

locked-in and indexed priced volumes) with financial hedges (Id. at 8). In particular, PGW planned to lock-in prices for about 35% of its annual firm volumes, and purchase the other 65% under First-Of-The-Month indexes with daily swing volumes purchased under the spot market (Id.). PGW also anticipated hedging about 17 Bcf, or 40% of the November through March firm gas supply requirements (Id.).

In light of this strategy, PGW proposed recovery through the FY 1999 GCR of some \$1.6 million for the cost of purchasing a financial hedge (Id. at 13-14), as well as \$200,000 for the estimated cost of a hedging simulation exercise (Id. at 16). However, the Company conceded that prior Commission authorization via a Tariff change was required for these activities to occur (Tr. 34-35; responses to, e.g., PA-62, PA-65, PA-67; PGW Brief at 5). The Company therefore agreed that the total proposed \$2 million in additional non-gas expenses should not be incorporated in the FY 1999 GCR calculation at this juncture (Tr. 34-35; PGW Brief at 5). Notwithstanding that the Company could not pursue the financial hedging component of its strategy at this time, it made no change in its overall gas cost projections for FY 1999, but was proceeding to lock up more volume for price than was originally anticipated (Tr. 35-36).¹⁰

In addition, during the course of the proceeding, finalized FY 1998 GCR data became available. This showed that, rather than a \$3.019 million under-collection as indicated by the "10 & 2" (ten months actual/two months estimated) results (PGW Statement 1 at Exhibit CW-5), there was actually a \$3.614 million under-collection to be carried over to FY 1999 (response to HE-13).

When this actual carryover amount is factored into the GCR calculation, and the proposed new non-gas expenses are removed, PGW's proposed FY 1999 GCR is reduced slightly, to \$1.2219/Mcf (response to TR-1).¹¹

The following table utilizes data from PA Statement 1 at Exhibit CW-1 and the responses to HE-13 and TR-1 to provide a summary comparison of last year's and this year's GCR calculations. The column headed "FY 1998 Compliance Budget" reflects the

¹⁰As the Advocate's witness pointed out, PGW's financial hedging strategy, if undertaken during FY 1999, would not have had an impact on gas costs in that year anyway, but rather starting in FY 2000 (PA Statement 1 at 9, 34).

¹¹But see Table 1, infra, wherein the Hearing Examiner's calculation of the resultant GCR - \$1.2243 per Mcf - is minimally higher than PGW's calculation.

GCR as approved by the Commission; while the next column shows the actual results for FY 1998. Reflecting in major part the much warmer-than-normal heating season experienced in FY 1998, there were significant declines from budget with respect to applicable sales volumes and associated natural gas expense. For this reason as well as somewhat reduced participation levels in CRP, the CRP discount was also less than had been budgeted (PGW Statement 2 at 1). In addition, towards the end of the fiscal year, PGW suspended CWP spending due to cash constraints (response to PA-56) and therefore under-spent the budgeted amount by nearly \$500,000.

The column headed "FY 1999 Initial GCR Filing" of course reflects the Company's August 3 filing, while the last column updates the elements of the GCR calculation by utilizing the finalized carryover amount from FY 1998 and by eliminating the proposed new non-gas expenses, as agreed by the parties (PA Brief at 2-3; PGW Brief at 5).

Table 1

Summary Comparison of FY 1998 and FY 1999 Gas Cost Rate Calculations

Element of GCR Calculation	FY 1998 Compliance Budget	FY 1998 Actual Finalized GCR	FY 1999 Initial GCR Filing	FY 1999 Revised GCR Calculation
Applicable sales volume (Mcf)	59,605,055	51,987,264	58,947,798	58,947,798
Net natural gas expense	\$237,929,368	\$217,677,981	\$242,319,407	\$242,319,407
Plus purchased electric expense	1,025,000	953,952	1,025,001	1,025,001
Total applicable fuel expense	\$238,954,368	\$218,631,933	\$243,344,408	\$243,344,408
Conservation program	\$2,200,000	\$1,705,047	\$2,200,000	\$2,200,000
CRP discount	15,407,872	11,970,272	14,177,451	14,177,451
New non-gas expense	n/a	n/a	2,030,500	0
Total non-gas expense	\$17,607,872	\$13,675,319	\$18,407,951	\$16,377,451
Natural gas price adjustment	\$8,040,867	\$0	n/a	n/a
Total applicable raw material expense	\$264,603,107	\$232,307,252	\$261,752,359	\$259,721,859
Less natural gas refunds	\$1,000,000	\$170,475	\$3,710,000	\$3,710,000
Prior year reconciliation	(11,001,276)	(11,001,278)	(3,019,435)	(3,613,746)
Total adjustment	\$(10,001,276)	\$(10,830,803)	\$690,565	\$96,254
Net applicable raw mat expense	\$274,604,383	\$243,138,055	\$261,061,794	\$259,625,605
Unit cost of fuel (per Mcf)	\$4.6071	\$4.6769	\$4.4287	\$4.4043*
Gas cost rate (per Mcf)	\$1.4272	\$1.4272	\$1.2466	\$1.2243*
Net over/under recovery	\$8.025	\$(3,613,746)	\$2,279	\$(1,818)*

*/ Estimated by Hearing Examiner using PGW's applicable sales volume and net applicable raw material expense numbers. These results do not exactly match PGW's response to TR-1 which is not in the format of Exhibit CW-1, as was requested. According to PGW's response to TR-1, the resultant GCR factor would be very slightly lower, \$1.2219 per Mcf, and the resultant underbilling would also be slightly lower, \$(348).

IV. THE PUBLIC ADVOCATE'S POSITION ON THE PROPOSED GCR

In his prefiled written testimony (PA Statement 1 at 8-15), the Advocate's witness LeLash recommended that the Commission adopt findings and conclusions which may be summarized as follows:

1. Based on several recommended adjustments to PGW's filing, the GCR factor should be \$1.1754 per Mcf (not \$1.2466, as filed by the Company), assuming an effective date of December 15, 1998.
2. The \$2 million in expenses for hedging costs, risk management simulation, weather insurance and Commission-mandated gas supply studies are not recoverable through the GCR under the Tariff currently in effect and should therefore be removed from this year's calculation.¹²
3. The Company's forecast for gas commodity costs appears to be reasonable in light of DRI projections and the current NYMEX strip for the November 1998 to August 1999 period.
4. The use of the \$1.4272 per Mcf interim GCR factor should result in an offset to some of the FY 1998 under-collection.
5. The GCR calculation should include an additional credit of \$800,000 from off-system sales,¹³ and should also be updated to reflect the final FY 1998 underrecovery of \$3.6 million.
6. With the exception of its use of LNG, the Company has generally pursued appropriate regulatory objectives in its gas procurement.
7. During the past five years, PGW's firm demand has remained stable at about 60 Bcf.
8. PGW's firm design day demand of 750 Mmcf is met with 450 Mmcf of interstate pipeline supply and daily availability to 540 Mmcf of LNG vaporization. With the termination of the South Jersey LNG contract, PGW

¹²As to the merits of PGW's proposal to amend Regulation 11.5 to permit recovery of these costs through the GCR, LeLash opposes recovery of the cost of gas supply studies, weather insurance and risk management simulation through the GCR because these costs are not gas supply related and are controllable in nature. Without knowing more about the kind of financial hedging program proposed, LeLash took no position on whether the Tariff should be amended to permit recovery of such costs through the GCR. In any event, he noted that since the proposed \$1.6 million hedging cost would not be for gas utilized in FY 1999, it should not be included in the FY 1999 GCR calculation (id. at 8-9).

¹³Upon further consideration of the interactive relationship of off-system sales and capacity release credits, as described by PGW witness White, LeLash withdrew this recommendation (Tr. 79-84; PA Brief at 2, fn.1).

was able to permanently release its 50 Mmcf of Transco LGA storage, saving \$250,000 per year in demand charges.

9. During the past five years, PGW has experienced an increase in its unaccounted for gas losses to 3.9%, compared to the most recent 15 year average of 3.3%. This raises concern as to whether the distribution system is experiencing greater loss from leaks.¹⁴
10. During the 1997-98 GCR period, the Company experienced its second warmest winter in 40 years, with only 4,003 degree days compared to the normal level of 4,600 degree days. As a result, sendout volumes and gas costs were reduced, but there was also an underrecovery of PGW's fixed gas demand charges.
11. Because of limitations associated with the physical contract hedges being used by the Company, it is increasingly imperative for PGW to define objectives and procedures for an ongoing financial hedging program.
12. As part of a broader Commission oversight proceeding or a proceeding addressing cash flow stabilization, the Commission should require PGW to fully define the scope, control and financial exposure aspects of prospective hedging initiatives. The Company has not yet formally adopted its Financial Risk Management Policy nor established its planned Corporate Risk Management Council.
13. Although the Company has provided a framework for outsourcing its initial financial hedging activity, many of the program details as well as information about alternative proposals have not been presented, making it difficult to assess the reasonableness of PGW's preferred proposal and impeding progress on determining the best way to bring the benefit of financial hedging to the ratepayers.
14. Aside from the relative newness of the weather insurance concept which PGW proposes to use to insulate its operation from fixed fuel cost recovery problems associated with warm weather, there seems to be uncertainty about the level of cost protection being sought. That is, PGW supported a different "deadband" in last year's weather normalization adjustment proposal than it does in the current weather insurance proposal.
15. The Commission having identified weather insurance as an option to be considered in the cash flow stabilization review, the level of temperature

¹⁴White testified that the final unaccounted for figure for FY 1998 was 2.2%, which brought the last five year average down to 3.7% (Tr. 98). In light of this information, which he found to be "encouraging," LeLash opined that "the need for immediate action is probably not near as critical" as he had originally thought, but urged the Commission to monitor the situation (Tr. 102-104).

protection and the cost-effectiveness of weather insurance should be addressed in that proceeding.

16. PGW has an incentive to substitute storage gas for flowing gas if and when there is a cash shortage. Such substitution is not compatible with least cost gas procurement and is inconsistent with the fundamental principles of a fuel adjustment clause.¹⁵

LeLash's recommended findings at ¶¶ 3, 6 through 16 are either in the nature of observations, or contain general recommendations and policy considerations with respect to the broader hedging, outsourcing, gas management and cash flow stabilization concerns that were not discussed during the GCR hearing, but were reserved for Commission review at another time, and will therefore not be discussed further in this Recommended Decision.

The Advocate's witness Cameron provided written testimony in which he:

1. Raised concerns about the shut down of CWP since July 1998;
2. Opined that CWP's marginal cost-effectiveness, shown by the Year 7 impact evaluation, is a stellar result, compared to past performance and compared to virtually every other weatherization program in the United States;
3. Stated his expectation that the Year 8 results would be at least as cost-effective;
4. Recommended that PGW visit a sample of houses where setback thermostats were installed and assess how well and whether they are continuing to work; and
5. Observed that both CWP contractors were performing satisfactorily.

(PA Statement 2 at 3-9). As indicated earlier, by agreement of the parties and the Hearing Examiner, Mr. Cameron did not testify or appear for questioning at the hearings. Most of his testimony was in the nature of observation, but not being particularly germane to the GCR proceeding this year, it will not be discussed further in this Recommended Decision.

¹⁵Specifically, LeLash was concerned that, during the past fiscal year, PGW dispatched LNG on several occasions when temperature levels would not appear to justify its use, raising issues about cash flow considerations impacting gas procurement and dispatch decisions inappropriately (*id.* at 40-41).

V. DISCUSSION -- COMPUTATION OF FY 1999 GAS COST RATE

A. APPLICABLE RAW MATERIAL EXPENSES (FACTOR "C")

1. Projected FY 1999 Gas Costs

PGW submits that its natural gas pricing forecast is reasonable and realistic (PGW Brief at 4). The Company states that it "follows a reasoned methodology for projecting volatile gas costs for the upcoming budget year" (*Id.*). Specifically, the Company relies upon the July 1998 DRI/McGraw Hill (now, Standard & Poors (Tr. 113)) analysis of natural gas prices (*Id.*; response to PA-2).

This year, the Company set forth the basis for its gas price projections in some detail in its GCR filing. Its projections were further reviewed through the discovery process. Having done so, the Advocate's witness confirmed the reasonableness and accuracy of PGW's projections and recommended that the Commission adopt them for purpose of the FY 1999 GCR calculation (PA Statement 1 at 17-18; Tr. 33, 112-115).

Based on this record, I recommend that the Commission authorize inclusion in the FY 1999 GCR calculation (Factor "C") of \$243,344,408 for applicable fuel expense, as contained in PGW's filing.

2. Projected FY 1999 Non-Gas Expenses

a. Customer Responsibility Program ("CRP") revenue shortfall

The projected FY 1999 CRP revenue shortfall (or, "CRP discount") of \$14.177 million is somewhat lower than that budgeted for FY 1998 (\$15.408 million)¹⁹ (PGW Statement 1 at Exhibit CW-1; PGW Statement 2). Primarily, this reflects the fact that program

¹⁹The actual, finalized CRP discount for FY 1998 was \$11.970 million, or \$3.4 million below budget, reflecting the much warmer-than-normal heating season, a decrease in program participation, and an increase in excess usage charges collected (response to HE-13; PGW Statement 2 at 1).

participation for FY 1999 is projected to be less than for FY 1998,¹⁷ due to improvements in program administration¹⁸ (PGW Statement 2 at 2 and at attachments; PGW Exhibit 1 at GCR-22). PGW's other projections regarding the receipt of LIHEAP grants, LIHEAP make-up charges and excess usage charges -- all of which impact on the calculation of the CRP revenue shortfall -- are reasonable, based on recent experience.

The Advocate did not disagree with PGW's projected CRP expense (Tr. 33; PA Statement 1 at 22).

I therefore recommend that the Commission authorize recovery in the FY 1999 GCR calculation (Factor "C") of \$14,177,451 for the CRP revenue shortfall, as budgeted by PGW in its filing.¹⁹

¹⁷The number of CRP participants is projected to range from about 50,500 to 51,000 during FY 1999, while it was projected to be in the range of 53,000 for FY 1998 (Compare PGW Exhibit 2 at GCR-22 with response to ID-1 in FY 1998 GCR proceeding).

¹⁸PGW witness Coltro attributed the reduced program participation to more prompt notification to CRP customers who are in default on their monthly payments and PGW's intended use of a tightened income verification process (PGW Statement 2 at 2-3). Indeed, PGW's CRP statistics show that during FY 1998, while the total program population shrank a bit, the ratio of active to defaulted customers improved significantly (id. at 3). While as of September 1997, 63% of participants were in active status versus 37% defaulted, by June 1998 85% were in active status versus only 15% defaulted (id. at Exhibit CRP-2). Coltro expects this ratio to continue in FY 1999 (id. at 3).

¹⁹In 1994, I recommended against inclusion of the CRP shortfall among the non-fuel expenses recoverable through the GCR (Recommended Decision in CRP Shortfall Proceeding at 29-32). However, I alternatively recommended that if the Commission believed the program costs were too volatile or unpredictable at that early point in the program's existence, it could -- consistent with its prior decisions and with the underlying theory of the GCR -- permit recovery of all or part of the shortfall in this manner (id. at 32; see also id. at 27-29). The Commission amended Regulation 11.5 of the Tariff to permit recovery of the CRP costs through the GCR, citing the newness and unpredictability of the CRP shortfall and concern that PGW's proposed operating budget "may optimistically state PGW's costs associated with uncollectible revenues" (Order adopted December 6, 1994 at ordering ¶¶ A and B).

After several years experience with budgeting the CRP shortfall, the Commission directed PGW to include in its FY 1998 Operating Budget filing a discussion of CRP cost components and funding variables, and an analysis of the impact of moving \$5, \$10 or \$15 million of the shortfall to the Operating Budget (Order dated December 2, 1996 (2nd of Two Orders in the FY 1997 GCR Proceeding) at ordering paragraph 4). PGW did not make this filing. The Commission again requested this analysis during the FY 1998 budget hearings (Tr. 458-460). PGW thereafter filed a response to Question 5E, outlining four possibilities, and recommending no change to the CRP portion of the GCR at this time.

In its Memorandum Order in that proceeding, the Commission directed that PGW file with each future budget filing narrative, workpapers and pro forma budget schedules detailing the impact on that year's proposed operating budget of moving \$5, \$10 or \$15 million of the CRP shortfall out of the GCR under the four assumptions contained in PGW's response to Question 5E (Memorandum Order dated November 5, 1997 at ordering paragraph A(5)). This portion of the FY 1999 Operating Budget filing was just submitted to the Commission on November 13, 1998. The Commission may ultimately determine that some or all of the CRP shortfall should be moved out of the GCR, but for purpose of this Recommended Decision, I assume the entire CRP shortfall is to be recovered through the GCR for FY 1999.

b. Conservation Works Program ("CWP")

PGW has proposed a budget of \$2.2 million for CWP for FY 1999 (also known as Year 9 of the program) -- the same as last year's budgeted amount (PGW Statement 1 at Exhibit CW-1; PGW Exhibit 2 at GCR-19; PGW Statement 3).

The Advocate did not propose any changes to this budget (PA Statement 2 at 21-22; Tr. 33).

I recommend that the Commission authorize the inclusion in the FY 1999 GCR calculation (Factor "C") of \$2.2 million for CWP expense, as requested by PGW.

c. New Non-Gas Expenses

PGW included in its proposed GCR calculation \$2,030,500 for four non-gas expenses not previously recovered through the GCR -- \$1,560,500 for financial hedging costs; \$200,000 for risk management simulation costs; \$20,000 for fixed demand charges-related weather insurance; and \$250,000 for anticipated Commission-mandated gas supply studies (PGW Statement 1 at 9-16 and at Exhibit CW-1). As already discussed, PGW subsequently amended its filing to request changes to Regulation 11.5 of the Tariff, in order to authorize recovery of such costs through the GCR (PGW Exhibit 1). The Company has conceded that -- as the Advocate asserts -- in the absence of Commission approval of the proposed changes to the Tariff, these costs cannot be included in the current GCR calculation (PGW Brief at 5; Tr. 34-35; responses to PA-62, PA-65, PA-67; PA Brief at 2-3; PA Statement 1 at 8).

As indicated, Commission review of the proposed Tariff changes pursuant to Commission Regulation No.1 will be conducted in the future, and the merits of PGW's proposals will not be addressed at this time.

In light of the foregoing, I recommend that the Commission disallow recovery in the FY 1999 GCR of the \$2,030,500 PGW included in its filing for four new non-gas expenses not currently authorized by Regulation 11.5 of the Tariff, and direct PGW to remove these proposed expenses from the FY 1999 GCR calculation, as PGW has agreed.

B. ADJUSTMENTS TO APPLICABLE RAW MATERIAL EXPENSE (FACTOR "E")**1. Prior Year Reconciliation**

The Tariff provides for the automatic reconciliation of any prior year over- or under-collection in the calculation of the next year's GCR (Regulations 11.2(a), 11.3 (E), and 11.4(d)).

In its August 3, 1998 filing, the Company included in its GCR calculation a prior year reconciliation amount of \$3.019 million for the FY 1998 under-recovery (PGW Statement 1 at Exhibits CW-1 and CW-5). Subsequently, the finalized carryover amount for FY 1998 was determined to be an under-recovery of \$3.614 million (responses to PA-47 and HE-13; PGW Exhibit 4). The Advocate's witness correctly noted that the final, approved GCR calculation for FY 1999 should incorporate this difference (PA Statement 1 at 16-17 and at Schedule 1). Of course, PGW was in agreement with this position (Tr. 33-34).

