

**Philadelphia Gas Works**

Thomas E. Knudsen  
Chief Financial Officer



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December 7, 2000

**DOCKETED**

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DEC-7 PM 4:01  
SECRETARY PA P.U.C. BUREAU

VIA HAND DELIVERY

James McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg., 2nd Floor  
400 North Street  
Harrisburg, PA 17120

**ORIGINAL**

RE: Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00005654 (Interim Rate Proceeding)

**DOCUMENT FOLDER**

Dear Secretary McNulty:

Philadelphia Gas Works ("PGW") hereby responds to the Public Utility Commission's ("PUC") Opinion and Order entered November 22, 2000 in the above captioned proceeding. The PUC's Order found that PGW had justified additional annual revenues of \$11 million but indicated that PGW's right to collect this additional amount was contingent upon PGW's submission of a letter indicating its acceptance of a series of "conditions" mostly related to the management and operation of PGW.

PGW has carefully considered the Commission's proposed conditions and, regrettably, it has determined that it is not legally able to accept several of the conditions set forth in the Order. Specifically, the PUC has demanded that PGW presently agree that it will, by September 30, 2001, "retain independent, professional and experienced management for the Gas Works, pursuant to a long term ( 5 to 10 years ) . . . management agreement," subject to the approval of the PUC (conditions 9 & 10). Additionally, condition 12 of the Order would require PGW to "address and implement" the recommendations of the not yet completed PUC Management Audit, presumably regardless of the nature or scope of such future recommendations. Condition 13 requires PGW to implement a "best practices" working group in order to solicit ideas for additional management and operational changes.

PGW and its owner, the City of Philadelphia, are fully committed to assuring that PGW has completely professional and competent management, and have taken and will continue to take all possible steps to increase efficiency and to improve service. However, PGW is legally unable to agree to implement the above directives. It is the City that must determine PGW's management structure. By ordinance and contract, using a structure contemplated in its Home Rule Charter, the City provides for the operation of PGW by the Philadelphia Facilities Management Corporation with oversight by the Philadelphia Gas Commission and approval by

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James McNulty, Secretary  
December 7, 2000  
Page 2

the Philadelphia City Council. Such management changes would require the abrogation or amendment of the Management Agreement, an ordinance of the City of Philadelphia. Accordingly, PGW and PFMC may not legally agree to a full scale revision of PGW's management structure pursuant to PUC direction, or the implementation of major changes in the way in which PGW is managed or operated. Agreeing to these specific PUC conditions would put PGW in direct contravention of equally applicable City ordinances.<sup>1</sup>

Moreover, I have been advised by counsel that the Pennsylvania Natural Gas Choice and Competition Act, Section 2212(s), specifically reserves control of these issues to the City of Philadelphia or its authorized representatives. Therefore, PGW does not believe that, in good faith, it can agree to accept these conditions.

Nonetheless, PGW continues to be in urgent need of additional base rate revenues, and needs to collect those revenues during the Winter heating season (because its revenue collections are so seasonal, it has no ability to recoup or make up revenue deficiencies after the winter is over). PGW has two alternatives to propose in order to address these concerns. First, PGW requests that the Commission (i) grant an Application for Stay and Affirmative Relief, filed today, which requests that the PUC stay its Order, and allow PGW to implement a \$52 million rate increase pending its appeal, or, (ii) at least, stay pending appeal the portion of the Order that requires PGW to accept various conditions before it may collect even the authorized \$11 million interim increase.

Alternatively, PGW requests that the PUC permit PGW to implement the enclosed tariff revisions, which would produce an additional \$11 million in base rate revenues, pending appellate review of the legality of the above referenced conditions. The PUC could accomplish this by interpreting its Order as specifically permitting PGW to appeal the Order, and holding the conditions in abeyance, while it collects the authorized interim increase.

For your information, PGW is today filing a Petition for Review of the PUC's November 22 Order challenging several aspects of the PUC's Order including the conditioning of the authorized rate increase on a PGW agreement to take steps it does not have the legal authority to agree to. Please note, however, that PGW will not put the proposed tariff supplement into effect unless it receives clarification or a stay order from the PUC.

PGW's position with respect to the other "conditions" is as follows. Ordering paragraphs 1 - 4 were already agreed to by PGW (and authorized by PFMC) as a condition for receiving

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<sup>1</sup> Yet another bar to our accepting the "new management" condition is that requiring a contract of the cited length could result in PGW's bonds being considered taxable in violation of 66 Pa. C.S. § 2212(e).

James McNulty, Secretary  
December 7, 2000  
Page 3

expedited rate review, and PGW (obviously) will continue to abide by its previous commitment. Paragraphs 5 - 8 involved capital or operational improvements that PGW has proposed and is fully committed to accomplishing.<sup>2</sup> However, PGW's continued commitment to these efforts is necessarily contingent upon PGW's ability to continue to finance these projects without jeopardizing its ability to maintain day-to-day operations. This means that PGW's ability to comply is contingent on continued access to commercial paper as well as the capital market which is in jeopardy based upon the Commission's \$11 million award. PGW's commitment is also subject to PGW continuing to obtain the necessary approvals for these capital projects from the Philadelphia Gas Commission and Philadelphia City Council, as required by the PGW Management Agreement Ordinance.

Please contact me if you have questions or comments. If the Commission responds to this correspondence, I would appreciate if you would provide a copy of the letter by fax or e-mail to me (fax: 215-684-6101; e-mail: [thomas.knudsen@pgworks.com](mailto:thomas.knudsen@pgworks.com)) and to our regulatory counsel, Dan Clearfield (fax: 717-237-7161; e-mail: [dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)), in addition to regular mail.

Very truly yours,

Tom Knudsen  
Interim Chief Financial Officer for:  
Philadelphia Gas Works

TK/

Enclosure - Proposed Tariff Supplement

cc: John M. Quain, Chairman (w/enc)  
Robert K. Bloom, Vice Chairman (w/enc)  
Nora Mead Brownell, Commissioner (w/enc)  
Aaron Wilson, Jr., Commissioner (w/enc)  
Terrance J. Fitzpatrick, Commissioner (w/enc)  
Veronica Smith, Dep. Exec. Dir. (w/enc)  
R.A. Rosenthal, Bureau of Fixed Utility Services (w/enc)  
Daniel Clearfield, Esq. (w/enc)  
Attached Service List (w/enc)

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00 DEC - 7 PM 4:07  
F.A.P.U.C.  
SECRETARY'S BUREAU

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<sup>2</sup> PGW has in the context of its GCR compliance filing agreed to continue its LNG capital improvement project subject to the same 'ability to finance' caveat contained below and this letter should in no way be viewed as an abrogation of that commitment.

LIST OF CHANGES MADE BY THIS TARIFF

**GENERAL SERVICE – RATE GS – COMMODITY CHARGE - (First Revised Page No. 83)**

Increased commodity rates for Residential, Commercial and Industrial Customers to reflect the increase in the Interim Rate.

**MUNICIPAL SERVICE – RATE MS - COMMODITY CHARGE - (First Revised Page No. 85)**

Increased commodity rates for Municipal Customers to reflect the increase in the Interim Rate.

**PHILADELPHIA HOUSING AUTHORITY SERVICE – RATE PHA - COMMODITY CHARGE -  
(First Revised Page No. 87)**

Increased commodity rates for Philadelphia Housing Authority Customers to reflect the increase in the Interim Rate.

**GENERAL SERVICE - RATE GS**

Rate: Applicable to all gas consumed on or after  
~~September 1, 1991~~ December 8, 2000  
for Commercial and Industrial Customers, and to all gas consumed  
on or after June 1, 1999 for Residential Customers  
Air Conditioning Provision: Effective July 14, 2000  
Compressed Natural Gas Provision: Effective July 14, 2000

**AVAILABILITY**

Available for any purpose where the Company's distribution mains adjacent to the proposed gas service location are, or can economically be made, suitable to supply the quantities of gas required. Gas service is also available under this rate for comfort cooling and/or pilot usage for buildings served under seasonal rates, during those periods of the year when gas service is not ordinarily available under such seasonal rates.

**RATES**

**CUSTOMER CHARGE:** Per Meter (except parallel meters)  
\$ 8.00 per month for Residential Customers.  
\$ 10.00 per month for Commercial Customers.  
\$ 20.00 per month for Industrial Customers.

Plus

**COMMODITY CHARGE** ~~66.13~~ 68.02¢ per 100 cubic feet for Residential Customers (I)  
~~71.20~~ 73.24¢ per 100 cubic feet for Commercial, Industrial Customers (I)

**SPECIAL PROVISION – AIR CONDITIONING** – For the billing months May through September, the Commodity Charge shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. Provided, however, if one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company exceeds 40.00 cents per 100 cubic feet, then the rate under this provision shall be the lesser of one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company, or the applicable Commodity Charge set forth above. This rate is applicable for directly and indirectly fired gas cooling equipment of minimum cooling capacity of 3 tons, installed on or after September 1, 1990. Where practicable, such equipment must be separately metered and the cost for any additional metering, related equipment and installation shall be subject to Regulation 10 of the Rules and Regulations of this tariff. Where separate metering is impracticable for directly or indirectly fired gas cooling and heating equipment, one meter shall be installed for the heating/cooling equipment and such gas rendered to the Customer through such meter will be charged the full Rate GS for the billing months October through April. Under no circumstances will Customers be permitted to use gas rendered through such meter for any purpose other than cooling or heating.

(I) - Increase

**GENERAL SERVICE - RATE GS**

Rate: Applicable to all gas consumed on or after  
December 8, 2000

Air Conditioning Provision: Effective July 14, 2000  
Compressed Natural Gas Provision: Effective July 14, 2000

**AVAILABILITY**

Available for any purpose where the Company's distribution mains adjacent to the proposed gas service location are, or can economically be made, suitable to supply the quantities of gas required. Gas service is also available under this rate for comfort cooling and/or pilot usage for buildings served under seasonal rates, during those periods of the year when gas service is not ordinarily available under such seasonal rates.

**RATES**

**CUSTOMER CHARGE:** Per Meter (except parallel meters)  
\$ 8.00 per month for Residential Customers.  
\$ 10.00 per month for Commercial Customers.  
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**COMMODITY CHARGE** 68.02¢ per 100 cubic feet for Residential Customers (I)  
73.24¢ per 100 cubic feet for Commercial, Industrial Customers (I)

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(I) - Increase

**MUNICIPAL SERVICE - RATE MS**

Rate: Applicable to all gas consumed on or after ~~September 1, 1991~~ December 8, 2000.  
Air Conditioning Provision - Effective March 10, 1991  
Compressed Natural Gas Provision: Effective July 14, 2000

**AVAILABILITY**

Available to properties owned or occupied by the City of Philadelphia or the Board of Education, or any of their respective agencies or instrumentalities, for any type of gas service, unless purchased for resale to others, and where the Company's distribution mains adjacent to the proposed gas service locations are, or can economically be made, suitable to supply the quantities of gas required; provided, however, that the rate shall not be available to commercial tenants of any such property.

