

## **APPENDIX A**

**Philadelphia Gas Works - Gas Service Tariff  
(pp. 113-127)**

PHILADELPHIA GAS WORKS  
GAS SERVICE TARIFF



Issued by: Les A. Fyock  
Vice President  
Regulatory Affairs  
PHILADELPHIA GAS WORKS  
800 West Montgomery Avenue  
Philadelphia, PA 19122

**GAS TRANSPORTATION SERVICE - RATE GTS  
FIRM SERVICE**

Rate: Effective November 28, 1989

**AVAILABILITY**

This transportation and delivery service is available to any qualifying new or existing Customer when the Company, in its sole judgment, determines that it has sufficient capacity to provide the service, in excess of the requirements of the other firm service Customers. Customers must own and deliver gas of a suitable quality to the Company at an acceptable point of receipt. Transportation service shall be provided by the Company within its service territory as agent for the individual Customer or for a Buyer Group of no more than three individual Customers who contracts for transportation and delivery by the Company of at least 75,000 Mcf of gas per year. One member of a Buyer Group shall be designated as the sole contact for all billing and communications with the Company and will be responsible for the total payment for transportation service to a Buyer Group. However, each member of the group remains jointly and severally liable for all transportation charges incurred by the Buyer Group.

Customer shall have and provide to the Company, upon request, all necessary documentation to support ownership of the gas and authorization by all regulatory bodies with jurisdiction.

Each Customer shall be required to execute a Service Agreement which will specify terms and conditions of service under this Rate Schedule.

**CHARACTER OF SERVICE**

Transportation service under this rate schedule is firm and shall be interrupted only in cases of operating emergencies experienced by the Company. Company assumes no liability for interruptions caused by failure of supply sources or by third parties such as pipeline transporters and shall not be obligated to deliver gas under this Rate Schedule on any day that gas is not received at its gate station for the Customer's account except as specified under provisions for Standby Service contained herein.

**MONTHLY RATE**

The Monthly Charge shall be the sum of the following:

1. **CUSTOMER CHARGE:** \$250.00 per month.

**2. DELIVERY CHARGE:**

The maximum Delivery Charge shall be the Commodity Charge for the otherwise applicable firm retail sales tariff less the base cost of fuel as set forth in Regulation 11. The Delivery Charge applicable for each Customer shall be specified in the individual Transportation Service Agreement and is subject to revision from time to time as authorized by the Commission.

**3. TRANSPORTATION SURCHARGE:**

The Customer shall reimburse Company for any expense actually incurred for Customer's benefit from third party sources in the provision of this Service, such as directly assignable taxes, pipeline balancing penalties, governmentally imposed charges, and contingent liability for external transportation charges and fuel requirements. Additionally, for existing Customers, any unavoidable gas supply costs (e.g., pipeline demand charges) incurred on the Customer's behalf, may be recovered under this Surcharge. Such Surcharge is in addition to charges specified elsewhere in this Rate Schedule. Such potential charges are to be specifically defined and identified in the individual transportation service agreement.

**4. STANDBY SERVICE CHARGES, IF APPLICABLE:**

See Standby Service Provision.

**5. MINIMUM MONTHLY CHARGE:**

The minimum monthly charge shall be the Customer Charge.

**GAS COST RATE CLAUSE**

The Gas Cost Rate Clause as set forth in Regulation 11 of the Rules and Regulations of this Tariff shall NOT apply to transported volumes. Similarly, such transported volumes and any expenses related to such volumes shall be excluded from all calculations determining such Gas Cost Rate.

**CONTRACT TERM**

The duration of the transportation contract shall be as specified in the required individual Service Agreement. In no event shall the contract term be for a period of less than one (1) year.

### STANDBY SERVICE

Contingent upon the Company's ability to arrange the required supply contracts, a transportation Customer may contract for Standby Service to purchase gas from the Company under a specified retail rate schedule, in the event that the customer experiences an interruption or curtailment in transportation service by a third party transporter or supplier. The contract term for Standby Service shall be a minimum of one year. The maximum volume of gas that the Company is obligated to provide under the Standby Service on any day shall be specified in the individual Service Agreement. Volumes taken in excess of the specified daily limits, except for those volumes authorized and supplied by the Company under an applicable retail rate, may be subject to a charge of \$10 per Mcf if arrangements have been made for Emergency Service or \$20 per Mcf for all unauthorized volumes, as specified in the Conditions of Use provisions 6 and 7, respectively.

Under this Standby Service, upon proper notice, and as soon as operations permit, the Customer may convert some or all of their firm transportation service to the specified equivalent retail sales service during the effective period of this Standby Service Agreement. The Company is not obligated to provide retail sales service to a transportation Customer if the Customer has not contracted for Standby Service. Eligibility for such a Customer to receive retail gas service shall be no different than any other person or entity who is at the time making application for service as a new Customer.

A Customer contracting for Standby Service shall pay a monthly Reservation Charge that is equivalent to the demand charge paid by the Company to its highest cost pipeline supplier applied to the Customer's maximum Daily Contract Quantity as specified in the individual Service Agreement. The Company may revise the Reservation Charge no more frequently than monthly to reflect changes in the pipeline demand and related charges. The Reservation Charge prorated on a daily basis will be credited to all volumes purchased under the Standby Service. In addition, at the end of each contract year, the Customer will be assessed those minimum bill or take-or-pay charges actually paid by the Company to suppliers, which are attributable to the volume reserved but not taken under this Standby Service.

### STANDBY SERVICE - SPECIAL PROVISION

For Customers contracting for delivery by the Company of 10,000 Mcf per day or more of transportation gas, the terms and conditions under which Standby Service will be provided will be as specified in their individual Service Agreements, in lieu of the above.

### TERMS OF PAYMENT

Bills will be rendered and payment terms applied in accordance with the provisions of Regulations 3.31, 3.32, 3.33, 3.34, 3.36, 3.41, 3.42 and 3.43.

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**CONDITIONS OF USE**

1. The Company shall not be obligated to incur the cost of additional facilities to provide transportation service hereunder for existing load. Nonetheless, in the event the Company elects to provide additional facilities, which in the Company's sole judgment are required to provide transportation service, the cost of such facilities shall be the responsibility of the Customer. Customers may appeal the Company's judgment to the Commission. The Company shall provide, install, own and maintain such facilities. Where applicable, extensions and enlargements of gas supply facilities for qualifying new load shall be in accordance with Regulation 10.
2. The Customer warrants and will provide satisfactory documentation, upon request, that it has good and merchantable title for all gas delivered to the Company for transportation hereunder. Title shall be free and clear of all liens, encumbrances and claims whatsoever. Customer will indemnify Company and hold the Company harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of the adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, including pipeline transportation and service charges, which are applicable to such gas and/or the delivery of such gas to the Company.
3. The Company may retain for line loss and unaccounted-for gas a percentage of the total volume of gas delivered into its system for Customer's account. The percentage of gas to be retained by the Company shall be equivalent to the percentage for total system line loss and unaccounted-for, as utilized in the Company's Annual Operating Budget, as authorized by the Philadelphia Gas Commission. This condition may be revised as appropriate, by the individual Service Agreement, where the transported gas can be delivered directly to the Customer without commingling with other distribution system supplies.
4. In the event that the Company declares an "Emergency Situation" it may, at its discretion, divert Customer's gas for such purposes as Company deems appropriate and Customer will be compensated for such gas at the cost at which the Customer acquired the gas, at the Customer's cost of the alternate fuel utilized or at the Company's avoided cost of gas during the billing month, whichever is highest. The Customer shall demonstrate its cost of natural gas or replacement fuel by making a copy of its purchase contract available to Company upon request. All gas purchased by the Company will be credited to the Customer's account.

5. **NOTICE AND BALANCING**

The Notice and Balancing conditions shall be the following, except as otherwise provided in the individual Service Agreement.

The Company shall not be obligated to deliver or accept for delivery volumes in excess of the maximum hourly, daily or monthly volumes specified in the Service Agreement.

It is the intent of the Company that the Customer so manage his arrangements for daily deliveries of gas that they approximately equal his combined daily gas usage and that volume retained for line loss and unaccounted for adjustment. To facilitate this management and to avoid or correct imbalances, Customer may modify the quantities it intends to have delivered to Company's City Gate in accordance with the monthly and daily nomination procedure of the delivering pipeline. All delivery arrangements must be coordinated with Company's Gas Control Dispatcher in a manner deemed acceptable by Company. Company shall, within the limitations of its system, assist in the balancing effort.

The quantities of gas received on Customer's behalf will be balanced monthly on a thermally equivalent basis with those quantities re-delivered or retained for line loss and unaccounted for adjustment. For this thermal correction quantities will be multiplied by a fraction; the numerator of which is the weighted average Btu content per cubic foot of either the Company's system (if commingled) or the individual transporting pipeline (if not commingled), and the denominator is a reference Btu content of 1,000 Btu per cubic foot.

Notice will be provided by Company's Gas Control Dispatcher, at the time of each individual Customer's daily nominations, as to the availability of retail gas backup in accordance with operating conditions and their contractual service obligations. On any day when retail backup is declared unavailable, all volumes used (including adjustment for line loss and unaccounted for gas) in excess of that delivered on such Customer's behalf that day, will be excluded from their daily and monthly balancing provisions. Such gas will be billed for at the rate of \$10 per Mcf if Emergency Gas was initially requested and approved or at the rate of \$20 per Mcf if Unauthorized, as specified in the Conditions of Use provisions 6 and 7, respectively.

#### ALLOWABLE IMBALANCES

Imbalances except as noted above, may be permitted within a range of  $\pm 10\%$  on a daily basis if adjusted within  $\pm 5\%$  by month's end. Company will advise Customer of potential imbalance conditions periodically to facilitate correction. But repeated excessive overruns or underruns of the hourly and daily gas volumes received for Customer's account may be considered grounds for termination of service under this rate. Monthly imbalances within the allowable limits shall be resolved through mutual adjustment of initial deliveries in the subsequent month of service.

#### CORRECTION FOR QUANTITIES OUTSIDE RANGE OF ALLOWABLE IMBALANCES

All volumes utilized in excess of the allowable monthly overrun, where retail sales backup had been authorized, will be considered sold to the Customer under the applicable equivalent retail rate.

All volumes delivered to the Company that remain unaccepted by the Customer, in excess of the allowable monthly underrun may be offered for sale to the Company or stored at the Customer's option. Gas may be purchased by the Company at a rate not to exceed the Company's avoided cost of gas for the month of delivery. In the event that the Company does not elect to purchase volumes in excess of the allowable underrun, a service charge for all such volumes carried forward by the Company will be made. These volumes will be the first deliveries in the subsequent month. The unit rate for this service charge will be the volumetrically weighted average of the 100% load factor unit cost of the Company's pipeline storage contracts as utilized in the Company's Annual Operating Budget authorized by the Commission. Upon temporary suspension of deliveries or termination of Rate GTS service, any existing underrun imbalance shall be corrected within sixty (60) days of the end of the month in which final deliveries are made. Otherwise they become the property of the Company at no cost to the Company.

6. EMERGENCY GAS

Emergency gas is defined as a service to be offered by the Company when gas is not available under the otherwise applicable retail sales service, provided certain conditions apply and terms are met, and that the quantities of gas available to the Company and the distribution facilities are adequate to provide this service without jeopardizing the physical or economic operation of the Company. The cost of providing this emergency service is \$10.00 for each thousand cubic feet of gas used. The minimum charge for this service is \$100.00 per occurrence.

Customers who feel they may have to avail themselves of this service should send for a copy of the Terms and Conditions of Availability under which this emergency service may be obtained.

7. UNAUTHORIZED USE

If a Customer uses this service after being notified that service under this schedule is not available, or uses this service in excess of authorized limitations when established and duly notified, all such unauthorized usage shall be billed at the rate of \$20.00 for each Mcf. In addition, Company may, at its discretion, refuse to accept delivery from the Customer's Transporter, and physically shut off Customer to ensure compliance.

8. LIABILITY

The Company shall not be liable for curtailment of service under this Rate Schedule or loss of gas of the Customer as a result of any steps taken to comply with any law, regulation or order of any governmental agency with jurisdiction to regulate, allocate or control gas supplies or the rendering of service hereunder, and regardless of any defect in such law, regulation or order.

The Company reserves the right to commingle transport gas with its other supplies but gas is and remains the property of the Customer while being transported and delivered by the Company. The Customer shall be responsible for maintaining all insurance it deems necessary to protect its property interest in such gas before, during and after receipt by the Company.

The Company shall not be liable for any loss to the Customer or any other entity or person(s) arising from or out of service under this Rate Schedule, including loss of gas in the possession of the Company or any other cause.

### **RULES AND REGULATIONS**

The Rules and Regulations set forth in this Tariff shall govern the service under this classification except where noted herein.

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**GAS TRANSPORTATION SERVICE - RATE GTS  
INTERRUPTIBLE SERVICE**

Rate: Effective November 28, 1989

**AVAILABILITY**

This transportation and delivery service is available to any qualifying new or existing Customer when the Company, in its sole judgment, determines that it has sufficient capacity to provide the service, in excess of the requirements of the other Customers. Customers must own and deliver gas of a suitable quality to the Company at an acceptable point of receipt. Transportation service shall be provided by the Company within its service territory as agent for the individual Customer or for a Buyer Group of no more than three individual Customers who contracts for transportation and delivery by the Company of at least 75,000 Mcf of gas per year. One member of a Buyer Group shall be designated as the sole contact for all billing and communications with the Company and will be responsible for the total payment for transportation service to a Buyer Group. However, each member of the group remains jointly and severally liable for all transportation charges incurred by the Buyer Group.

Customer shall have and provide to the Company, upon request, all necessary documentation to support ownership of the gas and authorization by all regulatory bodies with jurisdiction.

Interruptible transportation service shall not be a replacement of service under any rate schedule providing for firm service.

Each Customer shall be required to execute a Service Agreement which will specify terms and conditions of service under this Rate Schedule.

**CHARACTER OF SERVICE**

Transportation service under this rate schedule is interruptible, paralleling the character of service of the otherwise applicable retail sales tariff. Service under this rate schedule shall be subordinate to all firm retail sales services and firm transportation services provided by the Company. The Company, at its sole discretion and on a best efforts basis, will endeavor to transport volumes received at the Company's City Gate for the Customer's account during periods when the otherwise applicable retail service is not available.

Company assumes no liability for interruptions caused by failure of supply sources or by third parties such as pipeline transporters and shall not be obligated to deliver gas under this Rate Schedule on any day that gas is not received at its gate station for the Customer's account except as specified under provisions for Standby Service contained herein.

**MONTHLY RATE**

The Monthly Charge shall be the sum of the following:

1. **CUSTOMER CHARGE:** \$250.00 per month.

2. **DELIVERY CHARGE:**

The maximum Delivery Charge shall be the interruptible margin, defined herein as the Commodity Charge for the otherwise applicable retail sales tariff less the avoided cost of gas as computed by the Company.

The Customer may elect either (i) a fixed annual Delivery Charge based on the annual interruptible margin in effect for the Company's operating fiscal year (currently September through August), or (ii) a variable monthly Delivery Charge. This variable charge shall be the monthly interruptible margin as experienced by the Company during the month of delivery. The Delivery Charge for volumes transported during periods when the otherwise applicable retail service is not available shall be as specified in the individual service agreement.

The Customer shall make an election of either the fixed or variable Delivery Charge pricing methodology prior to the initiation of service hereunder and at each subsequent September 1st thereafter, to be effective for the following twelve months, or portion thereof, of the contract period.

The Delivery Charge applicable for each Customer shall be specified in the individual Transportation Service Agreement and is subject to revision from time to time as authorized by the Commission.

3. **TRANSPORTATION SURCHARGE:**

The Customer shall reimburse Company for any expense actually incurred for Customer's benefit from third party sources in the provision of this Service, such as directly assignable taxes, pipeline balancing penalties, governmentally imposed charges, and contingent liability for external transportation charges and fuel requirements. Such Surcharge is in addition to charges specified elsewhere in this Rate Schedule. Such potential charges are to be specifically defined and identified in the individual transportation service agreement.

4. **STANDBY SERVICE CHARGES, IF APPLICABLE:**

See Standby Service Provisions.

5. **MINIMUM MONTHLY DELIVERY CHARGE:**

Except as otherwise provided in the individual service agreement, the Minimum Monthly Delivery Charge shall be the Daily Contract Quantity (DCQ) times one half the number of days transportation service is available in the billing month, times the applicable transportation Delivery Charge. The Minimum Monthly Delivery Charge shall be inapplicable when any of the following conditions occur:

- a) When the otherwise applicable retail sales service is not subject to a corresponding minimum charge; or
- b) When, for reasons, beyond the Customer's control, the Customer's gas burning equipment is temporarily inoperative; or
- c) When for reasons beyond the Customer's control, the Customer cannot obtain transportation from its pipeline transporter(s) to the Point of Receipt; or
- d) In emergency situations where the Company diverts the Customer's transportation gas to meet the requirements of its firm Customers.

During periods when the Minimum Monthly Delivery charge is inapplicable, the Customer Charge shall be the minimum monthly charge.

#### **GAS COST RATE CLAUSE**

The Gas Cost Rate Clause as set forth in Regulation 11 of the Rules and Regulations of this Tariff shall NOT apply to transported volumes. Similarly, such transported volumes and any expenses related to such volumes shall be excluded from all calculations determining such Gas Cost Rate.

#### **CONTRACT TERM**

The duration of the transportation contract shall be as specified in the required individual Service Agreement. In no event shall the contract term be for a period of less than one (1) year.

#### **STANDBY SERVICE**

Contingent upon the Company's ability to arrange the required supply contracts, a transportation Customer may contract for Standby Service to purchase gas from the Company under a specified retail rate schedule, in the event that the Customer experiences an interruption or curtailment in transportation service by a third party transporter or supplier during the availability period of such equivalent retail sales service. The contract term for Standby Service shall be a minimum of one year. The maximum volume of gas that the Company is obligated to provide under the Standby Service on any day shall be specified in the individual Service Agreement. Volumes taken in excess of the specified daily limits, except for those volumes authorized and supplied by the Company under an applicable retail rate, may be subject to a charge of \$10 per Mcf if arrangements have been made for Emergency Service or \$20 per Mcf for all unauthorized volumes, as specified in the Conditions of Use provisions 6 and 7, respectively.

Under this Standby Service, upon proper notice to the Company, and as soon as operations permit, the Customer may convert some or all of their interruptible transportation service to the specified equivalent retail sales service during the effective period of this Standby Service Agreement. The Company is not obligated to provide retail sales service to a transportation Customer if the Customer has not contracted for Standby Service. Eligibility for such a Customer to receive retail sales service shall be no different than any other person or entity who is, at the time, making application for service as a new Customer.

A Customer contracting for Standby Service shall pay a monthly Reservation Charge. This charge shall be based on the demand charge paid by the Company to its highest cost pipeline supplier adjusted to reflect the limitation on the availability of Standby Service for interruptible Customers, and then applied to the Customer's maximum Daily Contract Quantity as specified in the individual Service Agreement. The Company may revise the Reservation Charge no more frequently than monthly to reflect changes in the pipeline demand and related charges. The Reservation Charge prorated on a daily basis will be credited to all volumes purchased under the Standby Service. In addition, at the end of each contract year, the Customer will be assessed those minimum bill or take-or-pay charges actually paid by the Company to suppliers, which are attributable to the volume reserved but not taken under this Standby Service.

#### **STANDBY SERVICE - SPECIAL PROVISION**

For Customers contracting for delivery by the Company of 10,000 Mcf per day or more of transportation gas, the terms and conditions under which Standby Service will be provided will be as specified in their individual Service Agreements, in lieu of the above.

#### **TERMS OF PAYMENT**

Bills shall be rendered and payment terms applied in accordance with the provisions of Regulations 3.31, 3.32, 3.33, 3.34, 3.36, 3.41, 3.42 and 3.43.

#### **CONDITIONS OF USE**

- I. The Company shall not be obligated to incur the cost of additional facilities to provide transportation service hereunder for existing load. Nonetheless, in the event the Company elects to provide additional facilities, which in the Company's sole judgment are required to provide transportation service, the cost of such facilities shall be the responsibility of the Customer. Customers may appeal the Company's judgment to the Commission. The Company shall provide, install, own and maintain such facilities. Where applicable, extensions and enlargements of gas supply facilities for qualifying new load shall be in accordance with Regulation 10.

2. The Customer warrants and will provide satisfactory documentation, upon request, that it has good and merchantable title for all gas delivered to the Company for transportation hereunder. Title shall be free and clear of all liens, encumbrances and claims whatsoever. Customer will indemnify Company and hold the Company harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of the adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, including pipeline transportation and service charges, which are applicable to such gas and/or the delivery of such gas to the Company.
3. The Company may retain for line loss and unaccounted-for gas a percentage of the total volume of gas delivered into its system for Customer's account. The percentage of gas to be retained by the Company shall be equivalent to the percentage for total system line loss and unaccounted-for, as utilized in the Company's Annual Operating Budget, as authorized by the Philadelphia Gas Commission. This condition may be revised as appropriate, by the individual Service Agreement, where the transported gas can be delivered directly to the Customer without commingling with other distribution system supplies.
4. In the event that the Company declares an "Emergency Situation" it may, at its discretion, divert Customer's gas for such purposes as Company deems appropriate and Customer will be compensated for such gas at the cost at which the Customer acquired the gas, at the Customer's cost of the alternate fuel utilized or at the Company's avoided cost of gas during the billing month, whichever is highest. The Customer shall demonstrate its cost of natural gas or replacement fuel by making a copy of its purchase contract available to Company upon request. All gas purchased by the Company will be credited to the Customer's account.

5. NOTICE AND BALANCING

The Notice and Balancing conditions shall be the following, except as otherwise provided in the individual Service Agreement.

The Company shall not be obligated to deliver or accept for delivery volumes in excess of the maximum hourly, daily or monthly volumes specified in the Service Agreement.

It is the intent of the Company that the Customer so manage his arrangements for daily deliveries of gas that they approximately equal his combined daily gas usage and that volume retained for line loss and unaccounted for adjustment. To facilitate this management and to avoid or correct imbalances, Customer may modify the quantities it intends to have delivered to Company's City Gate in accordance with the monthly and daily nomination procedure of the delivering pipeline. All delivery arrangements must be coordinated with Company's Gas Control Dispatcher in a manner deemed acceptable by Company. Company shall, within the limitations of its system, assist in the balancing effort.

The quantities of gas received on Customer's behalf will be balanced monthly on a thermally equivalent basis with those quantities re-delivered or retained for line loss and unaccounted for adjustment. For this thermal correction quantities will be multiplied by a fraction; the numerator of which is the weighted average Btu content per cubic foot of either the Company's system (if commingled) or the individual transporting pipeline (if not commingled), and the denominator is a reference Btu content of 1,000 Btu per cubic foot.

Notice will be provided by Company's Gas Control Dispatcher, at the time of each individual Customer's daily nominations, as to the availability of retail gas backup in accordance with operating conditions and their contractual service obligations. On any day when retail backup is declared unavailable, all volumes used (including adjustment for line loss and unaccounted for gas) in excess of that delivered on such Customer's behalf that day, will be excluded from their daily and monthly balancing provisions. Such gas will be billed for at the rate of \$10 per Mcf if Emergency Gas was initially requested and approved or at the rate of \$20 per Mcf if Unauthorized, as specified in the Conditions of Use provisions 6 and 7, respectively.

#### ALLOWABLE IMBALANCES

Imbalances except as noted above, may be permitted within a range of  $\pm 10\%$  on a daily basis if adjusted within  $\pm 5\%$  by month's end. Company will advise Customer of potential imbalance conditions periodically to facilitate correction. But repeated excessive overruns or underruns of the hourly and daily gas volumes received for Customer's account may be considered grounds for termination of service under this rate. Monthly imbalances within the allowable limits shall be resolved through mutual adjustment of initial deliveries in the subsequent month of service.

#### CORRECTION FOR QUANTITIES OUTSIDE RANGE OF ALLOWABLE IMBALANCES

All volumes utilized in excess of the allowable monthly overrun, where retail sales backup had been authorized, will be considered sold to the Customer under the applicable equivalent retail rate.

All volumes delivered to the Company that remain unaccepted by the Customer, in excess of the allowable monthly underrun may be offered for sale to the Company or stored at the Customer's option. Gas may be purchased by the Company at a rate not to exceed the Company's avoided cost of gas for the month of delivery. In the event that the Company does not elect to purchase volumes in excess of the allowable underrun, a service charge for all such volumes carried forward by the Company will be made. These volumes will be the first deliveries in the subsequent month. The unit rate for this service charge will be the volumetrically weighted average of the 100% load factor unit cost of the Company's pipeline storage contracts as utilized in the Company's Annual Operating Budget authorized by the Commission. Upon temporary suspension of deliveries or termination of Rate GTS service, any existing underrun imbalance shall be corrected within sixty (60) days of the end of the month in which final deliveries are made. Otherwise they become the property of the Company at no cost to the Company.

#### 6. EMERGENCY GAS

Emergency gas is defined as a service to be offered by the Company when gas is not available under the otherwise applicable retail sales service, provided certain conditions apply and terms are met, and that the quantities of gas available to the Company and the distribution facilities are adequate to provide this service without jeopardizing the physical or economic operation of the Company. The cost of providing this emergency service is \$10.00 for each thousand cubic feet of gas used. The minimum charge for this service is \$100.00 per occurrence.

Customers who feel they may have to avail themselves of this service should send for a copy of the Terms and Conditions of Availability under which this emergency service may be obtained.

7. UNAUTHORIZED USE

If a Customer uses this service after being notified that service under this schedule is not available, or uses this service in excess of authorized limitations when established and duly notified, all such unauthorized usage shall be billed at the rate of \$20.00 for each Mcf. In addition, Company may, at its discretion, refuse to accept delivery from the Customer's Transporter, and physically shut off Customer to ensure compliance.

8. LIABILITY

The Company shall not be liable for curtailment of service under this Rate Schedule or loss of gas of the Customer as a result of any steps taken to comply with any law, regulation or order of any governmental agency with jurisdiction to regulate, allocate or control gas supplies or the rendering of service hereunder, and regardless of any defect in such law, regulation or order.

The Company reserves the right to commingle transport gas with its other supplies but gas is and remains the property of the Customer while being transported and delivered by the Company. The Customer shall be responsible for maintaining all insurance it deems necessary to protect its property interest in such gas before, during and after receipt by the Company.

The Company shall not be liable for any loss to the Customer or any other entity or person(s) arising from or out of service under this Rate Schedule, including loss of gas in the possession of the Company or any other cause.

### **RULES AND REGULATIONS**

The Rules and Regulations set forth in this Tariff shall govern the service under this classification except where noted herein.

**CERTIFICATE OF SERVICE**

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

**VIA E-MAIL, HAND DELIVERY AND/OR FIRST CLASS MAIL**

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SECRETARY'S BUREAU

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Daniel Clearfield, Esquire

Dated: August 22, 2001

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P.A.U.C.  
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August 22, 2001

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

DOCUMENT  
FOLDER

VIA HAND DELIVERY

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

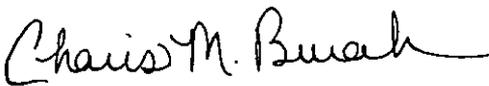
Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of the Exceptions of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") in the above-referenced proceeding.

As reflected in the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes. Thank you for your attention to this matter.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By   
Charis M. Burak

Counsel for the Philadelphia Industrial and  
Commercial Gas Users Group

Enclosures

CMB/lhe

c: Administrative Law Judge Cynthia Williams Fordham (via facsimile and federal express)  
Cheryl Walker Davis, Office of Special Assistants (via hand delivery) (with diskette in  
Word 6.0)  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

v.

PHILADELPHIA GAS WORKS

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:  
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Docket No. R-00006042

**DOCKETED**

AUG 24 2001

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

DOCUMENT  
FOLDER

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

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

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SECRETARY'S  
BUREAU

01 AUG 22 PM 2:17

Counsel to the Philadelphia Industrial and  
Commercial Gas Users Group

Dated: August 22, 2001

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## I. INTRODUCTION

On January 5, 2001, Philadelphia Gas Works ("PGW" or "Company") filed Supplement No. 7 to Tariff Gas – Pa. PUC No. 1 ("Supplement No. 7") with the Pennsylvania Public Utility Commission ("PUC" or "Commission"). Supplement No. 7 proposed to implement a \$65 million base rate increase to PGW customers, along with requesting several tariff revisions.

On February 2, 2001, the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") filed a Complaint in this proceeding. PICGUG is an *ad hoc* association of energy-intensive industrial and commercial customers receiving service from PGW under various rate schedules. PICGUG members use substantial volumes of natural gas in their businesses, and natural gas costs comprise a significant element of their respective costs of operation.

Pursuant to the procedural schedule, PICGUG filed a Main Brief ("M.B.") and a Reply Brief ("R.B.") in order to address several of the outstanding issues in this proceeding. Based upon evidentiary hearings and briefings by the parties, on August 7, 2001, Administrative Law Judge Cynthia Williams Fordham ("ALJ Fordham") issued her Recommended Decision ("R.D.") in this proceeding.

PICGUG files these Exceptions in order to except to one recommendation by the ALJ, regarding the allocation of any rate increase granted to PGW. Specifically, PICGUG urges the PUC to allocate the entirety of any rate increase approved for PGW to the residential customer classes in order to begin to alleviate the significant and unjustified subsidy currently being provided to the residential classes by the commercial and industrial classes. Contrary to the findings of the R.D., such an allocation would not conflict with the principles of gradualism, but rather, move the Company towards the efficient elimination of this improper subsidy.

## II. EXCEPTION

1. *The ALJ Errs In Determining That The Residential Classes Should Not Bear The Entirety Of Any Rate Increase, Even Though The Residential Classes Are Currently Being Subsidized By The Commercial And Industrial Classes.*

PGW's Cost of Service Study ("COSS"), as submitted in this proceeding, indicates that the residential customer classes are receiving a significant and unjustified subsidy from the commercial and industrial classes. See PICGUG M.B., pp. 26-31. Specifically, the commercial and industrial customers are receiving service from PGW at rates significantly above their cost to serve, while the residential customers are receiving service at rates significantly below their cost to serve. See id. at 26.

Even in light of this subsidy, however, PGW proposes a 10.5% rate increase for the residential classes, with an increase of approximately 8.8% proposed for the commercial and industrial classes. See id. at 28. This proposed allocation, based upon PGW's requested rate increase of \$65 million, would allow the current subsidy to remain in PGW's rates. Specifically, at the Company's proposed rates, the residential classes would receive a subsidy of \$36.6 million, with the commercial and industrial customers providing the bulk of this subsidy. See id.

Conversely, in order to begin the process of alleviating the subsidization of the residential customer classes, PICGUG proposes to allocate the entirety of any rate increase granted to PGW to the residential customer classes. See id. 28-30. While this allocation would not fully eliminate the subsidy, this proposed allocation would provide a significant step towards removing this subsidy from PGW's rates. See id. For example, allocating PGW's requested \$65 million rate increase to only the residential customer classes would result in a remaining subsidy of \$23 million. See id. at 29. Given the ALJ's recommended reduction to PGW's requested

increase, adopting PICGUG's recommendation to allocate the entire rate increase to the residential class would result in a remaining subsidy in excess of \$23 million.

