

Wolf, Block, Schorr and Solis-Cohen LLP

212 Locust Street
Suite 300
Harrisburg, PA 17101

T: 717 237 7160
F: 717 237 7161
www.wolfblock.com

ORIGINAL

DANIEL CLEARFIELD
DIRECT DIAL: (717) 237-7173
E-MAIL: DCLEARFIELD@WOLFBLOCK.COM

February 8, 2001

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
North Office Bldg., Rm. B-20
Harrisburg, PA 17120

RECEIVED
01 FEB -8 AM 10:33
PA P.U.C.
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 nine copies of its Joint Petition for Full Settlement of PGW's Petition for the Establishment of Interim Rates and Related Appeal 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.

DOCUMENT
FOLDER

40

DSH:26000.1

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, *et al.* :
 :
 v. :
 :
 Philadelphia Gas Works :

Docket No. R-00005654

RECEIVED
01 FEB - 8 AM 10:40
PA.P.U.C.
SECRETARY'S BUREAU

**JOINT PETITION FOR FULL SETTLEMENT OF PHILADELPHIA
GAS WORKS' PETITION FOR THE ESTABLISHMENT OF INTERIM RATES
AND RELATED APPEAL**

Philadelphia Gas Works ("PGW") and the Commission's Law Bureau ("Joint Petitioners") respectfully submit this Joint Petition for Full Settlement of PGW's Petition for the Establishment of Interim Rates and Related Appeal ("Joint Petition"). The City of Philadelphia ("City") is a signatory to the Joint Petition for the purposes set forth in paragraph 4 herein. The terms and conditions of the Joint Petition represent a comprehensive settlement which resolves all issues before the Commonwealth Court arising from PGW's dual jurisdiction Petition for Review arising from the Commission's Opinion and Order entered November 22, 2000.

The Joint Petitioners aver that this comprehensive settlement is in the public interest, and therefore request that the Commission: (1) approve without modification the proposed settlement and make the requested findings as set forth in this Joint Petition; (2) amend the Commission's Order entered at this docket on November 22, 2000 and the Commission's November 22, 2000 Gas Cost Rate (GCR) Order at docket R-00005619, as necessary to implement the full settlement effective upon the withdrawal of the Commonwealth Court Petition for Review; and (3) approve the tariff supplements necessary to implement the proposed settlement.¹ In support of their request, the Joint Petitioners state as follows:

¹The Joint Petitioners recognize that pursuant to the Public Utility Code, the Commission is obligated to provide notice and an opportunity to be heard before it may amend a prior Order and therefore request that the Commission provide an

DOCUMENTED
FEB 12 2001

DOCUMENT
FOLDER

I. SUMMARY OF SETTLEMENT

The Joint Petitioners have agreed to the proposed settlement terms and conditions set forth in this document as a means to resolve, finally and equitably, all issues arising from PGW's Petition for the Establishment of Interim Rates and its related Petition for Review in lieu of further protracted and expensive litigation in Commonwealth Court. In addition, this Joint Petition includes management commitments and provides PGW with the timely relief necessary for it to address its pending financial obligations as required by law.

In particular, the City has agreed that it will make a good faith commitment to proceed with its independent permanent management search process which is designed to result in the selection of qualified management personnel or a management team by the end of September 2001, and to proceed with its present process of revising the present PGW governance structure. PGW agrees to implement all of the recommendations of PUC's management audit or explain why it does not believe it can do so, in accordance with specific criteria set forth in this Settlement. To address its current financial needs, PGW will be permitted to charge and collect by the end of August, 2001, the PUC's authorized \$11 million interim rate increase, together with the recovery of an additional \$7 million through its GCR to account for additional bad debt expense produced by dramatically higher projected natural gas costs incurred by PGW. PGW will also be permitted to hold in reserve any GCR overcollection that it actually incurs, not to exceed an amount set forth herein, to insure that it will be able to have sufficient cash to meet its bond covenants through the beginning of 2002.

expedited time period for other parties to comment on this full settlement. The Joint Petitioners agree that as soon as practicable: (1) PGW will provide notice to its customers via a bill message; (2) PGW will post a notice in its offices; and (3) PGW will provide notice by news release.

These rate and GCR increases, as well as prudent operational changes and the establishment of a deferral account, are designed to respond to PGW's projected financial obligations and are consistent with the PUC's obligation to establish rates for PGW which permit it to meet all of its Bond Ordinance covenants and to otherwise comply with Section 2212 of the Public Utility Code.

Upon entry of a final order by the Commission setting forth the terms herein, PGW and the City of Philadelphia will cause their Petitions For Review filed with the Commonwealth Court, at 557 M.D. 2000, to be withdrawn and terminated. Upon withdrawal of the Petition for Review, the Commission's final order will become effective.

II. BACKGROUND

1. PGW is a group of real and personal assets owned by the City of Philadelphia and used for the acquisition, storage, processing, and distribution of natural gas within the City. PGW qualifies as a "city natural gas distribution operation" pursuant to Section 102 of the Public Utility Code. 66 Pa. C.S. §102. PGW provides natural gas supply and distribution services to over 520,000 customers.
2. For the purposes of this Joint Petition and pursuant to Section 2212(k) of the Natural Gas Choice and Competition Act ("Gas Choice Act"), 66 Pa. C.S. §2212(k), PGW is an instrumentality of the City of Philadelphia.
3. PGW is managed by the Philadelphia Facilities Management Corporation, subject to oversight by the Philadelphia Gas Commission ("PGC") and, in some instances, Philadelphia City Council and the City's Director of Finance, pursuant to an Agreement for Management and Operation of Philadelphia Gas Works with the City of Philadelphia executed on December 29, 1972. On the same date, the Management Agreement was incorporated into and approved by an ordinance of Philadelphia City Council (No. 455 of 1972) ("Management Agreement Ordinance").

4. The City of Philadelphia is a signatory to this Joint Petition for purposes of implementing paragraph 30, relating to withdrawal of the appeal, and paragraphs 19 and 20 relating to the independent management search process.

5. Prior to July 1, 2000, PGW operated under the jurisdiction of the PGC. The PGC fixed and regulated gas rates consistent with the standards set by the ordinances of the City, including the Management Agreement Ordinance and the City's Bond Ordinances.

6. On July 1, 2000, the PUC assumed jurisdiction over PGW pursuant to the Gas Choice Act, which makes most provisions of Title 66, the Public Utility Code, applicable to PGW, as a "city natural gas distribution operation," subject to the provisions of Section 2212. 66 Pa. C.S. § 2212(b).

7. Pursuant to Section 2212(d) of the Gas Choice Act, until such time as a new tariff is filed by PGW and approved by the PUC in connection with a restructuring, PGW continues and "shall continue to provide natural gas supply and natural gas distribution services to its customers under the prior tariff and the policies or programs existing . . ." on July 1, 2000. 66 Pa. C.S. § 2212(d). Based on its "prior" tariff and the Gas Choice Act, PGW is authorized to request modifications of that tariff from the PUC.

8. The Gas Choice Act states that, notwithstanding any other provision of the Public Utility Code to the contrary, the PUC shall follow the "same ratemaking methodology and requirements" that were previously applicable to PGW when determining PGW's operation's revenue requirement and approving overall rates and charges. 66 Pa. C.S. § 2212(e).

9. The Gas Choice Act also states that the PUC shall permit PGW to impose, charge or collect rates or charges as necessary to comply with the City's bond covenants. 66 Pa.C.S. §2212(e).

10. PGW has at least three relevant Bond Ordinance covenants:

- a) A covenant that requires PGW to maintain funds that are 150% of its annual debt service obligation;
- b) A covenant that requires PGW and its owner, the City of Philadelphia, to charge rates that permit PGW to have sufficient cash to pay all of its obligations, including its debt service obligations, during each fiscal year in full when they are due; and
- c) A covenant that requires PGW and the City to continuously maintain and operate the Gas Works.

11. Shortly after the PUC's assumption of jurisdiction, PGW filed a petition with the PUC requesting it to establish an expedited process to consider an increase in PGW's rates and to grant the increase prior to the Winter 2000-01 heating season (during which PGW collects a substantial portion - nearly 70% - of its revenues). By Order entered August 17, 2000, the PUC granted PGW's request for such an interim rate proceeding.

12. As a condition to the PUC's expedited consideration of its request for an immediate rate increase, PGW agreed, among other things, that any interim rates ultimately granted by the PUC would be subject to refund if, at the conclusion of the full base rate case, the PUC determined that a lower level of rates was appropriate under the law.

13. After the expedited proceeding, the Commission entered its Order on November 22, 2000, allowing PGW an \$11 million interim increase in its base rates. In addition, the Commission conditioned the implementation of that increase on a series of conditions on the part of PGW regarding its management and services.

14. On December 7, 2000, PGW filed a Petition for Review, in the Commonwealth Court's original and appellate jurisdiction, challenging the Commission's November 22nd Order both as to the amount of authorized interim rate increase and the conditions imposed thereon.

15. On December 7, 2000, PGW also filed an Application for Stay and Affirmative Relief Pending Appeal with the PUC requesting that the Commission allow PGW to implement a \$52

million interim increase pending appeal or, in the alternative, that it stay the conditions precedent in its Order and allow PGW to immediately implement the awarded \$11 million rate increase while PGW challenged the Order.

16. On December 20, 2000, the PUC denied PGW's Application. In denying the Application, the PUC stated that PGW could appeal its Order and implement the \$11 million interim rate increase, but it again conditioned the immediate collection of the base rate revenues on PGW's good faith compliance with the conditions.

17. Because PGW believed the conditions, as imposed, were inconsistent with Section 2212(s) of the Gas Choice Act and with City ordinances, PGW could not comply with the PUC's conditions.

18. Since the PUC's December 20, 2000 Order, PGW and the Commission's Law Bureau have engaged in good faith negotiations to try and resolve their legal disputes and the financial difficulties facing PGW without the need for additional litigation before Commonwealth Court. This Joint Petition is the product of those negotiations

III. TERMS AND CONDITIONS

The Joint Petitioners, intending to be legally bound and for due consideration given, agree as follows:

19. The City commits to make a good faith effort to complete the permanent management search process which is intended to culminate with the selection of a permanent CEO or management firm, in accordance with the "Independent PGW Management Search Process". That Process is attached hereto as Attachment "A."

20. The City commits to make a good faith effort to complete its planned effort to revise PGW's present governance structure, in accordance with the discussion set forth in the Independent PGW Management Search Process as set forth in Attachment "A."

21. PGW further commits to make a good faith effort to implement management audit recommendations set forth in the PUC Management Audit of PGW conducted by Barrington-Wellesley Group, Inc., in accordance with the Management Audit Implementation Review Process (attached hereto as Attachment "B").

22. PGW will be permitted to increase its current Customer Charge sufficient to provide an additional \$11 million in base rate revenue by August 31, 2001. The Customer Charge increase will be prorated across all firm customers. The customer charge increase will be subject to review and revision in PGW's pending base rate proceeding.

23. As part of its previously authorized GCR revision opportunity in March, 2001, the non-gas cost portion of PGW's GCR rate will be increased to produce \$7 million, compressed so as to be collected by August 31, 2001, the end of PGW's current GCR period, in order to recover additional bad debt expense associated with gas costs in excess of the level assumed in the Interim Rate Proceeding. This amount will not be reconciled against actual gas costs. The bad debt expense will be subject to review and revision in PGW's pending base rate proceeding.

24. Depending upon PGW's next GCR update, the \$7 million non-gas costs will either be subsumed within any calculated over-recovery or will be separately billed as an increase to the existing, or then authorized, GCR factor.

25. The Joint Petitioners request that the Commission recognize that PGW must have a \$20-25 million positive cash balance at fiscal year end. Joint Petitioners also request Commission recognition that certain steps that PGW will take to conserve cash are prudent in light of all currently known circumstances and consistent with its supply and reliability obligations to customers. Those steps include:

- a) The foregoing of Spring/Summer injections for a portion of PGW's storage fields and, in the alternative, the securing of a purchased gas contract by which PGW will obtain gas for customer use during the 2001-02 winter; and

- b) The use of a predetermined injection schedule in order to fill the remainder of its gas storage fields which will delay PGW's major gas purchasing obligations until the latter part of the gas storage injection season.

26. PGW anticipates that other operational steps will also assist the Company in producing cash flow.

27. Any additional calculated GCR over-recovery, up to \$18 million (for a total of \$25 million), will be held in a reserve account to be used as necessary to meet Bond Ordinance covenant requirements, i.e., debt service and/or timely payment of obligations when due, through January, 2002. After the PUC rules on PGW's permanent base rate request or any additional settlement thereof, PGW will make a projection of its debt service and cash obligations through January, 2002. To the extent PGW identifies a cash deficiency that would cause a Bond Ordinance covenant violation, PGW will be permitted to utilize the reserve fund (or portion thereof) to cover this deficiency. Any remaining portion of the reserve will be returned to ratepayers through the GCR, subject to PGW's right to request a different treatment. PGW will make an informational filing to the PUC when it determines whether it shall need the reserve fund, by no later than December 31, 2001, which shall be reviewed and approved by the PUC with its conclusions communicated by secretarial letter within ten (10) days of its filing.

28. The Joint Petitioners request that the PUC recognize that it has statutory obligations under Section 2212(e) to provide PGW with rates adequate to meet all of its Bond Ordinance covenants, to follow the same ratemaking methodology and requirements that were applicable to PGW prior to July 1, 2000, and to otherwise comply with Section 2212 of the Public Utility Code.

29. PGW expects that the above financial and operational steps set forth above will be sufficient to enable them to meet their financial obligations through January, 2002. If, however, these steps are not sufficient, PGW agrees that it shall request additional rate relief to meet any

shortfall only as a last resort after pursuing in good faith all other sources of revenue reasonably available.

30. Upon entry of a final order by the PUC approving the terms agreed to in this Joint Petition without modification and which makes the specific findings requested in paragraphs 25 and 28, PGW will cause its Petition For Review filed with the Commonwealth Court, at 557 M.D. 2000, to be withdrawn and terminated. After the withdrawal of the Petition for Review, the Commission's order adopting this Joint Petition shall become effective. If the PUC does not approve the Joint Petition as requested herein, PGW and the City are not legally bound to follow any of the terms set forth herein and retain the right to continue with their Commonwealth Court Petition for Review, and to take any other legally authorized action to pursue objections to the PUC's Interim Rate Order.

31. Once the Commission's Order adopting this Joint Petition becomes effective, this Joint Petition and its terms shall be implemented and enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission's approval of this Joint Petition and Settlement unless such implementation and enforcement of the Settlement is stayed or enjoined by the Commission, or by a court having competent jurisdiction over the matter.

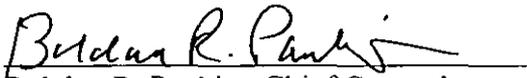
32. Acknowledging that it is expressly understood and agreed that this Joint Petition constitutes a negotiated resolution solely of issues addressed herein, the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding (including any PUC or appellate proceeding that occurs if this Joint Petition is not approved by the PUC), and shall not be characterized as the position of either PGW or the Law Bureau and shall not constitute an admission of any fact or legal principle set forth herein in any such proceeding.

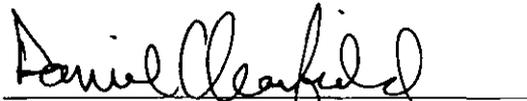
33. Unless expressly modified by this Settlement, all of the terms and conditions of the Public Utility Code and in particular, Section 2212, remain in full force and effect.

IV. CONCLUSION

WHEREFORE, the Joint Petitioners, intending to be legally bound, respectfully request the Commission: (1) approve without modification the proposed settlement as set forth in this Joint Petition; (2) amend the Commission's Orders entered in this matter on November 22, 2000, as necessary to implement the full settlement effective upon PGW's withdrawal of its Commonwealth Court Petition for Review; and (3) approve the tariff supplements designed to become effective immediately pursuant to the terms set forth herein.

Respectfully submitted,


Bohdan R. Pankiw, Chief Counsel
For: PaPUC Law Bureau


Daniel Clearfield, Esq.
Mark S. Stewart, Esq.
For: PGW


Daniel W. Cantú-Hertzler, Chair
For: The City of Philadelphia

Dated: February 8, 2001

RECEIVED
01 FEB -8 AM 10:40
PA.P.U.C.
SECRETARY'S BUREAU

Attachment A

Independent PGW Management Search Process

INDEPENDENT PGW MANAGEMENT SEARCH PROCESS

The City and the Philadelphia Facilities Management Corporation (PFMC), are committed to retaining top quality permanent management for PGW as soon as possible.

In preparation for the management search the City sought advice concerning the possible impact on PGW's tax-exempt debt should a for-profit management firm be retained to manage PGW. Second, preliminary inquiries have been made about search firms with utility experience. Third, a decision has been made to search for an individual CEO simultaneously with a search for a management company, leaving the final decision as to the direction to take until an evaluation of the candidates and the condition of PGW at that time can be performed. Fourth, in an attempt to learn from prior experience, a review has been conducted of the process used in the most recent search for PGW management.

I. GOVERNANCE

PGW's current governance structure is recognized as a barrier to PGW's ability to attract top quality management. The City commits to advance proposals which will simplify PGW's governance structure and result in an independent professional management for the Gas Works. Any governance changes must be made by ordinance. City Council is currently considering Bill 603 which would eliminate PFMC and give management authority to the Gas Commission. Mayor Street opposes Bill 603. It is expected that the governance issue will be resolved before City Council's recess for the summer at the middle of June.