This rate is also available for service at such locations, served under seasonal rates for comfort cooling and/or pilot usage, during periods of the year when gas is not ordinarily available under such seasonal rates.

**RATE**

The rate per hundred cubic feet . . . . . ~~64.13~~ 65.96¢ (I)

**SPECIAL PROVISION - AIR CONDITIONING** - For the billing months of May through September, the rate shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. This rate is applicable for directly and indirectly fired gas cooling equipment (gas engine, absorption, adsorption) of minimum cooling capacity of 15 tons, installed on or after September 1, 1990. Such equipment must be separately metered and the cost for any additional metering, related equipment and installation, remain the responsibility of the customer.

**SPECIAL PROVISION - COMPRESSED NATURAL GAS (CNG)** - Natural gas provided under this rate schedule for purposes of fueling CNG vehicles shall be dispensed on a liquid gallon basis but billed on an Mcf basis. The conversion between liquid gallons and Mcf shall use a ratio in which the numerator is the Department of Energy BTU energy content of one gallon of gasoline and the denominator is the Lower Heating Value (LHV) in BTUs of the Company's average annual natural gas sendout.

**GAS COST RATE CLAUSE**

The Gas Cost Rate Clause as set forth in Regulation 11 of the Rules and Regulations of this Tariff shall apply to the above rate.

(I) - Increase

**MUNICIPAL SERVICE - RATE MS**

Rate: Applicable to all gas consumed on or after December 8, 2000.  
Air Conditioning Provision - Effective March 10, 1991  
Compressed Natural Gas Provision: Effective July 14, 2000

**AVAILABILITY**

Available to properties owned or occupied by the City of Philadelphia or the Board of Education, or any of their respective agencies or instrumentalities, for any type of gas service, unless purchased for resale to others, and where the Company's distribution mains adjacent to the proposed gas service locations are, or can economically be made, suitable to supply the quantities of gas required; provided, however, that the rate shall not be available to commercial tenants of any such property.

This rate is also available for service at such locations, served under seasonal rates for comfort cooling and/or pilot usage, during periods of the year when gas is not ordinarily available under such seasonal rates.

**RATE**

The rate per hundred cubic feet . . . . . 65.96¢ (I)

**SPECIAL PROVISION - AIR CONDITIONING** - For the billing months of May through September, the rate shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. This rate is applicable for directly and indirectly fired gas cooling equipment (gas engine, absorption, adsorption) of minimum cooling capacity of 15 tons, installed on or after September 1, 1990. Such equipment must be separately metered and the cost for any additional metering, related equipment and installation, remain the responsibility of the customer.

**SPECIAL PROVISION - COMPRESSED NATURAL GAS (CNG)** - Natural gas provided under this rate schedule for purposes of fueling CNG vehicles shall be dispensed on a liquid gallon basis but billed on an Mcf basis. The conversion between liquid gallons and Mcf shall use a ratio in which the numerator is the Department of Energy BTU energy content of one gallon of gasoline and the denominator is the Lower Heating Value (LHV) in BTUs of the Company's average annual natural gas sendout.

**GAS COST RATE CLAUSE**

The Gas Cost Rate Clause as set forth in Regulation 11 of the Rules and Regulations of this Tariff shall apply to the above rate.

(I) - Increase

**PHILADELPHIA HOUSING AUTHORITY SERVICE - RATE PHA**

Rate: Applicable to all gas consumed on or after ~~September 1, 1991~~ December 8, 2000.  
Air Conditioning Provision: Effective July 14, 2000

**AVAILABILITY**

Available for all gas usage in multiple dwelling residential buildings containing ten or more dwelling units, owned and operated by the Philadelphia Housing Authority, where cooking shall be performed exclusively with gas and where gas service shall be supplied through one or more single point metering arrangements at locations where the Company's distribution mains adjacent to the proposed gas service locations are, or can economically be made, suitable to supply the quantities of gas required.

This rate is also available for all gas usage in single and multiple dwelling residential buildings, containing less than ten dwelling units, provided, and only so long as, gas is used exclusively for cooking, water heating and space heating for all such residential buildings owned and operated by the Philadelphia Housing Authority, except (1) buildings operated by the Philadelphia Housing Authority, prior to the original effective date of this rate (January 1, 1969), and (2) buildings for which, in the judgment of the Company, such gas service cannot be provided economically.

This rate is also available in buildings, meeting the above specifications, served under seasonal rates for comfort cooling and/or pilot usage, during periods of the year when gas service is not ordinarily available under such seasonal rates.

**RATE**

The rate per hundred cubic feet . . . . . 71.2673.30¢ (I)

**SPECIAL PROVISION – AIR CONDITIONING** – For the billing months May through September, the Commodity Charge shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. Provided, however, if one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company exceeds 40.00 cents per 100 cubic feet, then the rate under this provision shall be the lesser of one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company, or the PHA rate set forth above. This rate is applicable for directly and indirectly fired gas cooling equipment of minimum cooling capacity of 3 tons, installed on or after September 1, 1990. Where practicable such equipment must be separately metered and the cost for any additional metering, related equipment and installation shall be subject to Regulation 10 of the Rules and Regulations of this tariff. Where separate metering is impracticable for directly or indirectly fired gas cooling and heating equipment, one meter shall be installed for the heating/cooling equipment and such gas rendered to the Customer through such meter will be charged the full Rate PHA for the billing months October through April. Under no circumstances will Customers be permitted to use gas rendered through such meter for any purpose other than cooling or heating.

(I) - Increase

**PHILADELPHIA HOUSING AUTHORITY SERVICE - RATE PHA**

Rate: Applicable to all gas consumed on or after December 8, 2000.  
Air Conditioning Provision: Effective July 14, 2000

**AVAILABILITY**

Available for all gas usage in multiple dwelling residential buildings containing ten or more dwelling units, owned and operated by the Philadelphia Housing Authority, where cooking shall be performed exclusively with gas and where gas service shall be supplied through one or more single point metering arrangements at locations where the Company's distribution mains adjacent to the proposed gas service locations are, or can economically be made, suitable to supply the quantities of gas required.

This rate is also available for all gas usage in single and multiple dwelling residential buildings, containing less than ten dwelling units, provided, and only so long as, gas is used exclusively for cooking, water heating and space heating for all such residential buildings owned and operated by the Philadelphia Housing Authority, except (1) buildings operated by the Philadelphia Housing Authority, prior to the original effective date of this rate (January 1, 1969), and (2) buildings for which, in the judgment of the Company, such gas service cannot be provided economically.

This rate is also available in buildings, meeting the above specifications, served under seasonal rates for comfort cooling and/or pilot usage, during periods of the year when gas service is not ordinarily available under such seasonal rates.

**RATE**

The rate per hundred cubic feet . . . . 73.30¢ (I)

**SPECIAL PROVISION – AIR CONDITIONING** – For the billing months May through September, the Commodity Charge shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. Provided, however, if one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company exceeds 40.00 cents per 100 cubic feet, then the rate under this provision shall be the lesser of one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company, or the PHA rate set forth above. This rate is applicable for directly and indirectly fired gas cooling equipment of minimum cooling capacity of 3 tons, installed on or after September 1, 1990. Where practicable such equipment must be separately metered and the cost for any additional metering, related equipment and installation shall be subject to Regulation 10 of the Rules and Regulations of this tariff. Where separate metering is impracticable for directly or indirectly fired gas cooling and heating equipment, one meter shall be installed for the heating/cooling equipment and such gas rendered to the Customer through such meter will be charged the full Rate PHA for the billing months October through April. Under no circumstances will Customers be permitted to use gas rendered through such meter for any purpose other than cooling or heating.

(I) - Increase

**Philadelphia Gas Works**

Interim Rate Increase Request Docket No. R-00005654

**Compliance Interim Rate Increases**

	Current	Current		Revised		
Customer	Customer	Commodity	Proposed	Commodity	Percent	Regulation/
Category	Charge	Charge	Increase	Charge	Increase	Rate
	\$	¢/Ccf	¢/Ccf	¢/Ccf		
Residential	8.00	66.13	1.89	68.02	2.9%	Rate GS
Commercial	10.00	71.20	2.04	73.24	2.9%	Rate GS
Industrial	20.00	71.20	2.04	73.24	2.9%	Rate GS
Municipal/MS	N/A	64.13	1.83	65.96	2.9%	Rate MS
PHA	N/A	71.26	2.04	73.30	2.9%	Rate PHA
Legend:						
Rate GS, General Service; Rate MS, Municipal Service; and Rate PHA, Philadelphia Housing Authority Service						

## SERVICE LIST

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ORIGINAL

DANIEL CLEARFIELD  
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December 7, 2000

VIA HAND DELIVERY

DOCUMENT  
FOLDER

James McNulty, Secretary  
PA Public Utility Commission  
North Office Bldg., Rm. B-20  
Harrisburg, PA 17105

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PA.P.U.S.  
SECRETARY'S BUREAU

RE: Pennsylvania Public Utility Commission v. Philadelphia  
Gas Works; Docket No. R-00005654

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Application for Stay and Affirmative Relief Pending Appellate Review with regard to the above referenced matter. As indicated by the attached certificate of service, all parties of record have been served with a copy of this filing.

Please contact me if you have any questions with respect to the enclosed.

Respectfully submitted,

Daniel Clearfield  
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww  
Enclosures

cc: All Parties of Record w/enc.

DSH:25127.1

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ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, *et al.* :

v.

Philadelphia Gas Works

Docket No. R-00005654

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SECRETARY'S BUREAU

APPLICATION FOR STAY AND AFFIRMATIVE RELIEF  
PENDING APPELLATE REVIEW

DOCUMENT  
FOLDER

Philadelphia Gas Works ("PGW") respectfully files this Application, pursuant to Pa. R.A.P. 1781(a) and 52 Pa. Code § 5.572, requesting that the Commission grant PGW a stay and affirmative relief pending appeal of its Opinion and Order entered November 22, 2000, in the above-captioned matter. The Order disposed of PGW's Petition requesting a \$52 million rate increase by granting PGW an interim rate increase of \$11 million subject to various conditions set forth in the Order. In support of this Application, PGW avers as follows:

1. The Commission's Order conditioned PGW's ability to realize the \$11 million interim rate increase, which it awarded and recognized as necessary and proper under the law, on PGW's acceptance of various caveats and future courses of action. As indicated in a letter to the Commission responding to the PUC Order (and attached hereto as Appendix "A"), PGW respectfully submits that serious legal questions exist regarding the Commission's authority to impose conditions involving the scope, makeup and content of PGW's management.