In the R.D., the ALJ recognizes the inappropriateness of this subsidy currently inherent in PGW's rates. As a result, the ALJ states the following:

[T]he residential classes (heat and non-heat) are receiving significant and unjustifiable subsidies from the Company's commercial and industrial customers. Specifically, PGW's residential classes are paying less than their cost to serve, while PGW's commercial and industrial customers are paying more than their cost to serve. Even in light of this subsidy, PGW's recommended rate allocation for the rate increase proposed in this proceeding is fairly consistent among the classes. PGW proposes a 10.5% overall increase for the residential classes, while the commercial and industrial classes would receive an increase of about 8.8%. Based upon this increase, however, the significant subsidy provided to the residential classes by the commercial and industrial classes would still remain. The residential classes will receive a subsidy of \$36.6 million at the Company's proposed rates, and the commercial and industrial customers will provide the bulk of this subsidy.

R.D. at 70-71 (citations redacted). As part of her findings of fact, the ALJ notes that "PGW's residential customer classes are currently being subsidized by the commercial and industrial customer classes." Id. at 19. In addition, the ALJ determines that all of the parties desire for the customer classes to move closer to their cost of service. See id. at 76.

The ALJ states, however, that the concept of gradualism requires that the residential classes not bear the entirety of any rate increase. See id. For this reason, the ALJ rejects PICGUG's allocation proposal and instead recommends that the allocation structure proposed by the Office of Trial Staff ("OTS") in this proceeding is an "appropriate solution." See id. As explained in the R.D., "OTS' recommended revenue allocation retains the current volumetric charge for all classes except the residential class. Since the residential class is being subsidized

by the other customer classes, OTS proposes that the residential class receive a volumetric decrease after the other classes obtain the maximum reduction."<sup>1</sup> Id.

Under the OTS proposal, all PGW customer classes would receive a rate increase in their customer charges. With the exception of the residential classes, all customer classes would remain at PGW's current volumetric rates. The residential classes would then receive the bulk of any volumetric increase. See OTS Exhibit No. 3, Schedule 3. The OTS proposal, and thus the R.D., is based upon PGW receiving a rate increase of \$33 million, as compared to the \$65 million originally requested by the Company. See id. Pursuant to the OTS proposal, if PGW were to receive a rate increase of greater than \$33 million, the other customer classes, including the commercial and industrial classes, would receive both volumetric and customer charge increases. See id.

The R.D.'s recommendation for an appropriate rate allocation does not provide the necessary relief to the industrial and commercial classes that would occur if any rate increase were allocated in full to the residential classes. Specifically, the OTS proposal still provides for a rate increase in the customer charge of all of PGW's classes. Pursuant to PGW's proposal, the requested \$65 million rate increase would result in a customer charge increase of \$44.5 million, with the remaining \$20.5 million generated through the volumetric rate increase. See PICGUG M.B., p. 27. Even if the overall revenue increase was lowered, the majority of PGW's rate increase would be flowed through the customer charge, which would result in a rate increase for

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<sup>1</sup> Although PGW requests a \$65 million rate increase, the R.D. recommends that this increase be modified to \$33 million, in addition to the \$11 million interim relief implemented in March 2001. See R.D. at 110. This recommended rate increase is identical to that proposed by the OTS. As such, the allocation proposal set forth by the OTS is based upon the proposed \$33 million rate increase. PICGUG does not except to the ALJ's recommendation regarding PGW's revenue requirement.

all customer classes. As a result, the OTS proposal does not provide the same relief from the millions of dollars currently being subsidized to the residential classes, as would occur if the entirety of any rate increase were allocated in full to the residential classes.

In addition, PGW's forthcoming restructuring proceeding requires that significant and expedient progress be made towards eliminating this subsidy. See id. at pp. 30-31. Based upon PGW's COSS, transportation customers are currently paying transportation rates that are \$1.5 million, or 57.8%, greater than their allocated cost to serve. See id. at 30. As a result, transportation customers, similar to industrial and commercial customers, are contributing to the residential classes' subsidy. More importantly, however, because PGW's maximum transportation rate is the non-gas rate from the transportation customer's applicable rate schedule, these customers must negotiate downward from a grossly inflated tariff rate that is far above the cost to serve, rather than negotiating from a cost-based rate level. See id.

PGW's forthcoming restructuring proceeding will require the Company to unbundle its rates; however, because neither PGW's current transportation nor sales rates are cost-based, any unbundling would not result in the appropriate cost-based transportation rates. See id. at 30-31. As such, PGW's current base rate proceeding is the first, and possibly only, opportunity that the Commission will have to significantly reduce this improper and unjustifiable subsidy prior to PGW being required to unbundle its rates. Thus, the PUC should take the appropriate action to move towards eliminating the maximum portion of this subsidy possible in this proceeding while still following the principles of gradualism (i.e., allocating the entirety of any rate increase to the residential classes).

Moreover, in light of the onerous task that the commercial and industrial customers currently bear in subsidizing the residential customers, allocating PGW's rate increase in full to

the residential classes will not contravene the principles of gradualism. For example, if PGW's requested rate increase of \$65 million was allocated to the residential classes, the overall rates for the residential classes would increase from 10.5% proposed by PGW to 13.2%, resulting in a 2.7% rate increase from that originally proposed by the Company.<sup>2</sup> See id. at 29. Under this scenario, the commercial and industrial customers would continue to provide a \$23 million subsidy to the residential classes. See id. Accordingly, the principles of gradualism are not contravened when the residential classes' rates would increase at a maximum percentage of 13.2% (or based upon the ALJ's recommended rate increase of \$33 million, less than 13.2%), while the industrial and commercial customer classes are still required to provide an enormous and improper subsidy.

As part of this proceeding, PICGUG presented several alternative rate allocations should the PUC determine not to allocate the full rate increase to the residential classes. See id. at 29-30. For example, the residential classes could receive three times the percentage increase given to the other classes. See id. The OTS proposal recommended by the ALJ in the R.D. also provides such an alternative method for allocation. The PUC must be aware, however, that these alternatives, while allocating a larger percentage of any rate increase to the residential classes than that proposed by the Company, will not provide the immediate and significant relief that would occur if the entire rate increase in this proceeding is granted to the residential classes.

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<sup>2</sup> Moreover, if the entirety of the ALJ's recommended rate increase (i.e., \$33 million) was allocated to the residential classes, the residential classes' percentage increase would be lower than the aforementioned 13.2%.

### III. CONCLUSION

The Philadelphia Industrial and Commercial Gas Users Group respectfully submits that the Administrative Law Judge erred in her recommendation regarding the allocation of the rate increase to be implemented in this proceeding. The goal of the parties in this proceeding is to move the individual customer classes closer to their respective costs to serve. This goal cannot be achieved, however, without a full allocation to the residential classes of any rate increase approved in this proceeding. While the ALJ's recommendation provides for an allocation that addresses this subsidy more appropriately than the allocation proposed by PGW, only by allocating any rate increase in its entirety to the residential classes can the PUC ensure that the necessary and adequate steps are being implemented to remove the burden of this subsidy as properly and expediently as possible from the industrial and commercial customer classes. Accordingly, PICGUG requests that the Commission modify the R.D. in order to allocate any rate increase granted by PGW to the residential classes in full.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Charis M. Burak

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Counsel to the Philadelphia Industrial and  
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Dated: August 22, 2001

**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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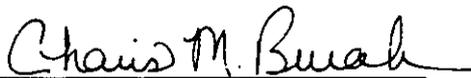
SECRETARY'S BUREAU

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Dated this 22<sup>nd</sup> day of August, 2001, in Harrisburg, Pennsylvania.



ORIGINAL

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August 22, 2001

HAND DELIVERED

James J. McNulty, Secretary  
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SECRETARY'S BUREAU

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

Dear Mr. McNulty:

Please be advised that the Office of Small Business Advocate will not be filing Exceptions to the Recommended Decision in the above-captioned proceeding. The OSBA reserves the right to file Reply Exceptions. As evidenced by the enclosed certificate of service, a copy has been served on all active parties in this case.

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

Sincerely,

*Steven C. Gray*  
Steven C. Gray  
Assistant Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

Parties of Record

Mr. Brian Kalcic

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AUG 29 2001

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FOLDER

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

PHILADELPHIA GAS WORKS

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Docket No. R-00006042

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CERTIFICATE OF SERVICE

I certify that I am serving the foregoing document on behalf of the Office of Small Business Advocate by FAX and first class mail upon the persons addressed below:

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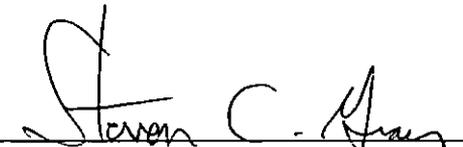
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AUG 28 2001

August 28, 2001

PUBLIC UTILITY COMMISSION  
HARRISBURG, PA

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
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2<sup>nd</sup> Floor, 7 North  
400 North Street  
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 nine copies of the Reply Exceptions of CEPA et al.

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

Very truly yours,



PHILIP A. BERTOCCI

Attorney for CEPA et al.

cc: Certificate of Service  
Commission's Office of Special Assistants w/computer disk

Enclosures

DOCUMENT  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

AUG 28 2001

Pennsylvania Public Utility Commission	:	Docket Number
v.	:	R-00006042
Philadelphia Gas Works	:	R-00006042C0001 <u>et al.</u>

PUBLIC UTILITY COMMISSION

DOCUMENT  
FOLDER

REPLY EXCEPTIONS OF CEPA et al.

Four low income consumer advocacy groups, the Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), the Tenants' Action Group (TAG) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively "CEPA et al.") hereby submit the following Reply Exceptions pursuant to 52 Pa.Code §5.535 to the Exceptions of Philadelphia Gas Works in the above-captioned matter.

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AUG 30 2001

I. Introduction.

1. PGW's Exceptions repeat yet another time the same legal theories which have been developed throughout the Interim Base Rate Case (Docket No. R-00005654) and in this case as part of a continuing effort by the City to shift the financial responsibility for historical mismanagement and inadequate service exclusively onto PGW's customers. The Exceptions also attempt to continue to camouflage the fact that of the \$65 million rate increase which PGW seeks, \$18 million, almost 28% will not flow into efforts to bring PGW service out of the abyss where it has been resting for over two years or into any other reconstructive PGW activity, but rather into the City's general fund.

2. PGW and its apologists have variously characterized the \$18 million payment, sometimes as a “dividend,” sometimes as a licensing fee, sometimes as a payment in lieu of rent or in lieu of taxes. All of these justifications raise embarrassing questions. If it is a dividend, has the City’s performance as a manager justified such a payment? Despite the fact that the Pennsylvania Supreme Court decision in Public Advocate treated the \$18 million payment as a return on investment, the City now claims that PGW “pays not one dime of dividend or return to equity investors....” PGW Exceptions, at 2.<sup>1</sup> If the \$18 million payment is rent or a licensing fee, why should PGW, a City-owned asset, pay “rent” or a “licensing fee” to the owner? If it is a payment in lieu of taxes, how can such a payment be legal under the state constitution? Public Advocate v. Philadelphia Gas Commission, 637 A.2d 676, 685 (Pa.Cmwlt. 1994), reversed on other grounds, Public Advocate v. Philadelphia Gas Commission, 544 Pa.129, 674 A.2d 1056 (1996). If it is not any of these things, then how can the payment be justified at all?

3. In these Exceptions, PGW now brings to the fore a new justification advanced by the City Director of Finance as a bit of bravado. That justification is that PGW customers should not be concerned about the \$18 million payment, because after all, they are only paying themselves. “[F]or all intents and purposes,” we are told, “PGW and Philadelphia are one and the same....Forcing the ‘City’ to cover a PGW obligation forces the same set of citizens to bear that cost – either directly or indirectly.” PGW Exceptions, at 1.

This is not a serious argument. There is absolutely no merit to any claim that the citizens of Philadelphia are PGW’s legal owners.

More importantly, to say that PGW’s citizen ratepayers are only paying

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<sup>1</sup> Public Advocate v. Philadelphia Gas Commission, 544 Pa.129, 674 A.2d 1056 (1996).

themselves as citizen taxpayers when the \$18 million payment is made is to ignore the fact that tax burdens and utility burdens are distributed according to different formulas. With the exception of CRP customers, PGW customers pay for their service not on the basis of their wealth or their incomes -- in that sense, the costs of utility service are highly regressive, with tens of thousands of households at or barely above the poverty line paying a much higher percentage of their income and wealth for such service than those with higher income and greater wealth.

In addition, in the circumstances of this case, placing the total burden of mismanagement on PGW's customers imposes an immediate and direct hardship on them in the form of increased rates on top of unprecedented rate increases -- while placing \$18 million of the burden of mismanagement upon them as citizen taxpayers would not mean any immediate tax increase.

From a public policy standpoint also, refusing to grant further base rate increases until the City has waived or granted back the \$18 million payment fixes responsibility for mismanagement where it lies -- with the City, not with PGW customers. Inviting the City to accept substantial financial responsibility before providing increased base rates creates incentive for better management in the future, and/or deterrence for those who might place narrow political interests above the general public interest. In a well run municipal utility, the benefits of municipal ownership should flow to customers, not serve to excuse waste committed for the political benefit of a few.

## II. Specific Reply Exceptions.

### A. Reply to PGW Exception No. 1. (“ The ALJ Erred in Several Observations About the Applicable Ratemaking Method Even Though the Decision Implicitly Adopted the Cash Flow Method in Establishing PGW’s Revenue Requirement”).

4. Public Advocate v. Philadelphia Gas Commission, 544 Pa.129, 674 A.2d 1056, 1062 (1996)(hereinafter “Public Advocate”) holds that the ultimate test of the validity of a rate set for PGW is whether in impact and effect, the rate is just and reasonable. This is a broad constitutional standard which provides wide but not unlimited discretion to the regulatory commission to set rates within a “zone of reasonableness” through a process which balances of the interests of customers and the interests of a utility. Part of this “just and reasonable” standard involves an appraisal by the regulator of the level of customer service provided by a utility, as well as the effectiveness of its management. Throughout this case, PGW has attempted to narrow the regulator’s range of inquiry. Ignoring the most important teaching of Public Advocate, PGW has argued that the “just and reasonable” standard is applicable only to the assessment of particular regulatory determinations concerning particular expenditures and revenue projections, and is not a standard to be applied directly and independently to the overall rate result. See, e.g., Philadelphia Gas Works’ Reply to the Answer of PICGUG, CEPA et al., OTS and OCA to PGW’s Motion in Limine, at 7, ¶3

5. PGW’s latest formulation of this theory is contained in the statement that:  
those principles and legal requirements, such as the just and reasonable requirement, are satisfied when the Commission utilizes the Cash Flow Method in the Management Agreement to set rates. In other words, if rates are appropriately set using the Cash Flow Methodology, then that result cannot be ignored or modified on the ground that some other result would be “more reasonable” or “fair.”

PGW Exceptions, at 8.

6. This formulation is still a misleading and tendentious statement of the law. First, the “just and reasonable” requirement is not just one requirement among many, but, as the Supreme Court has held, the paramount standard. Second, no amount of capitalizing the term Cash Flow Methodology can make it a statutory term, because it appears in no statute, and has never been comprehensively defined. Third, talismanic use of the term Cash Flow Methodology does not make up for the fact, always very clear and recently pointed out by the Gas Commission’s Hearing Examiner, that the Management Agreement does not spell out exactly how much working capital or year end cash is “reasonable” especially in light of the fact that customers have been and are still carrying debt service on \$100 million in PGW’s improvidently tapped out Tax Exempt Commercial Paper Program. See CEPA et al. Main Brief, at 29-32.<sup>2</sup> Fourth, contrary to PGW’s claims, the ALJ and the Commission certainly do have the authority to modify or ignore rates proposed by PGW using self serving and one-sided calculations on the grounds that some other result would be more reasonable or more fair -- i.e., in accordance with the “just and reasonable” standard.

7. Moreover, CEPA et al. most emphatically dispute PGW’s claim that Gas Commission decisions from a time prior to the existence of PGW’s Tax Exempt Commercial Program are the “best source” for determining what PGW’s prior ratemaking method is and how it should be applied. PGW Exception No. 1, at 8. None of these opinions addressed the situation at hand, where PGW’s service is demonstrably inadequate, has been for at least two years, and where the utility’s financial problems

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<sup>2</sup> See also Hearing Officer’s Recommended Decision, FY 2001 Operating Budget and Outyear Forecasts (May 17, 2001), at 19, 20 (In the Matter of the Fiscal Year 2001 Consolidated Budget /Oversight Review of PGW’s Proposed Operating and Capital Budgets and Outyear Forecasts.....” Philadelphia Gas Commission), attached as Exhibit A to OCA’s Main Brief.,

may be directly traced to historical mismanagement. CEPA et al. Main Brief, at 12-21.

8. Finally, throughout this litigation and the preceding Interim Base Rate Case, PGW has displayed a great fondness for tendentious paraphrasing of the Gas Choice Act, and then asking the Commission to “acknowledge” the validity of its paraphrases, as if adherence to the text of the Gas Choice Act is somehow insufficient. So far, the Commission has fortunately resisted PGW’s entreaties. Acceding to such a strategy leads not to “clarification” as the Company ingenuously claims, but rather to obfuscation -- and in the end, will focus attention not on what the General Assembly meant when it passed certain provisions, but rather what PGW meant when it asked the Commission to “acknowledge” certain erroneous or one sided legal propositions. The Commission should not grant PGW’s requests to acknowledge what amounts to the paramountcy of the so-called Cash Flow Method. PGW Exception No. 1, at 9.

9. Contrary to PGW’s claims, the ALJ did not adopt PGW’s distorted theory of the Cash Flow Method, which does not recognize the paramountcy of the constitutionally based “just and reasonable” standard. To the contrary, in concluding that rates must be “just and reasonable,” the R.D. specifically makes reference to the fact that the “just and reasonable” standard is ultimately a constitutional standard. R.D. at 32-34.

10. PGW’s Exception No. 1 has no merit and should be rejected by the Commission.

**B. Reply to PGW Exception No. 2. (“The ALJ Erred by Finding that Section 1301 of the Public Utility Code Offsets Section 2212(e)’s Ratemaking Obligations and That There is No Presumption that Rates Set Pursuant to the Management Agreement/Cash Flow Method are Just and Reasonable”).**

11. PGW Exception No. 2 appears to be related to Exception No. 1. Both Exceptions address the relationship between the “just and reasonable” standard and the rate determinations arising from PGW’s narrow interpretation of the requirements of the Management Agreement and the bond ordinances and statutes. Exception No. 2, however, focuses on two specific R.D. conclusions of law:

(A) the conclusion that the “just and reasonable” standard contained in Section 1301 of the Public Utility Code “offsets” results which might be required by a narrow reading of the Management Agreement and the bond ordinances and statutes.

(B) the R.D.’s rejection of PGW’s claim that rates determined according to the Management Agreement and the bond ordinances and statutes are presumptively constitutional and just and reasonable.

12. With regard to the first Conclusion of Law, whether Section 1301 offsets Section 2212(e) even though Section 2212(e) contains the phrase “notwithstanding any other provision of this title to the contrary,” CEPA et al. have since the outset stressed that Section 1301 of the Public Utility Code is a constitutionally based provision, a statutory provision which expressly codifies as state law a federal constitutional requirement, and as such, can not be overridden by the General Assembly. CEPA et al. Main Brief, at 8, 9.

13. Because Section 1301 is constitutionally based, the phrase “notwithstanding any

other provision of this title to the contrary” is not “crystal clear,” as PGW argues. The scope of the phrase is ambiguous, because it is doubtful that the legislature attempted to overrule a federal constitutional standard in enacting this Gas Choice Act provision. It is hornbook law that a statute must be interpreted in a manner which does not offend constitutional standards. As the Office of Consumer Advocate has strongly argued, it is not reasonable to assume that the General Assembly would place PGW under PGC jurisdiction as to rates and tariff with the same force as any other public utility, without providing it with the authority to apply the “just and reasonable” standard to its rates. *OCA Main Brief, at 13-17.*

14. With regard to the second Conclusion of Law, rejecting the position that rates determined according to the Management Agreement/Cash Flow Method are presumptively just and reasonable, CEPA et al. interpret the R.D. to reject only the proposition that such rates are per se “just and reasonable.” In other words, the R.D. denies that there exists a non-rebuttable presumption that rates determined according to the formula contained in the Management Agreement and the bond statutes and ordinances are “just and reasonable.”

15. PGW appears to argue that rates determined in this manner are irrebutably presumed “just and reasonable.” However, the language quoted from Public Advocate does not support that position. The quotation: “Thus, it is presumed that rates set in accordance with the [Management Agreement Ordinance] are constitutional.” is in actuality a misquotation, which in addition is taken out of context. Public Advocate actually says: “Thus, it is presumed that rates set in accordance with the 1972 City ordinance, which includes the fixed annual payment in dispute, are constitutional.” Public Advocate, at 1061. (emphases added).

In context, the sentence appears after a statement that the Management Agreement Ordinance was duly passed by City Council and, with a reference to the Action Alliance case,<sup>3</sup> sets forth the formula for setting rates. The opinion then reminds us that there is no “applicable constitutional requirement more exacting than the constitutional requirement of ‘just and reasonable’ rates.” Finally, the opinion then goes on to conclude: “Thus, since the rates set by the Gas Commission’s order for PGW’s 1991-92 fiscal year are just and reasonable, it was proper for the Gas Commission to include the fixed annual \$18,000,000 payment by PGW to the City, as required by the 1972 City ordinance, in the calculation of that rate.” Public Advocate, at 1063.

16. The statement relied upon by PGW as written merely states that a duly enacted ordinance providing for an \$18 million City Payment benefits, like all duly enacted statutes, from the rebuttable presumption of constitutionality, and by extension, that rates which include provision for the \$18 million payment benefit from that same rebuttable presumption. The effect of PGW’s misquotation is to lay the stress on the overall rate, as opposed to inclusion of the \$18 million payment in the overall rate. The effect of omitting the context is to give the misleading appearance that a review of the validity of PGW’s rates is ended after reviewing how application of the Management Ordinance formula was accomplished, when in fact, there is an additional and all important step, review whether the overall rate is just and reasonable. Public Advocate, at 1063. Given PGW’s inadequate service and historic mismanagement, neither the rate requested by PGW nor the rate recommended by the R.D. is “just and reasonable.”

17. Thus, PGW Exception No. 2 has no merit, and should be rejected by the Commission.

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<sup>3</sup> Action Alliance of Senior Citizens of Greater Philadelphia v. Philadelphia Gas Commission, 406 A.2d 1155 (Pa.Cmwth. 1979).

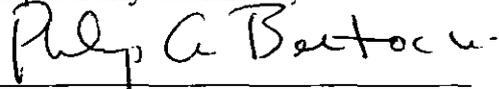
### III. Conclusion.

18. In the Introduction to its Exceptions, PGW threatens that if the Commission does not grant it substantially the full level of base rates which it has requested, the Company will have to make “hard” choices concerning “potential cut back or elimination” of programs to improve customer service supposedly implementing the provisions of the Management Audit. PGW Exceptions, at 4. In making this threat, PGW and the City have implicitly identified the core issue in this case. From the beginning, CEPA *et al.* have contended that unlike most rate cases for municipally owned utilities, the issue here is not merely a matter of how much in rates is necessary to cover reasonable costs, but rather what share of the increased costs must be assumed by the owner. Because of PGW’s service inadequacy and historic mismanagement, the template for this case is D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, 466 F.2d 394(D.C. Cir. 1972), cert. denied, 409 U.S. 1086), which basically holds that as a matter of constitutional law, rates follow service. Like the utility in that case, PGW should be denied any further rate increase pending an equity infusion by the owner addressed at shouldering at least part of the cost of restoring PGW customer service to adequate levels. Because PGW has failed in its obligation to provide adequate service, it is not just and reasonable for PGW customers to be required to assume the full burden of PGW’s refurbishment plus the annual \$18 million City payment.

In sum, CEPA *et al.* submit that the “hard” choice which PGW and its owner should be making is not between terrible and even more terrible service for customers, but between options available to City authorities to free up the funds necessary to pay the

City's fair share of PGW's rehabilitation. For all the foregoing reasons, CEPA et al. request that the Commission deny PGW's Exceptions No. 1 and 2.<sup>4</sup>

Respectfully submitted,



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

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(215) 981-3702

August 28, 2001

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<sup>4</sup> CEPA et al. also oppose PGW's Exceptions Nos. 3 through 10 and Exception 14, and request that they be denied.

R-00006042

CERTIFICATE OF SERVICE

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

Via Federal Express

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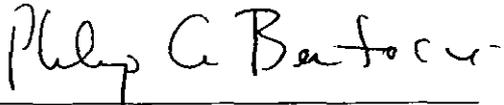
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Date: August 28, 2001



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August 30, 2001

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

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01 AUG 30 PM 3:30  
P.A.U.C.  
SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed for filing are the original plus nine (9) copies of the Reply Exceptions on behalf of the Office of Small Business Advocate. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

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

Sincerely,

Steven C. Gray  
Assistant Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director  
Office of Special Assistants

Parties of Record

Mr. Brian Kalcic

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FOLDER

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**ORIGINAL**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION :  
 : Docket No. R-00006042  
v. :  
 :  
PHILADELPHIA GAS WORKS :

CERTIFICATE OF SERVICE

I certify that I am serving Reply Exceptions on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

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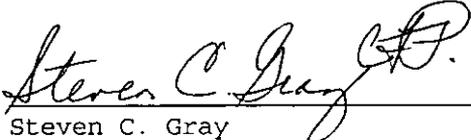
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Steven C. Gray  
Assistant Small Business Advocate

Dated: August 30, 2001

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

PHILADELPHIA GAS WORKS

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:  
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Docket No. R-00006042

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REPLY EXCEPTIONS  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE

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SECRETARY'S BUREAU  
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Dated: August 30, 2001

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**DOCKETED**  
AUG 31 2001

## I. INTRODUCTION

On January 5, 2001, Philadelphia Gas Works ("PGW" or "Company") filed Supplement No. 7 to Tariff Gas -- Pa. P.U.C. No. 1 to become effective March 6, 2001. This filing by PGW proposed an increase in rates calculated to produce an additional \$65,000,000 in annual revenues. On February 8, 2001, the Pennsylvania Public Utility Commission ("Commission") suspended Supplement No. 7 until October 6, 2001, in order to conduct an investigation into the justness and reasonableness of PGW's proposed rates.

The Office of Small Business Advocate ("OSBA") filed a formal complaint in this rate proceeding on February 6, 2001. The OSBA distributed and entered into the record the direct, rebuttal, and surrebuttal testimony of Brian Kalcic, the sole witness appearing on behalf of the OSBA in this case.

Evidentiary hearings were held before Administrative Law Judge ("ALJ") Cynthia W. Fordham in Philadelphia on May 22, 23, and 24, 2001.

The OSBA filed a Main Brief on June 21, 2001 and a Reply Brief on June 29, 2001 in order to address certain issues in this proceeding regarding class revenue allocation and rate design.

On August 7, 2001, the Office of Administrative Law Judge issued the Recommended Decision ("R.D.") of ALJ Fordham in this proceeding. In that decision, the ALJ recommended that the Commission adopt PGW's Cost of Service Study ("COSS") as filed, and deny the adjustments to the COSS proposed by the Office of Consumer Advocate ("OCA"). See R.D., at 73. Further, ALJ Fordham recommended that the revenue allocation among the rate classes be structured as proposed by the Office

of Trial Staff (“OTS”), thereby reducing the extreme under-recovery of the costs to serve the Residential customers of PGW. See R.D., at 76. Finally, the ALJ recommended that the various rate designs, as proposed by the OTS, be adopted. In particular, the ALJ’s recommended customer charges mitigate the excessive customer charge increases that PGW proposed in its filing. See R.D., at 79.

Exceptions to the Recommended Decision were due on August 22, 2001. The OSBA decided not to file exceptions to the R.D. simply because the adoption of certain OTS proposals created results that were substantially similar to the arguments set forth by the OSBA in our testimony and briefs. For example, the OTS revenue allocation among the customer classes resulted in a revenue increase to the Commercial class that was only slightly higher than that proposed by the OSBA. Another example is the Commercial class customer charge, which the OSBA recommended to be set at \$17.50 per month. The OTS proposal, as adopted by the ALJ, sets the Commercial class customer charge at \$18.00. Like the revenue allocation design recommended by the ALJ, the customer charge is slightly higher than as proposed by the OSBA, but close enough that it becomes a distinction without a difference.

However, the OCA, PGW, the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), and the Consumers Education and Protective Association (which, along with the Association of Community Organizations for Reform Now, and the Action Alliance of Senior Citizens of Greater Philadelphia, is collectively known as “CEPA”) did file Exceptions to the Recommended Decision.

The OSBA files these Reply Exceptions in response to OCA’s Exception No. 5 and PGW’s Exception No. 14. Note that CEPA’s Exception No. 7 simply supports and

incorporates OCA's Exception No. 5 by reference, and therefore no specific additional response to CEPA Exception No. 7 is necessary. In addition, the OSBA notes that the revenue allocation issue addressed in Exception No. 5 directly impacts OCA Exceptions No. 6 and 7. The OSBA has no specific response to either OCA Exceptions No. 6 or 7, and will instead focus on the central issue of revenue allocation addressed in OCA Exception No. 5.

## II. REPLY EXCEPTIONS

**Reply Exception No. 1:** The Recommended Decision fairly allocates the revenue responsibility among the customer classes, and OCA's Exception No. 5 should be denied by the Commission

In Exception No. 5, the OCA claims that the ALJ erred in recommending that the residential class be assigned a proportionally greater level of revenue responsibility than that proposed by the Company. OCA Exceptions, at 20. The OCA submits Exception 5 in the face of overwhelming evidence that unequivocally shows that the residential class is significantly under-recovering its cost of service, while other classes such as the commercial class are significantly over-recovering their cost of service. See, e.g., OSBA Main Brief, at 2.

The OCA proceeds along two lines of argument in an attempt to overturn the ALJ's recommendation on this issue. The first line of argument revolves around the use of the term "subsidy." The OCA insists that "[t]he concept of subsidies has a specific meaning in economics," and that this specific definition of the term and no other shall control these proceedings. OCA Statement 2-R, at 3. Accordingly, the OCA attempts to

use its definition of the term “subsidy” to determine that the ALJ’s conclusion “that the residential class is being subsidized by the other rate classes is incorrect.” OCA Exceptions, at 21. The OCA then proceeds with a lengthy argument on how subsidies involve products that are provided at less than marginal or incremental cost, and that PGW must charge prices higher than marginal or incremental costs, and therefore no class is subsidizing any other class. OCA Exceptions, at 21.

