

LAW OFFICES

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

204 STATE STREET
HARRISBURG, PA 17101

(717) 234-9730
FAX (717) 234-9734

ONE PENN CENTER
19TH FLOOR
1617 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19103-1895

(215) 665-3000
FAX (215) 665-3165

USX TOWER SUITE 5240
600 GRANT STREET
PITTSBURGH, PA 15219
(412) 566-1500
FAX (412) 566-1508

SUITE 300
20 BRACE ROAD
CHERRY HILL, NJ 08034
(856) 795-3300
FAX (856) 795-8843

MICHAEL C. RICHMAN
BARBARA WEINBERG
KIMBERLY D. SUTTON*
STEVEN T. DAVIS****
CATHIE PYUNE-MCELDOWNEY*
MICHAEL S. PEPPERMAN*
CYNTHIA A. TEDESCHI*
ANDREW J. GIORGIONE
KIMBERLY J. SCOTT*
WILLIAM K. PELOSI*
JASON E. REISMAN*
JONATHAN W. HUGG
MATHIEU J. SHAPIRO*
DAVID A. NASATIR***
TODD J. GLASSMAN*
MICHAEL D. VAGNONI
ERIC G. FIKRY*
RYAN W. DECKER*
CHRISTOPHER M. BRUBAKER*
JAMES P. LEONARD*
JENNIFER B. LAMBERT*

NINA B. STRYKER
ROGER P. CAMERON*
D. ALEXANDER BARNES*
GARY M. SAMMS
KIRSTEN B. HARE*
MICHAEL E. HESTON*
DANIEL F. SCHRANGHAMER*
STEPHEN W.W. CHING, JR.*
JOSEPH J. CENTENO
PETER J. OBERKIRCHER*
CAROLYN L. DORAZIO
AMANDA W. FIGLAND*
HILLARY J. MOONAY*
THOMAS E. HANSON, JR.*
LORI M. EMRICK*
LORI E. HALBER*
KARA L. PEISCHL*
MICHAEL D. TILLMAN*
HARRY D. MADONNA
J. BENJAMIN YEAGER
MICHAEL J. KUDER

OF COUNSEL:
FRANK E. HAHN, JR.
ALLEN WEINBERG
WILLIAM G. SCHWARTZ
JONATHAN H. NEWMAN***
ROBERT N.C. NIX, III
ROBERT M. DUBBS
FREDERICK COHEN
J. KURT STRAUB
WENDELL F. HOLLAND****
JOAN M. ROEDIGER

MARTIN WEINBERG*
PETER M. BREITLING
ROBERT I. WHITELAW***
JEFFREY B. ROTWITT
GREGORY D. SAPUTELLI*
THORLEY C. MILLS, JR.**
WARREN W. AYRES
CHARLES M. GOLDEN
THOMAS A. LEONARD
ANN G. VERBER***
JOSEPH J. MCGOVERN***
JULIUS M. STEINER
WALTER W. COHEN
MARVIN S. LIEBER***
JEFFREY S. BATOFF*
SCOTT E. DENMAN
ANASTASIOS EFSTRATIADES*
JERALD S. BATOFF
DANIEL P. FINEGAN*
J. ERIC RATHBURN
RUTH RUDBARG WESSEL
NICHOLAS PODUSLENKO*
VAHAN H. GUREGHIAN
RICHARD P. LIMBURG
STEVEN A. HABER*
EDMOND M. GEORGE*
MICHAEL P. WEINSTEIN**

PAUL C. HEINTZ
HUGH C. SUTHERLAND
E. PARRY WARNER
JAMES M. PENNY, JR.
KENNETH L. OLIVER, JR.
JOHN J. EHLLINGER, JR.
MARK A. LUBLIN*
JAMES W. BAUMBACH
STEPHEN D. SCHRIER*
LOUIS B. KUPPERMAN
JOSEPH P. DOUGHER
PAUL S. DIAMOND
JEROME N. KLINE
LAWRENCE J. TABAS
PAUL N. ALLEN
VICTOR ALAN YOUNG
CATHLEEN CURRAN MYERS
CHARLES S. K. SCUDDER****
WILLIAM J. LEONARD
JOHN E. RYAN
CAROL BRAYSHAW LONGWELL
JACQUELINE Z. SHULMAN*
LARRY BESNOFF
JAMES R. THOMPSON*
SCOTT J. FIELDS*
CLARE M. DIEMER*
JOHN V. O'HARA*

* ALSO MEMBER OF NEW JERSEY BAR
** ALSO MEMBER OF OHIO BAR
*** ALSO MEMBER OF D.C. BAR
**** ADMITTED IN DELAWARE ONLY
* ALSO MEMBER OF N.J. BAR AND D.C. BAR
** ALSO MEMBER OF N.J. & FLORIDA BAR
*** ALSO MEMBER OF D.C. AND MASSACHUSETTS BAR
**** ALSO MEMBER OF NEW YORK BAR

DIRECT DIAL: (717) 221-7920

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March 1, 2001

Via Hand Delivery

Johnnie Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

DOCUMENT
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Re: Philadelphia Gas Works' Permanent Base Rate Filing
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW responses to OTS Interrogatories:

OTS-RE - 66 OTS-RE - 75
OTS-RE - 70 OTS-RE - 76
OTS-RE - 73 OTS-RS - 50
OTS-RE - 74 OTS-RS - 52

Johnnie Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
February 28, 2001
Page 2

Thank you for your attention to this matter.

Sincerely,



Walter W. Cohen

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

WWC:dhs

Enclosures

cc: All parties on Proof of Service (w/enclosures)
Secretary McNulty (Certificate of Service only)

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I hereby certify that I have this day served a true copy of the foregoing Interrogatory Responses upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

Via Hand Delivery

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

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

Tanya Mc Closkey, Esquire
Steve Keene, Esquire
Office of Consumer Advocate
5th Floor, Forum Place Building
555 Walnut Street
Harrisburg, PA 17101-1921

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

Johnnie Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

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Via U.S. Mail

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

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

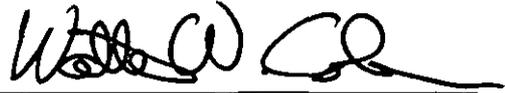
Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

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

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

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

Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406



Walter W. Cohen, Esquire

Dated: March 1, 2001

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OBERMAYER REBMANN MAXWELL & HIPPEL LLP

204 STATE STREET
HARRISBURG, PA 17101

MARTIN WEINBERG
PETER M. BREITLING
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WENDELL F. HOLLAND****
JOAN M. ROEDIGER
(717) 221-7920

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- ** ALSO MEMBER OF OHIO BAR
- *** ALSO MEMBER OF D.C. BAR
- **** ADMITTED IN DELAWARE ONLY
- * ALSO MEMBER OF N.J. BAR AND D.C. BAR
- ** ALSO MEMBER OF N.J. & FLORIDA BAR
- *** ALSO MEMBER OF D.C. AND MASSACHUSETTS BAR
- **** ALSO MEMBER OF NEW YORK BAR

March 1, 2001

DIRECT DIAL:

Via Hand Delivery

Steve Keene, Esquire
Office of Consumer Advocate
5th Floor, Forum Place Building
555 Walnut Street
Harrisburg, PA 17101-1921

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Docket No. R-00006042

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OCA, Set 1-19,20,21,22,25,32

OCA, Set 3-5,8,42,44

Thank you for your attention to this matter.

Sincerely,

Walter W. Cohen

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300 North 2nd Street
Harrisburg, PA 17101

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

Tanya Mc Closkey, Esquire
Steve Keene, Esquire
Office of Consumer Advocate
5th Floor, Forum Place Building
555 Walnut Street
Harrisburg, PA 17101-1921

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

Johnnie Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

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

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

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

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

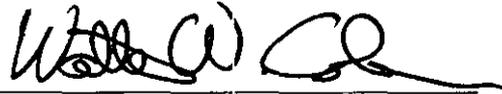
Philip Bertocci, Esquire
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102

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

Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406



Walter W. Cohen, Esquire

Dated: March 1, 2001

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DANIEL CLEARFIELD ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

JONATHAN TWERSKY
C0001
1701 SOUTH 11TH STREET
PHILADELPHIA PA 19148

ADAM B KRUGER
C0002
8812 MANCHESTER STREET
PHILADELPHIA PA 19152

ANTHONY JANKENSKY
C0003
3916 STEVENSON STREET
PHILADELPHIA PA 19114

FRANCES WILLIAMS
C0004
5216 NORTH 11TH STREET
PHILADELPHIA PA 19141-2809

JUDITH A FLANAGAN
C0005
6561 EDMUND STREET
PHILADELPHIA PA 19135

DEBORAH KANE
C0006
7134 KEYSTONE STREET
PHILADELPHIA PA 19135

HASHA SALAMAN
C0007
9204 BURBANK ROAD
PHILADELPHIA PA 19115-4003

DAVID A POSTERNOCK
C0008
215 BECK STREET
PHILADELPHIA PA 19147

ANNE GOLDEN
C0009
6649 HEGERMAN STREET REAR-SIDE
1ST FL
PHILADELPHIA PA 19135

RICHARD STERLING
C0010
2524 MEMPHIS STREET
PHILADELPHIA PA 19125

LORETTA HUTCHINGS
C0011
6421 GLENMORE AVENUE
PHILADELPHIA PA 19142

ROBERT B MULLINEAUX
C0012
239 SOUTH 13TH STREET
PHILADELPHIA PA 19107

KIMBERLY A LISACEK
C0013
2343 SOUTH BANCROFT STREET
PHILADELPHIA PA 19145

DEBORAH SALVATO
C0014
2225 SOUTH GARNET STREET
PHILADELPHIA PA 19145

JOHNNIE E SIMMS ESQUIRE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

ANGELA JONES ESQUIRE
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

DAVID M KLEPPINGER ESQUIRE
CHARIS M BURAK ESQUIRE
KAREN S MILLER ORNER
MCNEES WALLACE & NURICK
100 PINE STREET PO BOX 1166
HARRISBURG PA 17108-1166

LANCE HAVER
6048 OGONTZ AVENUE
PHILADELPHIA PA 19141

PHILIP A BERTOCCI ESQUIRE
EDWARD A MCCOOL ESQUIRE
COMMUNITY LEGAL SERVICES INC
1424 CHESTNUT STREET 4TH FLOOR
PHILADELPHIA PA 19102-2505

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SECRETARY'S BUREAU
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RICHARD LELASH
FINANCIAL AND REGULATORY
CONSULTANT
18 SEVENTY ACRE ROAD
REDDING CT 06896

CRAIG A DOLL ESQUIRE
2ND FLOOR
11 NORTH FRONT STREET
HARRISBURG PA 17010-1606

BRIAN KALCIC
CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

TANYA J MCCLOSKEY ESQUIRE
JAMES A MULLINS ESQUIRE
STEPHEN J KEENE
OFFICE OF CONSUMER ADVOCATE
5TH FL FORUM PL 555 WALNUT ST
HARRISBURG PA 17101-1923

WARREN L COLSTON
C0015
1639 MERIBROOK ROAD
PHILADELPHIA PA 19151-2717

DAVID G RICKARD
C0016
3311 G STREET
PHILADELPHIA PA 19134

ALIZA HILDEBRAND
C0017
2114 FITZWATER STREET APT 2
PHILADELPHIA PA 19146

HARRY ROBINSON
C0018
C/O RUCH SHIPON SKARBK
5200 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19124

GERRIE A STEIN
C0019
12733 VERDA DRIVE
PHILADELPHIA PA 19154

RENEE JEANINE RAGNO
C0020
6104 BUSTLETON AVENUE
PHILADELPHIA PA 19149

LAURA KUNECK
C0021
5461 VICARIS STREET
PHILADELPHIA PA 19128

WILLIAM BRIGGS
C0022
3655 OLD YORK ROAD
PHILADELPHIA PA 19140

CHARLES HUANG
C0024
10825 EAST KESWICK ROAD APT 5
PHILADELPHIA PA 19154

DIANE KINGSLEY
C0025
5411 HOUGHTON PLACE
PHILADELPHIA PA 19128

ROBERT AND KIMBERLY DEGREGORIO
C0026
6529 WALKER STREET
PHILADELPHIA PA 19135

WILLIAM G COLEMAN
C0028
4710 EDMUND STREET
PHILADELPHIA PA 19124

MARY SCORZA
C0029
10921 WALDEMIRE DRIVE
PHILADELPHIA PA 19154

LINDA FERNANDEZ
C0030
4340 PALMETTO STREET
PHILADELPHIA PA 19124-4309

LEONA R HOLLAND
C0031
5000 WALNUT STREET REAR
PHILADELPHIA PA 19139

JESSICA M WOODS
C0032
4628 SPRUCE STREET 2ND FLOOR
PHILADELPHIA PA 19139-4581

THOMAS AND CAROL LISACEK
C0033
1036 TREE STREET
PHILADELPHIA PA 19148

DIANE V CHUDZINSKA
C0034
2555 EAST CLEARFIELD STREET
PHILADELPHIA PA 19134

TOM SALMONS
C0035
1684 M STREET
PHILADELPHIA PA 19124

MICHAEL RUSSO
C0036
1316 HIGBEE STREET
PHILADELPHIA PA 19135

HARRIETTE TAYLOR
C0037
5717 SPRUCE STREET
PHILADELPHIA PA 19139-3808

DANIELLE AND WILLIAM VETTER
C0038
3599 K NOTTINGHAM LANE
PHILADELPHIA PA 19114

MARIA PRENDERGAST
C0039
1157 SOUTH 12TH STREET 1ST FLOOR
PHILADELPHIA PA 19147

RICHARD HOTCHKISS
C0040
525 SOUTH MELVILLE STREET
PHILADELPHIA PA 19143

ROSEANN BILARDO
C0041
5960 JANNETTE STREET
PHILADELPHIA PA 19128-1615

BRENDA M KINGWOOD
C0042
3546 CAMAC STREET
PHILADELPHIA PA 19140

SAMUEL J MUNAFO
C0043
3345 HOLME AVENUE
PHILADELPHIA PA 19114-3807

MAUREEN NOONE-MCGOVERN
C0044
2350 EAST ALBERT STREET
PHILADELPHIA PA 19125

ILENE APPLEBAUM-SCHULTZ
C0045
8301 DORCAS STREET
PHILADELPHIA PA 19152

JOANNE L FRITZ
C0046
1359 EAST CAREY STREET
PHILADELPHIA PA 19124

CARRIE HARTSFIELD
C0047
3118 NORTH PERCY STREET
PHILADELPHIA PA 19133

RICHARD T FOX
C0048
6274 LARGE STREET
PHILADELPHIA PA 19149

JOANNE AND GREGORY IRLICH
C0049
7811 LISTER STREET
PHILADELPHIA PA 19152

LOUIS IZZI
C0050
1920 EAST ONTARIO STREET
PHILADELPHIA PA 19134

JANE WARREN
C0051
455 MARKLE STREET
PHILADELPHIA PA 19128

FRANCIS X TENAGLIO
C0052
2335 SOUTH 18TH STREET
PHILADELPHIA PA 19145

RACHELE LEMON
C0053
2038 SPRING GARDEN STREET APT 3R
PHILADELPHIA PA 19130

ROBERT C KRALLE
C0054
12508 NANTON DRIVE
PHILADELPHIA PA 19154

TIKI WRIGHT
C0055
581 ROSALIE STREET
PHILADELPHIA PA 19120

VINCE MULLINS
C0056
322 WELLINGTON STREET
PHILADELPHIA PA 19149

WILLIAM J MASCIOTRO JR
C0057
1704 SHELMIRE AVENUE
PHILADELPHIA PA 19111-3427

JOSEPH E KETTINGER
C0058
3116 ENGLEWOOD STREET
PHILADELPHIA PA 19149

ANGELA BOGUCKI SIMONE
C0059
3255 KNORR STREET
PHILADELPHIA PA 19149

DAVID KLEPPINGER ESQUIRE
CHARIS BURAK ESQUIRE
K ORNER ESQUIRE
MCNEES WALLACE & NURICK
100 PINE ST PO BOX 1166
HARRISBURG PA 17108-1166

GLORIA DENT
C0061
6947 STENTON AVENUE
PHILADELPHIA PA 19138-1927

WALTER A PATZ
C0062
3207 ANCONA ROAD
PHILADELPHIA PA 19154-1903

JOSEPHINE RENDECH
C0063
3016 BELGRADE STREET
PHILADELPHIA PA 19134

DEANNA M CORBIN
C0064
1131 E CHELTEN AVENUE
PHILADELPHIA PA 19138-1821

NANCY S HOUSTON
C0065
731 CORINTHIAN AVENUE
PHILADELPHIA PA 19130

BRIAN BIGGS
C0066
5448 RIDGE AVENUE
PHILADELPHIA PA 19128

GERTRUDE BORASKI
C0067
3426 TILTON STREET
PHILADELPHIA PA 19134

RICHARD F KOSICH
C0068
1830 GREEN STREET APT 2R
PHILADELPHIA PA 19130

JOHN DITTUS
C0069
1339 GILHAM STREET
PHILADELPHIA PA 19111

STEVEN C GRAY ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

BRIAN KALCIC
EXCEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

JEANNE S WIETICHA
C0071
3616 BELGRADE STREET
PHILADELPHIA PA 19134-5519

CYNTHIA ROBINSON
C0072
5983 N OPAL STREET
PHILADELPHIA PA 19141

MATTHEW C MORGAN
C0073
115 KALOS STREET
PHILADELPHIA PA 19182

VU TIEN NGUYEN
C0074
1745 W PASSYUNK AVENUE
PHILADELPHIA PA 18145-3836

MARK S STEWART ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

SCOTT A HUFF
C0075
110 LOMBARD STREET APT 19
PHILADELPHIA PA 19147

CYNTHIA RASCOE
C0076
16 RUGBY
PHILADELPHIA PA 19138

TAMEIKA L STERLING
C0077
2520 S EDGEWOOD STREET
PHILADELPHIA PA 19142

LIL HENDERSON
C0078
6334/6336 NORTH 10TH STREET
PHILADELPHIA PA 19141

JOE FEDELI
C0079
3116 WELSH ROAD
PHILADELPHIA PA 19136-1810

LAWRENCE W MEEHAN
C0080
3015 FANSHAW STREET
PHILADELPHIA PA 19149

WENDY S LAVERTY
C0081
464 VANKIRK STREET
PHILADELPHIA PA 19120

KIA WILLIAMS
C0082
5037 SPRINGFIELD AVENUE APT 3
3RD FLOOR
PHILADELPHIA PA 19143

VANESSA PAYNE
C0083
907 ATWOOD ROAD
PHILADELPHIA PA 19151

MARK CAMPBELL
C0084
5438 WOODCREST AVENUE
PHILADELPHIA PA 19131

LEEANNA COX PURNELL
C0085
2029 NORTH 62ND STREET
PHILADELPHIA PA 19151

LEOTA BAUER
C0086
3110 FAIRFIELD STREET
PHILADELPHIA PA 19136-1108

LEROY HARRIS III
C0087
5741 WEST DUNLAP STREET
PHILADELPHIA PA 19131-3411

HELEN T KLOCEK
C0088
3151 CEDAR STREET
PHILADELPHIA PA 19134

AUDREY F RICHARDSON-JORDAN
C0089
6438 NORTH NORWOOD STREET
PHILADELPHIA PA 19138-2508

ROXANNE T GREGORIO
C0090
718 SOUTH PERCY STREET
PHILADELPHIA PA 19147

ATTILIO W FEDELI
C0091
3291 HOLME AVENUE
PHILADELPHIA PA 19114

DENISE RIEHL
C0092
676 RENZ STREET
PHILADELPHIA PA 19128

LINDA G REDDING
C0093
605 KINGSLEY STREET
PHILADELPHIA PA 19128

KEVIN CAMPBELL
C0094
2242 FRIENDSHIP STREET
PHILADELPHIA PA 19149

CHRISTINA GAINES
C0095
260 EAST SLORUM STREET
PHILADELPHIA PA 19119

SUSAN CAVANAUGH
C0096
117 FULLER STREET
PHILADELPHIA PA 19152

SALA N BAILEY
C0097
35 ALMA STREET
PHILADELPHIA PA 19149

JEANNETTE KING-COLEMAN
C0098
5701 FLORENCE AVENUE
PHILADELPHIA PA 19143-4527

VIRGINIA T LOCK
C0099
6700 ROWLAND AVENUE
PHILADELPHIA PA 19149

L EVELYN MACMATH
C0100
5844 PENN STREET
PHILADELPHIA PA 19149

WENDELL F HOLLAND ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPEL LLP
ONE PENN CENTER 19TH FLOOR
1617 JOHN F KENNEDY BOULEVARD
PHILADELPHIA PA 19103-1895

MARIE A ZOOK
C0101
8320 JEANES STREET
PHILADELPHIA PA 19111

ANTHONY M GUIDOTTI
C0102
9733 REDD RAMBLER DRIVE
PHILADELPHIA PA 19115-2926

MARGARET C BRENNA
C0103
2354 EAST TUCKER STREET
PHILADELPHIA PA 19125

KAREN S CLAPP
C0104
1237 RODMANN REAR COURT
PHILADELPHIA PA 19147

MARGARET GROSS
C0105
3938 NORTH SMELLEY
PO BOX 38015
PHILADELPHIA PA 19140

BARBARA J LIPSCOMB-OLIVER
C0106
6615 GONTZ AVENUE
PHILADELPHIA PA 19126

MARIO FAVACCHIA
C0107
1711 WEST MOYAMENSING AVENUE
PHILADELPHIA PA 19145

DOMINIC L FOLINO
C0108
7404 DUNGAN ROAD
PHILADELPHIA PA 19111

MARY COOPER
C0109
175 WEST ALBANUS STREET
PHILADELPHIA PA 19120

FEDELE P FOLINO
C0110
7157 TORRESDALE AVENUE
PHILADELPHIA PA 19135

ROBERT NUCCIO
C0111
349 MERCY STREET
PHILADELPHIA PA 19148

CAREN PY
C0112
705 GARLAND STREET
PHILADELPHIA PA 19124

HERBERT S HEINEMAN
C0113
723 WESTVIEW STREET
PHILADELPHIA PA 19119

JANE MCKAIN
C0114
1511 SHUNK STREET
PHILADELPHIA PA 19145

CHUONG VAN TRAN
C0115
10855 ACADEMY ROAD
PHILADELPHIA PA 19154

ALBERT MCNULTY
C0116
119 GAUL STREET
PHILADELPHIA PA 19134

ELIZABETH WILLIAMS
C0117
114 ARCH STREET
PHILADELPHIA PA 19139

MARY JANE SMITH
C0118
8112 DORCAS STREET
PHILADELPHIA PA 19152

VINCENZINA FLACCO
C0119
704 REED STREET
PHILADELPHIA PA 19147-5729

ANGELO ROTCHFORD
CRRESCENTINA MIELE
C0120
2624 EAST SOMERSET STREET
PHILADELPHIA PA 19134

LAWRENCE E MOTYKA
C0121
4611 SPRINGFIELD AVENUE
PHILADELPHIA PA 19143-3610

ELIZABETH BANTUM
C0122
6551 NORTH WOODSTOCK STREET
PHILADELPHIA PA 19138

JUNE AND JAMES GREGORIO
C0123
710 REED STREET
PHILADELPHIA PA 19147

PHILOMENA AMATI
C0124
8719 DITMAN STREET
PHILADELPHIA PA 19136

GEORGIANA SULLIVAN
C0125
6377 MARSDEN STREET
PHILADELPHIA PA 19135

THOMAS J SMITH
C0126
7409 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19152

CALVIN T TOWNES
C0127
2504 78TH AVENUE
PHILADELPHIA PA 19150

WALTER W COHEN ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPLE LLP
204 STATE STREET
HARRISBURG PA 17101

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

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VIA HAND DELIVERY

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

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. Jones:

Enclosed please find PGW responses to the following OSBA Interrogatories:

OSBA Set I - 2 and 6

Thank you for your attention to this matter.

Very truly yours,



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

/smw

cc: Parties of record (w/encl.)
Secretary McNulty (Certificate of Service only)

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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).

HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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

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Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141
(CEPA)
A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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FOLDER

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 2, 2001

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

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

A PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. McCloskey:

Enclosed please find PGW's responses to the following OCA Interrogatories:

Set I - 1, 3, 26, 28, 39-41

Set III - 27, 48

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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

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

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

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

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

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

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

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

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

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

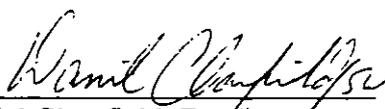
Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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MAR 6 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895



Daniel Clearfield, Esquire

Dated: March 2, 2001

:

Wolf, Block, Schorr and Solis-Cohen LLP

212 Locust Street
Suite 300
Harrisburg, PA 17101
E: 717 237 7160
F: 717 237 7161
www.wolfblock.com

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

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VIA FEDERAL EXPRESS

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

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

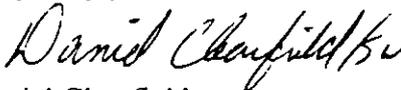
Dear Mr. Bertocci:

Enclosed please find PGW's responses to the following CEPA Interrogatories:

Set I - 22, 43, 44 and 45

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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)

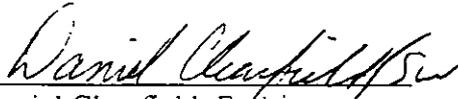
Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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MAR 6 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 2, 2001

:

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

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SECRETARY'S BUREAU

VIA HAND DELIVERY

Johnnie Simms
PA Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Building
400 North Street; 2nd Floor
Harrisburg, PA 17120

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW responses to OTS Interrogatories:

OTS-RE - 86, 88, 113, 117, 119, 120, 121, 122, 124

OTS-RS - 49

OTS-RR - 10, 16

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)
Secretary McNulty (Certificate of Service only)

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

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

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

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

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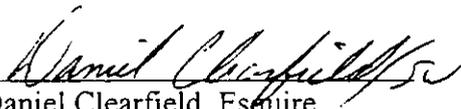
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MAR 6 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 2, 2001

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

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VIA HAND DELIVERY

Charis M. Burak, Esquire
McNees, Wallace, Nurick
100 Pine Street
P.O. Box 116
Harrisburg, PA 17108-1166

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. Burak:

Enclosed please find PGW's responses to the following PICGUG Interrogatories:

Set I - 1, 2 and 3

Thank you for your attention to this matter.

Very truly yours,



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

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

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

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

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)

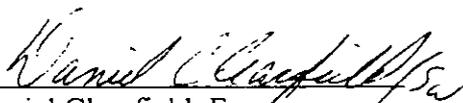
Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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MAR 6 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 2, 2001

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

004138

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

March 6, 2001

VIA HAND DELIVERY

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

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RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. McCloskey:

Enclosed please find PGW's responses to the following OCA Interrogatories:

Set I - 6, 8, 9, 10, 12, 27, 30, 31, 36, 37, 43

Set II - 2-5, 7-9, 11, 12, 13, 15, 16, 18, 19, 20-22, 24-30

Set III - 9, 11, 16, 18, 19, 20, 22, 43, 48, 49

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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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).

004139

HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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 (VIA FEDERAL EXPRESS)
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

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**DOCUMENT
FOLDER**

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 6, 2001

DANIEL CLEARFIELD ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

JONATHAN TWERSKY
C0001
1701 SOUTH 11TH STREET
PHILADELPHIA PA 19148

ADAM B KRUGER
C0002
8812 MANCHESTER STREET
PHILADELPHIA PA 19152

ANTHONY JANKENSKY
C0003
3916 STEVENSON STREET
PHILADELPHIA PA 19114

FRANCES WILLIAMS
C0004
5216 NORTH 11TH STREET
PHILADELPHIA PA 19141-2809

JUDITH A FLANAGAN
C0005
6561 EDMUND STREET
PHILADELPHIA PA 19135

DEBORAH KANE
C0006
7134 KEYSTONE STREET
PHILADELPHIA PA 19135

HASHA SALAMAN
C0007
9204 BURBANK ROAD
PHILADELPHIA PA 19115-4003

DAVID A POSTERNOCK
C0008
215 BECK STREET
PHILADELPHIA PA 19147

ANNE GOLDEN
C0009
6649 HEGERMAN STREET REAR-SIDE
1ST FL
PHILADELPHIA PA 19135

RICHARD STERLING
C0010
2524 MEMPHIS STREET
PHILADELPHIA PA 19125

LORETTA HUTCHINGS
C0011
6421 GLENMORE AVENUE
PHILADELPHIA PA 19142

ROBERT B MULLINEAUX
C0012
239 SOUTH 13TH STREET
PHILADELPHIA PA 19107

KIMBERLY A LISACEK
C0013
2343 SOUTH BANCROFT STREET
PHILADELPHIA PA 19145

DEBORAH SALVATO
C0014
2225 SOUTH GARNET STREET
PHILADELPHIA PA 19145

JOHNNIE E SIMMS ESQUIRE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

ANGELA JONES ESQUIRE
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

DAVID M KLEPPINGER ESQUIRE
CHARIS M BURAK ESQUIRE
KAREN S MILLER ORNER
MCNEES WALLACE & NURICK
100 PINE STREET PO BOX 1166
HARRISBURG PA 17108-1166

LANCE HAVER
6048 OGONTZ AVENUE
PHILADELPHIA PA 19141

PHILIP A BERTOCCI ESQUIRE
EDWARD A MCCOOL ESQUIRE
COMMUNITY LEGAL SERVICES INC
1424 CHESTNUT STREET 4TH FLOOR
PHILADELPHIA PA 19102-2505

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RICHARD LELASH
FINANCIAL AND REGULATORY
CONSULTANT
18 SEVENTY ACRE ROAD
REDDING CT 06896

CRAIG A DOLL ESQUIRE
FLOOR
20 NORTH FRONT STREET
HARRISBURG PA 17010-1606

BRIAN KALCIC
MODEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

TANYA J MCCLOSKEY ESQUIRE
JAMES A MULLINS ESQUIRE
STEPHEN J KEENE
OFFICE OF CONSUMER ADVOCATE
5TH FL FORUM PL 555 WALNUT ST
HARRISBURG PA 17101-1923

WARREN L COLSTON
C0015
1639 MERIBROOK ROAD
PHILADELPHIA PA 19151-2717

DAVID G RICKARD
C0016
3311 G STREET
PHILADELPHIA PA 19134

ALIZA HILDEBRAND
C0017
2114 FITZWATER STREET APT 2
PHILADELPHIA PA 19146

HARRY ROBINSON
C0018
C/O RUCH SHIPON SKARBK
5200 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19124

GERRIE A STEIN
C0019
12733 VERDA DRIVE
PHILADELPHIA PA 19154

RENEE JEANINE RAGNO
C0020
6104 BUSTLETON AVENUE
PHILADELPHIA PA 19149

LAURA KUNECK
C0021
5461 VICARIS STREET
PHILADELPHIA PA 19128

WILLIAM BRIGGS
C0022
3655 OLD YORK ROAD
PHILADELPHIA PA 19140

CHARLES HUANG
C0024
10825 EAST KESWICK ROAD APT 5
PHILADELPHIA PA 19154

DIANE KINGSLEY
C0025
5411 HOUGHTON PLACE
PHILADELPHIA PA 19128

ROBERT AND KIMBERLY DEGREGORIO
C0026
6529 WALKER STREET
PHILADELPHIA PA 19135

WILLIAM G COLEMAN
C0028
4710 EDMUND STREET
PHILADELPHIA PA 19124

MARY SCORZA
C0029
10921 WALDEMIRE DRIVE
PHILADELPHIA PA 19154

LINDA FERNANDEZ
C0030
4340 PALMETTO STREET
PHILADELPHIA PA 19124-4309

LEONA R HOLLAND
C0031
5000 WALNUT STREET REAR
PHILADELPHIA PA 19139

JESSICA M WOODS
C0032
4628 SPRUCE STREET 2ND FLOOR
PHILADELPHIA PA 19139-4581

THOMAS AND CAROL LISACEK
C0033
1036 TREE STREET
PHILADELPHIA PA 19148

DIANE V CHUDZINSKA
C0034
2555 EAST CLEARFIELD STREET
PHILADELPHIA PA 19134

TOM SALMONS
C0035
1034 M STREET
PHILADELPHIA PA 19124

MICHAEL RUSSO
C0036
4316 HIGBEE STREET
PHILADELPHIA PA 19135

HARRIETTE TAYLOR
C0037
5717 SPRUCE STREET
PHILADELPHIA PA 19139-3808

DANIELLE AND WILLIAM VETTER
C0038
3599 K NOTTINGHAM LANE
PHILADELPHIA PA 19114

MARIA PRENDERGAST
C0039
1157 SOUTH 12TH STREET 1ST FLOOR
PHILADELPHIA PA 19147

RICHARD HOTCHKISS
C0040
525 SOUTH MELVILLE STREET
PHILADELPHIA PA 19143

ROSEANN BILARDO
C0041
5960 JANNETTE STREET
PHILADELPHIA PA 19128-1615

BRENDA M KINGWOOD
C0042
3546 CAMAC STREET
PHILADELPHIA PA 19140

SAMUEL J MUNAFO
C0043
3345 HOLME AVENUE
PHILADELPHIA PA 19114-3807

MAUREEN NOONE-MCGOVERN
C0044
2350 EAST ALBERT STREET
PHILADELPHIA PA 19125

ILENE APPLEBAUM-SCHULTZ
C0045
8301 DORCAS STREET
PHILADELPHIA PA 19152

JOANNE L FRITZ
C0046
1359 EAST CAREY STREET
PHILADELPHIA PA 19124

CARRIE HARTSFIELD
C0047
3118 NORTH PERCY STREET
PHILADELPHIA PA 19133

RICHARD T FOX
C0048
6274 LARGE STREET
PHILADELPHIA PA 19149

JOANNE AND GREGORY IRLICH
C0049
7811 LISTER STREET
PHILADELPHIA PA 19152

LOUIS IZZI
C0050
1920 EAST ONTARIO STREET
PHILADELPHIA PA 19134

JANE WARREN
C0051
455 MARKLE STREET
PHILADELPHIA PA 19128

FRANCIS X TENAGLIO
C0052
2335 SOUTH 18TH STREET
PHILADELPHIA PA 19145

RACHELE LEMON
C0053
2038 SPRING GARDEN STREET APT 3R
PHILADELPHIA PA 19130

ROBERT C KRALLE
C0054
12508 NANTON DRIVE
PHILADELPHIA PA 19154

TIKI WRIGHT
C0055
581 ROSALIE STREET
PHILADELPHIA PA 19120

VINCE MULLINS
56
622 WELLINGTON STREET
PHILADELPHIA PA 19149

WILLIAM J MASCIOTRO JR
57
1704 SHELMIRE AVENUE
PHILADELPHIA PA 19111-3427

JOSEPH E KETTINGER
C0058
3116 ENGLEWOOD STREET
PHILADELPHIA PA 19149

ANGELA BOGUCKI SIMONE
C0059
3255 KNORR STREET
PHILADELPHIA PA 19149

DAVID KLEPPINGER ESQUIRE
CHARIS BURAK ESQUIRE
K ORNER ESQUIRE
MCNEES WALLACE & NURICK
100 PINE ST PO BOX 1166
HARRISBURG PA 17108-1166

GLORIA DENT
C0061
6947 STENTON AVENUE
PHILADELPHIA PA 19138-1927

WALTER A PATZ
C0062
3207 ANCONA ROAD
PHILADELPHIA PA 19154-1903

JOSEPHINE RENDECH
C0063
3016 BELGRADE STREET
PHILADELPHIA PA 19134

DEANNA M CORBIN
C0064
1131 E CHELTEN AVENUE
PHILADELPHIA PA 19138-1821

NANCY S HOUSTON
C0065
731 CORINTHIAN AVENUE
PHILADELPHIA PA 19130

BRIAN BIGGS
C0066
5448 RIDGE AVENUE
PHILADELPHIA PA 19128

GERTRUDE BORASKI
C0067
3426 TILTON STREET
PHILADELPHIA PA 19134

RICHARD F KOSICH
C0068
1830 GREEN STREET APT 2R
PHILADELPHIA PA 19130

JOHN DITTUS
C0069
1339 GILHAM STREET
PHILADELPHIA PA 19111

STEVEN C GRAY ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

BRIAN KALCIC
EXCEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

JEANNE S WIETICHA
C0071
3616 BELGRADE STREET
PHILADELPHIA PA 19134-5519

CYNTHIA ROBINSON
C0072
5983 N OPAL STREET
PHILADELPHIA PA 19141

MATTHEW C MORGAN
C0073
115 KALOS STREET
PHILADELPHIA PA 19182

VU TIEN NGUYEN
C0074
1745 W PASSYUNK AVENUE
PHILADELPHIA PA 18145-3836

MARK S STEWART ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

SCOTT A HUFF
075
110 LOMBARD STREET APT 19
PHILADELPHIA PA 19147

CYNTHIA RASCOE
076
7416 RUGBY
PHILADELPHIA PA 19138

TAMEIKA L STERLING
C0077
2520 S EDGEWOOD STREET
PHILADELPHIA PA 19142

LIL HENDERSON
C0078
6334/6336 NORTH 10TH STREET
PHILADELPHIA PA 19141

JOE FEDELI
C0079
3116 WELSH ROAD
PHILADELPHIA PA 19136-1810

LAWRENCE W MEEHAN
C0080
3015 FANSHAWE STREET
PHILADELPHIA PA 19149

WENDY S LAVERTY
C0081
464 VANKIRK STREET
PHILADELPHIA PA 19120

KIA WILLIAMS
C0082
5037 SPRINGFIELD AVENUE APT 3
3RD FLOOR
PHILADELPHIA PA 19143

VANESSA PAYNE
C0083
907 ATWOOD ROAD
PHILADELPHIA PA 19151

MARK CAMPBELL
C0084
5438 WOODCREST AVENUE
PHILADELPHIA PA 19131

LEEANNA COX PURNELL
C0085
2029 NORTH 62ND STREET
PHILADELPHIA PA 19151

LEOTA BAUER
C0086
3110 FAIRFIELD STREET
PHILADELPHIA PA 19136-1108

LEROY HARRIS III
C0087
5741 WEST DUNLAP STREET
PHILADELPHIA PA 19131-3411

HELEN T KLOCEK
C0088
3151 CEDAR STREET
PHILADELPHIA PA 19134

AUDREY F RICHARDSON-JORDAN
C0089
6438 NORTH NORWOOD STREET
PHILADELPHIA PA 19138-2508

ROXANNE T GREGORIO
C0090
718 SOUTH PERCY STREET
PHILADELPHIA PA 19147

ATTILIO W FEDELI
C0091
3291 HOLME AVENUE
PHILADELPHIA PA 19114

DENISE RIEHL
C0092
676 RENZ STREET
PHILADELPHIA PA 19128

LINDA G REDDING
C0093
605 KINGSLEY STREET
PHILADELPHIA PA 19128

KEVIN CAMPBELL
C0094
2242 FRIENDSHIP STREET
PHILADELPHIA PA 19149

CHRISTINA GAINES
C0095
260 EAST SLOSUM STREET
PHILADELPHIA PA 19119

SUSAN CAVANAUGH
C0096
17 FULLER STREET
PHILADELPHIA PA 19152

SALA N BAILEY
C0097
535 ALMA STREET
PHILADELPHIA PA 19149

JEANNETTE KING-COLEMAN
C0098
5701 FLORENCE AVENUE
PHILADELPHIA PA 19143-4527

VIRGINIA T LOCK
C0099
6700 ROWLAND AVENUE
PHILADELPHIA PA 19149

L EVELYN MACMATH
C0100
5844 PENN STREET
PHILADELPHIA PA 19149

WENDELL F HOLLAND ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPEL LLP
ONE PENN CENTER 19TH FLOOR
1617 JOHN F KENNEDY BOULEVARD
PHILADELPHIA PA 19103-1895

MARIE A ZOOK
C0101
8320 JEANES STREET
PHILADELPHIA PA 19111

ANTHONY M GUIDOTTI
C0102
9733 REDD RAMBLER DRIVE
PHILADELPHIA PA 19115-2926

MARGARET C BRENNAN
C0103
2354 EAST TUCKER STREET
PHILADELPHIA PA 19125

KAREN S CLAPP
C0104
1237 RODMANN REAR COURT
PHILADELPHIA PA 19147

MARGARET GROSS
C0105
3938 NORTH SMELLEY
PO BOX 38015
PHILADELPHIA PA 19140

BARBARA J LIPSCOMB-OLIVER
C0106
6615 GONTZ AVENUE
PHILADELPHIA PA 19126

MARIO FAVACCHIA
C0107
1711 WEST MOYAMENSING AVENUE
PHILADELPHIA PA 19145

DOMINIC L FOLINO
C0108
7404 DUNGAN ROAD
PHILADELPHIA PA 19111

MARY COOPER
C0109
175 WEST ALBANUS STREET
PHILADELPHIA PA 19120

FEDELE P FOLINO
C0110
7157 TORRESDALE AVENUE
PHILADELPHIA PA 19135

ROBERT NUCCIO
C0111
349 MERCY STREET
PHILADELPHIA PA 19148

CAREN PY
C0112
705 GARLAND STREET
PHILADELPHIA PA 19124

HERBERT S HEINEMAN
C0113
723 WESTVIEW STREET
PHILADELPHIA PA 19119

JANE MCKAIN
C0114
1511 SHUNK STREET
PHILADELPHIA PA 19145

CHUONG VAN TRAN
C0115
10855 ACADEMY ROAD
PHILADELPHIA PA 19154

ALBERT MCNULTY
116
79 GAUL STREET
PHILADELPHIA PA 19134

ELIZABETH WILLIAMS
117
3214 ARCH STREET
PHILADELPHIA PA 19139

MARY JANE SMITH
C0118
8112 DORCAS STREET
PHILADELPHIA PA 19152

VINCENZINA FLACCO
C0119
704 REED STREET
PHILADELPHIA PA 19147-5729

ANGELO ROTCHFORD
CRRESCENTINA MIELE
C0120
2624 EAST SOMERSET STREET
PHILADELPHIA PA 19134

LAWRENCE E MOTYKA
C0121
4611 SPRINGFIELD AVENUE
PHILADELPHIA PA 19143-3610

ELIZABETH BANTUM
C0122
6551 NORTH WOODSTOCK STREET
PHILADELPHIA PA 19138

JUNE AND JAMES GREGORIO
C0123
710 REED STREET
PHILADELPHIA PA 19147

PHILOMENA AMATI
0124
8719 DITMAN STREET
PHILADELPHIA PA 19136

GEORGIANA SULLIVAN
C0125
6377 MARSDEN STREET
PHILADELPHIA PA 19135

THOMAS J SMITH
C0126
7409 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19152

CALVIN T TOWNES
C0127
2504 78TH AVENUE
PHILADELPHIA PA 19150

WALTER W COHEN ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPLE LLP
204 STATE STREET
HARRISBURG PA 17101

REBECCA ROSE
FRANK MURPHY
C0128
4413 ERNIE DAVIS CIRCLE
PHILADELPHIA PA 19154

DJEMBA SHUTSHA DIVINE
C-0129
446 ROSELYN STREET
1ST FLOOR
PHILADELPHIA PA 19120

JOHN MURPHY
C0130
4248 J STREET
PHILADELPHIA PA 19124

ELIZABETH D TONER
C0131
5420 AKRON STREET
PHILADELPHIA PA 19124

BERYL M CAMPBELL
C0132
3438 EDMONT STREET
PHILADELPHIA PA 19134

ANTHONY LINKEWICZ
C-0133
3280 EMERY STREET
PHILADELPHIA PA 19134

PAUL LE COMPTE
C0134
6500 VAN KIKE STREET
PHILADELPHIA PA 19135

CECILLIA J KHALFANI
C0135
6651 NORTH LAWRENCE STREET
PHILADELPHIA PA 19126

SHARON WILLIAMS
36
9 DEVEREAUX AVENUE
PHILADELPHIA PA 19149

FRED ANTOWIAK
37
42 FERNDALE STREET
PHILADELPHIA PA 19111

LILLIE SOMERVILLE
C0138
PO BOX 38307
PHILADELPHIA PA 19140

LEA ANN HARRIS
C-0139
7453 NORTH 21ST STREET
PHILADELPHIA PA 19138

LEONARD ELGART
C0140
247 WEST MENTOR STREET
PHILADELPHIA PA 19120

ELIZABETH ANCHETA
C0141
2840 EDMONT STREET
PHILADELPHIA 19134

MR AND MRS DOUGLAS J FINKBINER
C0142
8630 MARIGOLD PLACE
PHILADELPHIA PA 19136

DELORES A GRIFFIN-STOKES
C0143
1526 NORTH 5TH STREET
PHILADELPHIA PA 19131-3809

CURTIS GLEN
C0144
2722 CLAYTON STREET
PHILADELPHIA PA 19152

DAVID SCHOLNICK
C0145
1106 FEDERAL STREET
APARTMENT 2
PHILADELPHIA PA 19147

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

March 8, 2001

VIA HAND DELIVERY

Johnnie Simms
PA Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Building
400 North Street; 2nd Floor
Harrisburg, PA 17120

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW responses to OTS Interrogatory:

OTS-RS - 42

OTS-RE - 61

OTS-TRF - 36

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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
Bedding, 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

DOCKETED

MAR 12 2001

DOCUMENT FOLDER

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 8, 2001

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

March 8, 2001

VIA HAND DELIVERY

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

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. Jones:

Enclosed please find PGW responses to the following OSBA Interrogatories:

OSBA Set I - 3, 4, 5, 8, 9 and 10

Thank you for your attention to this matter.

**DOCUMENT
FOLDER**

Very truly yours,



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

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

DSH:26303.1

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HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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

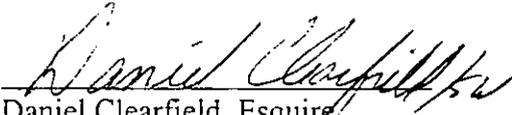
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POCKETED

MAR 12 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 8, 2001

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

March 8, 2001

**DOCUMENT
FOLDER**

VIA HAND DELIVERY

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

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. McCloskey:

Enclosed please find PGW's responses to the following OCA Interrogatories:

Set I - 23 and 34

Set III - 1 and 50

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

DSH:26303.3

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).

HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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

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P.O. Box 1166
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(CEPA)

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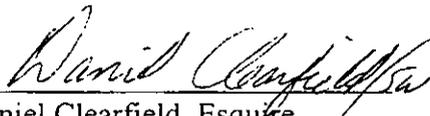
Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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MAR 12 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 8, 2001

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

March 8, 2001

VIA HAND DELIVERY

Charis M. Burak, Esquire
McNees, Wallace, Nurick
100 Pine Street
P.O. Box 116
Harrisburg, PA 17108-1166

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. Burak:

Enclosed please find PGW's responses to the following PICGUG Interrogatories:

Set I - 5(a)

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

004546

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SECRETARY'S BUREAU
01 MAR 29 AM 10:24

DSH:26303.1

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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).

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

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

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

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

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

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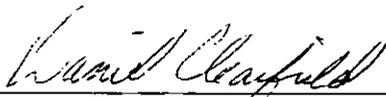
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MAR 12 2001

**DOCUMENT
FOLDER**

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895



Daniel Clearfield, Esquire

Dated: March 8, 2001

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

MARK S. STEWART
DIRECT DIAL: (717) 237-7191
E-MAIL: MSTEWART@WOLFBLOCK.COM

March 8, 2001

VIA HAND DELIVERY

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

DOCUMENT
FOLDER

SECRETARY'S BUREAU
01 MAR -8 PM 3:07

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Secretary McNulty:

Enclosed for filing please find the original and three (3) copies of a Discovery Stipulation between Office of Trail Staff and Philadelphia Gas Works, in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions please contact me.

Very truly yours,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jlg
Enclosure

cc: All Parties of Record (Per Attached Certificate of Service) w/enc.

SRB

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

In Re: Petition of Philadelphia Gas Works for :
Waiver of Certain Notification and Filing :
Requirements and Establishment of :
Expedited Hearing Schedule for Base :
Rate Proceeding :

Docket No. R-00006042

DOCKETS
MAR 14 2001

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DISCOVERY STIPULATION BETWEEN
OFFICE OF TRIAL STAFF AND
PHILADELPHIA GAS WORKS

DOCUMENT
FOLDER

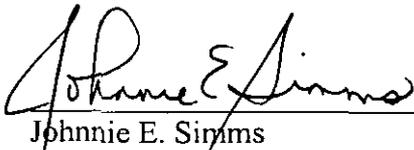
The Office of Trial Staff ("OTS") and Philadelphia Gas Works ("PGW"), in order to resolve a discovery dispute concerning OTS III, Nos. TRF-1-35, and OTS-V, Nos. RE-117-118, hereby agree and stipulate as follows:

1. On February 1 and February 15, 2001, OTS served interrogatories, Sets III and V, respectively, on PGW.
2. On February 14 and 28, 2001, PGW filed timely objections to OTS III, Nos. TRF-1-35, and Nos. RE-117-118 of OTS V. The interrogatories in OTS III requested that PGW explain and/or justify certain provisions in its tariff. In OTS V, Nos. RE-117-118, OTS asked PGW to produce, justify and/or explain data relating to PGW's currently proposed and past operating budgets and expenditures. PGW objected to these interrogatories asserting that, based upon Section 2212(d), (e) and (s) of the Public Utility Code, the interrogatories were legally irrelevant and would not lead to any admissible evidence. 66 Pa. C.S. § 2212(d), (e) and (s).
3. Without waiving its objections, PGW agrees to answer the above-referenced interrogatories, and will do so by March 16, 2001, pursuant to and contingent upon the following:

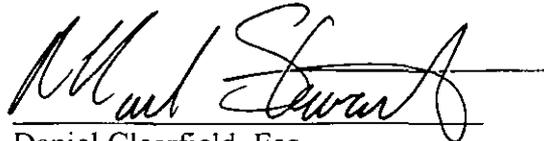
- a. OTS agrees that PGW, by answering the interrogatories, does not waive its right to object to the relevance and admissibility of any answers or *information produced in response to the objected to interrogatories*, including a claim that any adjustment that could be proposed by using this data is legally barred by the Gas Choice Act, and to seek the exclusion of the same from the record;
- b. OTS understands that, to the extent that the same personnel at PGW who will be responsible for answering the objected to interrogatories are also working on answers to non-objected to discovery, PGW will address the non-objected to discovery first; and
- c. The parties agree that every effort will be made so that the timing of the answers to the objected to interrogatories will not alter the schedule of proceedings adopted at the pre-hearing conference in this matter.