2. Specifically, PGW asserts that the conditions contained in Ordering Paragraphs 9-12 are inconsistent with Section 2212(s) of the Natural Gas Choice and Competition Act ("Gas Choice Act"), 66 Pa. C.S. § 2212(s). PGW previously has committed itself to the capital projects set forth in Ordering Paragraphs 5, 6, and 8,<sup>1</sup> and budgeted for the same in its requested \$52 million interim rate increase. While PGW remains willing to comply with such conditions, its agreement to do so is contingent upon its ability to continue to finance these capital and service improvement projects without jeopardizing its ability to maintain day-to-day operations and meet its legal and financial obligations. Based upon the insufficient \$11 million rate increase awarded by the Commission, PGW has serious concerns about its ability to continue to finance these projects.

3. Based on these substantial legal questions, PGW requests that the Commission stay the portions of its Order containing the relevant conditions precedent pending appellate review, and allow PGW to immediately implement at least the \$11 million interim rate increase, to which the Commission has determined PGW is legally entitled, or allow some other increase supported by the record pending appeal.

4. PGW also respectfully submits that questions exist regarding the lawfulness of the amount of interim rate increase afforded by the Commission in its Order. PGW is particularly concerned that the Commission's Order, with its \$11 million interim rate increase, contravenes

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<sup>1</sup> PGW has agreed to abide by a condition that is identical to condition 7 in the Commission's Order in PGW's GCR case. PGW is not contesting any conditions contained in the Order issued in this matter which are also present in the GCR Order. Additionally, PGW is not contesting the conditions in Ordering Paragraphs 1-4 which it agreed to in order to obtain expedited review of its Petition for an expedited process to consider a rate increase.

provisions of the Gas Choice Act, such as 66 Pa. C.S. § 2212(d), (e) and (f). Likewise, PGW asserts that limiting the increase to \$11 million is not supported by substantial evidence in the record.<sup>2</sup>

5. According to the undisputed record evidence, PGW earns 65% of its revenues in the winter months of December through March. In order for PGW to meet all of its legal and financial obligations, including the nearly \$100 million payoff on its commercial paper line of credit and its \$18 million statutorily mandated annual payment to the City of Philadelphia, both of which come due in June 2001, any increase – whether interim or a full base rate increase – must be implemented now prior to those winter months. Thus, PGW needs additional rate relief, now, pending appellate review of the Commission’s Order, if it is to meet its legal and financial obligations and to avoid irreparable harm that would result if it were not able to meet these financial commitments. As PGW has agreed to refund any interim rate relief later deemed to be excessive, no harm to PGW’s customers could result from granting PGW affirmative relief pending appeal. Conversely, significant harm will befall PGW, its customers, and the City of Philadelphia should PGW default on its obligations due to inadequate interim rate relief.

WHEREFORE, PGW respectfully requests that the Commission issue an Order:

- A. granting this Application;

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<sup>2</sup> The lowest interim rate increase supported by any actual analysis in the record of PGW’s revenue requirements was the Office of Consumer Advocate’s \$25 million increase, which was not determined using the cash flow method. Applying the Commission’s adjustments, except for the projected \$1.5 million in revenues from the modifications of the senior citizen discount program (a proposal that PGW had withdrawn and, at any rate cannot be realized without the approval of the Philadelphia City Council), the lowest increase supported by any evidence in the record is \$20 million.

- B. staying the portion of its Order allowing an \$11 million interim rate increase, and granting affirmative relief, pending appeal and subject to refund, in the form of a \$52 million interim rate increase or other amount consistent with the required cash flow method and substantial evidence in the record;<sup>3</sup> or in the alternative
- C. staying the conditions set forth in Ordering Paragraphs 5, 6, and 8-12 pending appellate review of the Commission's Order, and allowing the immediate implementation of any authorized interim rate increase.

Respectfully submitted,



Daniel Clearfield, Esq.  
Mark Stewart, Esq.  
Wolf, Block, Schorr and Solis-Cohen LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
(717) 237-7160

RECEIVED  
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PA.P.U.C.  
SECRETARY'S BUREAU

Dated: December 7, 2000

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<sup>3</sup> PGW was the only party that supplied evidence of record showing the appropriate amount of an interim rate increase while applying the cash flow method, as required by the Gas Choice Act, which was \$52 million. PGW also provided the Commission with an analysis of what the recommended interim rate increases of the Office of Consumer Advocate and Office of Trial Staff would have been if they had applied the cash flow methodology as required in Section 2212(e) of the Gas Choice Act. Using OCA's numbers, which were erroneous, but applying the cash flow method, PGW would be legally entitled to an interim rate increase of \$47.3 - \$51.5 million. PGW Reply Brief at 37. Using OTS' numbers, which were erroneous, but applying the cash flow method, PGW would be legally entitled to an interim rate increase of \$38.53 - \$43.5 million. Id. at 38.

# APPENDIX A

## Philadelphia Gas Works

Thomas E. Knudsen  
Chief Financial Officer



800 W. Montgomery Avenue, Philadelphia, PA 19122  
Telephone: (215) 684-6051  
Fax (215) 684-6101  
E-mail: thomas.knudsen@pgworks.com

December 7, 2000

### VIA HAND DELIVERY

James McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg., 2nd Floor  
400 North Street  
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00005654 (Interim Rate Proceeding)

Dear Secretary McNulty:

Philadelphia Gas Works ("PGW") hereby responds to the Public Utility Commission's ("PUC") Opinion and Order entered November 22, 2000 in the above captioned proceeding. The PUC's Order found that PGW had justified additional annual revenues of \$11 million but indicated that PGW's right to collect this additional amount was contingent upon PGW's submission of a letter indicating its acceptance of a series of "conditions" mostly related to the management and operation of PGW.

PGW has carefully considered the Commission's proposed conditions and, regrettably, it has determined that it is not legally able to accept several of the conditions set forth in the Order. Specifically, the PUC has demanded that PGW presently agree that it will, by September 30, 2001, "retain independent, professional and experienced management for the Gas Works, pursuant to a long term ( 5 to 10 years ) . . . management agreement," subject to the approval of the PUC (conditions 9 & 10). Additionally, condition 12 of the Order would require PGW to "address and implement" the recommendations of the not yet completed PUC Management Audit, presumably regardless of the nature or scope of such future recommendations. Condition 13 requires PGW to implement a "best practices" working group in order to solicit ideas for additional management and operational changes.

PGW and its owner, the City of Philadelphia, are fully committed to assuring that PGW has completely professional and competent management, and have taken and will continue to take all possible steps to increase efficiency and to improve service. However, PGW is legally unable to agree to implement the above directives. It is the City that must determine PGW's management structure. By ordinance and contract, using a structure contemplated in its Home Rule Charter, the City provides for the operation of PGW by the Philadelphia Facilities Management Corporation with oversight by the Philadelphia Gas Commission and approval by

James McNulty, Secretary  
December 7, 2000  
Page 2

the Philadelphia City Council. Such management changes would require the abrogation or amendment of the Management Agreement, an ordinance of the City of Philadelphia. Accordingly, PGW and PFMC may not legally agree to a full scale revision of PGW's management structure pursuant to PUC direction, or the implementation of major changes in the way in which PGW is managed or operated. Agreeing to these specific PUC conditions would put PGW in direct contravention of equally applicable City ordinances.<sup>1</sup>

Moreover, I have been advised by counsel that the Pennsylvania Natural Gas Choice and Competition Act, Section 2212(s), specifically reserves control of these issues to the City of Philadelphia or its authorized representatives. Therefore, PGW does not believe that, in good faith, it can agree to accept these conditions.

Nonetheless, PGW continues to be in urgent need of additional base rate revenues, and needs to collect those revenues during the Winter heating season (because its revenue collections are so seasonal, it has no ability to recoup or make up revenue deficiencies after the winter is over). PGW has two alternatives to propose in order to address these concerns. First, PGW requests that the Commission (i) grant an Application for Stay and Affirmative Relief, filed today, which requests that the PUC stay its Order, and allow PGW to implement a \$52 million rate increase pending its appeal, or, (ii) at least, stay pending appeal the portion of the Order that requires PGW to accept various conditions before it may collect even the authorized \$11 million interim increase.

Alternatively, PGW requests that the PUC permit PGW to implement the enclosed tariff revisions, which would produce an additional \$11 million in base rate revenues, pending appellate review of the legality of the above referenced conditions. The PUC could accomplish this by interpreting its Order as specifically permitting PGW to appeal the Order, and holding the conditions in abeyance, while it collects the authorized interim increase.

For your information, PGW is today filing a Petition for Review of the PUC's November 22 Order challenging several aspects of the PUC's Order including the conditioning of the authorized rate increase on a PGW agreement to take steps it does not have the legal authority to agree to. Please note, however, that PGW will not put the proposed tariff supplement into effect unless it receives clarification or a stay order from the PUC.

PGW's position with respect to the other "conditions" is as follows. Ordering paragraphs 1 - 4 were already agreed to by PGW (and authorized by PFMC) as a condition for receiving

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<sup>1</sup> Yet another bar to our accepting the "new management" condition is that requiring a contract of the cited length could result in PGW's bonds being considered taxable in violation of 66 Pa. C.S. § 2212(e).

James McNulty, Secretary  
December 7, 2000  
Page 3

expedited rate review, and PGW (obviously) will continue to abide by its previous commitment. Paragraphs 5 - 8 involved capital or operational improvements that PGW has proposed and is fully committed to accomplishing.<sup>2</sup> However, PGW's continued commitment to these efforts is necessarily contingent upon PGW's ability to continue to finance these projects without jeopardizing its ability to maintain day-to-day operations. This means that PGW's ability to comply is contingent on continued access to commercial paper as well as the capital market which is in jeopardy based upon the Commission's \$11 million award. PGW's commitment is also subject to PGW continuing to obtain the necessary approvals for these capital projects from the Philadelphia Gas Commission and Philadelphia City Council, as required by the PGW Management Agreement Ordinance.

Please contact me if you have questions or comments. If the Commission responds to this correspondence, I would appreciate if you would provide a copy of the letter by fax or e-mail to me (fax: 215-684-6101; e-mail: [thomas.knudsen@pgworks.com](mailto:thomas.knudsen@pgworks.com)) and to our regulatory counsel, Dan Clearfield (fax: 717-237-7161; e-mail: [dclearfield@wolfblock.com](mailto:dclearfield@wolfblock.com)), in addition to regular mail.