I recommend that the Commission authorize inclusion in Factor "E" of the FY 1999 GCR calculation of the actual, finalized \$3,613,746 under-billing from FY 1998, or \$594,311 more than included in PGW's filing.

2. Natural Gas Refunds

The Company projects receiving \$3.71 million in refunds from natural gas suppliers during the fiscal year (PGW Statement 1 at Exhibit CW-1). This primarily reflects anticipated receipt of a refund from the Transco Gas Pipeline rate case (*Id.* at 3; PGW Exhibit 2 at GCR-8; see also response to PA-32).

The Advocate's witness did not suggest any reason for disagreement with this projection (PA Statement 1 at Schedule 1; Tr. 33).

I recommend that the Commission approve inclusion in Factor "E" of the FY 1999 GCR calculation of a \$3.71 million credit (adjustment) for projected natural gas refunds from PGW's suppliers, as contained in PGW's filing.

3. Off-System Sales

The Company typically credits to the GCR calculation the benefits of capacity release and off-system sales. The FY 1999 GCR calculation incorporates close to \$2.2 million in projected capacity release credits but no credits for off-system sales (PGW Statement 1 at 3 and at Exhibit CW-6).

Acknowledging the Company's past position that off-system sales transactions are speculative, LeLash still proposed that an \$800,000 credit for anticipated off-system sales be included in the GCR calculation (PA Statement 1 at 22-23 and at Schedule 1).

However, during the hearing, the Advocate's witness withdrew his recommendation, based on additional information provided by PGW witness White (Tr. 79-84). In essence, PGW demonstrated that the capacity release credits and off-system sales margins are interrelated -- as White put it, it is a "zero sum game," in which the flexibility in PGW's system can be used to generate one or the other, but not both, and in which if revenues are increased in one category, the other will decline (*Id.*).²⁰

In light of the foregoing, I recommend that no additional credit adjustment be applied to the FY 1999 GCR calculation to reflect anticipated off-system sales, as agreed by the parties.

C. APPLICABLE SALES VOLUME (FACTOR "S")

As noted in LeLash's testimony, PGW's weather normalized firm sales have been relatively stable (PA Statement 1 at 27 and at Schedule 5, p. 2 of 5). During this

²⁰White provided the following historic data to illustrate this relationship (Tr. 80-81, 83):

Fiscal Year	Capacity Release Volume	Capacity Release Credits	Off-System Sales Margins
1996	7.9 Bcf	\$463,000	\$627,000
1997	7.9 Bcf	\$529,000	\$828,000
1998	16 Bcf	\$2.9 million	\$355,000
1999 (est)	22.4 Bcf	\$2.2 million	\$0

proceeding, there was little discussion of and no controversy about PGW's projected GCR applicable sales volume (PGW Statement 1 at Exhibit CW-1).

I recommend that the Commission utilize for Factor "S" in the FY 1999 GCR calculation the projected applicable sales volume of 58,947,798 Mcf contained in PGW's filing.

D. BASE COST OF FUEL (FACTOR "B")

Regulation 11.3 (at B) provides that

The base cost shall be adjusted at the time of the annual Gas Cost Rate filing to include at least ninety percent (90%) of the Company's experienced gas rates in effect as of the end of the August billing period, plus such portion of the projected gas costs as the Commission shall permit.

In prior proceedings, there has been considerable discussion of the meaning of this provision, particularly whether the proposed GCR met the 90% "roll-in" requirement. But again, there was no discussion of these questions this year.

Regardless, I am compelled to note that the proposed GCR would not comply with the 90% standard. I estimate that the unit cost of gas in effect as of the end of FY 1998 is \$4.202 per Mcf.²¹ The base cost of \$3.18 would therefore only reflect 76% of the experienced gas costs.

In last year's proceeding, the Commission renewed its prior exception to the 90% roll-in requirement, to permit the base cost to remain at \$3.18 per Mcf for purpose of the FY 1998 GCR calculation (1st of Two Orders dated February 25, 1998 at ordering

²¹Calculated from response to HE-13 as follows:

\$243,138,055	FY 1998 net applicable raw material expense
<u>- 13,675,319</u>	Less non-gas expenses
\$229,462,736	Net applicable gas expense
<u>- 11,001,278</u>	Less FY 1997 underbilling carried over into FY 1998
\$218,461,458	Experienced gas expense as of August 1998 adjusted to remove impact of FY 1997 expense

The per Mcf cost is obtained by dividing the experienced gas expense by the applicable sales volume of 51,987,264 Mcf.

paragraph 4).²² In the absence of any further suggestions that this portion of the Tariff should be changed, or of any concerns on the part of either PGW or the Advocate, and in light of the transparency to the ratepayer of these costs, I recommend that the Commission take similar action to permit the base cost to remain at \$3.180 per Mcf until further notice.

Thus, I recommend that the Commission renew its exception to the base cost adjustment required by Regulation 11.3, and permit the base cost (Factor "B" of the GCR formula) to remain at \$3.180 per Mcf for FY 1999 and future fiscal years, unless and until modified by subsequent Commission action.

E. RECOMMENDED FY 1999 GAS COST RATE AND EFFECTIVE DATE

If the Commission approves all of the foregoing recommendations regarding the elements of the GCR calculation, as shown in Table 1, supra, the net applicable raw material expense for FY 1999 will be \$259,625,605. Dividing by applicable sales of 58,947,798 Mcf yields a projected unit cost of fuel of \$4.4043. Subtracting the \$3.18 base cost leaves \$1.2243 per Mcf to be recovered through the GCR, assuming a September 1, 1998 effective date. This 20 cent decrease from the current GCR factor amounts to slightly more than a 2% decrease in the unit cost of gas to the typical firm (Rate GS) customer.²³

However, since a reduced GCR factor was not put into effect at the beginning of the fiscal year, the cost reduction for the balance of the fiscal year will be somewhat greater. That is, from September 1, 1998 to the present time, the GCR in effect has been at the FY 1998 level of \$1.4272 per Mcf, thereby resulting in an over-recovery of gas costs during this portion of the fiscal year. LeLash estimated that this over-recovery amounts to about \$2.1 million if the GCR is not changed until December 15, 1998, and urged that any such amount be taken into account in setting the finalized GCR factor which will be in effect for the balance of the fiscal year after Commission action (PA Statement 1 at 10, 19 and at Schedule 3).

²²Although this Order indicated that the Commission would permit the base cost to remain at \$3.18 "until further action by the Commission," the exception was linked to the FY 1998 GCR calculation, and I therefore believe it is necessary to take additional Commission action to renew the exception.

²³ $\$1.4272 - \$1.2243 = \$0.2029 + \8.5472 (current GS rate of \$7.12 per Mcf plus current GCR of \$1.4272) = 2.4%.

PGW's calculation is that, taking into account the two adjustments reflected in Table 1, *supra*, the GCR factor would be \$1.1553 per Mcf, if the effective date were December 15, 1998, and \$1.1119 per Mcf, if the effective date were not until January 1, 1999 (response to TR-1). The former would result in a rate reduction of 3.2% for the balance of the fiscal year,²⁴ while the latter would result in a slightly greater rate reduction of 3.7% for the rest of the fiscal year.²⁵ Either way, I estimate that the reduction would yield a savings of about \$23 for the typical residential heating customer for the rest of FY 1999.²⁶

GCR billing changes can be accomplished with the existing Legacy system in seven days; thus, assuming that the Commission takes final action at its scheduled December 8, 1998 meeting, the new GCR could be effective December 15, 1998 for usage on and after that date (response to HE-14; Tr. 69, 71, 72).

The Advocate supports a December 15, 1998 effective date for the new GCR (PA Brief at 3-6; Tr. 79). However, PGW recommended that the effective date be January 1, 1999, when it anticipated converting from the Legacy system to the new BCCS billing system (response to HE-14; Tr. 65, 68). Although the Company "recognize[s] that we would like to get as much of the winter volumes into the revised factor as possible," PGW thought it was appropriate to recommend the later date "for simplicity's sake," that is, to avoid having to put in the revised GCR factor under the old system for 15 days and then converting over to the new system from January 1 on (Tr. 68-69, 73-74).

Since PGW intends to run the Legacy system parallel to the BCCS system for some time period, and thus, would have to make the simple programming change of replacing the current GCR factor with the new one anyway (Tr. 71-72, 74-75), the Company's position does not make sense.

Even if it did make sense, the Company's position is contingent upon its representation at the hearing that January 1, 1999 was "the firm date" for BCCS to go live (Tr. 68-69). To the extent the January 1 target date slips, this would create additional,

²⁴ $\$1.4272 - \$1.1553 = \$0.2719 \div \$8.5472 = 3.2\%$.

²⁵ $\$1.4272 - \$1.1119 = \$0.3153 \div \$8.5472 = 3.7\%$.

²⁶Applying the 3.2% reduction to estimated typical usage for a residential heating customer from December 15 to the end of the fiscal year of about 85 Mcf yields a \$23 savings. Applying the slightly greater 3.7% reduction to the lesser volumes that would be consumed by the typical residential heating customer from January 1 to the end of the fiscal year of about 76 Mcf also yields about a \$23 savings.

unwarranted delays in implementation of the reduced GCR factor. Indeed, less than a month later, it now appears that the January 1 date is not firm at all; rather, the most current estimate is that BCCS will be implemented in mid-February 1999.²⁷ Given the history of delays in the BCCS implementation date, it would be unwise for the Commission to link implementation of the new GCR to BCCS.

For all of these reasons, I recommend that, consistent with the foregoing recommended adjustments to PGW's August 3, 1998 filing, the Commission authorize recovery through the FY 1999 GCR of net applicable raw material expense of \$259,625,605 as applied to applicable sales volumes of 58,947,978 Mcf. Consequently, I recommend that the Commission authorize an FY 1999 GCR of approximately \$1.1553 per Mcf (subject to possible refinement when PGW performs the necessary calculations consistent with the Commission's GCR Order), to be effective and applied to usage on and after December 15, 1998.

VI. CONCLUSION

I recommend that the Commission enter an Order in this matter that reflects the recommendations discussed in this Recommended Decision. I further recommend that the Commission direct the Company to make a compliance filing reflecting the ordered adjustments to the FY 1999 GCR within ten days of execution of the Commission's Order herein. Finally, I recommend that PGW be required to include on the first customer bills rendered after the Commission's Order herein a notice of the effective date and amount of the GCR for the remainder of FY 1999.

Respectfully submitted,



JANET PARRISH, ESQ.
HEARING EXAMINER

DATED: November 18, 1998

²⁷At an informal discovery meeting held on November 18, 1998 as part of the Commission's pending FY 1999 oversight review and consolidated budget proceeding, PGW's Chief Information Officer David Lee informed Commission Hearing Examiner Tarleton D. Williams and Advocate consultant Thomas E. Knudsen that the expected implementation date for the BCCS had been delayed to mid-February 1999.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v. : Docket No. R-00006042

Philadelphia Gas Works :

First Set of Interrogatories of CEPA et al.

Pursuant to 52 Pa.Code §5.341, 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.") hereby propound the following First Set of Interrogatories to the Philadelphia Gas Works to be answered by those officers, employees or agents as may be cognizant of the requested facts and who are authorized to answer on behalf of the Company.

Dated: February 2, 2001

Instructions

(a) These interrogatories shall be deemed to be continuing. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.

(b) The answers provided should first restate the question asked and also identify the person(s) supplying the information.

(c) All information is to be divulged that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term "Philadelphia Gas Works" or "the Company" or "you," as used herein includes the Philadelphia Gas Works, its attorneys, agents, employees, or other representatives.

(d) As used herein, the word "document" or "workpaper" includes, but is not limited to, the original and all copies (regardless of origin and whether or not including additional writing hereon or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, notes, letters, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, meetings or other communications, bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing, in whatever form, stored or contained in or on whatever medium including computerized memory or magnetic media.

Philadelphia Gas Works

Docket No. R-00006042

First Set of Interrogatories of CEPA et al.

CEPA-1. What is the current PGW policy regarding company payment for employee parties and celebrations? If PGW has a written policy concerning this subject, provide a copy of the policy. Provide a detailed breakdown of the amount spent in FY2000 on such parties and the amount budgeted for FY2001.

CEPA-2. What is the current PGW policy regarding spending for retiree parties? If PGW has a written policy concerning this subject, provide a copy of the policy. Provide a detailed breakdown of the amount spent in FY2000 on such parties and the amount budgeted for FY2001.

CEPA-3. Provide a schedule showing post retirement non-pension benefits including but not limited to health benefits and legal services provided PGW retirees in FY 2000. For each category of benefit, also state how much has been budgeted for FY 2001.

CEPA-4. Does PGW have a policy concerning company payment for membership fees for the company and/or for individual employees for country club, gym club, dining club and other non-professional associations? If the answer is affirmative, state the policy. If the policy is in writing, provide a copy of the written policy.

CEPA-5. Provide a detailed breakdown of the amount spent, if any, in FY 2000:

(a) on membership fees for PGW for country club, gym club, dining club and other non-professional associations.

(b) on membership fees for PGW senior management and/or other PGW employees for country club, gym club, dining club and other non-professional associations.

CEPA-6. Provide the year, make, model, and company number, if any, for every marked PGW vehicle and indicate the PGW department to which each such vehicle is assigned.

CEPA-7. The Company has indicated in the response to KB-50 in the PGW FY 2001 Consolidated Budget Proceedings before the Philadelphia Gas Commission that of 31 marked vehicles assigned to "Credit Collection," all but three are either 3/4 ton vans or 1/2 ton pickup trucks. The three exceptions are Plymouth Accclaim sedans.

(a) Update this information.

(b) Provide information concerning the cost per mile of operating pickups and vans as opposed to a sedan like a Plymouth Accclaim.

(c) Explain why PGW uses vans and pickup trucks for Credit/Collections work.

CEPA-8. In PGW's FY 2001 Consolidated Budget Proceedings, PGW produced the document attached as Exhibit A in partial response to KB-50 which, inter alia, requested PGW to provide "for unmarked vehicles, the make and model of each car ... as well as the person and title of the person to whom the car is assigned."

(a) Update the information on Exhibit A as of an administratively convenient date, no earlier than December 1, 2000.

(b) For each vehicle, indicate whether it has been assigned to a particular employee (1) for Commuting and Business Use only; (2) for Commuting, Business Use and Other Personal Use; (3) for Business Use only.

CEPA-9. Does PGW have a written policy governing when personal cars for Commuting and Business Use only and/or for Commuting and Business Use and Other Personal Use are assigned to PGW management employees? If the answer is affirmative, please provide a copy of the policy.

CEPA-10. Does PGW have a written policy governing the travel (local or non-local) for which a personal company car may be used? If the answer is affirmative, please provide a copy of the policy.

CEPA-11. What costs, if any, associated with operating a personal company car for Commuting and Business Use only does the PGW employee assume?

CEPA-12. What costs, if any, associated with operating of a personal company car for Other Personal Use does the PGW employee assume?

CEPA-13. Provide a schedule showing on an annual basis how many PGW employees had personal company cars in FY 1996 through FY 2001 in which employees who had cars for Commuting and Business Use only are separated out from employees who had cars for Commuting, Business and Other Personal Use.

CEPA-14. Is it correct that PGW requires employees to whom a personal car has been assigned to pay the Company \$0.13 per mile when the car is being used for Other Personal Use? If the response is yes, explain why PGW receives only \$0.13 per mile from employees who use a company car for personal use when Federal Government employees receive government reimbursement for authorized use of their private cars for business use at the rate of \$0.325 per mile (41 CFR §301-10.303).

CEPA-15. When did PGW last update the amount per mile that it charges employees for usage of company cars for "Other Personal Use"?

CEPA-16. What PGW written Procedure or Regulation states the per mile charge for "Other Personal Use"?

CEPA-17. State the annual cost to PGW of providing personal company cars to PGW management employees in FY 2000 for Commuting and Business Use only. Provide workpapers explaining how this cost was calculated.

CEPA-18. State the annual cost to PGW of providing personal company cars to PGW management employees in FY 2000 for Commuting, Business and Other Personal Use. Provide workpapers explaining how this cost was calculated.

CEPA-19. What is the total average annual cost to PGW of having a sedan in its fleet? Please break down this annual average cost into relevant categories of costs including but not limited to fleet management, insurance, maintenance costs, including payroll, gas and oil and depreciation (if owned by PGW) or lease costs.

CEPA-20. Does PGW have any written policy other than No. 776-01 defining when an employee qualifies for:

- (a) a car for Commuting Use and Business Use (if so provide a copy)
- (b) a car for Commuting Use, Business Use and Other Personal Use (if so provide a copy).

CEPA-21. Provide a copy of all current contracts between PGW and Aramark concerning the PGW cafeteria and/or provision of food services to the company

CEPA-22. If PGW subsidizes the cost of employee meals, state the amount of the subsidy in FY 2000

CEPA-23. Provide the formula which is used to determine the amount of any subsidy to Aramark or refund from Aramark in connection with operation of the cafeteria and other food services at PGW.

CEPA-24. With regard to the formula set forth in response to CEPA-23 regarding food services, provide a schedule showing Total Sales, Net Costs, Profit/Loss, Management Fee and Subsidy/Refund for each year beginning in FY 1996 through FY 2000.

CEPA-25. Provide a schedule showing the amounts budgeted for the cafeteria Subsidy/Refund in FY 1996 through FY 2001.

CEPA-26. With regard to the Aramark contract provided in response to CEPA-21, has there been any change in the provisions concerning the commissions arising from cigarette sales provided to PGW from Aramark's vending machines since 1981?

CEPA-27. In the past ten years, has PGW solicited bids for the food service contract current held by Aramark? If the response is negative, provide details concerning efforts by PGW in the last ten years to assess the economic reasonableness of its food service arrangements for the cafeteria and for PGW based vending machines.

CEPA-28. Provide a list of all purchased services contracts other than contracts for legal services under which services are being provided in FY 2001 pursuant to a contract negotiated and executed prior to September 1, 1990.

CEPA-29. With regard to the cafeteria provide a schedule showing

(a) for FY1996 through FY 2000 the annual costs to PGW for cleaning exterminating garbage and trash removal services and repair and replacement of food service fixtures in fulfillment of the obligations set forth on page 2 of the February 14 1974 Agreement between PGW and ARA Services Inc.

(b) the amount budgeted for FY 2001 for the costs set forth in subsection (a) of this Interrogatory

CEPA-30. Provide a schedule showing the amounts paid to Deloitte and Touche as outside auditors for each year FY1996 to FY2000 and budgeted for FY2001.

CEPA-31. Provide copies of Deloitte and Touche's annual post-audit "letter to management" for each of the last five fiscal years. If the post-audit letter regarding any of the years FY1996 through FY2001 has still not been issued explain why.

CEPA-32. Explain the current PGW policy regarding payment for employee professional membership dues. If there is a written policy provide a copy of the policy.

CEPA-33. (a) How much did PGW spend in FY 2000 for professional dues for its employees?

(b) For how many employees did PGW pay for professional dues in FY 2000?

(c) Is there an annual limit for individual employees on the number of professional associations for which PGW will pay a membership fee?

(d) How much has PGW budgeted for FY 2001 for professional dues for its employees? Provide a breakdown of this amount by Department.