II. REQUIREMENTS FOR SEARCH PROCESS

1. The search process will be conducted independently of the present interim management team.

2. The search will seek professional individuals or firms experienced in utility operations.
3. The search will seek to retain independent professional management for at least a 4-year commitment.
4. The members of the search team will develop expertise and experience requirements that would typically be required for such a position.

III. SEARCH PROCESS TIMELINE

<u>ACTION</u>	<u>COMPLETION DATE</u>
Complete Analysis of Impact on Tax-Exempt Bonds	February 15
Three Track Parallel Process:	
Retain Search Firm(s)	March 15
a) Form City Committee Issue RFP for Management Firm	April 6
b) Issue Request for Applications for CEO position	April 6
c) Analyze Potential Benefits of Sale of PGW	June 14
Adopt New PGW Governance	June 15
Conduct Interviews of Candidates for CEO And Management Firm	September 7
Initiate contract negotiations with Winning candidate	October 1
Approval and Execution of contract with Selected candidate	December 31

Attachment B

Management Audit Recommendations Review Process

Management Audit Recommendations Review Process

1. PGW has met with the PUC audit staff and discussed all recommendations in detail. The Company will agree to make a good faith attempt to implement all recommendations of the Management Audit except those that PGW takes exceptions to.
2. Reasons for taking exception to a management audit recommendation will be limited to in which PGW has a good faith belief that the recommendation is inconsistent with one of the following:
 - a. legality of the recommendation (e.g., beyond PGW's legal authority to implement including that the recommendation is not an issue over which PGW Management has control or that PGW is under a legal obligation to take a different position);
 - b. affordability, feasibility and material quantification issues (e.g., the Company believes in good faith that it does not or may not have funds available to implement the recommendation while funding all other necessary operations and meeting legal obligations, that quantification of the benefit/recommendation is not accurate or justified; or that the recommendation would inappropriately reduce existing consumer protections or consumer benefit programs);
 - c. collective bargaining (i.e., the recommendation would violate PGW's existing collective bargaining agreement);
3. Prior to filing an implementation plan, PGW will collaborate with the Law Bureau regarding the management audit recommendations/findings that PGW is unable to implement, consistent with one of the above reasons. The collaborative process will work to resolve issues raised or to arrive at revised actions that PGW can agree to take.
4. After this process, PGW will have opportunity to submit a proposed Implementation Plan to the PUC containing its plan for implementing the recommendations that it accepts and its position on all recommendations that remain contested.
5. After PGW's submission of its proposed implementation plan, the PUC will issue an order with respect to the Management Audit. To the extent that contested recommendations remain, the PUC Law Bureau may initiate enforcement proceedings or the PUC may consolidate any enforcement proceedings with PGW's base rate case. The PUC shall not issue an order directing PGW to comply with any recommendation without giving PGW the opportunity to be heard and an evidentiary hearing on all recommendations where there are factual issues. PGW retains right to appeal any PUC Order.

CERTIFICATE OF SERVICE

ORIGINAL

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 FEDERAL EXPRESS

Tanya McCloskey, Esq.
Steve Keene, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

Angela Jones, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101

Jackie Sparkman, Esquire
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

Johnnie Simms, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Charis M. Burak, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141
(CEPA)

Philip Bertocci, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102

Richard Lelash
Financial and Regulatory Consultant
18 Seventy Acre Road
Redding, CT 06896
(OCA)

Craig A. Doll, Esq.
25 North Front St., 2nd Floor
Harrisburg, PA 17101-1606

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

Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

RECEIVED
01 FEB -8 AM 10:39
PA P.U.C.
SECRETARY'S BUREAU

Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406
(PICGUG)

Dated: February 8, 2001



Daniel Clearfield, Esq.

RECEIVED
01 FEB - 8 AM 10:40
PA P.U.C.
SECRETARY'S BUREAU

Wolf, Block, Schorr and Solis-Cohen LLP

212 Locust Street
Suite 300
Harrisburg, PA 17101

T: 717 237 7160
F: 717 237 7161
www.wolfblock.com

DANIEL CLEARFIELD
DIRECT DIAL: (717) 237-7173
E-MAIL: DCLEARFIELD@WOLFBLOCK.COM

February 8, 2001

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
North Office Bldg., Rm. B-20
Harrisburg, PA 17120

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 nine copies of its Joint Petition for Full Settlement of PGW's Petition for the Establishment of Interim Rates and Related Appeal 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:26000.1

ORIGINAL



1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clsphila.org

RECEIVED

FEB 15 2001

February 15, 2001

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

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

Filed by Federal Express
Priority Overnight

**Re: Pennsylvania Public Utility Commission, et al. v. Philadelphia Gas Works
R-00005654**

**Comments of CEPA et al. in Opposition to the Joint Petition for Full Settlement
of Philadelphia Gas Works' Petition for the Establishment of Interim Rates and
Related Appeal**

Dear Secretary McNulty:

I represent the Consumers Education and Protective Association et al. in the
above-captioned matter.

Enclosed please find for filing an original and three (3) copies of the Comments of
CEPA et al. in Opposition to the Joint Petition for Full Settlement of Philadelphia Gas
Works' Petition for the Establishment of Interim Rate and Related Appeal.

These Comments are being served this date on the parties listed on the Certificate
of Service by First Class U.S. Mail, postage prepaid.

Very truly yours,

PHILIP A. BERTOCCI

Attorney for CEPA et al.

cc: Certificate of Service

Enclosures

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility
Commission, et al.**

: Docket No. R-00005654

v.

DOCKETED RECEIVED

FEB 20 2001

Philadelphia Gas Works

**DOCUMENT
FOLDER**

FEB 15 2001

**A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**COMMENTS OF CEPA ET AL. IN OPPOSITION
TO THE JOINT PETITION FOR FULL SETTLEMENT OF
PHILADELPHIA GAS WORKS' PETITION FOR THE ESTABLISHMENT
OF INTERIM RATES AND RELATED APPEAL**

I. Introduction.

On February 8, 2001, the Philadelphia Gas Works and its owner, the City of Philadelphia (hereinafter "PGW") and the Commission's Law Bureau filed with the Commission a Joint Petition for Full Settlement of Philadelphia Gas Works' Petition for the Establishment of Interim Rates and Related Appeal (hereinafter "Settlement"). PGW requested the PUC to issue an order approving the Settlement "without modification" and setting forth certain "specific findings" and "recognitions" concerning PGW's projected FY 2001 year end cash needs, the "prudence" of proposed gas supply measures and the applicability of Public Utility Code Section 2212 to PGW ratemaking procedures.

The Settlement purports to be a comprehensive settlement of all issues arising from the dual jurisdiction Commonwealth Court case which PGW had filed on December 7, 2000. That case collaterally attacked and appealed the Commission's November 21, 2000 Order (hereinafter "Interim Base Rate Order") granting PGW an interim base rate increase of \$11 million subject to certain conditions directly related, inter alia, to

customer service, the implementation of the recommendations flowing from the PUC's Management Audit, and the expeditious engagement of permanent professional management for PGW.

In the Commonwealth Court proceeding, CEPA et al.¹ intervened on the side of the Commission in support of the Interim Base Rate Order, which, although not everything which CEPA et al. had sought before the Commission, was a just and reasonable determination that was within the Commission's ample discretion in this interim base rate increase proceeding.

In the present Settlement, PGW, after imposing upon the Commission's well-burdened Law Bureau, seeks once again to obtain through back room special pleading what it was not able to obtain publicly from the Commission, and what it would not have obtained through pursuit of either its overheated Mandamus and Equity Actions or its Appeal to the Commonwealth Court. As these comments will demonstrate, the Settlement is a monolithic and one sided document, which increases financial burdens on ratepayers, transfers risks to ratepayers, and dilutes the PUC's conditions aimed at improving PGW performance -- without a single compensatory commitment by the City to share the burdens of past mismanagement and to dedicate ratepayer resources currently earmarked for City coffers to partially mitigate the current rate shock.

A little under three months ago, on November 21, 2000, PUC Chairman John M. Quain observed in his Motion in support of the Interim Base Rate Order that PGW had stubbornly resisted the limitations which the Company itself had defined at the outset of

¹ CEPA et al. are four Philadelphia based membership and advocacy organizations which support consumer rights in a wide range of matters. The four organizations are: Consumers Education and Protection Association (CEPA); Association of Community Organizations for Reform Now (ACORN); Action Alliance of Senior Citizens; and Tenants' Action Group.

the Interim Base Rate Case. In so doing, the Chairman and the Commission clearly understood that such behavior by the City and PGW “shows a patent disregard for the impact ... [that PGW’s rate claims] will have on ... customers. The coverage requested by PGW virtually doubles the basic financial requirements for their bond coverage. The fact that PGW can even contemplate a request for a “cushion” in a situation where service to customers is clearly inferior is unacceptable” (Emphases added).²

PGW has now returned to the Commission to renew its request for a “cushion” in a different form. Such request is renewed after the Commission has granted PGW a second adjustment in its Gas Cost Rate in the amount of \$133 million – which has caused over a 50% rate increase in the residential customer’s overall bill above pre-November 21, 2000 levels. CEPA et al. urge the Commission to reject this Settlement as unjust and unreasonable.

II. The Commission Must Review the Settlement as a Contested Case and May Approve It Only If It Is Supported by Substantial Evidence in the Record, and Is in Conformity with Law.

Although the Settlement has been presented as a “Full Settlement,” the Settlement presented by the PUC Law Bureau and PGW for approval is only a Partial Settlement, because it is opposed by parties like CEPA et al. who have since the outset been active in this case and the related Commonwealth Court appeals. The Commission’s review of this partial Settlement must be consistent with processes and standards for deciding a contested case. Re PECO Energy Co., R-00973953, P-00971265, 181 PUR 4th 507, 1997 WL 824004 (Pa. PUC December 23, 1999).

² Motion of Chairman John M. Quain, November 21, 2000, PUC Docket No. R-00005654.

In a contested rate case, the burden of proof is on the proponent of an order to show that the terms of the order are just and reasonable. 66 Pa.C.S. §315 (burden of proof to show that proposed rate is just and reasonable is on the public utility); 66 Pa.C.S. §332(a) (except as provided in Section 315, the proponent of a rule or order has the burden of proof). To approve a contested settlement, the Commission must find substantial evidence in the record supporting the settlement terms, and those terms must be in accordance with law. See 66 Pa.C.S. §332(b) (“No sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence”). A similar standard is applicable on judicial review. A court should uphold the findings of the PUC unless the adjudication is in violation of constitutional rights, is not in accordance with law, or is not supported by substantial evidence. 2 Pa.C.S. §704; see also Popowsky v. Pennsylvania Public Utility Commission, -- Pa. --, 706 A.2d 1197, 1201 (1997). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Republic Steel Corp. v. Workmen’s Comp. Appeal Bd., -- Pa. --, 421 A.2d 1060, 1062 (1980).

III. Reasons Why the Commission Must Reject the Settlement.

A. The Commission Must Reject the Settlement Because It Is Not Just and Reasonable.

1. The Just and Reasonable Standard is the Paramount Standard in Determining an Appropriate Interim Base Rate for PGW.

As the Public Utility Commission recognized in its November 22, 2000 Interim Base Rate Order in this case, the “just and reasonable” standard is the paramount

standard in all ratemaking, not merely for PGW but for all Pennsylvania public utilities. Interim Base Rate Order, at 6 (“We are to assess the request before us in the context of the “just and reasonable standard,” keeping in mind our statutory obligation to provide minimal debt service coverage as required by Section 2212 of the Public Utility Code”). This standard is constitutionally based. It is a standard which looks beyond the particular ratemaking methodology provided for in state or local law, and commands the ratemaker to ultimately address whether the “total effect” or “impact” is “just and reasonable.” Like the provisions in the Public Utility Code which adopt that standard, adherence to this standard may not be waived without violating the supreme law of the land. Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602, 64 S.Ct. 281, 288 (1944); 66 Pa. C.S. §1301; Public Advocate v. Philadelphia Gas Commission, 674 A.2d 1056 (Pa.Cmwlt. 1996); Action Alliance v. Philadelphia Gas Commission, 406 A.2d 1155 (Pa.Cmwlt. 1979). The provisions of the Settlement which address ratemaking methodology do not and can not suggest that any other standard is applicable.³

The Commission can only approve this settlement if it finds that the Settlement terms are just and reasonable and supported by substantial evidence in the record. CEPA et al. oppose the Settlement because the record in this case does not support such a finding. As Federal Power Commission v. Hope Natural Gas Co. requires, in determining a just and reasonable rate, the ratemaker must balance customer and investor or owner interests. In determining a just and reasonable rate, the ratemaker is entitled to take into

³ It is to be noted that the Settlement provides for explicit “recognition” to be made by the Commission in approving the Settlement that the Commission shall comply with Section 2212 of the Public Utility Code, the section of the Gas Choice Act which contains most of the provisions concerning transfer of jurisdiction over PGW’s tariff and rates from the Philadelphia Gas Commission to the Pennsylvania Public Utility Commission. Settlement, ¶ 28. CEPA et al. regard this “recognition” as only a repetition of the recognition which the Commission already provided in the Interim Base Rate Order. See Interim Base Rate Order, at 8 (“Section 2212(e) provides that in determining PGW’s revenue requirement and approving overall rates and charges, the Commission ‘shall follow the same ratemaking methodology and requirements that were applicable’ to PGW before the Commission assumed jurisdiction over its operations”).

account burdens imposed on customers by inadequate service, incompetent management decisions and by other events such as rapid run ups in gas cost rates like those which have been experienced recently. In its Interim Base Rate Order, the Commission succinctly applied this standard when it stated:

We agree with the intervenors who observe that it is important to recognize in this proceeding that PGW's current financial situation is largely one of its own making and that it is unfair to saddle ratepayers with the entire burden of immediately correcting those problems.

(Interim Base Rate Order, at 10). In this case, the Commission has itself recognized that the record contains pervasive evidence of inadequate service, widespread mismanagement over many years, lack of necessary permanent management and customer hardship caused by a level of gas cost rate increases resulting in increases of over 50% in the monthly bills of residential customers. Interim Base Rate Order, at 19, 10, 26, 27.

2. The Settlement Is Not Just and Reasonable Because It Uniformly Imposes Burdens on Customers While Relieving the City of Philadelphia of Its Ownership Responsibilities.

Notwithstanding all the aforementioned factors, which weigh on the side of customers, the Settlement uniformly imposes added burdens in the form of increased payments and increased risk of more payments on customers, while shielding the City and the Company from ownership risks and duties.

First, the Settlement permits PGW to realize the base rate increase originally granted in volumetric terms through an increase in the Customer Charge from \$8 to approximately \$12 monthly, large enough to permit recovery of the full \$11 million before August 31, 2001. It does not even specify how revenues derived from the increased portion of the Customer Charge will be treated after August 31, when PGW's

fiscal year ends. In taking this step, PGW has with one swift stroke shifted onto ratepayers the burden which PGW assumed for itself when it resolved to decline the \$11 million (characterized as a "token") and file an appeal.⁴

Second, the Settlement permits PGW to recover another \$7 million from customers in FY 2001 through the Gas Cost Rate as a non-reconcilable gas cost. The Settlement provides that to the extent that a GCR overcollection of \$7 million is projected as of March 1, 2001, PGW is under no obligation to reduce its GCR, or to refund that \$7 million in the FY 2002 GCR. To the extent that PGW does not anticipate a GCR overcollection of \$7 as of March 1, 2001, PGW may increase its Gas Cost Rate for the third time in four months to bill for this sum on a compressed basis over the remainder of this fiscal year. In effect, this provision increases the Interim Base Rate Increase which the Commission has granted from \$11 million to \$18 million.

Third, in the event of a year end GCR overcollection, the Settlement permits PGW to temporarily retain an additional \$18 million in a reserve fund, to be used in its virtually unfettered discretion to meet supposed cash needs experienced by the Company between September 1, 2001 and January 1, 2002. \$18 million of this money, which has been justified for collection from customers as gas costs on a strictly reconcilable basis, pursuant to formal proceedings, would thereby be irrevocably transformed into non refundable PGW revenues. With the \$7 million increase described above, this provision potentially increases the Interim Base Rate Increase which the Commission has granted from \$11 million to \$36 million.

⁴ The Settlement does not specify how revenues generated by the Customer Charge increase after August 31, 2001 will be treated. If the Commission approves the Settlement, it should condition approval on acceptance of the requirement that such revenues shall not become non-refundable PGW revenues in the event, as seems now likely, that PGW's pending Base Rate Increase case will not have been completed by September 1, 2001.

Fourth, the Settlement provides that the Commission provide approval in advance to PGW for an approach to gas procurement for FY 2002 gas supply which, while assisting PGW's cash flow in FY 2001, may expose customers to substantial risk of increased gas costs in FY 2002.

To top off this unending demand for more, the City and PGW are at pains to remind the Commission that they reserve their right to come back to ask for further benefits at the expense of ratepayers. Settlement, ¶¶ 27,29.

3. The Assurances to Ratepayers Contained in the Settlement Are Illusory.

If the Settlement reflected an appropriate application of the "just and reasonable" standard, one would expect to see a sharing of the burdens that the parties identify as associated with PGW's continuing cash flow problems substantially caused by the accumulated effects of poor collections practices and by the shocking rate increases associated with increased gas costs. There is no such sharing in this Settlement, only more smoke and mirrors like Paragraph 29.