Very truly yours,



Tom Knudsen  
Interim Chief Financial Officer for:  
Philadelphia Gas Works

TK/

Enclosure - Proposed Tariff Supplement

cc: John M. Quain, Chairman (w/enc)  
Robert K. Bloom, Vice Chairman (w/enc)  
Nora Mead Brownell, Commissioner (w/enc)  
Aaron Wilson, Jr., Commissioner (w/enc)  
Terrance J. Fitzpatrick, Commissioner (w/enc)  
Veronica Smith, Dep. Exec. Dir. (w/enc)  
R.A. Rosenthal, Bureau of Fixed Utility Services (w/enc)  
Daniel Clearfield, Esq. (w/enc)  
Attached Service List (w/enc)

---

<sup>2</sup> PGW has in the context of its GCR compliance filing agreed to continue its LNG capital improvement project subject to the same 'ability to finance' caveat contained below and this letter should in no way be viewed as an abrogation of that commitment.

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; HAND DELIVERY AND/OR FIRST CLASS MAIL

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Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 S. Meramec Avenue  
St. Louis, MO 63105

  
Daniel Clearfield, Esq.

RECEIVED  
00 DEC -7 PM 14:08  
PA.P.U.C. BUREAU  
SECRETARY'S BUREAU

Dated: December 7, 2000

DATE: December 8, 2000

SUBJECT: R-00005654

TO: Law Bureau

FROM: James J. McNulty, Secretary

LAF

DOCKETED  
DEC 11 2000

DOCUMENT  
FOLDER

Pennsylvania Public Utility Commission  
v.  
Philadelphia Gas Works

---

Attached is a copy of a Petition for Stay and Affirmative Relief Pending Appellate Review, filed by Philadelphia Gas Works in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: OTS  
FUS

laf

DATE: December 8, 2000

SUBJECT: R-00005654

TO: Law Bureau

FROM: James J. McNulty, Secretary

LAF

DOCKETED  
DEC 11 2000

DOCUMENT  
FOLDER

Pennsylvania Public Utility Commission  
v.  
Philadelphia Gas Works

---

Attached is a copy of a Response to the Order Entered November 22, 2000, filed by Philadelphia Gas Works in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: OTS  
FUS

laf

**GRAIG A. DOLL**

ATTORNEY AT LAW  
25 NORTH FRONT STREET • SECOND FLOOR  
HARRISBURG, PENNSYLVANIA 17101-1606

717/230-9555

FAX 717/230-9750

E-MAIL CDoll176342@aol.com

December 18, 2000

**ORIGINAL**

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3254  
Harrisburg, PA 171705-3265

**DOCUMENT  
FOLDER**

**RECEIVED  
00 DEC 18 AM 11:34  
P.A.U.C.  
SECRETARY'S BUREAU**

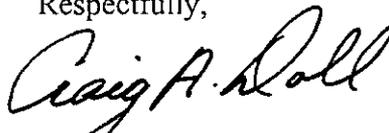
Re: Pennsylvania Public Utility Commission v. Philadelphia  
Gas Works  
Request for Stay and Affirmative Relief Pending  
Appellate Review  
Docket No. R-00005654

Dear Secretary Mc Nulty:

Enclosed please find the Response of the Apartment Association of Greater Philadelphia (AAGP) to the Application for Stay and Affirmative Relief Pending Appellate Review filed by the Philadelphia Gas Works (PGW) in the above captioned matter. For the reason set forth in its Response, AAGP respectfully requests that this Honorable Commission reject PGW's request.

A copy of this response has been served upon all parties of record as set forth on the attached Certificate of Service.

Respectfully,

  
Craig A. Doll

CAD/pk  
Enclosure  
cc: P. Bennett



BEFORE THE PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility  
Commission, et.al

v.

Docket No.  
R-00005654

Philadelphia Gas Works

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DEC 28 2000

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RESPONSE OF THE APARTMENT  
ASSOCIATION OF GREATER  
PHILADELPHIA  
TO  
APPLICATION FOR STAY AND  
AFFIRMATIVE RELIEF PENDING  
APPELLATE REVIEW  
OF  
PHILADELPHIA GAS WORKS

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SECRETARY'S BUREAU

DOCUMENT  
FOLDER

The Apartment Association of Greater Philadelphia ("AAGP"), a party to the above captioned Commission proceeding, hereby files its Response to the Application for Stay and Affirmative Relief Pending Appellate Review ("Application") filed December 7, 2000 by the Philadelphia Gas Works ("PGW"). AAGP respectfully requests that this Commission deny the Application.

I. INTRODUCTION

As Set forth in PGW's Application, by Order entered November 22, 2000, this Commission granted to PGW an interim rate increase of \$11 million subject to various

conditions. On December 7, 2000, PGW filed two documents: (1) the Application for Stay and Affirmative Relief Pending Appellate Review (“Application” or “Stay”); and (2) a Petition for Review (In the nature of a Complaint in Mandamus and Equity and an Appeal from a Final Order) (“Petition”) invoking both the appellate and original jurisdiction of the Commonwealth Court. Pursuant to the Commission’s Regulations, Responses to the Application are due December 18, 2000.

PGW’s Application to this Commission is based upon two theories: (1) that the authority of the Commission to impose certain conditions is questionable at best and should not be implemented pending a determination of those legal questions at the appellate court level; and (2) that the Commission erred when it permitted PGW to collect an additional \$11 million in annual revenues on an interim basis rather than the \$52 million requested. AAGP submits that in both requests, PGW has failed to meet the legal standard that would support the grant of relief requested.

## II. THE STAY

The established standard for determining whether the issuance of a stay is appropriate is set forth in Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983), (“Process Gas”) which decision formally adopted the stay criteria established in Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F. 2d 921 (D.C. Cir 1958).<sup>1</sup> Pursuant to Process Gas, a stay will be granted if:

1. The petitioner makes a strong showing that he is likely to prevail upon the merits;

---

<sup>1</sup> The Commission has consistently utilized Process Gas in determining whether a stay should be granted. See. e.g. Pennsylvania Public Utility Commission v Pittsburgh Limousine, Inc. A-00107834C9801, 2000 WL 104781 (January 13, 2000).

2. The petitioner has shown that without the requested relief, he will suffer irreparable injury;
3. the issuance of a stay will not substantially harm other interested parties in the proceeding; and
4. the issuance of a stay will not adversely affect the public interest.

502 Pa. at 552-553, 467 A. 2d at 808-809. AAGP submits that PGW has not met the above enumerated criteria.

In order to meet the first criterion, it is necessary for PGW to present a “substantial case on the merits”.<sup>2</sup> Within the application itself and the appended letter, PGW alludes to “substantial legal questions” (Paragraph 3), and “questions regarding the lawfulness of the amount of interim rate increase afforded by the Commission” ( Paragraph 4). Outside several unsupported conclusions to the effect that several Commission Ordering Paragraphs are inconsistent with differing sections of the Natural Gas Act, PGW has provided no rationale or analysis to support its conclusions. Similarly, “Appendix A” to the Application provides no new analysis to support the request.

In order to glean the basis for PGW’s statements, it is necessary to review the Petition for Review (“Petition”) filed with the Commonwealth Court.<sup>3</sup> In its Petition, PGW raises issues before the Court that it raised in its brief filed in the proceedings before this Commission with one notable exception. These arguments were properly rejected by this Commission. In Paragraphs 28, 56 of its Petition and Paragraphs 106-127 of its original jurisdiction action, PGW

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<sup>2</sup> The Pennsylvania Supreme Court in Process Gas altered the Virginia Jobbers criterion to reflect its assumption that an administrative agency would not readily conclude that it has issued an Order that would not withstand review by an appellate court.

<sup>3</sup> AAGP does not mean to suggest that it is legally appropriate to look outside the four corners of the Application for Stay to ascertain the grounds relied upon for the relief requested. However, should the Commission be of the opinion that the Commonwealth Court pleadings are incorporated in this proceeding by reference, AAGP maintains that even with the inclusion of the pleadings in that proceeding, PGW has still failed to meet the requirements for a Stay.

appears to be raising the issue of whether the Natural Gas Choice Act permissibly abrogates portions of the Philadelphia Home Rule Charter. AAGP submits that the issue of the interplay of the Natural Gas Choice Act provisions, the Philadelphia Home Rule Charter, and the Pennsylvania Constitution is already before the Courts of this Commonwealth in City Council of Philadelphia v. Commonwealth, 34 M.D. 2000<sup>4</sup>. AAGP submits that PGW has failed to show that it has set forth a substantial case on the merits.

PGW has failed to meet the second criterion - that it will suffer irreparable injury or harm absent the grant of the stay. The concept of irreparable harm has been set forth in a variety of decisions. In general, an injury is regarded as *irreparable if it will cause damage which can be estimated only by conjecture and not by any pecuniary standard*. See, e.g. 5 Std. Pa. Prac. 2d §8381 (1983). An injury is deemed irreparable if it cannot be adequately compensated by an award of monetary damages. Cosner v. United Penn Bank, 385 Pa. Super. 484, 492, 517 A.2d 1337, 1341 (1982). For the harm to be irreparable, it must be irreversible. Schulman v. Franklin & Marshall College, 371 Pa. Super. 345, 350, 538 A.2d 49, 52 (1988). PGW's Application before the Commission fails to even allege that it will be irreparably harmed.

With respect to its request relative to paragraphs 5, 6, 8 -12 of the Commission's order, PGW merely asserts that those provisions may violate provisions of the Natural Gas Choice Act or may not be able to be implemented due to financial considerations. Application, Paragraph 2, prayer for relief paragraph C.<sup>5</sup> As a basis for requesting a stay of paragraphs 5, 6, and 8, PGW maintains that while it remains committed to the projects outlined in those paragraphs,

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<sup>4</sup> PGW has also raised, in its Petition for Review, the issue of whether the Commission's decision is supported by record evidence.

