

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

ORIGINAL

Daniel Clearfield
Direct Dial: (717) 237-7173
Direct Fax: (717) 237-7161
E-mail: dclearfield@wolfblock.com

January 12, 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

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2004 JAN 20 PM 3:16
SECRETARY'S BUREAU

Re: Pa. PUC v. Philadelphia Gas Works,
Docket No. M-00021612

Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Secretary McNulty:

Enclosed for filing please find the original and three copies of a Joint Petition for Appeal from Action by Staff, or Alternatively, Joint Petition for Interlocutory Review and Answer to Material Question in the above-referenced matters. As evidenced by the attached Certificate of Service, all parties have been served in the manner indicated.

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

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosures

cc: Hon. Allison K. Turner w/enc.
Certificate of Service w/enc.

DSH:39508.1/PHI211-156208

RJP

CERTIFICATE OF SERVICE

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

VIA E-MAIL & FIRST CLASS MAIL

Charis Mincavage, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
E-mail: Cmincavage@mwn.com

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: josimms@state.pa.us

Stephen Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
E-mail: sgray@state.pa.us

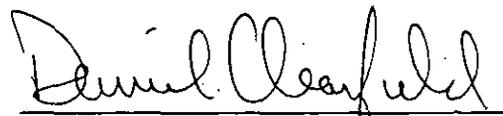
Lance Haver, Director
Mayor's Office of Consumer Affairs
116 City Hall
Philadelphia, PA 19102
lance.haver@phila.gov

Philip Bertocci, Esq.
Edward A. McCool, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
Fax: (215) 981-0434
E-mail: pbertocci@clsphila.org

Tanya McCloskey, Esq.
James Mullins, Esq.
Steve Keene, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
E-mail: TmcCloskey@paoca.org
Skeene@paoca.org

Leslie B. Hope, Esq.
Assistant City Solicitor
One Parkway, 16th Fl.
1515 Arch St.
Philadelphia, PA 19102
leslie.hope@phila.gov

Edward Morrison
767 Cinnaminson Street
Philadelphia, PA 19128


Daniel Clearfield, Esq.

Dated: January 21, 2004

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

Petition for Rescission and Amendment
of Philadelphia Gas Works

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Docket M-00021612

Docket P-00032061

PA PUC
SECRETARY'S BUREAU

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JOINT PETITION FOR APPEAL FROM ACTION BY STAFF, OR
ALTERNATIVELY, JOINT PETITION FOR INTERLOCUTORY
REVIEW AND ANSWER TO MATERIAL QUESTION

Philadelphia Gas Works ("PGW") and the Consumer Education and Protective Association et al. ("CEPA") respectfully submit this Joint Petition for Appeal from Action by Staff, pursuant to 52 Pa. Code § 5.44, seeking Commission review of a Secretarial Letter rejecting a tariff supplement by PGW implementing an interim, means tested Senior Citizen Discount which had been sanctioned by order of the Administrative Law Judge ("ALJ") assigned to this proceeding. In the alternative, the Joint Petitioners request Commission interlocutory review of the ALJ's Prehearing Order Two pursuant to 52 Pa. Code § 5.302.

Prehearing Order Two, issued by presiding ALJ Allison K. Turner on December 12, 2003, directed PGW to implement an interim, means-tested Senior Citizen Discount ("SCD"), pending the Commission's final order in this matter.¹ After filing the appropriate tariff pages in compliance with the ALJ's Order, PGW's interim SCD was rejected by Secretarial Letter from

¹ The Order clarified that customers becoming eligible for the discount during this interim period could be returned to regular service if the Commission voted to reject PGW's proposal for a continued, means tested SCD.

DOCKETED

the Commission, with reference to the Bureau of Fixed Utility Services (Attachment "A"). The Joint Petitioners appeal this determination by Commission staff as the ALJ had clearly been delegated the authority to rule on the request for an interim, means tested SCD, pending the Commission's ultimate decision, and the public interest and need to assist needy seniors during this winter's heating season² supported such relief. This result is further compelled by the fact that all active parties have now entered into, support or do not oppose a settlement authorizing the implementation of PGW's means tested SCD proposal.

In the alternative, should the Commission determine that an appeal pursuant to Section 5.44 of the Commission's regulations is not the appropriate manner by which to seek review of the Secretarial Letter, then the Joint Petitioners request interlocutory review of Prehearing Order Two in order to resolve any questions about the authority of the Commission to authorize, through the ALJ, the implementation of an interim SCD.

