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COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

-----Docket Nos.
 Pennsylvania Public Utility Commission vs. :M-00021612
 Philadelphia Gas Works and :
 Petition for Rescission and Amendment :P-00032061
 of Philadelphia Gas Works. Modification :
 of the Senior Citizen Discount Program. :
 :
 :
 :
 :
 Initial prehearing conference. :

Pages 1 through 37

DOCKETED

NOV 20 2003

State Office Building
Library Conference Room
Philadelphia, Pennsylvania

Wednesday, November 12, 2003

Met, pursuant to notice, at 2:00 p.m.

BEFORE:.....

Allison K. Turner, Administrative Law Judge

APPEARANCES:

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE ALLISON K. TURNER:

Now is the time and place for a hearing in the matter of the Pennsylvania Public Utility Commission versus Philadelphia Gas Works docketed at M-0021612 and P-0032061. I have in the hearing room with me the court reporter, Mr. Philip A. Bertocci, joined by Laura Moskowitz, and also Mr. Lance Haver on behalf of the Mayor's Office?

MR. HAVER: Yes.

JUDGE TURNER: Who do I have on the phone up there?

MR. CLEARFIELD: Good afternoon, Your Honor. This is Daniel Clearfield on behalf of PGW.

JUDGE TURNER: Good afternoon.

MR. SIMMS: Johnnie E. Simms and Richard Knasky on behalf of the Office of Trial Staff.

JUDGE TURNER: Okay.

MR. GRAY: Good afternoon, Your Honor. This is Steve Gray on behalf of the Office of Small Business Advocate.

MS. APPLEBY: Good afternoon, Your Honor. Christine Appleby and Steven Keene for the Office of Consumer Advocate.

MS. MILLER: Good afternoon, Your Honor. This is Karen Miller on behalf of the Philadelphia Industrial and Commercial Gas Users Group.

1 JUDGE TURNER: What is your first name,
2 Ms. Miller?

3 MS. MILLER: Karen Miller.

4 JUDGE TURNER: On behalf of PICGUG?

5 MS. MILLER: That's correct, Your Honor.

6 JUDGE TURNER: Good afternoon to all of you.
7 Mr. Clearfield, is anyone coming here from PGW?

8 MR. CLEARFIELD: I'm not expecting that,
9 Your Honor.

10 JUDGE TURNER: Thank you. Thank you all for
11 sending me prehearing memoranda in response to my recent order.
12 I will say, first off, that Exelon sent me a letter saying that
13 they do not intend to participate actively. I have received
14 prehearing memoranda from OCA, CEPA, et al, Office of Trial
15 Staff, Office of Small Business Advocate, PICGUG, and PGW.

16 Now Mr. Clearfield, I have an additional question for
17 you. Was your petition served on Scott Rubin for the Union?

18 MR. CLEARFIELD: Yes, he is on our Certificate of
19 Service, and would have been on for restructuring, Your Honor.
20 So I'm going to say yes, based, on that circumstantial evidence.
21 But I can double check that.

22 JUDGE TURNER: I did not get a copy of the
23 Certificate of Service with the petition. As you know, I hadn't
24 gotten a copy of the petition until you sent me one, which I
25 appreciate. I also have all of the attachments at this point.

1 MR. CLEARFIELD: I'm fairly certain he was served,
2 Your Honor, because he's on our restructuring service list.

3 JUDGE TURNER: Well the reason I ask is because I
4 took my service list for the order off of the computer with the
5 P-docket, and he's not included there.

6 MR. CLEARFIELD: When we filed it, Your Honor, we
7 would have filed it in the restructuring docket because we filed
8 it as a Petition for Rescission and Amendment of that order.
9 So that is why I'm assuming that that -- he was served.

10 JUDGE TURNER: Thank you for that. I worry that I
11 have not served him appropriately with the prehearing order, but
12 I will have to resolve that for my myself. Now the parties in
13 their prehearing memoranda have raised a variety of issues. In
14 fact, a surprising number of issues to me. It seems to me that
15 the main issue is whether in fact this is a just and reasonable
16 rate, and whether PGW can support that.

17 It presents a number of facts in a variety of ways
18 in its petition, and even has an affidavit attached. So maybe
19 I can hear from the parties more specifically or at more length
20 specifically what they intend to challenge about this rate.

21 Could I start with you, Mr. Simms?

22 MR. SIMMS: I guess, Your Honor, if I had an
23 opportunity to review the company's testimony, the basic
24 question as I see it is whether or not there is sufficient
25 reason to overturn the Commission's order in this proceeding,

1 the proceeding that was just recently completed. I mean, the
2 issue of whether or not it's just and reasonable is secondary to
3 the fact of whether or not the Commission's order itself, if it
4 should be overturned.

5 JUDGE TURNER: Are you going to take the position
6 that it should not be overturned?

7 MR. SIMMS: That's correct.

8 JUDGE TURNER: Are you going to take that position
9 because the Commission is not considering this under -- as a
10 petition, excuse me, for rescission and modification, but rather
11 as a petition in general under 52 PA Code 5.41?