CEPA-34. Provide a detailed itemization of the PGW dues and subscriptions contained in the proposed FY 2001 budget for Legal and Regulatory Affairs, Operations, Marketing and Supply Services, Finance, Customer Service, Information Technology, and Human Resources. In connection with those itemizations, indicate which dues and subscriptions expenses constitute renewals and which ones are proposed expenditures which were not made in FY 2000.

CEPA-35. For PGW's proposed subscriptions or memberships in the Delaware Valley Regional Planning Commission, Greater Philadelphia First, PENJERDEL, American Gas Cooling Center, Clean Cities, Natural Gas Vehicle Coalition, E-Source and ASHREA (Corporate), provide:

- (a) the annual cost of the membership or subscription;
- (b) whether PGW has previously subscribed or belonged to the association;
- (c) identification of tangible benefits from arising from the previous membership or subscription;
- (d) a cost benefit analysis which would justify such expenditure;

CEPA-36. For each of the following organizations, Delaware River Valley Regional Planning Commission, Greater Philadelphia First, and PENJERDEL, state:

- (a) whether the City of Philadelphia and/or a City Department has a membership;
- (b) whether that member pays the same membership or subscription fee as PGW;
- (c) why the City of Philadelphia and/or a City Department with membership in the organization could not fairly represent/advocate for PGW interests; (d) whether PGW has discussed the possibility of the City or a particular City Department representing/advocating for PGW interests in these membership associations.

CEPA-37. Provide a detailed breakdown of the amount spent on public relations consulting contracts and advertising purchased services in FY 2000 and budgeted for FY2001.

CEPA-38. For each advertising and public relations related purchased services contract for which expenditures were made in FY 2000 provide:

- (a) the name of the vendor;
- (b) the service provided;
- (c) a copy of the contract pursuant to which the service was provided;
- (d) the amount paid by PGW pursuant to the contract in FY 2000;
- (e) information concerning whether the contract was competitively bid.

CEPA-39. With regard to Beach Advertising:

- (a) explain what services Beach Advertising performed in FY 2000 in connection with the LIHEAP program for which it received payment of \$110,000;
- (b) provide a copy of the contract with Beach Advertising;
- (c) state the amount included in the FY 2001 budget for the same services.

CEPA-40. Describe the types of accounts for which PGW obtains purchased collection services.

CEPA-41. Are there any circumstances in which PGW seeks purchased collection services for a residential account in which the customer is delinquent, but still receiving service at that account? If the answer is affirmative, explain when PGW uses purchased collection services for such accounts.

CEPA-42. Provide a schedule detailing purchased services expenses for collection services provided to PGW in FY 2000. For each contract, provide

(a) the name of the vendor;

(b) state the service provided;

(c) a copy of the contract pursuant to which the service was provided;

(d) state the amount paid by PGW pursuant to the contract in FY 2000;

(e) state whether the contract was competitively bid;

(f) state whether PGW has contracted for collection services with this vendor to be provided in FY 2001 and provide a copy of the relevant contract.

CEPA-43. How much has PGW budgeted for purchased collection services in FY 2001?

CEPA-44. State how many PGW residential customers notified PGW of bankruptcy filings in FY 2000? In the first quarter of FY 2001?

CEPA-45. Is PGW currently able to automatically prorate the bills of customers who have filed bankruptcy, so as to prevent billing them post bankruptcy filing for gas consumed prior to the filing of a bankruptcy petition? If the answer is no, state what procedures PGW uses to ensure that such customers receive bills which only require them to pay for gas consumed after the filing of the bankruptcy petition and where applicable, provide an assurance of future payment.

CEPA-46. (a) In FY 2000, how many times did PGW agree to pay, or was ordered to pay damages or attorney's fees to bankruptcy debtors and/or counsel arising from violations of the Bankruptcy Code's automatic stay (11 U.S.C. §362) or the Bankruptcy Code's discharge injunctions (11 USC §§ 727, 1328)?

(b) As of an administratively convenient date not earlier than December 1, 2000, state how many times in FY 2001 PGW agreed to pay, or was ordered to pay damages or attorney's fees to bankruptcy debtors and/or counsel arising from violations of the Bankruptcy Code's automatic stay (11 U.S.C. §362) or the Bankruptcy Code's discharge injunctions (11 USC §§ 727, 1328).

CEPA-47. In months in which there is not a change in the Gas Cost Rate, is PGW currently capable of making adjustments in the customer's budget amount required under the PGW Tariff to be made in the fourth, eighth and twelfth months of the customer's budget billing plan when meter readings indicate that annual consumption will be more than 10% higher than the annual budget?

CEPA-48. If PGW receives a rate increase of \$65 million:

(a) state PGW's estimate of how many residential customers will become delinquent on their bills due to the additional charges:

(b) state in dollars PGW's estimated incremental increase in uncollectibles arising from this base rate increase.

CEPA-49. Provide a schedule showing the number of new enrollments in CRP for each month from September 1999 through January 31, 2001.

CEPA-50. Provide a schedule showing the number of new enrollments in Budget Billing for each month from September 1999 through January 31, 2001.

CEPA-51. Provide copies of all bill inserts, bill messages and print and electronic media announcements distributed or broadcast since November 21, 2000, concerning the availability of PGW's Customer Responsibility Program for low income customers.

CEPA-52. Provide a schedule showing how many informal complaints involving PGW were pending before the PUC's Bureau of Consumer Services as of August 1, 2000, September 1, 2000, October 1, 2000, November 1, 2000, December 1, 2000, January 1, 2001 and February 1, 2001.

CEPA-53. Provide a schedule showing how company reports concerning informal complaints by PGW customers were provided by PGW to the PUC's Bureau of Consumer Services in August, 2000, September 2000, October 2000, November 2000, December 2000, January 2001 and February 2001.

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

Attorneys for CEPA et al.

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

CERTIFICATE OF SERVICE

ORIGINAL

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

VIA FIRST CLASS MAIL AND/OR E-MAIL

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SECRETARY'S BUREAU



Mark S. Stewart, Esquire

Dated: March 21, 2001



COMMUNITY
LEGAL SERVICES, INC.

ORIGINAL

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

DOCUMENT
FOLDER

March 22, 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

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 Motion of CEPA et al. to Dismiss Objections and to Compel Answers to Interrogatories CEPA-1 through 21, 23 through 30, 32 through 42, and CEPA-49 of CEPA et al.'s First Set of Interrogatories.

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

Very truly yours,

PHILIP A. BERTOCCI

Attorney for CEPA et al.

cc: Certificate of Service

Enclosures

RECEIVED

MAR 22 2001

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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MAR 22 2001

**Pennsylvania Public Utility
Commission**

v.

Philadelphia Gas Works

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:
:
:
:

Docket Number

R-00006042

R-00006042C0001 et al.

A PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**MOTION OF CEPA et al. TO DISMISS OBJECTIONS AND TO COMPEL ANSWERS
TO INTERROGATORIES CEPA-1 through 21, 23 through 30, 32 through 42, and
CEPA-49 OF CEPA et al.'s FIRST SET OF INTERROGATORIES**

Pursuant to 52 Pa. Code §5.342, CEPA et al. hereby move that the Presiding Officer, Administrative Law Judge Cynthia Williams Fordham, dismiss the Objections of Philadelphia Gas Works ("PGW" or ""Company") and direct PGW to answer Interrogatories CEPA-1 through CEPA-21, CEPA-23 through CEPA-30, CEPA-32 through CEPA-42 and CEPA-49 of CEPA et al.'s First Set of Interrogatories.

In support of their Motion, CEPA et al. state as follows:

I. CEPA-1 through 21, CEPA-23 through 30, CEPA-32 through 42

1. CEPA et al. served its First Set of Interrogatories on PGW on February 2, 2001.

2. On February 15, 2001, PGW served its written objections to CEPA-1 through CEPA 21, CEPA-23 though CEPA-30 and CEPA-32 through CEPA-42 (hereinafter collectively the "CEPA Interrogatories").

**DOCUMENT
FOLDER**

3. The CEPA Interrogatories read, in their entirety, as follows:

CEPA-1. What is the current PGW policy regarding company payment for employee parties and celebrations? If PGW has a written policy concerning this subject, provide a copy of the policy. Provide a detailed breakdown of the amount spent in FY2000 on such parties and the amount budgeted for FY2001.

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CEPA-6. Provide the year, make, model, and company number, if any, for every marked PGW vehicle and indicate the PGW department to which each such vehicle is assigned.

CEPA-7. The Company has indicated in the response to KB-50 in the PGW FY 2001 Consolidated Budget Proceedings before the Philadelphia Gas Commission that of 31 marked vehicles assigned to "Credit Collection," all but three are either 3/4 ton vans or 1/2 ton pickup trucks. The three exceptions are Plymouth Acclaim sedans.

(a) Update this information.

(b) Provide information concerning the cost per mile of operating pickups and vans as opposed to a sedan like a Plymouth Acclaim.

(c) Explain why PGW uses vans and pickup trucks for Credit/Collections work.

CEPA-8. In PGW's FY 2001 Consolidated Budget Proceedings, PGW produced the

document attached as Exhibit A in partial response to KB-50 which, inter alia, requested PGW to provide "for unmarked vehicles, the make and model of each car ... as well as the person and title of the person to whom the car is assigned."

(a) Update the information on Exhibit A as of an administratively convenient date, no earlier than December 1, 2000.

(b) For each vehicle, indicate whether it has been assigned to a particular employee (1) for Commuting and Business Use only; (2) for Commuting, Business Use and Other Personal Use; (3) for Business Use only.

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(a) explain what services Beach Advertising performed in FY 2000 in connection with the LIHEAP program for which it received payment of \$110,000;
(b) provide a copy of the contract with Beach Advertising;
(c) state the amount included in the FY 2001 budget for the same services.

CEPA-40. Describe the types of accounts for which PGW obtains purchased collection services.

CEPA-41. Are there any circumstances in which PGW seeks purchased collection services for a residential account in which the customer is delinquent, but still receiving service at that account? If the answer is affirmative, explain when PGW uses purchased collection services for such accounts.

CEPA-42. Provide a schedule detailing purchased services expenses for collection services provided to PGW in FY 2000. For each contract, provide

(a) the name of the vendor;
(b) state the service provided;
(c) a copy of the contract pursuant to which the service was provided;
(d) state the amount paid by PGW pursuant to the contract in FY 2000;

- (e) state whether the contract was competitively bid;
- (f) state whether PGW has contracted for collection services with this vendor to be provided in FY 2001, and provide a copy of the relevant contract.

4. PGW objected to each of the CEPA Interrogatories in a similar manner. Printed below, as an example, is PGW's objection to CEPA-1. The boldfaced type indicates the text that appears differently in PGW's objections in order to provide specific reference to the content of the interrogatory to which objection has been made.

PGW objects to this question because it seeks legally irrelevant information and cannot lead to the production of admissible information
The Interrogatory is clearly directed at the appropriateness of expenditures provided for PGW's operating budget. According to 66 Pa.C.S. §2212(s), the Commission shall not abrogate or limit the City of Philadelphia's ability to determine PGW's budgets. The Philadelphia Gas Commission ("PGC"), a commission of the City, retains the authority to approve PGW's annual operating budget. While CEPA's Interrogatory may be relevant and appropriate in the budget proceedings before the PGC, it is beyond the scope of this proceeding.

Additionally, the Commission must, according to Section 2212(e) of the Public Utility Code, apply the same ratemaking methodology and requirements as were applicable to PGW prior to its assumption of jurisdiction and set rates so as to allow PGW to satisfy its bond covenants. Under that methodology and those requirements, once the PGC set [sic] PGW's budget, the Management Agreement Ordinance and the bond covenants required that rates be set so as to fund the operating budget. Thus, as the PGC continues to set PGW's budget, this proceeding is not to question the wisdom of PGW's **allocations and expenditures on employee functions**. Instead, this proceeding is to ensure that the identified expense has traditionally been included in PGW's operating budget and to set rates so as to cover the operating budget as approved.

5. According to the Natural Gas Choice and Competition Act ("Gas Choice Act"), city natural gas distribution operations are "subject to regulation and control by the commission with the same force as if the service were rendered by a public utility." 66 Pa.C.S. §2212(b). Moreover, Sections 2212(d) and 2212(e) of the Gas Choice Act

confer upon the PUC exclusive jurisdiction over PGW's rates and tariff. 66 Pa.C.S. §§2212(d), 2212(e)..

6. Prior to the transfer of jurisdiction over PGW's rates and Tariff from the Philadelphia Gas Commission to the PUC, the ultimate standard for determining PGW's rates was the constitutionally based "just and reasonable" standard. Because it is constitutionally based, the "just and reasonable" standard continues to govern the ultimate determination of PGW's rates. As the U.S. Supreme Court has held, regardless of the particular ratemaking "theory" or "methodology," no base rate is valid unless its "total effect" or "impact" is "just and reasonable." Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602, 64 S.Ct.1 281, 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").

7. As a matter of law, the Commission may not approve a proposed base rate increase, even one which has been formulated according to the specific provisions of the Management Agreement, unless the resulting rate itself satisfies the paramount "just and

reasonable” standard. Public Advocate v. Philadelphia Gas Commission, -- Pa. --, 674 A.2d 1056, 1062 (1996).

8. The Commission itself in the prior Interim Base Rate Case (PUC v. PGW, R-00005654) and in this case has affirmed that ultimate applicable standard for determination of PGW’s base rates is the “just and reasonable” standard. See February 8, 2001 Order at Ordering Paragraphs 1 and 3.

9. The CEPA Interrogatories are aimed at determining whether the PGW FY 2001 test year budget, which is one basis for the determination of the Company’s base rates, is a reasonable and prudent budget, or whether it contains costs which are unreasonable and imprudent and which may not be passed on to ratepayers through base rates. Thus, the CEPA Interrogatories make inquiry concerning: expenses for employee parties and celebrations; post retirement non-pension benefits; expenses for membership fees for the company and individual employees for country club, gym club dining club and other non-professional associations; expenses for providing Company cars to approximately 40 management personnel for commuting or for commuting and personal use; PGW’s subsidization of its employee cafeteria; personal services contracts; payments for employee professional membership dues; PGW expenses for dues and subscriptions to various associations and journals/information services; advertising and public relations expenses. The information sought is clearly “legally relevant” because such information would shed light upon the prudence of the expenses which serve as the partial basis for PGW’s base rate increase request.

10. PGW’s contention that inquiry into the prudence of the Company’s expenses is “beyond the scope of this proceeding,” would have the practical effect of transforming the ratemaking function entrusted by law to the Commission from a broad inquiry

involving full exercise of Commission discretion, into a narrow ministerial act. Such an interpretation of the Gas Choice Act would denature the ratemaking function. In its essence, ratemaking constitutes an exercise of legislative power delegated to the PUC by the General Assembly and necessarily implies a range of legislative discretion. Duquesne Light Co. v. Pennsylvania Public Utility Commission, 176 Pa.Super. 568, 107 A.2d 745 (1954); City of Philadelphia v. Pennsylvania Public Utility Commission, 174 Pa.Super. 641, 102 A.2d 428 (1954). The PUC acting under the statutory authority to fix reasonable rates performs a quasi-legislative function. Cheltenham & Abington Sewerage Co. v. Pa.P.U.C., 344 Pa. 366, 25 A.2d 334 (1942), *appeal dismissed*, 317 U.S. 588, 63 S.Ct. 38, *rehearing denied*, 317 U.S. 707, 63 S.Ct. 153, *cert. denied*, 317 U.S. 5343, 63 S.Ct. 39.

11. Section 2204(i) of the Gas Choice Act, 66 Pa.C.S. §2204(i), requires that PGW submit to a PUC Management Audit. Consistent with this provision, the General Assembly's determination that jurisdiction over PGW's rates and tariff should be transferred to the PUC reflects an intent to reform a utility notorious for high rates, insufficient controls on spending and a low level of service. This manifest intent is inconsistent with the astonishing theory put forth by the City and the Company that the PUC's role in ratemaking does not extend to questioning the "wisdom" of any of the expenses contained in PGW's approved budgets. If the PUC is limited to reviewing PGW's budgets to assure that all itemized expenses have been "traditionally ...included" in PGW's operating budget and to provide through rates the funds to pay for those expenses, the reforming intent of the Act would be frustrated, and the PUC would be reduced to ratifying "business as usual."

12. The information sought by the CEPA Interrogatories is necessary to assess the prudence and reasonableness of portions of PGW's test year operating budget. The

information sought is clearly discoverable under 52 Pa.Code §5.321(c) because it is not privileged and is “relevant to the subject matter involved in the pending action” and/or “appears reasonably calculated to lead to the discovery of admissible evidence.” This is a broad standard which is to be liberally applied. Pa.P.U.C. v. Equitable Gas Co., 61 Pa. P.U.C. 468, 477 (1986); *accord*, Pittsburgh Bd. of Public Education v. M.J.N., 105 Pa.Cmwlth.397, 403,524 A.2d 1385, 1388 (1987).

13. CEPA et al. believe that the most efficient and sensible way to handle the dispute concerning the CEPA Interrogatories would have been for PGW to promptly provide the information and documents requested, while explicitly reserving the Company’s right to object to the admissibility of the information and documents provided, without requiring a negotiated stipulation.

II. CEPA-49

14. CEPA-49 requested PGW to: "Provide a schedule showing the number of new enrollments in CRP for each month from September 1999 through January 31, 2001." PGW answered as follows: "PGW does not have reports that show the number of new enrollments in CRP per month for the period in consideration. Nonetheless, the CRP participation level has increased from 46, 770 in September of 1999 to 55,764 in January 2001, which represents more than 11% of PGW residential customer base."

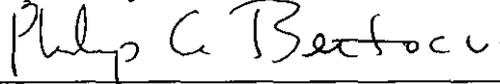
15. PGW’s answer is not responsive. The question was designed to obtain information which might provide a basis for judgment concerning the sufficiency of the information which PGW provides to customers concerning the availability of the CRP program, especially in light of the PUC November 22, 2000 Order (Pa.P.U.C. v. PGW,

R-00005619) directing PGW to provide bill inserts informing customers about the benefits of budget billing and other programs (including CRP, PGW's customer assistance program). November 22, 2000 Order, at p. 18 and Ordering Paragraph 1. Moreover, the fact that PGW does not "have reports" addressing this precise question does not excuse the Company from using the resources at its disposal to answer the interrogatory.

16. CEPA et al.'s counsel has attempted to obtain a supplemental response from PGW but no such response has been forthcoming.

WHEREFORE, for the above reasons, CEPA et al. respectfully request that the Presiding Officer, Administrative Law Judge Cynthia Williams Fordham, dismiss the Philadelphia Gas Works' Objections to the CEPA Interrogatories, and compel PGW to respond to Interrogatories CEPA-1 through CEPA-21, CEPA- 23 through CEPA-30, CEPA-32 through CEPA-42, and CEPA-49. .

Respectfully submitted,



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

Attorneys for CEPA et al.

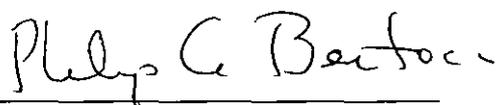
Date: March 22, 2001

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

VERIFICATION

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

Date: 3/22/01



PHILIP A. BERTOCCI

R-00006042

CERTIFICATE OF SERVICE

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

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A PUBLIC UTILITY COMMISSION
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March 23, 2001

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**DOCUMENT
FOLDER**

RECEIVED
01 MAR 23 PM 3:22
PA PUC
SECRETARY'S BUREAU

RE: Pa PUC v. PGW, Docket No. R-00006042

Dear Phil:

On behalf of Philadelphia Gas Works, enclosed please find its response to Consumers Education and Protective Association's et al. ("CEPA") Interrogatory Set I, No. 46 with regard to the above referenced matter.