I. Procedural Background

On March 31, 2003, the Commission issued its Final Order in PGW's Restructuring Proceeding. As part of that Order, the Commission accepted PGW's proposal that the SCD be discontinued for new participants reaching age 65 on or after September 1, 2003. After consultation with Philadelphia City Council, the City Administration and representatives of senior advocacy groups, including CEPA, PGW filed a Petition for Rescission and Amendment of Final Order, asking that the Commission amend its Order and approve a means tested SCD for non-grandfathered seniors pursuant to its authority under Section 2212(r)(1) of the Gas Choice Act.

² PGW experiences the overwhelming percentage of its heating degree days during the November through March time period.

On October 9, 2003, the Commission entered an Opinion and Order directing that PGW's Petition be referred to the Office of ALJ for the development of a record on an expedited basis. On December 1, 2003, CEPA filed a Petition to Allow PGW to Enroll Additional Income Eligible Senior Citizens in the SCD Program, which called for the creation of an interim means tested SCD in order to provide immediate relief to senior citizen customers during the pendency of this proceeding over the winter season. CEPA's Petition was also assigned to ALJ Allison K. Turner as part of this proceeding.³ While the Office of Trial Staff opposed CEPA's Petition, PGW, the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") supported it. The ALJ granted CEPA's Petition, and authorized PGW to file tariff pages implementing an interim means tested SCD, pending final decision by the Commission.

On December 19, 2003, PGW filed Supplement No. 2 to its Tariff, Pa PUC No. 2, to implement the interim means tested SCD.⁴ But, on January 7, 2004, a Secretarial Letter was issued rejecting PGW's tariff supplement and claiming that the Commission's March 31 Final Order in PGW's Restructuring Proceeding did not permit a means tested SCD.

II. The Commission Should Reverse The Decision Of The Staff Rejecting PGW's Tariff Supplement, And Allow The Interim Means Tested SCD To Become Effective Pending The Final Disposition Of This Proceeding.

The Secretarial Letter's rejection of PGW's tariff supplement, apparently in concert with the Bureau of Fixed Utility Services, is overly broad and erroneous, and therefore the Commission should grant this Joint Petition for Appeal and allow the tariff supplement to become effective on an interim basis. The Secretarial Letter, attached hereto as Attachment A, reads as follows:

³ Prehearing Order Two at 8.

⁴ Supplement No. 2 is attached hereto as Attachment "B."

The above tariff supplement which was issued on December 19, 2003, to become effective on December 20, 2003, has been rejected and will not be placed into effect. This filing *introduced a means-tested Senior Citizen Discount Program*. The Commission order entered on March 31, 2003, at M-00021612 did not permit a means-tested [SCD] to be implemented, thus Supplement No. 2 to Tariff Gas Pa. PUC No. 2 is not permitted to be placed into effect. (emphasis added).

As the emphasized text of the letter reveals, Commission staff either misconstrued PGW's tariff supplement or applied an overly broad reading of the Commission's March 31, 2003, Final Order. Contrary to the letter, PGW's tariff supplement did not "introduce a means-tested Senior Citizen Discount Program." Instead, the supplement, as authorized by the ALJ, introduced an interim means tested SCD which would be in effect pending the Commission's final determination on the overarching question of allowing a permanent, means tested SCD. Clearly; neither the Joint Petitioners nor the ALJ presumed that Prehearing Order Two constituted an amendment or rescission of the Commission's March 31 Order, entitling PGW to introduce a full fledged, permanent means tested SCD. Rather, at the request of CEPA and with the concurrence of PGW, OCA and OSBA, the ALJ, via the Prehearing Order, authorized the implementation of an *interim* means tested SCD in recognition of the fact that immediately providing such relief for Philadelphia's needy senior citizens on an interim basis and pending the final outcome of this case was in the public interest.

Indeed, the ALJ was very cognizant of the limitations of her authority, as delegated by the Commission, and even refused PGW's request that any customers who received the interim means tested SCD retain the benefit if the proposed discount was ultimately rejected.⁵ Accordingly, as Commission staff misconstrued PGW's tariff supplement to constitute the introduction of a means tested SCD, as opposed to a public interest-compelled, *interim* means

⁵ Prehearing Order at 5-6.

tested discount pending the outcome of this proceeding, the Commission should overrule the Secretarial Letter.