In that provision, PGW opines that the Settlement provides rates sufficient to enable the Company to "meet their financial obligations through January, 2002." However, if the resources provided through the Settlement are not sufficient, the Company "agrees that it shall request additional rate relief to meet any shortfall only as a last resort after pursuing in good faith all other sources of revenue reasonably available." Settlement, ¶29. This provision provides little comfort to ratepayers.

First, PGW has already requested "additional rate relief" in that it has filed a request for a permanent base rate increase of \$65 million, \$13 million more than was

requested in the Interim Base Rate Case. The Settlement makes no commitment to alter that filing in light of rate relief provided on an interim basis in this case. If PGW's pending permanent base rate increase request is not reduced by at least \$11 million, then PGW has already, as we speak, requested the "additional rate relief" that it now promises not to seek.

Second, although the City of Philadelphia is a party to the Settlement for the purposes of Settlement Paragraphs 19, 20, and 30 (relating to new management and withdrawal of the Commonwealth Court appeals), the City is not a party to this Paragraph 29. See Settlement, ¶4. It is not committing any resources "reasonably available" to it to mitigate enormous burdens placed on ratepayers by PGW's debacle. In the Commonwealth Court cases, PGW and even the City objected to the Commission's requirement in the Interim Base Rate Order that management reforms be undertaken on the grounds that "legal requirements" like City Council approval prevented the City from taking certain steps. Petition for Review, ¶ 53 (Philadelphia Gas Works; the Philadelphia Facilities Management Corporation; City of Philadelphia v. Pennsylvania Public Utility Commission, Cmwlth Ct., No. 537, M.D. 2000). Thus, it is to be expected that although the City is ever ready to claim the benefits of ownership when it comes to pocketing with interest the annual \$18 million City payment, it is not ready to even recognize, let alone assume the burdens that come with ownership responsibilities.

Third, customers can not draw any comfort from a provision referring to "all other sources of revenue reasonably available" which fails to mention even one resource which in a City budget of over \$2.8 billion just might be available! It can be expected that if resources are not "reasonably" available to prevent heaping added costs and risks on ratepayers at this time, the City will claim that there are none "reasonably available" at any future time either.

B. The Provision for Recovery of an Additional \$7 Million Through the Gas Cost Rate is a Hidden Interim Base Rate Increase, above the \$11 Million Already Granted.

1. Under the Guise of an Additional Gas Cost Adjustment, the Settlement Proposes a \$7 Million Base Rate Increase.

In Paragraph 23, the Settlement provides that the “non-gas portion of PGW’s GCR rate will be increased to produce \$7 million, compressed so as to be collected by August 31, 2001, the end of PGW current period.”⁵ Settlement, ¶ 23. Although this \$7 million is to be included in the GCR, unlike all other GCR items, it “will not be reconciled against actual gas costs” (or presumably other non-gas costs included in PGW’s GCR). Although the Settlement states that the GCR “rate” will be increased to recover this \$7 million on a compressed basis, it appears that this \$7 million may be recovered without an actual increase in the GCR charged to customers. To the extent that PGW projects an overcollection as of March 1, 2001, such that it would otherwise be required to reduce its GCR by \$7 million, PGW will not have to make this reduction by reason of the Settlement.⁶

⁵ In this connection, the Commission must bear in mind that the Settlement arises from the Interim Base Rate Order. The Interim Base Rate Order was granted on the condition that if the pending Permanent Base Rate Case results in a determination that the Base Rate Increase should be less than the Interim Base Rate Increase, then customers should be entitled to a refund. These same provisions should apply to the Settlement Agreement, which in effect, has provided an Interim Base Rate Increase of at least \$18 million.

⁶ As in the case of the increase in the Customer Charge for the balance of FY 2001, the Settlement does not address the situation which would arise should PGW raise the existing Gas Cost rate on March 1, 2001 in order to recover an additional non-reconcilable \$7 million. If the Commission approves the Settlement, it should condition such approval upon acceptance of the requirement that PGW will not be permitted to bill customers that portion of the GCR which would account for recovery of the non-reconcilable \$7 million in association with any gas consumed after August 31, 2001. In the event that PGW is allowed to continue billing customers after August 31, 2001 the incremental portion of the GCR associated with the \$7 million, any revenues so generated should be credited against the FY 2002 gas costs.

2. The \$7 Million Non-Reconcilable Non-Fuel Gas Cost Increase Is Not Supported by Substantial Evidence and Is Not in Conformity With Law.

The Commission should reject this portion of the Settlement. The proposed institution of an uncollectibles expense to be collected through the Gas Cost Rate is not consistent with existing law.⁷ Neither the Public Utility Code nor PGW's Tariff permits an uncollectibles expense to be collected through the Gas Cost Rate. Such provision for recovery of uncollectible costs is also not consistent with the policies underlying gas cost rates. Such gas cost rates were created to permit recovery of gas costs which were volatile in nature and not within the control of a public utility. To be sure, Section 11.5 of PGW's Tariff permits collection of certain specified reconcilable non-gas costs also deemed to be volatile and not within the Company's control.⁸ However, bad debt expense is not among the enumerated non-gas costs recoverable through the GCR under that Tariff.

Moreover, the determination of the amount of a bad debt expense is largely judgmental. It is closely linked to management practices, and is quintessentially a cost which management has a duty to stringently control.

To permit the \$7 million to be collected as a non-reconcilable non-fuel cost through the GCR also violates the scheme which has been adopted for updates of PGW's gas cost rate pursuant to Section 1307(f) of the Public Utility Code and 52 Pa.Code

⁷ In this proceeding, the Commission determined that PGW's uncollectibles expense should be estimated at 7.4% of gas billings. Interim Base Rate Order, at 16. The \$7 million allowance for bad debt associated with the January 1, 2001 \$133 million increase in the Gas Cost Rate permits recovery by this mechanism of a portion of the bad debt that could reasonably be associated with this level of gas cost increase. The fact remains that this allowance for bad debt is therefore not supported by substantial evidence in the record. The premise of the Interim Base Rate Order was that the PGW Gas Cost Rate would be set at \$97 million above the pre-November 22, 2000 level, with the opportunity for further updates.

⁸ PGW Tariff Gas -Pa. P.U.C. No. 1, §11.5.

§53.64. Updates in the gas cost rate are legally justifiable, without extensive hearing, because the variables for calculating the appropriateness and the amount of the adjustment are narrowly defined, and concern recoveries which are totally reconcilable at year end with full due process protections. National Fuel Gas Distribution Corp. v. Pa. Public Utility Commission, 81 Pa.Cmwlth. 148, 473 A.2d 1109 (1984); see also 52 Pa.Code §53.64(i)(3).

In contrast, if the Company should require an increase up to \$7 million in the Gas Cost Rate pursuant to Paragraphs 23 and 24 of the Settlement and/or assert its right not to refund \$7 million in gas cost overcollections, the Settlement would deny customers their due process rights. Under both the federal and state constitutions and the Public Utility Code, customers have a due process right to challenge the appropriateness of the Settlement's provision for the designation of a portion of funds collected through a Gas Cost Rate as not subject to refund.⁹ Cf. Community Central Energy Corporation v. Pa. Public Utility Commission, 436 A.2d 1255 (1981)(due process violated where utility company not permitted full hearing on its claim that part of gas cost rate overcollection should not be refunded).

The Commission should also reject this part of the Settlement on policy grounds, because it represents a breach of trust with ratepayers. In a time of high price volatility, it is critical that customers learn to distinguish between costs over which a public utility and a public utility commission may exercise control, and costs which for the most part, even when incurred pursuant to least cost fuel procurement policies, are beyond the control of

⁹ The meaning of the last sentence of ¶23 ("The bad debt expense will be subject to review and revision in PGW's pending base rate proceeding") is unclear. Certainly, in any base rate case, the bad debt expense is subject to review as part of determining the cost of service. But it is hard to see how the fact of this "review" would impact the burden placed on ratepayers by an irreconcilable non-fuel cost included in otherwise reconcilable GCR costs during the test year. If the Commission approves the Settlement, it should condition its approval on the requirement that whatever "revision" might take place will not result in additional burdens on ratepayers.

the utilities and their regulators. Section 1307(e) of the Public Utility Code establishes a rebuttable presumption that over recovered gas costs will be returned to customers in the subsequent 12 month GCR period ("Absent good cause being shown to the contrary, the commission shall ...direct each such public utility to, over an appropriate 12-month period, refund to its patrons ...[any overrecovery]..."). 66 Pa.C.S. §1307(e)(3).¹⁰

In this case, Gas Cost Rates have been set and procedures have been created on the premise that alleged gas costs are truly gas costs within a narrow definition of the term, and the non-fuel costs included in PGW's Gas Cost Rate have been strictly defined. In its notices to customers, both the PUC and PGW have stressed that the increases in the gas cost rate are linked to increased fuel costs. To the degree that there has been public acceptance of an overall increase in natural gas rates in Philadelphia of more than 50% above pre-November 21, 2000 levels due only to the GCR increases, that acceptance may be attributed to public understanding that gas costs, as opposed to base rates, are not within the control of PGW or its regulators. It is a breach of trust for PGW and the Commission, now that rates have been raised, to propose not to refund all excess monies collected through the Gas Cost Rate, but rather to use certain amounts for purposes which have not received full due process review. Such action only furthers public cynicism and gives the impression that PUC regulation is just back room politics as usual.

¹⁰ The formula in PGW's Tariff governing calculation of the Gas Cost Rate expressly provides for refund of GCR overcollections in the subsequent period. "Factor E" is treated as a credit or debit to the projected cost of natural gas, and is defined as "experienced net over billings (or under billing) of the cost of natural gas and other raw materials as of the end of the computation year." PGW Tariff Gas - Pa.P.U.C. No. 1, §§ 11.2, 11.3.

C. The Settlement Also Potentially Contains a Hidden \$18 Million Interim Base Rate Increase, above the \$11 Million Granted, and the \$7 Million Requested.

1. The Settlement Seeks Pre-Authorization to Convert Refundable Revenues Overcollected This Year from Customers through High Gas Cost Rates to Its Own Use.

Paragraph 27 of the Settlement addresses what may only be termed a “hypothetical circumstance” – that after successive unparalleled increases in the Gas Cost Rate sustained by customers in December and January, gas prices would have declined so quickly and steeply as to produce an overcollection of as much as \$25 million at year’s end, August 31, 2001. The Settlement provides that PGW should be permitted to retain up to \$18 million in a reserve fund through January 2002. This reserve fund would be available for PGW use in that period when “necessary to meet Bond Ordinance covenant requirements, i.e., debt service and/or timely payment of obligations when due...” Settlement, ¶27.

PGW suggests that this \$18 million will be held until “[a]fter the PUC rules on PGW’s permanent base rate request or any additional settlement thereof...” At that time, PGW will review its “debt service and cash obligations” to identify any “cash deficiency that would cause a Bond Ordinance covenant violation.” The Settlement would by its terms, as of its effective date pre-authorize (i.e., “permit”) PGW, on the basis of its own determinations, to use the reserve fund to cover the “deficiency.”

The reference to broadly defined “debt service and cash obligations” provides no comfort to ratepayers. It is so vague as to provide justification for any disbursement of the funds. For instance, is it an appropriate use of such funds to replenish in full the \$45 million City Loan? If so, then this clause serves only as a fig leaf to cover the reality that what started as an interim base rate increase of \$11 million for FY 2001 has been

converted via the Settlement into imposition on customers of the potential requirement to pay PGW \$36 million in base rates or the equivalent for FY 2001.

In order to use this money in its discretion to cover these broadly defined needs, PGW need only make an “informational filing to the PUC” when it determines that it will need the reserve fund. Although the Settlement states that the PUC is to review and approve such use, the fact that the filing is to be only “informational,” and the approval to be communicated by secretarial letter rather than by Commission order, strongly suggests that the approval is pro forma.

2. The Potential \$18 Million Interim Base Rate Increase Is Not Supported by Substantial Evidence or in Conformity with Law.

The provision of a potential rate increase of \$18 million contained in Paragraph 27, like the smaller, but definite \$7 million increase provided in Paragraph 23, is not supported by substantial evidence on the record. In this context however, the proposal addresses an overcollection that may not even occur. The FY 2001 GCR Proceeding addressed the Company’s projections concerning anticipated fuel costs for FY 2001, not the amount of overcollection to be anticipated at fiscal year end. Moreover, that proceeding was based entirely on the assumption that money recovered pursuant to the Gas Cost Rate was totally reconcilable, in favor of the Company or of ratepayers as the case may be. 66 Pa.C.S. §1307(e)(3).

In addition, the terms of Paragraph 27 presuppose alleged facts (both the existence of an overcollection post-August 31, 2001, the overcollection amount, and PGW’s cash circumstances) which are so speculative that they should be deemed not ripe for adjudication. As such, these terms are not appropriately included in this Settlement.

Process Gas Consumers Group v. Pa. Public Utility Commission, 84 Pa.Cmwlth. 76, 480

A.2d 1273 (1984).

The provision is also contrary to law, in that, both the Public Utility Code and the PGW Tariff establish the presumption that monies raised through the Gas Cost Rate are fully reconcilable. In order to overcome that presumption, due process requires a hearing in which the burden is on the utility to establish "good cause" for conversion of GCR funds to other utility uses. Community Central Energy Corporation v. Pa. Public Utility Commission, 436 A.2d 1255 (1981). Moreover, as with the \$7 million discussed above, any use by PGW of the Section 1307(f) and 52 Pa.Code §53.64 update mechanisms in the next two months will be constitutionally tainted because of the possibility that inaccurate estimates causing an overcollection will via this Settlement be converted into additional non-refundable revenues for operating costs to the Company, above those formally determined to be necessary through base rates. Finally, once more, to allow PGW to convert an overcollection to Company use is contrary to public policy, and erodes confidence in the integrity of the regulatory processes.

D. The Request for Prudency Findings in Gas Procurement and Other As Yet Unnamed Areas All in the Name of Cash Balances Is the City's Method of Evading Its Ownership Responsibilities at Customer Expense.

1. The Prudency Findings Protect PGW But Place Customers At Financial Risk.

In Paragraphs 25 and 30, the Settlement provides that the PUC will make a "specific finding" that certain "steps" which PGW proposes to take in handling its gas supply procurement for FY 2002 are "prudent in light of all currently known circumstances and consistent with its supply and reliability obligations to customers." Settlement, ¶¶ 25, 30. In connection with this request for prudency findings, PGW further requests that the Commission "recognize" that it needs a "cash balance" of \$20-25

million at "year end."¹¹

Two proposed gas supply steps are described only in summary form in the Settlement. Both involve measures designed to defer the time when PGW would be obligated to pay for gas supplies to be used during the FY 2002 heating season. In Paragraph 25(a), PGW proposes to forego purchasing for storage month by month starting this spring into the fall in favor of selling certain substantial storage capacity while entering into a contract for purchase of gas at index for the winter season. In Paragraph 25(b), PGW proposes to defer the purchase of gas for injection in the Company's other storage fields until the "latter part of the gas storage injection season."

In a gas market which is experiencing unusual volatility, PGW thus proposes a gas purchasing plan that eschews attempting to control risk by making purchases over the maximum available period of time in favor of a strategy which places the company at the mercy of the market in the early fall. The recent events in California suggest that such a strategy may not be prudent. As the New York Times reported on February 11, 2001, quoting an electricity marketer's comments on the failure of the California system to permit hedging against market volatility:

"They didn't have to wait till the last minute to buy all that power," said John Stout, a senior vice president at Reliant Energy. "In any negotiation, if a buyer has to have something, then the longer he waits to buy it, the more the negotiating strength shifts to the seller. That was a choice that California made."¹²

Moreover, PGW does not even claim that this strategy is consistent with a "least cost fuel procurement policy." 66 Pa.C.S. §1318(a). The Settlement does not even

¹¹ As a drafting matter, the Settlement should say "FY 2001 year end", not just "at fiscal year end" to foreclose any argument that such a recognition would apply to any other PGW fiscal year.

¹² "How Power Sellers Profited on California's Panic," New York Times, February 11, 2001.

contain the term. Indeed, PGW's characterization of the terms within which its proposed measures are to be judged "prudent" contains considerations other than those set forth in the Public Utility Code. The Code provides that public utilities must follow a "least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers." *Id.* In contrast, PGW asks that the Commission find that the proposed steps are "prudent in light of all currently known circumstances and consistent with its supply and reliability obligations to customers." Settlement, ¶ 25. The Company admits that the measures for which it demands a prudency finding are aimed "to conserve cash," not to lower gas costs overall to customers. *Id.*

PGW's request for prudency findings is all the more unacceptable because the Settlement leaves the door open for the claim that the Company may seek prudency findings on cash grounds to defer main replacement activities or refurbishment of its LNG facilities. Thus, at Paragraph 25, the Settlement states that the certain steps for which it seeks prudency findings "include" (and by implication are not necessarily limited to) the enumerated gas supply prudency requests. Past practice teaches that given the opportunity to choose between continuing inefficient, costly and time-worn practices, and fulfilling its responsibilities to ratepayers to enhance the efficiency, adequacy and safety of its service, PGW will invariably choose the former and postpone the latter.

In short, rather than utilize the City Loan or the \$18 million City Payment in order to address PGW's anticipated cash flow needs, the City and the Company are strenuously seeking to position themselves to shift the costs associated with cash difficulties onto ratepayers, with the blessing of this Commission. The City may say that it is holding the \$18 million in reserve – but if this reserve is never to be used, even when absolutely needed, PGW's ratepayers have the right to ask: "If not now, when?"