1. By signing this Stipulation, OTS does not waive or diminish its ability to argue that the answers to or information produced pursuant to the subject interrogatories are relevant and admissible, except that it cannot assert that the act of answering constitutes an admission of the same by PGW.

Respectfully submitted,



Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265
717-787-1976



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

Dated: March 7, 2001

01 MAR -8 PM 3:07
SECRETARY'S BUREAU

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 HAND DELIVERY OR FIRST CLASS MAIL

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

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

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

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
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Brian Kalcic
Excel Consulting
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225 S. Meramec Avenue
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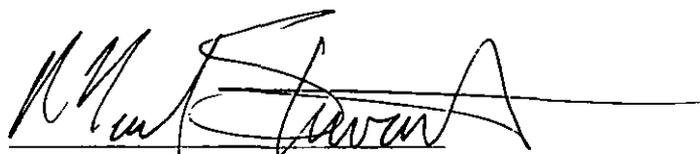
Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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01 MAR -8 PM 3:07
HARRISBURG
SECRETARY'S BUREAU

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895

SECRETARY'S BUREAU
MAR 8 PM 3:07



Mark S. Stewart, Esquire

Dated: March 8, 2001



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 8, 2001

In Re: **R-00006042, R-00006042C0001 et al.**

(See letter dated 02/13/2001)

Pennsylvania Public Utility Commission v. Philadelphia Gas Works

Requesting a general rate increase of \$65,000,000.

Public Input Hearing Notice

This is to inform you that a Public Input Hearings on the above-captioned case will be held as follows:

Wednesday, March 28, 2001 at 2:00 and 7:00 p.m.

Double Tree Hotel
Broad & Locust Streets
Philadelphia Pennsylvania 19107
Point of Contact: Jonathan Esten
Telephone: (215) 893-1626
Fax: (215) 893-1664

Thursday, March 29, 2001 at 6:00 p.m.

Double Tree Hotel
9461 Roosevelt Boulevard
Philadelphia Pennsylvania 19114
Point of Contact: Abby Kleiman
Telephone: (215) 671-9600 Ext. 7709
Fax: (215) 673-4240

Presiding: **Administrative Law Judge Cynthia W. Fordham**
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
Telephone: (215) 560-2105
Fax: (215) 560-3133

DOCKETED
MAR 12 2001

**DOCUMENT
FOLDER**

Please mark your records accordingly.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call Norma Lewis at the Public Utility Commission:

- Scheduling Office: 717-787-1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: **Chairman Quain**
Vice Chairman Bloom
Commissioner Brownell
Commissioner Wilson
Commissioner Fitzpatrick
Judge Fordham
June Perry - BPL 111
Eric Levis - BPL 101
Verna Edmonds - BPL
Office of Trial Staff (2)
Consumer Advocate
Small Business Advocate
Bill Barrett - FUS
Steve Springer, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

Wolf, Block, Schorr and Solis-Cohen LLP

ORIGINAL

212 Locust Street
Suite 300
Harrisburg, PA 17101

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

MARK S. STEWART
DIRECT DIAL: (717) 237-7191
E-MAIL: MSTEWART@WOLFBLOCK.COM

March 12, 2001

VIA HAND DELIVERY

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

DOCUMENT
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01 MAR 12 AM 11:53
PA P.U.C.
SECRETARY'S BUREAU

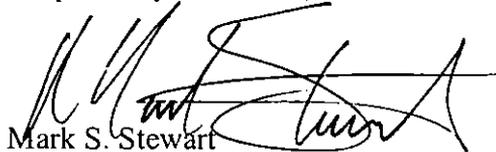
RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Objections to Office of Consumer Advocate's Interrogatories, Set IV, Nos. 3-5 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,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

cc: Parties of record (w/encl.)

SRB

DSH:26504.1

122

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In Re: Petition of Philadelphia Gas Works for :
Waiver of Certain Notification and Filing :
Requirements and Establishment of : Docket No. R-00006042
Expedited Hearing Schedule for Base :
Rate Proceeding :**

**OBJECTIONS OF PHILADELPHIA GAS WORKS
TO OFFICE OF CONSUMER ADVOCATE
INTERROGATORIES, SET IV**

Philadelphia Gas Works ("PGW"), pursuant to 52 Pa. Code §§ 5.342 and 5.349, objects to Office of Consumer Advocate ("OCA") Interrogatories, Set IV, Nos. 3-5, as follows:

**DOCUMENT
FOLDER**

**RECEIVED
01 MAR 12 AM 11:59
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SECRETARY'S BUREAU**

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MAR 14 2001**

- 3) Please provide the schedule "Budget of Cash Receipts and Disbursements Fiscal Year Ending August 31, 2001" updated for actual data and continue to provide monthly updates throughout this proceeding. (Assumptions regarding the amount and timing of the interim rate increase and GCR increase should reflect PGW's best estimates.)

Objection:

PGW objects to this interrogatory, in regard to its requirement for monthly updates, because it is burdensome, oppressive and would cause unreasonable annoyance. PGW will supplement its responses in accordance with 52 Pa. Code § 5.332. PGW will provide the specific update requested by the interrogatory.

- 4) Please provide the most recent schedule "Fiscal Year 2000-01 Cost Savings" and continue to update throughout this proceeding.

Objection:

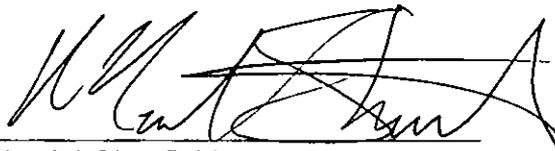
PGW objects to this interrogatory because it is burdensome, oppressive and would cause unreasonable annoyance. PGW will supplement its responses in accordance with 52 Pa. Code § 5.332. PGW will provide the specific update requested by the interrogatory.

- 5) Please provide the most recent schedule "Status of Collection Activities Report" and continue to update throughout this proceeding.

Objection:

PGW objects to this interrogatory because it is burdensome, oppressive and would cause unreasonable annoyance. PGW will supplement its responses in accordance with 52 Pa. Code § 5.332. PGW will provide the specific update requested by the interrogatory.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel Clearfield', written over a horizontal line.

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

Dated: March 12, 2001

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

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

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

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Office of Small Business Advocate
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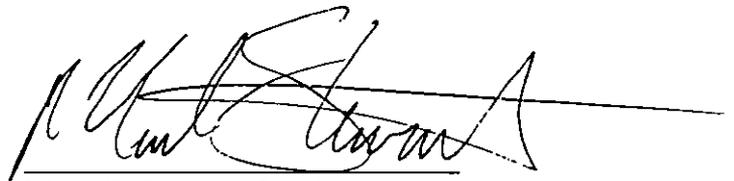
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J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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SECRETARY'S BUREAU

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895

A handwritten signature in black ink, appearing to read 'Mark S. Stewart', written over a horizontal line.

Mark S. Stewart, Esquire

Dated: March 12, 2001

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

MARK S. STEWART
DIRECT DIAL: (717) 237-7191
E-MAIL: MSTEWARD@WOLFBLOCK.COM

March 13, 2001

James A. Mullins
Assistant Consumer Advocate
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Mullins:

Enclosed, please find Philadelphia Gas Works' supplemental response to OCA-I-31.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jlg
Enclosures

cc: Certificate of Service (w/encs)

005561

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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

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

Johnnie Simms, Esq.
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PA Public Utility Commission
P.O. Box 3265
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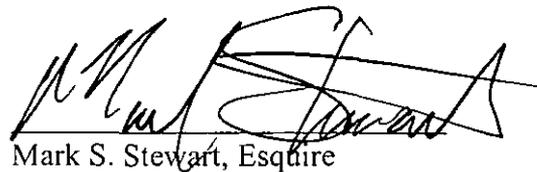
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J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895



Mark S. Stewart, Esquire

Dated: March 13, 2001

DANIEL CLEARFIELD ESQUIRE
WOLF-BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

JONATHAN TWERSKY
C0001
1701 SOUTH 11TH STREET
PHILADELPHIA PA 19148

ADAM B KRUGER
C0002
8812 MANCHESTER STREET
PHILADELPHIA PA 19152

ANTHONY JANKENSKY
C0003
3916 STEVENSON STREET
PHILADELPHIA PA 19114

FRANCES WILLIAMS
C0004
5216 NORTH 11TH STREET
PHILADELPHIA PA 19141-2809

JUDITH A FLANAGAN
C0005
6561 EDMUND STREET
PHILADELPHIA PA 19135

DEBORAH KANE
C0006
7134 KEYSTONE STREET
PHILADELPHIA PA 19135

HASHA SALAMAN
C0007
9204 BURBANK ROAD
PHILADELPHIA PA 19115-4003

DAVID A POSTERNOCK
C0008
215 BECK STREET
PHILADELPHIA PA 19147

DOCUMENT
FOLDER

ANNE GOLDEN
C0009
6649 HEGERMAN STREET REAR-SIDE
1ST FL
PHILADELPHIA PA 19135

RICHARD STERLING
C0010
2524 MEMPHIS STREET
PHILADELPHIA PA 19125

LORETTA HUTCHINGS
C0011
6421 GLENMORE AVENUE
PHILADELPHIA PA 19142

ROBERT B MULLINEAUX
C0012
239 SOUTH 13TH STREET
PHILADELPHIA PA 19107

KIMBERLY A LISACEK
C0013
2343 SOUTH BANCROFT STREET
PHILADELPHIA PA 19145

DEBORAH SALVATO
C0014
2225 SOUTH GARNET STREET
PHILADELPHIA PA 19145

JOHNNIE E SIMMS ESQUIRE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

ANGELA JONES ESQUIRE
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

DAVID M KLEPPINGER ESQUIRE
CHARIS M BURAK ESQUIRE
KAREN S MILLER ORNER
MCNEES WALLACE & NURICK
100 PINE STREET PO BOX 1166
HARRISBURG PA 17108-1166

LANCE HAVER
6048 OGONTZ AVENUE
PHILADELPHIA PA 19141

PHILIP A BERTOCCI ESQUIRE
EDWARD A MCCOOL ESQUIRE
COMMUNITY LEGAL SERVICES INC
1424 CHESTNUT STREET 4TH FLOOR
PHILADELPHIA PA 19102-2505

05 MAR 13
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SECRETARY
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RICHARD LELASH
FINANCIAL AND REGULATORY
CONSULTANT
18 SEVENTY ACRE ROAD
REDDING CT 06896

CRAIG A DOLL ESQUIRE
2ND FLOOR
25 NORTH FRONT STREET
HARRISBURG PA 17010-1606

BRIAN KALCIC
EXCEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

TANYA J MCCLOSKEY ESQUIRE
JAMES A MULLINS ESQUIRE
STEPHEN J KEENE
OFFICE OF CONSUMER ADVOCATE
5TH FL FORUM PL 555 WALNUT ST
HARRISBURG PA 17101-1923

WARREN L COLSTON
C0015
1639 MERIBROOK ROAD
PHILADELPHIA PA 19151-2717

DAVID G RICKARD
C0016
3311 G STREET
PHILADELPHIA PA 19134

ALIZA HILDEBRAND
C0017
2114 FITZWATER STREET APT 2
PHILADELPHIA PA 19146

HARRY ROBINSON
C0018
C/O RUCH SHIPON SKARBK
5200 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19124

GERRIE A STEIN
C0019
12733 VERDA DRIVE
PHILADELPHIA PA 19154

RENEE JEANINE RAGNO
C0020
6104 BUSTLETON AVENUE
PHILADELPHIA PA 19149

LAURA KUNECK
C0021
5461 VICARIS STREET
PHILADELPHIA PA 19128

WILLIAM BRIGGS
C0022
3655 OLD YORK ROAD
PHILADELPHIA PA 19140

CHARLES HUANG
C0024
10825 EAST KESWICK ROAD APT 5
PHILADELPHIA PA 19154

DIANE KINGSLEY
C0025
5411 HOUGHTON PLACE
PHILADELPHIA PA 19128

ROBERT AND KIMBERLY DEGREGORIO
C0026
6529 WALKER STREET
PHILADELPHIA PA 19135

WILLIAM G COLEMAN
C0028
4710 EDMUND STREET
PHILADELPHIA PA 19124

MARY SCORZA
C0029
10921 WALDEMIRE DRIVE
PHILADELPHIA PA 19154

LINDA FERNANDEZ
C0030
4340 PALMETTO STREET
PHILADELPHIA PA 19124-4309

LEONA R HOLLAND
C0031
5000 WALNUT STREET REAR
PHILADELPHIA PA 19139

JESSICA M WOODS
C0032
4628 SPRUCE STREET 2ND FLOOR
PHILADELPHIA PA 19139-4581

THOMAS AND CAROL LISACEK
C0033
1036 TREE STREET
PHILADELPHIA PA 19148

DIANE V CHUDZINSKA
C0034
2555 EAST CLEARFIELD STREET
PHILADELPHIA PA 19134

TOM SALMONS
C0035
3884 M STREET
PHILADELPHIA PA 19124

MICHAEL RUSSO
C0036
4316 HIGBEE STREET
PHILADELPHIA PA 19135

HARRIETTE TAYLOR
C0037
5717 SPRUCE STREET
PHILADELPHIA PA 19139-3808

DANIELLE AND WILLIAM VETTER
C0038
3599 K NOTTINGHAM LANE
PHILADELPHIA PA 19114

MARIA PRENDERGAST
C0039
1157 SOUTH 12TH STREET 1ST FLOOR
PHILADELPHIA PA 19147

RICHARD HOTCHKISS
C0040
525 SOUTH MELVILLE STREET
PHILADELPHIA PA 19143

ROSEANN BILARDO
C0041
5960 JANNETTE STREET
PHILADELPHIA PA 19128-1615

BRENDA M KINGWOOD
C0042
3546 CAMAC STREET
PHILADELPHIA PA 19140

SAMUEL J MUNAFO
C0043
3345 HOLME AVENUE
PHILADELPHIA PA 19114-3807

MAUREEN NOONE-MCGOVERN
C0044
2350 EAST ALBERT STREET
PHILADELPHIA PA 19125

ILENE APPLEBAUM-SCHULTZ
C0045
8301 DORCAS STREET
PHILADELPHIA PA 19152

JOANNE L FRITZ
C0046
1359 EAST CAREY STREET
PHILADELPHIA PA 19124

CARRIE HARTSFIELD
C0047
3118 NORTH PERCY STREET
PHILADELPHIA PA 19133

RICHARD T FOX
C0048
6274 LARGE STREET
PHILADELPHIA PA 19149

JOANNE AND GREGORY IRLICH
C0049
7811 LISTER STREET
PHILADELPHIA PA 19152

LOUIS IZZI
C0050
1920 EAST ONTARIO STREET
PHILADELPHIA PA 19134

JANE WARREN
C0051
455 MARKLE STREET
PHILADELPHIA PA 19128

FRANCIS X TENAGLIO
C0052
2335 SOUTH 18TH STREET
PHILADELPHIA PA 19145

RACHELE LEMON
C0053
2038 SPRING GARDEN STREET APT 3R
PHILADELPHIA PA 19130

ROBERT C KRALLE
C0054
12508 NANTON DRIVE
PHILADELPHIA PA 19154

TIKI WRIGHT
C0055
581 ROSALIE STREET
PHILADELPHIA PA 19120

VINCE MULLINS
C0056
3522 WELLINGTON STREET
PHILADELPHIA PA 19149

WILLIAM J MASCIOTRO JR
C0057
1704 SHELMIRE AVENUE
PHILADELPHIA PA 19111-3427

JOSEPH E KETTINGER
C0058
3116 ENGLEWOOD STREET
PHILADELPHIA PA 19149

ANGELA BOGUCKI SIMONE
C0059
3255 KNORR STREET
PHILADELPHIA PA 19149

DAVID KLEPPINGER ESQUIRE
CHARIS BURAK ESQUIRE
K ORNER ESQUIRE
MCNEES WALLACE & NURICK
100 PINE ST PO BOX 1166
HARRISBURG PA 17108-1166

GLORIA DENT
C0061
6947 STENTON AVENUE
PHILADELPHIA PA 19138-1927

WALTER A PATZ
C0062
3207 ANCONA ROAD
PHILADELPHIA PA 19154-1903

JOSEPHINE RENDECH
C0063
3016 BELGRADE STREET
PHILADELPHIA PA 19134

DEANNA M CORBIN
C0064
1131 E CHELTEN AVENUE
PHILADELPHIA PA 19138-1821

NANCY S HOUSTON
C0065
731 CORINTHIAN AVENUE
PHILADELPHIA PA 19130

BRIAN BIGGS
C0066
5448 RIDGE AVENUE
PHILADELPHIA PA 19128

GERTRUDE BORASKI
C0067
3426 TILTON STREET
PHILADELPHIA PA 19134

RICHARD F KOSICH
C0068
1830 GREEN STREET APT 2R
PHILADELPHIA PA 19130

JOHN DITTUS
C0069
1339 GILHAM STREET
PHILADELPHIA PA 19111

STEVEN C GRAY ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

BRIAN KALCIC
EXCEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

JEANNE S WIETICHA
C0071
3616 BELGRADE STREET
PHILADELPHIA PA 19134-5519

CYNTHIA ROBINSON
C0072
5983 N OPAL STREET
PHILADELPHIA PA 19141

MATTHEW C MORGAN
C0073
115 KALOS STREET
PHILADELPHIA PA 19182

VU TIEN NGUYEN
C0074
1745 W PASSYUNK AVENUE
PHILADELPHIA PA 18145-3836

MARK S STEWART ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

SCOTT A HUFF
C0075
1110 LOMBARD STREET APT 19
PHILADELPHIA PA 19147

CYNTHIA RASCOE
C0076
7416 RUGBY
PHILADELPHIA PA 19138

TAMEIKA L STERLING
C0077
2520 S EDGEWOOD STREET
PHILADELPHIA PA 19142

LIL HENDERSON
C0078
6334/6336 NORTH 10TH STREET
PHILADELPHIA PA 19141

JOE FEDELI
C0079
3116 WELSH ROAD
PHILADELPHIA PA 19136-1810

LAWRENCE W MEEHAN
C0080
3015 FANSHAWE STREET
PHILADELPHIA PA 19149

WENDY S LAVERTY
C0081
464 VANKIRK STREET
PHILADELPHIA PA 19120

KIA WILLIAMS
C0082
5037 SPRINGFIELD AVENUE APT 3
3RD FLOOR
PHILADELPHIA PA 19143

VANESSA PAYNE
C0083
907 ATWOOD ROAD
PHILADELPHIA PA 19151

MARK CAMPBELL
C0084
5438 WOODCREST AVENUE
PHILADELPHIA PA 19131

LEEANNA COX PURNELL
C0085
2029 NORTH 62ND STREET
PHILADELPHIA PA 19151

LEOTA BAUER
C0086
3110 FAIRFIELD STREET
PHILADELPHIA PA 19136-1108

LEROY HARRIS III
C0087
5741 WEST DUNLAP STREET
PHILADELPHIA PA 19131-3411

HELEN T KLOCEK
C0088
3151 CEDAR STREET
PHILADELPHIA PA 19134

AUDREY F RICHARDSON-JORDAN
C0089
6438 NORTH NORWOOD STREET
PHILADELPHIA PA 19138-2508

ROXANNE T GREGORIO
C0090
718 SOUTH PERCY STREET
PHILADELPHIA PA 19147

ATTILIO W FEDELI
C0091
3291 HOLME AVENUE
PHILADELPHIA PA 19114

DENISE RIEHL
C0092
676 RENZ STREET
PHILADELPHIA PA 19128

LINDA G REDDING
C0093
605 KINGSLEY STREET
PHILADELPHIA PA 19128

KEVIN CAMPBELL
C0094
2242 FRIENDSHIP STREET
PHILADELPHIA PA 19149

CHRISTINA GAINES
C0095
260 EAST SLORUM STREET
PHILADELPHIA PA 19119

SUSAN CAVANAUGH
C0096
847 FULLER STREET
PHILADELPHIA PA 19152

SALA N BAILEY
C0097
5935 ALMA STREET
PHILADELPHIA PA 19149

JEANNETTE KING-COLEMAN
C0098
5701 FLORENCE AVENUE
PHILADELPHIA PA 19143-4527

VIRGINIA T LOCK
C0099
6700 ROWLAND AVENUE
PHILADELPHIA PA 19149

L EVELYN MACMATH
C0100
5844 PENN STREET
PHILADELPHIA PA 19149

WENDELL F HOLLAND ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPEL LLP
ONE PENN CENTER 19TH FLOOR
1617 JOHN F KENNEDY BOULEVARD
PHILADELPHIA PA 19103-1895

MARIE A ZOOK
C0101
8320 JEANES STREET
PHILADELPHIA PA 19111

ANTHONY M GUIDOTTI
C0102
9733 REDD RAMBLER DRIVE
PHILADELPHIA PA 19115-2926

MARGARET C BRENNAN
C0103
2354 EAST TUCKER STREET
PHILADELPHIA PA 19125

KAREN S CLAPP
C0104
1237 RODMANN REAR COURT
PHILADELPHIA PA 19147

MARGARET GROSS
C0105
3938 NORTH SMELLEY
PO BOX 38015
PHILADELPHIA PA 19140

BARBARA J LIPSCOMB-OLIVER
C0106
6615 GONTZ AVENUE
PHILADELPHIA PA 19126

MARIO FAVACCHIA
C0107
1711 WEST MOYAMENSING AVENUE
PHILADELPHIA PA 19145

DOMINIC L FOLINO
C0108
7404 DUNGAN ROAD
PHILADELPHIA PA 19111

MARY COOPER
C0109
175 WEST ALBANUS STREET
PHILADELPHIA PA 19120

FEDELE P FOLINO
C0110
7157 TORRESDALE AVENUE
PHILADELPHIA PA 19135

ROBERT NUCCIO
C0111
349 MERCY STREET
PHILADELPHIA PA 19148

CAREN PY
C0112
705 GARLAND STREET
PHILADELPHIA PA 19124

HERBERT S HEINEMAN
C0113
723 WESTVIEW STREET
PHILADELPHIA PA 19119

JANE MCKAIN
C0114
1511 SHUNK STREET
PHILADELPHIA PA 19145

CHUONG VAN TRAN
C0115
10855 ACADEMY ROAD
PHILADELPHIA PA 19154

ALBERT MCNULTY
C0116
2779 GAUL STREET
PHILADELPHIA PA 19134

ELIZABETH WILLIAMS
C0117
5214 ARCH STREET
PHILADELPHIA PA 19139

MARY JANE SMITH
C0118
8112 DORCAS STREET
PHILADELPHIA PA 19152

VINCENZINA FLACCO
C0119
704 REED STREET
PHILADELPHIA PA 19147-5729

ANGELO ROTCHFORD
CRRESCENTINA MIELE
C0120
2624 EAST SOMERSET STREET
PHILADELPHIA PA 19134

LAWRENCE E MOTYKA
C0121
4611 SPRINGFIELD AVENUE
PHILADELPHIA PA 19143-3610

ELIZABETH BANTUM
C0122
6551 NORTH WOODSTOCK STREET
PHILADELPHIA PA 19138

JUNE AND JAMES GREGORIO
C0123
710 REED STREET
PHILADELPHIA PA 19147

PHILOMENA AMATI
0124
8719 DITMAN STREET
PHILADELPHIA PA 19136

GEORGIANA SULLIVAN
C0125
6377 MARSDEN STREET
PHILADELPHIA PA 19135

THOMAS J SMITH
C0126
7409 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19152

CALVIN T TOWNES
C0127
2504 78TH AVENUE
PHILADELPHIA PA 19150

WALTER W COHEN ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPLE LLP
204 STATE STREET
HARRISBURG PA 17101

REBECCA ROSE
FRANK MURPHY
C0128
4413 ERNIE DAVIS CIRCLE
PHILADELPHIA PA 19154

DJEMBA SHUTSHA DIVINE
C-0129
446 ROSELYN STREET
1ST FLOOR
PHILADELPHIA PA 19120

JOHN MURPHY
C0130
4248 J STREET
PHILADELPHIA PA 19124

ELIZABETH D TONER
C0131
5420 AKRON STREET
PHILADELPHIA PA 19124

BERYL M CAMPBELL
C0132
3438 EDMONT STREET
PHILADELPHIA PA 19134

ANTHONY LINKEWICZ
C-0133
3280 EMERY STREET
PHILADELPHIA PA 19134

PAUL LE COMPTE
C0134
6500 VAN KIKE STREET
PHILADELPHIA PA 19135

CECILLIA J KHALFANI
C0135
6651 NORTH LAWRENCE STREET
PHILADELPHIA PA 19126

SHARON WILLIAMS
C0136
549 DEVEREAUX AVENUE
PHILADELPHIA PA 19149

FRED ANTOWIAK
C0137
7942 FERNDAL STREET
PHILADELPHIA PA 19111

LILLIE SOMERVILLE
C0138
PO BOX 38307
PHILADELPHIA PA 19140

LEA ANN HARRIS
C-0139
7453 NORTH 21ST STREET
PHILADELPHIA PA 19138

LEONARD ELGART
C0140
247 WEST MENTOR STREET
PHILADELPHIA PA 19120

ELIZABETH ANCHETA
C0141
2840 EDGEMONT STREET
PHILADELPHIA 19134

MR AND MRS DOUGLAS J FINKBINER
C0142
8630 MARIGOLD PLACE
PHILADELPHIA PA 19136

DELORES A GRIFFIN-STOKES
C0143
1526 NORTH 5TH STREET
PHILADELPHIA PA 19131-3809

CURTIS GLEN
C0144
2722 CLAYTON STREET
PHILADELPHIA PA 19152

DAVID SCHOLNICK
C0145
1106 FEDERAL STREET
APARTMENT 2
PHILADELPHIA PA 19147

MARY PAWLUCZYK
C0146
3149 CEDAR STREET
PHILADELPHIA PA 19134-4449

ALICE S WOJCIECHOWSKI
C0147
3401 CHIPPENDALE AVENUE
PHILADELPHIA PA 19136-3503

FLORENCE A DRAKE
C0148
3227 GAUL STREET
PHILADELPHIA PA 19134

BARBARA MCDEVITT
C0149
3169 MEMPHIS STREET
PHILADELPHIA PA 19134

JENNIFER MCCLOSKEY-MORRIS
C0150
3417 W PENN STREET
PHILADELPHIA PA 19129

BARBARA P (AROT) RUSSO
C0151
7243 VALLEY AVENUE
PHILADELPHIA PA 19128

THERESA ALICEA
C0152
1341 NORTH DELAWARE AVENUE
SUITE 303
PHILADELPHIA PA 19125

DANIEL DOUGHERTY
C0153
1729 PINE STREET
PHILADELPHIA PA 19103

ELAINE MATHEOS
C0154
2005 NORTH 49TH STREET
PHILADELPHIA PA 19131

JAMES MARINO
C0155
2740 SOUTH COLORADO STREET
PHILADELPHIA PA 19145

AMELIA KIMBLE
C0156
142 WEST ROSELYN STREET
PHILADELPHIA PA 19120

JOAN M LUCIER
C0157
234 DAY STREET
PHILADELPHIA PA 19125

EDWARD AND HELEN WHITE
C0158
1309 DISSTON STREET
PHILADELPHIA PA 19111

RICARDO J MARTIN
C0159
2729 POPLAR STREET
PHILADELPHIA PA 19130

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

March 14, 2001

VIA FEDERAL EXPRESS

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

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

005857

Dear Mr. Bertocci:

Enclosed please find PGW's responses to the following CEPA Interrogatories:

Set I - 31 and 48

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

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cc: Parties of-record (w/encl.)

