

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

ORIGINAL

In the Matter of:

Pennsylvania Public Utility Commission v. Philadelphia Gas Works : Docket No. R-00049157
Annual 1307 (f) : P-00042090
filing. Initial prehearing conference.

Pages 1 through 21

Hearing Room No. 2
Keystone Building
Plaza Level
400 North Street
Harrisburg, Pennsylvania
Monday, March 15, 2004

DOCUMENT

Met, pursuant to notice at 2:20 p.m.

BEFORE:

CHARLES E. RAINEY, JR.
Administrative Law Judge

APPEARANCES:

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WITNESS INDEX

WITNESSES: DIRECT CROSS REDIRECT RECROSS

(None.)

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NUMBER: MARKED ADMITTED
(None.)

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR:

1
2 Good afternoon. My name is Charles Rainey. And I am
3 the Administrative Law Judge who has been assigned to
4 these matters. And these matters include
5 Pennsylvania Public Utility Commission versus
6 Philadelphia Gas Works at Docket Number R-00049157.
7 And, also, the petition of Philadelphia Gas Works to
8 establish a cash receipt reconciliation clause at
9 Docket Number P-00042090.
10

11 Let me, at this time, give the parties
12 an opportunity to introduce themselves for the
13 record. And we'll start with counsel for
14 Philadelphia Gas Works. Go ahead, Mr. Clearfield.

15 MR. CLEARFIELD: Thank you, Your Honor.
16 I am Dan Clearfield. And I'm going to be
17 representing Philadelphia Gas Works in the
18 proceeding.

19 I'll be lead counsel. And also
20 proceeding as co-counsel will be Greg Stunder. He's
21 not present today. But just for the record, I wanted
22 to note his participation.

23 JUDGE RAINEY: Mr. Simms.

24 MR. SIMMS: Thank you, Your Honor. My
25 name is Johnnie Simms, appearing on behalf of the

1 Office of Trial Staff.

2 JUDGE RAINEY: Mr. Keene.

3 MR. KEENE: Thank you, Your Honor.

4 This is Stephen Keene for the Office of Consumer
5 Advocate.

6 JUDGE RAINEY: Mr. Gray.

7 MR. GRAY: Thank you, Your Honor. This
8 is Steve Gray on behalf of the Office of Small
9 Business Advocate.

10 MR. RAINEY: Mr. Bertocci.

11 MR. BERTOCCHI: Thank you, Your Honor.
12 This is Philip Bertocci on behalf of Action Alliance
13 of Senior Citizens, Tenant's Action Group, ACORN and
14 Consumers Education and Protective Association.

15 JUDGE RAINEY: Thank you, Mr. Bertocci.
16 And Miss Mincavage.

17 MS. MINCAVAGE: Thank you, Your Honor.
18 This is Charis Mincavage on behalf of the
19 Philadelphia Industrial and Commercial Gas Users
20 Group.

21 JUDGE RAINEY: Thank you very much. In
22 the interest of full disclosure, I want to note for
23 the record that I've served as counsel on the
24 Philadelphia Gas Commission while with the
25 Philadelphia City Solicitor's Office from

1 approximately 1985 through 1990.

2 And I also served as an assistant
3 consumer advocate from approximately 1981 to 1984.
4 Does anyone have any objection to my presiding over
5 this case?

6 MR. CLEARFIELD: No, Your Honor.

7 JUDGE RAINEY: Okay. Hearing none,
8 then I will continue to proceed preside over this
9 particular matter.

10 Let me note that I have received
11 prehearing conference memoranda from all of the
12 parties who are represented at this prehearing
13 conference.

14 There is an outstanding petition to
15 intervene from the Philadelphia Industrial and
16 Commercial Gas Users Group. Does any party have any
17 objection to that petition? Hearing none, the
18 petition will be granted.

19 Let me also note that the Commission's
20 docket entry state that two consumers complaints have
21 been filed. One was filed by Margaret Mangenta and
22 the filing date on that is February 18th, 2004. And
23 the docket entries also notes the following on the
24 formal complaint by William Kitch on February 23rd,
25 2004.

1 Based on a discussion that was held off
2 the record today, my understanding is that Mr. Keene,
3 from the Office of Consumer Advocate, will check into
4 those two complaints and will find out from those
5 consumer complainants whether or not they desire to
6 be active parties in this case. Is that correct, Mr.
7 Keene?

8 MR. KEENE: Yes, we will, Your Honor.

9 JUDGE RAINEY: Thank you very much.
10 The next matter to be taken up is the motion to
11 consolidate the proceedings from the Philadelphia Gas
12 Works.