2. The Proposed Prudency Findings Are Not Supported by Substantial Evidence or in Conformity with Law.

The Commission should reject this portion of the Settlement because it is not based upon substantial evidence and it is contrary to law.

It is not based upon substantial evidence because there is no record in this proceeding which would support this finding. This proceeding did not address gas costs. It is not even based upon substantial evidence contained in PGW's completed Gas Cost Rate Proceeding (PUC v. Philadelphia Gas Works, R-00005619), which did not address gas procurement for FY 2002.

Moreover, Paragraph 27 is contrary to law because such a finding concerning gas costs would not be just and reasonable. The standard for judging prudency does not include cash needs especially as here, where the owner of the utility is scheduled to receive \$18 million in payments from the utility before June 30, 2001. Management Agreement, §VII(b)(i).

E. The Settlement Is Not Complete and Could Be Used Against Ratepayers and the Commission.

The Settlement purports to be a "comprehensive settlement which resolves all issues" arising from PGW and the City's Dual Jurisdiction Appeal Petition for Review before the Commonwealth Court. Settlement, p. 1. However, that is not correct. The Settlement is incomplete in several respects.

The most serious deficiency is the lack of proposed "specific findings" which the Settlement states must be made by the Commission in approving the Settlement without modification. Those findings are to address matters outlined in Paragraph 28 (obligations

under 66 Pa.C.S. §2212) and Paragraph 25 (PGW's FY 2001 year end cash needs and prudence of certain gas supply and other measures).¹³

None of these proposed findings have been reduced to writing. Until these proposed findings are reduced to writing, neither the parties nor the Commission is in a position to know whether there has actually occurred a meeting of the minds necessary for achievement of even a Partial Settlement.

This omission is particularly troubling because the Settlement purports to be a "negotiated resolution" of rate determinations subject to certain conditions; from which PGW has appealed. Paragraph 32 specifies that the Settlement resolves those issues but "shall not constitute or be cited as controlling precedent in any other proceeding ... and shall not be characterized as the position of either PGW or the Law Bureau and shall not constitute an admission of any fact or legal principle set forth herein in any such proceeding." Settlement, ¶ 32. This wording suggests that the Settlement itself might not be cited as legal precedent, but that the Commission's Order including specific findings might be treated differently. If the Commission approves the Settlement, it should specify in its Order that any "specific findings" or "recognitions" made a part thereof are made solely for settlement purposes, and do not constitute controlling precedent.

IV. Conclusion.

The Commission's Interim Base Rate Order, rendered in the context of an expedited interim base rate proceeding requested by PGW, set a just and reasonable interim base rate and was fully within the Commission's discretion. While in

¹³ The Settlement also does not include a copy of the Form of Notice to be sent to customers pursuant to the Settlement Introduction, at 2n.1, nor proposed Tariff Sheets implementing the "prorated" increase in Customer Charges pursuant to Settlement, ¶ 11.

compliance with municipal, state and constitutional law, that Order summoned the City of Philadelphia and PGW to share with ratepayers in the burdens of commencing the refurbishment of PGW after years of mismanagement, inadequate service, and even fiscal scandal. In the months since that Order, the Commission must have learned that old habits die hard, that the City and PGW are able to depart only with great difficulty from a reflex which absorbs an annual \$18 million payment and many less avowable benefits of ownership, while consistently loading new financial burdens and other indignities upon ratepayers. The time has come to call a halt. For this reason, the PUC should stand firm on the basic terms of the Interim Base Rate Order, and reject this Settlement.

Respectfully submitted,

 PGAS

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

Attorneys for CEPA et al.

COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street, 4th Floor
Philadelphia, PA 19102
215-981-3702

Date: February 15, 2001

CERTIFICATE OF SERVICE

Re: Pennsylvania Utility Commission v. Philadelphia Gas Works

Docket Number: R-00005654

I hereby certify that I have this day served a true copy of the foregoing comments upon the following parties by First Class U.S. Mail, as follows:

Dated: 2/15/01

Daniel Clearfield, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Johnnie Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Tanya J. McCloskey, Esquire
Stephen Keene, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1921

Bernard Ryan, Esquire
Angela T. Jones, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

RECEIVED

FEB 15 2001

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Charis M. Burak, Esquire
David M. Kleppinger, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

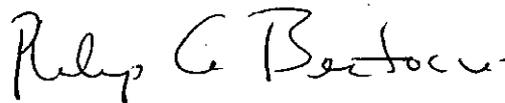
Craig A. Doll, Esquire
25 North Front Street
Harrisburg, PA 17101-1606

Walter Cohen, Esquire
Stephen W. W. Ching, Jr., Esquire
Obermayer, Rebmann,
Maxwell & Hippel
204 State Street
Harrisburg, PA 17101

Daniel W. Cantu-Hertzler, Esquire
Kenneth I. Trujillo, Esquire
City of Philadelphia - Law Department
1515 Arch Street, 16th Floor
Philadelphia, PA 19102

Bohdan R. Pankiw, Esquire
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Stanley Brown, Esquire
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120



PHILIP A. BERTOCCI, ESQUIRE

Community Legal Services, Inc,
1424 Chestnut Street, 4th Floor
Philadelphia, PA 19102
(215) 981-3702

MCNEES, WALLACE & NURICK
ATTORNEYS AT LAW

100 PINE STREET
P. O. BOX 1166
HARRISBURG, PA 17108-1166
TELEPHONE (717) 232-8000
FAX (717) 237-5300
<http://www.mwn.com>

ORIGINAL
SECRETARY'S BUREAU
01 FEB 16 11:28
RECORDED

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

February 16, 2001

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

DOCUMENT
FOLDER

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

Dear Secretary McNulty:

Enclosed please find the original and ten (10) copies of the Comments of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") in the above-referenced matter.

As evidenced by the attached Certificate of Service, all parties 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

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Enclosures
CMB/lhe

c: Stanley E. Brown, Law Bureau (via electronic mail and hand delivery)
Certificate of Service

45

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PENNSYLVANIA PUBLIC
UTILITY COMMISSION

v.

Docket No. R-00005654

PHILADELPHIA GAS WORKS

**COMMENTS OF THE PHILADELPHIA INDUSTRIAL
AND COMMERCIAL GAS USERS GROUP**

The Budd Company
The Building Owners' and Managers'
Association of Philadelphia
Jefferson Health System
Nabisco, Inc.

Newman & Company, Inc.
Sunoco, Inc.
Temple University
12th Street Gym
Smurfit Stone Container Corporation

David M. Kleppinger
Charis M. Burak
MCNEES, WALLACE & NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)

RECEIVED
01 FEB 16 AM 10:28
P.A.U.C.
SECRETARY'S BUREAU

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated: February 16, 2000

**DOCUMENT
FOLDER**

DOCKETED
FEB 20 2001

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. COMMENTS	4
A. The Joint Petition Fails To Provide Any Demonstrable Evidence As To Why The Provisions Of The November 22 Order Should Be Modified	4
B. The Joint Petition Fails To Adequately And Fully Address The Requirements Of Section 2212 Of The Competition Act	8
C. PGW's Commitment To Make "Good Faith Efforts" Provides No Assurance That The Continued Management And Governance Problems Plaguing The Company Will Be Resolved	9
III. CONCLUSION	11

RECEIVED
01 FEB 16 AM 10:28
F.A.H.U.C.
SECRETARY'S BUREAU

I. INTRODUCTION

On February 8, 2001, the Philadelphia Gas Works ("PGW" or "Company") and the Law Bureau of the Pennsylvania Public Utility Commission ("PUC" or "Commission") filed a Joint Petition for Settlement ("Joint Petition" or "Settlement") with the PUC to resolve all issues currently before the Commonwealth Court of Pennsylvania ("Commonwealth Court").¹ Before the Commonwealth Court is a Petition for Review filed by PGW regarding the PUC's November 22, 2000 Order resolving PGW's interim rate increase request for \$52 million. See Pennsylvania Public Utility Commission v. Philadelphia Gas Works; Docket No. 00005654, Order (Nov. 22, 2000) (hereinafter "November 22 Order"). This interim request stemmed from claims by PGW that the Company was facing a financial crisis and would be unable to meet its expenses and bond coverages as of January 1, 2001. The November 22 Order permitted PGW to implement an \$11 million increase in base rates, conditioned upon PGW meeting certain requirements.

The Joint Petition would modify the Commission's November 22 Order by allowing the Company to implement a \$36 million rate increase. This increase consists of three distinct components. First, PGW would be permitted to increase its base rates by \$11 million, as set forth in the Commission's November 22 Order. Second, the non-gas portion of the Company's Gas Cost Rate ("GCR") would be increased to produce \$7 million to recover additional bad debt expenses. Third, the Company's GCR would not be reconciled against actual gas costs, but rather, PGW would be permitted to retain any additional calculated GCR over-recovery up to \$18 million in a reserve account. This over-recovery would then be applied to any cash

¹The City of Philadelphia is a signatory to the Joint Petition for purposes of Paragraph 4.

deficiency that would prohibit PGW from meeting its bond covenants, through January, 2002. If any portion of the recovery remains, the ratepayers may be returned this recovery through the GCR, subject to PGW's right to request different treatment. Accordingly, the \$11 million base rate increase, the \$7 million GCR increase, and the \$18 million reserve account would result in a \$36 million rate increase to PGW.

The Joint Petition also addresses the application of Section 2212 of the Natural Gas Choice and Competition Act ("Competition Act") to PGW in future proceedings and permits PGW to use only "good faith efforts" in an attempt to resolve the Company's management and governance problems.

The Philadelphia Industrial and Commercial Gas Users Group ("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. As a result, any increase in PGW's rates substantially impacts PICGUG members' businesses. The membership of PICGUG is listed on the front cover of these Comments.

PICGUG was an active party in PGW's interim rate proceeding, and stringently argued against any increase to PGW beyond the minimal amount needed for the Company to maintain an adequate level of financial health and meet debt service requirements through the winter heating season. Pursuant to the Commission's findings, PICGUG understood that the purpose of any interim rate increase was only to ensure the Company's financial health until PGW filed a full base rate proceeding (which occurred on January 5, 2001). Because the PUC's November 22 Order resulted in a rate increase to PGW that would allow the Company to maintain a minimum

level of financial health during the winter heating season, PICGUG was in agreement with the Commission's November 22 Order.

Pursuant to the PUC's Secretarial Letter of February 8, 2001, PICGUG submits these Comments in opposition to the Joint Petition. As will be addressed more fully herein, the proposed Joint Petition fails to provide any substantive evidence to indicate why the November 22 Order must be abandoned, and instead, a rate increase over three times that originally approved must be implemented. Rather than address the Company's immediate needs (which are now less pressing considering the winter heating season is almost over and the PUC is in the process of reviewing the Company's full base rate proceeding), the Joint Petition addresses PGW's financial concerns into January, 2002.

In addition, the Joint Petition substantially changes the original requirements placed on PGW in order to receive an \$11 million increase, by permitting the Company to merely use "good faith efforts" in an attempt to improve the problems with PGW's governance and management structure, which are at the core of PGW's financial crisis. Interestingly, while the PUC's conditions have been removed, the permitted rate increase has significantly risen. The Joint Petition also vaguely addresses the interpretation of Section 2212 of the Competition Act that will be applied to PGW in the forthcoming proceeding. PICGUG has presented arguments before the Commission with respect to these issues and is an active party both in the Commonwealth Court and full base rate proceedings.

PICGUG was not privy to the discussions resulting in this Joint Petition. As a result, PICGUG has serious concerns with respect to the implementation of the settlement as a means to resolve PGW's interim rate proceeding.

II. COMMENTS

A. *The Joint Petition Fails To Provide Any Demonstrable Evidence As To Why The Provisions Of The November 22 Order Should Be Modified.*

The PUC set forth the following standard with respect to the evidence required from PGW to support the Company's proposed \$52 million interim rate increase.

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. In particular, PGW must present substantial evidence to support its assertion that an interim rate increase is necessary for PGW to comply with its covenants to the holders of any approved bonds.

Petition of Philadelphia Gas Works for Establishment of Interim Rate Procedures and for a Declaratory Order; Docket No. P-00001831, Order Establishing Interim Rate Procedures (Aug. 17, 2000), pp. 7-8 (hereinafter, "Interim Rate Order"). Accordingly, the PUC's November 22 Order finds that PGW failed to meet this standard with respect to the Company's request for a \$52 million rate increase. Rather, utilizing this standard, the Commission determined that only an \$11 million increase was needed to ensure the Company's financial health. See November 22 Order, pp. 11-12.

The Joint Petition fails, however, to provide any demonstrable evidence as to why the PUC's approval of an \$11 million rate increase should be modified to \$36 million. As more fully explained in Section I of these Comments, the Settlement would provide PGW a \$36 million rate increase resulting from three distinct components: (1) an \$11 million base rate increase; (2) a \$7 million GCR increase; and (3) an \$18 million reserve account. Of these

components, the Joint Petition labels only the \$11 million provision as a base rate increase. In actuality, however, the other two components of the Joint Petition, which the Settlement attempts to disguise as (1) a GCR increase (but one that will never be reconciled); and (2) a reserve account (for which no assurance of refund is provided), are truly base rate increases. If approved, the Joint Petition would therefore result in a \$36 million base rate increase to PGW customers.

Even though the Joint Petition would result in a significant increase to PGW customers' rates, the Settlement fails to provide any justification for modifying the PUC's November 22 Order. Specifically, the Joint Petition fails to submit any demonstrable evidence as to why the PUC's previously approved interim base rate increase of \$11 million should be increased by \$25 million for a total base rate increase of \$36 million. Moreover, the "reserve account" and the "non-reconcilable GCR increase" portions of the Joint Petition were not addressed during the interim rate proceeding and no evidence was presented by the Company as to the propriety or necessity of these provisions. In addition, the Joint Petition fails to provide any supporting documentation to substantiate these provisions.

PICGUG also has specific concerns with respect to the second component of the rate increase, which would allow for a \$7 million, non-reconcilable increase in the GCR. Throughout the course of PGW's last GCR proceeding, PICGUG argued that PGW's GCR improperly includes non-gas costs. The PUC recognized and agreed with this assertion and directed PGW to address the appropriateness of this inclusion in the Company's next base rate proceeding. See Pennsylvania Public Utility Commission v. Philadelphia Gas Works; Docket No. 00005619 Order (Nov. 22, 2000), p. 10. The Joint Petition, however, seems to ignore this direction by

allowing the Company to increase the non-gas portion of the GCR, as well as maintain the overcollection. Accordingly, if the Joint Petition is approved, the ability of the parties to address and refute the Company's placement of non-gas costs in the GCR in PGW's next base rate proceeding will be severely limited, in addition to directly affronting the previous findings of the PUC.

The Joint Petition also fails to provide any evidence as to why the non-gas portion of the GCR must be increased. Rather, the Petition merely provides that this increase will recover additional bad debt expense associated with the increased price of natural gas. If this increase in additional bad debt expense is an actuality, then the Joint Petition should provide some demonstration of the bad debt expense currently facing the Company, rather than merely allowing the parties to review the bad debt expense in PGW's pending base rate proceeding. In addition, the Joint Petition fails to provide any insight as to whether the Company's current gas costs have changed since PGW's last GCR proceeding, in which the PUC approved a \$97 million increase in the Company's GCR. Over the past several months, PGW customers have been faced with rising gas costs; to couple this increase with an additional unjustified non-gas cost increase will only add to the customers' economic suffering and compound the resulting rate shock.

This economic impact is further exacerbated by the Joint Petition's third component, which allows PGW to retain any overcollection in the GCR, up to \$18 million, to be used to meet future bond covenants. Currently, PGW customers are faced with spiraling natural gas costs in addition to a natural gas distribution company that is unable to provide efficient and adequate management. To add insult to injury, the Joint Petition would allow PGW to overcollect its GCR

at a time when natural gas prices continue to remain high. Moreover, PGW would be permitted to retain this overcollection to meet future bond covenants based upon merely the discretion of PGW as to whether these additional funds are required. The Joint Petition provides no check by the PUC with respect to whether PGW has other funds at its disposal that would be more appropriately used to meet the aforementioned bond covenants.

Interestingly, the \$18 million overcollection expected from the GCR is equivalent to the payment PGW must provide each year to the City of Philadelphia ("City"). PICGUG submits that perhaps the City, as owner of PGW, should retain the bulk of the responsibility in supporting PGW by allowing the Company to retain the City's \$18 million payment until January, 2002, rather than once again requiring the customers to shoulder the burden of the Company through an increased GCR. In addition, perhaps PGW would be more likely to return this outstanding \$18 million to the City, as compared to the provision in the Joint Petition, which provides that any remaining portion of the overcollection (thus assuming that the full \$18 million may be utilized by PGW) will be returned to ratepayers through the GCR, subject to PGW's right to request different treatment. Because the Joint Petition provides unfettered discretion to PGW with respect to the utilization of this \$18 million overcollection, PICGUG has little hope that any of the \$18 million will be returned to the ratepayers.

Finally, the Joint Petition requires the PUC to recognize that PGW must have a \$20-\$25 million cash balance at the end of the fiscal year and that certain steps PGW will take to conserve cash are prudent in light of all currently known circumstances. PICGUG submits that based upon the currently known circumstances, as set forth in PGW's interim rate proceeding and the Joint Petition, the PUC does not have the ability to recognize whether the aforementioned cash

balance and conservation steps are necessary and prudent. Rather, PGW is asking for the PUC to agree to issues, which will most likely arise during the current full base rate proceeding, based upon facts that are not in evidence. Once again, PICGUG submits that the minimal evidence set forth in PGW's interim rate proceeding, combined with the lack of evidence in the Joint Petition, do not permit the PUC to recognize and approve the aforementioned provisions. Instead, PICGUG submits that the PUC's November 22 Order should stand, and the concerns raised in the Joint Petition should be and can be more properly and thoroughly reviewed in the Company's current base rate proceeding.

