





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 5265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

R-00005654  
R-00005619

FEBRUARY 22, 2001

DANIEL CLEARFIELD ESQUIRE  
WOLF BLOCK SHORR & SOLIS-COHEN  
212 LOCUST STREET STE 300  
HARRISBURG PA 17101

**DOCKETED**

FEB 27 2001

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 February 21, 2001 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

DOCUMENT  
FOLDER

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held February 21, 2001

Commissioners Present:

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

DOCKETED

FEB 27 2001

PENNSYLVANIA PUBLIC UTILITY	:	Docket No. R-00005654
COMMISSION, ET AL.	:	
	:	
v.	:	Docket No. R-00005619
	:	
PHILADELPHIA GAS WORKS	:	

ORDER

DOCUMENT  
FOLDER

BY THE COMMISSION:

**Introduction**

On February 8, 2001, a Joint Petition for Full Settlement ("Joint Petition") of the Commission's November 22, 2000 Order, at Docket No. R-00005654, and a related appeal at Docket No. 557 M.D. 2000, was filed in the above-captioned proceedings by Philadelphia Gas Works ("PGW") and the Commission's Law Bureau ("Law Bureau")

(parties collectively referred to as the "Joint Petitioners"). The City of Philadelphia (the "City") is also a signatory to the Joint Petition for specified, limited purposes.

The proposed terms and conditions of the Joint Petition represent a comprehensive settlement which resolves all issues on appeal before the Commonwealth Court arising from challenges by PGW, the Philadelphia Facilities Management Corporation ("PFMC") and the City to the Commission's November 22, 2000 Order.

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 the Joint Petition; (2) amend the Commission's final orders as necessary to implement the full settlement; and (3) approve the tariff supplements necessary to implement the proposed settlement. The Joint Petitioners recognize, however, that pursuant to the provisions of Section 703(g) of the Public Utility Code, the Commission is obligated to provide notice of and opportunity to be heard before we may amend a prior order. In this regard, the Joint Petitioners request that the Commission provide an expedited time period for other parties to reply to this full settlement. Further, the Joint Petitioners agree that as soon as practicable, PGW will provide notice of the rate increase to its customers (1) via a bill message, (2) by posting a notice in its offices, and (3) by providing notice by news release.

By Secretarial Letter dated February 8, 2001, the Commission directed parties to these proceedings to file any comments to the Joint Petition by Noon on February 16,

2001. Comments were timely submitted by the Office of Consumer Advocate (“OCA”), the Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, the Action Alliance of Senior Citizens of Greater Philadelphia and the Tenants’ Action Group (collectively “CEPA et al.”), the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) and the Office of Small Business Advocate (“OSBA”). The Apartment Association of Greater Philadelphia (“AAGP”) submitted a letter in lieu of comments to the Joint Petition. On February 20, 2001, the Response of PGW to the comments was filed. All comments, whether or not they are specifically mentioned in this order, have been considered by the Commission before reaching a decision on whether to approve the Joint Petition.

**Joint Petition**

In the proposed settlement, the City commits to proceed in good faith with an 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 continue with its present process of streamlining the present PGW governance structure. Additionally, PGW agrees to implement all of the recommendations of the PUC Management Audit or explain why it does not believe it can do so, in accordance with specific, limited criteria set forth in this proposed settlement.

In exchange for these commitments by PGW and the City, PGW would be permitted to implement rate design changes enabling it to charge and collect the Commission’s previously-authorized \$11 million interim base rate increase by August 31,

2001. In addition, PGW would be permitted to recover \$7 million through its GCR, compressed so as to be collected by August 31, 2001, to account for additional bad debt expense produced by dramatically higher than projected natural gas costs incurred by PGW. The Joint Petition would also allow PGW to hold in reserve any GCR overcollection that it actually incurs, not to exceed \$25 million, to insure that it has sufficient cash to meet its bond covenants through January 2002. Any remaining portion of the reserve would be returned to ratepayers through the GCR, subject to PGW's right to request a different treatment. To this end, PGW would make an informational filing when it determines whether it will need the reserve fund, by no later than December 31, 2001. The filing would then be subject to review and approval by the Commission.

These interim rate and GCR increases, as well as the operational changes proposed by PGW and the establishment of a deferral account, are designed to address PGW's projected financial obligations. The Joint Petitioners assert that the provisions of the proposed settlement are consistent with the Commission's obligation to establish rates for PGW which permit it to meet all of its Bond Ordinance covenants.

Upon the entry of a final order by the Commission setting forth the above terms, PGW, PFMC and the City will cause their Petition 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 order will become effective.