Secretary McNulty (Certificate of Service only)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

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

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

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

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 17101-1600

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

005856

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MAR 15 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 14, 2001

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

March 14, 2001

VIA HAND DELIVERY

Johnnie Simms
PA Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Building
400 North Street; 2nd Floor
Harrisburg, PA 17120

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW responses to OTS Interrogatories:

OTS-RE - 83

OTS-TRF - 2

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)
Secretary McNulty (Certificate of Service only)

005855

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FOLDER

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

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

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

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

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 Consultan
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

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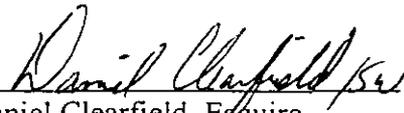
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Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406
(PICGUG)

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 14, 2001

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

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SECRETARY'S BUREAU

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

March 14, 2001

VIA HAND DELIVERY

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

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
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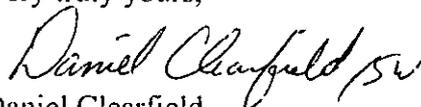
Dear Ms. McCloskey:

Enclosed please find PGW's responses to the following OCA Interrogatories:

Set IV - 2, 10, 11, 14, 16, 17, 19, 20, 21, 23, 25, 28 and 29

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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SECRETARY'S BUREAU

VIA FIRST CLASS MAIL

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

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

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

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)

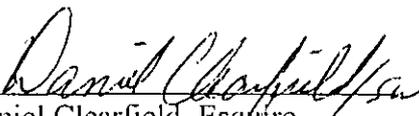
Richard A. Baudino
J. Kennedy and Associates
570 Colonial Park Dr., Suite 305
Roswell, GA 30075

DOCUMENT
FOLDER

DOCKETED
MAR 15 2001

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 14, 2001

DANIEL CLEARFIELD ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

JONATHAN TWERSKY
C0001
1701 SOUTH 11TH STREET
PHILADELPHIA PA 19148

ADAM B KRUGER
C0002
8812 MANCHESTER STREET
PHILADELPHIA PA 19152

DOCUMENT
FOLDER

ANTHONY JANKENSKY
C0003
3916 STEVENSON STREET
PHILADELPHIA PA 19114

FRANCES WILLIAMS
C0004
5216 NORTH 11TH STREET
PHILADELPHIA PA 19141-2809

JUDITH A FLANAGAN
C0005
6561 EDMUND STREET
PHILADELPHIA PA 19135

DEBORAH KANE
C0006
7134 KEYSTONE STREET
PHILADELPHIA PA 19135

HASHA SALAMAN
C0007
9204 BURBANK ROAD
PHILADELPHIA PA 19115-4003

DAVID A POSTERNOCK
C0008
215 BECK STREET
PHILADELPHIA PA 19147

007254

ANNE GOLDEN
C0009
6649 HEGERMAN STREET REAR-SIDE
1ST FL
PHILADELPHIA PA 19135

RICHARD STERLING
C0010
2524 MEMPHIS STREET
PHILADELPHIA PA 19125

LORETTA HUTCHINGS
C0011
6421 GLENMORE AVENUE
PHILADELPHIA PA 19142

ROBERT B MULLINEAUX
C0012
239 SOUTH 13TH STREET
PHILADELPHIA PA 19107

KIMBERLY A LISACEK
C0013
2343 SOUTH BANCROFT STREET
PHILADELPHIA PA 19145

DEBORAH SALVATO
C0014
2225 SOUTH GARNET STREET
PHILADELPHIA PA 19145

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JOHNNIE E SIMMS ESQUIRE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

ANGELA JONES ESQUIRE
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

DAVID M KLEPPINGER ESQUIRE
CHARIS M BURAK ESQUIRE
KAREN S MILLER ORNER
MCNEES WALLACE & NURICK
100 PINE STREET PO BOX 1166
HARRISBURG PA 17108-1166

LANCE HAVER
6048 OGONTZ AVENUE
PHILADELPHIA PA 19141

PHILIP A BERTOCCI ESQUIRE
EDWARD A MCCOOL ESQUIRE
COMMUNITY LEGAL SERVICES INC
1424 CHESTNUT STREET 4TH FLOOR
PHILADELPHIA PA 19102-2505

RICHARD LELASH
FINANCIAL AND REGULATORY
CONSULTANT
18 SEVENTY ACRE ROAD
REDDING CT 06896

CRAIG A DOLL ESQUIRE
2ND FLOOR
25 NORTH FRONT STREET
HARRISBURG PA 17010-1606

BRIAN KALCIC
EXCEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

TANYA J MCCLOSKEY ESQUIRE
JAMES A MULLINS ESQUIRE
STEPHEN J KEENE
OFFICE OF CONSUMER ADVOCATE
5TH FL FORUM PL 555 WALNUT ST
HARRISBURG PA 17101-1923

WARREN L COLSTON
C0015
1639 MERIBROOK ROAD
PHILADELPHIA PA 19151-2717

DAVID G RICKARD
C0016
3311 G STREET
PHILADELPHIA PA 19134

ALIZA HILDEBRAND
C0017
2114 FITZWATER STREET APT 2
PHILADELPHIA PA 19146

HARRY ROBINSON
C0018
C/O RUCH SHIPON SKARBEK
5200 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19124

GERRIE A STEIN
C0019
12733 VERDA DRIVE
PHILADELPHIA PA 19154

RENEE JEANINE RAGNO
C0020
6104 BUSTLETON AVENUE
PHILADELPHIA PA 19149

LAURA KUNECK
C0021
5461 VICARIS STREET
PHILADELPHIA PA 19128

WILLIAM BRIGGS
C0022
3655 OLD YORK ROAD
PHILADELPHIA PA 19140

CHARLES HUANG
C0024
10825 EAST KESWICK ROAD APT 5
PHILADELPHIA PA 19154

DIANE KINGSLEY
C0025
5411 HOUGHTON PLACE
PHILADELPHIA PA 19128

ROBERT AND KIMBERLY DEGREGORIO
C0026
6529 WALKER STREET
PHILADELPHIA PA 19135

WILLIAM G COLEMAN
C0028
4710 EDMUND STREET
PHILADELPHIA PA 19124

MARY SCORZA
C0029
10921 WALDEMIRE DRIVE
PHILADELPHIA PA 19154

LINDA FERNANDEZ
C0030
4340 PALMETTO STREET
PHILADELPHIA PA 19124-4309

LEONA R HOLLAND
C0031
5000 WALNUT STREET REAR
PHILADELPHIA PA 19139

JESSICA M WOODS
C0032
4628 SPRUCE STREET 2ND FLOOR
PHILADELPHIA PA 19139-4581

THOMAS AND CAROL LISACEK
C0033
1036 TREE STREET
PHILADELPHIA PA 19148

DIANE V CHUDZINSKA
C0034
2555 EAST CLEARFIELD STREET
PHILADELPHIA PA 19134

TOM SALMONS
C0035
3884 M STREET
PHILADELPHIA PA 19124

MICHAEL RUSSO
C0036
4316 HIGBEE STREET
PHILADELPHIA PA 19135

HARRIETTE TAYLOR
C0037
5717 SPRUCE STREET
PHILADELPHIA PA 19139-3808

DANIELLE AND WILLIAM VETTER
C0038
3599 K NOTTINGHAM LANE
PHILADELPHIA PA 19114

MARIA PRENDERGAST
C0039
1157 SOUTH 12TH STREET 1ST FLOOR
PHILADELPHIA PA 19147

RICHARD HOTCHKISS
C0040
525 SOUTH MELVILLE STREET
PHILADELPHIA PA 19143

ROSEANN BILARDO
C0041
5960 JANNETTE STREET
PHILADELPHIA PA 19128-1615

BRENDA M KINGWOOD
C0042
3546 CAMAC STREET
PHILADELPHIA PA 19140

SAMUEL J MUNAFO
C0043
3345 HOLME AVENUE
PHILADELPHIA PA 19114-3807

MAUREEN NOONE-MCGOVERN
C0044
2350 EAST ALBERT STREET
PHILADELPHIA PA 19125

ILENE APPLEBAUM-SCHULTZ
C0045
8301 DORCAS STREET
PHILADELPHIA PA 19152

JOANNE L FRITZ
C0046
1359 EAST CAREY STREET
PHILADELPHIA PA 19124

CARRIE HARTSFIELD
C0047
3118 NORTH PERCY STREET
PHILADELPHIA PA 19133

RICHARD T FOX
C0048
6274 LARGE STREET
PHILADELPHIA PA 19149

JOANNE AND GREGORY IRLICH
C0049
7811 LISTER STREET
PHILADELPHIA PA 19152

LOUIS IZZI
C0050
1920 EAST ONTARIO STREET
PHILADELPHIA PA 19134

JANE WARREN
C0051
455 MARKLE STREET
PHILADELPHIA PA 19128

FRANCIS X TENAGLIO
C0052
2335 SOUTH 18TH STREET
PHILADELPHIA PA 19145

RACHELE LEMON
C0053
2038 SPRING GARDEN STREET APT 3R
PHILADELPHIA PA 19130

ROBERT C KRALLE
C0054
12508 NANTON DRIVE
PHILADELPHIA PA 19154

TIKI WRIGHT
C0055
581 ROSALIE STREET
PHILADELPHIA PA 19120

VINCE MULLINS
C0056
3522 WELLINGTON STREET
PHILADELPHIA PA 19149

WILLIAM J MASCIOTRO JR
C0057
1704 SHELMIRE AVENUE
PHILADELPHIA PA 19111-3427

JOSEPH E KETTINGER
C0058
3116 ENGLEWOOD STREET
PHILADELPHIA PA 19149

ANGELA BOGUCKI SIMONE
C0059
3255 KNORR STREET
PHILADELPHIA PA 19149

DAVID KLEPPINGER ESQUIRE
CHARIS BURAK ESQUIRE
K ORNER ESQUIRE
MCNEES WALLACE & NURICK
100 PINE ST PO BOX 1166
HARRISBURG PA 17108-1166

GLORIA DENT
C0061
6947 STENTON AVENUE
PHILADELPHIA PA 19138-1927

WALTER A PATZ
C0062
3207 ANCONA ROAD
PHILADELPHIA PA 19154-1903

JOSEPHINE RENDECH
C0063
3016 BELGRADE STREET
PHILADELPHIA PA 19134

DEANNA M CORBIN
C0064
1131 E CHELTEN AVENUE
PHILADELPHIA PA 19138-1821

NANCY S HOUSTON
C0065
731 CORINTHIAN AVENUE
PHILADELPHIA PA 19130

BRIAN BIGGS
C0066
5448 RIDGE AVENUE
PHILADELPHIA PA 19128

GERTRUDE BORASKI
C0067
3426 TILTON STREET
PHILADELPHIA PA 19134

RICHARD F KOSICH
C0068
1830 GREEN STREET APT 2R
PHILADELPHIA PA 19130

JOHN DITTUS
C0069
1339 GILHAM STREET
PHILADELPHIA PA 19111

STEVEN C GRAY ESQUIRE
OFFICE OF SMALL BUSINESS
ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

BRIAN KALCIC
EXCEL CONSULTING
SUITE 720-T
225 MERAMEC AVENUE
ST LOUIS MO 63105

JEANNE S WIETICHA
C0071
3616 BELGRADE STREET
PHILADELPHIA PA 19134-5519

CYNTHIA ROBINSON
C0072
5983 N OPAL STREET
PHILADELPHIA PA 19141

MATTHEW C MORGAN
C0073
115 KALOS STREET
PHILADELPHIA PA 19182

VU TIEN NGUYEN
C0074
1745 W PASSYUNK AVENUE
PHILADELPHIA PA 18145-3836

MARK S STEWART ESQUIRE
WOLF BLOCK SCHORR AND SOLIS-
COHEN LLP
212 LOCUST STREET SUITE 300
HARRISBURG PA 17101

SCOTT A HUFF
C0075
1110 LOMBARD STREET APT 19
PHILADELPHIA PA 19147

CYNTHIA RASCOE
C0076
7416 RUGBY
PHILADELPHIA PA 19138

TAMEIKA L STERLING
C0077
2520 S EDGEWOOD STREET
PHILADELPHIA PA 19142

LIL HENDERSON
C0078
6334/6336 NORTH 10TH STREET
PHILADELPHIA PA 19141

JOE FEDELI
C0079
3116 WELSH ROAD
PHILADELPHIA PA 19136-1810

LAWRENCE W MEEHAN
C0080
3015 FANSHAWE STREET
PHILADELPHIA PA 19149

WENDY S LAVERTY
C0081
464 VANKIRK STREET
PHILADELPHIA PA 19120

KIA WILLIAMS
C0082
5037 SPRINGFIELD AVENUE APT 3
3RD FLOOR
PHILADELPHIA PA 19143

VANESSA PAYNE
C0083
907 ATWOOD ROAD
PHILADELPHIA PA 19151

MARK CAMPBELL
C0084
5438 WOODCREST AVENUE
PHILADELPHIA PA 19131

LEEANNA COX PURNELL
C0085
2029 NORTH 62ND STREET
PHILADELPHIA PA 19151

LEOTA BAUER
C0086
3110 FAIRFIELD STREET
PHILADELPHIA PA 19136-1108

LEROY HARRIS III
C0087
5741 WEST DUNLAP STREET
PHILADELPHIA PA 19131-3411

HELEN T KLOCEK
C0088
3151 CEDAR STREET
PHILADELPHIA PA 19134

AUDREY F RICHARDSON-JORDAN
C0089
6438 NORTH NORWOOD STREET
PHILADELPHIA PA 19138-2508

ROXANNE T GREGORIO
C0090
718 SOUTH PERCY STREET
PHILADELPHIA PA 19147

ATTILIO W FEDELI
C0091
3291 HOLME AVENUE
PHILADELPHIA PA 19114

DENISE RIEHL
C0092
676 RENZ STREET
PHILADELPHIA PA 19128

LINDA G REDDING
C0093
605 KINGSLEY STREET
PHILADELPHIA PA 19128

KEVIN CAMPBELL
C0094
2242 FRIENDSHIP STREET
PHILADELPHIA PA 19149

CHRISTINA GAINES
C0095
260 EAST SLOSUM STREET
PHILADELPHIA PA 19119

SUSAN CAVANAUGH
C0096
1847 FULLER STREET
PHILADELPHIA PA 19152

SALA N BAILEY
C0097
5935 ALMA STREET
PHILADELPHIA PA 19149

JEANNETTE KING-COLEMAN
C0098
5701 FLORENCE AVENUE
PHILADELPHIA PA 19143-4527

VIRGINIA T LOCK
C0099
6700 ROWLAND AVENUE
PHILADELPHIA PA 19149

L EVELYN MACMATH
C0100
5844 PENN STREET
PHILADELPHIA PA 19149

WENDELL F HOLLAND ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPEL LLP
ONE PENN CENTER 19TH FLOOR
1617 JOHN F KENNEDY BOULEVARD
PHILADELPHIA PA 19103-1895

MARIE A ZOOK
C0101
8320 JEANES STREET
PHILADELPHIA PA 19111

ANTHONY M GUIDOTTI
C0102
9733 REDD RAMBLER DRIVE
PHILADELPHIA PA 19115-2926

MARGARET C BRENNAN
C0103
2354 EAST TUCKER STREET
PHILADELPHIA PA 19125

KAREN S CLAPP
C0104
1237 RODMANN REAR COURT
PHILADELPHIA PA 19147

MARGARET GROSS
C0105
3938 NORTH SMELLEY
PO BOX 38015
PHILADELPHIA PA 19140

BARBARA J LIPSCOMB-OLIVER
C0106
6615 GONTZ AVENUE
PHILADELPHIA PA 19126

MARIO FAVACCHIA
C0107
1711 WEST MOYAMENSING AVENUE
PHILADELPHIA PA 19145

DOMINIC L FOLINO
C0108
7404 DUNGAN ROAD
PHILADELPHIA PA 19111

MARY COOPER
C0109
175 WEST ALBANUS STREET
PHILADELPHIA PA 19120

FEDELE P FOLINO
C0110
7157 TORRESDALE AVENUE
PHILADELPHIA PA 19135

ROBERT NUCCIO
C0111
349 MERCY STREET
PHILADELPHIA PA 19148

CAREN PY
C0112
705 GARLAND STREET
PHILADELPHIA PA 19124

HERBERT S HEINEMAN
C0113
723 WESTVIEW STREET
PHILADELPHIA PA 19119

JANE MCKAIN
C0114
1511 SHUNK STREET
PHILADELPHIA PA 19145

CHUONG VAN TRAN
C0115
10855 ACADEMY ROAD
PHILADELPHIA PA 19154

ALBERT MCNULTY
C0116
2979 GAUL STREET
PHILADELPHIA PA 19134

ELIZABETH WILLIAMS
C0117
5214 ARCH STREET
PHILADELPHIA PA 19139

MARY JANE SMITH
C0118
8112 DORCAS STREET
PHILADELPHIA PA 19152

VINCENZINA FLACCO
C0119
704 REED STREET
PHILADELPHIA PA 19147-5729

ANGELO ROTCHFORD
CRRESCENTINA MIELE
C0120
2624 EAST SOMERSET STREET
PHILADELPHIA PA 19134

LAWRENCE E MOTYKA
C0121
4611 SPRINGFIELD AVENUE
PHILADELPHIA PA 19143-3610

ELIZABETH BANTUM
C0122
6551 NORTH WOODSTOCK STREET
PHILADELPHIA PA 19138

JUNE AND JAMES GREGORIO
C0123
710 REED STREET
PHILADELPHIA PA 19147

PHILOMENA AMATI
0124
8719 DITMAN STREET
PHILADELPHIA PA 19136

GEORGIANA SULLIVAN
C0125
6377 MARSDEN STREET
PHILADELPHIA PA 19135

THOMAS J SMITH
C0126
7409 ROOSEVELT BOULEVARD
PHILADELPHIA PA 19152

CALVIN T TOWNES
C0127
2504 78TH AVENUE
PHILADELPHIA PA 19150

WALTER W COHEN ESQUIRE
OBERMAYER REBMANN MAXWELL &
HIPPLE LLP
204 STATE STREET
HARRISBURG PA 17101

REBECCA ROSE
FRANK MURPHY
C0128
4413 ERNIE DAVIS CIRCLE
PHILADELPHIA PA 19154

DJEMBA SHUTSHA DIVINE
C-0129
446 ROSELYN STREET
1ST FLOOR
PHILADELPHIA PA 19120

JOHN MURPHY
C0130
4248 J STREET
PHILADELPHIA PA 19124

ELIZABETH D TONER
C0131
5420 AKRON STREET
PHILADELPHIA PA 19124

BERYL M CAMPBELL
C0132
3438 EDGEMONT STREET
PHILADELPHIA PA 19134

ANTHONY LINKEWICZ
C-0133
3280 EMERY STREET
PHILADELPHIA PA 19134

PAUL LE COMPTE
C0134
6500 VAN KIKE STREET
PHILADELPHIA PA 19135

CECILLIA J KHALFANI
C0135
6651 NORTH LAWRENCE STREET
PHILADELPHIA PA 19126

SHARON WILLIAMS
C0136
1549 DEVEREAUX AVENUE
PHILADELPHIA PA 19149

FRED ANTOWIAK
C0137
7942 FERNDAL STREET
PHILADELPHIA PA 19111

LILLIE SOMERVILLE
C0138
PO BOX 38307
PHILADELPHIA PA 19140

LEA ANN HARRIS
C-0139
7453 NORTH 21ST STREET
PHILADELPHIA PA 19138

LEONARD ELGART
C0140
247 WEST MENTOR STREET
PHILADELPHIA PA 19120

ELIZABETH ANCHETA
C0141
2840 EDMONT STREET
PHILADELPHIA 19134

MR AND MRS DOUGLAS J FINKBINER
C0142
8630 MARIGOLD PLACE
PHILADELPHIA PA 19136

DELORES A GRIFFIN-STOKES
C0143
1526 NORTH 5TH STREET
PHILADELPHIA PA 19131-3809

CURTIS GLEN
C0144
2722 CLAYTON STREET
PHILADELPHIA PA 19152

DAVID SCHOLNICK
C0145
1106 FEDERAL STREET
APARTMENT 2
PHILADELPHIA PA 19147

MARY PAWLUCZYK
C0146
3149 CEDAR STREET
PHILADELPHIA PA 19134-4449

ALICE S WOJCIÉCHOWSKI
C0147
3401 CHIPPENDALE AVENUE
PHILADELPHIA PA 19136-3503

FLORENCE A DRAKE
C0148
3227 GAUL STREET
PHILADELPHIA PA 19134

BARBARA MCDEVITT
C0149
3169 MEMPHIS STREET
PHILADELPHIA PA 19134

JENNIFER MCCLOSKEY-MORRIS
C0150
3417 W PENN STREET
PHILADELPHIA PA 19129

BARBARA P (AROT) RUSSO
C0151
7243 VALLEY AVENUE
PHILADELPHIA PA 19128

THERESA ALICEA
C0152
1341 NORTH DELAWARE AVENUE
SUITE 303
PHILADELPHIA PA 19125

DANIEL DOUGHERTY
C0153
1729 PINE STREET
PHILADELPHIA PA 19103

ELAINE MATHEOS
C0154
2005 NORTH 49TH STREET
PHILADELPHIA PA 19131

JAMES MARINO
C0155
2740 SOUTH COLORADO STREET
PHILADELPHIA PA 19145

AMELIA KIMBLE
C0156
142 WEST ROSELYN STREET
PHILADELPHIA PA 19120

JOAN M LUCIER
C0157
1234 DAY STREET
PHILADELPHIA PA 19125

EDWARD AND HELEN WHITE
C0158
1309 DISSTON STREET
PHILADELPHIA PA 19111

RICARDO J MARTIN
C0159
2729 POPLAR STREET
PHILADELPHIA PA 19130

MARGARET F SMITH
C0160
3150 CEDAR STREET
PHILADELPHIA PA 19134

JAMES E MCGURN
C0161
714AFTON STREET
PHILADELPHIA PA 19111

DAVID PATRICK CARNEY
C0162
6136 COTTAGE STREET
PHILADELPHIA PA 19135

THERESA COSTELLO
C0163
3117 TULIP STREET
PHILADELPHIA PA 19134

DANIEL R HOLMES
C0164
3614 EAST THOMPSON STREET
PHILADELPHIA PA 19134

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

March 15, 2001

VIA HAND DELIVERY

Charis M. Burak, Esquire
McNees, Wallace, Nurick
100 Pine Street
P.O. Box 116
Harrisburg, PA 17108-1166

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. Burak:

Enclosed please find PGW's responses to the following PICGUG Interrogatories:

Set II - 1(a-e), 2, 3, 4, 5, 6 and 7

Thank you for your attention to this matter.