12 MR. SIMMS: That's correct.

13 JUDGE TURNER: But in fact the new Senior Citizen
14 Discount Rate is more consistent with OTS's position during the
15 restructuring proceeding; is it not?

16 MR. SIMMS: No. In fact our position in the
17 restructuring case was more stringent than what the Commission
18 finally approved. Of course we would have liked if our position
19 had been adopted. But to the extent that it was not by the
20 Commission we believe that at the minimum that the Commission's
21 order dealing with this issue should be the status quo.

22 JUDGE TURNER: I agree with you that it is the
23 status quo. But OTS supported a means tested STD, did it not?

24 MR. SIMMS: Well not in this proceeding, Your
25 Honor. In other proceedings we did request a means testing.

1 In this proceeding here our position was that what was adopted
2 by the Commission was the mortality rate, for lack of a better
3 term. What we indicated that we thought was that this Senior
4 Citizen Discount should be discontinued in its entirety at a
5 faster rate than if you use the mortality rate.

6 Of course, we clearly presented a position that
7 it should not be continued in any fashion after September one,
8 2003.

9 JUDGE TURNER: You're talking about your position
10 here or --

11 MR. SIMMS: Position in the restructuring case,
12 Your Honor.

13 JUDGE TURNER: I guess I'm misremembering your
14 position. Thank you for refreshing my recollection.

15 MR. SIMMS: Sure.

16 JUDGE TURNER: OCA, you generally support this;
17 is that correct?

18 MS. APPLEBY: Yes, that's correct, Your Honor.
19 We're primarily in this case to monitor in case there are any
20 changes made to it.

21 JUDGE TURNER: Changes made to the proposal?

22 MS. APPLEBY: Yes.

23 JUDGE TURNER: Mr. Gray?

24 MR. GRAY: Your Honor, just very briefly, as I
25 put in our prehearing memo, we're interested in some of the

1 mechanical considerations of this, how the numbers fall out,
2 what the proper methodology should be, the means test of senior
3 citizens. I will give you one example here. There is some
4 argument that income testing a senior citizen versus some other
5 methodology, I heard it called wealth testing, where the
6 question is if you have I think someone 70 years old who only
7 has \$20,000 of income, but could be sitting on a great deal of
8 assets, in no way what you might consider a low-income
9 customer.

10 So there has been some argument in some economic
11 sectors about how we "means test" someone in that position.
12 So there is interest in that question. Mr. Clearfield's client
13 has discussed about some of the cost of this, and that of course
14 raised a few red flags. And we would like to pursue that. The
15 third point I put in there, there is always an interplay between
16 the various low-income programs, and we want to make sure we
17 understand how this program is going to be fitting in with the
18 other programs already in place. That might be an easy answer.
19 It might not be. So that's where we're headed.

20 JUDGE TURNER: Ms. Miller.

21 MS. MILLER: We're generally in agreement with the
22 OCA's position on this issue, Your Honor. We're interested in
23 insuring that the terms and conditions of service are not
24 adversely affected for large industrial and commercial customers
25 by how the Senior Citizen Discount is ultimately designed.

1 JUDGE TURNER: Mr. Bertocci?

2 MR. BERTOCCI: Your Honor, we support this proposal
3 by the City of Philadelphia. However, the aspect of it which
4 makes LIHEAP -- application for LIHEAP as a requirement of
5 participation in the program we don't believe was part of the
6 program as defined by the Mayor and City Council. We don't
7 think that should be included.

8 MR. CLEARFIELD: Your Honor.

9 JUDGE TURNER: Yes.

10 MR. CLEARFIELD: This is Dan Clearfield.

11 JUDGE TURNER: Yes, sir.

12 MR. CLEARFIELD: PGW made the proposal initially
13 in our filing. We did indicate there was going to be some
14 requirement on LIHEAP. But we're not planning to pursue that
15 requirement.

16 JUDGE TURNER: Was there an actual filing that
17 accompanied the petition?

18 MR. CLEARFIELD: You mean a proposed tariff?

19 JUDGE TURNER: Yes.

20 MR. CLEARFIELD: No.

21 JUDGE TURNER: Now that we're going to have a full
22 blown case, are you going to provide a tariff?

23 MR. CLEARFIELD: Our plan at this point, which
24 could be changed, would be to provide the tariff in a compliance
25 tariff kind of mode. But we can prepare a tariff or proposed

1 tariff and submit it with Ms. Coltro's testimony. Assuming
2 we're still going to file testimony.

3 JUDGE TURNER: Well, you expressed an interest in
4 settling. I of course encourage you to do that. But if not, I
5 think you have to justify this as a just and reasonable rate. So
6 I expect the normal documentation that would come with any rate.