13 Let me note that I've also received
14 answers to that motion from the Office of Trial
15 Staff, the Office of Small Business Advocate and the
16 Office of Consumer Advocate.

17 It's also my understanding that Action
18 Alliance, et al. will be filing something by the end
19 of the day. Is that correct, Mr. Bertocci?

20 MR. BERTOCCHI: Yes, Your Honor.

21 JUDGE RAINEY: Okay. All right. And
22 it's also -- Mr. Bertocci, it's my understanding
23 that your answer will pretty much restate arguments
24 that have already been made by those other parties
25 who have filed answers to the motion; is that

1 correct. Mr. Bertocci?

2 MR. BERTOCCI: Yes.

3 JUDGE RAINEY: Oh, okay. All right.
4 Very well. I have reviewed the motion as well as the
5 answers that were filed to the -- to the motion to
6 consolidate. And I will grant the motion to
7 consolidate the proceedings.

8 MR. CLEARFIELD: Thank you very much,
9 Your Honor.

10 JUDGE RAINEY: Was that Mr.
11 Clearfield?

12 MR. CLEARFIELD: I just said thank you.

13 JUDGE RAINEY: Oh, okay. All right.
14 Let's then -- we'll move on then to discovery rules.
15 There were proposed discovery rules in this case by
16 the Philadelphia Gas Works as well as the Office of
17 Consumer Advocate.

18 And what we'll do is we'll blend those
19 proposed discovery rules. They're not inconsistent
20 with each other. I will include in a prehearing
21 order, the discovery rules that will be used in this
22 case. But I will go over what they are now.

23 First of all, answers to written
24 interrogatories shall be served in hand within ten
25 calendar days after service of the interrogatories.

1 The answering participant must make any
2 objections orally to the participant submitting the
3 interrogatories within three calendar days after
4 service of the interrogatories.

5 Three, written objections shall be
6 served on the parties filed with the Commission and
7 submitted to the Presiding Officer within five
8 calendar days after service of the interrogatories.

9 Motions to compel answers to the
10 interrogatories shall be served on the parties filed
11 with the Commission and submitted to the Presiding
12 Officer within three calendar days after service of
13 the written objections.

14 Answers to motions to compel, answers
15 to interrogatories shall be served on the parties
16 filed with the Commission and submitted to the
17 Presiding Officer within three calendar days after
18 service of the motion to compel.

19 Rulings of motions to compel shall be
20 made within seven days of the Presiding Officer's
21 receipt of the motion to compel, if practicable.

22 Written responses and documents entry
23 for inspection and other purposes shall be served in
24 hand within ten calendar days after service of the
25 request.

1 A participant desiring to take the
2 deposition of a person upon oral examination shall
3 give ten days notice in writing to the active
4 participant and to the Presiding Officer.

5 When a written request for admissions
6 are made, matters are deemed admitted unless the
7 request is answered in writing within 10 days or
8 objected to within five days at the service of the
9 requests.

10 Answers to on-the-record data requests
11 shall be served in hand within three calendars days
12 after the request was made.

13 The parties are expected to cooperate
14 with each other in regard to discovery. The parties
15 are encouraged to amicably resolve discovery disputes
16 among themselves.

17 Are there any questions with regard to
18 the discovery rules which we'll use in this
19 proceeding? Okay.

20 MR. GRAY: Your Honor, this is Steve
21 Gray from the OSBA.

22 JUDGE RAINEY: Yes, Mr. Gray.

23 MR. GRAY: Since you have decided to
24 consolidated the case, I would like to observe that
25 under the schedule, which I realize we haven't gotten

1 to yet, the non-company direct testimony is due four
2 weeks and one day from today.

3 If we have written interrogatories
4 served within ten calendar days, my question is, and
5 this is essentially to all the parties here, is that
6 fast enough.

7 My general reaction is, that is
8 probably not fast enough, given we have less than one
9 month to file our direct testimony from this point.

10 So, since, this is going to be an
11 expedited proceeding, it would seem we should
12 probably adopt even more aggressive discovery rules.

13 JUDGE RAINEY: What would you propose,
14 Mr. Gray?

15 MR. GRAY: I'm not so sure I wouldn't
16 say the answers to interrogatories should be five
17 calendar days. Otherwise, we're not -- I guess my
18 reaction is because the schedule, as proposed, made a
19 great deal of sense when they were just the 1307 (f).

20 If it's going to be consolidated,
21 which, obviously, it is, that's not much time. So my
22 reaction is five business days.