Very truly yours,



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

006187

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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

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

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

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

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

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 15, 2001

RESPONSE TO THE PHILADELPHIA INDUSTRIAL AND
COMMERCIAL GAS USERS GROUP (PICGUG) DATA REQUEST
REGARDING PGW'S RATE PROCEEDING

Question PICGUG-Set II-1a. Please refer to PGW Rate GTS.

a) How many customers are currently on Rate GTS?

Response Provided By: Craig White – Sr. Vice President, Marketing & Supply
Services

Response: There are nine GTS accounts, however, there are seven
customers. One customer has three separate accounts.

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

March 15, 2001

VIA HAND DELIVERY

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

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. McCloskey:

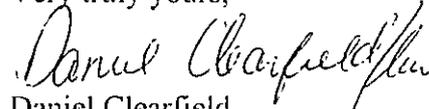
Enclosed please find PGW's responses to the following OCA Interrogatories:

Set II - 1, 14

Set IV - 15

Thank you for your attention to this matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

006191

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VIA FIRST CLASS MAIL

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

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

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

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

006192

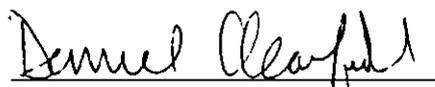
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Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406
(PICGUG)

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 15, 2001

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

March 16, 2001

VIA HAND DELIVERY

Johnnie Simms
PA Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Building
400 North Street; 2nd Floor
Harrisburg, PA 17120

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW responses to OTS Interrogatories:

OTS-RE - 115

**OTS-TRF - 1, 4, 5, 6, 7, 8, 10, 11, 14, 15, 16, 17, 18, 19(a), 19(c-d), 20, 21(b),
22, 23(a), 23(c-d), 24, 25(b), 26, 27(a & b), 27(d), 28, 29, 30, 32,
33, 34 and 35**

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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VIA FIRST CLASS MAIL and/or HAND DELIVERY

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

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

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

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

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 16, 2001

Wolf, Block, Schorr and Solis-Cohen LLP

ORIGINAL

212 Locust Street
Suite 300
Harrisburg, PA 17101

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

MARK S. STEWART
DIRECT DIAL: (717) 237-7191
E-MAIL: MSTEWART@WOLFBLOCK.COM

March 16, 2001

VIA HAND DELIVERY

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

DOCUMENT
FOLDER

01 MAR 16 PM 1:47
SECRETARY'S BUREAU

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Reply to the Office of Consumer Advocate's Motion to Dismiss Objections and to Compel Answers to Interrogatories 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,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jlg

cc: Parties of record (w/encl.)

DSH:26574.1

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Petition of Philadelphia Gas Works for :
Waiver of Certain Notification and Filing :
Requirements and Establishment of :
Expedited Hearing Schedule for Base :
Rate Proceeding :

Docket No. R-00006042

SECRETARY'S BUREAU

01 MAR 16 PM 1:47

PHILADELPHIA GAS WORKS' REPLY TO THE OFFICE OF
CONSUMER ADVOCATE'S MOTION TO DISMISS OBJECTIONS
AND TO COMPEL ANSWERS TO INTERROGATORIES

The Office of Consumer Advocate's ("OCA") Motion to Compel demands responses by Philadelphia Gas Works ("PGW") to interrogatories which seek information that is legally irrelevant in this case because the Public Utility Code, Section 2212, creates a unique ratemaking scheme for PGW that legally places off limits the kinds of ratemaking adjustments that OCA appears to be planning to make using the data produced pursuant to these discovery requests. A more detailed explanation of PGW's legal position is set forth below. Moreover, PGW is planning on filing a Motion in Limine requesting a ruling from the Administrative Law Judge ("ALJ") on the ratemaking requirements and limits applicable to PGW's ratemaking.

Notwithstanding these irrefutable legal requirements, and as an accommodation to OCA, PGW is willing to provide the requested data, subject only to a stipulation by OCA or a directive by the ALJ that providing the data does not constitute an admission that any adjustments that might be made using such information are legally permissible or that PGW in any way is waiving its position that the Public Utility Code does not permit such revenue requirement

DSH:26552.1

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MAR 21 2001

adjustments.¹ Such a stipulation would appear to be the most sensible way of handling this difference of opinion without further burdening the parties or the ALJ. In specific response to OCA's Motion, PGW states as follows:

In order for OCA's discovery to be proper, it must appear reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). In addition, OCA's interrogatories cannot cause unreasonable annoyance, oppression or burden to PGW. 52 Pa. Code § 5.361(a)(2). The subject interrogatories satisfy neither requirement.

Response to Motion to Compel -- OCA II-31

OCA II-31 involves the financial effect on PGW of a grant-back by the City of its statutorily mandated annual payment. However, Section 2212(f) of the Public Utility Code could not be more clear that the Commission must ensure that PGW can impose, charge and collect rates sufficient to enable it to make the annual \$18 million payment to the City of Philadelphia.² 66 Pa. C.S. § 2212(f). The PUC cannot directly require a grant-back of this annual payment. Nor can the Commission issue an order that effectively or indirectly requires such a grant-back by failing to provide sufficient rates or forcing PGW to restructure its budget and revenues, in essence robbing Peter to pay Paul. The Code does not provide the Commission with any discretion on this issue; PGW must be empowered to make its annual payment to the

¹ PGW has attempted to resolve this discovery dispute with OCA, along these lines, without bringing it before the ALJ, as it successfully did with the Office of Trial Staff. However, PGW was not able to obtain OCA's agreement. Consequently, any delay in OCA obtaining this data should not inure to the detriment of PGW.

² This payment is also explicitly required by the City ordinance which embodies PGW's prior ratemaking methodology and requirements which the PUC "shall" follow. 66 Pa. C.S. § 2212(e).

City of Philadelphia in at least the amount identified in the City's ordinances in effect on June 30, 2000. Thus, the information requested is legally irrelevant to this proceeding and cannot lead to the production of admissible evidence.

OCA states that it merely seeks information on the effect of such a hypothetical, as opposed to mandatory, grant-back. However, OCA's hypothetical grant-back is no more lawful than the mandatory one it references. As OCA indicates, the motive of various parties during the interim proceeding was to determine how they could deprive the City of its statutorily required payment. The City has not expressed a desire in this proceeding to consider such a grant-back, nor can PGW consider such a grant-back, and thus OCA's hypothetical is just so much wishful thinking for a result that contravenes the law.

As noted above, the Public Utility Code sets forth a totally unique ratemaking scheme for PGW, and similarly city owned natural gas distribution companies, which mandates that PGW must be able to pay the City its annual payment. Any result that falls short of that ability by PGW is unlawful. As OCA's hypothetical involves an illegal result, it is not only not reasonably calculated -- but is impossible -- for it to lead to the discovery of admissible evidence.

Furthermore, the propounding of hypotheticals, which by law cannot become reality, constitutes unreasonable annoyance, oppression and burden to PGW. Thus, as OCA II-31 is beyond the scope and limits of discovery, the ALJ should deny OCA's Motion.

Response to Motion to Compel – OCA III

OCA has also served a myriad of interrogatories focused, in considerable detail,³ on PGW's budgets, including in some instances five (5) year old budgets. Presumably, OCA desires this information in order to propose adjustments to PGW's revenue requirements. OCA notes that the information sought is common or typical in an investor owned base rate case. However, PGW is not such an entity, and this is not a common or typical base rate case. Section 2212(e), (f) and (s) of the Code, which dictate the irrelevance of these matters, apply only to city owned natural gas distribution companies, such as PGW.

In its Motion, OCA states that under the Public Utility Code, specifically the portions enacted pursuant to the Natural Gas Choice and Competition Act, PGW is "except for certain provisions under the Act, 'subject to regulation and control by the Commission with the same force as if the service were rendered by a public utility.'" Motion at ¶ 11 (emphasis added). The key phrase in reviewing this Motion is "except for certain provisions under the Act." Those provisions, specifically Section 2212(e)'s commandment that the PUC follow the previously applicable ratemaking methodology and requirements and ensure that PGW can satisfy its bond covenants, and Section 2212(s)'s reservation to the City of control over PGW's management, budgets, activities, etc., render OCA's interrogatories incapable of leading to the discovery of admissible evidence, and therefore legally irrelevant.

OCA's interrogatories can have only two aims: (1) to challenge and change allocations set forth in PGW's budget; and/or (2) to seek to affect adjustments in PGW's revenue

³ For instance, OCA III-25 actually includes two interrogatories regarding personnel costs associated with honoring Flag Day.

requirements with the result that the Commission sets rates at a level which will not allow for the expenditures in PGW's operating budget to be fully funded. Both results violate the Public Utility Code's unique ratemaking scheme for PGW.

First, Section 2212(s) states that the City retains the authority, notwithstanding any other provision of the Code, to manage PGW and determine its "activities," "functions" and "budgets." Thus, as the Philadelphia Gas Commission, and not the PUC, has the exclusive power to set or alter PGW's budget, forays into such hypothetical changes by OCA cannot lead to admissible evidence, are unduly burdensome, and are beyond the scope of permissible discovery.⁴

Second, because PGW's prior ratemaking methodology, which Section 2212(e) directs the PUC to apply without exception, required that its rates be set to fully fund its operating costs and budget,⁵ proposed adjustments in revenue requirements that result in underfunding of PGW's expenses are legally impermissible.⁶ Such adjustments and underfunding would violate the Code, and consequently interrogatories posed for the purpose of effectuating such an illegal

⁴ OCA raises the issue that the Philadelphia Gas Commission ("PGC") has not yet approved PGW's proposed budget. This argument, however, is a red herring. The PGC is expected to act on the budget very soon. More importantly, though, nearly everything in PGW's proposed budget has been in budgets previously approved by the PGC and PGW acknowledged in its objections that parties could explore the historical presence of specific items in this proposed budget through discovery.

⁵ The requirement to pay its obligations as they come due is also one of PGW's bond covenants. See Joint Settlement Petition at ¶ 10; Order of February 21, 2001 at ¶ 1. The PUC must ensure that PGW's rates allow it to meet its bond covenants. 66 Pa. C.S. § 2212(e).

⁶ Section 2212(e)'s bond covenant requirement would also be violated if PGW's budgets are underfunded as PGW would be forced to breach the requirement to pay its obligations as they come due.

result cannot possibly lead to the discovery of admissible evidence. Additionally, OCA's hypothetical exploration of such revenue adjustment is unreasonably annoying, oppressive and burdensome.

As noted above, PGW has offered to produce the information requested by OCA, and remains willing to do so, so long as either OCA enters into a stipulation or the ALJ directs that by providing the requested data PGW has not admitted the legal relevance of the information, admitted that any adjustments that might be made using such information are legally permissible, or waived its position that the Code does not permit a compelled or induced City payment grant-back or revenue requirement adjustments.

WHEREFORE, PGW respectfully requests that ALJ Cynthia Williams Fordham deny OCA's Motion to Compel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark S. Stewart", written over a horizontal line.

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

Dated: March 16, 2001

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

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

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

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

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)

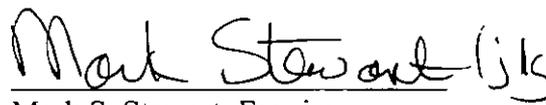
Craig A. Doll, Esq.
25 North Front St., 2nd Floor
Harrisburg, PA 17101-1606

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

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Mark S. Stewart, Esquire

Dated: March 16, 2001



COMMUNITY
LEGAL SERVICES, INC.

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

ORIGINAL

March 20, 2001

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

Filed by Federal Express

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MAR 20 2001

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: CEPA et al. v. Philadelphia Gas Works, Docket No. R-00006042

Dear Secretary McNulty:

I represent the Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), Action Alliance of Senior Citizens of Greater Philadelphia, and the Tenants Action Group (TAG) (collectively CEPA et al.) in the above-captioned matter.

Enclosed please find for filing an original and three copies of CEPA et al.'s Letter Memorandum in Support of OCA's March 12, 2001 Motion to Dismiss Objections and to Compel Answers to Interrogatory 31 of OCA Set II, and Interrogatories 15, 23-26, 28-32, 34-37, 39-41, 45-46 and 51 of OCA Set III.

As evidenced by the Certificate of Service all parties to the proceeding are being served with copies of this Letter Memorandum.

Very truly yours,

PHILIP A. BERTOCCI

Attorney for CEPA et al.

cc: Certificate of Service

Enclosures

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41

R-00006042

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 U.S. Mail, Postage Prepaid

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

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

Tanya Mc Closkey, Esquire
Stephen Keene, Esquire
Office of Consumer Advocate
5th Floor, Forum Place Building
555 Walnut Street
Harrisburg, PA 17101-1921

Johnnie Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
901 N. 7th Street, Rear
P.O. Box 3265
Harrisburg, PA 17105-3265

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

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

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

Richard W. LeLash
Financial and Regulatory Consultant
18 Seventy Acre Road
Redding, CT 06896

Lance Haver
6048 Ogontz Avenue
Philadelphia, PA 19141

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

Wendell F. Holland, Esquire
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Floor
Philadelphia, PA 19103-1895

Philip A. Bertocci

PHILIP A. BERTOCCHI, ESQUIRE

Date: March 20, 2001

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MAR 20 2001

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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March 20, 2001

Honorable Cynthia Williams Fordham
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

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Hand Delivery**

ORIGINAL

Re: Pa. PUC v. PGW; Docket No. R-00006042

CEPA et al.'s Letter Memorandum in Support of OCA's March 12, 2001 Motion to Dismiss Objections and to Compel Answers to Interrogatory 31 of OCA SET II, and Interrogatories 15, 23-26, 28-32, 34-37, 39-41, 45-46 and 51 of OCA SET III

Dear Judge Fordham:

This letter is written on behalf of CEPA et al., a group of low income consumer advocacy and membership organizations who are active parties in the above-captioned case.

OCA's March 12, 2001 Motion to Dismiss Objections (hereinafter "OCA Motion") and PGW's March 16, 2001 Reply to the Office of Consumer Advocate's Motion to Dismiss Objections and to Compel Answers to Interrogatories (hereinafter "PGW Reply") were filed during the week when lead counsel was on vacation. On his return, we were planning to file a motion similar to the OCA Motion seeking dismissal of the objections posed by PGW to many data requests contained in CEPA et al.'s February 2, 2001 First Set of Interrogatories. In most cases, PGW's objections to CEPA et al.'s discovery requests are based upon the same grounds as the Company's objections to OCA's discovery requests.

CEPA et al. therefore have a direct interest in the ALJ's decision regarding the OCA Motion. Because time may be short before a decision on the OCA Motion is rendered, we write today to amplify and present additional legal argument in support of the positions set forth in the OCA Motion.¹ CEPA et al. anticipate filing their own Motion to Dismiss Objections before the end of this week with regard to PGW's objections to CEPA et al.'s First Set of Interrogatories.

PGW has objected to Interrogatories in which OCA has sought: (1) information concerning items contained in PGW's FY 2001 "test year" Operating Budget and/or information which would assist in a determination of the prudence and reasonableness of such expenditures; (2) schedules in the format of Volume II, Part III which would show the effects on cash flow and debt service coverage if PGW and its owner the City of Philadelphia were to take various measures, including grant back of the \$18 million City Payment and/or other enumerated cash management steps. PGW objects that these discovery requests are "legally irrelevant" under the Gas Choice Act, 66 Pa.C.S. §§2201 et seq. According to PGW's legal theory, Gas Choice Act Section 2212(f) "dictates" that the Commission provide rates sufficient for PGW to make the \$18 million City Payment and Section 2212(s) bars PUC inquiry into the "wisdom" of PGW's "test year" budget allocations and expenditures.

PGW's legal theory is incorrect, because it ignores the applicable standard which binds the PUC in the performance of its ratemaking functions. That standard, as the Commission set forth in the prior Interim Base Rate Case (R-00005654) and has repeated in this case, is whether the proposed base rate is "just and reasonable." See February

¹ CEPA et al. fully support all the policy and other reasons set forth in the OCA Motion and will not repeat them here.

8, 2001 Order at Ordering Paragraphs 1 and 3.² That broad standard is not merely a statutory standard set forth in Section 1301 of the Public Utility Code, 66 Pa.C.S. §1301, but a standard based on the due process clause of the U.S. Constitution. As the U.S. Supreme Court has held, regardless of the particular ratemaking “theory” or “methodology” utilized, the Commission must set a base rate in which the “total effect” or “impact” is “just and reasonable.” Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602, 64 S.Ct. 281, 288 (1944). Application of that standard requires the ratemaker to balance the interests of a public utility against those of its customers, and taking all circumstances into account, to determine a rate which avoids both confiscation of a utility’s property and unfair imposition on consumers. Federal Power Commission et al. v. Natural Gas Pipeline Co., 315 U.S. 575, 62 S.Ct. 736, 744 (1942); Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 492 Pa. 326, 424 A.2d 1213, 1219 (1980), *cert. denied*, 454 U.S. 324, 102 S.Ct. 112 (1981)(“There is ample authority that the term ‘just and reasonable’ was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.”)

The applicable standard for determining the “legal relevance” of the data which OCA seeks in discovery is whether that data would assist in determining a “just and reasonable” permanent base rate for PGW. Certainly, in light of this standard, OCA’s

² Paragraph 1 of that Order states: “That an investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness and reasonableness of the rates, rules and regulations proposed in Supplement No. 7 to Tariff Gas-Pa.P.U.C. No. 1. Similarly, Paragraph 3 of that Order states: “That this investigation shall include consideration of the lawfulness, justness and reasonableness of Respondent’s existing rates, rules and regulations.”

inquiries concerning the effects on the Company of a “grant back” of the \$18 million City Payment and concerning the prudence of recent past and proposed expenditures are relevant to such an inquiry. How can the Commission determine a “just and reasonable” rate without assessing whether both the Company and its customers have assumed their fair share of the burdens and obligations implicit in the proposed rate? How can the Commission determine a “just and reasonable” rate without assessing whether the costs which the Company proposes to cover through rates are prudent and reasonable? Amazingly, the PGW Reply does not make one single reference to the “just and reasonable” standard. Instead, PGW seeks to restrict the Commission to the Company’s parochial, narrow and flawed interpretation of the ratemaking provisions contained in the Management Agreement.³

In this proceeding and/or the prior interim base rate proceeding, PGW has made three statutory arguments in support of its flawed theory of the case.

The first argument is based on the provision in Gas Choice Act Section 2212(e) which states that: “Notwithstanding any provision of this title to the contrary, in determining the natural gas distribution operation’s revenue requirement and approving overall rates and charges, the commission shall follow the same ratemaking methodology and requirements that were applicable to the city natural gas distribution operation prior to the assumption of jurisdiction by the commission” 66 Pa.C.S. §2212(e). PGW reads this provision to mean that the sole standards for setting rates for PGW are those set forth in the Management Agreement. By implication, this view would suggest either that the Management Agreement trumps the “just and reasonable” ratemaking standard set forth in Section 1301 of the Public Utility Code, or that the General Assembly, in passing

³ The Management Agreement, as amended, which sets forth provisions concerning ratemaking for the Philadelphia Gas Works, may be found in its original version in the Ordinances of the City of Philadelphia (from January 1 to December 31, 1972), pp. 1001 *et seq.* (Bill No. 455).

Section 2212(e), determined that a rate established on the basis of the Management Agreement's express provisions is per se "just and reasonable."

This argument is without merit, because the "just and reasonable" standard is not merely a statutory standard, but a federal constitutional standard. As a constitutional standard, the "just and reasonable" standard may be neither trumped nor qualified by state legislation or municipal ordinance. Therefore, the Gas Choice Act cannot be read, as PGW claims, to mean that the General Assembly has established a "totally unique ratemaking scheme for PGW." PGW Reply, at 3. To the contrary, although the Management Agreement contains ratemaking provisions which reflect the fact that PGW is not an investor owned utility, any base rate which the City and PGW may impose upon customers must nevertheless satisfy the "just and reasonable" standard.

The second argument is based on the decision of the Pennsylvania Supreme Court in Public Advocate v. Philadelphia Gas Commission, – Pa. –, 674 A.2d 1056, 1062 (1996). Misinterpreting that case, PGW has previously cited it for the proposition that rates determined according to the provisions of the Management Agreement are per se "just and reasonable."

However, that is not Public Advocate's holding. In that case, the Supreme Court rejected the contention that inclusion of an automatic \$18 million City Payment in base rates, without regard for the utility's level of service and performance, was per se unreasonable. The Court stated that under the totality of the circumstances in that *particular* rate case, inclusion of the \$18 million was not unjust and unreasonable. In explaining its decision, the Court specified that it was not the ratemaking "theory" that was the ultimate determinant in assessing the constitutionality of a rate, but rather the impact of the resulting rate on PGW and on its customers. The controlling determination

was whether under all the circumstances, the resulting rate in the particular case under review was “just and reasonable.” Nowhere did the Court state that a rate produced by application of the ratemaking provisions contained in the Management Agreement produced rates which were per se “just and reasonable.”

The third argument is based on Gas Choice Act Section 2212(s) which states in pertinent part that “Nothing contained in this title shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation ... including, but not limited to, the ownership, governance, management or control thereof.” 66 Pa.C.S. §2212(s). PGW misinterprets this language to mean that any inquiry by the PUC into the prudence or reasonableness of elements in PGW’s test year operating budget is impermissible, because such inquiry implies the authority to deny funding to certain budgeted PGW expenses. Such “underfunding” would, according to PGW, constitute an abrogation or limitation on the City’s budgetary prerogatives, in violation of Section 2212(s). PGW Reply, at 5.

In making this argument, PGW once more fails to recognize that ratemaking for PGW has and necessarily continues to take place within certain constitutional parameters. The power of PGW and the City to set and fund PGW’s budgets was never unlimited. This right was always subject to the requirement that the rate imposed to fund these budgets must be “just and reasonable.”

As the state Supreme Court stated in Public Advocate at a time when PGW (as a municipally owned utility) was not subject to the Public Utility Code with regard to service provided within municipal limits, “[e]ven though the PUC cannot regulate the

rates charged by ...PGW, it does not mean that municipal utilities are not subject to any control.” The Court underscored this holding by quoting directly from a vintage state Supreme Court case American Aniline Products, Inc. v. Lock Haven:

Courts have the power to determine questions relating to service and rates [of municipal utilities] where a complaint is based on “*reasonableness of the ordained rate or the justness of their application,*” or discrimination amounting to confiscation. (Emphases added).

Public Advocate, 674 A.2d 1056, 1061, quoting from 288 Pa. 420, 424, 135 A. 726, 727 (1927).

Inquiry by the Commission into the prudence of the costs which PGW seeks to recover through rates therefore does not constitute any “abrogation” or “limitation” on the pre-Gas Choice Act authority of PGW and the City to budget for PGW. This authority continues today, as in the past, to be subject to the “just and reasonable” constitutional standard.

In conclusion, ratemaking for PGW does not and never has involved blind application of the ratemaking provisions contained in the Management Agreement. PGW’s objections to OCA’s legitimate discovery requests represent one more episode in the City’s unceasing effort to prevent close scrutiny of a budgetary system which provides a yearly \$18 million subsidy to PGW’s owner the City of Philadelphia, without providing ratepayers with adequate, efficient or affordable service. CEPA et al.

respectfully request that the OCA Motion be granted.

Very truly yours,

Philip C. Bertocci

PHILIP A. BERTOCCHI, ESQUIRE
EDWARD A. MCCOOL, ESQUIRE

Attorneys for CEPA et al.

cc: Certificate of Service

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

March 21, 2001

VIA HAND DELIVERY

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

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. McCloskey:

Enclosed please find PGW's responses to the following OCA Interrogatories:

Set I - 35

Set IV - 5, 8, 9, 18, 22, 24, 26 and 27

Thank you for your attention to this matter.

Very truly yours,

Daniel Clearfield /smw

Daniel Clearfield

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

/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

007624

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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 or HAND DELIVERY

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

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

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

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

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
Exce! 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

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

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 21, 2001

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

March 21, 2001

VIA HAND DELIVERY

Johnnie Simms
PA Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Building
400 North Street; 2nd Floor
Harrisburg, PA 17120

DOCUMENT
FOLDER

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW responses to OTS Interrogatories:

OTS-RE - 63, 123

OTS-TRF - 13, 19(b), 23(b), 25(a), 25(c-d), 31(d)

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

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/smw

cc: Parties of record (w/encl.)