7 MR. CLEARFIELD: Well certainly, Your Honor.
8 Ms. Coltro will support in her testimony, and explain the
9 proposed plan. And if Your Honor please and believes it would
10 be better for the filing, we will present a proposed tariff
11 section that would lay out the plan in tariff-ease.

12 JUDGE TURNER: I think that would be best, in
13 particular that would make it clear that you're not including
14 the requirement of LIHEAP, that you say you're dropping. But
15 it's better to have that in writing, don't you agree?

16 MR. CLEARFIELD: Yes, I agree, and I will do it.

17 JUDGE TURNER: Now I do have some questions.

18 MR. HAVER: Your Honor.

19 JUDGE TURNER: Yes, sir.

20 MR. HAVER: Lance Haver. I have one question for
21 clarification, and that is, seniors who are now applying for the
22 Senior Citizen Discount, it's my understanding that if they
23 apply today that this preserves their date so that if in fact
24 the Senior Citizen Discount is accepted by the PUC that the
25 discount will go back to the date that the senior filed on.

1 Is that a correct assumption?

2 JUDGE TURNER: Mr. Clearfield?

3 MR. CLEARFIELD: That's not something that I've
4 discussed with the company, Your Honor. I frankly have not
5 given it careful consideration. I think it's something that
6 could be an issue in the proceeding here. Right now the senior
7 discount is not being provided to new applicants, because we
8 were following the existing order.

9 So we would have to proceed -- if it were
10 reenacted we would have to decide that issue as one of the other
11 issues in implementation.

12 JUDGE TURNER: Of course, Mr. Haver, if you're
13 going to participate we expect you to be represented by
14 counsel.

15 MR. HAVER: That's right. But I hope not to have
16 to. It would just make things even more messy. The question is:
17 Can we clarify this in the next few days?

18 JUDGE TURNER: Okay. Wait a minute. You're not
19 an attorney. You're not here representing anybody. You're here
20 from the Mayor's Office, but you're making things messy by this
21 approach. Okay?

22 MR. BERTOCCI: Your Honor, we support the question
23 that Mr. Haver was raising, and we think it's a question that
24 needs to be clarified.

25 JUDGE TURNER: That's fine with me.

1 MR. BERTOCCI: So I would raise that on behalf of
2 CEPA, if Mr. Haver is not here.

3 JUDGE TURNER: Okay. I think it would be good if
4 you had an attorney enter an appearance. Can I assume that you
5 and Mr. Clearfield have a relationship, informal relationship,
6 where he can answer your questions, Mr. Haver?

7 MR. HAVER: Well I'm going to take Your Honor's
8 advice and bring an attorney, and not try to handle things in a
9 comfortable fashion, but instead in an adversarial fashion. I
10 think it's an unfortunate decision by Your Honor, but I will
11 abide by it.

12 JUDGE TURNER: Thank you, Mr. Haver.

13 Now, let me move on to the ordinances and the
14 resolution. The ordinances preserve the Senior Citizen Discount
15 in its current form. There is a resolution that says we won't
16 enforce it if PGW files by July 7th, which they did. The
17 resolution indicates that the ordinances will be repealed or
18 modified. Has that occurred?

19 MR. CLEARFIELD: This is Mr. Clearfield. Not to
20 my knowledge, Your Honor.

21 JUDGE TURNER: All right. If you look at the
22 statute, it says that the senior citizens have to be continued
23 unless the program is modified by the ordinance of the governing
24 body. But it has not been modified. So the senior citizens
25 at this point have to be continued in the program as it exists.

1 Is that correct?

2 MR. CLEARFIELD: I think we're getting the
3 existing customers as of September first and the new customers
4 -- well, let's put it this way, we have to separate those out.
5 The section of the law to which you are referring says that
6 customers that were in the program as of September first, 2003
7 must stay in the program. The program must continue for those
8 customers in that form, unless City Council modifies it.

9 But it says, I think pretty clearly, that with
10 respect to new customers, that's customers after September
11 first, 2003, that the PUC will make the determination as to what
12 a just and reasonable program will look like. So the petition
13 that we filed focuses on those new applicants.

14 Existing customers continue to receive the
15 discount. Existing customers, and I use that term, that
16 includes customers that were receiving it as of September first,
17 2003, continue to receive the discount exactly as they did prior
18 to September first.

19 JUDGE TURNER: So that is your proposal. It will
20 be a two-stage program?

21 MR. CLEARFIELD: At this point, yes. But City
22 Council might act on the second, the grandfathered customers.
23 But right now we're focusing on the new applicants.

24 JUDGE TURNER: So the grandfathered customers will
25 receive the program as it exists, and any new applicants will

1 receive the new discount or new form of the program; is that
2 correct?

3 MR. CLEARFIELD: That's correct.

4 JUDGE TURNER: And you're going to support these
5 two things as just and reasonable rate?

6 MR. CLEARFIELD: Yes, Your Honor.

7 JUDGE TURNER: Now I notice that you also proposed
8 an informal discovery session on the eighth, and you also said
9 that the company was willing to settle, as usual?