23 MR. CLEARFIELD: Your Honor, this is
24 Mr. Clearfield. Five business days is an impossible
25 time. And the burden is going to be for the next

1 month, while the parties are filing their testimony,
2 will be on PGW.

3 So, we can -- what we would offer is
4 that, A, we would -- we would offer to have an
5 informal discovery session as soon as the parties
6 wish it. We will have as many as they wish.

7 And we will provide answers as quickly
8 as we can. And we will commit to that up front. But
9 there may be questions simply that can't be answered,
10 you know, and that require additional time.

11 So, we would propose to leave the ten
12 days. But with the admonition from you that there be
13 cooperation among the parties to answer any questions
14 that are crucial to their testimony.

15 JUDGE RAINEY: Mr. King, does that
16 satisfy your concerns?

17 MR. GRAY: Mr. Gray.

18 JUDGE RAINEY: Mr. Gray. I'm sorry.

19 MR. GRAY: Well, forgive me if I don't
20 have a great deal of sympathy for PGW in this case.
21 They chose the timing of this petition. We did not.

22 And they filed it merely two weeks ago,
23 a new mechanism that we are not familiar with and has
24 never been implemented in Pennsylvania. So, to say
25 that PGW is under a burden here, that may or may not

1 be true. But, clearly, the advocates are.

2 JUDGE RAINEY: Mr. Gray, the proposal
3 of an informal discovery conference, does that bring
4 you any closer to a comfort level?

5 MR. GRAY: Well, PGW has been kind
6 enough to have those informal discovery conferences
7 in the past. And they have some value.

8 But, unfortunately, one of PGW's
9 witnesses got their numbers all wrong in their
10 filing. And, so, we've got a problem sorting that
11 out. And I'm not too sure if an informal discovery
12 conference is going to help that or not.

13 MR. CLEARFIELD: Your Honor, this is
14 the first I've heard of that. And I would be
15 astounded if that statement was true, you know. And
16 I would think that in the next time before raising an
17 issue like that, Mr. Gray would have the courtesy of
18 raising it with me and with the company before making
19 that kind of statement.

20 But having said that, notwithstanding
21 that statement, I would go further and say that if
22 there are specific questions that are -- that Mr.
23 Gray needs to have answers to more quickly than the
24 ten days and we can handle it within reason, I would
25 even suggest that the company would try to get them

1 done within seven days, if they are prioritized, with
2 the understanding that we'll try to get as many
3 answers done as quickly as possible.

4 JUDGE RAINEY: So, what -- you're
5 proposing that although the discovery rules may say
6 ten calendars days, that you will endeavor to
7 actually get it done in seven days?

8 MR. CLEARFIELD: Yes, with the caveat
9 that we would ask the parties to indicate the
10 questions that have to be done within that period of
11 time. And there may be other questions that are not
12 as crucial and can be provided within the full ten
13 days.

14 JUDGE RAINEY: Mr. Gray, would that
15 seem to bring you somewhat closer.

16 MR. GRAY: Yes, Your Honor, that's
17 correct. And I will give a fair answer to Mr.
18 Clearfield. We didn't find out about the numbers
19 problem until over the weekend.

20 And with only six weeks and one day
21 from the time of filing, forgive me if I'm a little
22 concerned about us getting this prepared in time.

23 So, if the company can commit to seven
24 days, that's the best we can do, then that's what
25 we'll have to do.

1 JUDGE RAINEY: Very good. That's what
2 we'll do. And the parties will be courteous towards
3 each area other and will do what they can to be
4 cooperative with one another so that this proceeding
5 is not unduly burdensome to anyone.

6 Okay. Well, then moving to the hearing
7 and briefing schedule. There were hearing schedules
8 that were offered by PGW as well as by the Office of
9 Consumer Advocate.

10 We'll adopt the hearing and briefing
11 schedule that was offered by the Office of Consumer
12 Advocate. And let me just go over what that is.

13 On April 13th, 2004, direct testimony
14 of parties other than PGW is due in hand. On April
15 29th, 2004, rebuttal testimony is due in hand. On
16 May 6th, 2004, surre rebuttal testimony is due in
17 hand.

18 Hearings will be held on May 11th and
19 12th, 2004. Those are evidentiary hearings. On May
20 24th, 2004, main briefs are due in hand to the
21 Presiding Officer and the parties.