To the extent that Commission staff understood the scope of PGW's tariff supplement, and was thereby suggesting that an ALJ, who had been delegated authority by the Commission to preside over this proceeding and who had specifically been assigned CEPA's interim SCD request, lacked the authority to grant such interim or temporary relief, the staff is plainly erroneous. Procedurally, Section 703(g) of the Public Utility Code plainly gives the Commission the authority to amend or rescind its orders "at any time, after notice and after opportunity to be heard." 66 Pa. C.S. § 703(g). Certainly, the power to amend an order at any time would include the ability to do so, immediately and temporarily, pending the ultimate determination on said question by the Commission.⁶ Additionally, the parties had notice and an opportunity to be heard on CEPA's request for an interim means tested SCD via their written arguments to the ALJ.

Likewise, on substantive grounds, the decision to allow an interim SCD is fully supported by Section 2212(r)(1), which provides the Commission with the discretion to approve an SCD so long as the rates and terms of the program are just and reasonable. As the Commission has the power to approve a full fledged, permanent SCD for PGW's senior customers, it certainly has the lesser included power to advance the public interest by approving such a program on an interim basis, pending the final decision in this matter, so as to assist needy seniors who are in the midst

⁶ See *Griffin v. SEPTA*, 757 A.2d 448, 451 (Pa.Cmwlth. 2000) appeal denied, 775 A.2d 810 (Pa. 2001) (quoting *In re Swanson Street*, 30 A. 207, 208 (Pa. 1894)) ("the power to do a greater act includes the power to do a lesser act"). Moreover, the decision to allow an interim SCD pending the final order in this matter is also generally consistent with the Commission's authority under Sections 1308(a) and 1310 of the Code.

of the winter heating system.⁷ With the assignment of this matter, specifically including the disposition of CEPA's interim SCD Petition, to the ALJ, the Commission delegated its authority to its presiding officer and the ALJ's Prehearing Order Two is fully supported and proper.

Thus, because it either misconstrued Prehearing Order Two or misunderstood the Commission's authority, Commission staff's rejection of PGW's tariff supplement was erroneous. As such, the staff's January 7, 2004, decision should be reversed, and the Commission should direct that Supplement No. 2 become effective immediately. Such relief is especially warranted, here, where PGW's Petition for a permanent means tested SCD is now unopposed, with a settlement pending for approval before the ALJ. With the matter now unopposed, overruling the staff's decision and allowing Philadelphia's needy seniors to benefit from the SCD during this winter's heating season (which may be nearly over by the time the settlement is fully approved and implemented⁸) is even more reasonable and in the public interest.

III. In The Alternative, The Commission Should Grant Interlocutory Review Of Prehearing Order Two In Order To Answer The Material Question Regarding Its Authority To Award The Requested Interim Relief.

If the Commission determines that an appeal under Section 5.44 of its regulations is not the proper procedural vehicle for bringing this matter before it, then the Joint Petitioners respectfully request that the Commission grant interlocutory review of the ALJ's Prehearing

⁷ *Griffin*, 757 A.2d at 451; *see also* 66 Pa. C.S. § 501(a). The Commission has plenary authority to enforce the provisions of the Public Utility Code as required to advance the public interest. *South River Power Partners, L.P., v. Pa. P.U.C.*, 673 A.2d 422, 427 (Pa.Cmwith. 1996) (under Section 501 of the Code, "PUC granted broad authority to carry out those powers expressly delegated to it").

⁸ In addition to the time associated with the issuance of the ALJ's Recommended Decision and Commission approval, PGW's tariff supplement calls for the means tested SCD to be applied beginning with the customer's next billing period.

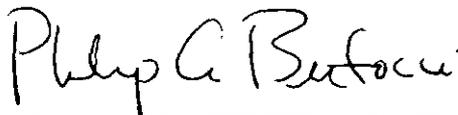
Order so as to affirm the ALJ's ruling to award temporary, interim SCD relief pending a final decision in this proceeding. As noted above, ample authority exists for the Commission to permit such relief, through one of its ALJs, when in the public interest. Accordingly, PGW requests the Commission to answer the following material question:

- Q. May the Commission, acting through one of its ALJs, authorize an immediate and interim SCD, pending a hearing on the matter, where the public interest compels such relief?

Suggested Answer: Yes. The Commission's authority to amend its own orders and approve a SCD program include the lesser relief of granting such relief on an interim basis during the pendency of a proceeding, particularly where doing so is in the public interest as it will benefit low income senior citizens during the winter heating season.