10 MR. CLEARFIELD: Did we say as usual?

11 JUDGE TURNER: No, you probably didn't say as
12 usual. But I, unfortunately, tagged that on. So let me take
13 it back.

14 MR. CLEARFIELD: It's accurate. Mr. Steward
15 actually wrote this, and he may have snuck that in. He's much
16 more conciliatory than I am.

17 JUDGE TURNER: Well, are you interested in
18 settlement?

19 MR. CLEARFIELD: Certainly. Your Honor. We're
20 always interested. I would only raise this point, that is that
21 while there are parties that are going to take whatever position
22 they wish to take, of course that is their right, the Commission
23 itself has made clear in its order that it has certain issues,
24 and certain facts it seeks to see developed on the record.

25 So that's an additional complication, if you will,

1 that we have to take into consideration in any kind of amicable
2 agreement here.

3 JUDGE TURNER: Well I agree with you, but that
4 could be resolved by stipulation.

5 MR. CLEARFIELD: That's what I was thinking about.

6 JUDGE TURNER: Were you? How fortunate. Now this
7 is the point where I would like to say, Mr. Haver, I want you
8 to have an attorney in a legal proceeding. I don't have any
9 problem with you participating in settlement or other talks
10 or discovery. I'm just not going to let you take over the
11 prehearing conference.

12 So, please don't feel that you're barred from
13 participating in any of the settlement talks. In fact, you
14 should be included if you represent the Mayor's Office. My
15 concern is there is nobody here from City Council. Are you
16 expecting anybody to come?

17 MR. HAVER: Your Honor, again, you have put me in
18 an awkward position. If you ask for me to speak, I will do so.
19 If you ask me not to until I'm represented by counsel I will do
20 so.

21 JUDGE TURNER: Oh, my goodness Mr. Haver, if you
22 have that much problem, never mind. Mr. Bertocci, have you any
23 idea if anyone is coming on behalf of City Council?

24 MR. BERTOCCI: No, I have no knowledge of that.

25 JUDGE TURNER: Okay. We did serve Mr. Leonard.

1 And I guess I would prefer, and I will call him or someone in
2 City Council to have someone here from that body, because they
3 are the key body. They have to pass the ordinances, and the
4 ordinances as they exist now it seems to me do not comport with
5 your proposal, Mr. Clearfield, if you don't mind my saying so.

6 MR. CLEARFIELD: No, I don't mind, Your Honor, but
7 I think what you may be overlooking is that after the initial
8 ordinances were passed, and I have to look to Mr. Bertocci, who
9 was involved in another capacity to catch me on this, there were
10 in essence settlement discussions and a compromised position was
11 worked out with the one issue that we don't have to discuss now.

12 But the essential elements of the new proposal
13 were agreed upon between the City, Administration, PGW and City
14 Council, and I guess representatives of senior advocacy groups
15 is the way we characterized it. And those were reflected in a
16 subsequent resolution I believe. I believe there was support
17 for that compromise, if you will.

18 JUDGE TURNER: I understand that, and I have a
19 copy of the resolution. But it does not have the status of the
20 ordinance. In fact, they refer to either amending or repealing
21 the ordinances. But as it stands, the City ordinances are in
22 place, and I think City Council is the originating authorizing
23 body here. So I am going to have a little problem just going on
24 a resolution when they were two existing ordinances that have
25 not been repealed or modified.

1 on a resolution when they were two existing ordinances that have
2 not been repealed or modified.

3 MR. CLEARFIELD: Well, I will take that back and
4 I will give that some thought. And we can re-visit it at some
5 stage and see how we can work that through, Your Honor.

6 JUDGE TURNER: Okay. Now let's turn to your
7 proposed schedule. I have been given to understand, at least
8 informally, that the Commission would like to proceed this case
9 by the end of December or the beginning of January. Under your
10 schedule they don't receive it until the third week in January.

11 MR. CLEARFIELD: Yes. Your Honor, the explanation
12 for that is simple. We do not see any way to create a schedule
13 that would be consistent with the due process rights of the
14 other parties, assuming there was going to be opposition or just
15 the right to present evidence that would allow that, considering
16 the need to do a recommended decision as well, and to give them
17 time to consider the results.

18 So, what we tried to do was come up with as
19 expedited a schedule as we could given those parameters with the
20 additional parameter that we're working right now on putting our
21 direct testimony formally together. I have been told that
22 November 25th, give or take a day, is as quickly as we could put
23 that together.

24 JUDGE TURNER: Mr. Simms, are you planning to file
25 a Motion in Limine or anything of that sort?

1 MR. SIMMS: Your Honor, I have not had any
2 discussions with Mr. Knasky about that. But I think that the
3 Commission's order and the petition by the company pretty much
4 limit the issues that are going to be discussed.