<sup>5</sup> Although PGW, in its prayer for relief requests a *stay of that portion* of the Order granting it an additional \$11 million in revenues, it simultaneously requests that the Commission grant it the \$52 million in additional revenues originally requested. AAGP maintains that in reality PGW is not seeking a stay of this portion of the Commission's Order, but requesting reconsideration of the Commission's \$11 million grant.

continuation of those projects is contingent upon the granting of its affirmative relief. Presumably, if PGW secures the additional \$41 million that it is requesting, the staying of these paragraphs is no longer necessary. AAGP maintains that PGW has not met any of the criteria for a stay of these paragraphs. Paragraphs 5, 6, and 8 require PGW to undertake actions basic to the functioning of its system. No one can doubt the necessity to replace its distribution mains to prevent catastrophic accidents. Similarly, no one has questioned the necessity to prepare accurate and timely bills to its customers as required by paragraph 6 of the Commission's Order.<sup>6</sup> PGW has not alleged in its Application that the action taken by the Commission with respect to these paragraphs is illegal or unconstitutional.<sup>7</sup> PGW has not alleged that it will be irreparably harmed by improving its distribution system, billing system, or customer care procedures. PGW has not alleged, except in a generalized manner, that it will be harmed by the operation of these paragraphs. To the contrary, the implementation of corrections to its billing system in order to accurately and timely render bills to its customers should increase cash available to PGW. Unlike this potential benefit to PGW, the potential for harm to the customers of PGW and residents of Philadelphia is great. One can only speculate when a main will fail due to age. However, it has generally been accepted by all of the parties to the various proceedings before this Commission involving PGW, that further delay in its main replacement program is no longer an option.

Additionally, delay in making changes to its billing and collection system has resulted and will continue to result in massive bills once a customer actually receives his or her bill and

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<sup>6</sup> These paragraphs do not appear to be the subject of any individual counts in PGW's Petition for Review before the Commonwealth Court.

<sup>7</sup> Within its Petition for Review PGW appears to argue that the entire act as applied by the Commission has violated the Philadelphia Home Rule Charter. The issue of the alleged conflict between the Philadelphia Home Rule Charter and the statute is currently the subject of the broader challenge to the constitutionality of the statute. See, City Council of Philadelphia, supra.. Within the context of that proceeding, the Commonwealth Court by order entered June 28, 2000, refused to grant a preliminary injunction to City Council.

will inevitably lead to higher uncollectible accounts. These higher dollar amounts will require PGW to increase the rates to its paying customers, causing further uncollectible accounts. AAGP submits that the potential harm to the general public outweighs any potential detriment to PGW.

Finally, the Commission's Order does not suggest that PGW will not recover the reasonable costs associated with a main replacement or other programs. Within several weeks, PGW will undoubtedly file for a permanent base rate increase fully addressing its long term financial needs and costs associated with various programs. Consequently, the Commission should deny the requested Stay of paragraphs 5, 6, and 8 of its Order.

Paragraphs 9 and 10 of the Commission's Order currently have an implementation date of September 30, 2001. While in order to meet this date PGW should begin its efforts of compliance, nothing within these paragraphs preclude PGW from securing an extension of that date if it can show a good faith effort to comply. Further, AAGP is of the opinion that having already filed its Petition for Review with the Commonwealth Court, briefing and oral argument before that court should have taken place well before the deadline in the Commission's Order. Thus, PGW should know before the September 30, 2001 date whether to finalize any commitments or to discard any information gathered as a result of the Commission's Ordering Paragraph 10. The granting of the Stay by the Commission would delay not only the implementation of any management changes, but delay the initiation of the search process until after all appeals are resolved. If one assumes all appeals are resolved in the Commission's favor by mid-year, any changes contemplated will, in all likelihood, not be in place until 2002.

Paragraph 11 requires the establishment of a "best practices" working group. Clearly, PGW cannot be harmed, much less irreparably, by the convening of a group of individuals who

are charged with seeking input into cost cutting measures. This paragraph does not require PGW to change any of its current practices, management, employment levels, etc., but merely requires PGW to seek input from various sources.

Paragraph 12 of the Commission's Order merely requires PGW to address and implement the recommendations of the independent auditors in the current management audit. Assuming the Commission follows its past practices, PGW will have an opportunity to review the findings of the management audit team, provide a response to those findings, and ultimately appeal any Commission findings to the Commonwealth Court.<sup>8</sup>

Assuming PGW does implement the conditions contained in these paragraphs, the actions taken are far from irreversible. They merely require PGW to begin a process to improve its service and accountability. No final decisions have been made, no changes are required to take place until September 30, 2001 at the earliest, and PGW is free to seek extension of these dates should it be able to show that its good faith efforts may take an additional reasonable period of time. Clearly, PGW has failed to show that harm, if any, is irreparable.

### III. AFFIRMATIVE RELIEF

As part of its filing with the Commission, PGW seeks an order replacing the \$11 million rate relief already granted with the \$52 million originally requested by the Company. PGW argues that the additional revenue is necessary to meet all of its legal and financial obligations, including, but not limited to, payment of \$18 million to the City of Philadelphia and payment on its \$100 million commercial paper line of credit.

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<sup>8</sup> The Commission's Order requires PGW to address and implement the recommendations in the management audit, "unless otherwise directed by the Commission." This is a clear indication that the Commission has not foreclosed forever any modification of the findings of the auditors.

The arguments raised by PGW are not new and merely reiterate the arguments made in the context of its testimony and briefs already considered by this Commission. In essence, PGW is merely requesting a reconsideration of the Commission's November 22, 2000 Order with regard to this issue. The standard for granting reconsideration is set forth in Duick v. Pennsylvania Gas and Water Company, 51 P.U.R. 4<sup>th</sup> 284 (1982). In Duick the Commission stated:

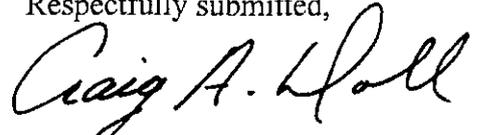
A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case [118 Pa. Super. 380, 179 A. 850 (1935)], wherein it was said that '[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.' What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

The Application before the Commission raises no new novel arguments not already presented, nor does the Application state what items may have been overlooked or not addressed by the Commission. Simply stated, PGW has not established any grounds for reconsideration of the Commission's November 22, 2000 Order. Consequently, AAGP urges this Commission to reject PGW's affirmative relief request.

IV. CONCLUSION

For the reasons set forth above, the Apartment Association of Greater Philadelphia respectfully requests that this Commission reject the Application for Stay and Affirmative relief of Philadelphia Gas Works.

Respectfully submitted,



Craig A. Doll, Esquire  
25 North Front Street  
Second Floor  
Harrisburg, PA 17101-1606  
(717) 230-9555

Attorney I. D. # 22814

Attorney for Intervenor  
Apartment Association of  
Greater Philadelphia

Dated: December 18, 2000

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00 DEC 18 AM 11:34  
PA.P.U.C.  
SECRETARY'S BUREAU

Pennsylvania Public Utility  
Commission

v.

Philadelphia Gas Works

Docket No.

R-00005654

**CERTIFICATE OF SERVICE**

I, Craig A. Doll, Esquire, do hereby certify that I have this day served a true and correct copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

SERVICE BY E-MAIL AND FIRST CLASS MAIL

Daniel Clearfield, Esq.  
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Dclearfield@wolfblock.com  
(Philadelphia Gas Works)

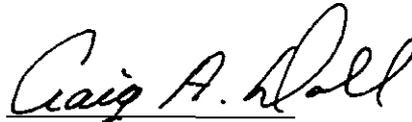
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(PICGUG)



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25 North Front Street  
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Harrisburg, PA 17101-1606

(717) 230-9555

Attorney I.D. #22814

Attorney for Apartment Association of  
Greater Philadelphia

Dated: December 18, 2000

RECEIVED  
PA P.U.C.  
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00 DEC 18 AM 11:34

MCNEES, WALLACE & NURICK  
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ORIGINAL

CHARIS M. BURAK  
DIRECT DIAL: (717) 237-5437  
E-MAIL ADDRESS: CBURAK@MWN.COM

December 18, 2000

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17120

VIA HAND DELIVERY

DOCUMENT  
FOLDER

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works;  
Docket No. R-00005654**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Philadelphia Industrial and Commercial Gas Users Group's ("PICGUG") Answer to Philadelphia Gas Works Application for Stay and Affirmative Relief Pending Appellate Review in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes.

Very truly yours,

MCNEES, WALLACE & NURICK

By *Charis M. Burak*  
Charis M. Burak

Counsel to the Philadelphia Industrial and  
Commercial Gas Users Group

Enclosures  
CMB/lhe

c: Andrew Tubbs, Esq., Law Bureau (via hand delivery)  
Karen Moury, Esq., Law Bureau (via hand delivery)  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission, et al. :

v. :

Philadelphia Gas Works

Docket No. R-000056

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**PHILADELPHIA INDUSTRIAL AND COMMERCIAL GAS USERS GROUP  
ANSWER TO PHILADELPHIA GAS WORKS  
APPLICATION FOR STAY AND AFFIRMATIVE RELIEF  
PENDING APPELLATE REVIEW**

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DOCUMENT  
FOLDER

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code Section 5.572(e), the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), by and through its attorneys, hereby answers the Application of the Philadelphia Gas Works ("PGW" or "Company") for Stay and Affirmative Relief Pending Appellate Review (hereinafter "Application"). In support thereof, PICGUG states as follows.

1. On August 8, 2000, PGW filed a Petition with the PUC requesting the establishment of an expedited interim rate increase to be in effect during the winter heating season, until a full base rate proceeding for the Company could be held. Specifically, PGW requested an interim rate increase of \$52 million. Pursuant to the Company's request, an expedited interim rate proceeding was held.

2. On November 22, 2000, after completion of the proceeding, the PUC entered an Order authorizing PGW to submit a Revised Tariff to increase its annual base rate revenues by \$11 million, in conjunction with or after the submission of a letter to the PUC indicating the Company's acceptance of fourteen conditions precedent as set forth in the November 22 Order. See Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00005654 Order (Nov. 22, 2000) (hereinafter, "November 22 Order").

3. On December 7, 2000, PGW filed its Application with the PUC requesting a stay of the Commission's Order and the granting of affirmative relief in the form of a \$52 million interim rate increase or another amount consistent with the required cash flow method and substantial evidence in the record. In the alternative, PGW requested a stay of several of the conditions precedent pending appellate review of the PUC's Order, as well as the ability to immediately implement an interim rate increase.<sup>1</sup>

4. PICGUG is an ad hoc association of energy-intensive industrial and commercial customers receiving service from PGW under various rate schedules. PICGUG members use substantial volumes of natural gas in their businesses, and natural gas costs comprise a significant element of their respective costs of operation. Because any change to PGW's rates would impact the price PICGUG members pay for service, PICGUG was an active party in PGW's interim rate proceeding.

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<sup>1</sup>PGW also filed a Petition for Review of the PUC's Order with the Commonwealth Court of Pennsylvania on December 7, 2000.

5. PICGUG files this Answer to respond to PGW's Application and to address the unsubstantiated arguments set forth by the Company with respect to the Application.