WHEREFORE, Joint Petitioners respectfully requests that the Commission grant this Petition for Appeal, reverse the decision of Commission staff announced in the January 7, 2004 Secretarial Letter, and direct that PGW's tariff supplement for an interim SCD program be placed into effect immediately. In the alternative, the Joint Petitioners request interlocutory review and an answer in the affirmative to the material question set forth herein.

Respectfully submitted,



Philip Bertocci, Esquire
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3702



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

Counsel for Philadelphia Gas Works

Of Counsel:
Abby Pozefsky, Esq.
Senior Vice President and
General Counsel
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6957

Date: January 20, 2004



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

JANUARY 7, 2004

M-00021612

DANIEL CLEARFIELD
WOLFF BLOCK SCHORR & SOLIS-COHEN LLP
STE 300
212 LOCUST STREET
HARRISBURG PA 17101

Re: Philadelphia Gas Works
Supplement No. 2 to Tariff Gas Pa. PUC No. 2

Dear Mr. Clearfield:

The above tariff supplement which was issued on December 19, 2003, to become effective on December 20, 2003, has been rejected and will not be placed into effect. This filing introduced a means-tested Senior Citizen Discount Program. The Commission order entered on March 31, 2003, at M-00021612 did not permit a means-tested Senior Citizen Discount Program to be implemented, thus Supplement No. 2 to Tariff Gas Pa. PUC No. 2 is not permitted to be placed into effect.

If you have any questions, please contact Kerry Klinefelter at (717) 787-2029.

Very truly yours,

James J. McNulty
Secretary

cc: Kerry Klinefelter
Janet Hernley

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SECRETARY'S BUREAU

PHILADELPHIA GAS WORKS
GAS SERVICE TARIFF



Issued by: Thomas Knudsen
President and CEO

PHILADELPHIA GAS WORKS
800 West Montgomery Avenue
Philadelphia, PA 19122

(For Description of Service Territory See Page No. 5)

This Tariff Supplement is being filed on an interim basis pursuant to Pre-Hearing Order No. 2 of ALJ Allison K. Turner in *In Re: Petition for Rescission & Amendment of Philadelphia Gas Works*, M-0021612, P-00032061.

PHILADELPHIA GAS WORKS

GAS SERVICE TARIFF

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2003 DEC 19 PM 2:14
SECRETARY'S BUREAU



Issued by: Thomas Knudsen
President and CEO

PHILADELPHIA GAS WORKS
800 West Montgomery Avenue
Philadelphia, PA 19122
(For Description of Service Territory See Page No. 5)

This Tariff Supplement is being filed on an interim basis pursuant to Pre-Hearing Order No. 2 of ALJ Allison K. Turner in *In Re: Petition for Rescission & Amendment of Philadelphia Gas Works*, M-0021612, P-00032061.

List of Changes Made by this Tariff

Senior Citizen Discount

pages 72-73

SENIOR CITIZEN DISCOUNT

Notice: This Tariff Supplement is being implemented on an interim basis pursuant to Pre-Hearing Order No. 2 of ALJ Allison K. Turner in *In Re: Petition for Rescission & Amendment of Philadelphia Gas Works*, M-0021612, P-00032061. Provision of the Senior Citizen Discount ("SCD") to customers becoming eligible for the SCD after September 1, 2003 shall be subject to the Final Order of the Public Utility Commission in the above docket.

I. PROVISION FOR SENIOR CITIZEN DISCOUNT

- A. A person shall be granted a reduction in monthly charges for Gas Service provided by the Company for Residential purposes if said person satisfies the conditions set forth below:
1. Is 65 years of age or older;
 2. Resides in the City of Philadelphia;
 3. Does or will directly make payment to the Company for Gas Service at his or her residence;
 4. Completes an acceptable application;
 5. Maintains his or her qualification for same.
 6. For persons applying for a Senior Citizen Discount after September 1, 2003, submits satisfactory proof that the applicant's Gross Annual Income, regardless of family size, does not exceed 250% of the federal poverty level for a two person family. The Customer shall provide all documentation necessary for PGW to determine the household Gross Annual Income, including but not limited to proof of household income and character of service requested (Heating or Non-Heating). PGW has the right to verify an Applicant's household Gross Annual Income by means including but not limited to verification through governmental agencies and reviewing credit reports.
- B. The Senior Citizen Discount, as set forth in this Tariff, shall only apply to the Gas which is consumed for Heating and Non-Heating purposes in that portion of the building in which the senior citizen resides. Therefore, if the senior citizen resides in a building that is part Residential and part Commercial or rental (to someone other than the senior citizen), only that portion of the building that is occupied by the senior citizen as a residence will be eligible for the Senior Citizen Discount.