Secretary McNulty (Certificate of Service only)

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VIA FIRST CLASS MAIL or HAND DELIVERY

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

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

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

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

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Philadelphia, PA 19141
(CEPA)

Philip Bertocci, Esq.
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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

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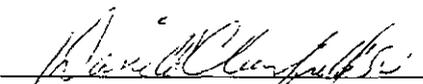
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Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406
(PICGUG)

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895



Daniel Clearfield, Esquire

Dated: March 21, 2001

Wolf, Block, Schorr and Solis-Cohen LLP
DOCUMENT
FOLDER

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

March 21, 2001

VIA HAND DELIVERY

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

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Ms. Jones:

Enclosed please find PGW responses to the following OSBA Interrogatories:

OSBA Set I - 1 and 7

Thank you for your attention to this matter.

Very truly yours,



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

/smw
cc: Parties of record (w/encl.)
Secretary McNulty (Certificate of Service only)

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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 or HAND DELIVERY

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

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

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

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

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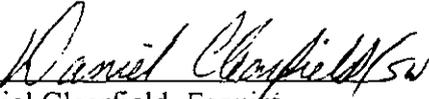
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Larry Speilvogel
203 Hughes Road
King of Prussia, PA 19406
(PICGUG)

Wendell F. Holland, Esq.
Obermayer, Rebmann Maxwell
& Hippel LLP
One Penn Center, 19th Fl.
1617 John F. Kennedy Blvd.
Philadelphia, PA 19103-1895


Daniel Clearfield, Esquire

Dated: March 21, 2001

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

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MARK S. STEWART
DIRECT DIAL: (717) 237-7191
E-MAIL: MSTEWART@WOLFBLOCK.COM

March 21, 2001

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

VIA HAND DELIVERY

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

RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Motion in Limine 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,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jlg

cc: Parties of record (w/enc)
Hon. Cynthia W. Fordham (w/enc)

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In Re: Petition of Philadelphia Gas Works for :
Waiver of Certain Notification and Filing :
Requirements and Establishment of :
Expedited Hearing Schedule for Base :
Rate Proceeding :

Docket No. R-000060

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MOTION IN LIMINE
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Certain parties have propounded numerous interrogatories in apparent preparation to repeat past arguments that the Public Utility Commission ("PUC"), in setting rates for Philadelphia Gas Works ("PGW"), should not use the ratemaking methodology and requirements used by PGW prior to PUC regulation and should not necessarily provide working capital allowing PGW to pay its debts as they come due. Rate-setting based on such arguments would violate Section 2212 of the Public Utility Code, the bond covenants of PGW and the City of Philadelphia, and the principles set forth in the PUC's Interim Rate Settlement Order. Accordingly, PGW respectfully submits this Motion in Limine, pursuant to 52 Pa. Code §5.103(a) and (d)(2), requesting an Order from the ALJ acknowledging the specifics of the ratemaking methodology and requirements that are mandated by the Public Utility Code and the Commission's Interim Rate Settlement Order in setting rates for PGW. These specific directives will also assist in determining in advance the testimony and adjustments that may be submitted by the parties when responding to PGW's base rate request.

In summary, PGW believes that Section 2212 of the Code establishes very clear ratemaking standards that must be used in setting PGW's base rates, distinctly different than the

methods for non-municipal companies. The law requires the PUC to use the “prior ratemaking methodology and requirements” applicable to PGW prior to PUC jurisdiction. That methodology – the “cash flow method” – set PGW’s revenue requirement at the level needed to fund its operating budget. Moreover, this previous ratemaking approach, as well as PGW’s bond ordinances, require that PGW’s rates be set so that it will have enough cash each month and at the end of the fiscal year to pay its obligations when they come due during that year. As the PUC acknowledged in its Interim Rate Settlement Order, the Public Utility Code itself obligates the Commission to set PGW’s rates in accordance with the prior ratemaking method and so that the Gas Works can satisfy its bond ordinances.¹

Despite these requirements, however, several parties have, in the past, challenged the use of the “cash flow method” as the basis for setting PGW’s rates, and specifically have denied that PGW should be able to claim a revenue requirement that includes cash working capital necessary to pay obligations when they come due.² Moreover, those same parties have made extensive discovery requests which seek data about a variety of PGW items that have regularly been part of PGW’s budgeted expenses and recovered in its revenues. For example, PGW has received numerous questions about its cafeteria in which food prices are subsidized as an employee benefit while other interrogatories have questioned the number and type of vehicles it makes available to its employees for official business. Presumably, the parties are seeking this data in

¹ PUC Order Approving Joint Petition for Settlement at 7 and ¶ 1; see Joint Petition at ¶¶ 10, 25 and 28. The Order and Joint Petition are attached hereto as Attachment A.

² See, e.g., Brief of OCA, Interim Rate Proceeding , R-00005654, at 34-36.

order to argue that the value of these benefits or expenditures should not be included in PGW's revenue requirement. However, if an adjustment were made to deny the cafeteria subsidy cost in PGW's rates, for example, PGW per force, would be denied the ability to both fund its budget and to satisfy its bond covenants. Thus, it is crucial that the ALJ and the PUC clarify the scope of PUC ratemaking authority, now, to assist all the parties by avoiding the expenditure of time and energy that will be incurred in advancing unnecessary and legally irrelevant issues and adjustments.

Just as important, in the wake of the PUC's Interim Settlement Order, it is vital that the ALJ and PUC resolve now any remaining ambiguity that may exist regarding the scope of the PUC's ratemaking authority. The Interim Settlement Order, when read in context, clearly acknowledges that the PUC's "statutory obligations" under Section 2212(e) include the "authorization of the rate changes and cash reserves." PUC Order Approving Joint Petition for Settlement at 7 (emphasis added).³ If this acknowledgment is not reinforced now, then PGW will once again be placed in the position of having to file appellate challenges to the PUC's final order at the end of the case when PGW will be in urgent need of obtaining sufficient revenue to prevent bond defaults and a further financial crisis. Accordingly, PGW is submitting this Motion now to obtain this necessary clarification which, it submits, will benefit all parties as well as PGW and its customers. The ALJ's decision should, in turn, be certified to the PUC for review and approval as soon as possible.

³ See Id. at ¶ 1; Joint Petition at ¶ 25 and 28.

In support of this Motion, PGW states as follows:

Background

1. On January 5, 2001, PGW filed a permanent base rate case with the PUC requesting that its base rates be increased by \$65 million annually. The increase was filed pursuant to Section 2212 of the Public Utility Code which, beginning July 1, 2000, transferred jurisdiction over PGW's rate to the PUC.⁴

2. Section 2212(e) of the Code commands the PUC, notwithstanding any other provision of the Public Utility Code to the contrary, to follow the "same ratemaking methodology and requirements" that were applied by PGW's former ratemaking body, the Philadelphia Gas Commission ("PGC"), when determining PGW's revenue requirements and overall rates and charges. 66 Pa. C.S. § 2212(e). Section 2212(e) requires the PUC to follow that rate making methodology until all "approved bonds have been retired, redeemed, advance refunded or otherwise defeased."⁵

3. The ratemaking method previously applied to PGW by the PGC was set forth in an ordinance of the City of Philadelphia, which adopted the Management Agreement between it and its governing board, the Philadelphia Facilities Management Corporation ("PFMC").⁶

⁴ Section 2212 was added by the Natural Gas Choice and Competition Act, Section 3 of the Act of June 22, 1999 (P.L. 122, No. 1999-21), 66 Pa. C.S. §§ 2201-2212 (hereinafter "the Gas Choice Act").

⁵ Id. All "approved bonds" have not been "retired, redeemed, advance refunded or otherwise defeased" as of this date and will not be until 2026.

⁶ The Management Agreement Ordinance was incorporated into and approved by an
(continued...)

4. The Management Agreement,⁷ which is attached hereto as Attachment B, compelled the PGC to utilize the “cash flow” methodology in setting PGW’s rates. The cash flow method, established in Section VII, ¶1, mandated that the PGC:

shall fix and regulate rates and charges for supplying gas to customers . . . which . . . will, in each fiscal year produce revenues, at a minimum:

(a) Sufficient to pay all of the operation and maintenance costs and expenses of conducting the Gas Works enterprise and to pay the interest and amortization becoming due in such fiscal year on debt incurred for the Gas Works, including, but not limited . . .

(b) Sufficient also . . .

(i) To make base payments to the City in the aggregate annual *principal* amount of \$18,000,000 . . . ;

(iii) To provide cash, or equivalent, for working capital in such reasonable amounts as may be determined by Company to be necessary and as shall be approved by the Gas Commission.

5. As indicated above, the Management Agreement Ordinance, Section VII, ¶1, requires PGW’s rates to cover an array of costs and expenses, including depreciation, retirement costs, all sinking fund charges payable for principal and interest on the City’s gas works revenue

⁶(...continued)

ordinance of Philadelphia City Council (No. 455 of 1972) (“Management Agreement”).

⁷ Pursuant to the Management Agreement Ordinance, PFMC is responsible for all operations of PGW, subject to the oversight and approval of various City officers and entities including PGC and Philadelphia City Council. Management Agreement Ordinance at § I, ¶1. PFMC is a non-profit corporation whose specific purpose is to operate PGW for the City. The Board of PFMC is appointed by the mayor of Philadelphia.

bonds, capital additions, working capital, and an annual \$18 million base payment to the City. Further, the cash flow method also obligated PGW to set rates and comply with the covenants of its bonds issued in accordance with the First Class City Revenue Bond Act. Management Agreement Ordinance at Section VII, ¶1(c).

6. PGW has three bond covenants that it must meet:
 - 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 the are due; and
 - c) A covenant that requires PGW and the City to continuously maintain and operate the Gas Works.⁸

7. In orders issued prior to the turnover of jurisdiction to the PUC, the PGC acknowledged the cash flow method as the statutory basis for establishing PGW's revenue requirement. For example, as was stated in the 1999 Gas Cost Rate Recommended Decision:

The relevant standard for review and approval of the Company's proposed Gas Cost Rate for FY 1999 is set forth in Section VII. 1. of the Management Agreement, which provides in pertinent part:

The Gas Commission shall fix and regulate rates and charges for supplying gas to its customers . . . which . . . will, in each fiscal year produce revenues, at a minimum:

- (a) Sufficient to pay all of the operation and maintenance costs and expenses of conducting the Gas Works enterprise

⁸ Joint Petition, ¶ 10; see PUC Order Approving Joint Petition for Settlement at ¶ 1.

This Agreement was adopted by an ordinance passed by the City Council of Philadelphia on December 29, 1972. The ordinance has statutory effect.

In the Matter of Philadelphia Gas Works' Proposed FY 1999 Gas Cost Rate, Recommended Decision at 4 (November 18, 1998) (citations omitted). The Recommended Decision is attached hereto as Attachment C.

8. Pennsylvania reviewing courts have recognized and upheld the cash flow rate making methodology in Action Alliance v. Philadelphia Gas Comm'n, 406 A.2d 1155, 1158 (Pa. Cmwlth. 1979), as producing just and reasonable rates.

9. The cash flow methodology has also been held by the Supreme Court to produce rates that are constitutionally just and reasonable and non-confiscatory. Public Advocate v. Philadelphia Gas Comm'n, 674 A.2d 1056, 1061 (Pa. 1996). Despite this ruling, some parties incorrectly argue that the constitutional just and reasonableness question is a ratemaking standard or formula that "trumps" all other statutory ratemaking requirements. To the contrary, "the Constitution leaves the states free to decide what ratemaking methodology best balances the interest of the utility and the public," and does not designate "a single theory of ratemaking as a constitutional requirement." Id. at 1061. The just and reasonable inquiry, which assesses the total impact of the rates, actually goes to whether the rates set are confiscatory to either the ratepayer or the utility's investors. Id. at 1062. As declared by the Supreme Court, "Any rate selected which falls within the broad zone of reasonableness cannot properly be attacked as unconstitutional for being confiscatory." Id. (emphasis added).

10. Section 2212(s) of the Code also provides that nothing contained in the Public Utility Code shall be construed to abrogate or limit the City of Philadelphia's ability to control, manage, or govern PGW. 66 Pa. C.S. § 2212(s). The City's autonomy extends to determining the powers, functions, budgets, activities, and mission of PGW. The City has exercised this autonomy pursuant to the Management Agreement Ordinance.

11. Section IV, ¶ 2 of the Management Agreement Ordinance requires PGW's annual operating budget to be submitted to and approved by the PGC and its capital budget to be recommended by the PGC and the City's Director of Finance and approved by the Philadelphia City Council. Section IV, ¶ 2(c) of the Management Agreement Ordinance provides that "[a]ll expenditures and commitments therefor [of PGW] shall be made pursuant to" the annual operating budget approved by the PGC.

12. PGW's current year operating and capital budgets were submitted to the PGC on June 11, 2000 for approval. PGW recently updated that budget to reflect the \$65 million base rate PUC filing. The PGC has not approved this year's budget (but is expected to do so soon).

13. Importantly, Section 2212(s) limits the PUC's jurisdiction and specifically decrees that:

[N]othing contained in this title shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation . . . including but not limited to, the ownership, governance, management or control thereof.

66 Pa. C.S. § 2212(s). Thus, while PGW's level of rates are now subject to PUC approval, control of PGW's "budget," "management" and "operation" are specifically reserved to the City of Philadelphia.

CASH FLOW METHOD OF RATEMAKING

14. Notwithstanding the above evidence that the "cash flow method" is the required means of establishing rates for PGW, questions have been raised by opposing parties about the propriety of using this method of ratemaking. Specifically, while acknowledging the need to permit PGW to produce enough income to realize its 1.5x debt service coverage covenant during the interim proceeding, several parties contended that it would be "improper" to go further and recognize the level of cash that PGW needs to have on hand to pay its various obligations, including its debt service payments.⁹

15. While in the November 22, 2000 Order, the PUC did not address PGW's cash needs, focusing instead on PGW's short term revenue needs, the PUC Order approving the Joint Petition for Settlement specifically recognized that PGW's revenue requirement must produce sufficient cash to permit it to pay its bills when they come due. The Joint Petition for Settlement noted that "PGW must have a \$20 - \$25 million positive cash balance at fiscal year end,"¹⁰ and requested that the PUC recognize that need by approving the \$18 million interim rate increase,

⁹ See, e.g., Brief of OCA, Interim Rate Proceeding, at 17 and 30-36.

¹⁰ Joint Petition for Settlement, ¶ 25.

cash conservation measures and the creation of a cash reserve fund in order to produce the necessary cash at year end.¹¹ The PUC approved these provisions declaring that,

“[i]n the Commission’s judgement, authorization of the rate changes and cash reserves in the proposed settlement 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.”¹²

16. As noted above, the obligation to set rates to satisfy PGW’s cash needs is also a requirement of PGW’s bond ordinances. As described in the Joint Petition, PGW has three significant bond 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 the are due; and
- c) A covenant that requires PGW and the City to continuously maintain and operate the Gas Works.¹³

The second and third covenants clearly require PGW to have adequate cash from rates to pay its various cash obligations when they become due. The PUC’s Order approving the Settlement with its own Law Bureau, indicated its intention to comply with Section 2212(e) of the Public Utility Code and took pains to specifically acknowledge its obligation to “follow the same ratemaking methodology and requirements that were applicable to [PGW] prior to the

¹¹ Joint Petition, ¶¶ 22-23, 25-27.

¹² PUC Order approving Joint Petition for Settlement at 8; see Id. at ¶ 5.

¹³ Joint Petition, ¶ 10.

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 [bond] covenants 66 Pa. C.S. § 2212(e).”¹⁴

Thus, establishing rates that permit PGW to have the necessary cash balances is not only at the heart of its ‘prior ratemaking methodology and requirements’ but is also required by its bond covenants, with which both the Public Utility Code and the PUC indicate PGW must comply. Accordingly, the ALJ should issue an order, now, declaring that PGW’s rates will be established using the cash flow method of ratemaking. The order should specifically indicate that the cash flow method requires that rates be set so as to produce sufficient cash on each month of the year to satisfy its projected cash obligation, and importantly, sufficient cash at the end of the fiscal (or test) year to permit PGW to pay its obligations in the months following the fiscal/test year. Obviously, PGW is not requesting that the ALJ pre-judge the evidence in the case on the level of rate increase to which PGW is entitled; only that she declare now that the ratemaking approach to be used in determining that level shall be the “prior rate making method” – the cash flow method – and that PGW’s need to have cash to pay its bills when they come due is a minimum requirement of any rate award.

ADJUSTMENTS TO PGW ANNUAL EXPENDITURES

¹⁴ PUC Order at 7, n. 1 While PGW acknowledges that the parties will offer into evidence differing theories and data on what level of rates will guarantee the satisfaction of those bond covenants, PGW asserts that the ALJ should bar any testimony or evidence which purports to identify or describe the nature of PGW’s bond covenants in a way that is inconsistent with the Commission’s findings in its Order of February 21, 2001.

17. A second, related issue that requires clarification is the question of the scope of adjustments to PGW's projected fiscal year expenses, income statement and cash flow statement that can be made by the parties and accepted by the PUC. OTS, OCA, CEPA and PICGUG have all served interrogatories on PGW seeking a plethora of information concerning PGW's past and proposed operating budgets and expenditures on everything from cigarette commissions to cafeteria subsidies, roach and pest control expenses, magazine subscriptions, retirement parties, health club memberships, and more.

18. The interrogatories question such minutia as the cost difference in operating sedans as opposed to vans, why a particular cents per mile fee is charged to employees who may use their company vehicle for a personal errand (amazingly three interrogatories were devoted to this topic), extermination costs, cafeteria trash removal costs, and whether PGW and any of the City's departments are both members of the same organizations and if so why.¹⁵

19. PGW filed timely objections to these operating budget/past expenditure interrogatories, asserting that they were legally irrelevant and could not lead to admissible evidence.

20. PGW has attempted to cooperate with the parties by responding to these and other data requests without waiving its view that the information requested in the discovery is legally irrelevant and cannot lead to legally relevant evidence.¹⁶

¹⁵ See, e.g., CEPA I, Nos. 7, 14-16, 29(a) and 36 (attached hereto as Attach. "D").

¹⁶ OTS agreed to such a stipulation, and PGW, as of the date of this Motion, has answered the discovery responses. PGW is willing to enter into a similar stipulation with the OCA
(continued...)

21. PGW submits, however, that the data requested could only be used to make the types of pro forma operating expense adjustments that the parties, such as the OCA and OTS, regularly make in base rate proceedings. For example, data concerning Company cars or the Company subsidy for the cafeteria typically is used by the OCA and the OTS to recommend that an amount equal to the level of such an expense should be disallowed. Adjustments are made on the ground that requiring ratepayers to cover such costs is unreasonable on some basis. Expenses subject to such adjustments include image advertising, company cars, employee discounts (like cafeteria subsidiaries), consultant contracts, and the like. However, what these claims fail to recognize is that PGW is subject to a unique ratemaking scheme and, for at least three reasons, such adjustments are violative of that ratemaking scheme.

22. First, as indicated above, Section 2212(e) commands that the Commission follow the same ratemaking methodology and requirements previously applicable to PGW. PGW's Fiscal Year 2000-2001 budget, on which its \$65 million revenue requirement is based, is made up virtually entirely of expenditures, programs and operations that were approved by the PGC for inclusion in prior approved budgets, and, thus, funded by PGW's rates. Thus, the PUC does not have the authority to refuse to include an allowance for the cafeteria subsidy, for example, regardless of how the PUC would typically treat such an expenditure for a non-municipal gas distribution utility.

¹⁶(...continued)

and CEPA but, to date, these parties have declined to enter into such an agreement and therefore PGW has not responded to their data requests.

23. Second, PGW's prior ratemaking method obligated its ratemaking authority (the PGC) to set rates sufficient to fund its budget, which included a level of charges that enabled PGW to meet its bond covenants. 66 Pa. C.S. § 2212(e). As indicated above, one of PGW's key bond covenants obligates PGW to have sufficient cash on hand to pay its obligations, including its debt service, when those obligations become due. Whether or not the type of expenditure at issue was previously approved by the PGC, the PUC cannot refuse to allow such expenditures to be included in PGW's rates without making it impossible for PGW to have the necessary cash to meet its expenditures when they come due. Another covenant with which PGW must comply requires it to maintain certain debt service ratios. If PGW's rate increase is substantially reduced because of such adjustments, then PGW will likely fail to maintain the required debt service coverage requirement and violate this covenant as well.

24. Finally, the specific expenditures, programs and operations reflected in PGW's 2000-2001 budget are part of PGW's proposed budget, presently being considered by the PGC. The PGC is scheduled to issue a decision on the proposed budget in the near future. Once that occurs, PGW's actual 2000-2001 operations and programs will be set. Under the previously cited regulatory approach, the PUC will be obligated to fund that budget, as approved. Consequently, the ALJ should exclude testimony and evidence regarding PGW's operating budgets and specific expenditures.

25. Moreover, adjustments to exclude the cost of certain PGW operations or programs intrudes into the City's budget approval authority as well. Prior to the passage of the Gas Choice Act, the PGC exercised two separate responsibilities: first it approved PGW's annual budget; and

second, it approved a level of rates to fund that budget. Since the PUC assumed jurisdiction of PGW on July 1, 2000, it has the responsibility to set PGW's rates, but the PGC retains authority to approve PGW's budgets. 66 Pa. C.S. § 2212(b) and (s). The approach followed by the PGC was to rule upon whether specific activities and operations were properly included in the budget. Once that determination was made, the PGC was obligated to fund the operation at whatever level it had authorized. If the PUC now were to disallow a particular expense item (the cafeteria subsidy, for example), the only way that PGW could absorb such a revenue adjustment and avoid a violation of its bond covenants and prior ratemaking approach would be by actually altering its operation to eliminate the expenditure. Putting aside the fact that, in most instances, the expenditures at issue have already been spent or are subject to long term or binding commitments, the principal reason that this result is barred is because forcing such actions would directly infringe on the City's right to operate and manage the Gas Works, a right specifically guaranteed by the Public Utility Code's Section 2212(s). As indicated, PGW's operating budget continues to be reviewed and approved by the PGC. Accordingly, questions about whether a particular activity or operation should or should not be undertaken, or whether a particular expenditure should be incurred, is a matter for PGW's budgeting authority — the PGC — to decide. Moreover, the PUC clearly cannot direct or prohibit these kind of activities and management decisions indirectly — by refusing to allow their costs in rates — when it is prohibited from doing so directly. It is axiomatic that an administrative agency cannot accomplish indirectly what it is prohibited from accomplishing directly.

26. The PUC's ratemaking investigation must proceed within these parameters. The base rate proceeding would verify that PGW does indeed require the full \$65 million increase in order to fund its operating budget and to pay its obligations when they come due. The specific level of cash and total income needed to accomplish this would continue to be subject to review and approval by the PUC. But, the ALJ should specifically declare that adjustments to PGW's annual operating expenditures may not be made to the extent that they: were contained in PGW's prior, approved operating budget; are contained within its current operating budget once approved; or will result in PGW not having sufficient cash available throughout the year and at year end to pay specific operating costs and obligations, including debt service, when those expenditures come due.

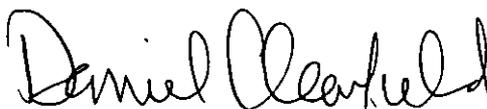
27. Despite the assertions of some parties, who have tried to convert the ability to make specific adjustments into a constitutional issue, the courts have been very clear that the Constitution does not provide a right to make individual expense adjustments within the ratemaking process. Public Advocate v. Philadelphia Gas Comm'n, 674 A.2d 1056, 1061-62 (Pa. 1996). Rather, the constitutional inquiry is focused on the totality of the circumstances, and "if the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end." Id. at 1062 (emphasis added).

WHEREFORE, PGW respectfully requests that:

(A) ALJ Cynthia Williams Fordham issue an order declaring that (1) the required rate making method for establishing PGW's revenue requirement in this proceeding is the "cash flow method;" (2) that the cash flow method requires, inter alia, that PGW's rates be set at a level which will allow it to have sufficient cash on hand each month to pay its obligations when they come due and sufficient cash at the end of the fiscal year to pay its obligations in that fiscal year; (3) that, specifically, the prior ratemaking methodology required to be applied by Section 2212(e) is set forth in the Management Agreement Ordinance; (4) that PGW's revenue requirement may not be adjusted or reduced to disallow expenditures, programs or operations that were included in PGW's prior budgets and rates by the PGC and which would bar it from meeting its bond covenants; (5) PGW's bond covenant requirements are as they are described in the Joint Petition for Settlement of the Interim Rate Proceeding, which was specifically approved by the PUC in its order of February 21, 2001; and (6) specifically limit or bar any testimony by parties to this proceeding that is inconsistent with the above pronouncements; and

B) Pursuant to 52 Pa. Code § 5.305, certify to the full Commission for review the ALJ's ruling on PGW's Motion in Limine as a material question the ruling on which by the full Commission will prevent prejudice and expedite the conduct of the proceeding.