5 Let me just speak on the schedule, Your Honor.
6 We have some concern with the schedule that has been proposed,
7 simply by the fact that it only gives us two weeks after we
8 receive the company's direct testimony. Also, I would like
9 to interject that perhaps the Commission was under the
10 understanding that by filing a petition and receiving the
11 recommended decision sometime in January that it would somehow
12 have some affect on this year's heating season.

13 I think Mr. Clearfield will verify that it will not
14 have an affect on this year's heating season. So what we're
15 talking about here in terms of implementing a Senior Citizen
16 Discount, if any, for customers after September one, 2003 will
17 be effective for next year's heating season.

18 MR. CLEARFIELD: This is Mr. Clearfield. That
19 is substantially correct, Your Honor. The heating season
20 technically within the company goes from December first through
21 March. But the majority of the degree days are experienced in
22 the December, January and February time frame.

23 JUDGE TURNER: So how are you handling the Senior
24 Citizen Discount now, according to the ordinances or according
25 to the Commission's order?

1 MR. CLEARFIELD: According to the Commission's
2 order, Your Honor, with the additional administrative step
3 of taking applications of interested applicants without
4 implementing the discount, so we would be ready to implement it
5 for those customers, at least on a going-forward basis, if the
6 Commission had given us the okay.

7 JUDGE TURNER: So, you're saying that any new
8 applicants for the program have been turned down?

9 MR. CLEARFIELD: Yes.

10 JUDGE TURNER: Do you know how many there are of
11 those?

12 MR. CLEARFIELD: The last time I asked the company
13 they thought it was a very small number, less than 100. But I
14 have not asked that in a couple of weeks.

15 JUDGE TURNER: Well, I suspect that will be a
16 subject of discovery and perhaps of testimony. If in fact the
17 Commission's intention was to allow new applicants to have a
18 Senior Citizen Discount, and they're not getting it, then I do
19 think we have to do something about that. I will have to read
20 the order.

21 I understand your point, Mr. Simms, that if we
22 can't finish the proceeding until February that new applicants
23 are out of luck. But I would like to see if that could be
24 avoided if possible.

25 Now the reason I had turned to you, Mr. Simms,

1 because it's my feeling from your earlier statement that you
2 don't think this proceeding should go ahead at all because you
3 think it's an illegitimate proceeding because it's not properly
4 a Petition for Rescission and Modification. Did I misunderstand
5 you?

6 MR. SIMMS: Well, that is my own legal position.
7 But the Commission has indicated that it wants the proceeding to
8 go. So to the extent that it's going forward, I think that the
9 paramount question that the company must satisfy, why should the
10 Commission overturn its position on this issue that it presented
11 when it filed the restructuring order. I think that's the
12 paramount issue. The company has filed a petition to have the
13 Commission to overturn its order as it relates to the Senior
14 Citizen Discount that was ordered and entered and adopted in the
15 restructuring proceeding.

16 JUDGE TURNER: But Mr. Simms, if your position is
17 adopted there is no reason to hold this proceeding, we should
18 stop it right now.

19 MR. SIMMS: Well, that's my position. But the
20 Commission obviously has reached a conclusion that they want to
21 hold a hearing on these issues.

22 JUDGE TURNER: So you're going to submit testimony
23 on these issues?

24 MR. SIMMS: The company files testimony, we're
25 going to respond, Your Honor.

1 JUDGE TURNER: Okay. Now has anyone else got a
2 proposal on scheduling?

3 MR. SIMMS: Your Honor, my only concern about the
4 schedule is that we only have two weeks between the time we
5 receive the company's testimony and the time my testimony is due
6 or the opposing party's intervening testimony is due. That
7 includes in that time period, at least two days is Thanksgiving
8 Holiday. So that leaves us with very little time for any type
9 of discovery that we may want to do during the time period, and
10 also be able to file testimony by the time of December 12th.

11 JUDGE TURNER: Do you have an alternate proposal?

12 MR. SIMMS: Your Honor, my alternate proposal,
13 that's why I raised the question about what affect that the
14 present heating system is going to have for Senior Citizen
15 Discount if we push the schedule up by one month.

16 JUDGE TURNER: By one month?

17 MR. SIMMS: Yes, push everything up by one month.
18 Well, the self-appointed time that PGW files direct testimony,
19 and the time that we file our intervening testimony.

20 JUDGE TURNER: I think I understand that. You
21 would then have intervenor testimony due a month after December
22 12th?

23 MR. SIMMS: That's correct.

24 JUDGE TURNER: I will have to take that under
25 consideration. But unless I get different guidelines from the

1 Commission, I don't think that's likely. I guess I would like
2 very much to see the informal discovery conference take place,
3 and I would like very much to see settlement talks take place in
4 the development of a stipulation.

5 MR. SIMMS: I missed your last comment, Your
6 Honor.

7 JUDGE TURNER: I'm sorry. I would like very much
8 to see the informal discovery conference take place. I would
9 also very much like to see settlement discussions take place.
10 I would like to see a date in this schedule realistically where
11 settlement discussions could take place, which would seem to me
12 to be after the informal discovery conference.