Whether this argument has any merit semantically, it misses the entire point of why more revenue responsibility must be allocated to the residential class. The point, in fact, is this: the residential class is severely under-recovering its total cost of service, something that has been demonstrated over and over again in this case. On the other hand, the commercial class is severely over-recovering its total cost of service. See, e.g., OSBA Main Brief, at 2. Some might choose to call the residential result a “subsidy.” Others might choose to call that “under-recovering the total costs allocated to that class.” Consequently, even if everyone accepts the OCA definition of the term “subsidy,” nothing changes. The residential class is no closer to paying its cost of service. Other classes, such as the commercial class, are no closer to being relieved of the heavy burden associated with the over-paying of its total cost of service. This unfair and harsh result is something that can be mitigated in this base rates case.

The OCA’s second argument in Exception No. 5 is a claim that “the Company’s cost of service study...overstates the costs that should be allocated to the residential class.” OCA Exceptions, at 22. The OCA claims that certain “costs and credits” are improperly allocated in the PGW COSS, and that when those adjustments are in fact made, “[t]he corrected cost of service study does not support the extreme revenue

responsibility recommendations adopted by the ALJ...[r]ather, it supports the allocation proposed by PGW.” Id.

As a matter of record, the OSBA has previously addressed this exact assertion by the OCA, both in testimony and in briefs. See, e.g., OSBA Statement 3. See also, OSBA Reply Brief, at 6. Simply stated, even using the OCA “corrected” cost of service study the residential class is still vastly under-recovering its cost of service, and all other firm delivery classes are still greatly over-recovering their cost of service. The result may not be to the OCA’s liking, but those are the facts.

OSBA Statement 1, Schedule BK-1, page 1 of 2, shows the increases needed to move PGW’s rate classes to their cost of service using the PGW cost of service study. OSBA Statement 3, Schedule BK-1S, page 1 of 2, shows the increases needed to move those same classes to their cost of service using the OCA “corrected” cost of service study. Putting the charts side-by-side finishes, once and for all, OCA’s argument that the residential class is receiving a “disproportionately high increase” in the ALJ’s Recommended Decision. As Mr. Kalcic concluded:

On net, Schedule BK-1S, page 1 of 2 does not reveal any improvement in the relative standing of the Residential class among PGW’s firm rate classes. For instance, the Residential class is still the only firm class shown to require and increase, that increase is in excess of 23.5%, and all other firm rate classes are shown to require double-digit decreases. Therefore, Schedule BK-1S, page 1 of 2 does not provide any evidence in support of Mr. Miller’s conclusion that the “extreme” disparity in residential versus non-residential increases recommended by the OSBA is unfounded.

OSBA Statement 3, at 4 (emphasis in original).

For the reasons set forth in this Reply Exception, as well as the reasons set forth in the OSBA's Main Brief and Reply Brief, the OSBA submits that the ALJ's recommendation to adopt the OTS revenue allocation should stand unaltered. The OCA's reasoning regarding the miraculous results that stem from their "corrected" cost of service study is unfounded and patently wrong. Furthermore, semantics should not be allowed to distract the Commission from finding that the residential class is materially under-recovering its cost of service. The Recommended Decision makes definite progress in correcting that wrong, and the OSBA requests that the R.D. stand as written.

**Reply Exception No. 2:** The Recommended Decision establishes a reasonable Commercial customer charge of \$18.00, and therefore PGW Exception No. 14 should be denied

ALJ Fordham's Recommended Decision concludes that the Commercial class customer charge should be increased from the current \$10.00 per month to \$18.00 per month. See R.D. at 78. This is the OTS proposal, and is relatively close to the proposal set forth by the OSBA. See, e.g., OSBA Main Brief at 8.

PGW, however, has decided that an 80% increase in the Commercial class customer charge is still not enough, and has filed Exception No. 14 claiming that the ALJ erred when she did not set the Commercial customer charge at \$25.00 as requested by the Company. PGW Exceptions, at 38.

PGW does not go to great length in Exception No. 14 as to why \$18.00 per month is so fatally flawed, other than basically summarizing their argument that "[t]he Company's proposed customer charges bring rates closer to costs while honoring the

concept of gradualism, and reduce PGW's sensitivity to weather swings." Id., at 39. Therefore, consider PGW's Exception No. 14 in light of the proposed \$18.00 customer charge. First, it clearly moves the charge closer to the cost of service, nearly doubling the rate from \$10.00 to \$18.00 in this proceeding. Second, PGW's alleged sensitivity to weather swings is provided a significant degree of relief by generating additional fixed revenue through this increased customer charge. Finally, the concept of gradualism is tested by a Commercial customer charge that increases from \$10.00 to \$18.00 per month. That 80% increase, however, pales in comparison to the stunning 150% increase to \$25.00 that PGW continues to advocate in Exception No. 14. No stretch of the imagination can transform an increase of that magnitude into a shining example of gradualism at work.

Thus the Company's own argument demonstrates the fairness of the Commercial customer charge as recommended by the ALJ. Therefore, for the reasons set forth above, as well as the reasons set for in the OSBA Main Brief and Reply Brief, the OSBA submits that the ALJ's recommendation to increase the Commercial class customer charge to \$18.00 per month should remain unaltered.

### III. CONCLUSION

For the reasons set forth in the Direct, Rebuttal, and Surrebuttal testimony of the OSBA, and for the reasons set forth in the Main and Reply briefs of the OSBA, and for the reasons set forth above, the OSBA requests that the Commission accept the revenue allocation and rate design recommendations as set forth in the ALJ's Recommended Decision, and deny OCA Exception No. 5, CEPA Exception No. 7, and PGW Exception No. 14.

Respectfully submitted,

  
Steven C. Gray  
Assistant Small Business Advocate

Date: August 30, 2001



OFFICE OF CONSUMER ADVOCATE

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ORIGINAL  
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AUG 30 PM 4:20

August 30, 2001

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

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

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Reply Exceptions of the Office of Consumer Advocate, in the above-referenced proceeding.

Please also note that the Reply Exceptions contain a correction to a reference in the OCA Exceptions regarding the magnitude of the Gas Cost Rate ("GCR") decrease that is now pending before the Commission. As set forth in Footnote 1 of these Reply Exceptions, the OCA identified the magnitude of the proposed September GCR reduction as \$70 million in its Exceptions. However, this \$70 million was to be in addition to the \$65 million reduction proposed by the Company in its original GCR filing which would have been placed into effect in December if the GCR case had been fully litigated. A proposed settlement has been submitted in the GCR proceeding and the settlement reflects a total GCR reduction of \$135 million. Consequently, the OCA's Exceptions should have referenced a \$135 million proposed reduction in the GCR, rather than a \$70 million reduction.

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

Sincerely yours,

*Tanya J. McCloskey*

Tanya J. McCloskey  
Senior Assistant Consumer Advocate

DOCUMENT  
FOLDER

Enclosure

cc: All parties of record  
Hon. Cynthia Fordham  
Office of Special Assistants

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION :

v. :

Docket No. R-00006042

PHILADELPHIA GAS WORKS :

REPLY EXCEPTIONS  
OF THE OFFICE OF CONSUMER ADVOCATE

RECEIVED  
01 AUG 30 PM 4:20  
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## I. INTRODUCTION

On August 7, 2001, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge (ALJ) Fordham. In her Recommended Decision (R.D.), the ALJ properly rejected PGW's request for a \$65 million rate increase (\$54 million plus \$11 million interim relief). The OCA strongly supports the ALJ's conclusion in this regard, although the OCA disagrees with the ALJ's recommended rate increase of \$44 million (\$33 million plus \$11 million interim relief). PGW has excepted to the ALJ's recommendations, arguing that she erred in her legal analysis regarding the ratemaking methodology and the ratemaking principles and standards that are to be applied in this case. PGW argues that it is entitled to a \$65 million rate increase, and that such rate increase is necessary given its financial condition.

The OCA submits, however, that the ALJ did not err in her analysis regarding the ratemaking methodology and the fundamental ratemaking principles that must guide the Commission's decision in this case. As the ALJ correctly finds, PGW's rates must be just and reasonable in accordance with the Public Utility Code and as determined by this Commission. Any other conclusion would render the Act bringing PGW under the Commission's jurisdiction meaningless.

When the just and reasonable standard that is the hallmark of the Commission's ratemaking authority is applied to the facts of this case, the Commission must conclude, as did the ALJ, that PGW's requested \$65 million rate increase must be rejected. In its Exceptions, PGW argues that the ALJ failed to recognize several factors that make PGW unique. The OCA submits, however, that PGW's list of "unique" factors were fully considered in this case. Importantly, all parties to this case recognized PGW's status as a municipal utility, its urban customer base, its variety of discount programs, and its prior regulation

by the Philadelphia Gas Commission. All parties, however, worked from PGW's own Revised Fiscal Year 2001 Budget, which incorporated all of these unique factors, in making their rate recommendations.

PGW also argues that the ALJ has ignored its "precarious" financial situation and the testimony of its Interim CEO that this was a company "on the brink." As set forth below and in the OCA's Briefs and Exceptions, however, the Company has not justified the need for a \$65 million rate increase at this time. On the contrary, the OCA demonstrated that the Company can meet its expense and working capital requirements as well as meet its coverage requirements and payment to the City with a far smaller rate increase, on the order of \$21.5 million.

Moreover, when the circumstances are reviewed that have brought the Company to its present situation, they do not support resolving all of these long-term financial problems in one rate case at the expense of ratepayers alone. Many of PGW's financial problems are of its own making. Despite its weakening financial condition over the past eight years and three recent warmer than normal winters, PGW did not act. PGW did not seek base rate relief from the Philadelphia Gas Commission and its owner, the City, did not make any needed equity contribution. In fact, PGW continued to make the \$18 million payment to the City each year. Now that ratemaking authority has been transferred to the PUC, PGW seeks rate relief that would "stabilize" its financial condition on a long term basis, allow it to make its \$18 million payment to the City, and end the fiscal year with a cushion of \$35 to \$40 million in cash, all without the help of its owner, the City. The OCA submits that the Commission cannot and should not resolve all of PGW's financial problems through this one rate case at the expense of ratepayers.

The public input testimony in this proceeding was compelling as to the unaffordability of PGW's rates and the poor quality of service being provided by PGW. Over the past year, PGW's ratepayers have

experienced \$248 million in rate increases (\$237 million in the GCR and \$11 million interim base rate relief) and will only begin to see an easing of this burden in September of this year when the GCR is reduced by \$135 million to reflect a moderation in natural gas prices.<sup>1</sup> This burden was further compounded by the fact that rates were adjusted so that these increases could be fully recovered from ratepayers in less than one year. As the public input testimony demonstrated, ratepayers simply do not have the funds to solve all of the Company's problems at this time.<sup>2</sup>

Additionally, as the public input testimony and the Management Audit have made clear, ratepayers have experienced poor quality of service despite bearing the burden of these significant rate increases. PGW's level of service as measured by abandonment phone rates and response time of the call center is one of the worst in the industry. *Stratified Management and Operations Audit*. Testimony of incorrect bills or no bills at all, long wait times on the telephone or at the office to address any problems, and poor customer service when finally connected with a customer service representative were heard at the public input hearings.

When these factors are weighed, the OCA submits that its rate increase recommendation of \$21.5 million (\$10.5 million in addition to the \$11 million interim relief) reaches the proper balance. This level of

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<sup>1</sup> In its Exceptions, the OCA incorrectly identified the annual magnitude of the proposed September GCR reduction as \$70 million. This \$70 million was in addition to the Company's proposed \$65 million reduction which would have been placed into effect in December if the case had been fully litigated. The Settlement, therefore, provides for a total reduction in net GCR expense of \$135 million in September with the possibility of further reduction in December based on actual gas prices.

<sup>2</sup> Even with the moderation in natural gas prices, the OCA submits that PGW's rates remain burdensome. The \$135 million decrease in the GCR does not offset the \$248 million increase that PGW customers have experienced. PGW seeks to remove almost half of this rate relief through its proposed base rate increase. PGW's proposal, however, ignores the unaffordability of rates as evidenced by the level of uncollectible balances carried by the Company.

rate increase allows the Company to meet its projected expenses, including its \$18 million payment to the City, its mains replacement program, the LNG plant upgrade, the fixes to its computer system, and its Transition to Excellence Program, while still meeting its debt coverage requirements. If the Company requires additional cash flow over and above this amount, it should seek the assistance of its owner, the City, through a grant back of the \$18 million payment to the City as project revenues, or further assistance from the City in the form of loans. PGW should not just turn to its ratepayers to solve the multitude of problems affecting PGW.

## II. REPLY EXCEPTIONS

### A. Reply To PGW Exceptions Nos. 1, 2, 3, 8, 9, 11, and 14

#### **Reply To PGW Exc. Nos. 1 and 2: The ALJ Applied The Correct Legal Standard To PGW's Request.**

##### 1. Introduction

At pages 5 to 12 of its Exceptions, PGW presents its Exception Nos. 1 and 2. In these Exceptions, PGW argues that the ALJ has misinterpreted PGW's position concerning its "prior ratemaking methodology" under Section 2212(e) and has erred in finding that PGW's rates must be just and reasonable in accordance with Section 1301. The OCA submits, however, that the ALJ correctly characterized PGW's position in this case and correctly found that Section 1301 of the Public Utility Code must be applied to PGW's claim. Most importantly, the OCA submits that the ALJ correctly recognized that if PGW's interpretation of Section 2212(e) is followed, the Commission would be reduced to no more than a "rubber stamp" approval of what PGW has requested or what the Philadelphia Gas Commission has approved. Such a result would render the Act meaningless.

The OCA submits that the question raised by PGW's Exception Nos. 1 and 2 is what is the proper standard for the Commission to apply to a determination of PGW's rates and how should that standard be applied. Rather than attempt to reconstruct PGW's myriad of arguments, the Commission should simply state, as did the ALJ, that rates for PGW must be just and reasonable in accordance with the Section 1301 of the Public Utility Code and other relevant sections of the Public Utility Code. When applying this standard to PGW's rates, the OCA submits that the Commission should recognize that the Management Agreement specifies certain *categories* of expenses and revenues that are to be included in the rate setting process. The Commission must also recognize, however, that the reasonable and prudent *level* of these expenses, as well as the final result, are matters that the Commission must decide in the exercise of its discretion. For ratemaking purposes, the Commission is not required to accept the level of expense claimed by the Company or approved in a PGW budget by the Philadelphia Gas Commission. The Commission must exercise its discretion to balance the interests, as it does in all other cases, and determine what level of rates is just and reasonable.

In this case, when these standards are applied, the OCA submits that the ALJ properly rejected PGW's claimed \$65 million rate increase. The OCA submits, however, that a rate increase of no more than \$21.5 million (\$10.5 million plus the \$11 million interim request) is all that is required.

2. The ALJ Correctly Concluded That Rates Must Be Just And Reasonable.

PGW now seemingly acknowledges that its rates must be just and reasonable, but then again removes any discretion that the Commission might have to establish just and reasonable rates through two arguments. PGW seeks to avoid the Commission's ratemaking authority by first arguing that the Public Utility Code, particularly Section 1301, is simply inapplicable to its request since Section 2212 is

“paramount” to the remainder of the Public Utility Code. PGW Exc. at 11. Next, PGW argues that if its rates must be just and reasonable, then the “Management Agreement/Cash Flow Method” is “presumed” to meet the constitutional just and reasonable standard and no further inquiry is permitted, citing the Pennsylvania Supreme Court decision in Public Advocate v. Philadelphia Gas Comm’n, 674 A.2d 1056 (Pa. 1996). The OCA submits that PGW’s arguments must be rejected. The Commission must specifically state in its decision that PGW’s rates must be just and reasonable, in accord with the Public Utility Code and sound ratemaking principles. This is the fundamental principle of rate regulation and it must be clearly applied to PGW.

The OCA submits that PGW’s attempt to elevate Section 2212(e) over all other provisions of the Public Utility Code must fail. PGW hangs its hat on the language in Section 2212(e) that states: “Notwithstanding any other provision of this title to the contrary” before setting forth the language on determining PGW’s revenue requirement. What PGW fails to acknowledge when reading this language, however, is that the just and reasonable standard of Section 1301 is not “to the contrary.” In fact, PGW now acknowledges what the Courts have said all along – PGW’s rates must be just and reasonable. PGW Exc. at 7. In the case that PGW so heavily relies upon, the Pennsylvania Supreme Court stated:

We hold today that the United States Supreme Court guidelines for determining the constitutionality of a rate are also applicable to examining rate disputes involving municipal utilities.

Public Advocate, 674 A.2d at 1062. See also, Action Alliance v. Philadelphia Gas Comm’n, 406 A.2d 1155, 1158 (Pa. Cmwlth. 1979) and American Aniline Products, Inc. v. Lock Haven, 288 Pa. 420, 424, 135 A.2d 726, 727 (1927). Section 1301 is Pennsylvania’s embodiment of this constitutional standard and it must be applied to PGW. The OCA submits that the ALJ’s decision in this regard was directly on

point. The ALJ correctly found that a more appropriate reading of Section 2212(e) is one that gives meaning to all provisions of the Public Utility Code. R.D. at 24-27, 33; 166 Pa.C.S. §1922.

PGW next tries to circumvent the Commission's ratemaking authority through the circular argument that its ratemaking method is "presumed" to establish just and reasonable rates.<sup>3</sup> PGW relies on the Pennsylvania Supreme Court's decision in Public Advocate for its sweeping conclusion. PGW, however, misconstrues the Court's discussion about the constitutionality of the 1972 City ordinance that set forth the ratemaking "formula" for establishing PGW's rates as an endorsement of any rate that PGW comes up with as a result of PGW's application of the "formula." PGW also completely ignores the remainder of the Court's discussion. After concluding that there is a presumption to the constitutionality of the City Ordinance that specifies the ratemaking formula for PGW's rates, the Court completes its analysis by first quoting from FPC v. Hope, 320 U.S. 591 (1944) as follows:

[I]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.

Public Advocate, 674 A.2d at 1062. See also the Court's reference to Duquesne Light v. Barasch, 488 U.S. at 314 (it is not the theory but the impact of the rate order which counts).

After setting forth this standard, the Supreme Court in Public Advocate examined the overall impact of the Gas Commission's rate order for PGW's 1991-1992 Fiscal Year. The Court stated its conclusion as follows:

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<sup>3</sup> The implausibility of the Company's argument that any rate produced by its ratemaking methodology is just and reasonable can be seen in the Company's own testimony. The Company presented two witnesses, each of whom applied this methodology, but produced different results.

A review of the overall impact of the Gas Commission's rate order for PGW's 1991-92 fiscal year mandates a different result. A review of the rate in question shows that the rate approved by the Gas Commission for PGW's 1991-92 Fiscal Year does not amount to a confiscatory rate. In fact, neither the Commonwealth Court nor the Public Advocate contends or has proven that the rate in question amounts to either a confiscatory or an unjust and unreasonable rate.

Public Advocate, 674 A.2d at 1062. Far from being an endorsement of the notion that the Management Agreement is "presumed" to produce just and reasonable rates, the Supreme Court's analysis demonstrates that the Commission must exercise its discretion, based on the facts before it, to determine a level of rates that is just and reasonable.<sup>4</sup>

3. The Commission Must Apply the "Management Agreement/Cash Flow Method" By Determining A Reasonable Level Of Expenses And Revenues For PGW Under The Circumstances Of This Case.

In applying these principles to PGW, the Commission must determine the reasonable level of expenses, including the reasonable amount of cash working capital to be provided by ratepayers, under the terms of the Management Agreement. In essence, this is no different than any other ratemaking authority of the Commission; it simply utilizes a different methodology than rate base/rate of return regulation. Even under a rate base/rate of return methodology, the Commission determines the reasonable level of expenses and revenues for each company.

What PGW confuses in its Exceptions when it seeks to have the Management Agreement/Cash Flow Method deemed to produce a just and reasonable result is that the Management Agreement only

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<sup>4</sup> PGW's argument also confuses the method employed with the actual application of the method. As set forth herein, it is the application, or the determination of a reasonable level of expenses and revenues, that will determine the appropriate rate levels for PGW.

specifies *categories* of expenses that are to be included in the rate setting process, not the level of cost that is to be allowed or recovered in each category. Neither the Management Agreement nor the Court cases cited by PGW, provide for the mechanical application of the Cash Flow Method forwarded by PGW without regard to the just and reasonable standard. The Management Agreement itself clearly sets forth that its purpose is to allow for *reasonable* rates. On Page 1 of the Management Agreement it states:

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

PGW Exh. TEK-2 at 1. Nothing in the Management Agreement suggests that the Commission may not apply its discretion to determine a *reasonable level of expenses* within these categories.

In fact, this case has primarily been about the *reasonable* level of cash working capital that should be provided by ratepayers and the reasonable level of cash that the Company should have on hand at the end of the fiscal year. As set forth in more detail below, the Management Agreement states that only a reasonable amount of working capital is to be included in rates. PGW Exh. TEK-2, Management Agreement, §VII.1(b). And, the Management Agreement does not specify any year-end cash balance that the Company must have. These are matters that the Commission must determine based on the facts of record.

In considering PGW's recent Fiscal Year 2001 Budget, the Philadelphia Gas Commission Hearing Examiner perhaps best set forth the review that has been undertaken and that must be undertaken:

PGW asserts that Section IV. of the Management Agreement (regarding operating budget approvals) must be read in conjunction with the Section VII. requirements (regarding rate-setting), but as PGW concedes, "[i]nterpretation of the Management Agreement must also be reconciled with the Gas Choice Act" (cites omitted). From this, PGW concludes that "[p]erforce...this Commission must assure that the budget incorporates sufficient revenues to pay operating and maintenance expenses and costs associated with the programs and

policies approved by this Commission...; the City payment; and a reasonable allowance for cash working capital” (cites omitted).

While the Commission [PGC] retains the obligation to adopt *reasonable* budgets which project sufficient revenues to cover *reasonable* operating expenses, as already discussed, the Commission cannot assure that “sufficient revenues” are provided via PGW’s rates because it no longer has authority over the legal determination of PGW’s revenue requirement, which is now with the PUC’s purview (see 66 Pa.C.S. §2212(e)). *In addition, there is no specific formula for the determination of PGW’s year-end cash balance set forth in the provision for PGW’s rates and other project revenues to provide a reasonable and necessary amount of cash or equivalent working capital. Under the Management Agreement, this determination is left to be a matter of judgment, which is to be exercised in the overall exercise of rate-setting authority.*

PGC Hearing Examiner Recommended Decision, FY2001 Operating Budget and Outyear Forecasts at 19-20 (May 17, 2001)(emphasis added).<sup>5</sup>

As can be seen, the Philadelphia Gas Commission always exercised discretion to determine reasonable expenses and a reasonable amount of cash to be provided by ratepayers. As even PGW acknowledges, the PGC traditionally determined a zone of reasonable revenues and expenses and balanced the interests of both customers and PGW. PGW M.B. at 14, fn. 34. Now, it is this Commission’s task to determine the reasonable level of revenues and expenses, including a reasonable amount of cash requirement, and balance the interests of customers and PGW. This Commission’s exercise of discretion to determine a level of just and reasonable rates is perfectly consistent with the “prior ratemaking methodology” of PGW, and thereby, the Act.<sup>6</sup>

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<sup>5</sup> The Philadelphia Gas Commission adopted the Hearing Examiner’s recommendation regarding the budget without discussing the legal issue. OCA R.B., Appendix A (Philadelphia Gas Commission Motion of June 19, 2001).

<sup>6</sup> PGW also argues that the decisions of the Philadelphia Gas Commission provide the best source for determining what PGW’s prior ratemaking methodology is and how it should be applied. The  
(continued...)

4. Conclusion

The OCA submits that the ALJ's discussion of PGW's "prior ratemaking methodology" under Section 2212(e) and her determination that Section 1301 must be applied to PGW's request was not in error. The ALJ's discussion simply rejected PGW's extreme interpretations and application of the cash flow method that would have the Commission serve as nothing more than a "rubber stamp" for PGW's request or the Philadelphia Gas Commission's budget determination. Although the OCA respectfully disagrees with the ALJ's final rate determination upon application of this methodology, the ALJ did not err in her discussion of the appropriate ratemaking methodology or standards. The Commission should reject PGW's Exceptions Nos. 1 and 2.

**Reply to PGW Exc. 3:**        The ALJ Correctly Rejected PGW's Request For A \$65 Million Rate Increase.

1.        A \$65 Million Rate Increase Is Not Required By The Management Agreement Or The Bond Covenants.

At pages 12 to 20, PGW excepts to the ALJ's recommendation to reject its \$65 million rate increase request and the \$53 million rate increase recommendation of its consultant for the bond issuance, Black & Veatch. PGW continues its arguments made throughout the case that under the Management Agreement, it must have a \$35 to \$40 million end of year cash balance, cover all expenses that it has

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<sup>6</sup>(...continued)

OCA does not disagree that these decisions can provide important information, but the PUC must render its own decisions now that it has jurisdiction over PGW's rates. Moreover, the situation in effect when many of the Philadelphia Gas Commission decisions were made has significantly changed. For example, the Company did not have a commercial paper program at the time of the PGC decisions relied upon by the Company. Tr. at 607.

claimed or have been previously approved by the Philadelphia Gas Commission, and make its \$18 million payment to the City to meet its bond covenant requirements.<sup>7</sup> PGW Exc. at 14-15. The OCA submits that the ALJ correctly rejected these arguments. Although the OCA has argued that the ALJ awarded the Company a rate increase amount that was too high given the circumstances of this case, the OCA submits that the ALJ correctly rejected PGW's claims that it requires a \$65 million rate increase to meet its bond covenant requirements.

The bulk of PGW's argument is driven by its assertion that only under its proposed increase of \$65 million, will it have the \$35 to \$40 million of cash at the end of the fiscal year that is required under the Management Agreement, with no help from its owner, the City. PGW would have this Commission find that the Management Agreement, and thereby the bond covenants, set forth a specific amount of cash that must be available to PGW at the end of each fiscal year. The Management Agreement and bond covenants specify no such amount and do not even reference specific year-end cash balances.

As to the issue of cash, or cash working capital, the Management Agreement provides:

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

(b) Sufficient also ...

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<sup>7</sup> If this is accurate, then PGW has not satisfied its bond covenant requirements since 1995. As OCA witness LeLash testified, PGW's end of year cash balance has not exceeded a \$35 million year-end cash balance since 1995. OCA St. 1 at 23.

(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.

PGW Exh. TEK-2, §VII.1(b)[emphasis added]. The Agreement clearly states that only a *reasonable amount* of working capital is to be included in rates. The Management Agreement does not assume that customer rates will cover all Company capital and cash needs as if no other sources of capital or revenues are available to PGW. The question, then, that the Commission must answer is how to determine a reasonable amount of revenue that should be provided by ratepayers.

As OCA witness LeLash explained, the Company has three sources of revenues and capital – rates, debt financing and common equity. The Commission must determine a reasonable mix from these three sources. OCA witness LeLash summarized the OCA’s position:

Under the PUC’s mandate to set just and reasonable rates, I have recommended for a variety of reasons which have already been presented, that rates be designed to share responsibility between the Company’s owner and its ratepayers. The City of Philadelphia has a responsibility to protect the value of its operation. It needs to do so by augmenting the revenue flow from rates during a period when operational efficiency is low and wholesale gas prices very high. When these factors are reversed, the PUC may be able to, justifiably, shift more responsibility onto ratepayers. An adequate revenue flow for PGW must reflect a reasonable mix of resources from all three revenue and capital components. Without such a mix, it is my belief that rates will not be just and reasonable.

OCA St. 1-S at 14.

The OCA submits that its proposed increase in rates is fully consistent with the Management Agreement and provides an appropriate balance of PGW’s sources of revenue. The OCA has recommended a \$21.5 million rate increase as a means of meeting PGW’s short term financial needs. This level of rate increase was developed based on the Company’s own Revised Fiscal Year 2001 Budget which included its planned or projected expenditures. The OCA’s analysis also adopted the Company’s

own assumption that the Company will successfully issue its planned \$100 million of bonds (which was completed) and renew its \$100 million short term credit line (which was also completed). OCA St. 1 at 29-30; PGW Exh. BB-3; PGW Reply Brief at 22. The OCA's analysis also assumes that the \$18 million payment would be made to the City. After incorporating all of the expenses under the Management Agreement, OCA witness LeLash determined the revenue increase necessary to achieve a coverage on the 1998 Ordinance Bonds of 1.5 times. As set forth in OCA St. 1, Sch. 1, Line 2, a total rate increase of \$10.5 million in addition to the \$11 million interim relief (\$21.5 million total) meets this coverage requirement.

The OCA submits that this level of rate increase meets all of PGW's proposed expenditures, provides a 1.5x coverage on the 1998 Ordinance Bonds and a 2.01x coverage on the 1975 bonds. Additionally, by providing for coverage ratios that substantially exceed 1.0x, this level of rate increase provides PGW with working capital. In fact, the 1.5x coverage requirement provides a rate and cash cushion for the Company. The OCA submits that by utilizing the coverage requirements to determine the minimum rate increase acceptable, the interests of ratepayers are properly balanced under the circumstances of this case. As set forth throughout this case, ratepayers have experienced significant increases in their rates over the last year, and the quality of their service has been poor. To provide the Company with a substantially higher increase at this time would be unjust and unreasonable.

Despite PGW's protestations, the Management Agreement does not require a greater increase; nor does the just and reasonable standard. If PGW seeks greater bond coverages or greater cash reserves, it should seek a grant back of the \$18 million payment to the City as project revenues, a source of revenues specifically contemplated under the Management Agreement. PGW Exh. TEK-2, Section VII.

I. PGW should not turn to its ratepayers for this cash. OCA witness LeLash explained the problem with the Company's argument:

From the Company's perspective, given its definition of the cash flow method of rate setting, the capital shortfall would be recoverable from ratepayers. However, even PGW must realize that its ratepayers' ability to pay higher and higher rates has been limited because of the GCR increases. Such limits in the ratepayers' ability to pay are amply illustrated by the Company's currently requested rate increase which is justified, for the most part, by its growing bad debt expense.

As should be apparent, even if ratepayers had the responsibility to provide capital for PGW's operations, which I believe they do not, they lack the ability to provide a never ending source of capital.

OCA St. 1 at 15.

The OCA submits that the Company's position that ratepayers must meet all of its needs, including all of its cash requirements, and must solve all of its long-term financial problems in this one rate case is untenable. The Company's \$65 million request would simply relieve the City from its responsibility as owner and would overburden ratepayers. The unreasonableness of the Company's position that has produced its \$65 million claim was explained by OCA witness LeLash as follows:

The Company's definition or application of this method has rates providing PGW's capital as well as meeting revenue requirements. From a regulatory perspective, this interpretation of the Act and the cash flow method is fundamentally unreasonable. If it is followed, it would have the effect of absolving the City from any of its ownership responsibilities. In effect, the City would always be able to say that any PGW deficiencies were the result of insufficient revenues for costs and capital. Failure to rectify the Billing, Collections and Customer Service System (BCCS) problems, lack of adequate mains replacement, unreasonable levels of customer service could always be explained away by inadequate rate allowances.

OCA St. 1 at 26-27.