Very truly yours,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/lww
Enclosure

cc: All Parties of Record w/enc.
James McNulty, Secretary Certificate of Service only

DSH:24285.1

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).

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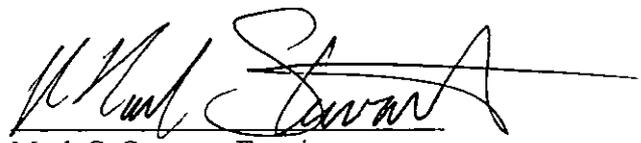
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Wendell F. Holland, Esq.
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& Hippel LLP
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A handwritten signature in black ink, appearing to read "Mark S. Stewart", with a long horizontal flourish extending to the right.

Mark S. Stewart, Esquire

Dated: March 23, 2001

**RESPONSE TO OFFICE OF CONSUMERS EDUCATION
AND PROTECTIVE ASSOCIATION DATA REQUEST
REGARDING PGW'S RATE PROCEEDING**

Question CEPA-1-46 -a: (a) In FY 2000, how many times did PGW agree to pay, or was ordered to pay, damages or attorney's fees to bankruptcy debtors and/or counsel arising from violations of the Bankruptcy Code's automatic stay (11 U.S.C. Section 362) or the Bankruptcy Code's discharge injunctions (11 U.S.C. Sections 727, 1328).

Response Provided By: Janet I. Moore, Senior Attorney

Response: During fiscal year 2000, PGW paid \$1,750 pursuant to a consent order for violations of the automatic stay.

Question CEPA-1-46-b: (b) As of an administratively convenient date not earlier than December 1, 2000, state how many times in FY 2001 PGW agreed to pay, or was ordered to pay damages or attorney's fees to bankruptcy debtors and/or counsel arising from violations of the Bankruptcy Code's automatic stay (11 U.S.C. Section 362) or the Bankruptcy Code's discharge injunction (11 U.S.C. Sections 727, 1328).

Response Provided By: Janet I. Moore, Senior Attorney

Response: PGW has not made any payments, in settlement or pursuant to Court Order, for violations of the Bankruptcy Code automatic stay or discharge injunctions in FY 2001. However, PGW is currently defending a Motion before the U.S. Bankruptcy Court in which the Debtor requests that the Court hold PGW liable for sanctions for violations of the automatic stay. "

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March 23, 2001

VIA HAND DELIVERY

Johnnie Simms
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Office of Trial Staff
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01 MAR 23 PM 3:22
PA.P.U.C.
SECRETARY'S BUREAU

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

Dear Mr. Simms:

Enclosed please find the following PGW response to OTS Interrogatory TRF-30E.

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)

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).

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Daniel Clearfield, Esquire

Dated: March 23, 2001

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March 23, 2001

VIA FEDERAL EXPRESS

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MAR 23 2001

PUBLIC UTILITY COMMISSION
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 Interrogatory Set V, No. 18 with regard to the above-referenced matter.

A copy of this filing is being served in accordance with §1.54 on the participants and in the manner set forth in the attached Certificate of Service.

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

Respectfully,

Wendell F. Holland
WENDELL F. HOLLAND

WFH/swwc
Enclosure

cc: Parties on attached Service List (w/ encls.)

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**OBJECTION OF PHILADELPHIA GAS WORKS
TO OFFICE OF CONSUMER ADVOCATE
INTERROGATORY SET V, NO. 18**

Philadelphia Gas Works ("PGW"), pursuant to 52 Pa. Code §§ 5.342 and 5.349,
objects to Office of Consumer Advocate ("OCA") Interrogatory Set V, No. 18, as
follows:

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PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

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- 18) a) Please provide a status update on any on-going discussions with the union concerning the new labor contract which is to be negotiated this spring. At the current time, to the degree known, what will be the contract provisions which PGW will seek to obtain in the negotiation?
- b) Finally, what contingency plans does PGW have in the event of a prolonged strike and what will be the impact of a prolonged strike on PGW's operating budget?

OBJECTION:

PGW objects to this interrogatory because it relates to sensitive, privileged, and/or proprietary information the disclosure of which may result in unreasonable hardship -- especially in connection with on-going negotiations with the union -- and thus is burdensome, oppressive and would cause unreasonable annoyance.

Respectfully submitted,



WENDELL F. HOLLAND

Obermayer Rebmann Maxwell & Hoppel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103
(215) 665-3000

Dated: March 23, 2001

ORIGINAL

CERTIFICATE OF SERVICE

I herby 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 FEDERAL EXPRESS

James McNulty, Secretary
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FIRST CLASS MAIL, POSTAGE PREPAID

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Steven C. Gray, Esquire Office of Small Business Advocate Commerce Building, Suite 1102 300 North 2 nd Street Harrisburg, PA 17101 (717) 783-2525 Fax (717) 783-2831 sgray@state.pa.us	Phillip A. Bertocci, Esq. Community Legal Services, Inc. 1424 Chestnut Street, 4 th Floor Philadelphia, PA 19102-2505 (215) 981-3702 Fax (215) 981-0435 pbertocci@clsphila.com

<p>David M. Kleppinger, Esquire Charis M. Burak, Esquire McNEES, WALLACE, NURICK 100 Pine Street P.O. Box 1166 Harrisburg, PA 17108-1166 (717) 232-8000 Fax (717) 237-5300 <u>dkleppin@mwn.com</u> <u>cburak@mwn.com</u></p>	
<p>Jackie Sparkman, Esquire School District of Philadelphia Office of General Counsel 2130 Arch Street, 5th Floor Philadelphia, PA 19103 (215) 988-0577 (215) 988-0579 (fax)</p>	<p>Richard Lelash Financial and Regulatory Consultant 18 Seventy Acre Road Redding, CT 06896 (203) 438-4659 (203) 431-9625 (fax) LELASH@SPRINT.COM</p>
<p>Craig A. Doll, Esq. 25 North Front Street, 2nd Floor Harrisburg, PA 17101-1606 (717) 230-9555 Fax (717) 230-9750 <u>Cdoll76342@aol.com</u></p>	<p>Brian Kalcic Excel Consulting Suite 720-T 225 S. Meramec Avenue St. Louis, MO 63105 (314) 725-2511 (314) 725-2022 (fax)</p>
<p>Lance Haver 6048 Ogontz Avenue Philadelphia, PA 19141</p>	<p>Richard A. Baudino J. Kennedy and Associates Inc. 570 Colonial Park Drive, Suite 305 Roswell, GA 30075 (770) 992-2027 (770) 992-0806 <u>rbaudino@jkenn.com</u></p>

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STEPHEN W.W. CHING, JR., ESCOUTRE

Dated: March 23, 2001

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March 27, 2001

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026

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works;
Docket No. R-00006042**

Dear Mr. Clearfield:

Enclosed are two (2) copies of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") Interrogatories - Set III to Philadelphia Gas Works in the above-referenced proceeding. In addition, these Interrogatories are being served via electronic mail in WordPerfect 7.0 format.

Please endeavor to forward responses in an organized manner as they are completed; it is not necessary to await completion of all responses prior to forwarding those completed more quickly. In addition, please communicate any objections or questions that you may have regarding these Interrogatories as quickly as possible.

Copies of these Interrogatories are being served on all parties consistent with the attached Certificate of Service. Thank you for your attention to this matter.

Very truly yours,

MCNEES, WALLACE & NURICK

By *Charis M. Burak*
Charis M. Burak

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Enclosure
CMB/lhe

c: James J. McNulty, Secretary (Transmittal Letter and Certificate of Service)
Certificate of Service

CERTIFICATE OF SERVICE

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

VIA FIRST CLASS MAIL

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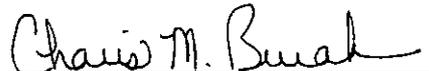
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Dated this 27th day of March, 2001, in Harrisburg, Pennsylvania.

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March 28, 2001

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SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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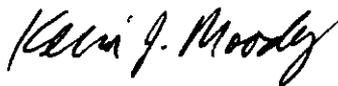
RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket Nos. R-00006042 and R-00006042C0001 et al.

Dear Mr. McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Answer to CEPA *et al.*'s Motion to Dismiss Objections and to Compel Answers to Interrogatories in 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,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jlg

cc: Parties of record (w/encl.)
Cynthia W. Fordham, ALJ

DSH:26732.1

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 28 2001

PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

In Re: Petition of Philadelphia Gas Works for :
Waiver of Certain Notification and Filing :
Requirements and Establishment of : Docket Nos. R-00006042
Expedited Hearing Schedule for Base : and R-00006042C0001 *et al.*
Rate Proceeding :

PHILADELPHIA GAS WORKS' ANSWER TO CEPA, *et al.*'s
MOTION TO DISMISS OBJECTIONS AND TO COMPEL
ANSWERS TO CEPA'S INTERROGATORIES, SET I

The Motion to Compel of CEPA, *et al.* demands responses from Philadelphia Gas Works ("PGW") to interrogatories seeking information that is irrelevant in this proceeding because Section 2212 of the Public Utility Code creates a unique ratemaking scheme for PGW that places off limits before this Commission the kinds of ratemaking adjustments CEPA intends to recommend based upon the information sought by these discovery requests. The Office of Consumer Advocate ("OCA") has moved to compel responses to interrogatories seeking similar information for the same purpose, and PGW's response to the OCA raises the same issues as this response to CEPA's motion.

PGW also filed a Motion in Limine requesting a ruling from the Administrative Law Judge ("ALJ") concerning the proper ratemaking methodology and requirements to be applied by the Pennsylvania Public Utility Commission ("PUC" or "Commission"). PGW's Motion in Limine goes to the heart of PGW's objections to CEPA's (and the OCA's) interrogatories, and rulings on both CEPA's and the OCA's motions to compel should be deferred until the ALJ rules on the Motion in Limine in order to assist the parties in determining in advance the testimony

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and adjustments that may be submitted by the parties in response to PGW's base rate request, thereby avoiding the expenditure of time and energy in advocating unnecessary and legally irrelevant issues and adjustments — and unnecessary time and energy in discovery disputes.

Just as important, the ALJ and the PUC should rule on the Motion in Limine before the motions to compel in order to resolve any remaining ambiguity that may exist regarding the scope of the PUC's ratemaking authority in the wake of the PUC's Interim Settlement Order¹ which, 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."² This acknowledgment would seem to require approval of the Motion in Limine and denial of CEPA's and the OCA's motions to compel, and reinforcement of this acknowledgment now would benefit all parties, as well as PGW and its customers, for the reasons set forth above.

Notwithstanding the irrefutable legal requirements set forth below and in PGW's Motion in Limine, as an accommodation to CEPA, PGW is willing to provide the requested data (except for CEPA-49, to which PGW has fully responded), subject only to a stipulation by CEPA 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 adjustments. Such a stipulation would appear to be the most sensible way of

¹ Order entered February 21, 2001 at Docket Nos. R-00005654 and R-00005619.

² Id. at 7, ¶ 1; see also Joint Petition for Settlement at ¶s 25 and 28.

handling this difference of opinion without further burdening the parties or the ALJ, pending resolution of PGW's Motion in Limine.

In specific response to CEPA'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, responding to CEPA'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 — CEPA-1 through 21, 23 through 30, 32 through 42.

These 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.³ By CEPA's own admission, these interrogatories "are aimed at determining whether the PGW FY 2001 test year budget, which is one basis for the determination of the Company's base rates, is a reasonable and prudent budget, or whether it contains costs which are unreasonable and imprudent and which may not be passed on to ratepayers through base rates." CEPA Motion at 9. Whether PGW's FY 2001 budget "is a reasonable and prudent budget" is for the Philadelphia Gas Commission to decide, not the PUC. Therefore, CEPA's interrogatories clearly seek irrelevant information and are not reasonably calculated to lead to the discovery of admissible evidence

³ See, e.g., CEPA-7, 14-16, 29(a) and 36.

In its Motion, CEPA asserts that under the Natural Gas Choice and Competition Act, PGW is “subject to regulation and control by the commission with the same force as if the service were rendered by a public utility.” Motion at ¶ 5. However, CEPA fails to include the key phrase that is determinative on these issues – “Subject to the provisions of this section [2212].” Those provisions include the commandment of Subsection 2212(e) that the PUC follow the previously applicable ratemaking methodology and requirements and ensure that PGW can satisfy its bond covenants, and Subsection 2212(s)’s reservation to the City of Philadelphia of control over PGW’s management, budgets, activities, *etc.* For the reasons set forth below, these subsections render CEPA’s interrogatories irrelevant and incapable of leading to the discovery of admissible evidence. Accordingly, responding to CEPA’s interrogatories would cause unreasonable annoyance, oppression or burden to PGW.

CEPA fails to recognize that Section 2212 subjects PGW to a unique ratemaking scheme which renders the rate case adjustments envisioned by CEPA improper for at least three reasons.

First, Subsection 2212(e) requires the Commission to 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. The PGC is expected to act on the budget very soon. Thus, CEPA’s interrogatories are in the wrong proceeding and at the wrong time.

Second, PGW’s prior ratemaking method obligated its prior 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). 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.

Finally, once the PGC acts on PGW's proposed 2000-2001 budget, the specific expenditures, programs and operations in PGW's 2000-2001 budget will be set. Under Section 2212, the PUC will be obligated to fund that budget, as approved by the PGC. 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.

PGW's legal position is hardly an "astonishing theory" (CEPA Motion at ¶11) in view of the unique ratemaking scheme for PGW. This unique scheme does indeed "narrow" the PUC's ratemaking inquiry (as CEPA admits at ¶10 of its motion), but it does not transform the PUC's ratemaking inquiry into a "ministerial act." The passthrough of PGC approved budget amounts is no different than the passthrough of other costs that are determined by agencies other than the PUC to be proper. For example, the FERC-approved prices of a gas utility's prudent gas purchases must be passed through to ratepayers, and FERC-approved electric transmission rates are not subject to revision by the PUC.

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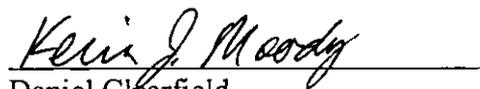
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Response to Motion to Compel — CEPA-49

PGW's answer to this interrogatory was responsive. CEPA's failure to submit the questions to which it really seeks answers does not provide a basis for requiring a further response from PGW. CEPA need only ask additional questions.

WHEREFORE, PGW respectfully requests that ALJ Cynthia Williams Fordham defer ruling on CEPA's Motion to Compel pending disposition of PGW's Motion in Limine or, in the alternative, that CEPA's Motion to Compel be summarily denied.

Respectfully submitted,



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Kevin J. Moody
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street, Suite 300
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Dated: March 28, 2001

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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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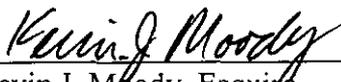
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Dated: March 28, 2001

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Docket No.:	R-00006042, R-00006042C0001 et al.		YES	NO
		Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Case Name:	Pennsylvania Public Utility Commission v.	Hearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
	Philadelphia Gas Works	Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Philadelphia, PA	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
	Doubletree Hotel	Estimated Add'l Days:		
Date:	March 28, 2001 7:00p.m.			
ALJ:	Cynthia W. Fordham	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
Reporting Firm:	Commonwealth Reporting	Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
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Doubletree Hotel		Estimated Add'l Days:		
Date:	March 28, 2001 2:00p.m.	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Cynthia W. Fordham	DATE:		
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OALJ Hearing Report

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Docket No.:	R-00006042, R-00006042C0001 et al.	Prehearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Case Name:	Pennsylvania Public Utility Commission v. Philadelphia Gas Works	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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		Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Location:	Philadelphia, PA Doubletree Hotel Roosevelt Boulevard	Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
Date:	March 29, 2001	Estimated Add'l Days:	Hearings	
		Scheduled:	3/22-3/25, 3/30, 3/31/2001	
ALJ:	Cynthia W. Fordham	RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:	43 people testified at Public Input Hearing; approx. 100 people attended; 2 petitions submitted	

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March 29, 2001

VIA TELECOPY AND FIRST CLASS MAIL

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

Dear Mr. Bertocci:

As we discussed on the telephone this morning, enclosed please find additional information in response to CEPA-49, specifically, CRP participation levels from July 1999 through January 2001. My understanding is that this additional information resolves CEPA's request in its Motion to Compel for a more responsive answer.

Please contact me as soon as possible if my understanding is incorrect. Thank you.

Very truly yours,



Kevin J. Moody
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jlg
Enclosure

cc: All Parties of Record (w/enc)
James J. McNulty (Cert. of Service only)
Hon. Cynthia W. Fordham

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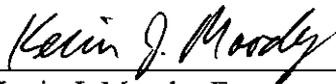
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Dated: March 29, 2001

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

Dear Mr. Mullins:

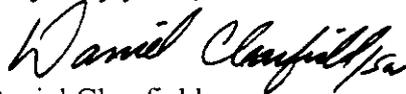
Enclosed please find PGW's responses to the following OCA Interrogatories:

Set IV - 1, 6

Set V - 1, 2, 8, 11, 12, 14 and 17.

Also enclosed are responses to **informal discovery information requests nos. 6 and 7.** By service copy of this correspondence and its attachments, the informal discovery responses are considered to have been served upon all parties. 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:26303.5

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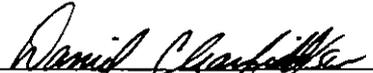
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RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Simms:

Enclosed please find the following PGW response to the following OTS Interrogatories:

RS - 7

TRF - 12(a-e), 32(e), 33(d) and 34(d).

Please note that 32(e), 33(d) and 34(d) were previously submitted. Please replace the previous versions with the enclosed responses. 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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March 30, 2001

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

Dear Ms. Burak:

Enclosed please find PGW's revised attachment to PICGUG Set II - 1(c).

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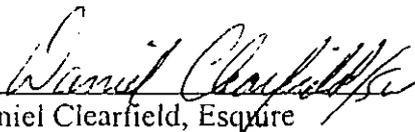
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RE: Philadelphia Gas Works' Permanent Base Rate Filing,
Docket No. R-00006042

Dear Mr. Mullins:

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Set V - 3(a-c), 4, 5, 23, 24(a-b) and 27.

Also enclosed are responses to **informal discovery information requests nos. 2 and 3.** By service copy of this correspondence and its attachments, the informal discovery responses are considered to have been served upon all parties. Thank you for your attention to this matter.

Very truly yours,

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Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

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cc: Parties of record (w/encl.)

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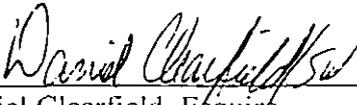
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April 2, 2001

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street
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VIA HAND DELIVERY

Re: Philadelphia Industrial and Commercial Gas Users Group v. Philadelphia Gas Works; Docket No. R-00006042

Dear Secretary McNulty:

Please find enclosed the original and three (3) copies of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") Answer to Philadelphia Gas Works Motion in Limine in the above-referenced matter.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

MCNEES, WALLACE & NURICK

By *Karen S. Miller Orner*
Charis M. Burak
Karen S. Miller Orner

DOCUMENT
FOLDER

Counsel to the Philadelphia Industrial
and Commercial Gas Users Group

Enclosure
CMB/lhe

c: Administrative Law Judge Cynthia Williams Fordham (via facsimile and first class mail)
Certificate of Service

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Pennsylvania Public Utility Commission

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

v.