13 MR. SIMMS: Your Honor, we're willing to engage in
14 settlement discussions. We have always been willing to engage
15 in settlement discussions with the company. But based on the
16 history of this proceeding, and based upon the fact that City
17 Council in the restructuring case tried to enter an appearance
18 late in the proceeding, we were the only party to oppose that.
19 The Commission agreed with our answer to that petition. And I
20 believe to some degree -- I don't know whether or not PGW has
21 any room to move on anything, because I think their hands are
22 tied by the fact that they are doing what City Council and the
23 Mayor's Office is asking them to do.

24 So, I don't know if Mr. Clearfield could speak to
25 that, whether or not he feels he has room to move, Your Honor.

1 But it seems to me, under the present circumstances, either we
2 accept their position or we don't because of what has occurred
3 thus far.

4 So I'm willing to meet, but I'm not hopeful that
5 we're going to reach a resolution on this through settlement
6 discussions. Because I think that the City Council and the
7 Mayor's Office made it crystal clear on how they want the Senior
8 Citizen Discount Program to continue after September one, 2003.

9 JUDGE TURNER: You don't think they have the
10 authority to do that?

11 MR. SIMMS: Your Honor, as of September one, 2003,
12 the authority regarding any new applicant for the Senior Citizen
13 Discount Program, or if there is any program, rests solely with
14 the Pennsylvania Public Utility Commission. City Council no
15 longer, nor does the Mayor's Office, have any control over the
16 Senior Citizen Discount. Their only control rests with those
17 individuals who were in the program as of September one, 2003.
18 As of the strike of midnight September one, 2003 that
19 jurisdiction rests solely with the Commission.

20 City Council, as far as we're concerned, can pass
21 100 ordinances regarding those particular new applicants. It
22 has no basis in law as it relates to the Public Utility Code.

23 JUDGE TURNER: Okay. As I keep saying, your
24 position is there is no point in this proceeding. But you're
25 still going to provide testimony?

1 MR. SIMMS: Only to the extent that the Commission
2 under their jurisdiction over the Senior Citizen Discount
3 Program wants us to have a hearing as to whether or not this new
4 proposal should be adopted by them. To that extent, we're going
5 to participate in it.

6 JUDGE TURNER: Okay. Does anyone else have any
7 comments on the schedule? I'm going to have to take a look at
8 the schedule. I don't think I can adopt Mr. Simms' proposal,
9 although I have some sympathy with it. And I don't think I can
10 adopt this schedule as it stands. I will need to contact my
11 central office. I will, of course, issue a prehearing order
12 after this.

13 MR. GRAY: Your Honor, this is Steve Gray from the
14 OSBA. Can I interject for a moment?

15 JUDGE TURNER: Certainly. I was about to ask if
16 anyone else had any comments, and you have some.

17 MR. GRAY: Thank you, Your Honor. I was sitting
18 here thinking about this, and it's one thing to say, you know
19 you can't go as far as Mr. Simms wants to go. But to say that
20 even this schedule that Mr. Clearfield has put together, that's
21 a little bit troubling. It actually makes me think back to
22 August of '99 when the restructuring, the original restructuring
23 procedures were put in place. And the Commission came down in
24 August of '99 and said we need to have expedited hearings, and
25 we need hearings done, and all of the natural gas distribution

1 companies in Pennsylvania, we want to get this done by the end
2 of August. And everybody screamed because of due process
3 considerations of that. And as you well know the restructuring
4 proceeding took a heck of a lot longer than three and a half
5 weeks.

6 So it seems like, if I may be so bold as to say,
7 when you talk to your people back at the Commission maybe you
8 should raise with them exactly what Mr. Simms said, we're going
9 to miss the heating season entirely. There are certainly real
10 due process concerns here. We have all worked together before,
11 and we understand the time pressures that everyone is under, and
12 we will get this done quickly.

13 But to say -- my concern is you're going to come
14 back in a couple of days and say, okay, even Mr. Clearfield's
15 schedule is too liberal, we're going to cut this down even
16 further. And then you're not going to have any kind of decent
17 record whatsoever to make a recommended decision on.

18 JUDGE TURNER: Thank you for your consideration,
19 Mr. Gray. I do remember those days, and I do remember in fact
20 that the cases weren't done in three and a half weeks, but they
21 were done in very short order and over the objections of most of
22 the participants. And the Commission made several reinforcing
23 rulings.

24 Now they were in fact trying to catch the heating
25 seasons. And they wanted in fact agreement from the parties

1 that certain rates would be in place for the heating season even
2 if the cases took longer.

3 It seems to me that that is a possibility here,
4 that there should be an agreement to give discounts to new
5 applicants while this case is pending, rather than to leave them
6 hanging out in the cold, so to speak. And if that's something
7 that the parties could agree to, then I think I could see my way
8 clear and more easily towards relaxing the schedule.

