

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: December 19, 2000	2. BUREAU AGENDA NO. DEC-2000-L-183* (REVISED)
3. BUREAU: Law	
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: B.R. Pankiw, 7-5000 Supervisor: K.O. Moury, 2-8883	December 20, 2000
7. PERSONS IN CHARGE: Andrew S. Tubbs, 7-2871	[Handwritten initials: BRP, KOM, AS]
8. DOCKET NO.: R-00005654	[Stamp: DOCKETED JAN 11 2001]

- 9. (a) CAPTION (abbreviate if more than 4 lines)**
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

- (a) Pennsylvania Public Utility Commission, et al v. Philadelphia Gas Works; Interim Rates Proceeding.
- (b) On December 7, 2000, Philadelphia Gas Works (PGW) filed an Application for Stay and Affirmative Relief Pending Appellate Review. By its Application, PGW seeks permission to implement an interim rate increase without accepting certain conditions contained in the Commission's November 22, 2000 Order at this Docket. PGW's obligation to accept the conditions contained in the November 22, 2000 Order were set forth as a prerequisite to receiving an interim rate increase. Various parties filed Answers to PGW's Application for Stay and Affirmative Relief Pending Appellate Review.
- (c) The Law Bureau recommends that the Commission adopt the proposed Order addressing PGW's Application.

10. MOTION BY: Commissioner Chm. Quain

SECONDED: Commissioner Bloom

Commissioner Brownell - Yes
 Commissioner Wilson - Yes
 Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.

DOCUMENT
 FOLDER



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

DECEMBER 20, 2000

R-00005654

DANIEL CLEARFIELD ESQUIRE
BLAKE J NELSON ESQUIRE
WOLF BLOCK SCHORR & SOLIS-COHEN
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.
v.
PHILADELPHIA GAS WORKS

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on December 20, 2000 in the above-entitled proceeding has adopted an Order.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

smk
Enclosure
cert. Mail

DOCKETED
DEC 27 2000

DOCUMENT
FOLDER

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265**

Public Meeting held December 20, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice-Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

DOCKETED
DEC 27 2000

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, ET AL.

Docket No. R-00005654

v.

PHILADELPHIA GAS WORKS

ORDER

BY THE COMMISSION:

**DOCUMENT
FOLDER**

I. INTRODUCTION

Before the Commission for consideration is an Application for Stay and Affirmative Relief Pending Appellate Review, pursuant to Pa. R.A.P. 1781(a) and 52 Pa.Code §5.572. The Application was filed by the Philadelphia Gas Works (PGW) on December 7, 2000, requesting that the Commission grant a stay and affirmative relief pending appeal of the Commission's November 22, 2000 Order, in the above-captioned matter. Specifically, PGW seeks permission to implement an interim rate increase without accepting certain conditions in the November 22, 2000 Order that it has challenged in its appeal. While we will not relieve PGW of the obligation to accept all of

the conditions set forth in the November 22, 2000 Order as a prerequisite to receiving an \$11 million interim rate increase, we are willing to permit PGW to continue with its appellate challenge of the November 22, 2000 Order regarding the legality of certain conditions.

II. CASE HISTORY

On August 8, 2000, PGW, pursuant to 52 Pa. Code §§5.41 and 5.42 and 66 Pa. C.S. §§331(f), 2212(d) and (e), and Chapter 13 of the Public Utility Code, filed a Petition for Establishment of Interim Rate Procedures and for a Declaratory Order (Petition). In its Petition, PGW requested the Commission to establish an expedited hearing schedule for the purpose of considering its interim rate request.

On August 17, 2000, the Commission entered an Order granting PGW's request for an expedited proceeding for the review of interim rates, subject to certain conditions. Specifically, the Commission's August 17, 2000 Order expressly conditioned approval of the expedited schedule on the following: (1) PGW's filing with the Commission a full base rate case on or before January 1, 2001; (2) PGW's firm commitment that any interim rates ultimately granted by the Commission are subject to refund at the conclusion of a full base rate case if the Commission determines that a lower level of rates is just and reasonable; (3) PGW's firm commitment that it will not seek to recoup additional revenues from ratepayers if the Commission ultimately determines that a higher level of rates is just and reasonable; and (4) PGW's firm commitment to its "Transitioning to Excellence" plan for improvement and a demonstration throughout the interim rate period that it is providing safe and adequate service.