Docket No. R-00006042

Philadelphia Gas Works

PHILADELPHIA INDUSTRIAL AND COMMERCIAL GAS USERS GROUP
ANSWER TO PHILADELPHIA GAS WORKS MOTION IN LIMINE

Pursuant to 52 Pa. Code Section 5.103(c), the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), by and through its attorneys, hereby files this Answer in opposition to the Philadelphia Gas Works ("PGW" or "Company") Motion In Limine. In support thereof, PICGUG states as follows:

1. On January 5, 2001, PGW filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Supplement No. 7 to the Company's tariff, which, if implemented, would increase PGW's base rates by \$65 million. PGW also filed an accompanying Petition addressing several issues, including a request for the waiver of certain filing requirements.

2. On February 8, 2001, the PUC entered an Order denying PGW's waiver request with respect to certain filing requirements in order to ensure that the parties to this proceeding obtained the opportunity to "review all relevant information pertaining to the various issues related to this proceeding." See Pennsylvania Public Utility Commission v. Philadelphia Gas Works; Docket No. R-00006042, Order (Feb. 8, 2001) (hereinafter, "February 8 Order").

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3. Pursuant to this Order, and in order to obtain the information that would otherwise be provided by the Company pursuant to Public Utility Code filing requirements, various parties to this proceeding, including PICGUG, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA") and CEPA, et al. ("CEPA") served interrogatories on PGW addressing numerous issues, including questions related to PGW's budgetary expenses.

4. On March 21, 2001, PGW filed a Motion in Limine ("Motion") in order to narrow the scope of this proceeding.¹ According to PGW, the interrogatories propounded by the intervening parties ensure that these parties will present testimony challenging the use of the "cash flow" method for setting PGW's rates and suggesting operating expense adjustments to PGW's budget.² For these reasons, PGW requests that presiding Administrative Law Judge Cynthia Williams Fordham ("ALJ") issue an Order limiting the scope of the testimony that can

¹According to the Certificate of Service attached to this Motion, PGW chose to serve the intervening parties by first class mail and/or e-mail. Although the Certificate of Service does not differentiate the method of service used for each party, PICGUG was only served via first class mail. Accordingly, 52 Pa. Code Section 1.56(b) provides that PICGUG's Answer to PGW's Motion is not due until April 3, 2001.

²PICGUG is intrigued at PGW's omniscient feat of determining those issues that will be raised in the intervening parties' direct testimony before this testimony is even filed. According to PGW, "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." See PGW Motion, p. 13. This argument is especially ironic considering that PGW chose not to provide the information required pursuant to 52 Pa. Code Sections 53.52 and 53.53, but rather, informed the intervening parties that this information could only be obtained by submitting interrogatory requests. Accordingly, the only way for the parties to obtain this information, which would normally be provided as part of a Natural Gas Distribution Company's base rate filing, was to submit interrogatories to PGW addressing these numerous issues.

be presented by the intervening parties in this proceeding.³ Although PGW requests several pronouncements from the ALJ, the Motion focuses upon two main issues: (1) whether the “cash flow methodology” is the required ratemaking methodology to be utilized in this proceeding for establishing PGW’s revenue requirement; and (2) whether PGW’s revenue requirement may be adjusted or reduced to disallow expenditures, programs or operations that were included in PGW’s prior budgets and rates by the Philadelphia Gas Commission (“PGC”).⁴

5. As discussed more fully herein, PICGUG opposes PGW’s Motion to unreasonably narrow the scope of this proceeding by limiting the issues that may be addressed by the parties. Throughout the course of the Company’s proceedings before the PUC, PGW has tried unsuccessfully to limit the scope of these proceedings in an attempt to restrain the Commission from doing anything more than “rubber stamping” the requests presented by the

³According to PGW, another purpose of this Motion is to “resolve now any remaining ambiguity that may exist regarding the scope of the PUC’s ratemaking authority” in light of the PUC’s Order approving PGW’s Petition for Settlement in the Interim Rate Proceeding. See PGW Motion, p. 3. PGW submits that if this acknowledgment is not reinforced, PGW may be required to file for appellate review. According to PICGUG’s understanding, however, the PUC’s Order approving the Joint Petition occurred in PGW’s Interim Base Rate Proceeding, docketed at R-00005654. PGW’s Motion in Limine, however, addresses issues raised in the Company’s full base rate proceeding, at Docket No. R-00006042. Because these are two distinct proceedings, PICGUG submits that PGW may not attempt to resolve outstanding matters at Docket No. R-00005654 in the context of a separately docketed proceeding. Rather, if PGW has concerns related to the PUC’s Order in the Interim Rate Proceeding, then PGW is obligated to address, or appeal, these issues at the appropriate docket instead of attempting to meld the Company’s concerns into one continuous (and thus never-ending) proceeding.

⁴Although PGW’s Motion requests six specific declarations, four of the pronouncements stem tangentially from the Company’s two main arguments. As a result, PICGUG’s Answer will focus on the two main arguments, while tangentially addressing the other related pronouncements. PICGUG would note opposition, however, to PGW’s entire Motion and all declarations requested therein, even if not specifically addressed in PICGUG’s Answer.

Company.⁵ Each time, however, the PUC has recognized that the scope of PGW's proceedings must provide the parties an opportunity to review the relevant information and investigate the lawfulness, justness and reasonableness of PGW's existing rates, rules and regulations.⁶

PICGUG submits that, as determined previously by the PUC, the parties in this proceeding must be provided the opportunity to review and address all of the relevant information needed in order for the PUC to make an informed decision regarding PGW's base rate proceeding. See Feb. 8 Order, p. 11.

6. The Commonwealth Court of Pennsylvania ("Commonwealth Court") has held that a Motion in Limine may be presented in a pending matter whereby exclusion is sought in order to ensure the elimination of anticipated prejudicial evidence, remove extraneous issues from the underlying proceeding, preclude references to prejudicial matters, or prevent encumbering the record with immaterial matters. See Commw. of Pa. v. Pikur Enterprises, Inc., 596 A.2d 1253 (Pa. Commw. 1991).

7. PICGUG submits that the information sought to be excluded by PGW (i.e., any references to ratemaking methodology outside of "cash flow" or the Company's budgetary expenditures) is not prejudicial or extraneous, nor would this evidence encumber the record with immaterial matters. Rather, the information sought to be excluded by PGW would only provide

⁵See February 8 Order (finding that PGW could not seek a blanket waiver from additional filing requirements); see also Petition of Philadelphia Gas Works for Establishment of Interim Rate Procedures and for a Declaratory Order; Docket No. P-00001831, Order Establishing Interim Rate Procedures (Aug. 17, 2000) (denying the request of PGW for a Commission declaration limiting the scope of the expedited interim rate proceeding).

⁶See id.

the PUC with all of the relevant information needed in order to make a full and complete determination with respect to the Company's base rate proceeding. Accordingly, PGW's Motion should be denied.

RATEMAKING METHODOLOGY

8. Section 2212(e) of the Natural Gas Choice and Competition Act ("Competition Act") provides the following with respect to the methodology to be employed by the PUC after the transfer in jurisdiction of PGW from the PGC.

Notwithstanding any provision of this title to the contrary, in determining the city natural gas distribution operation's revenue requirement and approving overall rates and charges, the commission shall follow the same ratemaking methodology and requirements that were applicable to the city natural gas distribution operation prior to the assumption of jurisdiction by the commission, and such obligation shall continue until the date on which all approved bonds have been retired, redeemed, advance refunded or otherwise defeased.

66 Pa. C.S. § 2212(e). The purpose of this provision was to provide PGW with some level of certainty with respect to the ratemaking methodology to be utilized by the PUC until the Company's bonds are retired. PICGUG acknowledges that the methodology utilized by the PGC in previous PGW proceedings, as included in the Management Agreement, was the cash flow methodology. Section 1301 of the Public Utility Code, however, requires that "[e]very rate made, demanded, or received by any public utility...shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa. C.S. §1301. Accordingly, Section 1301 must be balanced with the requirements of Section 2212 in order to ensure that PGW's customers are subject to rates that conform with all of the requirements set forth in the Public Utility Code.

9. The level of certainty to be provided by the Competition Act was not intended to eclipse the PUC's responsibility to ensure that PGW's rates are just and reasonable. Although PGW claims that the cash flow methodology can produce rates that are just and reasonable, the statute obligates the Commission to determine that the actual rates resulting from PGW's base rate proceeding truly are just and reasonable irrespective of the ratemaking methodology utilized. By allowing the Commission to compare PGC and PUC ratemaking methodologies, the PUC can ensure that any resulting rates are just and reasonable. Moreover, assuming, *arguendo*, that the PUC utilizes the cash flow methodology in this proceeding, the statute does not prohibit the Commission from superimposing traditional ratemaking methodology on top of the cash flow method in order to ensure that PGW's rates are just and reasonable. Equipping the PUC with all of the necessary information to make the just and reasonable rate determination is necessary to meet the PUC's obligation to serve the public interest. PGW's Motion would improperly limit the analysis that could be provided by the parties, thus inhibiting the Commission's ability to make a fully informed determination of just and reasonable rates.

10. PICGUG also disagrees with PGW's claims that allowing the PUC to examine all of the relevant evidence in this proceeding would abrogate the City of Philadelphia's ("City") ability to control PGW. Allowing the PUC to examine the applicable ratemaking methodologies to ensure that PGW's rates are just and reasonable does nothing to limit the City's control over PGW.

11. Moreover, PICGUG vehemently disagrees with PGW's suggestion that the Company's request would not result in the ALJ pre-judging the evidence with respect to the level of rate increase to which PGW is entitled. In fact, PGW's request to limit the testimony in this

proceeding would do exactly that by prohibiting both the ALJ and the PUC from receiving the necessary information into evidence with respect to whether PGW's rates are just and reasonable.

12. PGW's Motion would too narrowly limit the scope of this proceeding by requiring the parties to unconscionably limit the testimony, and issues, that can be presented in this proceeding. For example, according to PGW's request, a party would not be permitted to compare rate methodologies in order to determine whether PGW's rate increase proposal would result in just and reasonable rates under each of the various methodologies. Moreover, by limiting the testimony that can be presented in this proceeding, PGW is requiring the PUC to foresee every possible context in which these issues can be raised and determine whether these issues are appropriate at the outset of this proceeding. Such action is grossly premature, compromises the procedural and substantive due process rights of the parties, and prevents the PUC from making a reasoned decision that is in the public interest.⁷ Query what position PGW would take if the PUC compared the result of a \$65 million increase as proposed by PGW under the application of the cash flow method to the result of a greater increase produced through the application of the PUC's traditional ratemaking method? Would PGW limit its request to \$65 million in that context if, hypothetically, the PUC found a greater increase served the public interest and constituted just and reasonable rates? PICGUG thinks not. Similarly, the PUC should have the knowledge of what just and reasonable rate increase serves the public interest

⁷If any intervening party raises issues in direct testimony that PGW believes is inappropriate, PGW still retains the ability to file a Motion to Strike this testimony during the course of this proceeding.

and can be supported by either, or both, the cash flow and traditional rate of return methodologies.

OPERATING BUDGET AND EXPENDITURES

13. The PUC has previously stated that the parties would have the opportunity to review and analyze, during the course of this base rate proceeding, PGW's operating budget and expenditures. PGW's Motion, however, would prohibit the parties from carrying out the PUC's declaration, and as such, must be denied.

14. In the PUC's November 22 Order addressing PGW's interim base rate filing, the PUC noted that "PGW must file a base rate case on or before January 1, 2001, so that its overall revenue requirements could be thoroughly evaluated before final rates and charges are established to replace any interim levels approved here." See Pennsylvania Public Utility Commission v. Philadelphia Gas Works; Docket No. R-0000565, Order (Nov. 22, 2000) (hereinafter "November 22 Order"), p. 8. The PUC also emphasized that PGW's overall revenue requirements and rate levels would be fully examined in the context of a subsequent base rate proceeding and that "it would not be appropriate to provide the Company with a...surplus of cash...before the Commission's management audit has been completed and a full base rate review examining all expenditures has been conducted." See id. at 8-9.

15. Similarly, in the PUC's Order approving the Petition for Settlement in PGW's Interim Base Rate Proceeding, the PUC noted that "the Joint Petition recognizes that the appropriate amount of this [bad debt] expense will be subject to review and revision in PGW's pending base rate proceeding." See Pennsylvania Public Utility Commission v. Philadelphia Gas Works; Docket No. R-00005654, Order (Feb. 22, 2001) (hereinafter "Feb. 22 Order"), p. 7. The

Commission also noted that the Public Utility Code clearly provides the PUC with the authority to make alterations to PGW's present tariff. See id. Moreover, the PUC also retained the rights of all parties to challenge PGW with respect to the Company's gas procurement efforts and implementation of management audit recommendations. See id.

16. The PUC, on numerous occasions, has recognized the ability of the intervening parties to review and revise PGW's expenses in this proceeding. Obviously, PGW was aware of the PUC's decisions in these proceedings, however, PGW has failed to raise any arguments regarding this review standard until now. In its Motion, PGW fails to recognize these previous decisions by the PUC or set forth any reasoning as to why the PUC's directives should be modified. The parties must be given the opportunity to fully review and analyze PGW's base rate proceeding, per the PUC's directive.

17. As discussed previously, the PUC must examine whether PGW's rates are just and reasonable. This analysis can only be achieved by examining the Company's underlying revenue requirement. Moreover, while PGW argues that the Company's budget has been established by the PGC and cannot be modified by any intervening parties, PGW fails to note whether the Company has adhered to the budgetary requirements. If PGW has not followed the established budget and has expended monies in other places, obviously these expenses would be determinative for the PUC's rate examination. Pursuant to PGW's Motion, however, the parties would be prohibited from addressing these issues or requesting any type of modifications that may be necessary depending upon PGW's implemented budget.

18. The PUC must have the opportunity to review PGW's entire financial picture prior to determining whether a \$65 million rate increase is needed. Although PGW would prefer

that the Commission merely "rubber stamp" the PGC-approved budget and PGW-requested rate increase, that is simply not possible. Accordingly, in order to ensure that a complete and full analysis is done with respect to PGW's base rate proceeding, the parties must be given the opportunity to address issues related to PGW's revenue requirement and PGW's Motion must be denied.⁸

WHEREFORE, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Pennsylvania Public Utility Commission deny Philadelphia Gas Works' Motion in Limine in its entirety for the reasons set forth herein.

Respectfully submitted,

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Dated: April 2, 2001

⁸Moreover, as noted previously, if any intervening party raises issues in direct testimony that PGW believes is inappropriate, PGW still retains the ability to file a Motion to Strike this testimony during the course of this proceeding.

CERTIFICATE OF SERVICE

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

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Dated this 2nd day of April, 2001, in Harrisburg, Pennsylvania.



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IN REPLY PLEASE
REFER TO OUR FILE

April 2, 2001

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R-00006042

Dear Secretary McNulty:

Enclosed please find the Office of Trial Staff answer to Philadelphia Gas Works Motion In Limine. As the Certificate of Service indicates the Parties of Record have been served with the enclosed document.

If there are any questions please don't hesitate to contact me.

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Sincerely,

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

cc: All active parties
Honorable Cynthia W. Fordham

JES:alb

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SECRETARY'S BUREAU

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**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**

**P.P.U.C.
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**THE OFFICE OF TRIAL STAFF'S
ANSWER TO
PHILADELPHIA GAS WORKS'
MOTION IN LIMINE**

On March 21, 2001, Philadelphia Gas Works ("PGW") filed a "Motion In Limine" for the purpose of securing directives in determining in advance the testimony and adjustments that may be submitted by the parties when responding to PGW's base rate request. PGW's motion is premised on its belief that "certain parties have propounded numerous interrogatories in apparent preparation to repeat past arguments that the Public Utility Commission in setting rates for 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."

It is the belief of PGW that the Commission's Interim Rate Settlement Order and the Public Utility Code obligates the Commission to set PGW's rates in accordance with the prior ratemaking method and in such a manner that PGW can

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satisfy its bond ordinances. The sum and substance of PGW's argument is that the respective parties cannot challenge any expenditures, programs and operations that were approved by the Philadelphia Gas Commission ("PGC") for inclusion in prior approved budgets, and, thus, funded by PGW's rates. (See paragraph 22 of PGW's Motion). Most notably, PGW claims that the specific expenditures, programs and operations reflected in its 2000-2001 budget that are presently being considered by the PGC, of which the requested \$65 million is based upon must be funded by the Commission upon the final approval of the budget by the PGC. (See paragraph 24 of PGW's Motion).

OTS respectfully submits that enumerated answers to every PGW's averments in its Motion is unnecessary, as the issue to be addressed by Administrative Law Judge Fordham and the Commission is very simple. The issue is whether the Commission should be guided by the "just and reasonable" standard of the Public Utility Code or by the budget approval process of the Philadelphia Gas Commission. If there is a determination that the budgetary process controls the level of the rate increase for PGW, then this instant rate proceeding should be immediately terminated. A termination of this proceeding is in order, because to do otherwise would be the continuation of a pointless rate investigation before Administrative Law Judge Fordham and the Commission, and more important, an inconsequential investigation for PGW's ratepayers. It appears, according to PGW, the only obligation of the respective opposing parties, Administrative Law Judge Fordham and the Commission is to await the outcome

of the budget process before the PGC, and then have the Administrative Law Judge and the Commission “rubber stamp” the \$65 million request.¹ Moreover, the public input hearings of March 28, 2001 and March 29, 2001, respectfully, should have been or should be held before the PGC during their deliberations on the budget request of PGW. Clearly, this type of a rate investigation as suggested by PGW in its Motion could not have been contemplated by the General Assembly when the legislation was enacted allowing the Commission to assume jurisdiction of PGW.

Additionally, PGW argues that “whether or not the type of expenditures 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.” OTS submits that the Commission is guided by the “just and reasonable” standard of the Public Utility Code in determining the appropriate level of rate request for PGW, not the budgetary process of the PGC. Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides in pertinent part that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission.” Additionally, Section 1308(c) of the Public Utility Code, 66 Pa. C.S. § 1308(d), provides that “if, after such hearing, the commission finds any such rate to be unjust or unreasonable, or in anywise in violation of law, the

¹ PGW admits that the \$65 million revenue requirement is based on its Fiscal Year 2000-2001 budget.

commission shall determine the just and reasonable rate to be charged or applied by the public utility for the service in question, and shall fix the same by order to be served upon the public utility and such rate shall thereafter be observed until changed as provided by this part.” There is absolutely nothing in Sections 1301 and 1308 of the Public Utility Code that would suggest that the Commission is under an obligation to determine rates for a public utility on the basis of a budgetary process. In order to determine whether approved rates are just and reasonable, there must be a review of the underlying expenses associated with the requested rate increase. Consequently, if the expenses are unlawful or unreasonable then there must be an adjustment as to what the ratepayers will or will not pay for in rates, and the public utility is obligated to make the appropriate adjustment as it relates to its ratepayers based upon the Commission’s Order.