B. The Joint Petition Fails To Adequately And Fully Address The Requirements Of Section 2212 Of The Competition Act.

While the Joint Petition addresses Section 2212 of the Competition Act, these references are not complete. Specifically, Paragraph 28 of the Settlement requires the PUC to recognize that:

it has statutory obligations under Section 2212(e) to provide PGW with rates adequate to meet all of its Bond Ordinance covenants, to follow the same ratemaking methodology and requirements that were applicable to PGW prior to July 1, 2000, and to otherwise comply with Section 2212 of the Public Utility Code.

See Joint Petition, p. 8. This provision attempts to rewrite the Competition Act by requiring the PUC to agree to follow a loose summary of Section 2212, rather than setting forth the actual wording of the Section. As a result, PICGUG asserts that the broad and generalized wording of the Joint Petition would allow PGW to argue that the Commission must follow Section 2212 pursuant to the Company's interpretation, rather than allowing the PUC to follow the true intent of Section 2212.

For this reason, PICGUG submits that if the purpose of the Joint Petition is to ensure that the PUC follow the requirements of Section 2212, then each of the applicable provisions should be specifically cited in the Joint Petition. By specifically citing each provision, the PUC would ensure that the actual provisions of Section 2212 govern any further PGW proceedings, rather than permitting PGW's interpretation of Section 2212 to guide such requirements.

C. PGW's Commitment To Make "Good Faith Efforts" Provides No Assurance That The Continued Management And Governance Problems Plaguing The Company Will Be Resolved.

The PUC's November 22 Order set forth several conditions that PGW was required to agree to prior to receiving the proposed \$11 million rate increase. The purpose of these conditions was to address the pervasive "evidence of service inadequacies" found by the PUC throughout the interim rate proceeding. See November 22 Order, pp. 20-21. These conditions addressed various issues, including the recent management and governance issues plaguing PGW. The conditions also required PGW to commit to taking certain actions, by a required date, with respect to retaining independent management and implementing measures recommended in the Company's management audit. See id. at 29-30.

The Joint Petition, however, only requires the City and PGW to "make a good faith effort" to complete the management service process, revise the Company's present governance structure, and implement management audit recommendations. See Joint Petition, pp. 6-7. Considering the numerous troubles with respect to PGW management over the previous years (including the Company's interim base rate proceeding, which was necessitated by findings of fiscal crises precipitated by previous management), requiring PGW and the City to only make a "good faith effort" with respect to these issues provides little assurance to PGW customers that

the Company's fiscal and service performances will be met and addressed. Moreover, while the PUC's November 22 Order placed stringent conditions on PGW in order to approve an \$11 million rate increase, the Joint Petition lessens these conditions while more than tripling the rate increase. As a result, PICGUG has difficulty reconciling these changes in light of the Joint Petition's lack of substantive evidence demonstrating why such an exorbitant increase should be permitted. Accordingly, PICGUG submits that if the conditions upon PGW are to be non-existent, then the resulting rate increase should not be significantly modified in order to further burden ratepayers through PGW's inability to provide proper and efficient management of the Company.

PICGUG chose not to appeal the PUC's November 22 Order based upon its content. The granting of this Joint Petition, however, would provide PICGUG with no other choice than to appeal the Settlement as being grossly inconsistent with the November 22 Order, the conditions set forth therein, and the record evidence presented during the interim rate proceeding. In addition, PICGUG questions the PUC's discretion in settling an appeal through a Joint Petition, which contains no input whatsoever from the other parties to this appeal. Moreover, should this Joint Petition be approved and implemented, PICGUG may be required to seek a stay of this Settlement due to the substantial and irreparable harm that could result to PICGUG members.

III. CONCLUSION

WHEREFORE, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Pennsylvania Public Utility Commission deny the Joint Petition of the Philadelphia Gas Works, the City of Philadelphia and the Law Bureau consistent with the reasoning set forth herein.

Respectfully submitted,

McNEES, WALLACE & NURICK

By Charis M. Burak
David M. Kleppinger
Charis M. Burak
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated: February 16, 2001

RECEIVED
01 FEB 16 AM 10:28
P.A.U.C.
SECRETARY'S BUREAU

ORIGINAL

CERTIFICATE OF SERVICE

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

VIA HAND DELIVERY

Daniel Clearfield, Esq.
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street
Suite 300
Harrisburg, PA 17101

Bernard Ryan, Esq.
Angela Jones, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Johnnie Simms, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Craig A. Doll, Esq.
25 North Front Street
Second Floor
Harrisburg, PA 17101-1606

Tanya McCloskey, Esq.
Stephen Keene, Esq.
Office of Consumer Advocate
555 Walnut Street, Forum Place - 5th Fl.
Harrisburg, PA 17120

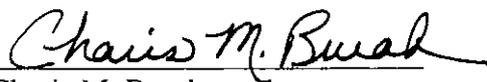
Walter W. Cohen, Esq.
Obermayer, Rebmann, Maxwell & Hippell
204 State Street
Harrisburg, PA 17101

VIA FACSIMILE AND FIRST CLASS MAIL

Philip A. Bertocci, Esq.
Community Legal Services, Inc.
1424 Chestnut Street, 3rd Floor
Philadelphia, PA 19102

Jackie Sparkman, Esq.
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

RECEIVED
01 FEB 16 AM 10:28
PA.P.U.C.
SECRETARY'S BUREAU


Charis M. Burak

Dated this 16th day of February, 2001, in Harrisburg, Pennsylvania.

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
E-Mail: paoca@ptd.net

ORIGINAL

February 16, 2001

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

DOCUMENT
FOLDER

RECEIVED
01 FEB 15 PM 12:00
PA P.U.C.
SECRETARY'S BUREAU

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 Comments of the Office of Consumer Advocate Regarding The Joint Petition For Full Settlement Of Philadelphia Gas Works' Petition For The Establishment Of Interim Rates And Related Appeal, 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,

Tanya J. McCloskey
Senior Assistant Consumer Advocate

Enclosure

cc: All parties of record
59744

44

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL
RECEIVED
FEB 16 PM 12:00
SECRETARY'S BUREAU

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

DOCKET NO. R-00005654

PHILADELPHIA GAS WORKS

DOCUMENT FOLDER **DOCKETED**
FEB 20 2001

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE
REGARDING THE JOINT PETITION FOR FULL SETTLEMENT OF PHILADELPHIA GAS
WORKS' PETITION FOR THE ESTABLISHMENT OF INTERIM RATES AND RELATED
APPEAL

I. INTRODUCTION

The Office of Consumer Advocate ("OCA") submits the following Comments in response to the Joint Petition for Full Settlement of Philadelphia Gas Works' Petition for the Establishment of Interim Rates and Related Appeal ("Joint Petition") filed on February 8, 2001. The OCA submits these Comments in accordance with the Secretarial Letter of February 8, 2001 which called for Comments by 1:00 P.M. on Friday, February 16, 2001.

The Joint Petition under review by the Commission was submitted by the Philadelphia Gas Works ("PGW" or "Company") and the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Law Bureau to settle PGW's appeal of the Commission's Order entered

November 22, 2000 in the above-captioned proceeding. Additionally, the City of Philadelphia is a signatory to the Joint Petition.¹

The Joint Petition, if implemented in its current form, would allow PGW to, *inter alia*: 1) increase its customer charge to a sufficient level to provide an additional \$11 million in base rate revenues by August 31, 2001, 2) increase its GCR to include \$7 million in non-gas costs for bad debt expense to be recovered by August 31, 2001, and 3) maintain its GCR at this higher level and retain any additional GCR over-recovery produced thereby, up to \$18 million, until it is determined whether the funds are required to make a bond payment in January, 2002. See Joint Petition at ¶¶22,23,27. In addition, the Commission has agreed to, *inter alia* 1) recognize that PGW must have a \$20-\$25 million positive cash balance at fiscal year end, 2) deem prudent certain natural gas purchasing practices for this year implemented to save cash, 3) recognize certain obligations under Section 2212(e), and 4) otherwise comply with Section 2212 of the Public Utility Code. Joint Petition at ¶¶25, 26, 28. If the Joint Petition is approved, PGW agrees to withdraw and terminate its action before the Commonwealth Court docketed at 557 C.D. 2000. Joint Petition at ¶30.

As will be explained in more detail below, the OCA has identified a number of concerns with the Joint Petition that should be addressed by the Commission before any approval of this Joint Petition is granted. While the OCA does not oppose some additional rate relief above the \$11 million awarded by the Commission in its November 22, 2000 Order, the OCA submits that the structure of providing the additional rate recovery must be consistent with Pennsylvania law and PGW's tariff. Additionally, while the OCA would not oppose what appears to be an annual rate

¹PGW, the Commission's Law Bureau and the City of Philadelphia will be referred to as the "Joint Petitioners" throughout the remainder of these Comments.

increase of \$18 million, the provisions of the settlement may result in the Company recovering more revenue than that identified by the Settlement and may result in a rate increase of up to \$36 million in a six month time frame.

The OCA would also note that the statements that the Commission has been asked to agree to appear to be incomplete statements of the law in Pennsylvania. Such representations, if incomplete, are subject to significant misinterpretation in the Commission's future regulation of this Company. Of great import to the OCA is the Commission's continued ability to ensure that PGW's rates are just and reasonable and that PGW's service is safe and adequate. The OCA submits that the implementation of proposals that are in accord with Pennsylvania statutes and PGW's existing tariff would best serve the public interest.

As such, the OCA requests that the Commission clarify or modify the Joint Petition to bring the provisions of the proposed settlement into accord with Pennsylvania law and PGW's tariff. Additionally, the OCA requests that the Commission clarify the statements that it has been asked to agree to in the Joint Petition so as to preserve its ability to regulate the rates and service of PGW.

The OCA addresses the specific terms and conditions of the Joint Petition below and makes various recommendations regarding these provisions.

II. COMMENTS

A. Introduction

As currently proposed, the Joint Petition could result in a rate increase of up to \$36 million for PGW. This rate increase would be comprised of the \$11 million increase in base rates through increased customer charges, a \$7 million increase in the GCR to recover an additional category of non-gas cost related to projected bad debt expense, and the retention of up to \$18 million in over-recovered GCR revenues that may not be returned to customers if it is needed to meet bond payments, or the Company otherwise requests that it be permitted to retain the overcollection. With these three items, PGW customers are being asked to provide up to \$36 million in rate relief before August 31, 2001, or in just a few short months. The Commission must bear in mind that PGW customers have experienced a \$97 million increase in the GCR in December of 2000 followed by an additional \$133 million GCR increase in January 2001. These significant increases were also to be recovered by August 31, 2001. The burden on PGW's customers has continued to grow, and through this Joint Petition, it is not yet clear that relief is in sight. If anything, this Joint Petition as currently formulated takes away from customers the one hope that they had for lower rates—that overrecoveries in gas costs would be returned to them when gas prices declined.

Of particular concern to the OCA, much of this burden may be imposed on ratepayers in a manner that is inconsistent with Pennsylvania law or PGW's tariff. To allow the Company to recover these increased rates in a manner inconsistent with the law or the tariff could circumvent the protections contained in the law and the tariff that operate to the benefit of ratepayers. If this Joint Petition is to be approved and the rate relief granted, the Commission must clarify or modify various provisions to assure that ratepayers are protected.

Several aspects of the Joint Petition require clarification as to the intent or modification. First, it initially appears that the Commission seeks to provide PGW with up to \$18 million in *base* rate recovery accomplished through both an increase to base rates and an increase to the gas cost rate mechanism. The GCR, however, is a mechanism that is primarily for the recovery of natural gas costs and is fully reconcilable under PGW's tariff and Pennsylvania law. If the intent of the Joint Petition is to provide base rate relief, then that is the relief that should be granted. The OCA submits that the vehicle of the GCR should not be utilized to accomplish the recovery of base rate items.

Additionally, although it appears as if the Joint Petition allows for rate recovery of \$18 million (\$11 million in base rates and \$7 million in GCR), it actually allows rate recovery of up to \$36 million in rate increases. The Joint Petition allows PGW to retain up to \$18 million in over-recovered gas costs, and in essence, convert that into base rates, for the payment of its debt service obligations. The OCA submits that allowing the Company to retain an overrecovery of gas costs which may be produced by declining gas prices is inconsistent with Pennsylvania law and unfair to PGW ratepayers. Ratepayers in PGW's territory and across Pennsylvania and the nation, have absorbed significant increases in natural gas costs with the explicit understanding that they would be treated fairly when gas costs went down. PGW's customers are entitled to the prompt return of any GCR overpayments. The Commission should guarantee that any over-recovery received by the Company will be retained for a specific, limited period of time only and will be fully refunded to customers, with interest.

In addition, PGW is being allowed to recover all of its rate increases in a compressed 6 month time frame rather than on an annual basis. Indeed, the rates being established would be

sufficient to produce an increase in rates of up to \$72 million on an annualized basis. At a minimum, it is clear that the Company will overrecover the awarded increase since the settlement does not call for rates to be reduced after August 31, 2001. Yet, the Company's pending base rate case will not be concluded until October, 2001. Although it may be possible to account for and adjust this recovery in the pending permanent base rate case, the Commission must make absolutely clear that this will occur.

The Joint Petition also allows the Company to add a new category of non-gas costs – bad debt expense – to its GCR. The OCA submits that allowing PGW to include this new category of non-gas costs in its GCR is also inconsistent with Pennsylvania law, PGW's tariff and sound ratemaking principles. As the OCA witness explained in testimony in the interim rate proceeding, PGW, if it is to be regulated by the PUC, should begin moving toward Pennsylvania law and practice rather than further away from it. The Joint Petition would allow the Company to *recover a base rate item, bad debt expense, through the GCR for an unspecified period of time.* Although the PGW tariff allows the recovery of certain non-gas costs, the categories of non-gas costs that have been approved by the Philadelphia Gas Commission for recovery in the GCR are limited and do not include bad debt expense.

The OCA is also concerned that several of the statements or representations that the Commission has been asked to agree to do not completely reflect the law. The OCA submits that the Commission should clarify its intention to comply with all of the applicable laws in Pennsylvania, particularly the just and reasonable standard, and that it will evaluate each record as it is created and presented to the Commission.

Finally, the Joint Petition is unclear regarding the applicability of the conditions set forth in the Commission's November 22, 2000 Order. The Commission should make clear that all of the conditions, except those specifically modified by the Joint Petition, continue to apply. The Commission should clarify that any rate relief awarded by the Joint Petition is subject to refund if the permanent base rate case reaches a different result. In addition, the Commission should ensure that the Company remains committed to its mains replacement program, its BCCS improvements, and its LNG project to ensure the safety, adequacy and reliability of the system.

B. Specific Comments

1. Paragraph 22: Base Rate Increase of \$11 Million Through The Customer Charge

The Joint Petition, in Paragraph 22, provides that:

PGW will be permitted to increase its current Customer Charge sufficient to provide an additional \$11 million in base rate revenue by August 31, 2001. The Customer Charge increase will be prorated across all firm customers. The customer charge increase will be subject to review and revision in PGW's pending base rate proceeding.

Joint Petition at ¶22. It appears that the intent of this provision is to award PGW an \$11 million annual increase in base rates to be accomplished by an increase in the customer charge. There are several problems with this provision that should be addressed by the Commission. First, the Joint Petition allows recovery of the \$11 million increase in a 6 month time frame (assuming a March 2, 2001 implementation) rather than in a 12 month time frame. As with the GCR increases this year, ratepayers are being burdened with the recovery of costs under a compressed time frame. For this base rate increase, however, ratepayers are being asked to pay for these costs over this shorter period

of time not because of matters outside of the Company's control, but for matters that were squarely within the Company's control—the implementation of the base rate increase which they were awarded by the Commission. It seems particularly unfair, and in fact may only exacerbate uncollectible problems, to require ratepayers to shoulder this burden in six months. This \$11 million increase should be collected from ratepayers over the longest period of time possible, but at a minimum, through October when new base rates will be implemented.

Second, the OCA submits that the underlying record in this case does not provide any support for an increase in the customer charge as a means of recovering the \$11 million rate increase. Indeed, the Company, when it sought expedited treatment, stated that it would not seek an increase in the customer charge so as to eliminate controversy for the expedited, interim proceeding. There is no record to support any change in the customer charge at this time and there has been no opportunity to oppose a customer charge increase. Moreover, this provision lacks specificity as to the exact level of the increase for each customer class. Although the provision calls for proration across all firm customers, the actual level of increase of the customer charge and how such a proration will operate is not made clear. Without specifics as to exactly how the customer charge will be spread across customer classes and what the precise increase in the customer charge will be for the various customer classes, this provision requires further clarification before the Commission can properly assess its effect. Simply making the customer charge subject to review in the Company's pending base rate proceeding does not solve the problem of uncertainty that currently exists. The OCA submits that given the fact that this issue was explicitly removed from the case below, the proposed \$11 million increase should not be implemented through an increase to the

customer charge, but should be recovered in the manner proposed by PGW in the interim rate proceeding that was approved by the Commission in its November 22, 2000 Order.²

Third, the Joint Petition does not seem to account for the fact that these rates could continue past August 31, 2001, thus giving the Company greater recovery than what was provided for in the Settlement. The Commission must make clear that it does not intend for PGW to recover more than \$11 million through this base rate increase on an annual basis. Since these rates could be in effect past August 31, 2001, until at least October 5, 2001—the base rate suspension period—any rate relief should be designed to account for this fact. In addition, the Commission should specifically state that the effect of this recovery is to be fully captured and reflected in the now pending base rate case.