Pursuant to the procedural schedule established at an August 25, 2000 Prehearing Conference, direct testimony was submitted by the Office of Consumer Advocate (OCA),

the Commission's Office of Trial Staff (OTS), the Office of Small Business Advocate (OSBA) and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) on September 18, 2000 to the Administrative Law Judge (ALJ). PGW submitted rebuttal testimony on September 25, 2000. Public Input Hearings were held in Philadelphia on September 26 and 29, 2000, and Evidentiary Hearings were held on September 27-28, 2000. By order dated October 3, 2000, the ALJ certified the record in this proceeding to the Commission for decision.

By Order entered November 22, 2000, the Commission, based upon the record submitted during the proceeding, granted PGW an interim rate increase of \$11 million contingent upon PGW's express acceptance of a set of conditions. To effectuate the rate increase, the Commission required that PGW submit a letter to the Commission indicating its acceptance of all of the conditions described in the Order.

On December 7, 2000, PGW filed a letter with the Commission in response to this requirement. By that letter, PGW declined to accept some of the conditions set forth in the Order. Specifically, PGW's letter indicates its unwillingness to accept the conditions set forth in Ordering Paragraphs 9-12 of the November 22, 2000 Order which provide for PGW to: "retain independent, professional and experienced management for the Gas Works", subject to Commission review and approval by September 1, 2001; and to "address and implement" improvement measures ultimately recommended by the Commission's management audit of PGW. Further, PGW stated its objection to Ordering Paragraph 13, which requires PGW to implement a "best practice" working group to solicit additional ideas to improve management and operational changes. It also expressed concerns regarding its ability to comply with Ordering Paragraphs 5, 6 and 8.

PGW's Application for Stay

In PGW's instant Application for Stay and Affirmative Relief, it claims that the conditions described above relating to the scope, makeup and content of PGW's management are inconsistent with Section 2212(s) of the Natural Gas Choice and Competition Act (Act). 66 Pa.C.S. §2212(s). Additionally, PGW states that it previously committed to the capital projects set forth in Ordering Paragraphs 5, 6 and 8, which the Commission required PGW commit to in its acceptance letter. PGW restates its commitment to these projects, contingent upon its ability to continue to finance them. PGW also maintains that an interim increase of \$11 million is insufficient.

Based upon these arguments, PGW requests that the Commission stay the portion of its Order allowing an \$11 million interim rate increase, and grant affirmative relief, pending appeal, in the form of a \$52 million interim rate increase or other amount. Alternatively, PGW requests that the Commission stay the conditions set forth in Ordering Paragraphs 5, 6 and 8-12 pending appellate review of the Commission's November 22, 2000 Order, and allow the immediate implementation of any authorized interim rate increase. A third alternative, set forth in PGW's December 7, 2000 letter suggests that the Commission permit PGW to implement an \$11 million interim rate increase, while specifically allowing PGW to continue with its appeal of the November 22, 2000 Order challenging the conditions.

Answers to PGW's Application for Stay

On December 18, 2000, the OCA, PICGUG and the Apartment Association of Greater Philadelphia (AAGP) filed Answers to the PGW Application for Stay. All parties oppose PGW's Application for Stay, noting that Commission has already considered the arguments made by PGW. The OCA and PICGUG state that the Commission properly

exercised its discretion in establishing the interim rate proceeding and in determining that PGW's current quality of service necessitated that imposition of conditions on PGW to receive an interim rate increase.

III. Discussion

In the November 22, 2000 Order, the Commission expressly recognized the statutory requirement of allowing PGW to comply with its bond covenants and balance that mandate with our goal of approving just and reasonable rates. As the Commission explained, interim rate relief is viewed "solely as a means of enabling PGW to meet its operational needs for this heating season and to honor its bond covenants until we can complete our management audit and conduct a full base rate review." November 22, 2000 Order at 12. By authorizing PGW to implement an \$11 million interim rate increase, subject to various conditions, the Commission was satisfied that PGW will be able to meet its debt service requirements and that its ratepayers will have reasonably contributed to managing PGW's financial crisis for this winter heating season. In reaching these determinations, the Commission stressed the failure of PGW's management to timely address the financial situation that have steadily eroded over recent months and even years. We continue to adhere to the view that a conditional \$11 million rate increase is all that is necessary and appropriate for PGW.