The OCA submits that PGW's request for a \$65 million rate increase is unreasonable and was properly rejected by the ALJ. Given the circumstances of this case, the OCA submits that its recommended rate increase of \$10.5 million in addition to the \$11 million interim rate increase (\$21.5 million total), which is based on PGW's own Revised FY 2001 Budget, will allow PGW to meet its expenses and its debt service coverage requirements for its bonds. Requiring ratepayers to provide even more cash working capital at this time would not be just and reasonable.

2. The Black & Veatch Report Cannot Serve As A Basis For Setting PGW's Rates.

In its Exceptions, PGW argues that the Commission must at least award it a \$53 million rate increase since that is the amount of additional revenue requirement identified in an engineering report that was conducted for its recent bond issuance (the Black & Veatch Report). PGW Exc. at 17-20. PGW argues that since this Report was circulated to investors, it reflects their assumptions about future rate levels and that if these assumptions do not come to fruition, PGW will not be able to enter the financial markets on reasonable terms in the future. PGW Exc. at 19-20. The OCA submits that the Company's arguments must be rejected. First, the ALJ correctly noted that the Black & Veatch Report did not seek to determine a just and reasonable level of rate increase as the Commission must do. R.D. at 35. Second, the Black & Veatch Report contains the same infirmities as the Company's analysis. Third, the OCA submits that alleged investor assumptions, created through the Company's own report, cannot serve as the basis of any rate increase.

The OCA submits that the ALJ correctly concluded that the Black & Veatch Report was of no probative value in determining a just and reasonable level of rates. The Black & Veatch Report did not consider ratepayer interests and it made no analysis of what would be a just and reasonable level of rates.

Tr. 530. Importantly, the Black & Veatch Report is based on achieving the same set of long-term goals as the Company's request and utilizes the same application of the cash flow method as did the Company. See, Exh. TJS-2 at B-44, Tr. 513, 518. Mr. Sullivan, the witness in support of the Report, acknowledged on cross examination that his application and understanding of the methodology was developed with the assistance of the Company. Tr. 513, 518. The OCA submits that the Report provides no independent basis for increasing PGW's rates to customers, as PGW asserts, and it suffers from the same flaws as the Company's analysis. The ALJ correctly rejected its use in this proceeding.

Moreover, the OCA submits that PGW's arguments that the cost of its *future* bond issuances may be increased if it is not awarded at least the \$53 million increase is pure speculation. The Company has recently renewed its short term commercial paper program and has successfully issued its \$100 million bond issuance despite its stated concerns on the record that inadequate rate relief would compromise these issuances. Tr. 461-464; PGW Exh. BB-3; PGW R.B. at 22. The Commission cannot base rate relief on the speculative possibility of alleged future investor concerns.

### 3. Conclusion

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief at 17 to 40 and Reply Brief at 11 to 35, the OCA submits that the ALJ correctly rejected PGW's request for a \$65 million rate increase, as well as PGW's engineering consultant's recommendation of a \$53 million rate increase. The OCA submits that a rate increase of no more than \$21.5 million (\$10.5 million in addition to the \$11 million interim relief) is justified under the circumstances of this case.

**Reply to PGW Exc. 8:**      The ALJ's Decision Disallowing PGW's Lobbying Expense Claim Should Be Upheld.

At pages 26 to 27 of its Exceptions, PGW argues that the ALJ erred in disallowing PGW's claim for \$115,000 in lobbying expense since lobbying expense has previously been allowed as a legitimate expense for recovery by the Philadelphia Gas Commission. PGW argues that the ALJ's disallowance is based on Chapter 13 of the Public Utility Code which is not applicable to PGW. PGW Exc. at 26-27. As set forth fully in Reply to PGW Exception Nos. 1 and 2, PGW is not exempted from the Public Utility Code. Rather, PGW is to be subject to the regulation and control of the Commission with the same force as if the service were rendered by a public utility. 66 Pa.C.S. §2212(b). As to lobbying expense, this Commission, which must now determine rates, has a strong history of precedent disallowing the recovery of lobbying expense from ratepayers. Pa. PUC v. Pennsylvania-American Water Co., 79 Pa. PUC 25, 66 (1993); Pa. PUC v. Duquesne Light Co., 59 Pa. PUC 67, 118 (1985); Pa. PUC v. National Fuel Gas Dist. Corp., 84 Pa. PUC 134, 196 (1995); Pa. PUC v. Metropolitan Edison Co., 60 Pa. PUC 349, 382 (1985).

Indeed, PGW's assertion in this context that the Commission must simply allow any expense that the Philadelphia Gas Commission has previously allowed demonstrates the unreasonableness of the Company's argument. Such an argument simply turns the Commission into a "rubber stamp" for approval of PGC decisions rather than requiring the Commission to regulate the rates and service of PGW. OCA witness LeLash explained the flaws in the Company's logic:

The apparent corollary would be that if the PGC had not included some expense category in rates previously, it could not be recovered in the future. In my view, this appears to have the PGC, de facto, continuing to set rates by virtue of whatever it authorizes, eventually, within PGW's operating budget. This certainly does not appear to be

compatible with the intent of the Act, and it appears to require the PUC to potentially grant rates which it would otherwise determine not to be just and reasonable.

OCA St. 1-S at 12.

As the OCA has set forth, PGW's budget is not determinative with respect to the setting of rates by this Commission.<sup>8</sup> The PUC should accept evidence of the Philadelphia Gas Commission's approved budget level and items of expenditure, but the PUC should not be precluded from applying appropriate ratemaking principles to PGW's request.<sup>9</sup> By reviewing PGW's ratemaking claims, the Commission will be able to bring meaning to Section 2212 and all other provisions of the Public Utility Code. Simply put, the Commission should not tolerate unreasonable or imprudent expenditures that burden ratepayers, regardless of the past treatment of these expenditures by the Philadelphia Gas Commission.

The OCA submits that the ALJ correctly found that PUC precedent should be applied to the Company's request and properly disallowed PGW's \$115,000 lobbying expense claim in accord with Commission precedent. For the reasons set forth above, and in the OCA's Main Brief at 34-36, the ALJ's decision should be upheld.

**Reply to PGW Exc. 9:**        The OCA's Downward Expense Adjustments And Its Increase In Bad Debt Expense Adjustment Were Not "Intended" To Offset Each Other.

PGW argues that the ALJ erred in rejecting the OCA's increase to PGW's bad debt expense since this upward adjustment was made "in conjunction with" and "intended" to offset the OCA's downward

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<sup>8</sup> PGW has argued in this case that since its budget is publicly reviewed and approved by the Philadelphia Gas Commission it must not be changed by the Commission. As set forth above, the Commission should reject this proposition.

<sup>9</sup> The Philadelphia Gas Commission adopted the Hearing Examiner's recommendation that PGW's Fiscal Year 2001 Budget reflect the interim rate increase awarded by the PUC. OCA R.B., Appendix A (Motion of the Philadelphia Gas Commission).

expense adjustments. PGW Exc. at 28. PGW overstates the OCA's "intent." As OCA witness LeLash testified, he found that bad debt expense was understated in the Company's projections, but also found that this is a particularly difficult expense to analyze. OCA St. 1 at 32, 42. Mr. LeLash did perform an analysis of this expense through discovery. Mr. LeLash set forth the information he received and relied upon as follows:

In fact, with the subsequent increase in the GCR rate, even the \$727.5 million estimate will understate actual billed revenues. Accordingly, a \$65.3 million Bad Debt Expense would appear to be a low estimate. In response to an informal discovery request, the Company provided an Income Statement at current rates which showed Gas Revenues of \$770.4 million and a Bad Debt Expense of \$72.4 million.

OCA St. 1 at 42. This information, which showed a \$7.1 million further increase, and other information from the Company showing a range of potential increases from \$5 million to \$7 million formed the basis of the OCA's adjustment. The adjustment was not "selected" as a means of offsetting the OCA expense adjustments. Given the uncertain nature of the expense, its dependence on future gas prices, and the range of PGW's estimates, Mr. LeLash adopted an increase in bad debt expense that had the effect of offsetting the OCA expense adjustments in the analysis.<sup>10</sup> OCA St. 1 at 45. The increase in the bad debt expense was separately proposed based on the information of record.

As such, the OCA submits that PGW has overstated the "intent" of the OCA's bad debt expense adjustment. As with any adjustment proposed by a party, the ALJ was free to evaluate and rule on the adjustments separately. The OCA would agree that if the Commission adopts the OCA's proposed increase in the bad debt expense, it would have the "effect" of offsetting the OCA downward expense

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<sup>10</sup> The OCA would note that as Mr. LeLash testified, the increase in PGW's Gas Cost Rate has had a material effect on its bad debt expense. OCA St. 1 at 43.

adjustments that were adopted by the ALJ. Each of these adjustments, however, should be decided on its own merits.

**Reply to PGW Exc. 11:**     Excluding PGW's Purchased Electricity Costs From Its GCR Is Appropriate In This Proceeding.

At pages 83-84 of the R.D., the ALJ adopted the OCA's proposal that costs of purchased electricity be removed from PGW's Gas Cost Rate (GCR) and recovered in PGW's base rates. OCA witness LeLash had recommended this change since electricity expenses are not gas costs and are controllable in nature. OCA St. 1 at 48. PGW has excepted to this recommendation arguing that Section 2212(d) requires the Commission to defer a decision on this matter until the restructuring case. PGW Exc. at 31.

The OCA disagrees that Section 2212(d) prohibits the Commission from appropriately allocating costs between rate components in a base rate case. The OCA submits that this minimal change in the GCR is permissible in this proceeding, and that accomplishing this change would better prepare the Company for restructuring. Nevertheless, the OCA would not object if this change is deferred to the restructuring proceeding.

**Reply to PGW Exc. 14:**     The Residential Customer Charge Should Not Be Increased To A Level Of \$15.00 As Requested By PGW.

PGW excepts to the ALJ's recommendation to adopt the OTS proposed customer charges, including the OTS proposed residential customer charge of \$12.00 per month. PGW Exc. at 39. The Company argues for a residential customer charge of \$15.00. PGW argues that its cost of service study shows that customer related costs exceed even the \$15.00 per month level, and that it requires this

increased customer charge to produce additional fixed revenues so that it is not dependent upon cold winter weather to generate sufficient annual revenues. PGW Exc. at 39. PGW's Exception must be rejected.

As the OCA set forth in its Main Brief at 51 to 56 and its Reply Brief at 39-41, PGW's cost of service study significantly overstates the customer-related costs for the customer charge. As this Commission has held in numerous proceedings, the customer charge should collect basic customer costs. Pa PUC v. Pennsylvania-American Water Co., 82 Pa. PUC 381, 429 (1994) and Pa. PUC v, West Penn Power Co., 73 Pa. PUC 454, 526 (1990). PGW witness Gorman, however, included many costs that are not properly classified as customer-related. OCA St. 2 at 6. When these indirect costs are removed, the residential customer costs per month, at the Company's full base rate request, are reduced from PGW's estimate of \$39.94 per month to \$12.17 per month. OCA St. 2, Exh. 2-B, Table REM-4. When only direct customer costs are examined, even at the Company's full request, it is clear that there is no support for the Company's proposed \$15.00 per month residential customer charge.

Additionally, the OCA submits that the customer charge should not be used as a means of protecting PGW's revenues from the effects of weather. This Commission has been clear that the customer charge should be based on direct customer costs only. Weather is irrelevant when determining the direct customer costs and the customer charge.

As the OCA set forth in its Briefs and Exceptions, a residential customer charge of no more than \$11.50 per month should be implemented. OCA M.B. at 51-56; OCA R.B. at 39-41; OCA Exc. at 24-26. This residential customer charge level properly reflects direct customer costs and mitigates the impact of a significant customer charge increase from last year at this time. Additionally, this residential customer charge level is more in line with the average residential customer charge of other Pennsylvania natural gas

companies of \$10.35 per month. R.D. at 14; OTS Exh. 2, Sch.5. The OCA submits that its proposed residential customer charge of \$11.50 per month should be adopted.

B. Reply To PICGUG Exception 1

**Reply to PICGUG Exc. 1: PICGUG's Attempt To Allocate The Entire Rate Increase To The Residential Class Should Be Rejected.**

At pages 2-6 of its Exceptions, PICGUG argues that the ALJ erred in failing to allocate the entire rate increase to the residential class. PICGUG argues that since the ALJ found that the residential class was being subsidized, the ALJ should have allocated the entire rate increase to the residential class in an attempt to mitigate that subsidy. As the OCA set forth in its Exceptions, however, the ALJ's conclusion that the residential customer class is being subsidized is incorrect. OCA Exc. at 20-24. As OCA witness Miller explained, a subsidy does not exist unless the rates for the customer class are less than the marginal or incremental cost of serving that class. OCA St. 2-R at 4-5. Mr. Miller's review determined that PGW's marginal costs are much less than the total costs allocated to the residential class and less than the rates paid by the residential customers. OCA St. 2-R at 4-5. Thus, the ALJ's conclusion that residential customers are being subsidized was incorrect, and PICGUG's reliance upon such a perceived subsidy is also incorrect.

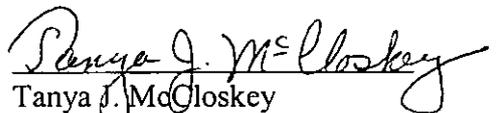
PICGUG also relies heavily upon PGW's cost of service study for its recommendation that the entire rate increase be allocated to the residential class. PGW's cost of service study is flawed, however, and overstates the costs that should be allocated to the residential customer class. OCA St. 2 at 21-25; OCA M.B. at 40-47; OCA R.B. at 35-58. When the cost of service study is corrected to reflect proper cost causation, there is no support for the extreme revenue responsibility recommendation of PICGUG.

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief at 40-51, Reply Brief at 38-39 and Exceptions at 20-24, the OCA submits that PICGUG's attempt to allocate the entire rate increase to the residential customer class should be rejected. Additionally, the ALJ's recommendation to allocate a disproportionate share of the increase to the residential class should be rejected, consistent with the OCA's Exceptions on this issue.

III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief, Reply Brief and Exceptions, PGW's Exceptions should be denied. PGW should be awarded a rate increase of no more than \$10.5 million in addition to the \$11 million interim rate increase (\$21.5 million total) subject to the conditions recommended by the OCA.

Respectfully submitted,

  
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Dated: August 30, 2001  
65253

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 documents, Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 30<sup>th</sup> day of August, 2001.

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IN REPLY PLEASE  
REFER TO OUR FILE

August 30, 2001

ORIGINAL

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JAMES J. MC NULTY

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

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the **Reply Exceptions of the Office of Trial Staff** for filing in the above-captioned proceeding.

Copies are being served upon all active parties of record.

Very truly yours,

Johnnie E. Simms  
Senior Prosecutor  
Office of Trial Staff

JES:em

c: Parties of Record  
Director Walker-Davis, Office of  
Special Assistants

Enclosures

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission :  
 :  
 v. : R-00006042, et al  
 :  
 Philadelphia Gas Works :

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THE OFFICE OF TRIAL STAFF'S  
REPLY EXCEPTIONS

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Johnnie E. Simms  
Senior Prosecutor

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Date: August 30, 2001

**DOCKETED**  
AUG 31 2001

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## **I. INTRODUCTION**

The Recommended Decision of Administrative Law Judge Cynthia Williams Fordham was issued on August 7, 2001. The active parties in this proceeding filed Exceptions to her Recommended Decision on August 22, 2001. The Office of Trial Staff did not file Exceptions, although the Recommended Decision did not adopt all of our recommendations. However, the Office of Trial Staff did reserve the right to file Reply Exceptions.

Accordingly, the Office of Trial Staff is filing Reply Exceptions to the Exceptions of Philadelphia Gas Works (“PGW” or “Company”).

## **II. REPLY EXCEPTIONS**

### **A. REPLY EXCEPTION NO. 1 - The ALJ Did Not Err In Rejecting PGW’s Claimed End of Test Year Cash Flow Request of \$65 Million.**

In its Exception No. 3 beginning on page 12, PGW argues that the Recommended Decision “completely overlooked the extensive record evidence showing that adequate end-of-test year cash working capital is produced only by implementation of the full \$65 million rate request.” OTS respectfully submits that this argument epitomizes the circular nature of the case that the Company has presented in this proceeding.

In that regard, it is necessary to revisit this rate case filing, as the Company’s Exceptions attempt to obfuscate the facts surrounding this case. Case in point, on January 5, 2001, PGW filed a tariff proposing changes in rules, regulations and rates calculated to produce \$65 million in additional annual revenues. In support of its proposed \$65 million in additional annual revenues, PGW presented, inter alia, the direct testimony of Thomas E. Knudsen, which has been marked for identification in this proceeding as

PGW Statement No. 1.0. On page 7 through 9 of Mr. Knudsen's direct testimony, he testifies that PGW has not been able to put into effect any of the \$11 million interim rate relief because the Commission's Order had been appealed to Commonwealth Court. Mr. Knudsen continued his direct testimony by testifying that "with the unprecedented run up in gas costs and without timely and adequate relief in the interim proceeding as requested, we are forced to ask both for further consideration of the interim needs for FY 2001 and for a larger amount for the permanent needs going forward in FY 2002."

An in depth analysis of Mr. Knudsen's testimony suggests that the \$65 million request was based in part on "the unprecedented run up in gas costs and the failure to receive any interim rate relief." PGW's concerns regarding its failure to receive interim rate relief was addressed, when on February 8, 2001, the Commission's Law Bureau and PGW filed with the Commission a "Joint Petition for Full Settlement of PGW's Petition for the Establishment of Interim Rates and Related Appeal" at docket number R-00005654. In the Joint Petition for Full Settlement, which was approved by the Commission on February 21, 2001, PGW was allowed to implement a \$11 million base rate increase, as well as recover \$7 million of bad debt expense through the GCR. Both of the increases were compressed so that the full \$18 million annual amount of the increase would be recovered by the end of PGW's current fiscal year on August 31, 2001. Furthermore, PGW was permitted to retain up to \$18 million in over-recovered gas cost revenues that would typically be returned to customers between March 1 through August 31, 2001. With respect to the "run up in gas costs", the Commission approved PGW's Petition to provide monthly updates to its GCR on February 1 and March 1, 2001.

(See Pa. P.U.C. v. Philadelphia Gas Works, Docket No. R-00005619 (Order entered January 24, 2001)).

Accordingly, when PGW claims that it needs the full \$65 million request there must be an examination of the facts at the time of the Company's rate increase Filing and the facts after the Company's rate increase Filing. As the record evidence supports, at the time of the Company's January 5, 2001 rate increase Filing, PGW had not received any monies from its interim rate relief request as authorized in the Commission Order of November 22, 2001 at docket number R-00005654. In fact, as PGW witness Knudsen testified, the \$65 million rate request was based in part on the fact that the Company had not received any interim relief. (PGW St. No. 1 at 7-8). After the January 5, 2001 rate case Filing, PGW was able to charge and collect the Commission's previously authorized \$11 million interim base rate increase by August 31, 2001 and to recover \$7 million through its GCR to account for bad debt expense. Furthermore, after the January 5, 2001 rate case Filing, PGW was authorized to hold \$18 million in reserve from GCR overcollections, to insure that it has sufficient cash to meet its bond covenants through January 2002.<sup>1</sup>

With potentially \$36 million at PGW's disposal, which was not contemplated by anyone when PGW filed for a \$65 million rate increase on January 5, 2001, PGW continues to argue on August 22, 2001 that the Company needs the full increase of \$65 million. If the Commission grants the full increase of \$65 million, PGW could potentially have at its disposal \$101 million, depending on the Commission approval of the reserve

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<sup>1</sup> PGW must make an informational filing when it determines whether it will need the reserve fund, by no later than December 31, 2001. The filing would then be subject to review and approval by the Commission. See Pennsylvania Public Utility Commission v. Philadelphia Gas Works - R-00005654 and R-00005619 (Order entered February 22, 2001).

fund. There is absolutely no evidentiary support for PGW's argument that it deserves \$65 million, when at a minimum, the Company will have \$18 million of rate relief (\$11 million interim rate relief and \$7 million GCR to account for bad debts) that was not contemplated at the time of its Filing on January 5, 2001.

With respect to the \$20 million pay down of PGW's outstanding commercial paper, OTS would submit that neither the Company nor OTS took into consideration the Company's increased collections efforts in collecting its accounts receivables, which are projected to be \$225 million as of August 31, 2001. As PGW witness Knudsen explained in his rebuttal testimony, PGW is working hard to reduce its bad debt, and "that action is projected to generate \$5 – \$10 million, at best, under the circumstances." (PGW St. No. 1.1 at 11). OTS would suggest that the \$5 – \$10 million that the Company contemplates receiving from its efforts in the collection of bad debts be used in paying down its outstanding commercial paper. If sufficient effort is utilized by the Company knowing that it has to pay down its outstanding commercial paper by \$20 million, perhaps more than \$5 – \$10 million can be recouped from its bad debt collections.

Most interesting is that in PGW's footnote 45 on page 13 of its Exceptions, PGW is averring that OTS witness Weakley incorrectly assumed that the full \$18 million interim increase would continue to be collected in base rates. On the contrary, the reference is a calculation of the ending cash balance for the year ending August 31, 2001 and not the calculation of the recommended increase in base rates. Mr. Weakley did not assume that the \$18 million would continue to be collected in base rates. Mr. Weakley correctly included the \$11 million of the interim increase in the OTS Schedules used to develop the

OTS recommended increase of \$33 million. (See OTS Exhibit No. 1). The \$7 million GCR increase was correctly included in the analysis of the ending cash balance for the fiscal year ending August 31, 2001, since the Company will only collect the \$7 million for this fiscal year as part of the GCR. It must be noted that the ending cash balance has nothing to do with establishing base rates in proceeding as it is simply a cash surplus in the cash flow statement. If the Company had any confusion regarding this matter, Mr. Weakley was available for cross-examination at the evidentiary hearings.

Finally, PGW argues that “the total level of year ending cash from all sources needed by the Company to be able to sustain itself was \$35 - \$40 million.” (See PGW Exceptions at page 14). In order to underscore its argument, PGW averred that “no party disputed the \$35 - \$40 million with any empirical or other evidence.” OTS respectfully submits that, unlike the Company, the other parties recalled that PGW’s own witness, Joseph R. Bogdonavage presented in the rebuttal phase of the proceeding, a year ending schedule updating the “actual projected” results for fiscal year 2001 showing the effects of the interim settlement increase.<sup>2</sup> Mr. Bogdonavage provided in PGW Exhibit JRB-2, page 2, a schedule that reflects the interim rate increase of \$18 million, which provides PGW with a year ending cash balance of approximately \$34.1 million, which is close to PGW witness Knudsen’s target of \$35 - \$40 million cash target at year end. Consequently, without any consideration being given to the filed rate increase of January 5, 2001, by its own admission, the interim rate increase of \$18 million will provide the Company with sufficient cash at the end of the fiscal year.

Accordingly, the Company's Exceptions should be denied.

**1. The ALJ Did Not Err By Failing to Recognize That the Full Rate Request Must Be Granted to Permit PGW to Satisfy All of Its Bond Covenants.**

PGW's argument that the full \$65 million rate request is necessary to enable PGW to meet all of its bond covenants is a red herring without any merit. PGW argued in part that "the Recommended Decision failed to recognize that the full \$65 million is needed if PGW is to have sufficient cash to pay all of its obligations, including its debt service obligation during each fiscal year, in full when they are due." PGW further argues that "a \$44 million rate award simply does not satisfy this standard because it would leave PGW woefully short of cash at the end of fiscal year 2000-01 (August 31, 2001), such that it will be in real danger of not having sufficient cash to meet its obligations during the pre-winter storage injection and gas buying season." (PGW Exceptions at page 16). OTS respectfully submits that the above argument by PGW illustrates a fundamental lack of understanding of the relationship between the Company's cash at the end of the fiscal year 2000-01 and this instant base rate proceeding.

First in response to the argument, as explained by OTS witness Deardorff, the OTS recommendation of \$44 million (including the interim rate increase of \$11 million) provides sufficient coverage to preserve PGW's credit rating. As the debt service coverage ratios are well in excess of the minimum requirements set forth in the Bond Ordinances, they provide ample cushion to alleviate any fears of the credit rating agencies that PGW

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<sup>2</sup> As previously discussed, the interim rate settlement was submitted to the Commission on February 8, 2001 and approved by the Commission on February 21, 2001, which is after the rate increase of \$65 million was filed with the Commission on January 5, 2001.

will not meet its debt service.<sup>3</sup> (OTS St. No. 5 at page 5). Second, as discussed above, PGW witness Bondonavage provided an Exhibit in which the Company admits that with the \$18 million interim increase PGW will have a projected end of the year cash balance of \$34 million. Finally, as previously noted, the Company's ending cash balance as of August 31, 2001 has no relationship with the establishment of rates in this proceeding. In that regard, PGW's ending cash balance as of August 31, 2001 will be some defined amount, which is presently projected by the Company to be \$34 million. However, the Commission will approve an annual rate increase in this case on or about October 6, 2001 approximately five weeks after the end of PGW's fiscal year of 2000-01. Consequently, since the end of PGW's fiscal year is August 31, 2001, and the suspension date in this proceeding is October 6, 2001, there is no nexus between the cash ending balance for August 31, 2001 and the final approved rate increase. There is absolutely no mutual co-existence between the cash balance for PGW on August 31, 2001 and the determination of rates in this proceeding.

Furthermore, the PGW argument that the \$44 million rate award will not enable PGW to meet its obligations during the pre-winter storage and gas buying season, is simply incorrect. It must be recognized that local distribution gas companies like PGW make their pre-winter storage and gas buying from the months of April through October. Accordingly, any rate increase that may be approved by the Commission will have

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<sup>3</sup> PGW witness Bisgaier testified that most municipal utilities have required coverage between 1.1x and 1.25x annual debt service. See PGW-1R St. 2 at page 5. The Rate Covenant set forth in Article IV, Section 403 of PGW 1975 and 1998 Bond Ordinances requires PGW to maintain minimum debt service coverage of 1.5 times for the 1975 and 1998 Ordinance Senior Revenue Bonds and 1.0 times for 1998 Ordinance Subordinate Revenue Bonds. OTS' recommended increase in revenues provides debt service coverage of 2.82x for the 1975 Ordinance Bonds, 2.93x for the 1998 Ordinance Bonds and 28.49x for the 1998 Ordinance Subordinate Bonds.

absolutely no effect on PGW's ability to inject gas into storage for the winter or to purchase gas, since the Commission will not make a determination on this rate Filing until on or about October 6, 2001. OTS submits that PGW's injection of gas and buying of gas for the winter will have ceased before the Commission entertains this case and long before any revenues are received by PGW from ratepayers as a result of any rate increase.

Accordingly, PGW's Exception is either a red herring or demonstrates a fundamental lack of understanding between the cash balance at the end of the fiscal year 2000-01 (August 31, 2001) and the determination of rates in this proceeding.

Nevertheless, the Exception is without merit and should be rejected.

**2. The ALJ Did Not Err By Failing to Accept the Findings of an Independent Engineering Report to Bondholders.**

On page 17 of its Exceptions, PGW argues that the ALJ failed to accept the results of an independent study conducted in conjunction with PGW's most recent bond issuance. PGW further argues that it will only satisfy its obligations to bondholders if PGW is able to raise its rates by an average of \$53 million (over and above the pre-interim rate levels).

OTS submits that PGW's argument failed to consider that the engineering report did not consider the just and reasonable standard or the public interest standard of the Pennsylvania Public Utility Code. Accordingly, the engineering report only considered the short and long-term goals of PGW. In determining those goals, the engineering report did not utilize a "test year" in determining an appropriate level of rates for PGW, but rather, the report calculated a levelized rate increase far outside the future test year in this proceeding. Simply, the engineering report determined all of the short and long-term goals of the management of PGW, and created a revenue requirement, and then divided that

requirement by five (5) years for a recommendation of annual rate increase of \$53 million for the next five years. While such an analysis may be proper for bond issuance it is not appropriate in the determination of a revenue requirement for utilities under the jurisdiction of the Pennsylvania Public Utility Commission.

Notably, PGW argued that the Engineering Report reflects investors' expectations and assumptions about future rate levels. Such an argument should be readily dismissed, as all investors know or should know that rate level determination are governed by the Commission and not by the Engineering Report. Accordingly, PGW's Exceptions should be denied.

**B. REPLY EXCEPTION NO. 2 - The ALJ Did Not Err by Granting OTS' Recommendation To Increase the Average Annual Usage of PGW's Residential and Commercial Heating Customers.**

The ALJ was correct to increase PGW's average annual usage for residential and commercial heating customers based upon the record evidence presented in this proceeding. Along with the issue surrounding PGW's customer count, no other issue had the substantial evidence to support the ALJ's recommendation. The ALJ's Recommended Decision addressing this issue at pages 39 through 50 clearly demonstrates the overwhelming evidence in support of the recommendation to increase the Company's firm sales to residential and commercial heating customers by 3.3 Bcf.<sup>4</sup>

During the course of the evidentiary hearings, the ALJ had the opportunity to evaluate the evidence presented by respective parties in addressing this issue. Based upon that evidence, the ALJ has in great detail outlined the OTS evidence in her Recommended

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<sup>4</sup> PGW without any evidentiary support continues to misrepresent OTS' adjustment by suggesting that the increase by 7% or 4.2 Bcf.

Decision. In reviewing the Company's evidence, it appears that the ALJ recognized, as did OTS, that the Company made arguments relying solely on verbal statements, often in the context of rejoinder testimony, without any schedules or exhibits supporting the testimony. Case in point, as it did in its Main Brief, in the Company's Exceptions PGW argued that OTS' proposed increase represents 4.2 Bcf of additional sales, or a 7% increase in prior year firm sales and translates into a 14% increase in the Company's design day peak demand. (PGW Main Brief at pages 43-44 and PGW Exceptions at page 20). As OTS discussed in its Reply Brief at pages 6 through 7, there are no schedules or exhibits presented into evidence by the Company explaining how the "14% increase" was calculated by the Company. The only evidence of a "14% increase" is PGW witness White's rejoinder testimony that "if I were to extrapolate that to a design year that would be better than a 14 percent increase in total firm sales." The ALJ correctly recognized that she and the Commission are required to rely on an evidentiary record in determining a recommendation in this proceeding. In that regard, the Company's witnesses' mere statements regarding calculations without supporting exhibits must be given no weight when compared to recommendations, such as those of OTS witness Kubas, which are fully supported by exhibits and schedules. In its Exceptions, PGW continued the propensity for making statements regarding its calculations without supporting exhibits by arguing that "since 1984, PGW average annual usage has gone down by 10 % per year, and it has never experienced the kind of increase that Mr. Kubas assumed". OTS submits that there are absolutely no supporting exhibits and/or schedules supporting the Company's statement regarding the "10% per year" calculation, such as, base load per customer information,

heat load per customer information, or a chart illustrating the average use over the past several years to support the "10% claim". Consequently, there is no independent evidence Mr. White's claim that the average annual residential usage has gone down by 10% per year.