Finally, it should be made clear that this increase, including any increase in the customer charge, if awarded, is subject to refund consistent with the Commission's Order in the interim base rate proceeding.

2. Paragraph 23: Reflection of Bad Debt Expense in GCR

In Paragraph 23 of the Joint Petition, the Joint Petitioners agree that:

As part of its previously authorized GCR revision opportunity in March 2001, the non-gas cost portion of PGW's GCR rate will be increased to produce \$7 million, compressed so as to be collected by August 31, 2001, the end of PGW's current GCR period, in order to recover additional bad debt expense associated with gas costs in excess of the level assumed in the Interim Rate Proceeding. This amount will not be reconciled against actual gas costs. The bad debt expense will be subject to review and revision in PGW's pending base rate proceeding.

² Although the OCA opposes a change in the customer charge, if the Commission determines to approve such a change, no more than 50% of the \$11 million increase should be recovered in the customer charge.

Joint Petition at ¶23. The OCA submits that this proposal is inconsistent with Pennsylvania law and PGW's tariff and should not be utilized as a means of obtaining an additional \$7 million in base rate recovery. If the intention of this paragraph is to provide PGW with the recovery of an additional \$7 million for a base rate item, then the base rates should be adjusted accordingly rather than changing the GCR in a manner inconsistent with the law and the tariffs.³

In PGW's expedited GCR proceeding at Docket No. R-00005619, the issue of the inclusion of non-gas costs in PGW's GCR was specifically addressed by the parties. In that proceeding, it was recognized that the Philadelphia Gas Commission had allowed for the inclusion of certain, limited non-gas costs within the GCR. These categories of costs did not include bad debt expense. The Commission's Order, entered November 22, 2000, addressed the inclusion of non-gas costs in PGW's GCR raised by the OCA, the Commission's Office of Trial Staff ("OTS") and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"). Based on the testimony presented, the Commission held that:

[W]hile the intervenors object to the inclusion of certain non-gas expenses in the GCR, no party disputes that pursuant to Section 2212(d), for purposes of the GCR filing in this proceeding, these costs must be properly included in the computation of the GCR. However, we agree with the Intervenor and hereby direct PGW to address the appropriateness of including non-gas costs expenses in the GCR as well as its impact on customers. Further, the appropriateness of PGW's practice of including non-gas costs in its GCR shall be addressed as an issue in the base rate filing that is to be made by PGW on or before January 1, 2001, and a specific

³ As noted above, the OCA does not dispute that an additional \$7 million in rate relief may, in fact, be appropriate. In the interim proceeding, the OCA had adjusted its final recommendation to include an increased level of uncollectible expense. The OCA submits, however, that this is a base rate item that should be recovered in base rates over the appropriate time period.

recommendation concerning this practice is to be presented to the Commission by the OALJ as a part of the resolution of that case.

Order at 10 (*emphasis added*). Therefore, the Commission allowed inclusion of the existing non-gas costs in PGW's GCR because inclusion of such costs had been previously allowed by the Philadelphia Gas Commission. However, the appropriateness of continued inclusion of any non-gas costs is to be addressed in PGW's pending base rate proceeding. Consequently, the Joint Petitioners' proposal to add yet another non-gas cost to the GCR may not be appropriate. Bad debt expense is a base rate item, which is to be addressed in a base rate proceeding. To seek continued expansion of the GCR to recover costs that should be recovered via base rates distorts the purpose of a GCR and is inconsistent with PGW's current tariff as well as Pennsylvania law.⁴ Therefore, the OCA submits that the inclusion of bad debt expense in the GCR should not be allowed through this Joint Petition.

The OCA submits that if the intent of the Joint Petition is to provide the Company with \$18 million in rate relief, then the \$7 million should be included in the commodity portion of the base rates and the GCR reduced if gas costs decrease. The additional \$7 million of rate recovery, like the \$11 million, must remain subject to refund as directed in the Commission's November 22 Order.

3. Paragraph 27: Retention of Any GCR Over-Recovery Revenues

The Joint Petition, at Paragraph 27 states that:

⁴ It is unclear to the OCA whether this category of expense would remain at \$7 million or would be permitted to increase if bad debt expense increases. If bad debt expense is allowed to be included in the GCR as a dollar for dollar pass through, there is no incentive or reason for the Company to take steps to control its bad debt expense.

Any additional calculated GCR over-recovery, up to \$18 million (for a total of \$25 million), will be held in a reserve account to be used as necessary to meet Bond Ordinance covenant requirements, i.e., debt service and/or timely payment of obligations when due, through January 2002. After the PUC rules on PGW's permanent base rate request or any additional settlement thereof, PGW will make a projection of its debt service and cash obligations through January, 2002. To the extent PGW identifies a cash deficiency that would cause a Bond Ordinance covenant violation, PGW will be permitted to utilize the reserve fund (or a portion thereof) to cover this deficiency. Any remaining portion of the reserve will be returned to ratepayers through the GCR, subject to PGW's right to request a different treatment.

Joint Petition at ¶27. Under this provision, PGW would be permitted to use this Gas Cost Rate overrecovery (or portion of it) to pay for a base rate item, i.e., to meet its debt service or payment obligations in January 2002. PGW indicates that it may return any unused portion of the reserve to ratepayers through the GCR, but it specifically reserves its right to request different treatment of the reserve. Id. Simply put, this proposal requests that ratepayers loan PGW up to \$18 million in over-recovered gas cost revenues that otherwise would be returned to customers via the GCR on a timely basis. If there is to be any loan at all from ratepayers, the OCA submits that the Commission must ensure that the money is fully refunded, with interest, in due course. PGW should not be permitted to retain any overcollection in gas costs. To allow the Company to retain this \$18 million overcollection whether to meet the debt service or otherwise, is to allow the Company an additional increase in base rates of \$18 million over 6 months.

The Commission has allowed PGW to implement several increases to its GCR over the past few months as gas prices were rising dramatically. These increases were also compressed for recovery and their stated purpose was to allow the Company to pay its bills for purchasing natural gas as the price of natural gas rose dramatically. These increases were always accompanied by the

implicit promise that when gas costs began to decrease, the GCR rate would also decrease accordingly. Now, PGW seeks to break this promise made to ratepayers and maintain its GCR at a level that will produce an overcollection. Worse yet, the Joint Petition contemplates that ratepayers may never see a return of this overcollection.

If there is an over-recovery of gas costs, this has resulted because gas costs have decreased, but such decreases have not been reflected in the rates charged to PGW customers. Pennsylvania law and PGW's tariff are clear that any overrecoveries in gas costs are to be fully refunded to customers. With an initial GCR increase of \$97 million in December 2000, coupled with another increase of \$133 million in January, 2001, it would be inequitable and inconsistent with the law and PGW's tariff to deny customers the rate relief that would result from the return of over-recovered revenues. Any over-recovery of GCR revenues would represent revenues that have been overpaid by customers and rightfully belong to such customers.

As such, if the Commission allows any over-recovery to be retained by PGW, the Commission should clarify that this is only a short-term loan from customers that must be repaid with interest. The Commission should strictly limit the period of time that the Company can hold this "loan" and it should require the full return of the loan with interest at the earliest possible time.

4. Paragraph 25: Fiscal Year End Cash Balance

The Joint Petition requests that the Commission "recognize that PGW must have a \$20-25 million positive cash balance at fiscal year end [August 31]". Joint Petition at ¶25. The OCA submits that this "finding" by the Commission has no basis in the record of this proceeding and could unduly compromise the parties' and the Commission's ability to determine the appropriate, just and reasonable level of rates for this Company in the current permanent base rate

case and in future cases. Initially, it is not clear whether this proposal is being made solely with respect to fiscal year 2000-2001 or on a going-forward basis for future fiscal years. At an absolute minimum, if the Commission provides such recognition, the Commission should restrict it to the interim base rate proceeding and Fiscal Year 2000-2001. The issue of the need for and level of cash balance at fiscal year end should be a matter for determination in each full base rate proceeding after a full review of all financial information of the Company.

Whether the proposal is intended to apply to the current fiscal year or to all fiscal years on a going-forward basis, however, there is no record evidence to support a statement that PGW requires a cash balance of \$20 to \$25 million at the end of any fiscal year. PGW's bond covenants do not contain such a cash balance requirement, nor was such a requirement established in the interim rate proceeding. To make such an assumption (even if only for a year) without record evidence, deprives other interested parties of the ability to adequately address this assumption in the appropriate case. Parties should be afforded the opportunity to consider what PGW's year end cash balance should be, and any appropriate year end cash balance for PGW should be determined within the context of a base rate proceeding where all of the relevant financial information can be considered. To agree to a specific cash balance requirement outside of the context of a base rate case and with no record support would compromise the Commission's ability to set rates that are just and reasonable.

5. Paragraph 25: Cash Conservation Efforts

In Paragraph 25, the Joint Petition also asks the Commission to deem prudent its proposal to forego Spring/Summer injections for a portion of PGW's storage fields and to use a predetermined injection schedule to fill the remainder of its gas storage fields. No further details

regarding these steps, such as the costs, the amount of cash saved, the Mcf of injection foregone, or the injection schedules, are provided to the Commission or the parties. Additionally, in Paragraph 26, the Company notes that it may take “other operational steps” but does not appear to request a prudence finding as to these “other operational steps.” Without further information, the OCA submits that it is not possible to comment on the prudence of such steps at this time or the impact of such steps on reliability. The Commission should make clear, however, that if it provides any pre-approval, it is not exempting the Company from the requirements of the mains replacement program or the LNG project.

6. Paragraph 28: Application of Section 2212(e)

The Joint Petition also requests that the Commission recognize certain principles and make certain statements regarding the law as applied to PGW. Specifically, Paragraph 28 provides that:

The Joint Petitioners request that the PUC recognize that it has statutory obligations under Section 2212(e) to provide PGW with rates adequate to meet all of its Bond Ordinance covenants, to follow the same ratemaking methodology and requirements that were applicable to PGW prior to July 1, 2000, and to otherwise comply with Section 2212 of the Public Utility Code.

Joint Petition at ¶28. Although the Joint Petition cites to Section 2212(e), the OCA submits that this provision of the Joint Petition is not a complete statement of the law that applies to PGW and is not a complete statement of Section 2212(e). Of particular concern, the Joint Petition may be interpreted to suggest that the Commission is not required to ensure that PGW’s rates are just and reasonable pursuant to Section 1301, *et seq.* or that service is safe and adequate pursuant to Section 1501, *et seq.*

The OCA submits that the Commission should clarify that it will adhere to all

provisions of the Public Utility Code, not just portions of Section 2212. A limited statement by the Commission, particularly one that does not recite all applicable law, could seriously compromise the Commission's ability to regulate this Company in the future.

7. Paragraph 21: Management Audit

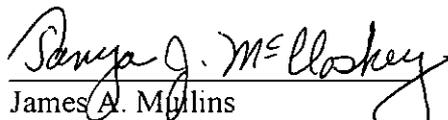
The Joint Petition is also predicated on an agreement for the consideration and review of the Management Audit recommendations. Joint Petition at ¶21. The Management Audit is being conducted by an independent firm under the auspices of the Commission. At this time, the Management Audit has not been made available to the parties. It was the OCA's expectation that the Management Audit would be available for the permanent base rate case so that any issues arising from the Audit could be addressed in the context of the base rate case. Without being able to review the Management Audit, it is difficult to determine whether the review process established by the Joint Petition is sufficient.

Of particular concern, the review process does not seem to contemplate the involvement of other interested parties. It is also unclear whether an agreement between Law Bureau and the Company regarding a specific recommendation would limit the ability of other parties to challenge the Company's decision in the base rate case or other appropriate proceeding. The Commission should clarify that all parties retain the right to challenge any Company decision regarding implementation of specific Management Audit recommendations. The review process, particularly if it does not include all interested parties, should not be considered to be binding on the parties or the Commission.

III. CONCLUSION

For the reasons set forth above, the OCA respectfully urges the Commission to consider all of the issues and concerns raised in these Comments in its determination of the appropriate treatment to be afforded the Joint Petition. The Commission should seek to clarify the Joint Petition and structure the Joint Petition in a manner that is consistent with Pennsylvania law and PGW's tariff.

Respectfully submitted,


James A. Mullins
Assistant Consumer Advocate
Tanya J. McCloskey
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: February 16, 2001
00062108

RECEIVED
01 FEB 16 PM 12:01
HARRISBURG
SECRETARY'S BUREAU

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 Comments of the Office of Consumer Advocate Regarding The Joint Petition For Full Settlement Of Philadelphia Gas Works' Petition For The Establishment Of Interim Rates And Related Appeal, 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 16th day of February, 2001.

SERVICE BY HAND DELIVERY

Johnnie E. Simms, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED
01 FEB 16 PM 12:01
PA PUBLIC
SECRETARY'S BUREAU

SERVICE BY E-MAIL AND FIRST CLASS MAIL

Bernard A. Ryan Jr., Esq.
Angela T. Jones, Esq.
Suite 1102 Commerce Bldg.
300 North Second Street
Harrisburg, PA 17101

Daniel Clearfield, Esq.
Wolf, Block, Schorr and Solis-Cohen, LLP
Suite 300
212 Locust Street
Harrisburg, PA 17101

Charis M. Burak, Esq.
David M. Kleppinger, Esq.
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Craig A. Doll, Esq.
2nd Floor
25 North Front Street
Harrisburg, PA 17010-1606

Walter W. Cohen, Esquire
Obermayer, Rebmann, Maxwell & Hippel
LLP
204 State Street
Harrisburg, PA 17101

Judith Mondre, President
Mondre Energy, Incorporated
Suite 1750
1601 Market Street
Philadelphia, PA 19103

Philip A. Bertocci, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505

Josephine Hayes, Manager
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122

Jackie Sparkman, Esq.
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

Philadelphia Gas Commission
9th Floor,
1515 Arch Street
Philadelphia, PA 19102

Thomas Smith
7409 Roosevelt Blvd.
Philadelphia, PA 19152

Francis X. Redding, Esq., Pres
Gas Works Employees Union, Local 686
7526 Frankford Avenue
Philadelphia, PA 19136

James F. Runckel, Esq.
Spear, Wilderman, Borish, Endy, Spear &
Runckel
Suite 1400, 230 South Broad Street
Philadelphia, PA 19102

David E. Loder, Esq.
Duane, Morris & Heckscher
One Liberty Place
Philadelphia, PA 19103-7396

Charles P. Pizzi, President
Greater Philadelphia Chamber of Commerce
200 South Broad Street, Suite 700
Philadelphia, PA 19102-3896



Tanya J. McCloskey
Senior Assistant Consumer Advocate
James A. Mullins
Stephen J. Keene
Assistant Consumer Advocates

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
59745.wpd

ORIGINAL
CRAIG A. DOLL
ATTORNEY AT LAW
25 NORTH FRONT STREET • SECOND FLOOR
HARRISBURG, PENNSYLVANIA 17101-6061

000278

01 FEB 16 PM 1:59
RECEIVED
SECRETARY'S BUREAU

717/230-9555

FAX 717/230-9750

EMAIL: cdoll76342@aol.com

February 16, 2001

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

DOCUMENT
FOLDER

DOCKETED
FEB 20 2001

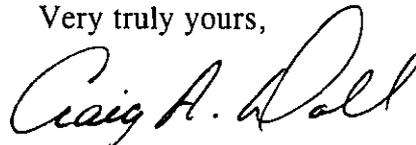
Re: **Pennsylvania Public Utility Commission v. Philadelphia Gas Works;**
Docket No. R-00005654

Dear Secretary McNulty:

This letter shall serve in lieu of comments to the Joint Petition for Settlement filed by the Philadelphia Gas Works and the Commission's Office of Trail Staff. The Apartment Association of Greater Philadelphia has reviewed the comments of the Office of Consumer Advocate and the Philadelphia Industrial and Commercial Gas Users Group in this matter and finds itself in general agreement with those comments. Accordingly, AAGP wishes to associate itself with those comments for the record.

A copy of this letter has been served electronically and via first class mail upon all parties of record as well as Mr. Stanley Brown, Esquire.

Very truly yours,


Craig A. Doll

CAD/pk

cc: Stanley Brown, Esquire
All Parties of Record

43

v.

Philadelphia Gas Works

Docket No.