Moreover, there is nothing in Section 2212(e) of the Public Utility Code, 66 Pa. C.S. §2212(e) that suggests the budget process of PGC is a factor in the establishment of rates by the Commission for PGW. There is absolutely no credible evidence to suggest that if PGW’s rate increase is substantially reduced because of adjustments, then PGW will likely fail to maintain the required debt service coverage requirement. With respect to the budgeted expenditures approved by the PGC, OTS would respectfully submit that the PGW is not unlike any other public utility or business. In that regard, if the PGC approves a budget of \$65 million, and the Commission approves a rate increase less than \$65 million, the management of PGW must make the appropriate budgetary adjustments like

any other public utility or business. Simply put, the expenditures will not become due, if the management of PGW in recognition of the Commission approved rate increase adjusts its budget, and, thus, do not make the expenditures. For example, if the Commission reduces an expense for ratemaking purposes, then PGW will have to seek payment from the ratepayers for the amount authorized by the Commission, not a higher budgetary amount approved by PGC. If the management of PGW continue to make debts knowing that the money is not there to pay for the debt, then the problem is one of nonfeasance for the management of PGW, not the Commission's failure to fund the budget in its entirety as approved by the PGC.

There is no merit to PGW's motion and OTS respectfully requests that the Motion In Limine be denied.

Respectfully submitted,



Johnnie E. Simms
Senior Prosecutor

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v.

:

Docket No. R-00006042

Philadelphia Gas Works

:

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to Philadelphia Gas Works Motion in Limine** of the Office of Trial Staff, dated April 2, 2001, either personally, by first class mail, electronic mail, or by fax upon the persons listed below:

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Office of Administrative Law Judge
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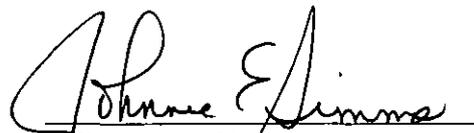
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A handwritten signature in black ink, appearing to read "Johnnie E. Simms", written over a horizontal line.

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

Dated: April 2, 2001
Docket No. R-00006042



COMMUNITY
LEGAL SERVICES, INC.

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1424 Chestnut Street, Philadelphia, PA 19102-2505
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April 2, 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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Re: P.U.C. v. Philadelphia Gas Works, Docket No. R-00006042 APR 02 2001

Dear Secretary McNulty:

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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 the Answer of CEPA et al. to Philadelphia Gas Works' Motion in Limine.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of this document.

Very truly yours,

PHILIP A. BERTOCCI

Attorney for CEPA et al.

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FOLDER

cc: Certificate of Service

Administrative Law Judge Cynthia Williams Fordham (FAX)

Enclosures

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CERTIFICATE OF SERVICE

Re: P.U.C. v Philadelphia Gas Works
Docket No. R-00006042

I hereby certify that I have this day served a true copy of the Answer of CEPA et al. to Philadelphia Gas Works' Motion In Limine upon the following parties by First Class U.S. Mail, postage prepaid, as follows:

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Dated: April 2, 2001

APR 02 2001

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SECRETARY'S BUREAU

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Pennsylvania Public Utility Commission
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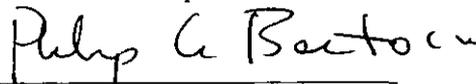
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Philip A. Bertocci, Esquire

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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APR 02 2001

**Pennsylvania Public Utility
Commission**

v.

Philadelphia Gas Works

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Docket Number
R-00006042
R-00006042C0001 et al.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ANSWER OF CEPA et al. TO PHILADELPHIA GAS WORKS' MOTION IN LIMINE

Four low income consumer membership and advocacy organizations, 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.") hereby answer the Motion in Limine of the Philadelphia Gas Works as follows:

Introduction

The Philadelphia Gas Works (PGW) has traditionally resisted close questioning and truly independent audits concerning how it has spent and proposes to spend the hard earned money of its ratepayers. This Motion in Limine (hereinafter "PGW Motion") stands squarely in that stale-mating "none of your business" tradition, which in recent years has been notably challenged by a Grand Jury Investigation detailing lack of fiscal controls to the point of criminality, and by the recent so-far unreleased Management Audit ordered by the PUC pursuant to the Gas Choice Act. In this Motion, at a time when PGW is seeking Pennsylvania Public Utility Commission (PUC) authorization to impose unparalleled financial burdens on customers, the Company brazenly claims that

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its "unique ratemaking scheme" places inquiries into the prudence of its expenditures off limits to public authorities charged by law with determining a level of "just and reasonable" rates. Such resistance is raised by a Company which has some of the highest rates in the region.

The unifying theme of the PGW Motion is that the ultimate standards to be applied in establishing PGW's base rates are to be found in Management Agreement Ordinance (together with applicable bond law). PGW would subordinate the Public Utility Code's "just and reasonable" standard to application of its narrow interpretation of the Management Agreement Ordinance and applicable bond law. This interpretation is incorrect. The Public Utility Code's "just and reasonable" standard can not be cast aside to suit PGW's narrow interests, because that standard is based on guarantees contained in the Due Process Clause of the U.S. Constitution. Despite PGW's protestations, it is well settled that regardless of the ratemaking formula contained in a particular ratemaking scheme, PGW's rates must pass the higher constitutional test of "just and reasonable."

The specific rulings which the PGW Motion seeks make plain the paralyzing effects that the Company's legal misinterpretations would have on the Commission's performance of its duties to exercise its statutory ratemaking authority within the parameters established by the U.S. Constitution.

First, PGW seeks an order declaring off limits inquiries by CEPA et al., the OCA and others into the prudence of various expenditures in PGW's proposed test year FY 2001 Operating Budget. In ruling on PGW's base rate increase request, PGW claims that the PUC may not consider the reasonableness of individual budget components such as, whether ratepayers should be required to fund a budget which permits PGW to pay hundreds of thousands of dollars annually to subsidize the employee cafeteria or to provide a company car for commuting use and even for personal use to over 40 PGW managers. Rather, according to PGW's legal theories, if PGW's owner, the City of

Philadelphia, acting through the Gas Commission, City Council and a politically appointed Board of Directors (PFMC), decides or has decided in the past that a particular PGW expense should be funded by ratepayers, then the PUC is precluded by statute from questioning these expenditures and is statutorily bound to provide rates to pay every dime of that expenditure.

The PGW Motion seeks to obtain a general declaration concerning matters which are already before the ALJ in the form of specific discovery disputes involving Motions to Dismiss Objections and to Compel Answers to Interrogatories filed by both CEPA et al., OCA and other parties to this case.

The PGW Motion thus seeks to obtain a declaration that would limit or bar testimony which advocates adjustment, reduction or disallowance of "any expenditures, programs or operations that were included in PGW's prior budgets and rates by the Philadelphia Gas Commission." PGW Motion, "Wherefore Clause," ¶¶A(4), A(6). This request parallels PGW's Objections to numerous items in CEPA et al.'s First Set of Interrogatories, which are the subject of CEPA et al.'s pending Motion to Dismiss Objections and Compel Answers (filed 3/22/01) and PGW's Answer (filed 3/28/01).

In a similar vein, the PGW Motion also seeks to obtain a declaration that would limit or bar any testimony that suggests that in determining a "just and reasonable" rate, the Commission may consider what resources other than from rates could be made available to PGW by PGW's owner the City of Philadelphia, including advances, waiver or grant back of the \$18 million City Payment, and an outright City grant. This request parallels PGW's Objections to numerous items in OCA's Interrogatories, which are also the subject of a pending Motion to Dismiss Objections and Compel Answers (filed 3/12/01) and PGW's Reply (filed 3/16/01).

In addition, the PGW Motion seeks sweeping declarations which purportedly summarize existing law concerning the rate making method which the PUC must utilize in adjudicating this permanent base rate case. In its Pre-Hearing Memorandum, the City

through PGW informed the parties that even the "suggestion" that the City might have a duty to bear some share of the burdens it seeks to place through rates on PGW customers should be off limits.¹ PGW has now expanded its list of forbidden subjects to include anything which is inconsistent with its narrow, one-sided and distorted summaries of the legal standards governing this proceeding. The requested declarations would ignore the paramount and independent status of the constitutionally based "just and reasonable" requirement and suppress any suggestion that the Commission is duty bound to balance the needs of the Company with the needs of ratepayers. Moreover, these requested declarations mischaracterize the Management Agreement Ordinance in the service of blanket denial by the City of any responsibility to make its own resources available to help meet relevant bond covenants, even where the City has failed in its duties to manage PGW effectively and efficiently.

If the Commission were to grant these requests, it would deprive itself and the parties of the information necessary to establish a "just and reasonable" base rate, and sanction a parochial municipal management tradition which has piled \$1 billion in debt and some of the highest gas rates in the country on Philadelphia consumers.

Background.²

1. In the "Background" Section of its Motion, PGW claims that "standards" to be used in setting PGW's base rates are "distinctly different than the methods of non-municipal companies." PGW Motion, p. 2. This is only a partial truth. It is true that Section 2212(e) of the Gas Choice Act requires the Commission to utilize the "prior

¹ See Philadelphia Gas Works' Prehearing Memorandum, at 5-6 (".... these proceedings should not involve even the suggestion that the City of Philadelphia will not receive its full annual payment from PGW").

² In this Answer, for reasons of economy and clarity, CEPA et al. have organized their response to PGW's Motion in Limine to match the four broad subject headings contained in PGW's Motion (Introduction, Background, Cash Flow Method of Ratemaking, and Adjustments to PGW Annual Expenditures).

ratemaking methodology and requirements” applicable to PGW prior to PUC jurisdiction. PGW Motion, p. 2. However, like all public utilities, whether publicly owned or investor owned, the ultimate standard for setting rates is the constitutionally based “just and reasonable” standard.

The PUC has already acknowledged in this proceeding that the ultimate ratemaking standard which is and always has been applicable to PGW is the “just and reasonable” standard. See February 8, 2001 Order at Ordering Paragraphs 1 and 3.³ 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 which in “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). While a ratemaking methodology, such as that set forth in the Management Agreement Ordinance, identifies factors which must be given weight in a particular rate setting process, that process does not produce a valid rate, unless that rate can be independently adjudged just and reasonable.

2. The standards for determining whether a rate is “just and reasonable” in turn, are distinct from any particular ratemaking methodology, and override any result obtained by application of that methodology. Application of the “just and reasonable” 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

³ 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.”

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.")

3. The applicable standard for determining the "legal relevance" of the data which the parties seek 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, the interrogatories concerning the effects on the Company of waiver or "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?

4. The Gas Choice Act may not be read to mandate that the Commission and the parties look only to the ratemaking methodology and requirements contained in the Gas Choice Act, 66 Pa.C.S. §§2201 et seq.; in adjudicating PGW's base rate level. PGW's argument based on Gas Choice Act Section 2212(e) is without merit. Section 2212(e)

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 Ordinance. By implication, this view would suggest either that the Management Agreement Ordinance trumps the “just and reasonable” ratemaking standard set forth in Section 1301 of the Public Utility Code, or that the General Assembly, in passing 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 fails 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 “unique ratemaking scheme for PGW.” PGW Motion, ¶21. To the contrary, although the Management Agreement Ordinance 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 constitutional “just and reasonable” standard.

5. Contrary to PGW’s contentions, Public Advocate v. Philadelphia Gas Commission, – Pa. –, 674 A.2d 1056, 1062 (1996) does not hold that utilization of the ratemaking methodology and requirements contained in the Management Agreement Ordinance produces rates which are *per se* “just and reasonable.” PGW Motion, ¶9. 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.” Moreover, there is no support in Public Advocate for the view advanced by PGW that the amount of individual expenditures contained in PGW’s past or present Operating Budgets are irrelevant to the determination whether the overall rate resulting from utilization of the ratemaking methodology contained in the Management Agreement Ordinance is “just and reasonable.”

6. Similarly, contrary to PGW’s contentions, Action Alliance v. Philadelphia Gas Commission, 406 A.2d 1155, 1158 (Pa. Cmwlth. 1979) does not “uphold the cash flow rate making methodology” nor does it state that utilization of that method “produces” just and reasonable rates. PGW Motion, ¶18. In that case, the Commonwealth Court remanded an appeal from a Philadelphia Court of Common Pleas order upholding a rate set by the Gas Commission according to the PGW statutory ratemaking methodology, because the Gas Commission’s rate order contained “no findings and no reasons ... for its conclusion that the rates were *just and reasonable*” (emphases added).⁴

⁴ CEPA et al.’s interpretation of the Action Alliance case is similar to the interpretation presented by the Philadelphia Gas Commission Hearing Examiner’s Recommended Decision in the FY 1999 Gas Cost Rate Proceeding, cited by PGW and attached as Exhibit “C” (“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,’ 45 Pa.Cmwlth. 234, 241-42; 406 A.2d at 1158”).

7. In the alternative, PGW appears to argue that the “just and reasonable” standard authorizes rates in such a broad “zone of reasonableness” that individual adjustments with regard to such matters as cafeteria subsidies or unjustified management perks like company cars would be practically speaking without consequence. PGW Motion, ¶9. This argument is without merit. If there is a “zone of reasonableness,” then the parties have the right to develop evidence in a broad range of matters, including individual budget items, and the level of customer service, in support of their contention before the trier of fact that the rate proposed has passed over the boundary between reasonable and unreasonable. Public Advocate v. Philadelphia Gas Commission, – Pa. –, 674 A.2d 1056, 1061 (1996); D.C. Transit System, Inc. v. Washington Area Metropolitan Transit Commission, 466 F.2d 394, 422-423 (1972)(Commission did not exceed limits of due process when it made a fare raise contingent upon steps calculated to rectify serious deficiencies in service...notwithstanding carrier’s claim that at existing fares it would be operating at a substantial loss in future and that it had a right to have fares increased to point which would enable it to earn a fair return).

8. Contrary to PGW’s contentions, Gas Choice Act Section 2212(s) does not bar the Commission or the parties from reviewing for prudence the various expenditures contained in the test year Operating Budget, which serves as one of the bases for the determination of appropriate base rates. That Section 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 for 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 Motion, ¶¶ 10, 25.

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.” The necessity of funding imprudent expenditures may cause a rate to be so great as to be outside the constitutionally permissible “zone of reasonableness.”

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.

9. In Paragraphs 3 through 7 of the PGW Motion, PGW excerpts various provisions of the Management Agreement Ordinance to describe the PGW “ratemaking methodology and requirements.” Consistent with its efforts to shift every conceivable cash need arising from PGW’s historic mismanagement and present inadequacies on to ratepayers, PGW has seized on the term “Cash Flow Method” in an attempt to validate its overreaching theories. This term, however, is not a statutory term, and should not become a substitute for analysis of all the statutory language which describes PGW’s “prior ratemaking methodology.” PGW uses the term in this proceeding to obscure the relationship between the just and reasonable standard and that methodology, and also as a tendentious substitute for the actual language of the Ordinance.⁵ As will be discussed in Paragraphs 11-15 below, the Ordinance does not support the position that the Ordinance “requires PGW’s *rates* to cover” (emphasis added) all PGW’s costs, including all working capital costs, as if there were no other cash resources including loans from the City/owner and private financial institutions, and possible grants from the City/owner.

Cash Flow Method of Ratemaking

10. CEPA et al. deny as a matter of law that the ratemaking methodology set forth in the Management Agreement Ordinance requires that all PGW’s cash needs (including satisfaction of the terms of the various bond covenants, however interpreted), must always be provided by the ratemaking authority through rates. As set forth above, in the PUC’s performance of the “just and reasonable” balancing process, such an

⁵ For instance, at PGW Motion, ¶ 7, PGW states that the Philadelphia Gas Commission “acknowledged the “cash flow method” as the statutory basis for establishing PGW’s revenue requirement” in the FY 1999 Gas Cost Rate Proceeding. However, the Recommended Decision does not use the term “cash flow method.” The quotation contained in that decision from the Management Agreement Ordinance only supports what is not in dispute in this proceeding, -- that the Commission must provide on an annual basis for PGW’s recovery of its gas costs, and the other non-fuel costs which are collected through the Gas Cost Rate.

interpretation would give an absolute priority to the interests of PGW's owner, the City, and PGW's bondholders, over the interests of PGW's ratepayers.

11. In addition, putting the "just and reasonable" requirement aside, the Management Agreement Ordinance does not say what PGW contends that it says, unless talismanic use of the term Cash Flow Method magically provides words which just are not in the Ordinance. In PGW's view, the Management Agreement Ordinance's "prior ratemaking methodology" requires "PGW to have adequate cash from rates to pay its various cash obligations when they become due." PGW Motion, ¶¶14, 16. In actuality, the operative language in the Management Agreement Ordinance does not say that all PGW's cash needs must be satisfied through "rates". In pertinent part, the Ordinance states:

The Gas Commission shall fix and regulate rates and charges for supplying gas to customers ...which (together with ... 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:

(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 on debt incurred for the Gas Works including, but not limited to: ...

(v) All sinking fund charges payable in respect of principal and interest on all obligations of the City issues 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....

(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.⁶

12. These provisions are structured to focus on the end result--whether PGW will have in toto sufficient resources to meet specified needs, They do not mandate, command, or dictate that such needs be satisfied through rates to the exclusion of all other non-rate resources. Moreover, these provisions do not foreclose the use by PGW of other resources that may be made available to it. In order to meet debt service ratio covenants, this language does not foreclose the use of a grant back from the City of the \$18 million City Payment or other municipal grants qualifying as project revenues. In order to meet other debt service covenants, however interpreted, this language does not foreclose the use of money advanced by the City like the recent \$45 million City Advance, or under certain conditions from PGW's capital fund. In order to made the \$18 million City Payment, this language does not foreclose the use of money borrowed pursuant to PGW's short term commercial paper program.

13. CEPA et al.'s interpretation of the Management Agreement Ordinance and related bond law is consistent with past practice by the City and by PGW. The City and PGW stated specifically in both this proceeding and in the recent Interim Base Rate Proceeding that all or part of the \$18 million City Payment could be available as a grant back to meet debt service coverage requirements without violation of any bond ordinance.⁷ PGW's other debt service payments have often been made in part with

⁶ See Management Agreement Ordinance, Section VII, attached to the PGW Motion as Exhibit "B."

⁷ See PUC v. PGW, Docket No. R-00005654, Transcript of Testimony (September 27, 2000), (Testimony of Thomas E. Knudsen, at 176-177. According the Mr. Knudsen's testimony in this case, not yet confirmed, the City has committed this year under certain undescribed circumstances, to grant back the \$18 million City Payment. Thus, referring to the \$45 million City Advance which has been made in this FY 2001, and the \$18 million City Payment which has not yet been made, Mr. Knudsen states that "the City has already committed all that it can in working capital, a total of \$63 million." Prefiled Testimony of Thomas E. Knudsen in this case, Volume I (Revised), at 4.

borrowed funds, again, without violation of bond covenants. The recent \$45 million advance by the City to assist PGW's cash needs provided resources other than rates to meet PGW's bond covenants and cash needs; such assistance was not regarded as a violation of PGW's covenants, but consistent with the requirements of those covenants that PGW rates, together with other non-rate resources, be sufficient to enable to necessary payments to be made and the debt coverage ratios to be observed. Finally, in recent years, PGW has made the \$18 million City Payment not from ratepayer funds, but from borrowed funds -- demonstrating once more that PGW's "prior ratemaking methodology" does not require that every PGW obligation, real and imagined, must be met through funds raised from rates.

14. CEPA et al. protest PGW's repeated citations in PGW Motion at ¶¶14-16 including note 14, to the alleged summaries of PGW's cash needs and bond covenants contained in the Joint Petition for Settlement in PGW's now completed Interim Base Rate Case, PUC v. PGW, Docket No. R-00005654. The terms of that Settlement expressly provided that the "Joint Petition constitutes a negotiated resolution solely of issues addressed herein ...[and] ...the Joint Petitioners agree that this Settlement shall not constitute or be cited as controlling precedent in any other proceeding and shall not be characterized as the position of either PGW or the Law Bureau and shall not constitute an admission of any fact or legal principle set forth herein in any such proceeding." PUC v. PGW, Joint Petition for Full Settlement, Docket No. R-00005654, ¶32.