Respectfully submitted,



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

Dated: March 21, 2001

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SECRETARY'S BUREAU

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.

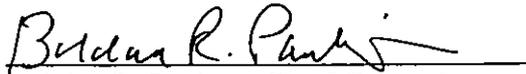
32. Acknowledging that it is expressly understood and agreed that this Joint Petition constitutes a negotiated resolution solely of issues addressed herein, the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding (including any 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.

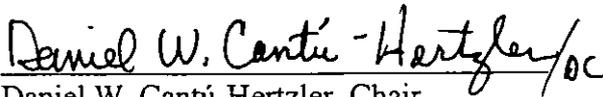
Respectfully submitted,



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

Attachment A

Independent PGW Management Search Process

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FACILITY
SECRETARY'S BUREAU

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
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.

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

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

ORDER

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),¹ 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

¹ 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.

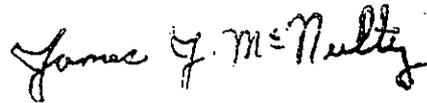
Conclusion

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

AGREEMENT

Between

THE CITY OF PHILADELPHIA

AND

THE PHILADELPHIA FACILITIES
MANAGEMENT CORPORATION

FOR THE MANAGEMENT AND OPERATION
OF THE PHILADELPHIA GAS WORKS

PRINTING DATE: January, 1996
Original Agreement Dated December 29, 1972
Includes Amendments Through December 31, 1995

Original Agreement between the City of Philadelphia and the Philadelphia Facilities Management Corporation was executed on December 29, 1972, for the management and operation of the Philadelphia Gas Works, pursuant to an Ordinance of City Council, approved December 29, 1972 (Bill #455), and to Resolutions of the Board of Directors of the Corporation adopted at a meeting held on December 13, 1972.

Agreement amended, pursuant to an Ordinance of City Council, approved December 14, 1973 (Bill #1021), relating to gas rate discount for Senior Citizens.

Agreement amended, pursuant to an Ordinance of City Council, approved May 30, 1975 (Bill #1870), relating to Gas Works Revenue Bonds.

Agreement amended, pursuant to an Ordinance of City Council, approved November 1, 1976 (Bill #396), relating to Company's management fee.

Agreement amended, pursuant to an Ordinance of City Council, approved June 22, 1978 (Bill #1410), relating to Temporary financing.

Agreement amended, pursuant to an Ordinance of City Council, approved April 10, 1979 (Bill #1874), relating to Company's management fee.

Agreement amended, pursuant to an Ordinance of City Council, approved June 11, 1979 (Bill #1948), relating to Management personnel provided by company; production purchase and delivery of gas; paving requirements; natural gas standards; heating value standards; attendance at meetings; classification of service; definitions and indemnifications.

Agreement amended, pursuant to an Ordinance of City Council, approved September 5, 1980 (Bill #319), relating to Company's management fee.

Agreement amended, pursuant to an Ordinance of City Council, approved September 5, 1980 (Bill #320), relating to Company's management fee.

Agreement amended, pursuant to an Ordinance of City Council, approved September 5, 1980 (Bill #321), relating to Gas Works Temporary Loan Notes.

Agreement amended, pursuant to an Ordinance of City Council, approved June 23, 1981 (Bill #750), relating to Temporary Financing.

Agreement amended, pursuant to an Ordinance of City Council, approved September 22, 1982 (Bill #1315), relating to change in fiscal year basis.

Agreement amended, pursuant to an Ordinance of City Council, approved December 3, 1982 (Bill #1314), relating to Temporary Financing.

Agreement amended, pursuant to an Ordinance of City Council approved April 11, 1990 (Bill #787), relating to compensation.

Agreement amended, pursuant to an Ordinance of City Council approved December 28, 1995 (Bill #1258), relating to Company's management fee.

Marginal notes are not part of the agreement, but are provided for convenience of use.

AGREEMENT made this 29th day of December, 1972, by and between the CITY OF PHILADELPHIA (hereinafter called "City"), and PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter called "Company").

Parties and dates

WITNESSETH:

WHEREAS, the City is the owner of a group of real and personal assets known as the Philadelphia Gas Works ("Gas Works"); and

WHEREAS, the City desires to provide quality gas services to its citizens at reasonable rates; and

WHEREAS, the Company is a non-profit corporation organized for the specific purpose of operating the Philadelphia Gas Works.

NOW, THEREFORE, the parties to this Agreement, intending to be legally bound, agree as follows:

SECTION I

General

1. The City hereby authorizes Company on the terms and conditions herein set forth to manage and operate all the property, real and personal, collectively known as the Gas Works, for the sole and exclusive benefit of City; provided, however, City may retrieve from the Gas Works any property or equipment which City determines to be unnecessary to the efficient and economic operation of the Gas Works.

*Authority to
manage and operate
PGW property*

*City may retrieve
surplus property or
equipment*

2. City, to the extent that it has or shall have the authority or power so to do, authorizes and empowers Company to maintain, change, alter, replace, repair and operate the Gas Works and appurtenances along and beneath the surfaces of the highways, streets, avenues, lanes, alleys, ways and public places in City, for the supply and distribution of gas, subject to provisions hereinafter set forth. For these purposes Company may enter upon, occupy and open all said highways, streets, avenues, lanes, alleys, ways and public places, and supply and distribute gas through pipes laid therein.

Right to enter highways

3. During the term of this Agreement, Company will maintain the Gas Works for the sole and exclusive benefit of the City, including all additions, extensions, betterments, and improvements made thereto, in good order and efficient operating condition. Upon termination of this Agreement by expiration of the term or by any other means, City, its agents, servants, or employees shall be entitled without further payment to Company to use all processes established at the Gas Works for the manufacture or distribution of gas of any type or kind. To the extent that use of any such process is authorized by a contract with a third party, City may at its option either continue the use of such process in accordance with the terms of such contract or may discontinue use of such process.

Company to maintain Gas Works

City's use of processes upon termination

4. Company shall not assign or subcontract this Agreement or any rights hereunder to any person or corporation, nor delegate any duties hereunder.

Agreement not assignable

5. Company's primary obligation shall be to apply the highest standards of management practice and diligence to the operation of the Gas Works.

Highest management standards

*"Recommendations" in the Ordinance.

6. Company shall provide the following personnel for the operation of the Gas Works:

*Management
personnel provided
by Company*

- (a) a chief executive officer;
- (b) a chief operating officer;
- (c) a chief financial officer; and
- (d) such other personnel as deemed appropriate by Company.

All such personnel shall be subject to the approval of the Gas Commission, which approval shall not be unreasonably withheld. In the event the Gas Commission fails to approve any such personnel they shall be replaced by approved personnel forthwith.

*Personnel subject to
Gas Commission
approval*

7. Company shall file semi-annual reports with the Gas Commission setting forth all salaries, fringe benefits, expenses and costs incurred by Company in carrying out its duties and responsibilities under the terms and conditions of this Agreement.

*Company to file
semi-annual reports*

SECTION II

Production, Purchase and Delivery of Gas

1. The Company shall take all reasonable steps to insure that the capacity of the Gas Works to manufacture, provide and distribute gas is at all times sufficient for the estimated maximum requirements of gas users in the City of Philadelphia.

*Capacity shall
meet requirements*

2. Company may purchase natural gas or other gas from other parties pursuant to contracts and agreements for such purchases which are first submitted to the Gas Commission for its recommendations and approved by City Council; except that in temporary or emergency situations, Company may purchase natural or other gas from other parties and then seek the approval for such purchase or purchases from the Gas Commission and City Council within 30 days after the initiation of such purchase. In the event such temporary purchase shall be disapproved such supply if continuing shall immediately terminate.

Approval of purchase of gas

Company shall have the right to contract with others for the distribution and/or transmission of such gas to the Gas Works or its facilities which are ancillary, attendant or related in any manner to purchase of gas after such contracts are first submitted to the Gas Commission for its recommendations and approved by City council.

Approval of natural gas delivery facilities

3. Company, to the extent permitted by the lawfully constituted authorities, may enlarge or extend the facilities for the distribution of gas to an agreed-upon customer meter location as may be necessary to meet the demand for gas. In any situation where such enlargement or extension of the Gas Works' facilities will place an unreasonable financial burden upon the then existing customers, in view of the anticipated revenues to be expected from such enlargement or extension Company shall make reasonable charges for the same as defined from time to time in Company regulations which are approved by the Gas Commission.

Charges to customers for extensions

4. The intention of this Agreement is that all changes, additions, extensions, betterments, improvements, alterations and replacements in the Gas Works and in the mains, pipes and appurtenances thereof, and in the property needed to meet the demands for gas as herein provided, shall be made in such a way and manner as shall maintain the Gas Works in good order and condition with the best and most economical processes in use that are customary in the best regulated gas works, to the extent permitted by funds available for said purposes.

Company shall maintain Gas Works in good order

5. All openings, excavations and repaving shall be made subject to such general rules, regulations, specifications, ordinances and such Acts of Assembly as may apply, as from time to time shall be in force concerning the opening, excavation and repaving of streets and the protection of travel along the same, and the trenches shall be refilled and repaved with the same material and character of paving as before they were opened, unless otherwise ordered by the Streets Commissioner. Refilling and making opening safe for traffic shall be completed by Company within five (5) days after the pipe, services, or mains have been laid, and said repaving shall be completed, weather permitting, within sixty (60) days thereafter.

Paving requirements

6. All ordinances, rules and regulations of City regulating the safety of the piping and fixtures of houses or buildings shall be binding upon Company.

Safety regulations

SECTION III

Standards of Gas

1. *General*

Company may supply straight natural gas in accordance with the standards provided for in the General Terms and Conditions of the supplier Company's Tariffs on file with the Federal Energy Regulatory Commission and incorporated by reference in the Agreements for the purchase of natural gas, to which the Company, City and Supplier companies are parties. Also for supplemental purposes, the Company may, as necessary, supply other gases interchangeable and compatible with natural gas.

Natural gas standards

Interchangeable supplemental gases

2. *Testing--Facilities and Inspection*

Adequate facilities for testing the heating value and purity of the gas shall be provided at the Gas Works' expense and equipped with calorimeters for continuously determining the heating value of the gas, apparatus for determining presence of sulphureted hydrogen in the gas, apparatus for determining total sulphur content, apparatus for determining total ammonia content, apparatus for determining specific gravity of the gas and such other apparatus customary and necessary for such purposes, or which will be found to improve the rapidity and accuracy of such testing.

Plant testing facilities

The location of testing facilities shall be selected by Company, and approved by Gas Commission.

Location of testing facilities

The design and accuracy of all testing apparatus when desired by City, Gas Commission or Company shall be certified by the United States Bureau of Standards.

Certification of test equipment

Standards and tests specified herein may be changed and altered from time to time as recommended by Company and approved by Gas Commission.

Change in standards and tests

City and Gas Commission shall have the right at all times by its proper officers, during the term of this Agreement, to test the quality and pressure of gas. Full facilities for these purposes shall be afforded by Company. All such tests shall be made in the presence of a representative of Company. Accurate written records of such test shall be maintained by Company.

City and Gas Commission have right to inspect

3. *Heating Value--Requirements And Determination*

The monthly average total heating value of the gas, when determined as provided below, shall not be less than 950 British Thermal Units per cubic foot, measured at a temperature of 60° Fahrenheit and a pressure of 30 inches of mercury.

Heating value standards

The daily average total heating value shall not differ from the monthly average total heating value to such extent as to interfere with the satisfactory functioning of consumer appliances.

The total heating value of the gas shall be continuously recorded daily unless prevented by circumstances beyond the Company's control.

Daily recording

The monthly average total heating value of the gas shall be the average of the daily averages of the total heating value for that month.

Average monthly value

The daily average total heating value shall be the average of 24-hourly readings.

Average daily value

4. *Purity--Requirements and Determination*

Sulphureted Hydrogen--The gas shall contain not more than a trace of sulphureted hydrogen. The gas shall be considered to contain not more than a trace of sulphurated hydrogen if a strip of white filter paper moistened with a solution containing five per cent by weight of lead acetate is not distinctly darker than a second paper freshly moistened in the same solution after the first paper has been exposed to the gas for one and one-half minutes in an apparatus of approved form through which the gas is flowing at the rate of approximately 5 cubic feet per hour, the gas not impinging directly from a jet upon the test paper.

Sulphureted hydrogen

Total sulphur--The gas shall contain in each 100 cubic feet not more than 30 grains of total sulphur.

Sulphur

Ammonia--The gas shall contain in each 100 cubic feet not more than 5 grains of ammonia.

Ammonia

5. *Pressure Regulations*

Company shall maintain pressures throughout the City within limits compatible with the satisfactory utilization of gas and as more fully defined in the Rules and Regulations* of the Company's Tariff and as approved from time to time by the Gas Commission.

Gas pressure requirements

Company shall take pressure readings continuously in representative locations throughout the City, which readings shall be available to representatives of City and the Gas Commission upon request for a period of one year prior to the date of such request, or in compliance with the rules issued from time to time by the Gas Commission.

Pressure readings

Gas Commission may order Company by written notice to adjust pressures to acceptable limits for satisfactory utilization of gas, and due diligence shall be employed by Company to adjust pressures at such points to within such acceptable limits. If compliance with the order of the Gas Commission shall require the installation of new apparatus or mains, Company shall be allowed six (6) months, after the necessary financing has been secured to obtain permits for opening of streets and for the laying of the mains and the installation of the necessary apparatus.

Adjustments of pressures

Delay in compliance

SECTION IV

Accounting Methods; Operating Budget and Forecast; Capital Budget and Forecast; Temporary Financing and Financial Statements

1. *Accounting Methods*

(a) *In General*

The accounts and reporting shall be on the accrual methods in which the accounting for depreciation shall be as described in subsection 1(b) herein.

Accounting to be on accrual method

The Gas Works revenues and expenses shall be operated and accounted for an extended period basis from July 1, 1981 to August 31, 1981, and on a fiscal year basis commencing September 1, 1982 and terminating August 31, 1983 and from September 1 to August 31 from year to year thereafter. Accounting shall be employed to show separately the operating accounts and the capital accounts. Operating and capital accounts shall follow generally the classifications specified by the Public Utility Commission of Pennsylvania, expanded or altered, as required by the Director of Finance to portray the special charges and special accounting prescribed in this agreement.

*Fiscal year
September 1 to
August 31*

*Accounting to follow:
PUC*

(b) Depreciation

There shall be established and maintained a reserve for depreciation reasonably estimated to be adequate to care for the retirement (due to exhaustion, wear and tear and obsolescence) of property at original cost. The amount necessary to be credited to the reserve each year for such purposes shall be charged to operations.

*Depreciation on
original cost*

(c) Employee Retirement Costs

There shall be provided for and charged to operations annually retirement cost for retired employees and employees still in service on the following basis:

For retired employees, the amount necessary to meet current payments to them under their retirement schedules.

Retired employees

An additional amount, as determined by the Director of Finance, shall be placed in a retirement fund to be held and invested by the Sinking Fund Commission. Such additional amount shall be determined by the Director of Finance after taking into consideration the current payrolls, the retirement schedules then in effect applicable to various classes of employees and the extent to which it appears desirable and reasonable to build up such fund in current and future years.

Pension fund

To this end, the Director of Finance at appropriate times shall obtain competent actuarial advice and shall have available at all times a report made within the immediately preceding five (5) years by a competent actuary based upon an actuarial investigation of the pertinent factors with the costs to be paid by the Gas Works. Payment out of such funds shall be subject to the approval of the Director of Finance as to amounts and when and how payable.

Any proposed change in the retirement plan, schedule or system recommended by Company first shall be transmitted to the Director of Finance for his approval and then transmitted to City Council for its approval, for which purpose there shall be made available to the City Council an appropriate actuarial report prepared under the direction of the Director of Finance.

Retirement plan changes

No employee of Company shall be entitled to be paid a retirement or separation allowance unless and until he can establish his direct and immediate and exclusive connection as such employee with the Gas Works whether under the present operator or former operator.

Employee eligibility for pensions

All such retirement and separation allowances which are paid during the continuance of this agreement and the terms of which, as so approved, require their continued payment after its termination, shall be thereafter paid by City, or City shall cause the same to be paid by any person succeeding to the operation of the Gas Works.

Obligation of City to continue to pay pensions

2. Budgets

(a) Operating Budget and Forecast

There shall be prepared annually an operating budget for the ensuing year and an operating forecast for four (4) years comprising the ensuing year and the three (3) years next following.

Operating budget

Such budget and forecast shall be prepared by Company with the aid of the Director of Finance; shall be consistent with the accounting methods prescribed in Section IV (1); and in general shall be in form and extent satisfactory to the Director of Finance and Gas Commission. The operating budget and forecast shall be subject to the approval of the Gas Commission.

*Approval of
operating budget by
Gas Commission*

(b) Capital Budget and Forecast

There shall be prepared annually a proposed capital budget for the ensuing year and a forecast for six (6) years comprising the ensuing year and the five (5) years next following. Such budget and forecast shall be prepared by Company; shall be consistent with the accounting methods prescribed in Section IV (1); and in general be in form and extent satisfactory to the Director of Finance and the Gas Commission.

Capital budget

The proposed budget and forecast first shall be transmitted to the Director of Finance and the Gas Commission for their recommendations thereon. The Director of Finance and Gas Commission shall transmit such budget and forecast together with their recommendations thereon to City Council for its approval. The submission of the proposed budget and forecast to the Director of Finance and Gas Commission by Company shall be made in sufficient time for their review and for the Director of Finance and Gas Commission in turn to submit the said budget and forecast together with their recommendations thereon to City Council no later than the middle of the fourth month preceding the beginning of the Gas Works' fiscal year, so that City Council may act on it at least thirty (30) days prior to the next ensuing fiscal year.

*Approval of capital
budget by City
Council*

The capital budget and forecast shall include a showing of the nature of the proposed capital additions and replacements, the amounts needed therefor and how the funds required are to be supplied as between--

*Nature of capital
items*

(i) funds generated within the business through charges to customers or otherwise; and

(ii) funds to be obtained through capital loans.

Capital loans

At any time during the fiscal year, or before the budget accounts are closed for the year, the division between (i) and (ii) above may, if conditions so warrant, be changed or the total thereof increased upon recommendation of the Director of Finance and the Gas Commission and upon approval by City Council.

Approval of changes

In the event that capital loans are required in any year under (ii) above, plans therefor shall be submitted to the Director of Finance for approval of the amount of loan and the method of effecting it, and then transmitted to City Council for its approval.

Approval of capital loans

(c) Expenditures Pursuant to Budgets

All expenditure and commitments therefor shall be made pursuant to such approved budgets and subject to rules and regulations, if any, promulgated by the Gas Commission in connection therewith.

Gas Commission rules regulate expenditures

3. Temporary Financing

Short-term loans not exceeding twenty million dollars in amount or twelve months in duration may be negotiated in anticipation of revenues, except that short-term loans exceeding twenty million dollars but not exceeding forty-five million dollars in amount may be negotiated in anticipation of revenues for Fiscal Year 1982 of the Gas Works and may be outstanding during the period July 1, 1981 through June 30, 1982. If such loans are required, plans therefor shall be submitted to the Gas Commission and the Director of Finance for approval of amount of loan. The amount of any such loan shall also be subject to the approval by resolution or by ordinance of City Council.

Approval of short term loans

The Gas Works may also receive temporary advances from the City in anticipation of revenues which are anticipated to be received by the Gas Works provided that such advances do not exceed twenty million dollars in amount or twenty-four months in duration; provided further, however, that during the period June 30, 1981 through June 30, 1983, such advances may exceed twenty million dollars but shall not exceed forty-five million dollars in amount. The amount of each such advance shall be subject to the prior approval of the Director of Finance and the Gas Commission and to the approval by resolution or by ordinance of City Council.

In addition to the foregoing authorized borrowings, loans not exceeding one hundred million dollars in aggregate principal amount at any time outstanding may be incurred for financing accounts receivable and the purchase of inventory for the Gas Works, as authorized by applicable law. If such loans are required, plans therefor shall be submitted to the Gas Commission and the Director of Finance for approval of the aggregate principal amount of such loans which may be outstanding at any single time. Such aggregate principal amount shall also be subject to approval by resolution or by ordinance of City Council.

4. Financial Statements

Company shall within a reasonable time after the close of the Gas Works' fiscal year furnish to the Mayor, the Gas Commission, the City Controller, the City Solicitor, the Director of Finance and City Council a financial statement of such year in form and extent satisfactory to the Director of Finance and Gas Commission. Such financial statement shall be audited by a certified public accountant in accordance with generally accepted accounting principles.

All books, records and accounts of the Gas Works shall be kept separate and apart from all other books, records and accounts of Company. The City Controller and the Director of Finance and Gas Commission may examine or cause to be examined the books, records and accounts of Gas Works for the purpose of auditing and reporting upon

*Furnishing of
financial
statements by
Company*

*CPA to audit
financial statement*

*Books, records and
accounts of PGW to
be kept separate*

such financial statement to the Mayor, the Gas Commission, the City Council, the City Solicitor and the Director of Finance; and the Director of Finance, Gas Commission and the City Controller shall at all times hereafter, for such purpose or for the purpose of ascertaining any facts in relation to the operation of the Gas Works and the performance of the obligations of Company, have full and free access at all reasonable hours to the related books, records and accounts of Gas Works.

*City controller,
Director of Finance
and Gas Commission
may audit books*

Company shall furnish the Mayor, the Gas Commission, the City Controller, the City Solicitor, the Director of Finance and City Council with copies of regular interim financial or operating reports, prepared for periods within the fiscal year, which any such parties may reasonably request.

*Furnishings of
regular interim
reports by company*

SECTION V

Insurance; Eminent Domain

1. Insurance

Company shall insure against loss the buildings, machinery, and equipment and other property of the Gas Works and other risks to the Gas Works, all of which shall be insured to the extent that such property and risks of gas companies are usually insured except that the Gas Commission may provide otherwise in its discretion.

*Adequate insurance
to be provided*

2. Eminent Domain

In the event that Company shall be lawfully required to remove or reconstruct any portion of the Gas Works, or to acquire additional land or property therefor, in consequence of the taking of any of the land or property of the said Gas Works by the United States, the State of Pennsylvania or the City of Philadelphia, in the exercise of the right of eminent domain, or for any other reason whatsoever, the cost and expense thereof shall be accorded appropriate accounting treatment.

*Exercise of right of
eminent domain*

SECTION VI

Gas Commission

1. The Gas Commission as it is presently constituted shall be retained.

Retained

2. The Gas Commission shall consist of the City Controller, two members appointed by City Council and two members appointed by the Mayor.

Membership

3. The members of the Gas Commission appointed by the Mayor shall be designated for four year terms to hold office until their successors are appointed and qualified. The City Controller shall hold office during his incumbency and until his successor has been elected and qualified. The members of the Gas Commission appointed by City Council shall be designated for four year terms, to hold office until their successors are appointed and qualified. The terms of all members of the Gas Commission shall terminate if this agreement is terminated by either party prior to the expiration of their respective terms.

Terms of office

4. Members of the Gas Commission shall receive compensation as fixed by City Council from time to time.

Compensation

5. The Gas Commission shall have the power and authority to obtain such professional services and to employ experts, consultants and such other personnel as in its judgment shall be deemed necessary, their compensation and expenses to be considered an operating expense of the Gas Works.

Power to hire experts

6. A statement of the expenses of the Gas Commission shall be filed annually by the Gas Commission with the City Controller and copies thereof transmitted to the Mayor, the City Solicitor, the Director of Finance and City Council.

Statement of expenses to be filed annually

7. Company shall keep the Gas Commission fully informed of its plans for operation, improvement, extension and betterment of the Gas Works.

Company to keep Gas Commission fully informed

8. The Gas Commission shall hold regular meetings and shall conduct all Commission business thereat. The City Solicitor and the Director of Finance or their designates or deputies shall and the Chief Executive Officer of the Gas Works or his designates may attend all such meetings of the Gas Commission.

Regular meetings

9. The Gas Commission shall have the responsibility for the overseeing of the operation of the Gas Works by the Company. All power not specifically granted to the Company shall reside in the Gas Commission.