R-00005654

000279
CERTIFICATE OF SERVICE

01 FEB 16 PM 1:59

RECEIVED
SECRETARY'S BUREAU

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.
Wolf, Block, Schorr & Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
Dclearfield@wolfblock.com
(Philadelphia Gas Works)

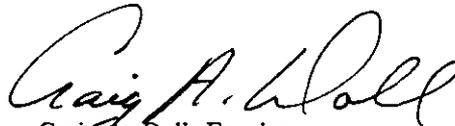
Bernard A. Ryan, Jr., Esq.
Angela T. Jones, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
angela_jones@dced.state.pa.us

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

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

Johnnie Simms, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
simmsj@puc.state.pa.us

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



Craig A. Doll, Esquire
25 North Front Street
Second Floor
Harrisburg, PA 17101-1606

(717) 230-9555

Attorney I.D. #22814

Attorney for Apartment Association of
Greater Philadelphia

Dated: February 16, 2001

DOCKETED



ORIGINAL

FEB 21 2001

OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

REC'D
01 FEB 16 12:55
SECRETARY'S BUREAU
(717) 783-2525
(717) 783-2831 (FAX)

Bernard A. Ryan, Jr
Small Business Advocate

February 16, 2001

HAND DELIVERED

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

**DOCUMENT
FOLDER**

**Re: Pennsylvania Public Utility Commission v.
Philadelphia Gas Works (Interim Rate Increase Request)
Docket No. R-00005654**

**DOCUMENT
FOLDER**

Dear Secretary McNulty:

The Office of Small Business Advocate ("OSBA") does not oppose the Joint Petition for Settlement of Philadelphia Gas Work's ("PGW's") Petition for the Establishment of Interim Rates and Related Appeal from the Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00005654. The OSBA finds that *the terms do not unreasonably harm the interests of small businesses and note that the increase in PGW's customer charge will be across all firm customers and subject to review and revision in PGW's pending base rate proceeding at Docket No. R-00006042. The OSBA is also aware that the agreed upon increase in non-gas costs will be either subsumed within any calculated over-recovery in the next GCR update or will be separately billed as an increase to the existing, or future authorized, GCR factor. The OSBA is limiting its comments to its position of non-opposition on this matter.*

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

Enclosures

cc: Karen Oill Moury, Esquire
Stanley Brown, Esquire
Andrew Tubbs, Esquire
Law Bureau

Hon. Marlane R. Chestnut
Administrative Law Judge

Parties of Record

Brian Kalcic

37

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PHILADELPHIA GAS WORKS

:
:
:
:
:
:

Docket No. R-00005654

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the foregoing document on behalf of the Office of Small Business Advocate by FAX and first class mail (unless otherwise indicated) upon the persons addressed below:

Hon. Marlane R. Chestnut
Administrative Law Judge
Pa. Public Utility Commission
1302 Philadelphia State Office Bldg.
Broad and Spring Garden Streets
Philadelphia, PA 19130
(215) 560-2105
(215) 560-3133 - Fax

Daniel Clearfield, Esquire
Alan Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
Locust Court Building, Suite 300
212 Locust Street
Harrisburg, PA 17101
(717) 237-7160
(717) 237-7161 (fax)

Walter W. Cohen, Esquire
Obermaer Rebmann Maxwell & Hippel
204 State Street
Harrisburg, PA 17101
(Philadelphia Gas Works)
(717) 234-9730
(717) 234-9734 (fax)

Johnnie E. Simms, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)

Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street 5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152

Charis M. Burak, Esquire
David M. Kleppinger, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 237-5368
(717) 237-5300 (fax)

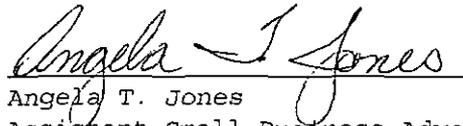
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street 4th floor
Philadelphia, PA 19102-2505
(215) 981-3702
(215) 981-0435 (fax)

Jackie Sparkman, Esquire
Bradford Stern, Esquire
c/o Mondre Energy Inc.
1601 Market Street, Suite 1750
Philadelphia, PA 19103
(School District of Philadelphia)
(215) 988-0577
(215) 988-0579 (fax)

RECEIVED
01 FEB 16 PM 12:57
SECRETARY'S BUREAU
P.A.P.U.C.

Karen Oill Moury, Esquire
Stanley Brown, Esquire
Andrew Tubbs, Esquire
Law Bureau
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
P.O. Box 3265
Harrisburg, PA 17105
(hand delivery)

Craig A. Doll, Esquire
25 North Front Street, 2nd Fl.
Harrisburg, PA 17101-1606
(717) 230-9555
(717) 230-9750 (fax)



Angela T. Jones
Assistant Small Business Advocate

Dated: February 16, 2001

P/PGW

SEC'S BUREAU

October 20, 2000

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

ORIGINAL

Re: Docket Numbers R-00005619 and R-00005654

Dear Mr. McNulty:

I am writing in response to the proposed increases in PGW's rates. I understand that PGW has been poorly managed in the past and that a revenue increase is the proposed solution to keeping the utility operating. However, I am deeply concerned with the structure of the rates. In this era of conservation and limited natural resources I have difficulty understanding why we as natural gas customers are not being rewarded for conserving energy.

I would like to use our household as an example. We have chosen not to use air conditioning, in fact we removed our central air system. We conserve our use of heat as much as possible. We minimize the use of hot water and have insulated our pipes, wall and ceilings. During the summer we rarely use more than 5 or 6 ccf and during the winter we use no more than 100 ccf. Our gas cost during the summer is half the cost of the customer service charge. We have taken great steps to reduce our gas usage yet on a percentage basis we are being penalized. To think of it on an extreme level, if we were to leave our house empty for 3 months and not use gas at all, according to the new rates, and the old rates, we would still have a gas bill to pay even though we used no gas!

I propose that PGW change its rate structure to remove the fixed fees or transfer the increased rates to the Gas Cost Rate. I have no problem paying according to the amount of gas I use. If I can conserve, I see the rewards in my bill. This way, I am paying for all the other customers who think that conserving natural resources is not necessary.

Please take my thoughts into consideration.

Sincerely,

Dina Corigliano
Dina Corigliano
750 N. Croskey Street
Philadelphia, PA 19130-2608

DOCKETED
FEB 21 2001

DOCUMENT
FOLDER

RECEIVED
SECRETARY'S BUREAU

01 FEB 15 PM 2:31

460000

34

Wolf, Block, Schorr and Solis-Cohen LLP

212 Locust Street
Suite 300
Harrisburg, PA 17101

T: 717 237 7160
F: 717 237 7161
www.wolfblock.com

ORIGINAL

RECEIVED
PA P.U.C.
SECRETARY'S BUREAU
FEB 20 AM 11:45

DANIEL CLEARFIELD
DIRECT DIAL: (717) 237-7173
E-MAIL: DCLEARFIELD@WOLFBLOCK.COM

DOCUMENT
FOLDER

February 20, 2001

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd. Floor
Harrisburg, PA 17105

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 Response to the Comments and Objections to the Joint Petition for Full Settlement with regard to the above referenced matter.

CERT/SVC ONLY

Also enclosed is a revised Attachment A to the Joint Petition for Full Settlement which corrects a typographical error in the Search Process Timeline. The completion date for the initial step of conduct in a complete analysis of the impact of tax-exempt bonds was originally identified as February 15, 2001 and it should be March 15, 2001. We have discussed this revision with representatives of the PUC Law Bureau and they agree that this correction is appropriate. The revised Attachment A should be substituted for the originally filed version.

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
Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures
cc: All Parties of Record w/enc.

DSH:26196.1

71

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL
SECRETARY'S BUREAU
01 FEB 20 11:14 AM
RECEIVED

Pennsylvania Public Utility Commission, *et al.* :
:
v. :
:
Philadelphia Gas Works :
:

Docket No. R-00005654

DOCUMENT
FOLDER

DOCKETED
FEB 21 2001

**RESPONSE OF PHILADELPHIA GAS WORKS TO THE COMMENTS
AND OBJECTIONS TO THE JOINT PETITION FOR FULL SETTLEMENT**

I. INTRODUCTION

The Philadelphia Gas Works ("PGW") hereby responds to the Comments and the Objections filed by various parties in response to the "Joint Petition for Full Settlement" submitted by PGW and the Commission's Law Bureau in an attempt to settle and resolve the issues associated with the Pennsylvania Public Utility Commission's ("PUC" or "Commission") November 22, 2000 Order on PGW's request for interim rate relief, and PGW's challenge of that Order in the Commonwealth Court of Pennsylvania.

While the two public parties, the Office of Small Business Advocate ("OSBA") and the Office of Consumer Advocate ("OCA"), express their non-opposition to the actual rate increase proposed in the Joint Petition, the OCA has raised several "concerns" and proposed modifications. Other parties — the Philadelphia Industrial and Commercial Gas Users Group, the Apartment Association of Greater Philadelphia ("AAGP") and Consumer Education and Protection Association, *et al.* ("CEPA") — have expressed objections to the proposed settlement.

70

In the limited time available, the following attempts to respond to the most material of the claims and concerns.

II. GENERAL RESPONSE TO COMMENTS

A. The Joint Petition is a Reasonable Compromise of the Issues Raised By PGW On Appeal By Providing Commitments on PGW Management While Appropriately Addressing PGW's Pressing Financial Needs.

Contrary to the claims and implications of some of the commenters, the Joint Petition is a balanced compromise of PGW's substantial claims before the Commonwealth Court in which PGW has alleged that the PUC's November 22, 2000 \$11 million interim rate order failed to adhere to the requirements of Section 2212 of the Natural Gas Choice and Competition Act ("Gas Choice Act"), 66 Pa. C.S. § 2212, was contrary to the evidence, and illegally intruded into *management discretion committed to the City of Philadelphia ("the City")* by law. If PGW had been successful in its appeal (which it expected to be), ratepayers would have been liable for as much as \$52 million, or almost three times the actual level of rate increase proposed in the Joint Petition, and there would have been no formal, memorialized commitment by PGW to the PUC to secure permanent management for the company, nor any agreement with respect to the results of the management audit. Instead of pressing these claims, however, PGW and the PUC's Law Bureau were able to work out a package of commitments — explicitly endorsed by the City itself — on securing permanent management for PGW, reviewing and revising its governance structure, and a process for implementing the results of the PUC's management audit. Along with these significant commitments, the Settlement proposes a package of financial steps that include only a minimal additional actual increase in rates (\$7 million) over the amount that the

PUC already authorized which, presumably, was not objectionable to any of the now objecting parties.

PGW respectfully requests that the PUC recognize, however, that PGW was able to agree to this package because the non-financial aspects of the settlement (*i.e.*, the creation of a GCR reserve account, the recognition of the prudence of PGW's cash conservation measures, and the PUC's recognition of its obligations under the statute to permit PGW to satisfy its bond covenants and its prior ratemaking requirements) were just as valuable to PGW as the relatively small rate increase. PGW is currently preparing to sell \$100 million in bonds May 2001, a financing that is absolutely required to provide PGW with sufficient cash to satisfy the PUC-mandated main-replacement and LNG repair programs as well as to finance PGW's \$100 million commercial paper obligation in June, 2001¹ and to make other debt service and gas purchase obligations through January, 2002. The Settlement package is a crucially important part of communicating to the investment community that PGW has the financial wherewithal to continue to satisfy its bond covenants in the short-term and has a reasonable expectation of being able to do so on a going-forward basis. Without these assurances, PGW simply will not be able to issue the bonds this spring and, without the proceeds from the bonds, PGW would cease to be able to operate as a viable entity.

Considering the importance to the company and its customers of permitting PGW to continue to operate on a going concern basis, the PUC should recognize that the Settlement

¹ The bond issuance produces working capital because the proceeds may be used to reimburse the company for cash outlays for capital improvements it has made through the fiscal year to date.

represents a reasonable balancing of all interests, consistent with the PUC's statutory obligations under the Gas Choice Act, and the PUC should therefore approve the Joint Petition as proposed. Contrary to the assertions of the some of the parties, each aspect of the Joint Petition is amply supported by the record in the interim proceeding itself, by findings in subsequent PUC Orders, or simply by a fair reading of the Gas Choice Act. There is no basis for or need to modify its terms.

B. The Actual Rate Increase Proposed in the Settlement is \$18 Million, Together With a Contingency To Be Used Only If Necessary To Meet PGW's Bond Covenants.

Contrary to the implications (or the outright allegations) of several of the parties, the only actual rate increase proposed in the Joint Petition is an \$18 million increase that would be implemented as an \$11 million increase in the customer charge allocated proportionally to each class, and a \$7 million increase in PGW's GCR. As the OCA acknowledges, the \$18 million increase is amply supported in the record (indeed, both the OCA and the OTS recommended more — \$25 million and \$27.5 million, respectively). In fact, it represents the PUC's originally authorized \$11 million increase, adjusted to recognize the effect on PGW's bad debt expense of the enormous increase in gas costs (\$133 million) that PGW was forced to implement on January 1, 2001, most of which was not accounted for in the PUC's November Order.² Based upon this single change, PGW's revenue requirements could have been increased by almost \$11 million,

² The PUC's Order indicated that it was adopting OTS's proposed Bad Debt allowance of 7.4% of total revenues in arriving at the \$11 million increase in the Order. Order at 16. Using that factor, PGW's Bad Debt expense and its revenue requirements, all other things equal, could have increased by \$9.8 million in order to permit PGW to fully realize sufficient income to meet the 1.5x debt service requirement of its Bond Covenant.

simply to permit PGW to meet the financial goals that were set forth in the PUC's November 22, 2000 Order. Under these circumstances, this increase is amply supported and completely reasonable.

The second part of the Joint Petition's financial package is the creation of "reserve fund," of up to \$18 million, that PGW could use if needed to produce the cash it needs to make its bond debt service and other obligations due in January, 2002. This cannot be considered a rate increase because it only will be available if PGW develops a GCR over collection; PGW does not presently predict it will have such an over collection, but even if the over collection of gas costs does develop, it can only be used if, at the end of PGW's base rate case, PGW predicts that it will have a cash shortage such that it will not be able to make its January debt service (\$26 million), gas procurement obligations and any other obligations, as required by its bond covenants. If PGW's cash flow analysis shows that it will have sufficient cash to make those payments, the reserve (if it exists) will be refunded to ratepayers.³

Finally, if 1) the reserve develops; and 2) PGW's cash needs in January, 2002 fall short of its cash sources, it can utilize this up to \$18 million potential reserve to make these payments. Availability of these funds is not only completely reasonable — without the ability to make these payments PGW clearly will not be able to continue to function — but failure to meet these payments would cause PGW to be in violation of its most fundamental bond covenants. As detailed in the Joint Petition, in addition to needing income at the end of the year to meet its 1.5x

³ The Settlement does permit PGW to request a different treatment of such an overcollection, (Joint Petition, ¶ 27), but the PUC would have to approve such an alteration, and all parties would have an opportunity to present their views on any such proposal, prior to its enactment.

debt service requirement, PGW's Bond Ordinances require it to "charge rates that permit PGW to have sufficient cash to pay all of its obligations, including its debt service obligations during fiscal year where they are due; and . . . to continuously maintain and operate the Gas Works."⁴ Thus, the potential \$18 million reserve would only be used to the extent necessary to allow PGW to pay its debt service and other bills and satisfy the legal requirements of PGW's bond covenants and Sections 2212(d) and (e) of the Public Utility Code. In light of the fact that PGW's evidence justified a \$52 million actual increase to meet these obligations, the implementation of just an \$18 million actual increase and an \$18 million "contingency fund" is completely reasonable, legally required and supported by record evidence.

III. RESPONSE TO SPECIFIC COMMENTS

A. Proposed Increase in Customer Charge.

The OCA raises concerns about the proposal to increase PGW's present customer charge in order to produce \$11 million by the end of the fiscal year. But these comments overlook the fact that PGW must be able to collect sufficient cash to be able to pay its bills when they are due. Allowing an \$11 million annual increase without increasing the rate so that PGW will be able to actually bill its customers \$11 million by the end of August, 2001 simply will result in PGW being without the cash that it needs to make its debt service and commercial paper payments in the June – August 2001 time frame and through January, 2002. The Joint Petition's proposal to

⁴ Joint Petition, ¶ 10 (emphasis added).

permit the customer charge to be set so that PGW can bill customers \$11 million by the end of its Fiscal year recognizes these cash flow requirements.⁵

OCA's concern that there is no evidence to support an increase in the customer charge fails to recognize that the customer charges proposed here are specifically subject to review and revision (and refund, if necessary) in PGW's base rate case (as is the entire interim increase).⁶

Any concerns about the level of the customer charge can be aired in that context.

B. Bad Debt Expense in the GCR.

OCA claims, incorrectly, that the Joint Petition's proposal to collect an additional \$7 million in the form of an increase in the non-gas cost portion of PGW's GCR is "inconsistent with Pennsylvania law and PGW's tariff."⁷ In fact, PGW's tariff contains a specific provision which permits its GCR rate to include specific non-gas costs "annually authorized by the Commission."⁸ Under the Gas Choice Act, until PGW's restructuring proceeding is completed,

⁵ It also recognizes — without making conclusions about the merit, or lack thereof, of the claims — that PGW determined that it could not agree to some of the conditions that the PUC had imposed in its November 22, 2001 Order because, in several instances, it was under concomitant and equally valid City legal obligation to adhere to a different process or standard. See, PGW Application For Stay and Affirmative Relief Pending Appellate Review, p. 1-2.

⁶ Joint Petition, ¶ 22. The review in PGW's pending base rate case also is the way in which the settlement proposes to deal with continuation of these customer charge rates, *i.e.*, until the base rate order is issued.

⁷ OCA Comments at 4, 9, 10.