In its Exceptions at page 20, PGW argues that the ALJ and OTS were in error to rely on actual 2000 data. Interestingly, while PGW argues that reliance on the 2000 data is in error, the Company in its Exceptions failed to articulate why it believes that such reliance is in error. In order to fully understand the Company's position on this matter and perhaps the reason for failing to articulate its position in its Exceptions, OTS submits that the Company in its Main Brief at page 44 articulated the reason why it believes that reliance on 2000 data is in error. In that regard, PGW witness White testified that the Company's data collection system was not producing accurate reports in the year 2000 (PGW Main Brief at page 44). In support of its position that the data collection system was not producing accurate reports in 2000, the Company prepared an Exhibit (PGW Exhibit CW-R-1) comparing the reported customer billings to sales for the most recent period ending February 2001, which, according to PGW, shows the inconsistency due to some months actually have negative sales. The Company was fully aware that in response, OTS requested that the ALJ examine OTS Exhibit No. 2, Schedule 5, page 2, which depicted PGW's actual sales for January 2000 through August 2000, which illustrated that for this time period, the residential and commercial heating class sales are all positive. Furthermore, in response, OTS requested that the ALJ examine OTS Exhibit No. 2, Schedule 5, page 4, which depicted PGW's actual sales for September 2000 through

December 2000, which illustrated that for this time period, the residential and commercial heating class sales are all positive. Notably, the same schedules reflected in OTS Exhibit No. 2 on pages 2 and 4, respectively, show sales that are, in fact, negative for several months during 2000, but the negative sales are associated with classes of customers, such as the Housing Authority, the Municipal and NGV, which were not relied upon nor addressed by OTS in this proceeding. Consequently, the Company's argument that ALJ was in error for relying upon year 2000 data to determine average use for the residential and commercial classes due to negative sales during the year 2000 is not valid.

Finally, a response is necessary due to certain comments presented in footnote 80 on page 21 of PGW's Exceptions. First, opposing parties in Commission proceedings will have disagreements on certain issues, but it is not necessary to resort to characterizing the disagreements with such names as "strawman attacks", as there is a need to maintain civility in Commission proceedings, and leave such names to other forums. Second, whether PGW presented sufficient data in its initial filing resides with the Administrative Law Judge and ultimately with the Commission. Notwithstanding, the burden of proof in Commission proceeding rests with the utility, accordingly, it is not OTS or the other parties responsibility to request additional information for the purpose of clarifying or bolstering the Company's evidence in this proceeding.<sup>5</sup> Third, it was not the intent of OTS, on page 15 of its Main Brief, to admit that the Company had verified on rebuttal that the factors and inputs had remained constant. On page 15 of its Main Brief, OTS was

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<sup>5</sup> In its Main Brief, OTS made the following comment: "Undoubtedly, in its Reply Brief, PGW will indicate that the numerical identification of the inputs would have been provided if OTS had requested the information through discovery. While that may be correct, it must be noted that PGW has the burden of proof, and it is the Company not OTS that has referenced the inputs in support of its position in this proceeding." See OTS Main Brief at page 17.

merely quoting from the testimony of PGW witness White. In fact on page 16 of OTS' Main Brief, in response to Mr. White's testimony, OTS argued as Mr. White explained, "the key to any forecasting model, is the consistency and accuracy of the input data that is used to develop the factors that are utilized to project sales and send-out." (N.T. 548). OTS submits that Mr. White's explanation is the key to the problem with the Company's forecasting model since there is no independent method of determining the consistency and accuracy of the model when there is no evidence of what numerical input data was used to develop the factors which determined the projected sales and send-out. Moreover, by Mr. White's own admission, all of the inputs utilized for the Company's claimed filing time period, which was September 1, 1999 through August 31, 2000, were utilized for the time period of November 2000 through March 2001. Clearly, it is possible that some of these inputs have changed over time and should have been updated.

In the final analysis, the Company has presented no record evidence or schedules detailing with any numerical specificity outlining the inputs that were utilized in the forecasting model. Case in point, no one other than PGW knows (1) what base load factors were utilized; (2) what heating load per degree day factors were utilized; (3) what monthly historical utilization factors were utilized. In this proceeding, PGW simply identified the inputs without the numerical identification of the factors that were inputted into the computer model. Such evidence is insufficient when compared to analysis performed by OTS witness Kubas, and accurately described in the Recommended Decision and adopted by the ALJ.

Accordingly, PGW's Exceptions should be denied.

**C. REPLY EXCEPTION NO. 3 - The ALJ Did Not Err by Finding That PGW's Residential and Commercial Customer Counts Should Be Increased as Proposed by OTS.**

As PGW noted in its Exceptions, based on a recommendation by OTS, the ALJ also recommended an increase of 11,189 in the number of PGW's residential heating customers and an increase of 51 in the number of commercial heating customers with a corresponding increase in pro forma revenues. PGW's Exceptions is that "in so doing, the ALJ incorrectly stated that PGW concurred that additional customers should be added." (PGW Exceptions at page 22).

A close examination of PGW witness White's rebuttal testimony (which was absent from PGW's Exceptions) will resolve whether PGW agreed that its residential and commercial customer counts should be increased as proposed by OTS. On page 6 through 8 of PGW Statement No. 4.1, Mr. White discussed Mr. Kubas' contention that the Company had understated residential heating and commercial heating customer counts. By his own admission, Mr. White acknowledged that in PGW's initial filing, the Company used the customer counts that matched the sales data included in their forecast model, however, in an April 2001 review, new customer count data was verified as being accurate. (PGW St. No. 4.1 at pages 6-7). With respect to the customer count, Mr. White testified in part that "Mr. Kubas' recommended increase in total customers may be reasonable." (PGW St. No. 4.1 at page 8). It is clear that PGW witness White has endorsed Mr. Kubas' recommended increase in total customers as being reasonable and that the Company's initial customer counts were incorrect. Accordingly, the ALJ adopted Mr. Kubas' customer counts.

In the area of increasing the annual usage per customer, the Company did not agree with that recommendation. (PGW St. No. 4.1 at page 8). Not surprisingly, since the ALJ earlier had rejected the Company's forecasting model utilizing pre-2000 usage factors with respect to annual usage per customer, it naturally follows to recognize that with the increase in customer count, the pro forma customer charge revenue and revenue from sales should be increased.

Accordingly, PGW's Exceptions should be denied.

**D. REPLY EXCEPTION NO. 4 - The ALJ Did Not Err In Allowing PGW Only \$61.1 Million in Bad Debt Expense**

On page 23 of its Exceptions, PGW argues that by endorsing OTS' proposed bad debt expense allowance, the ALJ ignored the Commission's obligation under Section 2212(e) as well as the evidence. In response, OTS submits that its bad debt recommendation is consistent with the Commission's decision in the interim rate proceeding in Pennsylvania Public Utility Commission, et al. v. Philadelphia Gas Works, R-00005654 (Order entered November 22, 2000) which provides in pertinent part as follows:

... First, we find the OTS method of determining the bad debt percentage to be reasonable and consistent with the Commission's policy of allowing known and measurable adjustments.

Consequently, the Commission has previously determined in the interim rate proceeding with the adoption of a similar OTS bad debt adjustment, its obligation under Section 2212(e) and that OTS' adjustment satisfied Section 2212(e) of the Public Utility Code. (OTS Main Brief at pages 36-37).

Furthermore, the Commission determined in the Interim Rate proceeding that the purpose of a bad debt adjustment is to determine “a normal level of expense levelizing fluctuations in this expense such as: write off or collection activities by PGW, economic conditions, or increased consumption due to weather.” It must be noted that arrearages does not necessarily mean that it is uncollectible. Moreover, the Commission determined that a five-year period is a sufficient length of time to levelize any aberrations due to economic conditions, such as high gas prices. In fact, OTS excluded fiscal year 2000 in its analysis due to PGW’s abnormally low write-offs for bad debts. (OTS Reply Brief at page 3).

The Company’s argument regarding its level of 40% arrearages that may be attributed to high gas prices, is a snap shot of a short period that will levelize over a period of time, and those arrearages should return to historic levels. Moreover, for the Company’s argument regarding the effects of high gas prices to have any merit, there would have to be evidence of continuing high gas prices and high delinquencies over a prolonged time period. In the instant proceeding, there is no evidence that there will be a continuation of high gas prices, in fact the evidence suggests a lowering of gas prices (N.T. 558-560).

Finally, the Company’s argument that the Philadelphia Gas Commission’s approval of PGW’s FY 2001 budget of \$68 million in bad debt expense ratifies the reasonableness of PGW’s proposed \$65 million bad debt expense is without merit. PGW needs to comprehend once and for all that the Philadelphia Gas Commission does not have an obligation to set “just and reasonable” rates for PGW for that obligation rests solely with

the Pennsylvania Public Utility Commission. Consequently, the Philadelphia Gas Commission is under no obligation to determine the reasonableness of expenses as it relates to the rates charged to ratepayers.

Accordingly, PGW's Exceptions should be rejected.

**E. REPLY EXCEPTION NO. 5 - The ALJ Did Not Err in Disallowing \$100,000 of PGW's Rate Case Expense Incurred for the Testimony of Lukens Energy Group, Inc.**

On page 26 of its Exceptions, PGW excepted to the ALJ's disallowance of \$100,000 of rate case expense associated with the testimony of the Lukens Energy Group, Inc. PGW argues that the rate case was disallowed because the ALJ claimed that the testimony and expense was "not necessary". OTS submits that PGW's articulation of the reason why the expense was disallowed is wholly inadequate. In that regard, the ALJ went to great lengths in discussing the record evidence relating to this issues at pages 50 through 54 of her Recommended Decision. The ALJ correctly concluded that the \$100,000 expense for the Lukens testimony should be disallowed because it was not a "just and reasonable" expense. As the ALJ noted, it is clear that there are differences between municipally owned utilities and investor owned utilities. Accordingly, it was not necessary for the Company to provide expert testimony concerning the revenue requirement for an investor owned utility.<sup>6</sup> Accordingly, and rightfully so, the ALJ determined that testimony was not relevant and ratepayers should not be required to pay for it.<sup>7</sup>

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<sup>6</sup> It must be noted that the same active parties in this proceeding participated in the Interim Rate Relief Proceeding at R-00005654 and should have been fully aware that PGW was a municipal owned utility.

<sup>7</sup> The Company was placed on notice at the time Lukens' testimony was identified and admitted into the record that OTS had an adjustment and questioned its relevance in this proceeding. N.T. 673.

It must be noted that the record evidence shows that the Company attempted to utilize conflicting testimony by three different witnesses to booster its position as to why the Lukens' testimony was relevant, and in each case the ALJ correctly dismissed the Company's justification for the testimony. Moreover, PGW's argument that as "the proponent of a rule or order is permitted to present its case as it see fit" is without merit. The argument failed to recognize that the ALJ has the right to determine the relevancy of any parties' evidence and/or testimony, and in this case the ALJ has correctly determined that the Lukens' testimony was not relevant to any issues in this case. Accordingly, the ratepayers of PGW should not pay for that part of the rate case expense. Additionally, with respect to the "proponent of a rule or order is permitted to present its case as it sees fit", the Commission concluded in Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp. 54 Pa. PUC 401, 416-417, (1980) in pertinent part as follows regarding rate case expense:

. . .If a particular utility should decide to expend more or less than its allowance, for whatever reason it may choose, that is a management decision for it to make. Our decision in this and every case is to determine the reasonable annual expense allowance to be charged to ratepayers.

In the instant proceeding, the ALJ has determined that the Lukens' rate case expense is not a reasonable expense to be charged to PGW's ratepayers. Accordingly, PGW's Exceptions should be denied.

**F. REPLY EXCEPTION NO. 6 - The ALJ Did Not Err by Reducing PGW's Proposed Promotional Expenses.**

The sole basis for PGW's Exceptions is its argument that "under PGW's prior ratemaking method, its rates are tailored to its future or anticipated need for cash." The

problem with that argument is that the Company failed to produce any evidence, which would justify allowing \$1.6 million for promotional expenses. In fact based upon its own records, during each of the last two years, PGW has budget approximately \$1.6 million for Promotional Activities; however, since the inception of the program, the total incentive payments have totaled only \$558,103, for approximately twenty-one (21) customers. While PGW has budget \$1.6 million for Promotional Activities, at no time has the Company expended more than \$383,193 in any one year. (OTS Main Brief at page 39). In fact, PGW only expended \$383,193 in 1999 and \$94,120 in 2000. Id. Clearly, when austerity should be the rule of the day, with PGW's self proclaimed financial crisis, the Promotional Activities claim should be limited to an amount that is reasonable, and represents some proximity to the actual amounts expended in the past.

Finally, with respect to PGW's "prior ratemaking method" argument, OTS submits that the Company has misinterpreted the concept, as "prior ratemaking method" only distinguishes between the ratemaking concepts for PGW's "cash flow method" versus the Commission's traditional investor-owned "rate base/rate of return" method.

Accordingly, PGW's Exceptions should be denied.

**G. REPLY EXCEPTION NO. 7 - The ALJ Did Not Err In Calculating and Adopting the Revenue Requirement Recommended by OTS.**

The Company's attempt to argue that the ALJ's recommended base rate increase falls short in that it did not incorporate all of the ALJ's adjustments from the Recommended Decision. The "expense adjustment" presented by PGW on page 30 of its exceptions is woefully inadequate, because it failed to represent the correct expense adjustment for this proceeding. In that regard, the "expense adjustment" presented needs

to be revised to reflect the proper expense adjustments in conjunction with the ALJ's recommended revenue requirement. Accordingly, there must first be a recognition that OTS recommended that the social costs (senior citizens discount, CWP and CRP) be removed from the GCR and included as expenses in base rates. This OTS recommendation totaled \$60,937,000. Since the ALJ recommended that these adjustments be deferred to the restructuring (R.D., pp. 84-87), the \$60.9 million must be removed from both revenues and expenses as shown on OTS Exhibit No. 1, Schedule 1. The iteration process requires that the write-off ratio of 7.6160% be employed to determine the bad debt expense attributable to the final base rate gas revenues that were to be determined in this proceeding. (OTS Statement No. 1, p. 7). The total base rate revenues based on the ALJ recommended decision is \$741,687,000. The final base rate adjustment of \$2,055,000 is to account for the rate making revenue impact associated with the customer count and usage adjustment as accepted by the ALJ. Moreover, the \$2,055,000 is the added revenues the company would experience at their proposed rates, using OTS Kubas' customer number and sales volumes.

Accordingly, in order to recognize the proper above adjustments to PGW's "expense adjustment" schedule presented on page 30 of its Exceptions, the schedule should be revised as follows:

Expense Adjustment

PGW proposed base rate increase	\$65,000,000
Net decrease from increase customer counts and Average usage (\$33,856,232 - \$20,479,000)	(13,377,000)

Normalization of rate case expense and

Elimination of Lukens testimony expense	( 362,000)
Reduction to promotional expenses	(1,260,000)
Lower bad debt expense allowance	<u>(3,872,000)</u>
Sub-Total	\$46,128,768
Interim rate increase	<u>(11,000,000)</u>
Company's calculation of the total rate increase	\$35,128,768
Iteration of bad debt expense	( 4,938,000)
Ratemaking revenue impact	<u>2,055,000</u>
Base Rate Increase Per ALJ	\$32,245,768

Consequently, based upon the adjustments that are needed to reflect the final approved revenue requirement, there is no need to increase the recommended increase of \$33 million by an additional \$2.1 million. Accordingly, PGW's Exceptions should be denied.

**H. REPLY EXCEPTION NO. 8 - The ALJ Did Not Err by Excluding Purchased Electricity Costs from PGW's GCR.**

PGW excepted to the ALJ's recommendation that purchased electricity costs be removed from its GCR and recovered in base rates. It is PGW's opinion that the treatment of these costs must be deferred until the restructuring case. The Commission, in PGW's 2000-2001 Gas Cost Rate proceeding at docket number R-00005619, ordered that "the appropriateness of PGW's practice of including non-gas costs in its GCR shall be addressed as an issue in the base rate filing that is to be made by PGW on or before January 1, 2001, and a specific recommendation concerning this practice is to be presented

to the Commission by the ALJ as part of the resolution of that case. In accordance with the Commission's instruction, OTS recommended that \$965,000 of purchased electric be removed from the GCR and placed in base rates. OTS submits that unlike the social costs that are included in the GCR, the purchased electric costs are the easiest to quantify and include those costs in the Company's Operation and Maintenance Claim in base rates. Accordingly, PGW's Exceptions should be rejected.

**I. REPLY EXCEPTION NO. 9 - The ALJ Did Not Err by Accepting OTS' Revenue Requirement Allocation Recommendation**

The ALJ accepted the OTS' proposal to reduce the rates for the GTS Trans customer class and increase rates for the LBS Large Direct, TriGen Direct and NGV Direct classes, so that these classes' rates will recover the costs allocated to them. The Company has excepted to this recommendation from the ALJ. OTS submits that the Company should at least recover the cost of service from its customers or otherwise another customer class will subsidize these customers. The Company's argument that LBS Large Direct, TriGen Direct, and NGV Direct customer classes are interruptible or negotiated rates is irrelevant to whether PGW is recovering the cost of service from these customers. If they are not recovering the cost of service, then PGW should negotiate higher rates or interrupt these customers or absorb the difference. However, when the Company negotiates rates below the cost of service, then the revenue requirement is increased for all customers, particularly since PGW is a cash flow utility. The transportation customers and other customers should not pay more to PGW for the purpose of subsidizing the LBS Large Direct, TriGen Direct and NGV Direct customer class.

With respect to PGW's argument that the Commission is legally constrained by Section 2212(d) of the Code, OTS submits that it was the Company that presented a cost of service in the proceeding for "the purpose of assigning the total costs incurred by PGW to each customer class and to compare the costs assigned to each customer class to the revenue produced by the rates proposed by the utility." (See PGW St. No. 5 at page 2). Accordingly, PGW's Exceptions should be rejected.

**J. REPLY EXCEPTION NO. 10 - The ALJ Did Not Err In Accepting OTS' Customer Charges.**

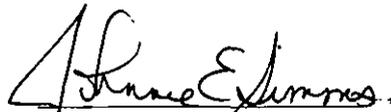
The Company's Exceptions appear to be premised on the fact that "for every customer class, the proposed monthly customer charges are lower than the customer related costs on a per customer-month basis as set forth in the Company's COSS." OTS would note no local distribution company in Pennsylvania is charging the total customer related costs, or residential charges would be in the range of \$50. Moreover, the Company is incorrect about the Municipal GS, MS, PHA-GS and PHA-PHA, as OTS recommended a \$18 customer charge for these customers. Finally, the Company's argument relating to mitigation of reliance on cold winters is an argument not unique to PGW, as all gas utilities in Pennsylvania would rather have higher non-variable customer charges rather than variable volumetric rates, because the former represents guaranteed revenue. Accordingly, PGW's Exceptions should be rejected.

**III. CONCLUSION**

For the foregoing reasons, the Exceptions of Philadelphia Gas Works should be rejected. The Pennsylvania Public Utility Commission should order Philadelphia Gas

Works to produce changes in rules, regulations, and rates calculated to produce no more than \$33 million in additional annual revenues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Johnnie E. Simms". The signature is written in a cursive style with a large initial "J".

Johnnie E. Simms  
Senior Prosecutor

Dated: August 30, 2001

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 **Reply Exceptions** of the Office of Trial Staff, dated August 30, 2001, either personally, by first class mail, electronic mail, express mail, or by fax upon the persons listed below:

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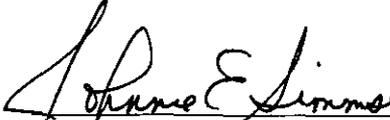
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Dated: August 30, 2001  
Docket No. R-00006042

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August 30, 2001

**VIA HAND DELIVERY**

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

01 AUG 30 PM 3:46  
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed please find an original and nine copies of its Reply Exceptions with regard to the above referenced matter. All parties of record have been served as evidenced by the attached Certificate of Service.

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

Very truly yours,

Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww  
Enclosure

cc: Hon. Cynthia Fordham w/enc.  
Office of Special Assistants w/enc. (and disk)  
All Parties of Record w/enc.

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DSH:28706.1

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility  
Commission

v.

Philadelphia Gas Works

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Docket No. R-00006042

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REPLY EXCEPTIONS OF PHILADELPHIA GAS WORKS

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## I. INTRODUCTION

Philadelphia Gas Works (“PGW”) hereby responds to the Exceptions filed by the Office of Consumer Advocate (“OCA”), Consumer Education and Protective Association, et al. (“CEPA”) and Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”).

## II. OCA’S REVENUE REQUIREMENT EXCEPTION MUST BE REJECTED.

The OCA’s Exceptions reflect the view — rejected by the ALJ — that the Commission should set PGW’s rates at any level that OCA “feels” is correct because the only applicable standard is whether the resulting rate levels are “just and reasonable.” OCA insists that the ALJ’s \$44 million recommendation, the same level proposed by the OTS, is “unreasonable” under its standard. Instead, the OCA claims, the PUC should permit PGW to increase its present rates (not including the \$11 million interim hike) by just \$10.5 million, an amount it says (incorrectly) will permit PGW to satisfy its debt service coverage bond covenants. This, the OCA insists, would be more “reasonable” than the ALJ’s recommendation because it is PGW’s “fault” that it needs a rate increase, customers have already experienced too many rate increases recently, and PGW’s service is not improving fast enough. But OCA’s position misstates the findings of the ALJ, is blatantly in violation of the Public Utility Code and, wholly at odds with the evidence that the ALJ’s recommended \$44 million rate increase (\$33 million plus \$11 million interim), is the minimum allowable increase under applicable legal standards.

### 1. OCA’s Recommendation Ignores PGW’s Prior Rate Making Methodology — the Cash Flow Method.

Unlike the OTS and the ALJ, OCA continues to claim that the only standard that the PUC has to follow in setting rates for PGW is whether the resulting rates are somehow “just and

reasonable.” OCA clearly reads this overall requirement as allowing it to recommend any amount that it thinks “fair” and would even permit the PUC to ignore the extensive evidence documenting PGW’s pro forma test year (or budget year) revenue requirement, including its extensive cash flow needs. Unlike OTS, the OCA refused to acknowledge that, while the overall ratemaking requirement is that rates must be just and reasonable, the required method of setting a specific level of rates for PGW is the Cash Flow Method. Again, contrary to OTS’s approach, OCA refused to base its recommendations on specific adjustments to PGW’s claimed revenue requirement, calculated pursuant to the Cash Flow Method. Most egregiously, OCA made no calculation or study of PGW’s cash needs on a pro forma basis. Why? The obvious reason is that if OCA had conducted the same type of rigorous analysis as OTS, it would have been forced to admit that PGW had justified a far greater level of revenue requirement than the \$10.5 million (not including the existing, \$11 million interim increase) it now proposes. Indeed, just looking at OCA’s downward expense adjustments of \$6.8 million — (which its own consultant recommended be offset dollar-for-dollar by an increase in PGW’s allowed pro forma bad debt expense).<sup>1</sup> OCA’s recommended rate increase would have been \$58.2 million (\$65 million less %6.8 million). Accordingly, OCA’s position should be dismissed out of hand.

Further, the OCA’s recommendation is at odds with the law which, as the PUC itself has previously acknowledged, requires the PUC to set rates using PGW’s prior ratemaking “methodology and requirements.”<sup>2</sup> PGW submitted testimony indicating that in every rate

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<sup>1</sup> OCA M.B. at 25; OCA St. 1.0 (Lelash) at 32.

<sup>2</sup> 66 Pa. C.S. § 2212(e); *Pa. PUC v. PGW*, R-00005654, Order (February 22, 2001) at 7 and n. 1.

proceeding in the last twenty years PGW's prior regulatory authority utilized the Cash Flow Method to set the specific level of rates for PGW.<sup>3</sup> Moreover, the record indicates that during the last twenty years, the PGC always set rate to satisfy all of PGW's bond covenants. Indeed, in once case, the PGC actually rejected this very type of proposal, calling it illegal and unreasonable.<sup>4</sup>

The OCA's approach is also inconsistent with the PUC's traditional application of its own "just and reasonable" ratemaking standard to investor owned utilities. The PUC uses a variety of methods in setting "just and reasonable rates" for investor-owned utilities including such methods as the operating ratio, which, like the Cash Flow Method, sets rates to cover all appropriate expenses plus a gross profit margin to permit a profit and to cover the utility's cash flow needs.<sup>5</sup> But the Commission has never, in the name of "just and reasonable rates," simply plucked a number out of the air merely to meet a utility's debt service coverage requirement, as the OCA has here, even though the evidence plainly shows the resulting rate level would produce a completely inadequate level of cash working capital for PGW.<sup>6</sup>

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<sup>3</sup> Tr. 579-82; PGW St. 1.0 (Knudsen) at 19; PGW St. 1.1 (Knudsen) at 2; PGW Exh. TEK-1.

<sup>4</sup> PGW Exh. JRB Rejoinder-2; 1982 Supp. Opinion and Order at 4 and 7, and 1983 Opinion and Order at 8-9.

<sup>5</sup> See, e.g., *Popowsky v. Pa. Pub. Util. Comm'n*, 674 A.2d 1149 (1996) (operating ratio a legally acceptable methodology for establishing just and reasonable rates for fixed utilities); *Kelly, et al. v. Peddlers's View Utility Co*, 1997 Pa. PUC LEXIS 21, \*25 (Rec. Dec.) (operating ratio method used to establish just and reasonable rates for water company); 52 Pa. Code 63.115(a) and 22 Pa. Bull. 1557. (Reseller proposed rate justified by application of Operating Ratio method). Just a 10% gross margin on PGW's pro forma operating expenses (\$768 million, PGW M.B., App. A, p. 1) would justify the entire rate increase — and more.

<sup>6</sup> OCA alleged before the ALJ that PGW's prior ratemaking methodology does not need to include an allowance for cash working capital because, in its more recent cases, the PGC  
(continued...)

Just as important, OCA's demands are inconsistent with the Code's requirement that PGW's rates must satisfy all of its bond covenants. First, the OCA's insistence that the Commission may set rates such that PGW would just barely meet its required debt service coverage levels is obviously not adequate. PGW would be left with absolutely no margin of error to avoid a technical default on its bonds, a result that all the parties — even OCA — agreed would be a disaster for PGW and its customers.<sup>7</sup> Under OCA's recommendation, PGW would suffer such a default if, for example, it experienced just a slightly warmer winter than normal or if gas costs were to jump back to the levels PGW was predicting at the beginning of this summer when it filed its original GCR.<sup>8</sup>

Moreover, OCA's recommendation completely ignores the equally important requirements set forth in its remaining covenants. As detailed in PGW's Exceptions, the Company has at least one other relevant bond covenant, which requires that the Company's rates be set so that its

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<sup>6</sup>(...continued)

focused on debt service; but this argument is a non sequitur. As OCA points out, one of the reasons the most recent cases were focused more on debt service is because, when those cases were going on, PGW's commercial paper program was not fully extended. But it now is fully utilized and even will have to be paid down by 20% by end of year 2002. Tr. 462; PGW Exh. BB-3. Accordingly, since PGW has fully utilized all available lines of credit and it has no other source of cash working capital, its only alternative is to obtain cash from rates. The fact that PGW's needs were supplemented by its permanent commercial paper program in the past (and, therefore, sufficient cash flow was produced when allowing PGW to satisfy its debt service coverage covenant) is now irrelevant.

<sup>7</sup> See OCA St. 1-S (Lelash) at 15; Tr. 748 (Weakley).

<sup>8</sup> See PGW St. 3.1 (Bogdonavage) at 2-5. Higher gas costs means higher bad debt expense and correspondingly lower realized debt service coverage. See, PGW St. 1.0 (Knudsen) at 8-9.

revenues permit it to pay all of its obligations when they come due.<sup>9</sup> This means that PGW's rates must be set to allow it to recover the revenues it needs to pay its bills during the year, and to have sufficient cash at the end of the fiscal year to be able to pay significant obligations in the first four months of the next fiscal year.<sup>10</sup> But, OCA's \$21.5 million recommendation does not even begin to satisfy this legal requirement.

PGW showed that, on a pro forma basis, OCA's recommended \$21.5 million would result in a negative \$30 million end of year cash balance, a result that would be disastrous in terms of PGW's ability to meet its ongoing natural gas purchasing and debt service obligations.<sup>11</sup> Indeed, Mr. Knudsen, PGW's interim CEO, testified that the OCA recommendation would stop PGW's capital construction and service improvement program in its tracks.<sup>12</sup> With a negative \$30 million year-end cash balance, PGW simply would not be able to continue its 1% cast iron main

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<sup>9</sup> PGW M.B. at 16-18. The requirements of PGW's "rate covenant" were set out in the Interim Rate Joint Petition, pp. 4-5, ¶ 10 and adopted by the PUC in its Order (R-00005654, Order at 9, ¶ 1). This characterization was never challenged by any party and constitutes a binding finding of the Commission.

<sup>10</sup> PGW St. 1.0 (Knudsen) at 20. This is an obligation of the budget test year because these cash amounts must be in place at the end of that year or PGW will not be able to build up enough cash from receipts in the beginning of the next fiscal year to pay its bills. *Id.*

<sup>11</sup> PGW M.B. at 49-56. The GCR decreases scheduled for September and December 1 will not improve cash flow position appreciably because the pro forma GCR level used by PGW to calculate its test year cash working capital requirement (\$3.83/Mcf, *see*, OCA Exceptions at 27, n. 15) is actually \$.54 lower than the stipulated September 1 GCR level (\$4.37/Mcf) and just \$.23/Mcf over the projected December 1 level (\$3.60). *See*, Appendix A hereto. Therefore, PGW's pro forma cash working capital analysis filed in the case is an accurate predictor of normal, going forward levels for the Company. That analysis shows that the full, \$65 million increase is required.

<sup>12</sup> Tr. 619-20; PGW St. 1.1 (Knudsen) at 13.

replacement program, its efforts to improve its billing system, or its initiative to improve service at the call center.

OCA's claim that its \$21.5 million recommendation — just \$10.5 million above the present interim level — and its contention that this is nonetheless sufficient to permit PGW to continue with these crucial programs,<sup>13</sup> shows OCA's lack of understanding of PGW's financial requirements. Even if OCA's allowed expense level includes the cost of these programs (permitting a sufficient level of earnings to cover them), OCA's failure to include an allowance for any end of year working capital means that the Company simply will not have the cash available to pay the invoices associated with the work when they come due. As a result, PGW would have no choice but to slow or cancel these projects for lack of cash to pay the invoices when due.<sup>14</sup> Indeed, PGW showed that the OCA recommendation was so inadequate that under certain assumptions the Company would actually be forced to miss a debt service payment in August, 2002.<sup>15</sup>

OCA's only defense (before the ALJ) to this devastating evidence were claims that PGW's FY 2001 actual year-end cash balance will be positive,<sup>16</sup> and that PGW's past financial results show that it has only infrequently achieved the levels of year end cash that PGW's witnesses testified was the appropriate target amount.<sup>17</sup> But, OCA's claim that its recommendation produces adequate cash flows is based on PGW's projected actual results of operation for FY 2001, not its

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<sup>13</sup> OCA Exceptions at 5.

<sup>14</sup> Tr. 619-20; PGW St. 1.1 (Knudsen) at 13.

<sup>15</sup> PGW St. 3.1 (Bogdonavage) at 5.