Responsibility, powers, and duties

SECTION VII

Gas Rates

1. The Gas Commission shall fix and regulate rates and charges for supplying gas to customers, other than the City and the Board of Education, without further authorization of City Council, which (together with revenues for gas supplied to the City and to the Board of Education and other revenues of the Gas Works qualifying as "project revenues" as such term is defined in Section 2 of The First Class City Revenue Bond Act) will, in each fiscal year produce revenues, at a minimum:

Gas commission shall fix rates

"Project Revenues"

First Class City Revenue Bond Act

(a) Sufficient to pay all of the operation and maintenance costs and expenses of conducting the Gas Works enterprise and to pay the interest and amortization becoming due in such fiscal year on debt incurred for the Gas Works, including, but not limited to:

*Rates to include
Operating and
maintenance costs
Interest and
amortization on
debt*

(i) Charges for depreciation as prescribed in Section IV 1. (b);

Depreciation

(ii) Charges for employees' retirement costs as prescribed in Section IV 1. (c);

Retirement costs

(iii) A management fee to Company equal to the actual cost to Company of managing the Gas Works but not to exceed the sum of:

Management Fee

(A) The amount needed to pay or provide for the payment of base salaries for the Chief Executive Officer, chief Operating Officer and Chief financial Officer and to pay the other expenses of the Company, not to exceed the following amounts for the specified fiscal years:

Salaries

FY1996	\$700,000
FY1997	\$725,000
FY1998	\$750,000
FY1999	\$775,000
FY2000	\$800,000

FY2001 and thereafter The prior fiscal year's maximum amount adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumer (CPI-U) All Items Index, Philadelphia, Pennsylvania, United States Department of Labor, Bureau of Labor Statistics, as most recently published and available to the Director of Finance on March 1 of each such fiscal year; and

(B) Incentive compensation, if any, awarded to Company management at the discretion of Company's Board of Directors, in total amount not to exceed \$150,000 per annum and in an amount per employee not to exceed \$75,000 per annum. Incentive compensation shall be payable only pursuant to performance standards established, and performance measured against such standards, by the Board of Directors of the Company. The performance standards shall include standards which the Board of Directors determines, from time to time, to be important for the improved operations of the Gas Works such as the achievement of the Gas Works' financial plan, customer service, billing and collection efficiencies and development of new revenues (other than from general rate increases).

*Incentive
compensation*

The Gas Works shall reimburse Company against vouchers on the first day of each calendar month for monies expended for the operation of the Gas Works in the previous calendar month.

(iv) Expenses of the Gas Commission; and

*Gas Commission
expenses*

(v) All sinking fund charges payable in respect of principal and interest on all obligations of the City issued for or with respect to the Gas Works and, with respect to Gas Works Revenue Bonds issued pursuant to The First Class City Revenue Bond Act, such additional amount as may be required to comply with any rate covenant and sinking fund reserve requirement approved by ordinance of City Council in connection with the authorization or issuance of Gas Works Revenue Bonds.

*Sinking fund
charges in
connection with Gas
Works Revenue
Bonds*

(b) Sufficient also (together with the excess on a cumulative basis of internally generated funds available for the purposes set forth below in this subparagraph (b) of prior years beginning after June 30, 1974, to the extent that such excess shall not have been applied to such purposes and shall be available for the payment of general expenses of such fiscal year and, subject and subordinate to the payment or provision for payment of all operation and maintenance costs and all sinking fund and sinking fund reserve

General expenses

requirements as set forth in subparagraph (a) of this subsection 1., together with the excess funds provided by revenues of such fiscal year not required for such purposes):

(i) To make base payments to the City in the aggregate annual *principal* amount of \$18,000,000 payable in the amount of \$4,500,000 on each February 1, March 1, April 1 and May 1, provided that the Gas Works may defer this payment to any time between said due date and June 30 of each year in which event it shall be assessed interest on the principal amount of prevailing rates, to be determined by the Director of Finance and the Gas Works, from the said due date of the date of payment or such different amounts at such different times, not greater in annual aggregate principal amount, as City Council shall prescribe;

Payments to City

(ii) To provide appropriations, to the extent not otherwise provided, for prepayment of debt and for capital additions which have been determined by the Gas Commission to be reasonable and which have been approved by City Council; and

Debt reduction and capital additions

(iii) To provide cash, or equivalent, for working capital in such reasonable amounts as may be determined by Company to be necessary and as shall be approved by the Gas Commission.

Working capital

(c) Anything to the contrary herein contained notwithstanding, Company may continue to budget and report revenues and expenses in the form and by the methods heretofore used and the Gas Works shall continue to pay out of its revenues all of the expenses set forth in this subsection 1, and all other expenses necessary and proper to the operation of the Gas Works, excepting only the Company's own personnel and administrative costs which are payable out of the management fee.

Non-cash expenses included in estimates of revenue requirements

For the purposes of clauses (a) and (b) of this subsection 1., to the extent that operating expenses do not represent an actual outflow of funds (e.g., depreciation) such amount may be included in ascertaining whether revenues are sufficient to meet other costs, expenses and requirements of said clauses (a) and (b). Company shall at all times to the extent of its authority observe and comply with all terms, covenants and provisions of all ordinances enacted by City Council relating to the Gas Works including without limitation, ordinances enacted pursuant to The First Class City Revenue Bond Act authorizing Gas Works Revenue Bonds.

Company to comply with terms of City Council ordinances

2. Upon any change in the rates for gas, the Gas Commission, at least thirty (30) days prior to the effective date thereof, shall notify City Council and give public notice by advertisement once in one or more daily newspapers having a circulation of at least 10,000 published in the City of Philadelphia, of the rates for gas to be charged.

Public notice of rate change

3. Company shall furnish to the City and the Board of Education, delivered in their various public buildings along the lines of its mains, such amounts of gas as may be required by the City or the said Board. Rates for gas for such public purposes shall be established from time to time by the Gas Commission upon the recommendations of Company and subject to approval by City Council.

Gas Rates for municipal purposes

4. In connection with any gas rate study or matter related thereto, Company shall furnish the Gas Commission such data as may reasonably be required therefor.

Company to furnish rate data to Gas Commission

5. In the determination of rate schedules for gas, the Gas Commission shall establish and apply non-discriminatory rates based on suitable and reasonable classification of the services provided, taking into consideration the preparation of such schedules, the nature and purpose of the use, the quantity* used, the time of year when used, the available supply of gas and other competing fuels, the maximum demand, and such other factors, including state, and federal laws, regulations or guide lines,

Non-discriminatory rates

Classification of service

* "quality" in the Ordinance

as may be appropriate to the economics of the purchase, manufacture, distribution and sale of gas and consistent with the intent and purpose of this ordinance and/or Agreement. Such rates may provide for sufficient revenue to stabilize them over a reasonable number of years.

6. If conditions warrant, the Company shall pay to the City, but only from any excess described in clause (b) of subsection 1. of this Section VII, such amounts, in addition to those set forth in clause (b) (i) of subsection 1. of this Section VII, as may be determined and agreed upon by the Gas Commission and City Council.

Additional city payments

7. The Gas Commission is authorized to establish rates for gas users authorizing a reduction in gas rates, in the amount of 20% of charges for non-heating and heating purposes to his residence, for any individual 65 years of age or older, residing in the City of Philadelphia, who directly makes payment to the operator of the Gas Works for gas services at his residence. In order to qualify for any rate reduction a person must first apply to the Philadelphia Gas Works for a rate reduction at least thirty days before the next scheduled meter reading. The reduction shall then take effect at the start of the succeeding billing period.

Senior Citizen rate

8. Notwithstanding any provisions to the contrary contained herein, no payments will be made to the City under subparagraph (b) of Paragraph 1 or under Paragraph 6 of this Section VII until the \$20,000,000 Gas Works Temporary Loan Note, Series of 1980, of the City has been paid in full with interest.

Temporary Loan Notes

SECTION VIII

Purchases and Sales of Non-Gas Items

1. Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, competitive bids shall be secured, pursuant to

procurement standards adopted and promulgated by the Gas Commission, before any purchase, by contract or otherwise, is made or before any contract is awarded for material and supplies, construction, alterations, repairs or maintenance or for rendering any services to Company other than professional services or for the purchase of any other item, thing or service, and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder.

Purchases to be made by competitive bids

Gas Commission to set purchasing standards

2. All residuals and by-products from operations, unserviceable property or equipment shall be sold to the highest responsible bidder pursuant to standards adopted and promulgated by the Gas Commission in a manner similar to that required for awards of contracts for the purchase of goods and services.

Residuals to be sold to highest responsible bidder

3. All acquisitions, sales and leases of real estate proposed by or for the Gas Works by Company shall be submitted to the Gas Commission for its action and approval, and shall be submitted to City Council for its approval by ordinance.

Real estate transactions to be approved by Gas Commission and City Council

SECTION IX

Legal Services

The Law Department of the City of Philadelphia shall be the legal advisor for the Gas Commission and the Gas Works. It shall supervise, direct, and control all of the law work of the Gas Commission and the Gas Works including, but not limited to, litigation or other legal representation, investigation, and drafting of documents including contracts, bonds and all other legal instruments for the Gas Commission and the Gas Works.

Law Department legal advisor for Gas Commission and PGW

Duties of Law Department

The City Solicitor shall determine whether legal services for the Gas Works shall be performed by other counsel, and in such event he shall designate such counsel and the compensation therefor in his sole discretion.

City Solicitor shall designate other counsel

All legal services rendered, by the Law Department and by other special legal counsel, to the Gas Commission and to the Gas Works shall be billed to the Gas Works and shall be payable out of gas revenues.

PGW shall pay for legal services

SECTION X

Company's Obligations During Disputes

No disputes between City and Company concerning any of the terms or provisions of this Agreement shall release Company from its obligations to manufacture, provide and supply gas in accordance with the terms and provisions hereof during the existence of this Agreement.

Disputes between City and Company

SECTION XI

Definitions

The following terms are defined for purposes of this Agreement as set forth below:

1. *Director of Finance* - The Director of Finance of the City of Philadelphia.
2. *City Solicitor* - The City Solicitor of the City of Philadelphia.
3. *City Controller* - The City Controller of the City of Philadelphia.
4. *Mayor* - The Mayor of the City of Philadelphia.

5. *City Council* - The City Council of the City of Philadelphia.

6. *Streets Commissioner* - The Commissioner of the Department of Streets of the City of Philadelphia.

7. *Gas Works* - All of the property, both personal and real, including mains and pipes, which together constitute the plant and equipment of the Philadelphia Gas Works.

8. *Non-Gas Items* - Non-gas items include but are not limited to every tangible or intangible article, item or thing except natural gas and substitute natural gas.

SECTION XII

Term

The term of this Agreement shall be for a period of two (2) years commencing January 1, 1973. Said term shall be subject to cancellation by City at any time, or upon the expiration of said two (2) years, upon ninety (90) days notice. No such cancellation shall be effective unless and until such cancellation shall have been approved by resolution or ordinance of City Council. In the absence of such notice, the term shall be extended for further two (2) year periods upon the terms and conditions herein.

Two year term

Termination by City

SECTION XIII

Other Agreements

1. Unless approved by the Gas Commission, no contract or agreement with a third party, including without limitation any union contract covering Gas Works personnel, entered into by Company or at its direction on behalf of the Gas Works during the term of this Agreement shall provide by its terms that it shall terminate or expire in the event that this Agreement between City and Company shall terminate or expire.

Contracts shall not terminate with this

2. The City agrees and hereby does, indemnify and hold harmless the Directors, the officers and the employees of Company, individually and collectively, while acting within the scope of their employment, against and from any and all personal liability, actions, causes of action, and any and all claims made against them whatever in their capacities as Directors, Officers or employees of Company with regard to this Agreement.

*Indemnification of
Board by City*

SECTION XIV

Counterparts

This Agreement may be executed in counterparts, all of which taken together shall constitute one document.

SECTION XV

Effectiveness

This Agreement shall not be effective or binding upon the parties unless it has been approved by an effective ordinance of City Council and has been ratified by the Board of Directors of Company.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, the corporate seal of the City of Philadelphia has been duly affixed by the Mayor of said City, and the corporate seal of the Philadelphia Facilities Management Corporation has been duly affixed by an authorized officer thereof, the day and year first above written.

CITY OF PHILADELPHIA

Attest:(s) Pace Reich
Deputy to the City Solicitor

By: (s) Frank L. Rizzo
Mayor

By: (s) William A. Costello
Commissioner of Public Property

PHILADELPHIA FACILITIES MANAGEMENT CORPORATION

Attest: (s) Stephen S. Gardner
Secretary

By: (s) F. Eugene Dixon, Jr.
President

Approved for the City of Philadelphia
as to correctness and form:

(s) Martin Weinberg
City Solicitor

BEFORE THE CITY OF
PHILADELPHIA - GAS COMMISSION

IN THE MATTER OF : FILED AUGUST 3, 1998
PHILADELPHIA GAS WORKS'
PROPOSED FY 1999 GAS
COST RATE :

RECOMMENDED DECISION

Before
JANET PARRISH, ESQ.
Hearing Examiner

November 18, 1998

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I. HISTORY OF THE PROCEEDING

On August 3, 1998, Philadelphia Gas Works ("PGW" or "the Company") filed with the Philadelphia Gas Commission ("the Commission" or "PGC") its proposed Gas Cost Rate ("GCR") for FY 1999 (PGW Exhibit 2). The filing included the prepared testimony of Craig White, Manager, Energy Planning and Federal Regulatory Affairs, PGW (PGW Statement 1), and the prepared testimony of Cristina Coltro, Coordinator, CRP/CWP, PGW regarding the Customer Responsibility Program ("CRP") (PGW Statement 2) and regarding the Conservation Works Program ("CWP") (PGW Statement 3).

In lieu of a prehearing conference, I held a telephone conference call on August 10, 1998 with counsel for PGW and the Public Advocate ("PA" or "the Advocate") regarding procedures and scheduling (PGC Exhibit 1).

On August 27, 1998, PGW filed an amendment to the filing (PGW Exhibit 3), revising portions of Mr. White's testimony and exhibits. On September 4, 1998, PGW filed another amendment to the filing, proposing changes to Regulation 11.5 of PGW Gas Service Tariff No.10, as amended ("Tariff") to permit the recovery of additional non-gas expenses through the GCR (PGW Exhibit 1).¹ The proposed Tariff amendment required review in accordance with Commission Regulation No.1.

At its September 15, 1998 meeting, the Commission had as an agenda item setting a preliminary GCR for FY 1999, but did not take action due to insufficient information as to whether PGW's proposed GCR of \$1.2466 per Mcf should go into effect on a preliminary basis.² Therefore, the FY 1998 GCR of \$1.4272 per Mcf has remained in effect in accordance with Section 11 of the Tariff (Transcript of September 15, 1998 Commission meeting at pages 4-5).

¹In its initial filing, PGW proposed that \$2 million in new, non-gas expenses be permitted to be recovered through the FY 1999 GCR - \$200,000 for risk management simulations; \$1.561 million for financial hedging costs; \$250,000 for potential Gas Commission-directed gas supply studies; and \$20,000 for GCR-related weather insurance - but did not specifically request that Regulation 11.5 of the Tariff be amended to permit this. I informed PGW that, in the absence of proposed Tariff language, the Commission would not initiate a Regulation No.1 proceeding (PGC Exhibit 1).

²The Advocate informed the Commission that it did not object to the GCR's remaining at \$1.4272 for the short run (Letter dated September 8, 1998 from Philip A. Bertocci to Chairwoman Tasco).

On September 23, 1998, formal proceedings with respect to the proposed Tariff amendment were commenced with a prehearing conference, of which written notice dated September 8, 1998 (PGC Exhibit 2) was given to all parties on the Commission's normal service list (i.e., who have recently participated in Commission proceedings). PGW and the Public Advocate ("PA" or "the Advocate") entered their appearances; the Gas Works Employees Union ("GWEU") did not appear. The prehearing conference was advertised in accordance with Regulation No.1 (PGC Exhibit 3).

While PGW's GCR filing does not trigger a Regulation No.1 proceeding in and of itself, it is subject to appropriate review and audit in accordance with the Commission's oversight and rate-setting responsibilities (Sections IV ¶2 and VII ¶1 of the Agreement between the City of Philadelphia and the Philadelphia Facilities Management Corporation for the Management and Operation of the Philadelphia Gas Works ("Management Agreement")), as well as Section 11 of the Tariff. The coordinated schedule and procedures established by the Hearing Examiner (which are set forth in my Memorandum dated October 13, 1998) were intended to enable the Commission to review the filing in a reasonably expeditious manner, while ensuring that a fair opportunity was given for interested parties to challenge or question PGW's proposals or present other alternatives for the Commission's consideration, and also ensuring that an adequate record was made, upon which fair and informed determinations can be made with respect to the GCR filing.

On October 20, 1998, the Advocate filed the written testimony of its witness Richard W. LeLash of the Georgetown Consulting Group (PA Statement 1). PGW did not object to, and the Hearing Examiner granted, the Advocate's request for an extension of time until October 22, 1998 to file the testimony of Laurie Cameron of the Grass Roots Alliance for a Solar Pennsylvania ("GRASP") (PA Statement 2).

A number of the issues raised in PGW's filing could not be addressed solely in the context of the GCR proceeding; thus, the Hearing Examiner and counsel for the parties agreed that the scope of the initial hearings would be limited to issues related to the calculation of the GCR (Transcript ("Tr.") 24-25; see also PGW Brief at 5 and PA Brief at 2). Additional hearings will be scheduled in the future regarding PGW's proposed amendment to Regulation 11.5 (Tr. 24). In addition, broader issues related to gas procurement and

management strategies, hedging activities, outsourcing and weather insurance³ will be considered in the context of the Commission's pending oversight review and cash flow stabilization review (Tr. 24-25).

In public hearings held October 26, 1998, the witnesses⁴ were questioned by all parties, the Hearing Examiner, and the Commission's Executive Director, G. Christian Kimmerle. No customers or members of the public gave public input at these hearings.

At the conclusion of these evidentiary hearings,⁵ the total number of transcript pages stood at 162 and there were a total of ten exhibits (seven PGW exhibits⁶ and three PGC exhibits). There were also two Transcript Requests ("TR-") directed to PGW, the responses to which are considered to be part of the record of this proceeding. Also considered part of the record are all responses and supplemental responses to data requests propounded by the Public Advocate (PA-1 to PA-72; C-1 to C-8) and the Hearing Examiner (HE-1 to HE-14).

On November 2, 1998, the parties filed their briefs/final position statements. This Recommended Decision follows.⁷ The parties will have the opportunity to file any exceptions to this Recommended Decision by November 25, 1998.

³PGW had also included a \$1 million line item for the purchase of weather insurance related to non-gas costs in its proposed FY 1999 operating budget, and on October 2, 1998, had filed a Petition to Expedite the Commission's Review of Revenue Margin Weather Insurance. By letter dated October 21, 1998, the Company withdrew this petition (see also response to PA-59).

⁴By agreement of the parties and the Hearing Examiner prior to the hearings, it was determined that it was unnecessary for PGW or Public Advocate witnesses to appear to testify or be questioned about issues related to the Customer Responsibility Program ("CRP") revenue shortfall or the Conservation Works Program ("CWP").

⁵The hearings were not adjourned, but were recessed to the call of the Hearing Examiner (Tr. 162).

⁶PGW's August 27, 1998 revisions to the filing, which were marked as PGW Exhibit 3 at the September 23, 1998 prehearing conference, were inadvertently marked again as an exhibit (PGW Exhibit 8) during the hearing.

⁷Under the original schedule, this Recommended Decision was scheduled to be filed on November 13, 1998, with exceptions or comments due by November 20, 1998 (memorandum dated October 13, 1998 from Hearing Examiner to counsel for the parties). However, due to the pressing need to expedite review of PGW's revised Phase 2 electricity proposal (filed on October 26, 1998), in order to get it on the agenda for the Commission's November 17, 1998 meeting, the GCR schedule had to be extended somewhat.

II. LEGAL STANDARD FOR REVIEW AND APPROVAL OF GAS COST RATE

The relevant standard for review and approval of the Company's proposed Gas Cost Rate for FY 1999 is set forth in Section VII.1. of the Management Agreement, which provides in pertinent part:

The Gas Commission shall fix and regulate rates and charges for supplying gas to its customers...which...will, in each fiscal year produce revenues, at a minimum:

- (a) Sufficient to pay all of the operation and maintenance costs and expenses of conducting the Gas Works enterprise....

This Agreement was adopted by an ordinance passed by the City Council of Philadelphia on December 29, 1972. The ordinance has statutory effect, School District of Philadelphia v. Zoning Board of Adjustment, 417 Pa. 277, 207 A.2d 864 (1965); Action Alliance, Etc. v. Philadelphia Gas Commission, 45 Pa. Cmwlth. 234, 241-42, 406 A.2d 1155, 1158 (1979).

Section VII of the Management Agreement has been construed by the Commonwealth Court to require the Commission to increase rates where the proposed rates are "just and reasonable," Action Alliance, supra, 45 Pa. Cmwlth. at 241-42, 406 A.2d at 1158. Pursuant to this authority, the calculation of the GCR factor of the Company's rates is directly governed by Section 11 of the Tariff.

Section 11 sets forth the method for computing the GCR; it also sets out this Commission's authority to review, audit and approve the GCR (see Regulation 11.3 at B; 11.4 a., c. and d.; 11.5). Regulation 11.2(a) requires that the GCR be computed to the nearest one-hundredth cent (0.01¢) in accordance with the following formula:

$$\text{GCR} = ((C - E) \div S) - B.$$

Regulation 11.3 contains the definitions for the elements of the GCR formula, which may be summarized as follows:

- **Factor C** is the current cost of natural gas and other raw materials (determined from the projected cost for each purchase (adjusted for net current gas stored) for the computation year, plus the sum of the projected book value of non-current gas at the beginning of the computation year minus the projected book value of non-current gas at the end of the computation year.
- **Factor E** is the experienced net over or under billings of the cost of natural gas and other raw materials as of the end of the computation year, as well as supplier refunds received prior to the end of the August billing period, and (effective with the FY 1992 GCR calculation) supplier refunds anticipated to be received within the computation year.
- **Factor S** is the projected applicable sales volume (Mcf of gas) to be billed to customers during the computation year.
- **Factor B** is the base cost of gas (i.e., the portion of natural gas and other raw material costs included in the base rate charges of Rate Schedules GS, MS, PHA and NGVS-Firm) in \$ per Mcf of applicable sales, currently set at \$3.180/Mcf.

The Tariff also permits specified non-gas expenses to be included in the calculation of the GCR, with annual authorization of the Commission. Currently, expenses associated with low-income conservation and marketing incentive⁸ programs, and the revenue shortfall associated with CRP are authorized for recovery through the GCR; these expenses are to be added to Factor "C" and individually reconciled in the development of Factor "E" (Regulation 11.5).

III. OVERVIEW OF THE PROPOSED FY 1999 GAS COST RATE

The GCR filing for the fiscal year beginning September 1, 1998 proposed a reduction in the GCR from the FY 1998 level of \$1.4272/Mcf to \$1.2466/Mcf (PGW Statement 1 at 1-2 and at Exhibit CW-1). This 18 cent per Mcf decrease primarily reflected an \$8 million

⁸In its Order regarding the FY 1996 GCR, the Commission directed that, after FY 1996, natural gas vehicles incentives program, air conditioning incentives program and incentive advertising program expenses would only be recoverable as components of PGW's operating budget (Order dated February 28, 1996 at ordering paragraph 3(G)).

decrease in the prior year reconciliation amount, from \$11 million in FY 1997 to approximately \$3 million in FY 1998 (Id. at 2-3 and at Exhibit CW-1).

Other factors impacting the FY 1999 calculation are (1) a .7 Bcf decrease in budgeted firm sales volumes; (2) a \$4.4 million increase in projected natural gas expense; (3) a \$1.2 million decrease in the CRP revenue shortfall (or, "CRP discount"); and (4) a \$2.7 million increase in budgeted natural gas refunds (Id. at 2 and at Exhibit CW-1). Offsetting the projected decrease in the annual CRP discount, PGW proposed recovery through the GCR of \$2.03 million in new, non-gas expenses (Id. at 2, 9-16 and at Exhibit CW-1).

In its August 3 filing, the Company projected that applicable raw material expense for FY 1999 would be \$261.752 million, of which \$243.344 million reflected the applicable fuel expense and \$18.408 million represented the budgeted non-fuel expenses (Id. at Exhibit CW-1). The projected fuel expense represents a 2% increase (\$4.4 million) from the \$238.954 million expense budgeted for FY 1998, but an 11% increase (\$24.7 million) from the \$218.632 million actual, finalized expense for FY 1998 (calculated from Id. and response to HE-13). Taking into account the projected non-gas expenses and budgeted adjustments for natural gas refunds and prior year reconciliations, PGW arrived at a projected unit cost of fuel of \$4.4287/Mcf⁹ (PGW Statement 1 at Exhibit CW-1). Subtracting the \$3.18 embedded in base rates, PGW arrived at an FY 1999 GCR of \$1.2466/Mcf (Id.).

According to White, PGW's gas cost charge is lower than that of other Pennsylvania local gas distribution companies (Id. at 5-7; response to PA-50). White asserts that there are two primary factors for the lower PGW gas costs:

- 1) PGW's FY 1998 locked-in price strategy produced about \$9.3 million in savings; and
- 2) PGW has continued to avoid the purchase of higher priced incremental pipeline capacity through the continued efficient use of existing assets.

(PGW Statement 1 at 7-8).

PGW's gas procurement strategy for FY 1999 remains as described in the Company's May 29, 1998 position statement on price hedging (Id. at 8-9 and at Exhibit CW-13). In brief, PGW's intent was to apply a portfolio strategy combining physical hedges (using both

⁹This compares to a unit cost of fuel for FY 1998 of \$4.6769/Mcf (response to HE-13).