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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
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Pennsylvania Public Utility Commission :
et al. :

v. :

Philadelphia Gas Works :

Docket No. ~~CR-00005654~~
R-00005654C0001-C0004

ORDER DENYING PGW'S MOTION TO STRIKE

On September 25, 2000, Philadelphia Gas Works (PGW) served a Motion to Strike Portions of OCA St. No. 1 (Motion), alleging that portions of the testimony of OCA [Office of Consumer Advocate] witness Richard LeLash are outside the scope of this proceeding. On September 26, 2000, I received the OCA's Answer to the Motion.

As explained in more detail below, this Motion will be denied.

As set forth in the Order Denying CEPA et al.'s Motion to Compel, dated September 25, 2000, the Commission in its August 17, 2000 Order at Docket No. P-00001831 discussed the scope of this expedited interim rate proceeding:

While it would clearly be inappropriate for the Commission to comment at this time on the merits of PGW's request for interim rate relief, suffice it to say that PGW must present substantial evidence to support its assertion that an interim increase is necessary to maintain a minimal, adequate level of financial health required to fund operations and meet debt service requirements through the winter heating season until the Commission can conduct and rule on a full base rate proceeding. In particular, PGW must present substantial evidence to support its assertion that an interim increase is necessary for PGW to comply with its covenants to the holders of any approved bonds.

It can fairly be argued that the Commission intended that this expedited proceeding encompass only the narrow issue of financial necessity and that it was deferring until the full base rate case all other issues, so that they could be fully and appropriately examined. On the other hand, the Commission is free to consider any issue it feels is appropriate and for which there is substantial evidence of record. While those cases cited by OCA correctly note that the Commission is able – if not required – to consider adequacy of service in the rate-setting context, there is nothing that says that this issue necessarily has to be addressed in this particular interim proceeding. It may well be that the Commission may decide that this issue, given the scant record necessarily able to be produced in the compressed time frame resulting from its August 17, 2000 Order, is not ripe for decision here and should be fully addressed in the up-coming base rate case.

Unlike the situation posed by the Motion to Compel, there is no unfairness to either party caused by denial of PGW's Motion. One of PGW's witnesses, Thomas Knudsen, made some general comments in his direct testimony concerning the adequacy of service provided by the company in the past and the company's intention to improve its service. The OCA's witness included in his prepared testimony some responsive testimony addressed to this issue, which is the subject of PGW's Motion. This testimony was not extensive or detailed, and it will be up to the Commission to decide how much weight, if any, to accord to it. PGW's rebuttal testimony did address Mr. LeLash's testimony, although given the short time period for all parties to adduce their testimony, both Mr. Knudsen and Mr. LeLash did not address this issue in detail.

Therefore, PGW's Motion to Strike will be denied.

Date: September 26, 2000



MARLANE R. CHESTNUT
Administrative Law Judge

SERVICE LIST

ACTIVE PARTIES (distributed at hearing on September 27, 2000)

Daniel Clearfield, Esq.
Wolf, Block, Schorr & Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
717-237-7160
Fax: 717-237-7161
Dclearfield@wolfblock.com
(Philadelphia Gas Works)

Johnnie Simms, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
717-787-1976
Fax: 717-772-2677
simmsj@puc.state.pa.us

Tanya J. McCloskey, Esq.
Stephen Keene, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1921
717-783-5048
Fax: 717-783-7152
tmccloskey@paoca.org

Bernard A. Ryan, Jr., Esq.
Angela T. Jones, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
717-783-2525
Fax: 717-783-2831
angela_jones@dccd.state.pa.us

Charis M. Burak, Esq.
David M. Kleppinger, Esq.
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717-232-8000
Fax: 717-237-5300
cburak@mwn.com
(PICGUG)

Craig A. Doll, Esq.
25 North Front Street
Harrisburg, PA 17101-1606
717-230-9555
Fax: 717-230-9750
Cdoll76342@aol.com
(AAGP)

Philip A. Bertocci, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3702
Fax: 215-981-0435
pbertocci@clsphila.org
(CEPA, ACORN, Action Alliance, TAG)

INACTIVE PARTIES (via regular mail)

Jackie Sparkman, Esq.
c/o Mondre Energy, Inc.
1601 Market Street, Suite 1750
Philadelphia, PA 19103
215-988-0577
Fax: 215-988-0579
jmondre@mondreenergy.com
(School District of Philadelphia)

Eugene P. Malin, Sr.
3422 Ryan Avenue
Philadelphia, PA 19136

Thomas J. Smith
7409 Roosevelt Boulevard
Philadelphia, PA 19152