## Comments

In its comments, the OCA asserts that while it does not oppose some additional rate relief above the \$11 million awarded by the Commission in its November 22, 2000 Order, the structure of providing that additional relief must be consistent with Pennsylvania law and PGW's tariff. As such, the OCA submits that the Commission should clarify or modify the Joint Petition so that it comports with Pennsylvania law regarding just and reasonable rates and PGW's tariff relating to the inclusion of non-gas costs in the GCR. Similarly, the OSBA does not oppose the Joint Petition, noting that the terms of the Joint Petition do not unreasonably harm the interests of small businesses.

CEPA et al. asserts that the Commission should approve the Joint Petition only if it finds that the terms are just and reasonable and supported by substantial evidence in the record. According to CEPA et al., the record in this case does not support such a finding. CEPA et al. also asserts that the \$7 million increase through the GCR and the retention by PGW of up to \$18 million in a reserve fund represents "additional base rate increases." Finally, CEPA et al. asserts that the proposed prudency findings in the Joint Petition are "protective of PGW but extremely risky to the customers of PGW."

PICGUG submits that the Joint Petition fails to provide any substantive evidence as to why the November 22, 2000 Order must be abandoned, and instead, addresses PGW's financial concerns into January 2002. PICGUG also submits that the Joint Petition changes the original conditions placed on PGW to receive an \$11 million increase in the November 22, 2000 Order.

## Resolution

In response to the comments submitted by the OCA, CEPA et al., and PICGUG, it should be emphasized that the rate increase proposed in this Joint Petition amounts to \$18 million through August 31, 2001 that would be implemented as an \$11 million interim base rate increase proportionately in the customer charge for each class and a \$7 million increase in PGW's GCR. Issues regarding the appropriate level of base rates, customer charge and bad debt expense on a permanent basis will be addressed in the pending base rate case. Moreover, the potential additional \$18 million "reserve fund" is available to PGW only if PGW develops a GCR over-collection and only if it is needed to satisfy bond debt service (after PGW pursues in good faith all other sources of revenue reasonably available). If not needed, the reserve (if it exists) will be refunded to ratepayers in accordance with existing GCR rules.

As to the assertions concerning the permanent inclusion of a factor in PGW's GCR to recover the bad debt expense, the Commission notes that the Joint Petition expressly states that its provisions constitute a negotiated resolution of the issues and are of no precedential value in subsequent proceedings. We assure the parties that our approval for the recovery of a portion of bad debt expense through the GCR under the limited and specific circumstances described in the Joint Petition does not reflect any intent to permit such treatment in future GCR proceedings. In fact, we note that in our November 22, 2000 GCR Order, we expressly directed PGW to address in its base rate filing the appropriateness of including non-gas costs in its GCR. Consistent with that directive, the

Joint Petition recognizes that the appropriate amount of this expense will be subject to review and revision in PGW's pending base rate proceeding. Finally, it should be recognized that the Public Utility Code clearly provides the Commission with the authority to make alterations to PGW's present tariff.

In response to the concerns regarding PGW's gas procurement efforts and the management audit recommendations, it is noted that all parties retain the right to challenge PGW in both of these areas. Specifically, PGW's gas procurement efforts will be fully evaluated in its next GCR proceeding, and the rights of all parties to challenge PGW's decisions to implement the management audit recommendations are unaffected by the Joint Petition.

The proposed settlement set forth in the Joint Petition constitutes a comprehensive resolution of the broad array of issues raised by PGW, PFMC and the City in their appeal of the Commission's November 22, 2000 order. In regulating PGW, the Commission will comply with its statutory obligations under the Public Utility Code, including Section 2212(e),<sup>1</sup> and fully expects PGW's to comply with the statute in providing reasonable and adequate service to its customers at just and reasonable rates. In the Commission's judgment, authorization of the rate changes and cash reserves in the proposed settlement

---

<sup>1</sup> Section 2212(e) requires, *inter alia*, that the Commission, in determining PGW'S revenue requirement and approving overall rates and charges, "follow the same ratemaking methodology and requirements that were applicable to [PGW] prior to the assumption of jurisdiction by the commission" and permit PGW to "impose, charge or collect rates or charges as necessary to permit...PGW to comply with its covenants to the holders of any approved bonds." 66 Pa.C.S. §2212(e).

are consistent with our statutory obligations under Section 2212(e), as well as the “just and reasonable” standards relied upon in our November 22, 2000 Order.

In addition to being consistent with our statutory obligations regarding PGW’s financial situation, various provisions of the Joint Petition describe the efforts that PGW will take to ensure an ability to fulfill its financial requirements. In particular, with respect to PGW’s efforts to conserve cash through operational changes in arranging supply purchases, in a manner consistent with its supply and reliability obligations, those actions, as represented by PGW, appear to be prudent in light of all currently known circumstances. Moreover, it is noteworthy that PGW fully expects that the financial and operational steps set forth in this proposed settlement will be sufficient to enable PGW to meet its financial obligations through January 2002. However, if these steps are not sufficient, PGW agrees that it will consider additional rate relief to meet any shortfall only as a last resort and only after pursuing in good faith all other sources of revenue reasonably available.