6. PGW first contends that certain conditions in the PUC's Order are inconsistent with Section 2212(s) of Natural Gas Choice and Competition Act ("Competition Act").<sup>2</sup> PGW's argument is limited to those conditions that would require the Company to: (1) retain independent, professional management for the Company (2) through an open, objective and fair selection process; (3) convene a "best practices" working group to solicit cost cutting steps from other entities; and (4) commit to addressing and implementing the management, operational, service and other improvement measures ultimately recommended in the Company's management audit.

7. Unfortunately, besides asserting that the aforementioned conditions are in conflict with the Competition Act, PGW fails to provide any substantive reasons upon which it bases this contention. Rather, PGW seems to imply that the mere assertion by the Company of a conflict is enough to require a stay of the proceeding. PICGUG submits, however, that PGW has not provided any substantive evidence as a basis for this argument.

For example, PICGUG questions how the convening of a "best practices" working group, which would allow PGW to solicit cost cutting steps from other Natural Gas Distribution

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<sup>2</sup>Section 2212(s) provides that nothing in the Competition Act "shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation...including, but not limited to, the ownership, governance, management or control thereof. Nothing in this title shall limit or prevent the proper city officials and agencies from conducting audits and examinations of the financial affairs of the city natural gas distribution operation in accordance with their official duties." 66 Pa. C.S. §2212(s).

Companies ("NGDCs"), would abrogate the City of Philadelphia's ("City") executive or legislative powers. Rather, PICGUG argues that in light of PGW's ongoing fiscal and managerial crises, a best practices working group would enable the Company to obtain necessary information that could be utilized to improve the Company's cash flow crisis. PICGUG submits that, similar to the "best practices" condition, PGW fails to provide any detail whatsoever as to how the other three conditions are in conflict with the Competition Act. Accordingly, PICGUG's ability to respond to PGW's arguments are limited, and PICGUG would submit that this lack of substantive evidence by PGW must result in a denial of the Company's Application.

8. PGW also addresses the conditions precedent set forth in the PUC's Order that would require the Company to: (1) achieve a 1% replacement rate in its mains replacement program; (2) commit to correct problems with the Company's BCCS systems; and (3) show improvement in its customer service functions. In the Application, PGW submits that the Company is willing to comply with these conditions, but that this compliance must be contingent upon PGW's ability to finance these projects without "jeopardizing" the Company's ability to maintain day-to-day operations, as well as meet its legal and financial obligations. According to PGW, the PUC's authorized increase of \$11 million is insufficient in this respect.

As addressed more fully in the PUC's November 22 Order, "service is an essential consideration in determining just and reasonable rates." See November 22 Order, p. 21. As determined in this proceeding, an ongoing pattern of inadequate management continues for PGW, which must be addressed. The PUC's Order provides the first step in conquering PGW's problems by setting forth the aforementioned conditions. See id. at 21-23. Although PGW argues that these conditions cannot be fulfilled in light of the PUC's "insufficient" authorization

of \$11 million, PGW fails to reconcile this argument with actual fact. For example, PGW submits that the 1% main replacement condition may not be fulfilled for lack of an adequate interim rate increase, but the Company fails to argue this point in light of the fact that the Company's base case capital budget provides for a 1% main replacement rate. See id. at 21. Once again, PGW presents an argument that rings hollow in light of the evidence set forth in this proceeding.

Moreover, PGW suggests that the conditions precedent be stayed and the Company be permitted to immediately implement at least the \$11 million interim rate increase "to which the Commission has determined PGW is legally entitled." See PGW Application, p. 2. PGW seems to ignore, however, the Commission's determination that PGW's customers have experienced various service problems, including billing issues, poor call center performance and inefficient dispatch of PGW employees. See November 22 Order, p. 22. Accordingly, the PUC notes that "it is imperative for the Commission to place specific conditions upon our grant of interim rate relief to PGW." Id. As a result, the PUC's \$11 million interim rate increase authorization is tied to these conditions, and PGW is only "legally entitled" to this rate increase if the aforementioned conditions are met. Accordingly, PGW's request to implement the \$11 million rate increase without accepting the PUC's conditions must be denied.

Because PGW fails to set forth any substantive arguments with respect to the PUC's conditions, PICGUG submits that PGW's request for a stay of the aforementioned conditions precedent pending appellate review should be denied.

9. PGW's argument that the PUC's authorized \$11 million increase is in conflict with the Competition Act is also faulty. According to PGW, this rate increase contravenes Section 2212(d), (e) and (f) of the Competition Act; however, the Company fails to provide any substantive evidence to support this argument.

For example, Section 2212(d) provides, in part, that a "city natural gas distribution operation shall continue to provide natural gas supply and natural gas distribution services to its customers under the prior tariff..." 66 Pa. C.S. §2212(d). Nothing in the PUC's November 22 Order contravenes PGW's current tariff, other than allowing the Company to supplement the tariff to allow for an \$11 million increase in rates.

Similarly, Section 2212(e) provides that "in determining the city natural gas distribution operation's revenue requirement and approving overall rates and charges, the commission shall follow the same ratemaking methodology and requirements that were applicable to the city natural gas distribution operation prior to the assumption of jurisdiction by the commission..." 66 Pa. C.S. §2212(e). Although PGW implies that the PUC failed to follow PGW's previous ratemaking methodology, the Company's claim fails to address the PUC's finding that "[g]iven the unique nature of this interim rate proceeding, the only legally required standard to which the Commission is bound is that the resulting rates must be 'just and reasonable.'" November 22 Order, p. 9. As properly determined by the PUC, the "just and reasonable" standard is consistent with Section 2212, as well as the standards set forth in PGW's Management Agreement and Philadelphia Gas Commission ("PGC") decisions. Moreover, the PUC's Order provides that *although the PUC does not approve the interim rate levels advocated by PGW, the PUC utilizes a cash flow analysis so that the interim rates approved will yield sufficient cash for PGW to pay its*

operational expenses and meet debt service requirements. See id. at 11-12. As a result, PGW's Application fails to provide any argument that addresses PGW's claim that the PUC's methodology in this proceeding contradicts the Competition Act.

Finally, Section 2212(f) requires the PUC to "permit the city natural gas distribution operation to impose, charge or collect rates and charges as necessary to permit the city natural gas distribution operation to transfer or pay to the city that is the owner of the natural gas distribution operation...such amount as may be specified...in the applicable ordinances." 66 Pa. C.S. §2212(f). Throughout this proceeding, the parties (including PICGUG) have argued that as owner of PGW, the City should provide relief to PGW and its ratepayers through a "grant-back" of the City's annual \$18 million payment. Specifically, this grant-back would take the form of "project revenues" that would help to improve PGW's current debt service coverages. In the PUC's Order, however, the Commission states that its "analysis did not consider the proposed \$18 million dollar grant back of the annual payment by the City" when determining the appropriate rate increase. November 22 Order, p. 14. Not surprisingly, PGW's Application does not respond to this portion of the PUC's Order or address why, in light of PGW's purported financial crises, the City, in its role as owner, would not waive the \$18 million payment in order to alleviate ratepayers from at least a portion of the resulting rate increase. Obviously, if the City were to truly fulfill its role as owner of PGW, the requirement of §2212(f) would be eliminated.

10. Although PGW also claims that the PUC's approval for an \$11 million rate increase is not supported by substantial evidence, PGW's only support for this argument is a claim that the Office of Consumer Advocate ("OCA") presented the lowest interim rate increase proposal, for \$25 million, and this proposal was not based on the cash flow method. PGW fails,

however, to address the multitude of evidence in this proceeding as set forth by various parties and addressed in the PUC's Order. Besides addressing the appropriate methodology to be utilized in this proceeding, the PUC takes great pains to note that the evidence presented in this proceeding provides that the Company's \$52 million increase request "would place PGW in a better position with respect to debt service coverage and net earnings than at any time in the last eight years." November 22 Order, p. 10. Because the PUC agrees with the evidence set forth by the parties to this proceeding, that the limited purpose of this interim proceeding is "averting a short-term financial crisis, pending a full review of PGW's expenditures and revenue requirements," the Commission finds that the full \$52 million rate increase requested by PGW is inappropriate. See id. PGW fails to provide any argument, however, as to how these findings, which substantially lessen PGW's proposed interim rate increase request, are not based upon substantial evidence.

Moreover, PICGUG presented evidence in this proceeding which provided that, while some level of interim relief may be necessary for PGW during the winter heating season in order to ensure that PGW is able to provide adequate service, certain circumstances surrounding the Company mitigated PGW's need for rate relief. These circumstances included: (1) a financial crisis of PGW's own making; (2) possible rate relief by the City;<sup>3</sup> (3) a less dire financial picture than that presented by the City; and (4) the resulting rate shock to customers from PGW's requested increase. These conditions were also considered by the PUC when determining the

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<sup>3</sup>During the course of this proceeding, PGW updated the record with information on City Council's activity with respect to PGW. Specifically, PGW presented two bills that were being considered by City Council that would permit the City to loan PGW \$45 million in light of PGW's financial crises. See PGW Update On City Council Activity (October 20, 2000).

appropriate rate increase for PGW. See id. at 6-12. Although PGW attempts to argue that the PUC's Order was not based on substantial evidence, PGW fails to specifically address and refute these findings.

11. PICGUG also dismisses PGW's claim that this rate increase must be implemented immediately in order for PGW to meet all of its legal and financial obligations. The PUC has already permitted PGW to implement a \$97 million Gas Cost Rate ("GCR") increase, which should help to alleviate a large portion of PGW's financial concerns.

Moreover, as PICGUG argued in this proceeding, PGW waited until early August to request an interim rate increase from the PUC, even though the Company was fully cognizant of its financial difficulties as early as March, 2000. See November 22 Order, p. 11. In its Order, the PUC also noted that PGW failed to timely address its financial concerns, and as a result, the scope of this proceeding would be limited to only the level of necessary interim relief. See id. Accordingly, PGW should not be rewarded for its untimeliness by being allowed to implement a rate increase without agreeing to the accompanying conditions.

12. In its prayer for relief, PGW suggests that the Company should be permitted to implement a \$52 million rate increase or other amount consistent with the required cash flow method. PICGUG finds this request quite amazing in light of the fact that PGW failed to provide substantial evidence during the interim rate proceeding that a \$52 million increase was necessary. PGW's Application presents no additional evidence that would support this request, other than PGW's claim that such an increase would be "refundable." Considering that PGW customers are currently seeing an increase of \$97 million through the GCR, the additional rate shock that would occur to ratepayers during this interim season could not be alleviated through the

possibility that rates may be refunded sometime in the future. As a result, PICGUG submits that PGW should not be permitted to implement any rate increase pending appellate review of the Commission's Order.

