or exhibits or other matters, documentation, that you will
8 be submitting as part of your case here.

9 So that I think it's acceptable for there to be some
10 kind of designation. I think that will keep us focused, and
11 it will also help in terms of making sure that everybody has
12 what is being referred to in the cases that are being made
13 by the parties.

14 MR. BERTOCCI: Your Honor, I have a suggestion here.

15 JUDGE RAINEY: Yes.

16 MR. BERTOCCI: It seems to me that PGW's suggestion
17 tends to kind of preclude those. If you don't designate it,
18 you can't use it.

19 It seems to me that, first of all, the focus on this
20 consolidated proceeding is much narrower than the
21 restructuring. We couldn't know that the general areas that
22 were dealt with in the restructuring, and that I have no
23 objection to trying to designate.

24 But I don't see why it should be preclusive. If for
25 some reason you didn't designate something by an oversight,

1 probably because of the time frame that's involved, then
2 that shouldn't preclude a party from bringing it up at any
3 time, or even in the brief.

4 And the effort is to get as much of the material
5 before the parties during the course of the proceedings as
6 possible. But it doesn't seem to me that it should be
7 preclusive. Especially since the Commission said that all
8 the records are consolidated.

9 MR. CLEARFIELD: Well, I don't believe they said,
10 Your Honor. This is Mr. Clearfield. Mr. Bertocci's comment
11 would get us exactly the same place as Mr. Keene's comment.

12 JUDGE RAINEY: Let me just say this, because I think
13 matters raised for the first time in brief as a kind of a
14 sneak attack kind of a situation would not be a good thing
15 in not giving any parties a chance to respond to or even to
16 examine the context in which those particular things were
17 said.

18 I'm going to ask that there at least be some attempt
19 with regard to designation of parts of the record. I don't
20 think it would be helpful to any party to include something
21 for the first time in a brief in a kind of a "gotcha" kind
22 of a manner.

23 I would ask that the parties do attempt to do that;
24 that at the time that the parties are making their direct
25 testimony or filings, or in the evidentiary hearings, to

1 raise any matters, or raise any parts of the records which
2 they are using in their particular case. I think that would
3 be most helpful.

4 And to the extent that any party feels the need to
5 raise anything for the first time in a brief, and again, I
6 think there's going to be limited utility and usefulness,
7 and would be frowned upon for the most part, that you
8 provide the full documentation in context if you're going to
9 be using that for the first time in a brief. But I would
10 discourage any party from doing that.

11 All right. Any other things that we need to take up
12 here this morning?

13 MR. KANASKIE: Yes, Your Honor. This is
14 Rick Kanaskie with the Office of Trial Staff.

15 JUDGE RAINEY: Yes.

16 MR. KANASKIE: An amended prehearing memo had been
17 sent to you and provided to the parties here in Harrisburg
18 expanding the issues that OTS will be involved with,
19 specifically adding the collection practices, universal
20 service programs, and most likely the petition that
21 Mr. Clearfield was going to file.

22 I'd also like to let the parties know that an
23 additional witness will be utilized by the Office of Trial
24 Staff consisting of an individual from the Bureau of
25 Consumer Services.

C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me, and thereafter reduced to typewriting by me, or under
my direction; and that this transcript is a true and
accurate record to the best of my ability.

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By: William J. Horst
William J. Horst

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