Additionally, we expect the City to complete the independent permanent management search process by December 31, 2001 and to take all actions necessary to simplify PGW’s present governance structure. As to the timeline set forth in Attachment A of the Joint Petition for the management search process, we recognize that the date for completion of the analysis regarding the impact on tax-exempt bonds should be March 15, rather than February 15. Further, consistent with the November 22, 2000 Order, we note that the management agreement executed pursuant to the process described in

Attachment A must be submitted to the Commission for prior review and approval to ensure compliance with the terms and conditions of the Joint Petition, as well as the standards set forth in the November 22, 2000 Order. Moreover, we expect PGW to implement the management audit recommendations set forth in the PUC Management Audit of PGW conducted by Barrington-Wellesley Group, Inc. We anticipate that fulfillment of these critical management commitments by the City and PGW will improve the overall efficiency and operation of PGW, if properly implemented as contemplated by this Order.

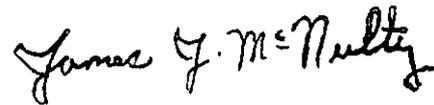
### **Conclusion**

Upon our review of the Joint Petition, we find that the proposal is in the public interest and therefore should be approved. Our approval is specifically contingent upon PGW's acceptance of all unmodified conditions in the November 22, 2000 Order, including the Commission's prior approval of the final management agreement, as evidenced by PGW's withdrawal of its appeal; **THEREFORE, IT IS ORDERED:**

1. That in consideration of and reliance upon the representations, mutual promises and undertakings of the parties to this proposed settlement, including the express agreement of each signatory to be legally bound by its terms, the terms of the proposed full settlement set forth in the Joint Petition shall be and are hereby approved as to each and every one of its terms and conditions, and we hereby reconsider and amend our prior orders in these proceedings as necessary to implement the terms of the full settlement.
2. Any issue not specifically addressed in this settlement shall be treated and resolved in accordance with the resolution of that issue in the November 22, 2000 Orders adopted by the Commission and entered on November 22, 2000, at Docket Nos. R-00005654 and R-00005619.

3. That the Commission's approval of the terms and conditions set forth in the Joint Petition are expressly contingent upon PGW's acceptance of the unmodified conditions in the November 22, 2000 Order, and shall not become final and enforceable until the appeal at 57 M.D. 2000 has been withdrawn and terminated.
4. That a copy of this order shall be served upon all parties to the PGW proceedings at Docket Nos. R-00005654 and R-00005619.

BY THE COMMISSION:



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: February 21, 2001

ORDER ENTERED: **FEB 22 2001**

DANIEL CLEARFIELD ESQUIRE  
WOLF, BLOCK SHORR & SOLIS-  
COHEN  
212 LOCUST STREET STE 300  
HARRISBURG PA 17101

DAVID M KLEPPINGER ESQ  
DENEES WALLACE & NURICK  
100 PINE STREET  
PO BOX 1166  
HARRISBURG PA 17108-1166

PHILIP BERTOCCI ESQUIRE  
COMMUNITY LEGAL SERVICES  
1424 CHESTNUT STREET  
PHILADELPHIA PA 19102

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

JACKIE SPARKMAN ESQUIRE  
MONDRE ENERGY INC  
1601 MARKET STREET STE 1750  
PHILADELPHIA PA 19103

WALTER W COHEN ESQUIRE  
OBERMAYER REBMAN MAXWELL &  
HIPPEL  
204 STATE STREET  
HARRISBURG PA 17101

MICHAEL GOULD  
2750 CLAYTON STREET  
PHILADELPHIA PA 19151

IDA SHUGERMAN  
7244 HANFORD STREET  
PHILADELPHIA PA 19149

THOMAS SMITH  
7409 ROOSEVELT BLVD  
PHILADELPHIA PA 19152

EUGENE MALIN  
3422 RYAN AVENUE  
PHILADELPHIA PA 19136

BARBARA WEINBERG ESQUIRE  
OBERMAYER REBMAN MAXWELL &  
HIPPEL  
1 PENN CTR 1617 JFK BLVD  
PHILADELPHIA PA 19103

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

TANYA MCCLOSKEY ESQUIRE  
OFFICE OF CONSUMER ADVOCATE  
FORUM PLACE  
555 WALNUT STREET 5TH FLOOR  
HARRISBURG PA 17101-1921  
MESSENGER

BERNARD A RYAN ESQUIRE  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
COMMERCE BLDG STE 1102  
300 NORTH SECOND STREET  
HARRISBURG PA 17101  
MESSENGER