15. CEPA et al. deny that the PUC's Order approving the Joint Settlement provides any guidance whatsoever on how the ALJ is to apply the facts of this case to applicable law in making a recommendation concerning PGW's requested Base Rate Increase. The parts of that Order cited at PGW Motion, ¶16 are merely conclusory, and provide no support for PGW's theory that PGW's "prior ratemaking methodology"

requires that all PGW's cash need be provided through rates. The issue is not whether rates "permit" PGW to satisfy its cash needs, but whether rates alone must provide all such resources for satisfaction of bond covenants and cash needs.

16. For the above reasons, there is no legal basis for PGW's request that the ALJ issue an order "declaring that PGW's rates will be established using the cash flow method of ratemaking... [and] specifically indicat[ing] 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 sufficient cash on at the end of the fiscal (or test) year to permit PGW to pay its obligations in the months following the fiscal/test year." PGW Motion, ¶16. In requesting such an Order, PGW attempts to impose an incorrect legal standard for applying PGW's "prior ratemaking methodology" as set forth in the Management Agreement Ordinance.

17. For the above reasons, there is also no legal basis for the request 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." PGW Motion, ¶16, n. 14. In requesting such an Order, PGW attempts to impose an incorrect legal standard for interpreting PGW's "prior ratemaking methodology" as set forth in the Management Agreement Ordinance.

Adjustments to PGW Annual Expenditures

18. According to PGW, neither the PUC nor PGW consumers are permitted to question whether rates sought to be fixed would fund (without a showing of related business necessity) numerous company cars for PGW management and subsidized lunches for PGW management and employees. To the contrary, "just and reasonable"

rates should not be set at levels which allow funding expenses unnecessary for maintenance of the business enterprise. Under applicable law, customers must be allowed to inquire whether attitudes that produced a ratepayer funded “limousine lady” and ratepayer funded executive dinners in some of Philadelphia’s best and most expensive restaurants are repeated on an ultimately much more routine and expensive scale at the PGW headquarters at 800 West Montgomery Avenue.

19. PGW claims that its “unique ratemaking scheme” forecloses such inquiries by the PUC in the process of establishing PGW’s rates. PGW Motion, ¶21. As set forth in Paragraphs 3-7, *supra*, the Commission must inquire into the reasonableness of test year expenses if it is to establish a rate base which, under any ratemaking methodology, would serve as a basis for the determination of “just and reasonable” rates. Consistent with its unwillingness to assume the burdens of past mismanagement, PGW and the City seek at all costs to protect the \$18 million City Payment from all question or adjustment. PGW misstates the holding of Public Advocate v. Philadelphia Gas Commission, 674 A.2d 1056, 1061-62. PGW Motion, ¶27. That case held that in the context of the particular rate case before the Court, the \$18 million City Payment did not render the rate constitutionally “unjust and unreasonable,” and that in impact and effect, the total rate was within a constitutionally defined “zone of reasonableness.” It did not uphold the \$18 million City Payment, as PGW claims, on the grounds that a rate may not be rendered unjust and unreasonable because of the inclusion of one unjustified expense component. The Public Advocate case is not support for PGW’s contention that the Commission is barred from taking evidence on the broad range of issues, including improvident spending, inadequately justified payments to the utility’s owner, and inferior service, which are relevant to determining the boundaries of that “zone of reasonableness.”

20. PGW further argues that for the PUC to allow inquiry into the prudence of

items in PGW's test year budget would violate Gas Choice Act Section 2212(s). According to PGW, Section 2212(s) "specifically guarantees" that the PGW and the City shall have the exclusive right to determine PGW's budgets. In fact, the Gas Choice Act contains no such guarantee -- it only provides that the Gas Choice Act will not "abrogate" or "limit" the City's existing right to determine PGW's budgets. That existing right was never exclusive or absolute, because any rates established on the basis of such budgets were subject to Court review under the "just and reasonable" constitutional standard. It is clear that under the Gas Choice Act, the PUC through a rate determination may at least make adjustments in the overall revenue requirement that may be funded through rates. Such adjustments would not limit or abrogate the City and PGW's budgetary rights. PGW and the City would preserve their right to spend according to their budgetary choices, but not the right to obtain a rate from ratepayers that would satisfy *all* the Company's perceived needs and obligations.

21. PGW also argues that PGW's "prior ratemaking methodology" assigned to the ratemaker the duty to provide rates to fund PGW's approved budget. PGW Motion, ¶¶23, 24, 25. From this premise, PGW appears to argue that to implement that methodology, the PUC must accept PGW's FY 2001 test year budget, and must provide through rates all monies necessary to fund that budget. This argument ignores the fact that under PGW's "prior ratemaking methodology," the Philadelphia Gas Commission *both* approved PGW budgets and, when rate cases were commenced, fixed PGW's rates. A rate case involved both processes simultaneously. In reviewing PGW's budgets, the Gas Commission was constrained by the necessity that the resources available to fund the budget include rate levels that were "just and reasonable." See Management Agreement Ordinance, Sections IV(2), VII, attached as Exhibit "B" to the PGW Motion.

22. PGW further argues that if the PUC issued a base rate order based upon

proposed individual expenditure adjustments in the Company's Operating Budget, such order would necessarily prevent PGW from complying with its various bond covenants. PGW Motion, ¶23. This argument is apparently based on the false premise that all PGW cash needs and bond covenant requirements must be funded exclusively through rates. CEPA et al. contend that even if PGW had a Philadelphia Gas Commission approved Operating Budget assuming revenues from an anticipated \$65 million base rate increase, the PUC could reduce that base rate increase by two thirds or more without running afoul of Section 2212(s) or any other statutory provision.

23. PGW's insistence on the absolute paramountcy of the anticipated expenditures and cash requirements explicit or implicit in PGW's approved budgets for PUC ratemaking purposes does not fully correlate with the Company's posture in this case. The fact is that PGW presently has neither a Gas Commission approved Operating Budget and forecast, nor a City Council approved Capital Budget and forecast. PGW admits that such is the case, while stating that it anticipates that the Philadelphia Gas Commission "will issue a decision on the proposed budget in the near future." PGW Motion, ¶24. In the absence of an approved budget, PGW claims Section 2212(s) requires the PUC to recognize the inviolability of any expenditure "contained in PGW's prior, approved budget or contained in its current operating budget once approved." PGW Motion, ¶26. Even if PGW's theories concerning PGW's "prior ratemaking methodology" are correct, in the absence of an approved test year budget to serve as the partial basis for a rate order, there is no legal authority for barring the PUC and the parties from inquiring into the prudence of expenses contained in past or merely proposed PGW Operating Budgets.

24. Section 2204(i) of the Gas Choice Act, 66 Pa.C.S. §2204(i), requires that PGW submit to a PUC Management Audit. Consistent with this provision, the General

Assembly's determination that jurisdiction over PGW's rates and tariff should be transferred to the PUC reflects an intent to reform a utility notorious for high rates, insufficient controls on spending and a low level of service. This manifest intent is inconsistent with the astonishing theory put forth by the City and the Company that the PUC's role in ratemaking does not extend to questioning the "wisdom" of any of the expenses contained in PGW's approved budgets. If the PUC is limited to reviewing PGW's budgets to assure that all itemized expenses have been traditionally included in PGW's operating budget and to provide through rates the funds to pay for those expenses, the reforming intent of the Act would be frustrated, and the PUC would be reduced to ratifying "business as usual."

WHEREFORE, CEPA et al. respectfully request that the ALJ deny PGW's Motion in its entirety.

Respectfully submitted,



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

Attorneys for CEPA et al.

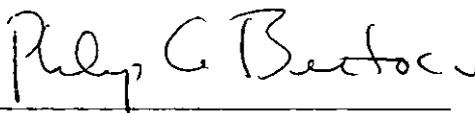
April 2, 2001

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

VERIFICATION

I, Philip A. Bertocci, Esquire, attorney for CEPA et al., hereby state that the facts contained in the foregoing Answer of CEPA et al. to Philadelphia Gas Works' Motion in Limine are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the Statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Date: April 2, 2001



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

Dear Ms. Burak:

Enclosed please find PGW's response to PICGUG Set I - Question 1.

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:26307.5

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).

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April 2, 2001

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

Dear Mr. Simms:

Enclosed please find PGW's response to OTS-RS-21.

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DOCUMENT
FOLDER

/smw

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

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).

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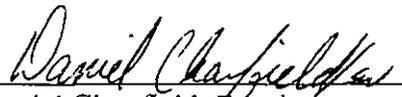
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Daniel Clearfield, Esquire

Dated: April 2, 2001



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April 2, 2001

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Re: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works
Docket No. R-00006042

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Office of Consumer Advocate's Answer in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

Aron J. Beatty
Assistant Consumer Advocate

Enclosure

cc: All parties of record

61762

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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

DOCKETED

: APR 05 2001

Docket No. R-00006842

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ANSWER OF THE OFFICE OF CONSUMER
ADVOCATE TO PHILADELPHIA GAS WORKS
MOTION IN LIMINE

DOCUMENT
FOLDER

Pursuant to 52 Pa. Code § 5.103(d), the Office of Consumer Advocate ("OCA") hereby submits its response to the Motion in Limine ("Motion") filed by the Philadelphia Gas Works ("PGW" or "Company") on March 21, 2001. PGW's Motion requests an Order from the Presiding Officer, Administrative Law Judge Cynthia Williams Fordham, acknowledging specific ratemaking methodology and budgetary requirements that should be applied to PGW in the above captioned proceeding. For the reasons set forth below, the OCA submits that PGW's Motion should be denied.

BACKGROUND

On March 21, 2001, PGW filed this Motion in Limine in the above-captioned proceeding. In its Motion, PGW seeks to have the “cash flow method” of ratemaking, as defined by PGW, declared the only acceptable method of ratemaking for PGW. The Company comes to this conclusion based on its reading of Section 2212(s) of The Natural Gas Choice and Competition Act (“Gas Choice Act” or “Act”). PGW seeks to have the scope of the PUC’s ratemaking authority determined through this Motion in Limine to prevent exploration of “unnecessary and legally irrelevant issues and adjustments.” Motion at 3. PGW’s Motion attempts to prevent current discovery attempting to ascertain the Company’s expenses and budget. The Company deems any discovery concerning such expenses and its budget to be irrelevant to the case at hand. PGW states that, under Section 2212(e) of the Code, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) is charged with following the same ratemaking methodology and requirements that the Philadelphia Gas Commission (“PGC”) used prior to the PUC assuming control under the Gas Choice Act. According to PGW, this section means that the Commission must employ the cash flow method of ratemaking as defined by PGW. PGW argues that the Commission may not employ any other ratemaking principles, including the just and reasonable standard. Finally, PGW asserts that, as a logical extension of its argument, the PUC is bound by the determinations of the Philadelphia Gas Commission. If the Philadelphia Gas Commission approves a PGW budget, PGW argues that the Commission can do nothing more than approve rates to recover this budgeted amount.

OCA ANSWER

1. The Gas Choice Act provides that city natural gas distribution operators are, with certain exceptions, “subject to regulation and control by the Commission with the same force as if the service were rendered by a public utility.” 66 Pa. C.S. §2212(b). The OCA does not interpret the Gas Choice Act in such a manner as would diminish the ability of the Commission to review PGW’s expenses and set PGW’s rates at just and reasonable levels. The Company requests that the cash flow method of ratemaking, as defined by PGW, be declared the only allowable method. Under this reasoning, PGW asserts that data requests seeking information regarding pro forma operating expense adjustments, as would be required under a traditional base rate case, are irrelevant and therefore undiscoverable. PGW argues that the operating budget passed by the PGC is a dictating instrument, and the Commission must simply set rates to meet the operational needs determined within such a budget.
2. PGW argues that the Commission must rely solely on the PGC approved budget when it attempts to set just and reasonable rates and may not conduct any analysis of its own or make any determination of what level of rates is just and reasonable. If the PGC were to set a budget that far exceeded what could be considered just and reasonable, PGW asserts that the Commission would still be obligated, under PGW’s reading of the Gas Choice Act, to set rates to meet that budget. This is an untenable result that renders the Gas Choice Act meaningless. If the Commission’s only function is to “rubber stamp” a budget approved by the Philadelphia

Gas Commission, the OCA submits that there was no point in bringing PGW under Commission jurisdiction to be “subject to regulation and control by the Commission with the same force as if the service were rendered by a public utility.” 66 Pa. C.S. §2212(b).

3. The OCA submits that a more appropriate reading of the Act, one which gives meaning to all provisions of the Act and the Public Utility Code, is that an approved PGW budget should be reviewed just as any other budget of a utility -- budgets that are approved by a utility’s Board of Directors -- is reviewed. The Commission should certainly accept evidence of the Philadelphia Gas Commission’s approved budget level, but the Commission should not be precluded from applying appropriate ratemaking principles to arrive at a just and reasonable level of rates. Indeed, the Commission should hold PGW to the same standard as other regulated utilities and should not tolerate unreasonable or imprudent expenditures that burden ratepayers.

4. Throughout PGW’s Motion, as well as in the Company’s objections to interrogatories propounded by the OCA, PGW relies on its argument that the Commission must accept the budget approved by the PGC. However, PGW acknowledges that the current budget request before the PUC, in this proceeding, has not yet been approved by the PGC. It is remarkable that PGW can proceed with a case that, they believe, requires the Commission to simply set rates to accommodate an operating budget that does not exist. PGW’s own actions belie its argument. If PGW’s argument is adopted, it should withdraw its case now since it has no approved budget.

The OCA submits, however, that it is the duty of the Commission to review all costs, expenses, and revenues to determine just and reasonable rates. The Commission is not charged with simply applying rates to meet a budget that is set by the Company.

5. PGW claims that the Interim Settlement Order “clearly acknowledges” that the Commission is statutorily obligated to authorize rate changes and establish cash reserves. Motion at 3. Additionally, PGW threatens to appeal this decision beyond the Commission if this “acknowledgment is not reinforced now.” This appeal, PGW claims, will then come at a time of even greater need of revenue for the company. However, the OCA submits that any threatened PGW action is of its own making. The Commission simply cannot make such an incorrect determination because of the threat of appeals.

6. PGW bases much of its argument in favor of the cash flow ratemaking methodology on the PUC’s February 22, 2001 Order (“Order” or “February 22 Order”) approving the Joint Petition for Full Settlement of the Commission’s November 22, 2000 Order (“November 22 Order”) at Docket No. R-00005654. This Order must be read in the context of the interim rate proceeding, and not this base rate case.

7. The Company argues that the February 22 Order approving the Joint Petition for Settlement recognized that PGW’s revenue requirement must produce sufficient cash to permit it to pay its financial obligations. The Order does not provide support for PGW’s argument that the cash flow method as defined by PGW must be utilized. The Order simply states that “the Commission will comply with its statutory obligations

under the Public Utility Code, including Section 2212(e).” Order at 7. The Order also states that the Joint Petition for Settlement’s provisions constitute a “negotiated resolution of the issues and are of no precedential value in subsequent proceedings.” Order at 6. Furthermore, the settlement only allowed PGW to implement a specified rate increase, subject to refund, after a determination of a just and reasonable level of rates in this base rate proceeding.

8. By the terms of the February 22 Order, the Commission states, “Issues regarding the appropriate level of base rates ... will be addressed in the pending base rate case.” Therefore, in the instant proceeding, the PUC contemplated such analysis, not mere “rubber stamping” of PGC determinations or of the settlement amount.

9. Importantly, in the February 22 Order, the Commission states its intention to authorize interim rate changes and cash reserves that “are consistent with [the Commission’s] statutory obligations under Section 2212(e), as well as the “just and reasonable” standards relied upon in our November 22, 2000 Order.” Order at 7, 8. (*emphasis added*). Therefore, the PUC recognized its duty to not only abide by Section 2212(e), but to also ensure that PGW’s rates, like the rates of all public utilities in the Commonwealth, are just and reasonable. PGW’s attempt to bifurcate the dual requirements of Section 2212(e) and Section 1301 (“Rates to be just and reasonable”) should, consequently, be rejected.

10. In the November 22 Order, the Commission stated that the standard of review was that of “just and reasonable” rates. PGW argued that the Commission was

required to adhere to the cash flow methodology contained in the Management Agreement but the Commission completely rejected this contention. November 22 Order at 6. It is unreasonable to assume, as PGW does, that the PUC would recognize the continuing applicability of Section 1301 for an interim case, but not for a permanent case such as this.

11. PGW continues to state in its Motion that reviewing courts, including the Pennsylvania Supreme Court, have recognized that the cash flow method has, in the past, produced just and reasonable rates. For example, PGW states that Action Alliance upheld the cash flow ratemaking methodology as producing just and reasonable rates. Motion at 7. However, in Action Alliance, the Court was unable to undertake a just and reasonable analysis of the Philadelphia Gas Commission rates because there was “no writing and certainly no findings and no reasons stated by the Philadelphia Gas Commission for its conclusion that the increased rates were just and reasonable.” See Action Alliance v. Philadelphia Gas Comm’n, 406 A.2d 1155, 1158 (1979). Based on this lack of record evidence, the Court stated that “We are therefore unable to review the Philadelphia Gas Commission’s adjudication.” Id. Consequently, in Action Alliance, the Court did not find that the cash flow methodology produced just and reasonable rates. Furthermore, the Court’s analysis in Action Alliance was premised on the fact that PGW was not subject to PUC regulation at that time. Id. Therefore, the typical fair return on fair value method of establishing and testing the reasonableness of utility rates was inapplicable. Quite obviously, PGW is now under

PUC regulation, so the underlying circumstances of Action Alliance do not apply.

Whether the cash flow method has produced just and reasonable rates in the past does not affect whether, in the instant proceeding, the cash flow method will, prospectively, produce just and reasonable rates. Moreover, as the Public Advocate case makes clear, the rates of PGW must be just and reasonable. See Public Advocate v. Philadelphia Gas Commission, 544 Pa. 129, 674 A.2d 1056 (1996). In Public Advocate, the Court stated that: “When examining the 1991-92 rates for PGW, this Court is mindful that no applicable constitutional requirement is more exacting than the requirement of ‘just and reasonable’ rates.” Id. at 1061. Therefore, the continuing applicability of the just and reasonable standard is quite evident.

12. In its Motion, PGW expresses displeasure with the nature of interrogatories served upon the Company. PGW has objected to 23 OCA interrogatories prior to the filing of this Motion. What the Company seems most displeased about is the examination of its operations and expenses - the same examination that every public utility is subject to as part of the Commission’s obligation to regulate and set rates. PGW should not be permitted to thwart the Commission’s review process.

13. PGW argues that the cash flow method, (including the bond coverage requirements), would render discovery of the type of expenditures complained of irrelevant, as almost all of the expenses were approved by the PGC, thereby removing the possibility of an allowance or disallowance from the PUC’s jurisdiction. This argument reverts back to the proposition that the Commission is powerless to act in any

manner different than the PGC approved operating budget. The OCA does not agree with this proposition, as has been argued throughout this Answer.

WHEREFORE, the Office of Consumer Advocate respectfully submits that, for the reasons set forth above, the Commission deny PGW's Motion in Limine.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

Docket No. R-00006042

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

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April 4, 2001

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DOCUMENT
FOLDER

RECEIVED
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01 APR -5 AM 9:54

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

Dear Mr. Mullins:

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

Set V - 7, 16, 19, 20, 21, 22 and 28.