Further, the Commission found, based upon public input testimony and the record developed in the proceeding, that it was imperative to place specific conditions upon our grant of interim rate relief in this proceeding. We explained that we would be remiss if we were to ignore the substantial public input testimony about PGW service problems. Moreover, the Commission determined that the ongoing pattern of inadequate management of PGW demanded affirmative steps requiring PGW to reform its management operations.

These factors led to the conditions precedent being placed upon PGW's receipt of interim rate increase and our determination today that PGW must expressly accept all of these conditions prior to receiving authorization to implement the previously approved \$11 million interim rate increase. While the Commission declines to stay or provide PGW with affirmative relief from the November 22, 2000 Order, the Commission recognizes that PGW is currently challenging the Commission's Order in Commonwealth Court.

Therefore, PGW may receive authorization to implement an \$11 million interim rate increase, to go into effect on one day's notice, in conjunction with or after the submission of a letter to the Secretary of the Commission indicating its acceptance of all the conditions contained in the November 22, 2000 Order. However, PGW's express acceptance of these conditions need not be accompanied by a withdrawal of its appeal. Rather, we are willing to permit PGW's legal challenge to continue, with the understanding that it would not need to ultimately fulfill those conditions if PGW's appeal is successful as to any or all of the conditions it opposes. However, pending the result of its appellate challenge, PGW must make a good faith effort to implement these conditions. Also, as to Ordering Paragraphs 5, 6 and 8, we expect PGW to be able to fulfill these conditions with the \$11 million interim rate increase. No relief from compliance with these conditions is warranted at this time. **THEREFORE,**

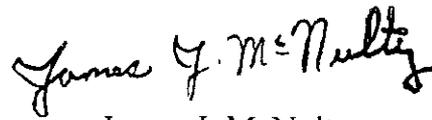
IT IS ORDERED:

1. That the Application For Stay And Affirmative Relief Pending Appellate Review relative to the Commission's Order entered on November 22, 2000, in the above-captioned proceeding is hereby denied.
2. That Philadelphia Gas Work's may implement an \$11 million interim rate increase, to go into effect on one day's notice, in conjunction with or after the submission

of a letter to the Secretary of the Commission indicating its acceptance of the all the conditions contained in the November 22, 2000 Order.

3. That PGW's express acceptance of the conditions set forth in the Commission's November 22, 2000 Order and its good faith effort to implement these conditions pending the result of its appellate challenge, is not contingent upon PGW withdrawing its appellate challenge of the Order regarding the legality of certain conditions.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 20, 2000

ORDER ENTERED: **DEC 20 2000**

DANIEL CLEARFIELD ESQUIRE
BLAKE J NELSON ESQUIRE
WOLF BLOCK SCHORR & SOLIS-
COHEN
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

BERNARD A RYAN JR ESQUIRE
ANGELA T JONES ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
SUITE 1102 SECOND STREET
300 NORTH SECOND STREET
HARRISBURG PA 17101

TANYA MCCLOSKEY ASST
CONSUMER ADVOCATE
S KEENE J MULLINS ESQUIRE
OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET 5TH FLOOR
FORUM PLACE
HARRISBURG PA 17105-3265
MESSENGER

PAIG A DOLL ESQUIRE
NORTH FRONT STREET
2ND FLOOR
HARRISBURG PA 17101-1606

PHILIP A BERTOCCI ESQUIRE
EDWARD A MCCOOL ESQUIRE
COMMUNITY LEGAL SERVICES INC
1424 CHESTNUT STREET 4TH
FLOOR
PHILADELPHIA PA 19102

CHARLES F HOFFMAN ESQUIRE
JOHNNIE E SIMMS ESQUIRE
PA PUC
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265
MESSENGER

DAVID M KLEPPINGER ESQUIRE
ARIS M BURAK ESQUIRE
MCNEES WALLACE & NURICK
100 PINE STREET PO BOX 1166
HARRISBURG PA 17108-1166

JACKIE SPARKMAN ESQUIRE
C/O MONDRE ENERGY INC
1601 MARKET STREET
SUITE 1750
PHILADELPHIA PA 19103

CHARLES P PIZZI PRESIDENT
GREATER PHILADELPHIA CHAMBER
OF COMMERCE
200 SOUTH BROAD STREET
SUITE 700
PHILADELPHIA PA 19102-3896