<sup>16</sup> OCA M.B. at 27.

<sup>17</sup> *Id.*

pro forma results. PGW presented its most recent actual data for seven months and combined that with five months on a projected basis. This analysis included PGW's actual, 2001 GCR revenues and the entire interim rate increase.<sup>18</sup> But, as the Commission is well aware, and the OCA itself stated, utility rates are always established using a pro forma test year, representative of future conditions. Consistent with that approach, PGW's presentation used a FY 2001 Test Year reflecting a "forecast" of the pending budget year.<sup>19</sup> Accordingly, OCA's reliance on PGW's projected actual test year results is completely incorrect.

Moreover, even if the actual results are examined, if the end-of-year cash balance is adjusted to remove the non-recurring<sup>20</sup> emergency City loan and one time gas costs deferrals, PGW's FY 2001 end-of-year cash will be a disastrous **NEGATIVE** \$20 million.<sup>21</sup> In addition, the other major source of year end cash for FY 2001 — about \$24 million — is from capital expenditure reimbursements made possible by PGW's recently completed \$120 million bond issuance.<sup>22</sup> PGW is not scheduled to issue another bond until 2003.<sup>23</sup> It is beyond cavil that permanent rates must be set on a normal basis after removing non-recurring items. OCA's failure to recognize the need to normalize budget results to determine the reasonableness of PGW's

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<sup>18</sup> OCA M.B. at 33-34.

<sup>19</sup> OCA M.B. at 30, and n. 11.

<sup>20</sup> The OCA agrees that non-recurring items must be removed entirely when establishing a revenue requirement. OCA M.B. at 32.

<sup>21</sup> PGW M.B. at 34.

<sup>22</sup> Tr. 586.

<sup>23</sup> *Id.*

claimed level of cash working capital is perplexing. Obviously, PGW's actual FY 2001 cash working capital level is irrelevant to the level that PGW will experience on an ongoing basis, the standard that even OCA agrees should be used to set rates for PGW.<sup>24</sup>

OCA appears to try to skirt the flaws in its analysis by claiming that the Commission should set rates only for the "next 12 to 18 months, until [PGW's] subsequent restructuring filing."<sup>25</sup> But, the OCA itself has acknowledged that the rates set here will be in effect for at least two years, not 12 months.<sup>26</sup> PGW clearly cannot survive for that period at the wholly inadequate rate levels upon which OCA is insisting.

**2. OCA's Claim That PGW's Rate Increase Should Be Denied Because of the Rate Increases Ratepayers Experienced in 2000 Is Not Supportable.**

OCA has attempted to support its minimal rate award by claiming that ratepayers have already incurred too many rate increases in the last year. While it recognizes that PGW has just recently agreed to reduce its current GCR by \$135 million with at least an additional \$36 million

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<sup>24</sup> OCA M.B. at 30. OCA's other contention is that PGW has never experienced the \$35-\$40 million level of year end cash that PGW has targeted and therefore PGW's requested revenue requirement is overstated (OCA Exceptions at 2). But the OCA apparently overlooked the fact that PGW's pro forma end of year cash balance is projected to be only \$10.2 million even if PGW's full, \$65 million rate request were granted by the PUC. (PGW R.B. at 20-24). The OCA also ignored the fact that, historically, when PGW achieved these lower end of year cash levels, it had available short term borrowing capacity that it was able to utilize — now completely exhausted. Tr. 462; PGW Exh. BB-3. Those past balances also were more adequate when gas costs were at lower levels — not the historically high levels that PGW — and all LDCs — continue to experience.

<sup>25</sup> OCA Exceptions at 7 and 9.

<sup>26</sup> OCA M.B. at 38. (PGW rate case expense should be amortized over two years — the period "between cases" anticipated for PGW). The OTS also agreed that two years is the appropriate period to assume that these rates will be in effect. Tr. 748-49.

reduction predicted for December 1, 2001, for a total of \$171 million,<sup>27</sup> OCA claims that these reductions fail to completely reverse the effect of the rate hikes caused by spiraling gas costs and that for this reason the PUC should ignore the evidence and slash the ALJ's recommendation by more than half.

But the OCA is wrong on all counts. First, PGW's GCR rate decreases will more than offset the effect of the base rate increase. The following chart shows the overall rate decreases that customers will experience if the PUC grants the full base rate increase.

Effect on Typical Customer Bill of Total Projected GCR Reduction  
and \$65 Million Base Rate Increase

	Current Rate	Annual Rate After \$171 Million GCR Decrease & Base Rate Increase	% of Reduction
Residential	\$ 1,470.81	\$ 1, 231.30	(16.3%)
Commercial	\$ 5,452.51	\$ 4,614.42	(15.4%)
Industrial	\$15,947.83	\$13,498.71	(15.4%)

Source: R-00016378, Joint Petition For Complete Settlement, App. C, Exh. A (Revised, 8/30/01)(Appendix "A" hereto).

Accordingly, under the present circumstances, OCA is suggesting that PGW's otherwise legitimate rate increase must be slashed because some customers may have difficulty paying the new rate, even though, on net, the rates will be 16% lower than their current charge. This simply is

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<sup>27</sup> R-0016378 (PGW 2001-02 GCR), Rec. Dec. at 4; Appendix A, hereto. The OCA's Exceptions erroneously reference the September decrease as \$70 million (OCA Exceptions, n. 1) but, in fact, the September decrease is \$135 million on an annual basis. *Id.*

not factually supportable. Indeed, the opposite is true; this is the ideal time to permit the Company to repair its financial situation while not burdening customers with *additional rate hikes*.

Moreover, OCA's claim is completely inconsistent with PGW's prior ratemaking methodology — to say nothing of standard PUC practice.<sup>28</sup> The OCA was unable to point to a single case decided by the PGC where an otherwise justified PGW rate increase was nonetheless denied because of concerns about the ability of customers to pay.<sup>29</sup> While the PGC had indicated frequently that it had been given discretion to determine each element of the Management Agreement ratemaking methodology within a “zone of reasonableness,”<sup>30</sup> it never sanctioned the kind of broad based denial advocated by the OCA.<sup>31</sup>

Second, even if one were to consider the overall rate increase from the standpoint of ability to pay, Mr. Lelash's contentions are not supportable.<sup>32</sup> Claiming that an additional base rate increase makes PGW's rates unaffordable ignores the record evidence that:

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<sup>28</sup> The Commission has already rejected OCA's claim that ability to pay, or affordability, is part of the just and reasonable analysis. In *Pa. PUC v. PG&W*, OCA made the very same *affordability* arguments that it has proffered in this proceeding. 1993 Pa. PUC LEXIS 61, \*189-191, \*206. However, the PUC rejected OCA's call for a reduction in PG&W's revenue requirement of approximately \$1 million based on alleged unaffordability.

<sup>29</sup> PGW Exh. Lelash Cross Exam-2 at Request 10.

<sup>30</sup> *See*, Exh. JRB Rejoinder-2, 1982 Supplemental Opinion and Order at 9-10 and 1983 Opinion and Order at 10-11.

<sup>31</sup> Indeed, the PGC explicitly disregarded such ability to pay claims in PGW's 1982 and 1983 rate increase cases, declaring that its “sympathy” and “feelings” could not replace its “duty to apply the law” as embodied in the Management Agreement Ordinance. PGW Exh. JRB Rejoinder-2, 1982 Opinion and Order at 2; *see Id.*, 1983 Opinion and Order at 3-5.

<sup>32</sup> *See*, PGW R.B. at n. 120.

- PGW’s average residential charge (prior to the recently agreed to GCR decrease) is currently close to the average for all gas utilities in Pennsylvania and is actually lower than two;<sup>33</sup>
- PGW has not had a base rate increase since 1991;<sup>34</sup>
- Overall, and including the originally proposed 2002 GCR and base rate changes, PGW’s rates have increased at virtually the same pace as gas rates nationally;<sup>35</sup> and
- OCA presented no empirical evidence that the rate levels proposed would cause significantly more customers to leave the system or be terminated.

There is simply no competent evidence that a \$65 million base rate allowance will result in unreasonable “rate shock,” even if it were to result in a net rate increase — which it will not.

**3. OCA’s Suggestion That PGW’s Rate Increase Should Be Denied Because Its Financial Difficulties Are “Of Its Own Making” is Squarely At Odds With The Evidence and Common Sense.**

As part of its argument to reject the ALJ’s recommended \$44 million rate increase, OCA has returned to the stock argument that PGW’s financial crisis allegedly is “of its own making,” and that it is PGW’s “fault” that it has been forced to request a base rate increase at this time.<sup>36</sup>

This is very fuzzy reasoning, to say the least. First, it is simply not honest to contend that PGW’s financial crisis is “of its own making.” It is well-established that the principal reason for PGW’s present difficult straits stems principally from two converging factors: three successive

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<sup>33</sup> PGW Exh. TJS-2, p. B-32. These comparisons include all of the changes in rates referenced in the Engineering Report including the interim rate increase (B-31) and in all year-to-date GCR revisions (B-29). Tr. 526.

<sup>34</sup> PGW Exh. TEK-1 p. 15; R.D. at 9, Finding of Fact ¶ 11.

<sup>35</sup> PGW Exh. TEK Rejoinder-1.

<sup>36</sup> OCA Exceptions at 2, 4.

warmer than normal winters;<sup>37</sup> and the enormous cash working capital drain and additional bad debt expense caused by the huge spike in wholesale natural gas prices last winter,<sup>38</sup> again a problem of recent vintage and one that all would agree was not of PGW's making. Obviously, PGW cannot control the winter weather or gas prices, as much as it would like to do so. Further, the effects of the winters combined with higher gas prices were cumulative and PGW tried to avoid asking for a base rate increase until it absolutely had to do so. Ordinarily, this type of action by a utility would be applauded by consumer representatives, not used as a basis of condemnation.

Moreover, OCA ignores the fact that, whatever the causes for the delay in requesting higher base rates, customers clearly have benefitted from the delay. Had PGW sought rate increases three years earlier and had they been granted, PGW's customers would have paid higher base rates for the past several years. It is not clear how that would have been better for customers than a single permanent increase in October, 2001.

At bottom, what PGW did or did not do in the past, under a previous administration and management, in response to systemic events which were mostly out of its control, simply is not a

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<sup>37</sup> PGW St. 4.0 (White) at 5; OCA St. 1.0 (Lelash) at 9. Indeed, even the PUC's Management Audit indicated that "PGW's financial position has deteriorated over the past three years. This historical perspective is highlighted by: net losses ranging from \$13.0 million to \$20.3 million annually; lower than expected gas sendout attributable to weather conditions about 15% warmer than expected." Admin. Counsel Attach. No. 1 at X-5.

<sup>38</sup> Even the OCA agreed that higher gas costs has increased PGW's cash working capital needs. Tr. 811 (Lelash).

reasonable or legal basis on which this Commission may reject the Company's current need for additional revenues.<sup>39</sup> It simply is nonsensical to argue otherwise.

**III. OCA AND CEPA'S EXCEPTIONS THAT THE ALJ FAILED TO ADJUST HER REVENUE REQUIREMENT RECOMMENDATION FOR OCA'S EXPENSE ADJUSTMENTS, ALSO ADOPTED IN THE DECISION, IS ERRONEOUS AND MUST BE REJECTED.**

OCA, with CEPA joining, excepts to the Recommended Decision on the basis that the ALJ failed to adjust her recommended rate increase of \$44 million for OCA's expense adjustments which she also recommended to the Commission.<sup>40</sup> However, OCA and CEPA's exceptions ignore the specific findings of the ALJ, and should be barred as they constitute a brand new position offered for the first time during the Exceptions phase of this proceeding.

First, OCA and CEPA have ignored the ALJ's specific findings that OTS' recommended revenue requirement should be approved and that PGW's should have a rate increase of \$44 million (including the existing, \$11 million interim relief).<sup>41</sup> Furthermore, the wording of Ordering Paragraph No. 2 confirms that the ALJ was aware that rates would have to be raised sufficiently to offset OCA's expense adjustments and still produce a net \$44 million increase.<sup>42</sup>

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<sup>39</sup> In *Pa. PUC v. Pennsylvania Gas and Water Co.*, 1991 Pa. PUC LEXIS 47, \*1, the PUC faced claims that service historically had been bad. *Id.* at \*5 and \*81-83. In granting PG&W a 110% increase in rates, the PUC noted that the company's "history" was not a "decisive factor" and stated that "there comes a point where we must put the past behind us." *Id.*

<sup>40</sup> OCA Exception 2; CEPA Exception 5.

<sup>41</sup> R.D. at 69.

<sup>42</sup> R.D. at 110, ¶ 2. The Recommended Order authorizes PGW to file a tariff supplement "designed to change rules, regulations and rates calculated to produce [\$33 million] in additional revenue in addition to" the \$11 million in interim

(continued...)

The OCA and CEPA position are completely inconsistent with these explicit recommendations. Obviously, the only way to reconcile the two positions is to instruct PGW to account for these adjustments for future ratemaking purposes (many of them are multi-year amortization of costs),<sup>43</sup> and to permit PGW to raise its rates by \$44 million (over pre-interim levels).

Second, the parties' Exceptions constitute a new position, presented for the very first time at the Exceptions phase, and thus any consideration of them should be barred. OCA and CEPA have either ignored or wilfully and intentionally "forgotten" that the OCA expressly presented its expense adjustments as being "offset" by its recommended bad debt expense.<sup>44</sup> As the expense adjustments were never presented as anything but a revenue neutral adjustment, OCA and CEPA's Exceptions constitute a new position. (Strangely, OCA did not except to the ALJ's recommended bad debt expense level, even though that level was some \$10 million lower than the level its own consultant recommended as an offsetting adjustment). Moreover, PGW's acceptance of the majority of these adjustments was based on this revenue-neutral presentation, and it would be manifestly unfair to force PGW to attempt to litigate the legitimacy of the adjustments at this point on a "stand alone" basis. OCA's untimely claim must be rejected.

**IV. OCA AND CEPA'S EXCEPTIONS THAT THE ALJ FAILED TO ACCOUNT FOR ALLEGED SERVICE INADEQUACIES MUST BE REJECTED.**

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<sup>42</sup>(...continued)  
relief.

<sup>43</sup> See, OCA M.B. at 32.

<sup>44</sup> OCA M.B. at 25 ("Mr. Lelash then made an offsetting increase in the Company's operating budget"); OCA St. 1.0 (Lelash) at 32.

Both OCA and CEPA except to the ALJ's findings that PGW's rates should be permitted to be increased by \$44 million (from pre-interim levels) on the ground that, because of PGW's alleged service inadequacies, it should receive a minimal amount.<sup>45</sup> Quite to the contrary, OCA and CEPA's recommendations result in rates which are not just and reasonable as they concern PGW,<sup>46</sup> and are wholly unsupported by both the facts and the law governing this case.

As noted above, the Public Utility Code is explicit that the Commission must follow PGW's prior ratemaking methodology and requirements in setting its rates.<sup>47</sup> That method and those requirements apply "notwithstanding any other provision of [the Code] to the contrary."<sup>48</sup> To the consternation of OCA and CEPA, this "notwithstanding" language actually means what it says: that Section 2212(e) is paramount to all other provisions of the Code.<sup>49</sup> Any other result is "absurd."<sup>50</sup>

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<sup>45</sup> OCA Exceptions 1 and 3; CEPA Exception 1.

<sup>46</sup> A public utility has a constitutional and statutory right to a reasonable return to investors. A just and reasonable rate is one that gives the utility a fair return. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-310 (1989); *Public Advocate v. Philadelphia Gas Comm'n*, 674 A.2d 1056, 1062 (Pa. 1996). The OCA and CEPA recommendations do not satisfy this standard.

<sup>47</sup> 66 Pa. C.S. § 2212(e).

<sup>48</sup> *Id.*

<sup>49</sup> *See Commonwealth v. Eddings*, 772 A.2d 956, 959-960 (Pa. 2001); *Common Cause/Pennsylvania*, 635 A.2d 1113, 1116-1118 (Pa. Cmwlth. 1993); *Burrell School Dist. v. City of Lower Burrell*, 608 A.2d 605, 606 (Pa. Cmwlth. 1992); *Borough of West Chester v. Taxpayers of Borough of West Chester*, 566 A.2d 373, 375-76 (Pa. Cmwlth. 1989); PGW Exceptions at n. 37.

<sup>50</sup> *Eddings*, 772 A.2d at 959-960.

As explained in its Main and Reply briefs and Exceptions,<sup>51</sup> while under the PGC's jurisdiction, PGW's rates had to meet a requirement of being just and reasonable, which was met whenever rates were set pursuant to the method in Section VII of the Management Agreement — the Cash Flow Method.<sup>52</sup> While the PGC exercised discretion to set the rate level for each revenue and expense item identified in Section VII within a zone of reasonableness, which could include consideration of the efficiency of the Company in providing the particular expense item, or the adequacy of PGW's performance in incurring the particular cost,<sup>53</sup> not once in the entire history of PGC ratemaking did that agency deny a rate increase for PGW in whole or in part on some broad finding of "inadequate service."<sup>54</sup> Accordingly, OCA and CEPA's claims that these alleged inadequacies are controlling within the legal standards governing this proceeding are simply incorrect. Moreover, the evidence shows that accepting the CEPA or OCA recommendation would cause PGW to violate its bond covenants, and, indeed, would require the PUC to completely ignore the law.<sup>55</sup>

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<sup>51</sup> PGW M.B. at 12-16; PGW R.B. at 5-11; PGW Exceptions at 5-12.

<sup>52</sup> See, e.g., PGW Exh. JRB Rejoinder-2, 1982 Supplemental Opinion and Order at 7.

<sup>53</sup> PGW Exh. JRB Rejoinder-2, 1982 Supplemental Opinion and Order at 9-10.

<sup>54</sup> PGW St. 1.1 (Knudsen) at 12-13; PGW Exh. Cross Exam-2 at Request 10. Ironically, CEPA claims, without any evidentiary support, that PGW's service has been inadequate for years. If that in fact is true, the absence of a single PGC order denying a rate on that basis should be dispositive proof that such an adjustment is simply not permitted under PGW's "[prior] ratemaking methodology and requirements." 66 Pa. C.S. § 2212(e).

<sup>55</sup> Even OCA has admitted that a \$21.5 million increase is minimally required just to meet PGW's debt service coverage covenant without providing any margin for error. OCA St. 1.0 (Lelash) at 30-31. A complete or substantial denial (e.g. \$21.5 million or less) of PGW's rate claim would result in PGW not having sufficient cash to pay all of its obligations — a violation of its rate covenant. PGW M.B. at 16-18 and 49-57.

Even under a purely traditional PUC analysis, that does not consider PGW's prior ratemaking method and requirements, OCA and CEPA's claims fail. Unlike the PUC decisions cited by OCA and CEPA, (dealing in all cases with water utilities) where the utility had failed to provide the service it was charged with providing (potable water),<sup>56</sup> the facts, here, show that PGW continues to provide gas service in a safe and reasonable manner. PGW's gas procurement practices were found to be reasonable,<sup>57</sup> and its safety record is reasonable.<sup>58</sup> An independent review also found that the Company was reasonably operated and managed.<sup>59</sup> In addition, even OCA acknowledged that the Company has made improvements in the area of service and is striving to continue to do so.<sup>60</sup> In response to these facts, OCA and CEPA have offered nothing more than conclusory claims and the testimony of an infinitesimal fraction of PGW's 500,000 some customers.<sup>61</sup> Clearly, these facts do not support a finding that PGW's service is wholly inadequate and that it has failed to deliver natural gas service.<sup>62</sup>

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<sup>56</sup> See, e.g., *Pa. PUC v. Pa. Gas & Water Co.*, 1989 Pa. PUC LEXIS 170, \*10; *Pa. PUC v. Sunshine Hills Water Co.*, 77 Pa. PUC 1, 6-7 (1992).

<sup>57</sup> Admin. Counsel Exh. No. 1 at 6; Admin. Counsel Attach. No. 1 at IX-22 – IX-24; R-00016378 (PGW 2001-02 GCR) Rec. Dec. at 13-14, finding 3-8.

<sup>58</sup> Admin. Counsel Exh. No. 1 at 6.

<sup>59</sup> PGW St. 8.0 (Sullivan) at 2.

<sup>60</sup> OCA M.B. at 64; OCA St. 1.0 (Lelash) at 53.

<sup>61</sup> PGW R.B. at n. 143.

<sup>62</sup> Beyond the evidentiary deficiency, the Commission's prior decisions make clear that, at most, adjustments made for service inadequacies (which historically have actually been based on Section 526 of the Code which is inapplicable to PGW) will simply reduce the return on equity and not result in a total denial of rate relief. PGW R.B. at 43-44, n. 160. The PUC never considered a total or substantial denial — to the point where the

(continued...)

The only other “evidence” pointed to by OCA and CEPA as the basis for a rate adjustment is the PUC’s Management Audit. But, as extensively detailed in PGW’s Reply Brief, using the Management Audit to make a rate adjustment is completely inconsistent with the basis on which the audit was conducted – to help PGW improve its service and efficiency – and is flatly at odds with the legal authorization for the audit in the Public Utility Code itself.<sup>63</sup> Indeed, in conducting the Management Audit, the auditors themselves explicitly acknowledged and acted in accordance with this limitation: “We did not look at the total rate case as part of the management audit.”<sup>64</sup> Moreover, the findings in the Management Audit are not of the type that have justified rate adjustments for service inadequacy. The Audit found deficiencies in certain areas (which PGW is addressing), but it clearly did not find the kind of total failure that has been discovered in some instances.<sup>65</sup>

PGW has committed to improving its service.<sup>66</sup> In her Recommended Decision,<sup>67</sup> the ALJ

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<sup>62</sup>(...continued)

“[c]ompany’s ability to operate” was “destroyed.” *Sunshine Hills Water Co.*, 77 Pa. PUC at 11. Even in *National Utilities v. Pa. PUC*, the Commonwealth Court took note that the utility would still earn a rate of return and implied that a different result would be impermissible. 709 A.2d 972, 980 n. 12 (Pa. Cmwlth. 1998). Moreover, in *Pa. PUC v. Pennsylvania Gas and Water Co.*, 79 Pa. P.U.C. 349 (1993), the Commission granted a rate increase to be used to finance the necessary acceleration of distribution system improvements in the face of service inadequacy allegations.

<sup>63</sup> PGW. R.B. at 40.

<sup>64</sup> *Id.* at 42.

<sup>65</sup> *Id.* at 43. In addition, neither OCA nor CEPA even submitted testimony contending that a rate adjustment should flow from the Management Audit and its position should be rejected for this reason alone. PGW R.B. at 44.

<sup>66</sup> PGW St. 1.2 (Knudsen); PGW Exh. TEK-3; Joint Petition for Interim Rate Settlement, R-00005654, at 7, ¶ 21 and Attach. B; R-00005654, letter of March 1, 2001 (agreeing to  
(continued...))

wisely noted the very common sensical fact that those improvements will not be possible if PGW's rate request is completely or substantially denied as requested by CEPA and OCA. Accordingly, these unreasonable demands must be rejected.

**V. CEPA AND OCA'S CONTINUED ATTACKS ON THE ANNUAL CITY PAYMENT REQUIRED BY THE CODE MUST BE REJECTED.**

CEPA and OCA continue to attack the annual \$18 million payment that the Commission is required to ensure that PGW can make to the City of Philadelphia.<sup>68</sup> These parties suggest that the Commission could legally condition PGW's rate increase on a grant back or waiver of the payment by the City or set rates so low as to force the City to waive the payment in order to provide PGW with needed cash working capital or to avoid a bond covenant default.<sup>69</sup> However, these parties are wrong in every respect, and the ALJ was correct to reject her positions.<sup>70</sup>

As PGW has demonstrated, both the facts and the law prohibit the Commission from accepting CEPA and OCA's positions.<sup>71</sup> A summary of the legal and factual deficiencies in their arguments is as follows:

- Section 2212(f) of the Code requires that the Commission "shall permit [PGW] to impose, charge, or collect rates and charges as necessary to permit [it] to transfer or pay to the" City its annual payment of \$18 million. Under the Code, the

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<sup>66</sup>(...continued)  
conditions 1-8, 11 and 13 of Commission's original November 22, 2001 Order).

<sup>67</sup> R.D. at 69.

<sup>68</sup> CEPA Exception 2; OCA Exceptions at 8.

<sup>69</sup> *Id.*

<sup>70</sup> R.D. at 27-29.

<sup>71</sup> PGW R.B. at 12-17.

Commission has no discretion to deviate from this requirement.<sup>72</sup>

- The Pennsylvania Supreme Court has already decided the constitutionality of PGW's annual \$18 million City payment in the affirmative. In *Public Advocate v. Philadelphia Gas Comm'n*, the Supreme Court faced the exact same argument: that the \$18 million payment "violated just and reasonable rate protections."<sup>73</sup> The Court rejected these claims, finding that the City payment was just and reasonable and constitutional.<sup>74</sup>
- Moreover, CEPA can only achieve its goal by arguing that Section 2212(f) of the Code is unconstitutional. But, deciding the constitutionality of a provision of the Public Utility Code is beyond the Commission's jurisdiction and scope of authority.<sup>75</sup>
- Since a forced grant-back is barred, the parties suggest that the PUC either condition any increase on a waiver or set rates so low as to force one. But, the PUC cannot do indirectly that which it is legally barred from doing directly.<sup>76</sup>
- The only evidence in the record supports the payment. The Commission directed audit found that the \$18 million City payment was reasonable and common for municipal utilities such as PGW.<sup>77</sup> No party submitted any evidence to challenge or refute that finding.

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<sup>72</sup> In addition to Section 2212(f) of the Code, Section 2212(l) states that "[n]otwithstanding any other provisions of this title, no assisted city shall be required to take action under this title" if the effect of the action would cause the city to deviate from its PICA plan. The unrefuted evidence in this proceeding is that the loss of some or all of the revenue from the annual payment would be a financial hardship on the City and could cause a unilateral variation in its PICA plan. PGW St. 7.0 (Davis) at 4.

<sup>73</sup> 674 A.2d 1156, 1159-60 (Pa. 1996).

<sup>74</sup> *Public Advocate*, 674 A.2d at 1061-63.

<sup>75</sup> *Feigley v. AT&T Communications of PA, Inc.*, C-00981434, Opinion and Order entered (April 20, 2001) at 27 (quoting ALJ Cocheres Recommended Decision).

<sup>76</sup> *See Pennsylvania Department of Public Welfare v. State Civil Service Comm'n*, 707 A.2d 589, 590-91 (Pa. Cmwlth. 1998) (holding that Civil Service Commission's action impermissibly attempted to do indirectly what court precedent forbade it from doing directly).

<sup>77</sup> Administrative Counsel Attach. No. 1 at X-12. The Management Audit found that the \$18 million payment just barely covered the lost taxes from PGW's municipal status. *Id.*

The parties are impermissibly trying to shift decision making on matters of City policy -- such as the distribution of City resources and the amount of financial support to provide PGW -- from the City to the Commission. However, as recognized by the Supreme Court in *Public Advocate*, the proper forum for the parties' arguments about City policy is before the City.<sup>78</sup> Nowhere in the Public Utility Code is it even remotely suggested that this Commission may usurp the functions of determining City policy and the distribution of City monies.<sup>79</sup>

**VI. OCA AND CEPA'S EXCEPTIONS CALLING ON THE COMMISSION TO CONDITION PGW'S RATE INCREASE ON SERVICE IMPROVEMENTS MUST BE REJECTED.**

OCA, with CEPA joining in the Exception, takes issue with the Recommended Decision because the ALJ did not adopt OCA's recommendation to condition any rate relief granted to PGW on its commitment to various service improvements.<sup>80</sup> The Commission should reject these Exceptions because OCA's conditions are unnecessary and legally dubious.<sup>81</sup>

First, the Company is already correcting every single deficiency that OCA has alleged. Second, the Company has already agreed to all of the desired actions through the Management

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<sup>78</sup> 674 A.2d at 1063. There, the court stated: "[C]onsumers are not left without a remedy if they are dissatisfied with rates charged by PGW. . . . If the residents desire a change in PGW's rate making method, they can either pressure the City Council to amend the 1972 ordinance or have their voices heard through the election process."

<sup>79</sup> Indeed, such action by the PUC would also be inconsistent with Article III, Section 31 of the Pennsylvania Constitution. Article III, Section 31 prohibits the General Assembly from delegating to any special commission the power to make, supervise, or interfere with any municipal improvement, money, property or effects, or to perform any municipal function whatsoever.

<sup>80</sup> OCA Exception 4; CEPA Exception 6.

<sup>81</sup> PGW R.B. at 57-58.

Audit process or its commitments as part of the Interim Rate Settlement or the 2000-01 GCR.<sup>82</sup>

Finally, PGW respectfully submits that the PUC does not have the legal authority to condition the granting of a rate increase that results from the application of Section VII of the Management Agreement, its prior ratemaking method, and is an otherwise justified rate increase, on the Company's acceptance of such conditions.<sup>83</sup>

**VII. THE COMMISSION SHOULD ACCEPT THE COMPANY'S PROPOSAL TO SET THE CUSTOMER CHARGE FOR THE RESIDENTIAL CLASS AT \$15.00.**

OCA argues that the ALJ improperly adopted a \$12.00 customer charge for residential customers as recommended by OTS.<sup>84</sup> OCA recommends a residential customer charge of no more than \$11.50.

As PGW has noted throughout these proceedings, even at the Company's proposed \$15.00 level for the residential class, PGW is recovering less than 50% of the fixed costs incurred by it to serve the residential customers.<sup>85</sup> The Cost of Service Study (COSS) presented by PGW and unchallenged by the parties clearly demonstrates that PGW is not charging residential customers the full costs incurred to serve their needs. In fact PICGUG argues that the Commission should

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<sup>82</sup> Joint Petition for Interim Rate Settlement at 7, ¶ 21 and Attach. B; *Pa. PUC v. PGW*, R-00005654 Opinion and Order (February 22, 2001) at ¶2 and letter of March 1, 2001 (agreeing to conditions 1-8, 11 and 13 of Commission's original, November 22, 2001 Order); R-00005619 (PGW 2000-01 GCR) Opinion and Order (Nov. 22, 2000).

<sup>83</sup> See 66 Pa. C.S. § 2212(e). Courts have repeatedly prohibited public utility commissions from conditioning otherwise justified rate increases upon the completion of service improvements. See PGW R.B. at n. 201.

<sup>84</sup> OCA Exceptions at 24.

<sup>85</sup> PGW M.B. at 63.

allocate the majority of any rate increase to the residential customers.<sup>86</sup> While PGW does not support PICGUG's position, the residential customer charge should at least be increased to \$15.00.

Moreover, PGW's proposed customer charges should be accepted because the additional revenues will help to mitigate PGW's current and substantial reliance on cold winter weather to generate sufficient annual revenues. While ALJ Fordham cites concerns for gradualism in only recommended a \$12.00 residential customer charge, she did not have the benefit factoring the GCR decrease into her calculations. As shown in Exhibit A to Appendix C in the Joint Petition for Settlement, if the Commission grants a full base rate increase of \$65 million, the bill for the residential customer will still **decrease** sixteen percent. Therefore, any concerns for gradualism are now moot. Accordingly, OCA's exception should be denied.