⁸ PGW Tariff, § 11.5 (Original Pg. No. 72).

the provisions of PGW's current tariff continue to apply, notwithstanding contrary provisions in the Public Utility Code or PUC regulations.⁹

The OCA's main concern appears to be the potential that this provision will result in the permanent inclusion of a factor in PGW's GCR to recover Bad Debt expense. The Settlement says exactly the opposite: 1) the appropriate amount of Bad Debt expense for PGW "will be subject to review and revision in PGW's pending base rate proceeding;"¹⁰ and 2) the Settlement itself (as opposed to the specific findings requested in paragraphs 25 and 28) shall not constitute binding precedent.¹¹ In PGW's pending base rate case, the parties are free to argue that more or less non-gas costs should be included or excluded from PGW's GCR, but the temporary inclusion of Bad Debt expense as a result of this settlement will have no effect on that debate.¹²

C. GCR Over Recovery Reserve Fund.

OCA's concern about PGW unfairly retaining any portion of the contingency fund that the settlement would make available to allow PGW to pay its debt service and other obligations in January, 2002, is unfounded. First, this potential "contingency fund" is absolutely essential to allow PGW to issue its bonds this spring. Investors are demanding a "backstop" in order to have some assurance that PGW will indeed be able to pay its bills when due — a basic obligation of

⁹ 66 Pa. C.S. § 2212(d).

¹⁰ Joint Petition, ¶ 23.

¹¹ Id, ¶ 32.

¹² The opportunity to file comments to the Joint Petition, and the opportunity to review and revise the bad debt expense in PGW's pending base rate case satisfies the due process requirements of Community Central Energy Corp. v. Pa. PUC, 473 A.2d 1109 (Pa.Cmwlth. 1984). See, CEPA Comments at 12.

any company — but also an absolute requirement of PGW's bond covenants, and, thus, the Public Utility Code.¹³

OCA is concerned that using any GCR over collection — up to \$18 million — as a cash reserve to pay January, 2002 obligations is contrary to the Code and PGW's tariff. But the Code clearly provides the PUC with the authority to alter, suspend or waive any provision of the Public Utility Code in its regulation of PGW,¹⁴ and the PUC clearly has the authority to make alterations to PGW's present tariff when they are requested by PGW, as is the case here.¹⁵

Moreover, the Joint Petition clearly indicates¹⁶ that, to the extent PGW's cash payment obligations in January do not require it to utilize the reserve fund, it will pay that amount back to ratepayers in accordance with its existing GCR rules. The only portion that the Joint Petition contemplates utilizing is the amount PGW demonstrates to the PUC it absolutely needs in order to make its January, 2002 payment obligations. That amount (assuming it is ever used) is not a loan, as OCA suggests, but a payment that the Public Utility Code obligates ratepayers to make in order to allow PGW to meet the obligations imposed by its bond ordinance covenants. Under those obligations, and the prior rate making methodology used by the Philadelphia Gas Commission ("PGC"), PGW has to collect from its rates enough to make these payments. The reserve fund is a compromise method of creating a potential source of these funds, to be used only if necessary, if the base rate award scheduled to be finalized in early October, 2001 does not

¹³ 66 Pa. C.S. § 2212(e).

¹⁴ 66 Pa. C. S. § 2212(c).

¹⁵ 66 Pa. C.S. § 2212(d).

¹⁶ Joint Petition, ¶ 27.

permit PGW to accumulate sufficient cash soon enough to be able to satisfy these obligations. It is thus best characterized as a contingency interim rate award, not a loan. Presumably the PUC's base rate determination will set PGW's permanent base rates at a level that will permit the company to meet its future obligations when they come due, as its Bond Ordinance covenants and the Gas Choice Act require. Ratepayers are considerably advantaged by this compromise because the Settlement does not require them to remit higher rates now to build up PGW's cash balances, but instead uses the potential GCR over collection to provide a backstop in case the combination of PGW's cash conservation steps, the use of available bond proceeds before they are needed to fund construction (or to reimburse prior cash outlays for construction), and the results of the base rate proceeding do not produce the sufficient cash balances necessary to permit PGW to meet its financial obligations.

D. Year-End Cash Balances.

OCA suggests that there is no "record evidence" to support the requested finding by the PUC that PGW "must have a \$20-25 million cash balance at fiscal year end."¹⁷ But this is incorrect. PGW placed considerable evidence on the record showing that PGW's end of year cash balance needs were considerably greater — \$35-40 million.¹⁸ The Joint Petition's requested declaration is a compromise position. PGW continues to believe that the \$35-40 million is

¹⁷ Joint Petition, ¶ 25.

¹⁸ PGW-IR St. 1 at 9; Exh. 1.1, ¶ 8-9; Tr. 135. No witness seriously disputed PGW's need for positive cash balances at year end. See, e.g., Tr. 242-43, 326. The \$35-40 million was produced from a combination of the use of bond proceeds, before their commitment for construction (or as reimbursement for prior capital outlays), and cash from operations. Id.

entirely justified and has agreed to a lesser amount solely for the purposes of settlement and in light of its present view of the cash that will be available from the May bond issuance and the results of PGW's cash conservation efforts, as explained in the Settlement.¹⁹ OCA's suggestion that the PUC's declaration of such needs requires additional hearings is simply incorrect. This issue was fully developed on the record in the interim case itself; the Joint Petition requests the PUC now to make a finding based upon the evidence previously adduced there. This is completely reasonable and appropriate.

E. Cash Conservation Efforts.

OCA, and CEPA raise concerns about the Joint Petition's request that the PUC declare to be prudent certain cash conservation steps that PGW is proposing to take in order to reduce PGW's end-of-year cash needs and, in turn, the amount of interim rate increase necessary to get the company through this difficult period. They argue that there is no evidence to support a finding of "prudence." But the requested finding is in the context of PGW's present cash crisis, the facts of which have been described on the record in this case in great detail, and on which PGW based its claim for interim rates.²⁰ PGW understands and expects that its gas procurement efforts will be evaluated in the context of its next GCR review, pursuant to the standard determined to be applicable for such a review. However, if the PUC desires to develop more evidence on the narrow issue of the prudence of PGW's steps to conserve cash and to avoid a substantially larger rate increase, it could tentatively make the requested finding and offer parties

¹⁹ Joint Petition, ¶¶ 10, 25, 27.

²⁰ See, PGW-IR-St. 1.0 (Knudsen Direct) at 5-15, Exhibits 1.1 and 1.2; PGW-IR-St. 1.1 (Knudsen Rebuttal) at 2-17, 19-22; PGW-IR-St. 2 (Bisgaier Direct) at 4-16.

a “mini-hearing” on this single issue.²¹ PGW is confident that it can fully explain the prudence and need for these steps in the current context.

F. Application of Section 2212(e).

The OCA also requests additions to the finding requested in paragraph 28, that the PUC,

has statutory obligations under Section 2212(e) to provide PGW with rates adequate to meet all of its Bond Ordinance covenants, to follow the same rate making methodology and requirements that were applicable to PGW prior to July 1, 2000, and to otherwise comply with Section 2212 of the Public Utility Code.²²

The OCA insists that the “just and reasonable” standard of Section 1301 of the Public Utility Code should also be referenced as controlling. But the OCA’s suggestion is wrong for at least two reasons. First, a crucial provision of the settlement, from the company’s perspective, is a clear recognition by the PUC of its obligations under this section of the Public Utility Code to permit PGW to meet its bond ordinance covenants. The declaration requested states what the law requires – nothing more – and does not require any alterations or additions. There is no need to engage in the debate about the applicability of other sections of the Code because the OCA is free to argue, in the pending base rate case, or in any other context, that other sections of the Code apply to PGW.

Second, however, OCA’s entire reference to Section 1301 as controlling betrays a misunderstanding of the application of the just and reasonable standard, as it applies to PGW.

²¹ If the PUC chooses to hold such a hearing, PGW requests that the PUC approve all other aspects of the Joint Petition now and then review the support for this finding.

²² Joint Petition, ¶ 28.

Section 2212(e) states clearly that PGW's rates must be set in accordance with its prior rate making methodology and requirements and so as to permit PGW to meet its bond covenants. The PGC and the Courts has always categorized rates that permitted PGW with sufficient income and cash to meet its bond covenants as per se just and reasonable.²³ To the extent that some different interpretation based upon other sections of the Code could be read to mandate a different result, the law is clear as to which prevails: Section 2212(e) prevails "notwithstanding any provision of this title to the contrary."²⁴ Clearly, the operative rate making standards for PGW are contained in Section 2212(e), the same standards that have been set forth in Paragraph 28 of the Joint Petition. If other sections would require a different result, the applicable law states that the standards in Section 2212 control. The OCA clarification is not only unnecessary, it is incorrect.

G. Management Audit and Other Service Commitments.

The OCA has indicated that it cannot fully consider the Management Audit review process that was agreed to by PGW because OCA has not as yet seen the results of the PUC's Management Audit. It also has expressed concerns that it did not appear that other parties were going to be formally involved in the implementation process. First, the implementation process

²³ Action Alliance v. Philadelphia Gas Commission, 406 A.2d 1155 (Pa.Cmwlth. 1979); Public Advocate v. Philadelphia Gas Commission, 674 A.2d 1056 (Pa. Cmwlth. 1996) CEPA has consistently misconstrued the holding of these cases as mandating that the PUC's just and reasonable ratemaking standard is somehow of constitutional dimension and supercedes the cash flow ratemaking standard or the statutory requirement that PGW's rates must be set to meet its bond ordinances. As noted above, these cases held that the PGC's cash flow ratemaking methodology was per se just and reasonable both constitutionally and otherwise.

²⁴ 66 Pa. C. S. § 2212(e) (emphasis added).

agreed to by PGW starts with a commitment to implement all of the recommendations of the PUC's auditors, except for a limited category of suggestions that, in PGW's view, cannot be implemented because, for example, they would require the company to take an action that was illegal.²⁵ PGW and the Commission Staff will have an opportunity to arrive at an acceptable compromise plan that would include a PGW commitment to implement a revised recommendation. The results of this process would presumably be described in the PUC's order publically releasing the audit results. This is no different than the usual process used by the PUC to implement an audit of other regulated utilities. If the PUC — or any party — desires to press PGW compliance with a recommendation, the Joint Petition sets forth a process by which that can occur. It is implicit that all parties retain the right to challenge PGW decisions to implement or to decline to implement Management Audit recommendations, just as PGW retains the right to challenge any PUC attempt to insist on implementation of any recommendation to which it has excepted.

The OCA also questioned whether PGW was agreeing to adhere to the remaining commitments contained in the November 22 Order²⁶. PGW's reading of the Joint Petition is that unless otherwise modified by the Settlement, the ordering paragraphs in the November 22 Order apply. Hence, it is prepared to adhere to the remaining commitments required there.²⁷

²⁵ Joint Petition, Attach. B.

²⁶ OCA Comments at 6.

²⁷ PGW already committed to its existing LNG refurbishment project in accepting the PUC's GCR Order. PGW's commitment to the main replacement program mentioned in the interim order would be in the same vein.

H. PICGUG's and CEPA's Claims That the Joint Petition Is Not Supported by Substantial Evidence Are Wholly Erroneous.

In addition to misconstruing the Joint Petition into a \$36 million rate increase, PICGUG and CEPA astonishingly assert that the Joint Petition and its allowance of a \$7 million GCR increase on account of heightened bad debt expenses are not supported by “any evidence.”²⁸ Nothing could be further from the truth. As indicated above, there is ample evidence in the record supporting far higher base rate increases; OTS submitted record evidence in the interim proceeding demonstrating PGW's need for a \$27.5 million increase, and the OCA submitted evidence supporting a \$25 million increase. Ironically, PICGUG's very own witness during the interim proceedings testified that an increase very similar to the amount allowed in the Joint Petition was in fact necessary.²⁹ According to Mr. Baudino's testimony, PGW needed a \$15.6 million interim increase, a mere \$2.4 million below what PGW will actually receive pursuant to the Joint Petition.³⁰ No mention of the recommendations of its own witness can be found in PICGUG's “Comments.”

Second, the Commission's recognition of and allowance for PGW's increased bad debt expenses is totally consistent with its prior orders. PICGUG oddly proclaims that “the Joint Petition fails to provide any insight as to whether the Company's current gas costs have changed

²⁸ PICGUG Comments at 6; CEPA Comments at 16.

²⁹ PICGUG St. 1 at 13.

³⁰ Id. Mr. Baudino's testimony was also submitted prior to the very significant increases in gas costs suffered by PGW. If Mr. Baudino had been privy to the gas cost increases since November 2000, his assessment of PGW's needs, instead of \$15.6 million, would undoubtedly have been well above the \$18 million figure contained in the Joint Petition.

since PGW's last GCR proceedings, in which the PUC approved a \$97 million increase in the Company's GCR."³¹ Quite the contrary, consistent with the Commission's regulations and the PUC's November 22, 2000 GCR Order, PGW was forced by increasing gas costs to file a \$133 million revision to its GCR in January 2001. PGW's revision was recognized and approved by the Commission by Secretarial Letter dated January 11, 2001.³² The \$7 million addition, aimed at offsetting enhanced bad debt expenses, is well within the formula formally adopted by the Commission in its November 22, 2000, Order on interim rates. In that Order, the Commission accepted the Office of Trial Staff's position that 7.3922% of PGW's total gas billings will be uncollectible. November 22nd Order at 17. Applying that percentage to the increase in PGW's billings prompted by the necessary \$133 million GCR increase, the Joint Petition's \$7 million allowance for bad debt expense is wholly supported, reasonable, and necessary.³³

³¹ PICGUG comments at 6.

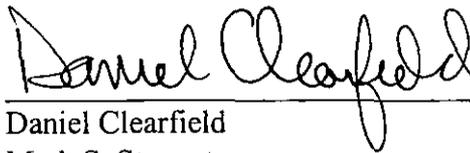
³² See OCA Comments at 4, 11.

³³ In actuality, 7.3922% applied to the \$133 million GCR update allows for a nearly \$10 million increase in PGW's rates to account for bad debt expenses. However, during the interim proceedings, some increase in gas costs was anticipated, and the \$7 million was a compromise level.

IV. CONCLUSION

Wherefore, the Philadelphia Gas Works respectfully requests that the Public Utility Commission reject the comments and objections discussed herein and issue an order approving the Joint Petition for Full Settlement in accordance with its terms.

Respectfully submitted,



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

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

Dated: February 20, 2001

RECEIVED
01 FEB 20 AM 11:44
P.A.P.U.C.
SECRETARY'S BUREAU

R-00005654

DOCUMENT
FOLDER

ORIGINAL
RECEIVED
FEB 20 11:45
M.P.U.C.
SECRETARY'S BUREAU

Attachment A

Independent PGW Management Search Process

DOCKETED
FEB 22 2001

INDEPENDENT PGW MANAGEMENT SEARCH PROCESS

The City and the Philadelphia Facilities Management Corporation (PFMC), are committed to retaining top quality permanent management for PGW as soon as possible.

In preparation for the management search the City sought advice concerning the possible impact on PGW's tax-exempt debt should a for-profit management firm be retained to manage PGW. Second, preliminary inquiries have been made about search firms with utility experience. Third, a decision has been made to search for an individual CEO simultaneously with a search for a management company, leaving the final decision as to the direction to take until an evaluation of the candidates and the condition of PGW at that time can be performed. Fourth, in an attempt to learn from prior experience, a review has been conducted of the process used in the most recent search for PGW management.

I. GOVERNANCE

PGW's current governance structure is recognized as a barrier to PGW's ability to attract top quality management. The City commits to advance proposals which will simplify PGW's governance structure and result in an independent professional management for the Gas Works. Any governance changes must be made by ordinance. City Council is currently considering Bill 603 which would eliminate PFMC and give management authority to the Gas Commission. Mayor Street opposes Bill 603. It is expected that the governance issue will be resolved before City Council's recess for the summer at the middle of June.

II. REQUIREMENTS FOR SEARCH PROCESS

1. The search process will be conducted independently of the present interim management team.

2. The search will seek professional individuals or firms experienced in utility operations.
3. The search will seek to retain independent professional management for at least a 4-year commitment.
4. The members of the search team will develop expertise and experience requirements that would typically be required for such a position.

III. SEARCH PROCESS TIMELINE

<u>ACTION</u>	<u>COMPLETION DATE</u>
Complete Analysis of Impact on Tax-Exempt Bonds	February ^{March} 15
<i>Three Track Parallel Process:</i>	
Retain Search Firm(s)	March 15
a) Form City Committee Issue RFP for Management Firm	April 6
b) Issue Request for Applications for CEO position	April 6
c) Analyze Potential Benefits of Sale of PGW	June 14
Adopt New PGW Governance	June 15
Conduct Interviews of Candidates for CEO And Management Firm	September 7
Initiate contract negotiations with Winning candidate	October 1
Approval and Execution of contract with Selected candidate	December 31

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 FIRST CLASS MAIL, HAND DELIVERY and/or E-MAIL

Tanya McCloskey, Esq.
Steve Keene, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

Angela Jones, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101

Jackie Sparkman, Esquire
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

Johnnie Simms, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Charis M. Burak, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141
(CEPA)

Philip Bertocci, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102

Richard Lelash
Financial and Regulatory Consultant
18 Seventy Acre Road
Redding, CT 06896
(OCA)

Craig A. Doll, Esq.
25 North Front St., 2nd Floor
Harrisburg, PA 17101-1606

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

Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

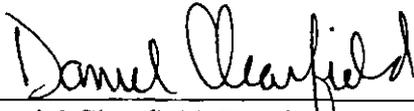
ORIGINAL
RECEIVED
01 FEB 20 AM 11:45
PA PUBLIC
UTILITY
COMMISSION
SECRETARY'S BUREAU

DOCUMENT
FOLDER

DOCKETED
FEB 22 2001

Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406
(PICGUG)

Dated: February 20, 2001


Daniel Clearfield, Esquire

RECEIVED
01 FEB 20 AM 11:45
F.P.U.C.
SECRETARY'S BUREAU