22 And on June 1st, 2004, reply briefs are
23 due in hand to the Presiding Officer and the parties.
24 The evidentiary hearings will be held at an available
25 hearing room in the Philadelphia State Office

1 Building, Broad and Spring Garden Street, 13th Floor.

2 The evidentiary hearings will begin at
3 10:00 a.m. Briefs must follow the content and form
4 for briefs as set forth in 52 PA Code, Section 5.501.
5 Briefs shall include proposed findings of fact and
6 conclusions of law and ordering paragraph.

7 A brief shall be as concise as possible
8 and shall be limited to 60 pages. Any unpublished
9 opinions, decisions or policies provided in a brief
10 must be attached to the brief.

11 Are there any questions with regard to
12 the hearing and briefing schedule?

13 MR. BERTOCCI: Your Honor, this may not
14 be the time to raise it but the public input hearings
15 isn't on that schedule at this point.

16 JUDGE RAINEY: Yeah, it isn't on that
17 schedule. I was going to bring up the public input
18 hearings. Of course, we did talk about that during
19 the off-the-record discussion that preceded this
20 prehearing conference.

21 And the Office of Consumer Advocate did
22 address public input hearings in its prehearing
23 conference memorandum. And what it stated, the
24 memorandum, or what it stated was that it presently
25 was not able to determine whether or not public

1 inputs would be necessary.

2 Now, I also understand that it was
3 stated that -- and you said this as well, Mr.
4 Bertocci, that in the event in the event that the
5 cash receipts reconciliation clause became part of
6 the proceeding, it was anticipated that public input
7 hearings would be something that is necessary.

8 And, so, I take it that with my having
9 granted the motion to consolidate, that that is your
10 feeling. Is that correct, Mr. Bertocci?

11 MR. BERTOCCHI: That's right.
12 Especially because there's already been substantial
13 press coverage of this issue. And Philadelphia City
14 Council and the public should have the opportunity to
15 express themselves.

16 I was thinking as possible dates, and I
17 haven't talk to other people about it because we
18 didn't know. But, Wednesday and Thursday, April 21st
19 and 22nd or may 4th and 5th. That's one during the
20 day and one after, you know, the end of the working
21 day, after 5:00 would be appropriate.

22 JUDGE RAINEY: What were the dates
23 again, Mr. Bertocci?

24 MR. BERTOCCHI: Wednesday, April 21st;
25 Thursday, April 22nd or Wednesday, May 4th; Thursday,

1 May 5th.

2 MR. CLEARFIELD: Your Honor, this is
3 Dan Clearfield. May I ask? You're talking about
4 May, either or, either one or just one day of those,
5 right?

6 MR. BERTOCCI: Yeah. I was thinking
7 that it could be one day. One during the working day
8 and one, you know, after 5:00. But I'm open to any
9 kind of suggestions from the parties because I know I
10 didn't talk to you about this.

11 JUDGE RAINEY: Is this something that
12 the parties could discuss among themselves and then
13 come back to me both with regard to proposed dates or
14 date and time and also places? Mr. Bertocci, do you
15 want to do that and talk to the parties and get back
16 to me?

17 MR. BERTOCCI: I think we can do that.

18 JUDGE RAINEY: Okay.

19 MR. CLEARFIELD: That's fine, Your
20 Honor. The company doesn't propose -- doesn't oppose
21 the public input, obviously, within reason. And
22 we'll be happy to have a conversation with Mr.
23 Bertocci and the other parties.

24 JUDGE RAINEY: Okay. Why don't we do
25 that and we'll also bring in the Office of

1 Administrative Law Judge hearing scheduler so that
2 they can make necessary arrangements with regard to
3 the time and place for public input hearings.

4 Okay. So, we will do that then. Are
5 there any other matters which we need to take up here
6 at this prehearing conference? Anyone?

7 Okay. Hearing none, then we will
8 proceed accordingly. And thank all the parties for
9 their participation. And this prehearing conference
10 is adjourned.

11 (Whereupon, at 2:42 p.m., the hearing
12 was concluded.)

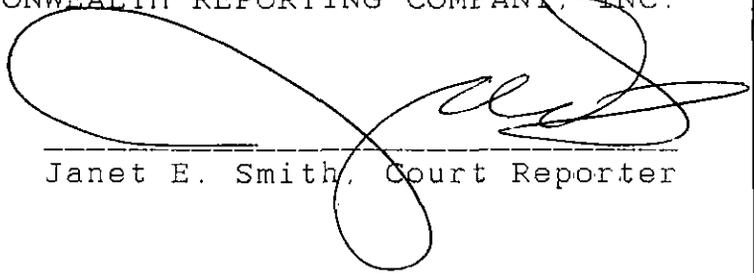
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