#### **VIII. OCA'S EXCEPTION TO ROLL OUT GAS COSTS TO THE GCR IN THIS PROCEEDING SHOULD BE REJECTED.**

OCA argues that the gas costs contained in base rates should be rolled out to the GCR.<sup>87</sup> The Company has continually asserted that this issue should be decided when the Commission decides the Restructuring case. At that time, the Commission shall have a full and complete record upon which to base its decision. OCA appears to recognize the practicality of deferring cost allocations of some programs — customer responsibility, senior citizens discount, conservation programs — until the Restructuring proceeding.<sup>88</sup> It is irrational to suggest that some costs can be shifted while others remain static, when these costs are symbiotic. All of these cost allocations

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<sup>86</sup> See, Section X, infra.

<sup>87</sup> OCA Exceptions at 27.

<sup>88</sup> OCA Exceptions. at 29.

will be fully and thoroughly reviewed and analyzed during restructuring. To prematurely force aspects of restructuring, without a full and through analysis, produced an imbalanced and dangerous result. The only thoughtful and comprehensive manner to address cost allocation concerns is during restructuring. Accordingly, OCA's exception should be denied.

**IX. THE ALJ PROPERLY REJECTED OCA'S MODIFICATIONS TO PGW'S PROPOSED CHANGES TO ITS NON-STANDARD RATES.**

OCA argues that the ALJ erred in rejecting its three modifications to PGW's proposed changes to its non-standard rates. OCA reasons that its proposed modifications ensure that sales customers are not disadvantaged by any contracts entered into by the Company under this tariff provision.

As the ALJ noted, OCA's modifications are too restrictive. It is the Company's clear intent to be flexible to offer individual, alternative pricing solutions to customers when they are faced with competitive fuel offerings, or to lure them back when they use an alternative fuel. The ability to charge market-based rates in competitive markets is critical to PGW's ability to compete effectively. Accordingly, OCA's exception should be denied.

**X. PICGUG'S PROPOSAL TO ALLOCATE THE ENTIRE RATE INCREASE ON THE RESIDENTIAL CLASS IS PATENTLY UNREASONABLE.**

PICGUG rejects the ALJ's recommendation to allocate the rate increase among all of PGW's classes. Predictably, PICGUG argues that the residential class should receive all of the increase. PICGUG stands alone in taking this position.

PICGUG's position is simply unreasonable. It violates the principles of gradualism. Rarely, has the Commission accepted such an extreme position, and the facts in this case do not justify such action.

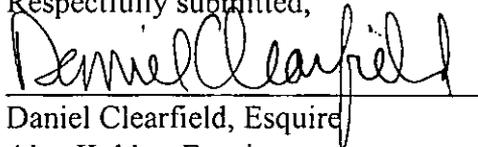
Most importantly, PICGUG's position should be rejected because of PGW's unique status: PGW serves the highest number of low-income customers in the Commonwealth.

Therefore, the Commission should adopt the ALJ's proposed revenue allocation and reject PICGUG's exception.

## **XI. CONCLUSION**

WHEREFORE, PGW respectfully requests that the Pennsylvania Public Utility Commission enter an Order which authorizes PGW to increase its rates by \$65 million annually (over and above pre-interim increase levels), and to reject the exceptions of the other parties, as set forth herein.

Respectfully submitted,



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# APPENDIX A

Appendix A

**Effect on Typical Heating Customer Bill**  
**Current Rates versus Updated GCR versus Pending Base Rate Case**

					Change in Rates Effective 9/1/01 Versus Current <i>(\$135 Million Reduction)</i>			Change in Rates Effective 12/1/01 Versus Current <i>(Additional \$36 Million Reduction)</i>			Change in Rates Proposed Base Rate Case v. Current <i>(w/\$171 Million GCR Reduction)</i>		
					(3)			(3)			(3)		
<b>Residential</b>	(1)		(2)		GCR	Change	Change	GCR	Change	Change	Proposed	Change	Change
<b>Unit Costs</b>	Annual	Unit	Current	Change	Update	In	In	Update	In	In	Base Case	In	In
			Rates	In Rate		Annual Bill	Rate		Annual Bill	Rate	Rates	Annual Bill	Rate
Base Fuel	100.0	Mcf	\$ 3,1800	Na	\$ 3,1800		\$ -	\$ 3,1800		\$ -	\$ 3,1800		\$ -
Base Non-Fuel	100.0	Mcf	\$ 3,4330	Na	\$ 3,4330		\$ -	\$ 3,4330		\$ -	\$ 3,7251		\$ 0.29
GCR Factor	100.0	Mcf	\$ 6,6959	Na	\$ 4,3724		\$ (2.32)	\$ 3,6079		\$ (3.09)	\$ 3,6079		\$ (3.09)
Customer Charge	12	Months	\$ 11.66	Na	\$ 11.66		\$ -	\$ 11.66		\$ -	\$ 15.00		\$ 3.34
<b>Annual Bill/Effect on Annual Bill</b>			<b>\$ 1,470.81</b>	Na	<b>\$ 1,238.46</b>	<b>\$ (232.35)</b>	<b>-15.8%</b>	<b>\$ 1,162.01</b>	<b>\$ (308.80)</b>	<b>-21.0%</b>	<b>\$ 1,231.30</b>	<b>\$ (239.51)</b>	<b>-16.3%</b>

					Change in Rates Effective 9/1/01 Versus Current <i>(\$135 Million Reduction)</i>			Change in Rates Effective 12/1/01 Versus Current <i>(Additional \$36 Million Reduction)</i>			Change in Rates Proposed Base Rate Case v. Current <i>(w/\$171 Million GCR Reduction)</i>		
					(3)			(3)			(3)		
<b>Commercial</b>	(1)		(2)		GCR	Change	Change	GCR	Change	Change	Proposed	Change	Change
<b>Unit Costs</b>	Annual	Unit	Current	Change	Update	In	In	Update	In	In	Base Case	In	In
			Rates	In Rate		Annual Bill	Rate		Annual Bill	Rate	Rates	Annual Bill	Rate
Base Fuel	382.0	Mcf	\$ 3,1800	Na	\$ 3,1800		\$ -	\$ 3,1800		\$ -	\$ 3,1800		\$ -
Base Non-Fuel	382.0	Mcf	\$ 3,9400	Na	\$ 3,9400		\$ -	\$ 3,9400		\$ -	\$ 4,5064		\$ 0.57
GCR Factor	382.0	Mcf	\$ 6,6959	Na	\$ 4,3724		\$ (2.32)	\$ 3,6079		\$ (3.09)	\$ 3,6079		\$ (3.09)
Customer Charge	12	Months	\$ 14.57	Na	\$ 14.57		\$ -	\$ 14.57		\$ -	\$ 25.00		\$ 10.43
<b>Annual Bill/Effect on Annual Bill</b>			<b>\$ 5,452.51</b>	Na	<b>\$ 4,564.94</b>	<b>\$ (887.58)</b>	<b>-16.3%</b>	<b>\$ 4,272.90</b>	<b>\$ (1,179.62)</b>	<b>-21.6%</b>	<b>\$ 4,614.42</b>	<b>\$ (838.09)</b>	<b>-15.4%</b>

					Change in Rates Effective 9/1/01 Versus Current <i>(\$135 Million Reduction)</i>			Change in Rates Effective 12/1/01 Versus Current <i>(Additional \$36 Million Reduction)</i>			Change in Rates Proposed Base Rate Case v. Current <i>(w/\$171 Million GCR Reduction)</i>		
					(3)			(3)			(3)		
<b>Industrial</b>	(1)		(2)		GCR	Change	Change	GCR	Change	Change	Proposed	Change	Change
<b>Unit Costs</b>	Annual	Unit	Current	Change	Update	In	In	Update	In	In	Base Case	In	In
			Rates	In Rate		Annual Bill	Rate		Annual Bill	Rate	Rates	Annual Bill	Rate
Base Fuel	1,129.0	Mcf	\$ 3,1800	Na	\$ 3,1800		\$ -	\$ 3,1800		\$ -	\$ 3,1800		\$ -
Base Non-Fuel	1,129.0	Mcf	\$ 3,9400	Na	\$ 3,9400		\$ -	\$ 3,9400		\$ -	\$ 4,6370		\$ 0.70
GCR Factor	1,129.0	Mcf	\$ 6,6959	Na	\$ 4,3724		\$ (2.32)	\$ 3,6079		\$ (3.09)	\$ 3,6079		\$ (3.09)
Customer Charge	12	Months	\$ 29.14	Na	\$ 29.14		\$ -	\$ 29.14		\$ -	\$ 50.00		\$ 20.86
<b>Annual Bill/Effect on Annual Bill</b>			<b>\$ 15,947.83</b>	Na	<b>\$ 13,324.60</b>	<b>\$ (2,623.23)</b>	<b>-16.4%</b>	<b>\$ 12,461.48</b>	<b>\$ (3,486.35)</b>	<b>-21.9%</b>	<b>\$ 13,498.71</b>	<b>\$ (2,449.12)</b>	<b>-15.4%</b>

Notes:  
 (1) Typical annual usage  
 (2) As of August 2001  
 (3) Assumes Full Award

**CERTIFICATE OF SERVICE**

**ORIGINAL**

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

**VIA E-MAIL, HAND DELIVERY AND/OR FIRST CLASS MAIL**

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Dated: August 30, 2001

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August 30, 2001

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

VIA HAND DELIVERY

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

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of the Reply Exceptions of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") in the above-referenced proceeding.

As reflected in the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes. Thank you for your attention to this matter.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By *Charis M. Burak*  
Charis M. Burak

Counsel for the Philadelphia Industrial and  
Commercial Gas Users Group

DOCUMENT  
FOLDER

Enclosures

CMB/lhe

- c: Administrative Law Judge Cynthia Williams Fordham (via facsimile and federal express)
- Cheryl Walker Davis, Office of Special Assistants (via hand delivery) (with diskette in Word 6.0)
- Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**ORIGINAL**

PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

v.

PHILADELPHIA GAS WORKS

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: Docket No. R-00006042  
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**REPLY EXCEPTIONS OF THE PHILADELPHIA INDUSTRIAL  
AND COMMERCIAL GAS USERS GROUP**

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

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

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Counsel to the Philadelphia Industrial and  
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Dated: August 30, 2001

**DOCKETED**  
AUG 31 2001

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## I. INTRODUCTION

On January 5, 2001, Philadelphia Gas Works ("PGW" or "Company") filed Supplement No. 7 to Tariff Gas – Pa. PUC No. 1 ("Supplement No. 7") with the Pennsylvania Public Utility Commission ("PUC" or "Commission"). Supplement No. 7 proposed to implement a \$65 million base rate increase. Based upon evidentiary hearings and briefings by the parties, on August 7, 2001, Administrative Law Judge Cynthia Williams Fordham ("ALJ Fordham") issued her Recommended Decision ("R.D.") in this proceeding.

Exceptions to the R.D. were filed by several parties. Specifically, the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), an intervenor in this proceeding, filed Exceptions to address one specific issue regarding cost allocation. PICGUG also received Exceptions from PGW, the Office of Consumer Advocate ("OCA"), and the Consumers Education and Protective Association, et al. ("CEPA").

PICGUG's Reply Exceptions will address three Exceptions raised by PGW. PICGUG will respond to PGW's claims that: (1) modifications to PGW's transportation rules and regulations are inappropriate and impossible to implement, even though PGW currently maintains a transportation rate schedule, and these modifications will only enhance the ability of large commercial and industrial customers to transport on PGW's system; (2) any rates set under the Cash Flow Methodology are presumed just and reasonable, even though no such presumption exists in the Public Utility Code; and (3) PGW's cash flow needs will only be satisfied by a \$65 million rate increase, even though the Company failed to provide any substantive evidence throughout this proceeding that would support this claim.

PICGUG's Reply Exceptions will also address two Exceptions raised by the OCA. PICGUG will respond to the OCA's claims that: (1) any modification to PGW's transportation system should be deferred until the Company's restructuring proceeding in order to meet the requirements of the Natural Gas Choice and Competition Act ("Competition Act"), even though the OCA failed to present any evidence during the course of this proceeding that would support this claim, and the OCA misconstrues the purpose of the Competition Act; and (2) any rate increase granted to PGW should be allocated pursuant to PGW's proposal, even though this proposal fails to consider the significant and improper subsidy currently being provided to residential customers by the industrial and commercial classes.

As set forth more fully herein, no arguments raised by PGW or the OCA regarding the aforementioned Exceptions negate the propriety of the Commission accepting the ALJ's well-reasoned Recommended Decision regarding these issues. Consequently, the aforementioned Exceptions of PGW and the OCA must be denied.<sup>1</sup>

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<sup>1</sup> In addition, CEPA's Exception Number 3 raises identical arguments to those presented by PGW and the OCA regarding the ALJ's recommended modifications to the Company's transportation regulations. See CEPA Exceptions, pp. 9-10. In order to avoid repetition, PICGUG will not separately respond to CEPA's arguments. The arguments set forth in these Reply Exceptions, however, regarding the recommended modifications to the Company's transportation rules, are also applicable to CEPA's Exceptions. Similar to PGW and the OCA, CEPA fails to raise any arguments that would negate the ALJ's Recommended Decision. Accordingly, PICGUG respectfully requests that CEPA's Exceptions also be denied.

## II. REPLY EXCEPTIONS

### 1. Reply to PGW Exception No. 12: The ALJ Correctly Concluded That Modifications To PGW's Transportation Requirements Are Both Necessary and Proper.

PGW excepts to the ALJ's recommendation to implement several modifications to the Company's transportation regulations. See PGW Exceptions (hereinafter "Exc."), pp. 32-37. Specifically, the ALJ recommends that PGW be required to: (1) lower the minimum volume eligibility requirement for transporting natural gas from 75,000 Mcf per year to 15,000 Mcf per year; (2) permit transportation customers to aggregate facilities serviced by multiple accounts; (3) expand Buyers Groups from the current maximum of three customers to up to ten customers; (4) provide standards and/or criteria that will be utilized by the Company in determining whether an intra-day nomination will be granted; (5) establish a means by which transportation customers can obtain daily balancing information by at least 2002;<sup>2</sup> and (6) provide the Company's Lost and Unaccounted for Gas Factor ("LUFGE") on January 1 of each year, with this factor to remain in effect for twelve months. See R.D. at 112-13. PGW claims that these modifications will: (1) result in the full unbundling of PGW's system; (2) be impossible for PGW to implement; (3) result in modifications contrary to the Competition Act; and (4) be better addressed in a collaborative setting. See PGW Exc., pp. 32-37. As discussed more fully herein, however, PGW's arguments are without merit and must be dismissed.

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<sup>2</sup> During the course of this proceeding, PGW indicated that the Company planned to have daily balancing information available through a web site that would be established by September 1, 2003. See R.D. at 102; PICGUG M.B., p. 21. The ALJ does not recommend a specific date in 2002 for PGW provide this information, however, she does indicate that "[i]t is unreasonable to wait until 2003 for this information to be available on the proposed website." R.D. at 103. Accordingly, PICGUG interprets the R.D. to recommend that PGW be required to provide daily balancing information as soon as reasonably possible in 2002, but no later than September 1, 2002.

- a. *The ALJ's Recommended Modifications Will Not Result In A Virtual Unbundling of PGW's Tariff, But Rather, Place PGW At The Same Level As Other NGDCs Prior to Restructuring.*

PGW claims that the ALJ's recommended modifications will result in the virtual unbundling of the Company's system, prior to PGW's forthcoming restructuring proceeding. See PGW Exc., pp. 33-35. In an attempt to validate these unsubstantiated arguments, PGW provides hyperbolic claims that the ALJ's recommended modifications would result in transportation being available to "virtually every one of PGW's over 500,000 customers." Id. at 33.

As correctly noted by ALJ Fordham, "[w]hile PGW technically permits [large commercial and industrial] customers to transport natural gas, the rigidity of PGW's transportation rules and requirements results in a system that actually prohibits many customers from having the ability and means to transport their own natural gas." R.D. at 90; see also PICGUG M.B., pp. 7-8; PICGUG R.B., pp. 9-12. As a result, PGW currently has only eight customers with transportation contracts. See R.D. at 90. Accordingly, the purpose of these modifications is not to fully unbundle PGW system, nor will these modifications result in a full unbundling. Rather, these modifications will allow PGW's large commercial and industrial customers, who are permitted to transport on PGW's system prior to the Company's restructuring proceeding, the opportunity to effectively and cost-efficiently transport their own natural gas. See R.D. at 89-104; PICGUG M.B., pp. 11-22.

As discussed more fully in PICGUG's Main and Reply Briefs, as well as in the R.D., the purpose of these modifications is to enable large commercial and industrial customers the opportunity to transport on PGW's system, similar to opportunities that have been provided to large commercial and industrial customers on other Natural Gas Distribution Companies'

("NGDCs") systems since the mid-1980's. See R.D. at 89-96; PICGUG M.B., pp. 13-15; PICGUG Reply Brief, pp. 10-11. As appropriately stated by the ALJ,

[U]nfortunately, PGW's unwillingness to move forward with other NGDCs has left PGW's customers at a competitive disadvantage. If a customer does not meet PGW's volumetric requirements, the customer has no choice but to accept natural gas sales service from PGW, while the other large industrial and commercial customers in the marketplace have the opportunity to shop for and seek out Natural Gas Suppliers ("NGS") that can offer cost-efficient savings.

R.D. at 95. In other words, the modifications recommended by the ALJ are not so substantive as to move PGW "forward with full customer choice prior to the Company's restructuring proceeding. Instead, the proposed modifications would merely place PGW's transportation programs at the same level as other NGDCs, prior to the onset of the Competition Act." Id. at 93.

In an attempt to divert the Commission from examining the true problems at issue (i.e., PGW's failure to provide a workable transportation system for its large commercial and industrial customers), PGW claims that the proposed modifications, as a whole, will result in a "virtual" restructuring of the Company's system prior to actual restructuring that is scheduled to occur in 2003. See PGW Exc., pp. 33-34. Besides setting forth exaggerated claims and unbelievable hypothesis, PGW does not provide any substantive evidence upon which to base these arguments.<sup>3</sup> Specifically, PGW fails to indicate how placing customers on PGW's system

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<sup>3</sup> For example, the Company claims that all of PGW's 500,000 customers would be able to meet the recommended minimum volumetric requirement of 15,000 Mcf per year, and thus begin transporting, because several residential customers could combine their loads with a single large user. See PGW Exc., p. 33. This argument is incredulous and the Company fails to explain how customers from such diverse classes with very different load characteristics and requirements would be able to transport together on the Company's system in a beneficial manner. Considering that this argument is the predominant basis for PGW's claims that the recommended modifications would result in a virtual unbundling, PGW's Exceptions ring hollow at best.

with the same transportation opportunities as provided by other NGDCs prior to restructuring will result in an automatic and uninhibited unbundling of PGW's system.

PGW seems to indicate that the two most perilous modifications, which would result in this virtual unbundling, are the lowering of the minimum volumetric requirement and the expansion of Buyers Groups. See PGW Exc., p. 33. Merely reviewing these modifications in their entirety, however, provides the realization that these changes will provide large commercial and industrial customers an opportunity to more cost-effectively transport on PGW's system, but will not result in such extreme revisions to PGW's tariff as to suddenly permit residential and small commercial customers to begin transporting their own natural gas. See R.D. at 93-96, 98-99; PICGUG M.B., 11-15, 16-17.

The R.D. correctly recommends that PGW's minimum volumetric requirement of 75,000 Mcf per year should be lowered in order to bring the Company on par with the PUC-approved minimum volumetric requirement of 5,000 Mcf per year, which is similar to the minimum volumetric requirements of other NGDCs in Pennsylvania. See R.D. at 93-96; PICGUG M.B., pp. 11-15. Although the ALJ correctly notes that lowering PGW's requirement to 5,000 Mcf would be appropriate, in light of PGW's constant claims of systemic problems, the ALJ recommends lowering PGW's volumetric requirement to only 15,000 Mcf per year. See R.D. at 96; PICGUG M.B., p. 15.

Similarly, the ALJ correctly finds that PGW's requirement that a Buyers Group be limited to no more than three individual customers stifles transportation on the Company's system. See R.D. at 98. Because a larger Buyers Group enables a customer to acquire a larger volume of gas and potentially reduce costs for everyone in the group, the ALJ recommends that PGW be required to increase Buyers Groups to allow for the inclusion of up to ten individual customers,

similar to the Buyers Groups provided for by other NGDCs. See id. at 98-99; PICGUG M.B., pp. 16-17.

Reducing PGW's minimum volume requirement to 15,000 Mcf per year would still leave PGW well above the level of other NGDCs prior to their restructuring proceedings. See PICGUG M.B., p. 11-15. PGW fails to explain, however, how other NGDCs maintained lower volumetric requirements of 5,000 Mcf per year or less since the mid-1980's, while not providing transportation services for residential and small commercial customers until after the passage and implementation of the Competition Act in 1999. See PICGUG M.B., p. 11-12. PGW, for example, fails to provide any type of load characteristics that would indicate that PGW's residential and small commercial customers have such enormous natural gas usage that these customers would be able to easily meet the 15,000 Mcf requirement. Considering that the PUC regulation providing for a minimum volumetric requirement of 5,000 Mcf per year was amended as late as 1992 and that the PUC did not begin implementing full restructuring until 1999, the PUC clearly did not intend for the minimum volumetric requirement of 5,000 Mcf to "virtually unbundle" every NGDCs' system. See id. at 12; see also 52 Pa. Code § 60.3(a).

Similarly, increasing PGW's Buyers Groups to ten customers would not result in the sudden outpouring of residential and small commercial customers to PGW's transportation service. Once again, this requirement is similar to that set forth by other NGDCs prior to their restructuring proceeding. See PICGUG M.B., pp. 16-17. Moreover, this requirement also coincides with PUC regulations, which provide eligibility for transportation services for a Buyers Group of up to ten individual customers. See 52 Pa. Code § 60.3(b). Obviously, the PUC did not intend in 1992 to unbundle every NGDCs system merely by permitting ten customers to form a Buyers Group, combined with a minimum volumetric requirement of 5,000 Mcf per year.

In addition, although PGW's basis for its argument is an incredulous hypothetical in which several small residential customers join with one large industrial customer in a Buyers Group in order to meet the minimum volumetric requirement, PGW fails to provide any evidence as to how such a combination would occur in the real world. Surely as an experienced NGDC, PGW must realize that large industrial and commercial customers maintain very different load characteristics and requirements than residential customers, thus virtually eliminating the ability of a large industrial customer to combine loads with residential customers merely to allow these residential customers the opportunity to transport on PGW's system.

The aforementioned analysis can also be applied to the other modifications recommended by the ALJ.<sup>4</sup> Separately or combined, these modifications will not result in the full unbundling of PGW's system. Instead, these recommendations will place PGW at the same level achieved by other NGDC's in the mid-1980's. In other words, these modifications will place PGW twenty years behind other NGDCs in Pennsylvania. Although PGW rejects the notion of such "modernity," these recommendations will help PGW begin to prepare for the Company's forthcoming restructuring proceeding.<sup>5</sup> Accordingly, PGW's Exceptions should be denied and the ALJ's recommendations should be approved.

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<sup>4</sup> See R.D. at 97; PICGUG M.B., pp. 15-16 (allowing customers to aggregate facilities by multiple accounts should not result in a full unbundling since most residential and commercial customers only have one account); R.D. at 99-101; PICGUG M.B., pp. 18-19; PICGUG R.B., pp. 10-11 (providing standards for intra-day nominations will not result in residential customers suddenly maintaining the ability to transport natural gas on their own accord); R.D. at 101-03; PICGUG M.B., pp. 19-22; PICGUG R.B., p. 11 (providing daily imbalance information to transportation customers will not increase the ability of residential customers to transport); R.D. at 103-04; PICGUG M.B., p. 22 (requiring PGW to state the Company's LUFG Factor would have absolutely no role in residential customers suddenly obtaining the ability to transport on the Company's system).

<sup>5</sup> Interestingly, PGW claims that the Competition Act contemplates PGW working towards full unbundling by preparing its systems in the time prior to the Company's restructuring proceeding.  
(cont'd footnote)

Finally, PGW recognizes the fallacy in its argument by noting that the "Gas Competition Act merely completed the last part of the transition, requiring that the transportation option be available to the small commercial and residential customers." PGW Exc., p. 34. By setting minimum volume requirements or expanding Buyers Groups, the PUC did not automatically open transportation for all customers on NGDCs' systems. Rather, through the NGDCs' restructuring proceedings, residential and small commercial customers were provided the opportunity to begin transporting. Similarly, the modifications proposed in this proceeding do not automatically unbundle PGW's system. Instead, these modifications merely attempt to improve upon PGW's current transportation system. Similar to other NGDCs, full unbundling will not occur until PGW's restructuring proceeding, as proscribed in the Competition Act. See 66 Pa. C.S. § 2212(h).

*b. The ALJ Correctly Determined That PGW Is Able To Implement Modifications To The Company's Transportation Regulations.*

As part of its argument that the Company should not be required to provide a working transportation rate schedule, PGW insists that the Company would be unable to implement the ALJ's recommended modifications. See PGW Exc., pp. 34-37. As discussed previously, the purpose of these modifications is to enable large commercial and industrial customers the opportunity to utilize PGW's current transportation service. In other words, these modifications

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(continued footnote)

According to the Company, Pennsylvania's other NGDCs "took some 20 years to evolve a system in which its commercial and industrial customers had a transportation option available to them." See PGW Exc., p. 34. Considering PGW has only begun preparation for restructuring and the Company's current transportation regulations are so antiquated as to be behind those implemented by other NGDCs in the mid-1980's, the question arises as to how PGW will be able to implement full unbundling by the Company's restructuring proceeding in 2002, which is less than one year away.

are not intended to require PGW to create a new transportation service.<sup>6</sup> Rather, these modifications will merely improve upon the Company's current transportation rules and regulations.<sup>7</sup> See R.D. at 89-104; PICGUG M.B., pp. 7-22.

For example, PGW suggests that the ALJ's recommended modifications would require the Company to: (1) revise its billing system; (2) establish a transportation rate; (3) create supplier rules and tariffs to include balancing rules; (4) create systems to maintain daily and seasonable reliability; and (5) provide daily imbalance information to transportation customers. See PGW Exc. at 35.

The aforementioned revisions should not be necessary considering PGW currently has Rate Schedule GTS in place and has eight customers with transportation contracts. See R.D. at 90. As such, the Company must have in place a means by which to bill these customers for any natural gas transported on PGW's system. In addition, Rate GTS currently has a transportation rate in place, which should apply to any additional large commercial and industrial customers able to transport as a result of these modifications. See PGW Tariff Gas – Pa. PUC No. 1, p. 114. Similarly, because PGW currently has a transportation rate schedule in place, the Company should already maintain system reliability provisions to account for any customers, including the current eight, that may transport on PGW's system. Accordingly, two of PGW's concerns are

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<sup>6</sup> In fact, PGW seems to contradict its own arguments. In one argument, the Company suggests that it would be impossible to implement the ALJ's recommendations. See PGW Exc., pp. 34-35. In another argument, however, PGW notes that "every one of the revisions demanded by PICGUG and recommended by the ALJ are covered by specific provisions in PGW's present tariff." See id. at 34. Based upon PGW's assertion, these recommendations would not require the implementation of new and novel regulations, but, as PICGUG has continued to argue throughout this proceeding, merely result in the enhancement of PGW's rules in order to improve the Company's transportation service.

<sup>7</sup> Currently, PGW's tariff contains Rate Schedule GTS – Gas Transportation Service. See PGW Tariff Gas – Pa. PUC No. 1, pp. 113-127.

already being provided for by the Company and would only require slight modification to account for the ALJ's recommended changes.

PGW is correct, however, that the Company is lacking in the ability to provide daily balancing information or intra-day nomination criteria to transportation customers. See PGW Exc., p. 35; see also PICGUG M.B., pp. 18-22; PICGUG R.B., pp. 10-11. PGW fails to recognize, however, that because PGW currently offers a transportation rate schedule, these requirements should have already been implemented by the Company. In other words, PGW allows customers to transport on the Company's system, but fails to provide the information necessary to ensure that these customers are able to adequately meet PGW's transportation requirements.<sup>8</sup> See R.D. at 99-103. Accordingly, in order for actual transportation to occur on PGW's system, some modifications, such as those proposed in this proceeding, are necessary. Merely because PGW would prefer to avoid these responsibilities should not excuse PGW from its responsibilities.

Moreover, as admitted by PGW throughout the course of this proceeding, and recognized by the ALJ, "the Company's current transportation customers are responsible for purchasing their own natural gas, arranging for the transportation of this natural gas to PGW's city gate, and interacting with the interstate pipeline supplier for this natural gas." R.D. at 95. Accordingly, PGW's transportation customers handle the majority of the issues associated with transporting

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<sup>8</sup> PGW recognizes that the Company does not maintain the ability to schedule and confirm nominations and suggests that, as a result, the Company "cannot reasonably be expected to adopt a requirement that it must comply with [implementing criteria for intra-day nominations] in any manner other than a best efforts basis." PGW Exc., p. 35. PGW fails to recognize, however, that the Company, as an NGDC providing transportation service to a select class of customers, maintains a responsibility to provide this information. Simply stating that the Company does not currently maintain this information is not an excuse for PGW to do nothing more than continue down this unreasonable and inappropriate path.

natural gas. See PICGUG M.B., p. 14. These recommendations are merely asking that PGW modify its system so that these customers can effectively and efficiently transport natural gas on PGW's system, thus alleviating one of PGW's many burdens. From a balancing aspect, requiring PGW to implement these modifications may result in PGW actually having to take some initial action; however, in return, the Company will be able to allow more customers to transport their own natural gas, thus freeing PGW to focus upon other issues it currently faces. See R.D. at 95-96; PICGUG M.B., p. 14.

PGW, however, in one final attempt to avoid any effort at actually improving the Company's system, suggests that any modifications to PGW's transportation regulations would result in a "doomsday" scenario. See PGW Exc., pp. 35-36. Although PGW suggests atrocities that could happen, PGW fails to provide any substantive evidence that the Company's could not successfully modify its transportation system in a manner similar to that provided by other NGDCs in the mid-1980's. In fact, PGW's claims seem to be nothing more than a continuing attempt by the Company to avoid the responsibilities undertaken by other NGDCs. While modifying PGW's transportation rules would require some effort by the Company, most, if not all, of these modifications would not plague PGW's system, but rather, begin to improve PGW's system and provide a basis for PGW's restructuring proceeding. As a result, PGW should embrace these modifications as an opportunity for the Company to begin to provide the proper and necessary foundation for a complete transportation system. For these reasons, PGW's claims that the Company is unable to meet the requirements needed for a fully operative transportation rate schedule must be dismissed and the ALJ's recommended modifications should be approved.