II. COMPUTATION OF SENIOR CITIZEN DISCOUNT

For eligible Customers, Gas Service provided by the Company will be priced at the full rate then in effect, as authorized by the Commission, and 80% of this amount will be billed to the Customer.

III. APPLICATION FOR SENIOR CITIZEN DISCOUNT

An application for Senior Citizen Discount must be completed by the Applicant in person at any one of the Company's offices or at such other place as the Company provides.

PHILADELPHIA GAS WORKS

IV. DOCUMENTARY EVIDENCE REQUIRED FOR SENIOR CITIZEN DISCOUNT

A. An Applicant must present:

1. Legal proof of age acceptable to the Company;
 2. Documentary evidence acceptable to the Company authenticating Applicant's residence at the address where Gas consumption will be subject to the discount;
 3. For persons applying for a Senior Citizen Discount after September 1, 2003, proof that he or she meets the Gross Annual Income requirements as set forth in (A)(6), above.
- B. The Company may from time to time require production of documentary evidence or other information deemed satisfactory by the Company so as to review a Customer's continued eligibility for the Senior Citizen Discount.

V. EFFECTIVE DATE OF THE INITIAL SENIOR CITIZEN DISCOUNT BILLING

- A. Applications made at least 30 days prior to the Applicant's next billing period, and which in that 30-day period are fully documented and accepted by the Company, will result in the initial application of the Senior Citizen Discount to the cost of the Gas consumed in such next billing period.
- B. Improper or incomplete applications causing the extension of the above 30-day period, and which delay in the Company's opinion is occasioned by the Applicant, will delay the initial use of the discount until the succeeding billing period next following the acceptance of the application.
- C. The Senior Citizen Discount, after its initial application, will continue in force thereafter so long as it is authorized and the original Applicant, in the opinion of the Company, continues to qualify for it.

VI. CUSTOMER'S GAS PIPING

- A. In order for the Company to quantify the amount of Gas to which the Senior Citizen Discount applies in the event that such Gas quantity cannot ordinarily be determined, arrangements acceptable to the Company must be made by the Customer.
- B. In cases where, at the time of making application, the Customer lives in only a portion of the structure to which Gas is also being supplied to others but through a single meter, and where the Discount does not apply to the others, and, in the opinion of the Company, the Customer's Gas piping can reasonably be changed, the Customer, at his or her expense, shall make the necessary piping rearrangement and the Company will install a separate meter.
- C. When the Customer's Gas piping, in the opinion of the Company, cannot reasonably be changed, the Company, for billing purposes, will estimate the quantity of Gas used by the Customer to which the Senior Citizen Discount will apply. In all other cases, the Customer should make Gas piping rearrangements to allow the Company to directly meter Gas used exclusively for such Customer's account.

DATE: January 26, 2004

SUBJECT: M-00021612
P-00032061

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary

DOCKETED
FEB 25 2004

DOCUMENT

Philadelphia Gas Works

Attached is copy of a Joint Petition for Appeal from Action by Staff, or Alternately, Joint Petition for Interlocutory Review and Answer to Material Question, filed by Philadelphia Gas Works and the Consumer Education and Protective Association et al, in connection with the above docketed proceedings.

This matter is assigned to your Office to be placed on the Public Meeting Agenda within 30 days, pursuant to 52 PA. Code 5.301, et seq.

Attachment

cc: Chairman and Commissioners - w/copy of petition
Office of Administrative Law Judge - w/ copy of
petition
Office of Trial Staff - w/copy of petition

was

RJP

DATE: March 3, 2004

SUBJECT: M-00021612; P-00032061; C-20030297

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

DOCUMENT
FOLDER

DOCKETED
MAR 16 2004

Pennsylvania Public Utility Commission V. Philadelphia Gas Works	M-00021612
Petition for Rescission and Amendment of Philadelphia Gas Works	P-00032061
Edward Morrison V. Philadelphia Gas Works	C-20030297

Copies of the Recommended Decision have been served upon all parties.

No exceptions have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificate of mailings. A second memo will not be released for these exceptions.