9 In any event --

10 MR. CLEARFIELD: This is Mr. Clearfield. Your
11 Honor, I guess I would say we can discuss among the parties, PGW
12 would be okay with that, with the understanding so that everyone
13 knows, just as every aspect of the discount, the discount that
14 we do provide is then recovered through the Universal Service
15 Charge. So that the amount of additional discount, the slight
16 amount of additional discount, would be picked up by the
17 additional customers.

18 JUDGE TURNER: Well, I understand what you're
19 saying.

20 MR. CLEARFIELD: The other customers.

21 JUDGE TURNER: See if that's something that could
22 be worked out. I think the Commission and myself would feel
23 better about the schedule, a longer schedule. I must say that
24 in my treatment of the schedule I'm representing the Commission,
25 not my personal preferences as an ALJ. So if I get my marching

1 orders I will have to do them, and there will have to be perhaps
2 interim relief of some sort.

3 But I do think that if you could see your way
4 clear with the agreement of the parties to handle the new
5 applicants that that would make things a lot easier on this
6 case. So let me ask you to discuss that with the parties and
7 get back to me, say, in two weeks.

8 MR. CLEARFIELD: I shall.

9 JUDGE TURNER: In any event, I think the first
10 three dates on this schedule should be implemented. Obviously
11 the first one is today. And the second one is your direct
12 testimony. The third one is the informal discovery conference.
13 The troublesome date is the intervenor testimony. As I say, if
14 in fact there can be an agreement that new applicants will be
15 given a discount, pending this proceeding, then I could
16 certainly see lengthening that time period.

17 Are there any other comments?

18 MR. GRAY: Your Honor, Steve Gray again. Just as
19 we're sitting here brainstorming this out, imagine a scenario
20 that we come to an agreement and say, yes, applicants after
21 September first, 2003 are allowed to get the program, and we
22 work this case out, what happens to those applicants, let's
23 assume it's June first, 2004, and the Commission decision
24 comes out absolutely not, the means testing program is
25 unjust, unreasonable, we're sticking with our 2003 order,

1 the program is terminated, what happens to those people? Do
2 they simply basically get grandfathered in?

3 I think Dan Clearfield is shaking his head. Would
4 that be the party's sort of rough understanding of that? They
5 would be in for good?

6 JUDGE TURNER: Okay. Mr. Gray, I always find you
7 to be a creative thinker. But I think that could be worked out
8 in the long run if that's what happens. It seems to me to be an
9 unlikely scenario. I think we just have to cross that bridge
10 when we come to it. Does anyone else have any comments?

11 MS. MILLER: Your Honor?

12 JUDGE TURNER: Yes.

13 MS. MILLER: I apologize, Your Honor. I thought
14 you were asking for questions just about schedule. This is
15 Karen Miller.

16 JUDGE TURNER: Yes.

17 MS. MILLER: We have a Petition to Intervene that
18 is still outstanding, Your Honor.

19 JUDGE TURNER: That's true. And I have received
20 it, and I will grant it in this order.

21 MS. MILLER: Thank you, Your Honor.

22 MS. APPLEBY: Your Honor, this is Christy Appleby
23 with the OCA. Regarding that similar issue, in your prehearing
24 order you had indicated that you were unsure of the status of
25 parties such as the OCA in this matter.

1 Are we being considered an active party or do you
2 want us to file a notice of intervention?

3 JUDGE TURNER: Well --

4 MS. APPLEBY: We were an active party in the
5 restructuring docket. But with the two docket numbers we
6 weren't sure whether or not you wanted us to file a Notice of
7 Intervention in this proceeding as well.

8 JUDGE TURNER: Yes, I think that would be better.
9 You're not filing a complaint, I gather?

10 MS. APPLEBY: No, we had just filed an answer
11 to the company's petition. But we hadn't filed anything
12 additional.

13 JUDGE TURNER: Yes. Because I don't have any
14 Notice of Appearance from you. You're just on the list. So
15 yes, I would like a Notice of Intervention.

16 MS. APPLEBY: That's fine. Thank you, Your Honor.

17 MR. SIMMS: Your Honor, this is Johnnie Simms.

18 JUDGE TURNER: Yes, sir.

19 MR. SIMMS: I know when we contact you in two
20 weeks or sooner that you will put forth a schedule. Are we
21 going to have a second prehearing conference?

22 JUDGE TURNER: I would consider that.

23 MR. SIMMS: The reason I'm asking that Your Honor,
24 because at that time we would then know when the intervening
25 testimony is going to be filed. And quite frankly, Your Honor,

1 I would like to know who will be filing testimony. I don't want
2 to have a situation where I'm getting people's, a party's issues
3 addressed for the first time in main briefs.

