

DATE FILED: 3/15/06

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

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R-00061296

**DOCUMENT
FOLDER**

PREHEARING ORDER #2

A prehearing conference in this case was held on March 15, 2006 at 10:00 a.m. in Philadelphia, PA.¹ Present were respondent Philadelphia Gas Works (PGW or respondent); the Office of Small Business Advocate (OSBA); the Philadelphia Industrial and Commercial Users Group (PICGUG); the Office of Consumer Advocate (OCA); the Office of Trial Staff (OTS) and Action Alliance of Senior Citizens of Greater Philadelphia and the Tenant Union Representative Network (Action Alliance et al.)

In accordance with Prehearing Order #1, dated March 3, 2006 (modified by e-mail dated March 9, 2006), I received Prehearing Memoranda from PICGUG, OSBA, OCA, OTS, PGW, and Action Alliance et al.

This Order discusses the procedural matters addressed at the prehearing conference.

1. The Petition to Intervene filed by PICGUG on March 10, 2006 was granted.

¹ Certain parties participated telephonically from Harrisburg.

2. Petitions to intervene and motions for admission pro hac vice, if not defective on their face, shall be deemed granted if not objected to within three business days after filing. If objected to, such pleadings will be addressed by order.

3. Pursuant to 52 Pa. Code §5.61(d), no answer is required for complaints that may be docketed with this proceeding.

4. Pursuant to 52 Pa. Code §1.55, each party - active and inactive - shall be limited to one entry on the service list, although there can be more than one name listed. Each party, if it has not yet done so, is directed to provide the e-mail address, fax number, telephone number and address of the person or persons they wish to have listed on the service list within five days of the date of this Order.

5. At this point, it is not necessary to characterize parties as active or inactive. Should it become necessary to do so in the future, pursuant to 52 Pa. Code §1.54(d), participants will be considered to be either active or inactive. Active parties will receive all documents and must copy all other active parties (and any inactive party that requests it from that party) on documents they send to the Commission or the presiding officer. They are expected to attend hearings, present witnesses and conduct discovery and cross-examination. Inactive parties will receive only hearing notices and orders. Inactive participants may testify at public input hearing sessions. Briefs, reply briefs, exceptions, reply exceptions and other pleadings may be filed by both active and inactive parties. Any party that files a petition to intervene and was not present at the first prehearing conference can be granted active party status only upon written request to the presiding officer.

The active parties are PECO, OCA, OSBA, OTS, PICGUG and Action Alliance et al.

6. Pursuant to 52 Pa.Code §§1.21 & 1.22, an active participant may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, an active participant that is a partnership, corporation, trust, association, or governmental agency or subdivision, must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent it in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code §1.24(b).

7. My informal e-mail distribution list is as follows. Any changes or corrections should be communicated to me, via e-mail (machestnut@state.pa.us) as soon as possible.

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Philip Bertocci	CLS	pbertocci@clsphila.org
Kathy Niesborella (please include on anything you send me)	OALJ	kniesborel@state.pa.us

8. Pursuant to 52 Pa. Code §5.342(d), the Commission's regulations relating to discovery are modified as follows. It should be noted that when an interrogatory or motion is served on a Friday or the day before a holiday, the appropriate period is deemed to start on the next business day.

- a) The response period for replying to written interrogatories is ten calendar days.

- b) Objections to interrogatories are to be communicated orally to the propounder of the interrogatory within three calendar days of receipt and *in writing within five calendar days of receipt of the interrogatory.*
- c) Responses to requests for document production, entry for inspection, or other purposes must be served within ten calendar days of service.
- d) Motions to dismiss objections and to compel response shall be filed with the Commission and served on me within three calendar days of receipt of the objections. Answers to such motions shall be filed with me within three calendar days after filing of the motion.
- e) Interrogatories which are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
- f) Requests for admissions will be deemed admitted unless objected to within ten calendar days of service.
- g) Answers to on-the-record data requests shall be served within seven calendar days of the request.
- h) Pursuant to 52 Pa. Code §5.341(b), neither interrogatories nor responses are to be served on the Commission or the presiding officer, although a certificate of service may be filed with the Commission's Secretary.

The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. Also, where possible, interrogatories are to be provided electronically as well as on paper. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions.

9. The parties are to confer among themselves in an attempt to resolve all or some of the issues associated with the company's filing

10. The following schedule was adopted:

Non-company parties, direct testimony	April 14, 2006
All parties, rebuttal testimony	May 4, 2006
Witten outline, surrebuttal testimony	May 11, 2006
Hearings (includes oral surrebuttal, rejoinder)	May 12, 2006
Main briefs	May 19, 2006
Reply briefs	May 26, 2006

11. In accordance with the schedule listed above, testimony may be served electronically on the dates listed if a hard copy is received in-hand by the parties the next business day. Do not file your testimony with the Commission, although you may file a certificate of service. Do not fax or e-mail testimony to me.

12. Testimony should be premarked with numerical, sequential statement numbers. All statements must list on the cover sheet the issue(s) addressed in that statement. Witnesses not identified in a party's prehearing memorandum will not be permitted to testify, except by special permission of the presiding Administrative Law Judge for good cause.

13. All active participants are directed to comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal or surrebuttal which should have been included in the active participant's case-in-chief or which substantially varies from the active participant's case-in-chief, unless the evidence is introduced in support of a proposed settlement.

14. The hearing will be held in Philadelphia and will commence at 9:00 a.m., unless changed by the presiding officer. Parties will complete the daily witness listing and cross-examination grid as directed.

15. In accordance with the schedule listed above, briefs must be filed with the Secretary, in accordance with 52 Pa. Code §5.502(a) on the dates listed. Briefs may be served electronically on the dates listed as long as a hard copy is received in-hand by me and all parties no later than 4:30 p.m. on the next business day. Each party is directed to include a copy of each brief on disk (in Microsoft Word 2002 or a compatible format) with the briefs filed with the Secretary. If you do not e-mail your briefs to me, please include a copy on disk.

16. All briefs shall comply with the requirements of 52 Pa. Code §§5.501 and 5.502, and in addition to the mandatory contents set forth in 52 Pa.Code §5.501(a), all main briefs, regardless of length, must contain:

- A. A table of contents (also must be included in the reply brief);
- B. A history of the proceeding;
- C. A discussion;
- D. Proposed findings of facts (with record citations to transcript pages or exhibits where supporting evidence appears);
- E. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and
- F. Proposed ordering paragraphs specifically identifying the relief sought.

17. If a reply brief is not filed, it will be assumed that the party does not dispute the assertions, contentions, arguments, etc. made by the other parties in their main briefs. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties' assertions, contentions, arguments, etc.

18. Any brief not filed and served on or before the date fixed therefor will not be accepted for filing, except by special permission of the Commission or the presiding Administrative Law Judge pursuant to 52 Pa. Code §5.502(c).

Date: March 15, 2006



Marlane R. Chestnut
Administrative Law Judge

Pennsylvania Public Utility Commission v. Philadelphia Gas Works
Docket Number R-00061296

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