**WHEREFORE**, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Pennsylvania Public Utility Commission deny Philadelphia Gas Works' Application for Stay and Affirmative Relief Pending Appellate Review in its entirety.

Respectfully submitted,

McNEES, WALLACE & NURICK

By Charis M. Burak

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Counsel to the Philadelphia Industrial and  
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Dated: December 18, 2000

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below.

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Charis M. Burak  
Charis M. Burak

Dated this 18<sup>th</sup> day of December, 2000, in Harrisburg, Pennsylvania.



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ORIGINAL

December 18, 2000

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SECRETARY'S BUREAU

00 DEC 18 PM 3:52

James J. McNulty, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pa. Public Utility Commission  
v.  
Philadelphia Gas Works  
Docket No. R-00005654

Dear Secretary McNulty:

Enclosed for filing please find an original and 3 (three) copies of the Answer of the Office of Consumer Advocate to PGW's Application for Stay and Affirmative Relief Pending Appellate Review, in the above-referenced proceeding.

Copies of this document have been served upon all parties as evidenced by the attached Certificate of Service.

Sincerely yours,

*James A. Mullins*  
James A. Mullins  
Assistant Consumer Advocate

Enclosure

cc: All parties of record  
Hon. Marlane Chestnut, Administrative Law Judge  
Andrew Tubbs, Pa. PUC Law Bureau

Jo

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, :  
et al. :

v. :

Philadelphia Gas Works

Docket No. R-0005654

**ORIGINAL**

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ANSWER OF THE  
OFFICE OF CONSUMER ADVOCATE  
TO APPLICATION FOR STAY AND  
AFFIRMATIVE RELIEF PENDING APPELLATE REVIEW

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The Office of Consumer Advocate (OCA) is in receipt of the Philadelphia Gas Work's (PGW or Company) Application for Stay and Affirmative Relief Pending Appellate Review (pursuant to Pa. R.A.P Rule 1781(a) and 52 Pa. Code § 5.572) of the Pennsylvania Public Utility Commission's (Commission or PUC) Opinion and Order entered November 22, 2000, in the above docket. PGW seeks a Stay of the Commission's November 22, 2000 Order allowing an \$11 million interim rate increase and a grant of affirmative relief in the form of a \$52 million interim rate increase. In the alternative, PGW requests that the Commission stay certain conditions, specifically the conditions providing for: 1) a 1% replacement rate in PGW's mains replacement program, 2) correction of the problems with PGW's BCCS system, 3) evidenced improvement in PGW's customer service functions and the reporting of progress to the Commission on a quarterly basis, 4) PGW's commitment to retain independent, professional and experienced management for the Gas

Works by September 30, 2001, 5) recognition that the above agreement be subject to Commission review and approval, 6) PGW's commitment to convene a "best practices" group, and 7) PGW's commitment to address and implement the management, operational, service and other improvement measures ultimately recommended in the management audit, unless otherwise directed by the Commission.

In its Application, it appears that of particular concern to PGW is the Commission's requirement that certain conditions be accepted by PGW in order for the Company to begin collecting an additional \$11 million in interim base rate revenues. In its Application, PGW requests that:

the Commission stay the portions of its Order containing the relevant conditions precedent pending appellate review, and allow PGW to immediately implement at least the \$11 million interim rate increase, to which the Commission has determined PGW is legally entitled, or allow some other increase supported by the record pending appeal.

Application at Paragraph 3 (*emphasis in original*). PGW also continues to question the legality of the amount awarded by the Commission—\$11 million—and asserts that it needs additional rate relief prior to the winter months in order to meet its financial obligations. Id. at 2-3.

As will be explained below, the OCA submits that the Company's request for a Stay and Affirmative Relief should be denied.

To obtain a stay of the Commission's Order regarding the amount awarded and the conditions attached to the implementation of this amount, PGW must show: (1) that there is a strong likelihood of success on the merits, (2) that the Company will suffer irreparable harm absent the stay, (3) that the stay will not substantially harm other parties, and (4) that the stay will not adversely affect the public interest. These standards were enumerated by the Commission in Re Daniels

Transfer Company and were based on the Pennsylvania Supreme Court's holding in Pennsylvania PUC v. Process Gas Consumers Group. See Re Daniels Transfer Company, Docket No. A-00006813C871 (Order entered August 19, 1988) and Pennsylvania PUC v. Process Gas Consumers Group, 502 Pa. 545, 551-52, 467 A.2d 805, 808-809 (1983). Additionally, Courts have held that the Applicant for a stay bears a heavy burden. Tri-State Asphalt Corp. v. Com. Dept. of Transportation, 135 Pa. Cmwlth. 410, 582 A.2d 55 (1990), appeal denied, 527 Pa. 659, 593 A.2d 429; Commonwealth Board of Finance and Revenue v. Rosetta Oil, Inc., 535 Pa. 343, 635 A.2d 139 (1993). The OCA submits that PGW has not met the standards for a stay and its request must, therefore, be denied.

A. PGW Has Not Shown That It Has A Strong Likelihood Of Success On The Merits

PGW argues that there are serious legal questions regarding the Commission's Order. Specifically, PGW argues that the Commission's Order requiring certain conditions is inconsistent with Section 2212(s) of the Natural Gas Choice and Competition Act. In addition, PGW argues that under Sections 2212(d), (e) and (f) of the Act, it is legally entitled to the full \$52 million which it requested. The OCA submits, however, that PGW's arguments do not demonstrate that it has a substantial likelihood of prevailing on the merits. The arguments forwarded by PGW have already been considered and rejected by the Commission when it entered its Order. Moreover, PGW ignores the fact that this particular proceeding and these matters were within the Commission's discretion. Absent proof of fraud, bad faith or abuse of discretion, the Commonwealth Court cannot overturn the Commission's exercise of its discretion. South River Power Partners, L.P. v. Pennsylvania Public Utility Commission, 696 A.2d 926 (Pa. Cmwlth. Ct. 1997).

First, PGW primarily seeks relief from the conditions imposed by the Commission and argues that the imposition of these conditions is inconsistent with Section 2212 of the Natural Gas Choice Act. However, PGW fails to recognize that service is an essential consideration in determining just and reasonable rates. See D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, 466 F.2d 394, 422 (D.C. Cir. 1972), cert. denied, 409 U.S. 1086. The Commission correctly set forth this principle when it stated in its Order:

The constitutional standard of just and reasonable rates, which also governs the setting of PGW's rates, as well as the Public Utility Code, requires that service be safe, adequate and efficient. Contrary to PGW, there is nothing in Section 2212 or in the Management Agreement between PGW and the Philadelphia Facilities Management Corporation that would justify a different standard for PGW.

Order at 21. This standard of just and reasonable rates has been upheld as it applies to PGW by the Courts. See Public Advocate v. Philadelphia Gas Commission, 674 A.2d 1056, 1061 (Pa. 1996).

In this case, the Commission determined that PGW's quality of service has suffered and that specific conditions were necessary to ensure adequate service and just and reasonable rates. The Commission has often exercised its discretion to either reject a rate increase due to inadequate service or condition the receipt of a rate increase on a utility company's agreement to certain conditions to ensure improved service. For example, in Pa.P.U.C. v. Pa. Gas and Water Co., 68 Pa.P.U.C. 191, 197 (1988), the Commission concluded that no rate increase could be justified based on the poor quality of service being offered by the utility. In a case involving Pennsylvania-American Water Company ("PAWC"), the Commission went as far to say that PAWC "should have to demonstrate *actual evidence of improved service*" before its customers should have to pay an increased rate. Pa.P.U.C. v. Pennsylvania-American Water Co., 71 Pa.P.U.C. 210, 217 (1989)

(emphasis added). Importantly, the Commission has also used its authority under Sections 523 and 526 to provide a utility with the option of accepting no rate increase or a rate increase that was dedicated entirely to distribution system improvements to accelerate progress toward providing safe and adequate service. Pa.P.U.C. v. Pa. Gas & Water Co., 79 Pa.P.U.C. 349, 359 (1993). Therefore, the Commission's decision to impose conditions here is within its discretion, which it properly exercised in this case.

Second, the Commission's allowance of an \$11 million rate increase was fully consistent with the law and the record in this proceeding. Initially, it must be noted that this proceeding itself was unique. Neither the Natural Gas Choice Act, the Public Utility Code or PGW's tariff provide for such a proceeding. Given the extraordinary circumstances, the PUC exercised its discretion to allow this proceeding and, in so doing, established a procedure and standard to be applied. In its August 17 Order, the Commission stated:

[W]e shall grant PGW's request for an expedited procedure to determine whether interim rates should be granted, subject to certain conditions...PGW must present substantial evidence to support its assertion that an interim rate 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.

Accordingly, an expedited hearing schedule for the review of PGW's interim rate request is established with a prehearing conference before an Administrative Law Judge during the week of August 21, 2000.

Petition of Philadelphia Gas Works for Establishment of Interim Rate Procedures and for a Declaratory Order, Docket No. P-00001831 (Order entered August 17, 2000). This standard is fully in accord with Section 2212, as well as the Public Utility Code. In its Order here, the Commission followed the standard it had set when it stated:

In providing for an interim rate process, the Commission sought to afford PGW an opportunity to maintain a sufficient level of financial health during the upcoming winter months. It was not our intention to immediately resolve all of PGW's financial problems or to ensure a certain level of liquidity at the end of the fiscal year. Rather, PGW must file a base rate case on or before January 1, 2001, so that its overall revenue requirements could be thoroughly evaluated before final rates and charges are established to replace any interim levels approved here.

Order at 8.

Moreover, contrary to PGW's argument, in applying this standard, the Commission specifically stated that it had considered the financial and cash needs of the Company. In determining that an award of \$11 million is appropriate, the Commission stated:

[W]e have performed the necessary calculations and cash flow analysis to ensure that PGW will have the opportunity to maintain a sufficient level of financial health required to fund operations and meet debt service and coverage requirements through the winter heating season. Specifically, we have calculated that the interim base rate and GCR rate relief approved today will produce debt service coverage of 2.01x for bonds issued under the 1975 Ordinance and 1.5x for the Senior Bonds issued under the 1998 Ordinance. These ratios meet the minimum debt service coverage requirements of 1.50x under these ordinances and are clearly sufficient for PGW to avoid a technical default of the coverage requirements.

Id. at 27. Therefore, this Commission's award of \$11 million in interim rate relief for PGW meets the Commission's standard and satisfies the legal requirements of the Public Utility Code.