Also enclosed are PGW's response to **informal discovery information requests no. 4.** By service copy of this correspondence and its attachments, the informal discovery responses are considered to have been served upon all parties. 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)

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).

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

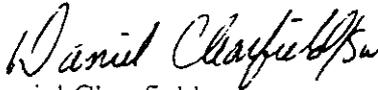
Dear Mr. Simms:

Enclosed please find PGW's responses to the following OTS interrogatories:

TRF - 3 and 9.

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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RE: Confidential Responses to OTS-TRF-33d and OTS-TRF-34d
Philadelphia Gas Works' Permanent Base Rate Filing,
Docket Nos. R-00006042 and R-00006042C0001 et al.

Dear Mr. Simms:

In accordance with the terms of the confidentiality agreement we just signed, enclosed are the confidential responses to the above referenced interrogatories.

Very truly yours,



Kevin J. Moody
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jlg

cc: Parties of Record (w/out enc.)

DSH:26798.1

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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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Dated: April 4, 2001



Kevin J. Moody, Esquire

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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 : Docket Nos. R-00006042 and
Expedited Hearing Schedule for Base : R-00006042C0001 *et al.*
Rate Proceeding :

PHILADELPHIA GAS WORKS' REPLY TO THE ANSWERS OF
PICGUG, CEPA *et al.*, OTS AND OCA TO PGW'S MOTION IN LIMINE
OR, IN THE ALTERNATIVE,

DOCKETED

REQUEST FOR LEAVE TO RESPOND AND THE RESPONSE
TO THE ANSWERS OF PICGUG, CEPA *et al.*, OTS AND OCA

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PA. JUDGE
SECRETARY'S OFFICE

Philadelphia Gas Works ("PGW") submits this general reply to the contentions and arguments in the Answers of Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), CEPA *et al.*,¹ the Office of Consumer Advocate ("OCA") and the Office of Trial Staff ("OTS") (collectively, "other parties") to PGW's Motion in Limine,² as well as a plea for quick action or, in the alternative, certification directly to the PUC.

The other parties confuse the straightforward issue presented by PGW's motion by proffering an unconvincing interpretation of the clear, unambiguous legislative directives that

¹ Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), Action Alliance of Senior Citizens of Great Philadelphia and the Tenants' Action Group (TAG) (collectively "CEPA")

² In the alternative, PGW respectfully requests leave to respond to the arguments of PICGUG, CEPA, OCA and OTS in answer to PGW's arguments in support of its motion.

78

define the scope of this rate proceeding. The other parties' arguments also misapprehend the constitutional requirement of "just and reasonable" rates.

The most important points are as follows:

1. Section 2212(e) of the Public Utility Code ("Code") states explicitly as follows:

Notwithstanding any provision of this title to the contrary, in determining the city natural gas distribution operation's revenue requirement and approving overall rates and charges, the commission shall follow the same ratemaking methodology and requirements that were applicable to the city natural gas distribution operation prior to the assumption of jurisdiction by the commission, and such obligation shall continue until the date on which all approved bonds have been retired, redeemed, advance refunded or otherwise defeased. (Emphasis added.)

In PGW's view, no part of this statutory mandate is unclear or ambiguous.

"Notwithstanding any provision of this title to the contrary," is quite clear:

- "[T]his title" is "Title 66" of the Pennsylvania Consolidated Statutes, which comprises two parts — Part I is the "Public Utility Code," and Part II is reserved ("Other Provisions").
- Therefore, any provisions of the Public Utility Code that are contrary to the Legislature's mandate in Section 2212(e) — that the PUC determine PGW's revenue requirement and overall rates and charges by "follow[ing] the same ratemaking methodology and requirements that were applicable to [PGW] prior to the assumption of jurisdiction by the commission" — are trumped by the legislative directive of Section 2212(e).³

³ Section 2212(e) employs the same language in regard to the PUC's requirement to ensure that PGW charges and collects rates sufficient to satisfy its bond covenants. A similar rationale applies to the legislative directive in Section 2122(s) that "[n]othing contained in this title shall be construed to abrogate or limit the executive or legislative powers of [PGW] to legislate or otherwise determine the powers, functions, budgets, activities and mission of [PGW], including, but not limited to, the ownership, governance, management or control thereof."

The other parties read Section 2212(e) as if it states “Notwithstanding any provision of this title to the contrary, *except sections* [insert desired sections here].” For instance:

- “Section 1301 must be balanced with the requirements of Section 2212 in order to ensure that PGW’s customers are subject to rates that conform with all of the requirements set forth in the Public Utility Code.” PICGUG Answer at 5, ¶8. *(This is illegal.)*
- “[T]he statute does not prohibit the Commission from superimposing traditional ratemaking methodology on top of the cash flow method.” PICGUG Answer at 6, ¶9. *(This is untrue.)*
- “The Gas Choice Act may not be read to mandate that the Commission and the parties look only to the ratemaking methodology and requirements contained in the Gas Choice Act, 66 Pa. C.S. § 2201 et seq. in adjudicating PGW’s base rate level.” CEPA Answer at 6, ¶4. *(This is true only in the reverse!)*
- “[T]he Gas Choice Act cannot be read, as PGW claims, to mean that the General Assembly has established a “unique ratemaking scheme for PGW.” CEPA Answer at 7, ¶4. *(This is exactly what the General Assembly did!)*
- “[A] more appropriate reading of the [Gas Choice] Act, one which gives meaning to all provisions of the Act and the Public Utility Code, is that an approved PGW budget should be reviewed just as any other budget of a utility – budgets that are approved by a utility’s Board of Directors – is reviewed.” OCA Answer at 4, ¶3. *(Section 2212 explains which section has precedence.)*
- “[T]here is absolutely nothing in Sections 1301 and 1308 of the Public Utility Code that would suggest that the Commission is under an obligation to determine rates for a public utility on this basis of a budgetary process.” OTS Answer at 4. *(These sections are not applicable!)*

The phrase “notwithstanding any provision of this title to the contrary” obviously means that not all of the provisions of the Public Utility Code are applicable to PGW, including Code Section 1301’s “just and reasonable” requirement *to the extent it authorizes a ratemaking method different from the one required by Section 2212(e)*. PGW understands, though, that this phrase does not and cannot exclude rates set in accordance with Section 2212(e) from the “just and

reasonable” *constitutional* requirement regarding confiscation.⁴ However, the other parties erroneously portray this overriding constitutional requirement as a “ratemaking standard” that justifies their attempts to require the PUC to set PGW’s rates using ratemaking methodologies *other than* the one required by Section 2212(e).⁵ The United States Supreme Court has clearly rejected the idea that the constitutional requirement of “just and reasonable rates” allows a “piecemeal” examination of the “subsidiary aspects” of a State’s chosen ratemaking methodology. Duquesne Light Co. v. Barasch, 488 U.S. 299, 313 (1989).⁶ Instead, it is well settled that it is “the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end.” Duquesne Light, 488 U.S. at 310 (*quoting* F.P.C. v. Hope Natural Gas, 320 U.S. 591, 602 (1944)). Duquesne Light makes clear that “the impact of certain rates can only be evaluated in the context of the system under which they are imposed.” Id., 488 U.S. at 314. The other parties’ attempt to use the

⁴ For this reason, PGW does not – as the OCA asserts – argue that the PUC “may not conduct any analysis of its own or make any determination of what level of rates is just and reasonable.” OCA Answer at 3, ¶2. That is the purpose of rate setting, and the Legislature has determined and directed with specificity what methodology will, in its judgment, produce just and reasonable rates for any city natural gas distribution operation, including PGW. There is not one “just and reasonable” rate. “Any rate selected which falls within the broad zone of reasonableness cannot be attacked as unconstitutional for being confiscatory [or excessive and extortionate].” Public Advocate v. Philadelphia Gas Comm’n, 674 A.2d 1056, 1061 (Pa. 1996) (*quoting* In re Permian Basin Area Rate Cases, 390 U.S. 747, 770 (1968)).

⁵ In F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942), the U.S. Supreme Court held that “[t]he Constitution does not bind ratemaking bodies to the service of any single formula or combination of formulas.”

⁶ Note that the defendant in this landmark Supreme Court case was the Pennsylvania Consumer Advocate.

constitutional requirement of “just and reasonable” rates to force *the PUC* to evaluate the constitutionality of the rates it sets according to Section 2212(e)’s required methodology is simply wrong⁷ and should be rejected.⁸

2. The meaning of Section 2212(e)’s phrase “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” also seems very clear. It should be beyond dispute at this point that this phrase requires the use of the “cash flow” methodology based upon the budget approved by the Philadelphia Gas Commission (“PGC”):

- The Management Agreement compelled the PGC to utilize the “cash flow” methodology in setting PGW’s rates. PICGUG agrees (PICGUG Answer at 5, ¶8); the PGC agrees (In the Matter of Philadelphia Gas Works’ Proposed FY 1999 Gas Cost Rate, Recommended Decision at 4 (November 18, 1998); and OTS agrees (OTS Main Brief at 3, R-00005654).
- The Management Agreement was incorporated into and approved by an ordinance of Philadelphia City Council (No. 455 of 1972). (Management Agreement Ordinance).
- An ordinance properly adopted by the Philadelphia City Council has the force and effect of a state statute. Public Advocate v. Philadelphia Gas Comm’n, 674 A.2d 1056, 1061 (Pa. 1996).

⁷ Duquesne Light makes clear that the evaluation of whether rates satisfy the “just and reasonable” *constitutional* requirement is a “judicial inquiry” rather than an administrative inquiry.

⁸ The other parties’ suggestions that the constitutional requirement of “just and reasonable” rates is concerned with the inclusion or exclusion in rates of *particular items* of expense or revenue was rejected in F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 603 (“Nor is it important to this case to determine the various permissible ways in which any rate base on which the return is completed might be arrived at.”) and Duquesne Light, 488 U.S. at 310 (“[A]ll of the subsidiary aspects of valuation for ratemaking purposes could not properly be characterized as having a constitutional dimension.”).

- The cash flow methodology obligated the PGC to set 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 bonds, capital additions, working capital, and an annual \$18 million base payment to the City, and comply with the covenants of PGW's bonds issued in accordance with the First Class City Revenue Bond Act. Management Agreement Ordinance at Section VII, ¶1.
- The cash flow methodology has been held by the Pennsylvania Supreme Court and the Commonwealth 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) ("[I]t is presumed that rates set in accordance with the 1972 City ordinance . . . are constitutional"); Action Alliance v. Philadelphia Gas Comm'n, 406 A.2d 1155, 1158 (Pa.Cmwlt. 1979).
- The PUC has agreed to "comply with its statutory obligations under the Public Utility Code, including Section 2212(e)," and has acknowledged that its statutory obligations under Section 2212(e) are consistent with the "just and reasonable" constitutional requirement. February 22, 2001 Order approving Joint Petition for Full Settlement (Interim Base rate Proceeding) at 7-8; see August 17, 2000 Order Establishing Interim Rate Procedures at 10.⁹
- The PUC has certified to the Commonwealth Court of Pennsylvania that it understands and will abide by the limitations and restrictions placed on its ratemaking authority, and relied on the same in defending its newly acquired authority. See City Council of Philadelphia v. Commonwealth et al., 34 M.D. 2000. In its Brief in Opposition to Philadelphia City Council's request for a preliminary injunction, after citing its obligations under Section 2212(e), the PUC assured the Commonwealth Court:

⁹ OCA particularly mischaracterizes the PUC's comments on the cash flow method in its November 22, 2000 Order on PGW's request for an interim rate increase. OCA Answer at 6-7, ¶ 10. OCA suggests that the PUC completely rejected its obligation to apply the cash flow method, and that it is unreasonable to think that the Commission would assume a stance in this case that differs from its position in the interim case. Id. However, the PUC made it abundantly clear that the "unique nature of this interim proceeding" was behind its position. November 22, 2000 Order at 9. Indeed, the PUC indicated that it applied a modified "cash flow analysis" designed only to address PGW's short term cash and debt service needs. Id. at 11.

Moreover, Act 21 [The Gas Choice Act] is explicit in its requirements that any rate changes allowed by the PUC may not adversely affect the revenue requirements of PGW . . . there is no evidence that the PUC will exercise this authority in a manner that will adversely affect the ability of the City to keep its bond covenants. To the contrary, Act 21 explicitly requires the PUC to rule upon rate increase requests in a manner that will serve to maintain a high level of protection to bondholders.

Brief of Respondent Pennsylvania Public Utility Commission in Opposition to Motions for Preliminary Injunctions at 7-9. (Attached as App. A.)

3. Finally, the other parties seem to forget that Sections 2212(e) and 2212(s) are the Legislature's directives, not PGW's, which are to be carried out by the Legislature's agent, the PUC, as an exercise of the Legislature's power to set utility rates.¹⁰ Section 2212(e) also requires the PGC, the PUC's statutory counterpart and legislative agency of the City of Philadelphia, to approve PGW's budget. Unlike the budgets of investor-owned utilities, PGW's budget is reviewed and approved in on-the-record public proceedings before the PGC.¹¹ That is the forum to examine the reasonableness and prudence of PGW's budget expenditures, not the PUC's ratemaking process required by Section 2212(e). The ALJ should be aware that, in the previously referenced City Council litigation, the PUC endorsed this viewpoint to the Commonwealth Court, asserting that the Gas Choice Act "leaves the [PGC] in place and able to

¹⁰ The other parties' attempts to invoke the "purpose" of Section 2212(e) (PICGUG Answer at 5, ¶ 8) and the "contemplations" of the General Assembly (OTS Answer at 3) in order to attempt to trump the explicit language of Section 2212(e) of the Code are clearly improper in terms of statutory construction and should be flatly rejected. *See* 1 Pa. C.S. § 1921(b) (clear and unambiguous words of a statute may not be disregarded under the pretext of pursuing their spirit).

¹¹ This undermines the OCA's assertion that the PUC should review PGW's approved budget "just as any other budget of a utility – budgets that are approved by a utility's Board of Directors – is reviewed." OCA Answer at 4, ¶3.

exercise its previous functions regarding the PGW capital budget, management issues and operational issues.” Brief of Respondent Pennsylvania Public Utility Commission in Opposition to Motions for Preliminary Injunctions at 13. (App. A hereto.)

In effect, the other parties are saying that – as a matter of constitutional law – the Pennsylvania Legislature cannot require the use of a particular methodology, to the exclusion of all others, to set rates. As stated above, Duquesne Light makes clear that “the impact of certain rates can only be evaluated in the context of the system under which they are imposed.”

Duquesne Light, 488 U.S. at 314. In this rate proceeding, “the system under which [PGW’s rates] are imposed” is – pursuant to Section 2212(e) – the “cash flow” method based upon the annual operating budget approved by the PGC. Rates set in accordance with that method, as embodied in the Management Agreement Ordinance, are presumed constitutional. Public Advocate, 674 A.2d at 1061. The other parties’ attempts to widen the scope of this proceeding based upon the constitutional requirement of “just and reasonable” rates is simply wrong and should be rejected.

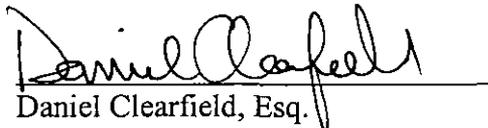
Need For Immediate Resolution

The other parties’ answers show that substantial controversy on this issue continues, despite the Commission’s acknowledgment of its obligations under Section 2212(e) in its November 22, 2000 Order approving the interim base rate settlement. The imminent hearings and PGW’s financial condition make clear the need for immediate resolution of this issue by the Commission. If, by some happenstance, the Commission does not confirm the acknowledgment in its November 22, 2000 Order, the sooner all the parties know this, the better, so that sufficient time exists for the parties to take appropriate action. Therefore, PGW respectfully requests Your

Honor to rule on PGW's motion in limine expeditiously and immediately certify the ruling to full Commission pursuant to 52 Pa. Code § 5.305 or, if Your Honor deems it more efficient, to certify the question to the full Commission immediately without ruling.

WHEREFORE, PGW respectfully requests that ALJ Cynthia Williams Fordham and the Commission provide the relief requested herein and in PGW's Motion in Limine.

Respectfully submitted,

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

Daniel Clearfield, Esq.

Kevin J. Moody, Esq.

Mark S. Stewart, Esq.

Wolf, Block, Schorr and Solis-Cohen LLP

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(717) 237-7160

Dated: April 6, 2001

COMMONWEALTH OF PENNSYLVANIA



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April 10, 2001

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

Re: Pennsylvania Public Utility Commission v.
Philadelphia Gas Works
Docket No. R-00006042

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V.P. J.C.
SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed is a certificate of service pursuant to 52 Pa. Code §5.412(f) for filing the direct testimony of Brian Kalcic in the above docket labeled OSBA Statement No. 1.

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

DOCUMENT
FOLDER

Sincerely,

Handwritten signature of Steven C. Gray.
Steven C. Gray
Assistant Small Business Advocate

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PHILADELPHIA GAS WORKS

Docket No. R-00006042

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CERTIFICATE OF SERVICE

I certify that I am serving two copies of the direct testimony of Brian Kalcic, labeled OSBA Statement No. 1, on behalf of the Office of Small Business Advocate in the manner indicated upon the persons addressed below:

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Steven C. Gray
Assistant Small Business Advocate

Dated: April 10, 2001

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April 10, 2001

VIA FACSIMILE AND FEDERAL EXPRESS

Administrative Law Judge Cynthia W. Fordham
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works;
Docket No. R-00006042**

Dear Judge Fordham:

Enclosed please find two copies of the *Direct Testimony* of Richard A. Baudino on behalf of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") in the above-captioned proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document.

DOCUMENT
FOLDER

Very truly yours,

MCNEES, WALLACE & NURICK

By *Charis M. Burak*
Charis M. Burak

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

CMB/lhe

c: James J. McNulty, Secretary (Transmittal Letter and Certificate of Service only - via Hand Delivery)
Certificate of Service

CERTIFICATE OF SERVICE

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

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Charis M. Buark

Dated this 10TH day of April, 2001, in Harrisburg, Pennsylvania.

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APR 10 2001

Re: Pa. Public Utility Commission v. Philadelphia Gas Works
Docket No. R-00006042
(Permanent Base Rate Increase)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dear Judge Fordham:

Please be advised that CEPA et al. will not be filing testimony in the above-captioned matter. CEPA et al. reserve the right however to cross examine witnesses and fully participate in the evidentiary hearings in these proceedings.

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

Very truly yours,

 PAB

PHILIP A. BERTOCCI
Attorney for CEPA et al.

cc: Service List

Joseph J. McNulty, Secretary

CERTIFICATE OF SERVICE

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

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April 11, 2001

VIA HAND DELIVERY

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

Dear Mr. Simms:

Enclosed please find PGW's revised responses to the following OTS interrogatory:

RS - 21.

Thank you for your attention to this matter.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

010955

/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).

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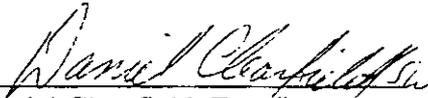
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Dated: April 11, 2001


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April 12, 2001

VIA HAND DELIVERY

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

Dear Mr. Simms:

Enclosed please find PGW's response to the following OTS interrogatory:

TRF - 21(a).

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)

011250

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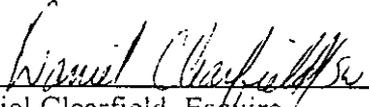
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Dated: April 12, 2001



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