4 JUDGE TURNER: Well, actually you reserved the
5 right to do that in your prehearing memoranda.

6 MR. SIMMS: No, that's not what I'm talking about,
7 Your Honor. I'm filing intervening testimony, assuming the
8 company puts forth the type of testimony I think they will put
9 forth. What I'm concerned about is that we may have parties who
10 for whatever reason decide that they're not going to put in
11 testimony, they're going to participate in the hearing, and
12 cross-examine witnesses. We have no idea what their issues are
13 or may be, and then they file a main brief identifying their
14 issues for the first time.

15 JUDGE TURNER: Okay.

16 MR. SIMMS: I think a second prehearing conference
17 we can discuss that and see where the parties are in terms of --
18 to what extent they're going to participate.

19 JUDGE TURNER: In your prehearing memoranda you
20 say: "There may be issues of Commission policy or legal
21 interpretation that are not properly the subject of testimony or
22 there may be factual issues that are clear on the record and
23 need not be supported by testimony. OTS reserves the right to
24 dispense with testimony when in its opinion an issue can be
25 adequately addressed in brief."

1 MR. SIMMS: That's correct, Your Honor. But I
2 intend to identify any type of bigger issues that we may have
3 with the proceeding.

4 JUDGE TURNER: Well I would direct you to identify
5 any legal or factual issues that you intend to address on brief
6 but not in testimony. I would direct all parties to do that.

7 MR. SIMMS: That's fine, Your Honor. We intend to
8 do that. I just wanted to make sure that all the other parties
9 are going to do that, because that has not happened in previous
10 PGW proceedings. I hadn't said anything because they hadn't
11 particularly addressed issues that I was dealing with. But I am
12 fine with your interpretation.

13 JUDGE TURNER: I guess PICGUG has stated that they
14 would let all parties know if they intended to present a
15 witness. Is that correct, Ms. Miller?

16 MS. MILLER: That's correct, Your Honor. We're
17 still evaluating whether we're going to submit witness's
18 testimony. But we will let the other parties know of our
19 decision as soon as possible.

20 JUDGE TURNER: OCA, and I assume any other party
21 here will do the same thing?

22 MS. APPLEBY: Yes, Your Honor.

23 JUDGE TURNER: All right. Are there any other
24 issues that the parties would like me to address before
25 adjourning?

1 MR. BERTOCCI: No issue, Your Honor. But CEPA
2 will be filing a Petition to Intervene. We have not filed a
3 Petition to Intervene, because we've based ourselves on the
4 restructuring. But it seems as if it's appropriate for us to do
5 that also.

6 JUDGE TURNER: Because in your prehearing
7 memoranda you stated you would be presenting witnesses.

8 MR. BERTOCCI: And we will be.

9 JUDGE TURNER: I look forward to that. Now before
10 I adjourn, Mr. Simms, do you still have an outstanding request
11 for another prehearing conference?

12 MR. SIMMS: No, Your Honor. I'm perfectly clear
13 with your interpretation and what you ruled on.

14 JUDGE TURNER: However, I may feel I need another
15 one. I'm not sure. But at this point there isn't one
16 scheduled. I will make the ruling that I discussed with
17 Mr. Simms.

18 Mr. Clearfield, you're going to file your
19 testimony by November 25th?

20 MR. CLEARFIELD: Yes, Your Honor. We will serve
21 it on all the parties via E-mail, and Your Honor, and then we
22 will overnight copies or first class mail copies as well.

23 JUDGE TURNER: You will have your informal
24 discovery conference on the eighth?

25 MR. CLEARFIELD: Yes, we will have that scheduled,

1 and assuming that there is someone who wants to participate we
2 will go forward.

3 JUDGE TURNER: And if possible you can have a
4 discussion of settlement and/or stipulation also in that time
5 period?

6 MR. CLEARFIELD: Yes, I think we probably could
7 do it on the eighth. In our previous experience with those
8 conferences they don't last all day. So maybe we can use it for
9 both purposes.

10 JUDGE TURNER: Sounds good to me. Are there any
11 other issues that people wish to raise at this point? Well,
12 I will expect a formal Notice of Appearance of Petition to
13 Intervene from everybody who has not filed one. I will expect
14 to hear from Mr. Clearfield in two weeks on the status of new
15 applicants after September first, 2003.

16 MR. CLEARFIELD: Yes.

17 JUDGE TURNER: As I keep returning to this,
18 Mr. Simms, you don't want to file any preliminary motion or
19 memorandum of law about this proceeding? You're just going to
20 go ahead with this as the Commission has set it up?

21 MR. SIMMS: Your Honor, that's correct. Let me
22 reserve that statement. I may do something, but right now I'm
23 going to proceed.

24 JUDGE TURNER: Okay. Thank you very much then.

25 MR. SIMMS: Thank you.

1 JUDGE TURNER: In that case then we are
2 adjourned.

3 MR. SIMMS: Thank you, Your Honor.

4 MR. CLEARFIELD: Thank you, Your Honor.

5 MR. BERTOCCI: Thank you.

6 (Whereupon, at 2:55 p.m. the hearing was
7 adjourned.)

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