Consequently, the Commission did not abuse its discretion or act in bad faith. The Commission's reasoning and judgment were carefully laid out and reasonable under the circumstances. PGW ignores the fact that it was at the Company's request that the Commission was compelled to act upon PGW's request for interim relief in a very short time and in a somewhat unorthodox fashion. Despite PGW's arguments, the Commission did not have to allow this

proceeding or any rate increase at all if it found that such result would be unjust and unreasonable. Instead, the Commission reviewed the record, applied the standard that had been established for this proceeding, and reached a result that it found to be just and reasonable.

B. PGW Has Not Met Its Burden Of Demonstrating Irreparable Harm

PGW asserts that it needs additional rate relief now in order to meet its legal and financial obligations and avoid irreparable harm that will result if it cannot meet these commitments. Application at Paragraph 5. The Company's primary argument appears to be that higher rates need to be put into place prior to the onset of the upcoming winter since PGW earns 65% of its revenues between December and March. A portion of this alleged harm, however, would be of the Company's own making by its failure to accept the conditions set forth by the Commission and, thereby, implement the rate increase awarded. The \$11 million interim base rate increase, along with the \$97 million gas cost rate (GCR) increase, and the possibility of updating the GCR was found by the Commission to provide adequate financial coverage and funding for operations.

C. Harm to Other Parties

PGW fails to address how its request, if granted, will not substantially harm other parties. However, the OCA submits that other parties, in fact, could be harmed if the Company's request for a stay is granted. In particular, the Commission found significant service problems based on the record in this proceeding, including the public input testimony. If the conditions are stayed, there is no assurance that ratepayers will receive adequate service even though they are required to pay higher rates. Moreover, to put into effect an increase greater than that found by the Commission to be warranted would result in rates that are unjust and unreasonable.

D. Harm to the Public Interest

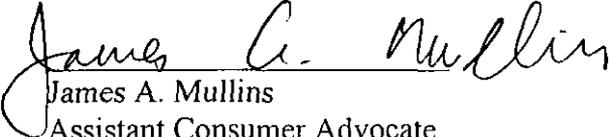
PGW also fails to address the effect on the public interest if the stay is granted. As noted above, the Commission found significant service problems. In its Order, the Commission concluded:

This Commission would clearly be remiss if we ignored the substantial public input testimony about the billing problems, poor call center performance, and inefficient dispatch of Company employees.

Order at 22. Consequently, the Commission has sought to rectify these concerns through the imposition of conditions calling for specific actions to remedy these problems. To allow a “business as usual” approach to continue within PGW is not in the public interest or consistent with the intent of the Natural Gas Choice Act in subjecting the Company to PUC jurisdiction.

WHEREFORE, for the reasons set forth above, the OCA submits that PGW's Application for Stay and Affirmative Relief Pending Appellate Review be denied. The Commission properly exercised its discretion to balance the interests of all parties and reach a reasonable compromise regarding this extraordinary proceeding.

Respectfully submitted,

  
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Assistant Consumer Advocate

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

Counsel for:  
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Consumer Advocate

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Dated: December 18, 2000  
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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission  
v.  
Philadelphia Gas Works  
Docket No. R-00005654

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18<sup>th</sup> day of December, 2000.

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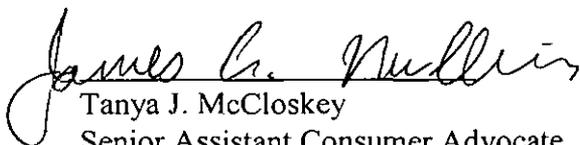
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December 19, 2000

ORIGINAL

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Commonwealth & North Streets  
Harrisburg, PA 17105

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DOCUMENT  
FOLDER

PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Sent by Federal Express

Re: Pennsylvania Public Utility Commission  
v. Philadelphia Gas Works  
Docket No. R-00005654

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Answer of CEPA et al. to Application of Philadelphia Gas Works for Stay and Affirmative Relief Pending Appellate Review in the above referenced proceeding.

This filing is made pursuant to 52 Pa. Code § 1.54.

Very truly yours,

*Philip A. Bertocci*

PHILIP A. BERTOCCI  
Counsel for CEPA et al.

PAB:cmh  
Enclosures  
cc: Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility  
Commission et al.

Docket No. R-00005654

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v.

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Philadelphia Gas Works

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A PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**ANSWER OF CEPA ET AL. TO APPLICATION OF  
PHILADELPHIA GAS WORKS FOR STAY AND AFFIRMATIVE  
RELIEF PENDING APPELLATE REVIEW**

The Consumers Education and Protective Association ("CEPA"), the Association of Community Organizations for Reform Now ("ACORN"), Action Alliance of Senior Citizens of Greater Philadelphia, and the Tenant Action Group ("TAG")(collectively "CEPA et al.") hereby file this answer to the Philadelphia Gas Works' Application for Stay and Affirmative Relief Pending Appellate Review as follows:

1. Admitted. It is admitted that the Commission's Order conditioned PGW's ability to realize the \$11 million interim rate increase on PGW's acceptance of various caveats and future courses of action. It is admitted that PGW has addressed a letter to the Commission attached as Appendix "A" to the Application, in which PGW expresses certain legal opinions concerning the Commission's authority to condition its rate award on acceptance by PGW of certain conditions.

As to whether the Commission considers the \$11 million award as "necessary and proper" without reference to the "caveats and future courses of action" to be taken by

PGW, CEPA et al. are after reasonable investigation without sufficient knowledge or information to form a belief as to the truth of the averment, which is therefore denied. No response is required under applicable rules to the factual averments contained in PGW's letter.

2. Admitted in part; denied in part. It is admitted that serious legal questions exist concerning whether Ordering Paragraphs 9-12 of the Commission's order are consistent with Section 2212(s) of the Natural Gas Choice and Competition Act ("Gas Choice Act"), 66 Pa.C.S. §2212(s); PGW could have, but did not, seek clarification of those aspects of the Commission's order pursuant to 52 Pa.Code §5.572, the same section under which the company filed this Application.

It is admitted that PGW has previously committed itself to the capital projects set forth in Ordering Paragraphs 5 (1% annual Cast Iron Main Replacement) and 7 (LNG Liquefaction Replacement); after reasonable investigation, CEPA et al. are without sufficient knowledge or information to form a belief as to the truth of the averment that PGW has previously committed to the Commission to take the actions required by Ordering Paragraphs 6 (rectifying BCCS) and 8 (improvement and reporting concerning customer service functions), which is therefore denied.

It is denied that PGW would be unable to comply with the conditions contained in Ordering Paragraphs 5-8 unless it received the full \$52 million contained in PGW's unapproved FY 2001 capital and operating budgets; to the contrary, PGW and its owner have an obligation and the ability to comply with PGW's commitments.

It is denied as a matter of law that PGW's prior commitments are contingent upon its ability to collect an unjust and unreasonable rate from ratepayers.

It is denied that the \$11 million base rate increase awarded by the Commission is insufficient; to the contrary, the Commission has determined that an \$11 million base rate increase is sufficient and meets the standard that PGW itself proposed – 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.” Petition of Philadelphia Gas Works for Establishment of Interim Rate Procedures and for a Declaratory Order, Docket No. P-1831, Paragraph 2. Whatever “serious concerns” PGW may have about its ability to meet its commitments, it must look to its owner, the City of Philadelphia, not to ratepayers for additional resources should such become necessary.

3. CEPA *et al.* admit that the Commission has determined that PGW is legally entitled, subject to certain conditions, to an interim base rate increase of \$11 million and no more; it is denied that any basis exists for granting PGW an interim base rate increase of more than \$11 million. Although CEPA *et al.* submit that the Commission had sufficient legal basis to deny any interim rate increase at all, the amount of this interim base rate increase is sufficiently supported in fact and law to withstand an appellate challenge.

With regard to PGW’s request that the Commission stay its requirement that PGW accept conditions set forth in Ordering Paragraphs 9 through 12, CEPA *et al.* admit that serious legal questions exist concerning the meaning and the legal bases under the Gas Choice Act for the imposition of these conditions. With regard to PGW’s request that the Commission stay pending appeal its requirement that PGW agree to the other conditions in the Order, particularly Paragraphs 6 and 8 concerning BCCS and improvement of the customer service function, CEPA *et al.* deny that serious legal questions exist that would justify a stay pending appeal of those provisions in the Order.

4. Denied. To the contrary, the Commission applied the correct legal standards in its review of PGW’s interim base rate increase request, and reached a conclusion which was at the very upper limits of the just and reasonable range.

5. Denied. To the contrary, the Commission's Order of November 22, 2000, based on a full consideration of the complete record, in which all the claims contained in this averment were raised, determined that an interim base rate increase of \$11 million was "just and reasonable," the ultimate legal standard applicable in this case.

CEPA et al. further deny that the Commission is statutorily mandated to provide ratepayer funds to allow PGW either to make the \$18 million City Payment or to accomplish the momentary payoff of PGW's \$100 million payoff on its commercial paper line of credit.

6. WHEREFORE, CEPA et al. respectfully request that the Commission issue an Order:

A. Denying PGW's request to stay ordering Paragraphs 5-8 of the Commission's November 22, 2000 Order;

B. Denying PGW's request for additional affirmative rate relief above \$11 million pending appeal;

C. Staying Ordering Paragraphs 9 through 12 of its November 22, 2000 Order pending appeal, subject to the pre-conditions that PGW fully and finally withdraw its pending Commonwealth Court Mandamus Action, and that PGW fully and finally withdraw its pending Commonwealth Court appeal to the extent that the company challenges the legal sufficiency of the Commission's \$11 million interim rate increase and the Commission's authority to precondition granting of such interim rate increase

upon PGW's acceptance of Ordering Paragraphs 5-8.

Respectfully submitted,

*Philip A. Bertocci*

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PHILIP A. BERTOCCI, ESQUIRE  
EDWARD A. MCCOOL, ESQUIRE

Date: December 19, 2000

*Attorneys for CEPA et al.*

COMMUNITY LEGAL SERVICES, INC.  
1424 Chestnut Street, 4<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 981-3702

## VERIFICATION

I, Philip A. Bertocci, attorney for CEPA et al., hereby that I am authorized to make this verification, and state that the facts set forth in the foregoing pleading are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Date:

12/19/00

Philip A Bertocci

**CERTIFICATE OF SERVICE**

Re: Pennsylvania Public Utility Commission  
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Philadelphia Gas Works  
Docket Number R-00005654

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PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

I hereby certify that I have this day served a true copy of the foregoing document, Answer of CEPA et al. to Application of Philadelphia Gas Works for Stay and Affirmative Relief Pending Appellate Review, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19<sup>th</sup> day of December, 2000.

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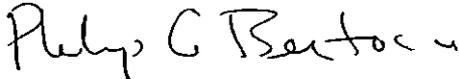
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