*c. The ALJ Correctly Determined That Modifications To PGW's Transportation Requirements Are Appropriate Pursuant To The Public Utility Code.*

In addition to the aforementioned, PGW also claims that the Section 2212 of the Competition Act prohibits the PUC from modifying the Company's tariff until after PGW's restructuring proceeding, or conversely, that only PGW may propose tariff modifications at this time.<sup>9</sup> See PGW Exc., pp. 33-34. For this reason, PGW claims that the ALJ's recommended modifications may not be adopted.

Section 2212(b) of the Competition Act provides that a city natural gas distribution operation "shall 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). Section 2212(d) supplements this provision by providing that a city natural gas distribution operation shall continue to provide natural gas distribution services to its customers under the prior tariff and policies or programs existing on the date the PUC assumes jurisdiction until the effective date of the Company's restructuring plan. See id. at § 2212(d).

As correctly noted by the ALJ, and discussed more fully in PICGUG's Main Brief, the purpose of Section 2212(d) was to provide PGW with some level of comfort regarding the rates and services that would be applied during the time between jurisdiction over PGW shifting to the PUC and the conclusion of the Company's restructuring proceeding. See R.D. at 91-93; PICGUG M.B., pp. 8-11. Section 2212, was not, however, intended to be used as an excuse for PGW to continue to provide inadequate and unreasonable transportation service to its customers, contrary to Commission rules and regulations. See id. PGW must still be subject to Commission

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<sup>9</sup> This argument is also raised in CEPA Exception No. 3. See PICGUG Reply Exc., p. 2, Footnote 1, supra.

rules and regulations, which require that PGW "furnish and maintain adequate, efficient, safe and reasonable service and facilities..."<sup>10</sup> 66 Pa. C.S. § 1501; see also PICGUG M.B., pp. 9-10.

Accordingly, while PGW suggests that only the Company may request tariff modifications, PGW continues to ignore the problems inherent with the Company's transportation system by failing to provide adequate information and systems that would enable large commercial and industrial customers the opportunity to effectively and efficiently transport natural gas on the Company's system. See PICGUG Reply Exc., pp. 3-12, supra. As such, only by allowing all parties the opportunity to indicate such problems and provide such solutions will the Commission ensure that PGW is providing adequate and reasonable service during this transition period.

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<sup>10</sup> PGW claims that PICGUG's complaints regarding PGW's transportation rules and regulations do not address "quality" concerns. See PGW Exc., p. 34. PGW fails to recognize that the quality of the Company's transportation service is exactly the concern at issue. Because PGW's transportation service is so inadequate, inefficient and unreasonable, eligible customers are unable to utilize this service, thus raising "quality" concern issues. Assuming, arguendo, PGW's claims that the terms and conditions associated with transportation service are not a "service" pursuant to Section 1501 of the Public Utility Code, but rather fall under the definition of "rates", the PUC still has a duty to ensure that PGW's transportation regulations are appropriate. See id. Section 1301 of the Public Utility Code provides 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. As discussed herein, the purpose of Section 2212 was not to allow PGW to avoid the mandates of the Public Utility Code. See R.D. at 91-93; PICGUG M.B., pp. 8-11. Although PGW maintains a transportation rate schedule, the Company's antiquated and rigid regulations prohibit most customers from transporting natural gas on PGW's system. Accordingly, PGW's transportation rates and regulations are not "just and reasonable" in conformance with the PUC mandate. Contrary to PGW's argument, Section 2212(d) does not permit the Company to shirk its responsibilities in meeting the requirements of the Public Utility Code. See id. Obviously, the purpose of Section 2212(d) was not to permit PGW to maintain unreasonable rates or inadequate service until after the Company's restructuring proceeding. Thus, PGW's claim that Section 2212 trumps any other provisions of the Public Utility Code must be rejected.

*d. The ALJ Correctly Determined That Problems Inherent In PGW's Transportation Requirements Would Not Be Better Addressed In A Collaborative Setting.*

Finally, PGW suggests that, in lieu of implementing the ALJ's proposed modifications, which would enable large commercial and industrial customers to more effectively transport on PGW's system, a collaborative setting should be initiated in order to assist PGW in the planning and development of the Company's restructuring proceeding. See PGW Exc., p. 37. Unfortunately, PGW fails to recognize that the purpose of the modifications is to enable large commercial and industrial customers the opportunity to utilize PGW's current transportation services, not fully unbundle PGW's system. See PICGUG R.B., pp. 9-12.

Merely initiating a collaborative to discuss restructuring does nothing more than defer the problems plaguing PGW's current transportation rate schedule until a later time. As discussed more fully herein, PGW's large commercial and industrial customers are technically permitted to transport on PGW's system; however, the Company's rules and regulations prohibit true transportation from actually occurring. See PICGUG M.B., pp. 7-22. As such, these customers should not be required to wait until the Company's restructuring proceeding for these problems to be solved. Rather, these customers are merely seeking the opportunity to modify PGW's system in order to turn PGW's transportation service from mere words on a piece of paper to an actual system that will enable large volume customers to transport. As such, a collaborative to discuss restructuring issues is not the appropriate remedy for these problems. See PICGUG R.B., pp. 9-11.

Because PGW fails to provide any substantive evidence to support the Company's claims that modifications to PGW's transportation rules would be improper, PGW's exceptions to the ALJ's well-reasoned R.D. must be denied.

**2. Reply to OCA Exception No. 9: The ALJ Correctly Concluded That Modifications To PGW's Transportation Regulations Should Be Implemented Prior To The Company's Restructuring Proceeding.**

The OCA excepts to the ALJ's recommendation to implement modifications to PGW's transportation requirements in order to enable large commercial and industrial customers to more effectively transport on the Company's system.<sup>11</sup> See OCA Exc., pp. 28-29. According to the OCA, modifications to PGW's transportation rules should not be implemented until after PGW's restructuring proceeding in order to ensure that the majority of PGW's large commercial and industrial customers continue to be subject to the Company's Gas Cost Rate ("GCR"), through which PGW's universal service costs are collected.<sup>12</sup> See id.

The ALJ correctly determines that PGW's rigid and antiquated transportation rules must be modified in order to appropriately allow large commercial and industrial customers the opportunity to utilize PGW's transportation services. See R.D. at 89-104. As discussed more fully herein, these modifications are also necessary in order to provide a basis for PGW's forthcoming restructuring proceeding. See id. at 93; PICGUG M.B., pp. 7-8.

Although PICGUG initially raised the issue of modifying PGW's transportation regulations in Direct Testimony, the OCA did not raise any arguments to the contrary throughout the course of this proceeding, until the Exceptions stage. Because PICGUG presented, addressed and argued the merits of these modifications in Direct and Surrebuttal Testimony, Main and Reply Briefs, and during Evidentiary Hearings, the OCA had more than ample opportunity to

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<sup>11</sup> This argument is also raised in CEPA Exception No. 3. See PICGUG Reply Exc., p. 2, Footnote No. 1, supra.

<sup>12</sup> The OCA claims that these modifications would contravene Section 2203(6) of the Competition Act, which addresses the ability of the Commission to establish a mechanism for the recovery of an NGDC's universal service costs. See 66 Pa. C.S. § 2203(6).

present any argument regarding the appropriateness of these modifications both overall and in light of any Competition Act requirements. The OCA, however, did not present any arguments regarding the proposed transportation modifications, including the applicability of Section 2203(6) to these modifications, throughout the evidentiary stages of this proceeding.<sup>13</sup>

According to the PUC, "a party to a proceeding before this Commission may advance new and novel arguments, not previously heard, in its Exceptions so long as the arguments rely upon evidence in the record." Phone Talk, Inc. et al. v. The Bell Telephone Company of Pennsylvania; Docket No. C-882009, Opinion and Order (Sept. 12, 1991), p. 59. The OCA's decision to raise this argument without presenting any evidence in this proceeding regarding Section 2203(6) places the OCA's Exception in clear violation of this standard. Throughout the course of this proceeding, the OCA did not address, present or even mention any applicability of Section 2203(6) to the recommended transportation requirements, much less argue the merits of these modifications in the OCA's Main or Reply Briefs. As such, there are no references to this section in the evidentiary record for this proceeding.

Moreover, by waiting to raise this argument in the Exception stage, the OCA has blindsided PICGUG, the ALJ and the Commission with respect to this issue. Had the OCA raised this argument earlier in the proceeding, PICGUG would have been provided the opportunity for adequate response. Waiting until PICGUG was eclipsed from presenting any evidence with respect to this issue, however, was nothing more than an inappropriate and unfair tactic by the OCA. In short, the OCA is attempting to compensate for the lack of substance in its

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<sup>13</sup> Moreover, at no point in time did any other parties present any argument that Section 2203(6) contravened the ability of the PUC to implement any changes to PGW's transportation rules. As such, the OCA's Exceptions were the first to address, much less even mention, Section 2203(6).

argument by preventing other parties from fairly and adequately addressing this issue. Accordingly, the OCA's argument must be dismissed.

Regardless of the procedural flaws in the OCA's argument, the OCA's claim that Section 2203(6) requires the deferral of any transportation modifications is also substantively lacking. Section 2203(6) provides that "[a]fter notice and hearings, the commission shall establish for each natural gas distribution company an appropriate nonbypassable, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company's universal service and energy conservation costs of the life of these programs." 66 Pa. C.S. § 2203(6). Simply based on the wording of this section, the PUC obviously intended for this mechanism to be implemented after an NGDC's restructuring proceeding (*i.e.*, "after notice and hearings"). Moreover, Section 2203(6) was not intended as an impediment to allow customers to transport on an NGDC's system. By arguing that PGW's GCR is nonbypassable, the OCA is overstepping the bounds of the Competition Act and suggesting that eligible large commercial and industrial customers should not be allowed to transport on PGW's system. Obviously, this scenario was not the intent of the Competition Act, the purpose of which was to open NGDCs' system to transportation for all customers. While the OCA attempts to use Section 2203(6) as an impediment to allowing eligible customers to appropriately transport on PGW's system, the language of Section 2203(6) is not applicable to the OCA's claims.

Moreover, and as discussed previously, large commercial and industrial customers have been transporting on other NGDCs' systems since the mid-1980's. *See* PICGUG M.B., pp. 7-8; 12-14. The purpose of the Competition Act was not to unbundle natural gas service for all customers, but rather, only residential and small commercial customers that had not yet been provided that opportunity. Similarly, PGW currently maintains a transportation rate schedule

and accompanying regulations. The modifications recommended to these regulations is not intended to allow large commercial and industrial customers the opportunity to transport on the Company's system for the first time. Rather, the purpose of these modifications is to better enable such customers to effectively utilize PGW's transportation service.

The OCA's arguments, however, seem to suggest that PGW's current transportation service can not be utilized by any customers until after the Company's restructuring proceeding. To suggest that these customers should not be able to participate in a service to which they are rightfully entitled in order to ensure that they remain subject to PGW's sales rates, and thus the GCR, is both inappropriate and unfair. Although the OCA may have concerns regarding the Company's universal service costs, the OCA should not require eligible large commercial and industrial customers hoping to transport on PGW's system to be captive ratepayers in order to fulfill the OCA's singular goals. If the OCA had concerns regarding the funding of the Company's GCR, then the OCA should have, and could have, raised these issues during the course of this proceeding rather than deferring them until PGW's restructuring proceeding. See OCA Statement No. 1, Direct Testimony of Richard W. LeLash, pp. 47-50.

In addition, the OCA's argument regarding modifications to PGW's transportation requirements contradicts the argument set forth by the OCA with respect to the Company's requested rate increase. Specifically, the OCA agrees with the ALJ's findings that PGW's rates must be just and reasonable and that in determining this standard, the interests of ratepayers must be balanced against the Company's financial needs. See OCA Exc., p. 11. Moreover, the OCA suggests that the ALJ failed to address PGW's quality of service as part of the recommended rate increase. See id. at 11-12. Based upon the OCA's opposition to any modifications to PGW's transportation rules and regulations, however, the OCA seems to believe that the "just and

reasonable" standard does not apply to PGW's quality of service with respect to transportation customers. As a result, the OCA's inconsistent arguments with respect to the applicability of the "just and reasonable" requirement requires that the OCA's Exception be dismissed by the PUC.<sup>14</sup>

Accordingly, because the OCA's argument is procedurally faulty and because the OCA fails to present any substantive arguments supporting this claim, the OCA's Exception must be denied.

**3. Reply to OCA Exceptions Nos. 5 and 7: The ALJ Correctly Concluded That The Residential Classes Are Being Improperly Subsidized By The Commercial And Industrial Classes.**

The OCA claims that the residential classes are not being subsidized by the commercial and industrial customers, and thus, any rate increase provided in this proceeding should be allocated according to PGW's proposal. See OCA Exc. 20-24; 26-27. Contrary to the OCA's claims, the ALJ correctly concluded that the residential classes are being provided a significant and inappropriate subsidy that must be reduced in order to alleviate the current burden placed on the commercial and industrial customers. See R.D. at 73-76.

The ALJ correctly notes that the

residential customer classes are receiving significant and unjustified subsidies from the commercial and industrial classes. The commercial and industrial customer classes are receiving service from PGW at rates significantly above their cost to serve, while the residential customer classes are receiving service at rates significantly below their cost to serve.

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<sup>14</sup> CEPA's Exceptions also argue that the "just and reasonable" standard must be examined in light of both the Company's rate increase request and the inadequacy of PGW's service. See CEPA Exc., pp. 3-5. Similar to the OCA, CEPA also seems to improperly believe that the "just and reasonable" argument does not apply to PGW's transportation service.

R.D. at 73. Accordingly, the ALJ determines that this subsidy requires that the majority of any rate increase be allocated to the residential customers.<sup>15</sup>

The OCA attempts to suggest that the ALJ's recommended rate allocation is inappropriate because no subsidy of the residential classes exists. See OCA Exc., pp. 21-22. In actuality, however, the OCA's argument is nothing more than a debate over the definition of "subsidy." Although the OCA attempts to suggest that the true determination of a subsidy requires a marginal cost and pricing study, the OCA chose not to prepare such a study in this proceeding. See PICGUG Statement No. 1-S, Surrebuttal Testimony of Richard A. Baudino, pp. 3-4. As such, the OCA's argument should be provided no weight in this proceeding. See PICGUG M.B., pp. 26-33.

Moreover, the OCA attempts to suggest that PGW's Cost of Service Study does not meet the appropriate requirements and must be rejected. See OCA Exc., pp. 22-23. As correctly noted by the ALJ, and confirmed by the other parties to this proceeding, PGW's Cost of Service Study provides an adequate guide for determining the customer class rates and the resulting subsidies occurring within these classes. See R.D. at 72-73. As such, the ALJ properly rejected the OCA's proposed modifications to the Company's Cost of Service Study. See id. at 73; see also PICGUG M.B., pp. 31-33. Merely because the OCA does not like the results produced by the Cost of Service Study is not reason enough to reject the Cost of Service Study in its entirety.

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<sup>15</sup> While PICGUG agrees with the ALJ's finding that the residential classes are being subsidized by the commercial and industrial customers, PICGUG excepted to the ALJ's recommendation that the OTS's proposed allocation should be implemented. Instead, because of the significant and unjustifiable subsidy provided to the residential classes, the entirety of any rate increase should be allocated to these classes in order to begin the movement towards eliminating this subsidy. See PICGUG Exc., pp. 2-6.

Accordingly, because the OCA's arguments do not negate the well-reasoned findings of the ALJ, the OCA's Exceptions must be denied.

**4. Reply to PGW Exception No. 2: The ALJ Correctly Concluded That Section 2212(e) Must Be Offset By The Requirements In Section 1301 And That Rates Set Pursuant To The Cash Flow Methodology Are Not Presumed Just And Reasonable.**

PGW's excepts to the ALJ's finding that the requirements of Section 2212(e) of the Competition Act must be offset by the requirements of Section 1301 of the Public Utility Code, which provides that rates must be just and reasonable. See PGW Exc., pp. 10-11. Similarly, PGW's excepts to the ALJ's finding that rates established pursuant to the Cash Flow Methodology cannot be presumed just and reasonable. See id. at 11-12. According to PGW, the Company's rates must be set according to the Cash Flow Method and presumed just and reasonable, regardless of the fact that the Public Utility Code does not provide for such a presumption. See id. at 10-12.

As correctly noted by the ALJ, regardless of the methodology used, any rate increase provided to PGW must be just and reasonable. See R.D. at 33; see also PICGUG M.B., p. 25; PICGUG R.B., p. 4. Section 2212(e) of the Competition Act provides that during the time between the shift in jurisdiction over PGW to the PUC and the end of the Company's restructuring proceeding, the Company's revenue requirements will be determined by following the same ratemaking methodology that was applicable to the Company prior to the jurisdictional shift. See 66 Pa. C.S. § 2212(e). This requirement must be offset, however, by the Public Utility Code, which provides that "every rate made, demanded, or received by any public utility...shall be just and reasonable." 66 Pa. C.S. § 1301; see also PICGUG R.B., p. 4. Accordingly, the purpose of the Competition Act was to provide PGW with some assurance regarding the setting of rates that would be followed prior to the Company's restructuring proceeding. The intention

of Section 2212(e) was not, however, to eliminate the "just and reasonable" requirement. See PICGUG M.B., p. 25; PICGUG R.B., p. 4; R.D. at 33-34.

Similarly, the ALJ correctly finds that the PUC must provide a determination that any rates set are just and reasonable; this determination cannot be presumed merely because of the use of a certain methodology. See R.D. at 34-35. PGW, as the public utility proposing the rate increase in this proceeding, maintains the burden of proving that its requested rate increase will result in just and reasonable rates. See id. at 31-32; PICGUG R.B., p. 4. Unfortunately, in this instance, the Company attempts to avoid this burden by suggesting that setting the Company's rates through the Cash Flow Method will result in just and reasonable rates, thus eliminating the need for further analysis. See PGW Exc., pp. 11-12.

Although PGW attempts to contravene this burden by suggesting that such a presumption exists, the Public Utility Code does not maintain that the burden of proof in a base rate proceeding can be "presumed" through the use of a specific ratemaking methodology. See PICGUG R.B., pp. 3-6. Accordingly, PGW cannot merely decree that such a presumption exists without a substantive basis upon which to support such an argument. Because PGW fails to provide this basis, PGW's argument does not negate the ALJ's recommendation, and PGW's Exceptions must be denied.

**5. Reply to PGW Exception No. 3: The ALJ Correctly Concluded That PGW's Fiscal Needs Will Be Met With A \$33 Million Rate Increase.**

PGW excepts to the ALJ's recommendation to grant PGW a \$33 million rate increase, in comparison to PGW's requested rate increase of \$65 million. See PGW Exc., pp. 12-20. As noted by the ALJ, the \$33 million rate increase is reasonable, and although PGW continues to suffer from service problems, PGW's entire rate increase should not be denied. See R.D. at 69.

According to PGW, the R.D. overlooked extensive record evidence showing that PGW's cash flow needs will only be met by a \$65 million rate increase. See PGW Exc., pp. 12-20.

Contrary to PGW's claims, the Company failed to provide sufficient evidence to substantiate a \$65 million rate increase. As discussed more fully in PICGUG's Main and Reply Briefs, PGW has sufficient cash flow to meet the Company's minimum fiscal needs. See PICGUG M.B., pp. 23-25; PICGUG R.B., pp. 2-9. In addition, throughout the course of this proceeding, PGW has suggested that higher rates are necessary in order to align the Company with the rates of other NGDCs in Pennsylvania. Simultaneously, however, the Company has resisted any effort to provide services equivalent to these higher rates. See PICGUG M.B., pp. 11-12; PICGUG R.B., pp. 6-7.

Moreover, PGW has suggested that a \$65 million rate increase must be implemented in order to provide the Company the ability to meet its long-term goals. See PICGUG M.B., p. 24. These goals, however, must be balanced with the burden faced by the Company's ratepayers due to PGW's constant requests for significant rate increases. See id.

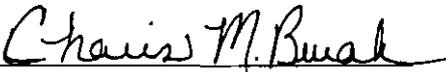
In addition, PGW claims that the ALJ failed to accept the findings of an independent engineering report; however, PGW's reliance on this report is solely misplaced. See PGW Exc., pp. 17-20; see also PICGUG R.B., pp. 7-9. Specifically, this engineering report failed to account for the responsibility of the City of Philadelphia as owner of PGW, in addition to not examining rates on the basis of a "just and reasonable" standard. See PICGUG R.B., pp. 7-9. Accordingly, PGW has failed to provide any substantive evidence that would justify the Company's requested rate increase. As such, PGW has failed to provide any arguments that would negate the ALJ's *well-reasoned recommendation to grant PGW a \$33 million rate increase.*

### III. CONCLUSION

**WHEREFORE**, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of the Philadelphia Gas Works, the Office of Consumer Advocate, and the Consumers Education and Protective Association, et al., and adopt the relevant portions of Administrative Law Judge Fordham's Recommended Decision consistent with PICGUG's Exceptions and Reply Exceptions and the relevant positions set forth in PICGUG's Main and Reply Briefs.

Respectfully submitted,

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Counsel to the Philadelphia Industrial and  
Commercial Gas Users Group

Dated: August 30, 2001

**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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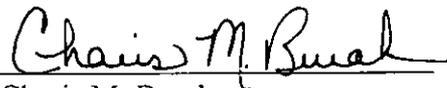
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Charis M. Burak

Dated this 30<sup>th</sup> day of August, 2001, in Harrisburg, Pennsylvania.

**PA PUC v. Philadelphia Gas Works**  
**Docket Number R-00006042**  
**Income Statement FYE August 31, 2001**

	<u>PGW Revised Budget</u>	<u>Commission Adjustments</u>	<u>Allowance</u>
<b><u>OPERATING REVENUES:</u></b>			
1. Non-Heating	121,544		121,544
2. Gas Transportation Service	3,656		3,656
3. Heating	535,415	34,263	569,678
4. <b>Proposed Base Rate Increase</b>	<b>65,000</b>	<b>(36,933)</b>	<b>28,067</b>
5. CRP/CWP/Senior Discount		0	0
6. Interim Increase		11,000	11,000
7. Electric Costs from GCR			0
8. Unbilled Revenue Adjustment	<u>1,844</u>		<u>1,844</u>
9. <b>TOTAL GAS REVENUES</b>	<b>727,459</b>	<b>8,330</b>	<b>735,789</b>
10. Other Operating Revenues	<u>28,026</u>		<u>28,026</u>
11. <b>TOTAL OPERATING REVENUES</b>	<b><u>755,485</u></b>		<b><u>763,815</u></b>
<b><u>12. OPERATING EXPENSES</u></b>			
13. Natural Gas	394,576	20,479	415,055
14. Other Raw Materials	<u>10</u>		<u>10</u>
15. <b><u>Sub-total Fuel</u></b>	<b>394,586</b>		<b>415,065</b>
16. <b><u>Contribution Margins</u></b>	<b>360,899</b>		<b>348,750</b>
17. Gas Processing	13,968		13,968
18. Field Services	33,061		33,061
19. Distribution	13,601		13,601
20. Customer Affairs	31,208		31,208
21. Electric Costs		0	0
22. Social Programs		0	0
23. Admin and General [Rate Case Expense]	45,407	-313	45,095
24. Marketing and Point of Sale Expenses	6,713	-1,260	5,453
25. Bad Debt Expense	65,297	-4,169	61,128
26. BCCS Remediation		-800	-800
27. Consultant Services		-424	-424
28. Non-Recurring Expenses		-1,840	-1,840
29. Employee Consultants		-258	-258
30. Equipment Rentals and Leasing		-632	-632
31. Lobbying Expenses		-115	-115
32. Operating Leases		-601	-601
33. Non-Recurring Material Purchases		-100	-100
34. Amortization-Regulatory Asset		-1,637	-1,637
35. Health Insurance	26,290		26,290

**PA PUC v. Philadelphia Gas Works**  
**Docket Number R-00006042**  
**Income Statement FYE August 31, 2001**

	<u>PGW Revised Budget</u>	<u>Commission Adjustments    Allowance</u>
36. Capitalized Fringe Benefits	-5,333	-5,333
37. Capitalized Administrative Costs	-6,815	-6,815
38. Regulatory Asset Amortization	3,750	3,750
39. Amortization of Restructuring Costs	965	965
40. Y2K & Deregulation Amortization	888	888
41. Pensions	1,376	1,376
42. Taxes	6,548	6,548
43. Amort. Of Non-Recurring IT Costs	0	0
44. Personnel Reductions/Retirements	-2,500	-2,500
45. Cost Savings/Productivity Improvements	<u>-10,000</u>	<u>-10,000</u>
<b>46. <u>Sub-total Operating Expenses</u></b>	<b>224,424</b>	<b>212,276</b>
47. Depreciation	33,381	33,381
48. Cost of Removal	2,500	2,500
49. To Clearing Accounts	<u>-3,344</u>	<u>-3,344</u>
50. <b><u>Sub-total</u></b>	<b>32,537</b>	<b>32,537</b>
<b>51. <u>TOTAL OPERATING EXPENSES</u></b>	<b><u>651,547</u></b>	<b><u>659,878</u></b>
<b>52. <u>OPERATING INCOME</u></b>	<b>103,938</b>	<b>103,938</b>
53. Other Income	<u>6,106</u>	<u>6,106</u>
54. Income Before Interest Expense	110,044	110,044
<b>55. <u>Interest Expense</u></b>		
56. LT Debt	47,871	47,871
57. Other	6,102	6,102
58. AFUDC	-346	-346
59. Loss from Extinguishment of Debt	<u>4,162</u>	<u>4,162</u>
60. <b>Total Interest</b>	<b>57,789</b>	<b>57,789</b>
61. <b>Net Income</b>	<b>52,255</b>	<b>52,255</b>
62. City Payment	<u>18,000</u>	<u>18,000</u>
63. <b>Net Earnings</b>	<b><u>34,255</u></b>	<b><u>34,255</u></b>

**PA PUC v. Philadelphia Gas Works**  
**Docket Number R-00006042**  
**Debt Service Coverage**  
**FYE August 31, 2001**

**FUNDS PROVIDED**

1. Total Gas Revenues	735,789
2. Other Operating Revenues	28,026
3. Total Operating Revenues	763,815
4. Other Income less Restricted Funds	6,557
5. AFUDC (Interest)	346
6. <b>TOTAL FUNDS PROVIDED</b>	<u><u>770,718</u></u>

**FUNDS APPLIED**

7. Fuel Costs	415,065
8. Other Operating Costs	244,813
9. Total Operating Expenses	<u>659,878</u>
10. PMA Lease Cost	0
11. \$20.1M Capital Lease Cost	3,980
12. \$23.0M Capital Lease Cost	3,997
13. Less: Non-Cash Expense	<u>37,272</u>
14. <b>TOTAL FUNDS APPLIED</b>	<u><u>630,583</u></u>

15. Funds Available to Cover Debt Service	140,136
16. Add-back Lease Costs	<u>7,977</u>
17. Funds Available Excluding Lease Costs	148,113

18. 1975 Ordinance Bonds Debt Service	<u>51,611</u>
19. <b>Debt Service Coverage 1975 Bonds</b>	<u><u>2.87</u></u>

20. Net Available after Prior Debt Service	96,502
21. PMA & Other Capital Leases	<u>7,977</u>
22. Net Available after Prior Capital Leases	88,525

23. 1998 Ordinance bonds Debt Service	29,449
24. <b>Debt Service Coverage New Bonds</b>	<u><u>3.01</u></u>

25. Net Available after Debt Service	59,076
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26. 1998 Ordinance Subordinate Bond Debt Service	1,990
27. <b>Debt Service Coverage Subordinate Bond</b>	<u><u>29.69</u></u>

**PA PUC v. Philadelphia Gas Works**  
**Docket Number R-00006042**  
**Cash Flow Statement**  
**FYE August 31, 2001**

**SOURCES**

1. Net Income	52,255
2. Depreciation and Amortization	42,827
3. Earnings on Restricted Funds	451
4. Impact of Refunded Debt Service	-
5. Increased/(Decreased) Other Liabilities	3,682
6. Available From Operations	<u>99,215</u>
7. Funds Required for Capital	34,000
8. Capital Leasing	6,000
9. Temporary Financing	-
10. <b>TOTAL SOURCES</b>	<u><b>139,215</b></u>

**USES**

11. Net Construction Expenses	62,293
Funded Debt Reduction:	
12. Revenue Bonds	34,192
13. PMA Leases/Subordinate Debt	1,065
14. Capital Leases	6,901
15. Temporary Financing	-
16. Notes Payable - CNG Acquisition	59
17. Temporary Financing Repayment	-
18. Distribution of Earnings	18,000
19. Additions to (Reductions of ) Non-Cash Working Capital	<u>14,891</u>
20. <b>Cash Needs</b>	137,401
21. Cash Surplus (Shortfall)	1,814
22. <b>TOTAL USES</b>	<u><b>139,215</b></u>
23. Cash - Beginning of Period	8,425
24. Cash - Surplus (Shortfall)	1,814
25. <b>ENDING CASH</b>	<u><b>10,239</b></u>
26. Internally Generated Funds	22,293
27. Outstanding Commercial Paper	97,000

**Wolf, Block, Schorr and Solis-Cohen LLP**

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**ORIGINAL**

September 20, 2001

KJR

**VIA HAND DELIVERY**

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

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SECRETARY'S BUREAU**

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

Dear Secretary McNulty:

Enclosed please find an original and three copies of its Settlement Stipulation entered into between Philadelphia Gas Works ("PGW") and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") with regard to the above referenced matter. The Stipulation resolves issues involving transportation rates, rules and regulations raised by PICGUG. Please note that, because these issues are scheduled to be considered tomorrow at the Public Meeting, parties may wish to review the enclosed Stipulation prior to that meeting. PGW and PICGUG have previously supplied this Stipulation to the major parties and have discussed the terms with them.

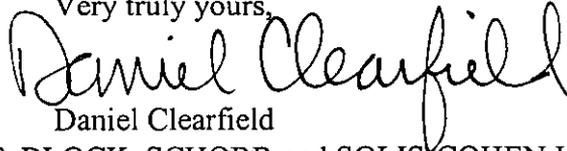
I am authorized to state that the Office of Consumer Advocate and the Office of Small Business Advocate do not oppose this Stipulation. All parties of record have been officially served as evidenced by the attached Certificate of Service.

65

James McNulty, Secretary  
September 20, 2001  
Page 2

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

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww  
Enclosure

cc: Glen Thomas, Chairman w/enc.  
Robert K. Bloom, Vice Chairman w/enc.  
Aaron Wilson, Jr., Commissioner w/enc.  
Terrance J. Fitzpatrick, Commissioner, w/enc.  
All Parties of Record w/enc.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission :

v. :

Philadelphia Gas Works :

Docket No. R-00006042

DOCKETED  
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SETTLEMENT STIPULATION

Philadelphia Gas Works ("PGW"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") and any other signatory parties hereto stipulate and agree, and respectfully request that, on the issue of gas transportation rules and regulations, the Pennsylvania Public Utility Commission ("PUC") adopt the terms and conditions set forth in Attachment "A" hereto in lieu of the ALJ's Recommended Decision on those issues (set forth at pp. 89 - 104 of the Recommended Decision, Findings of Fact Nos. 77-84, and ¶¶ 20 -21 of its ordering paragraphs).

The Settlement proposes to expand the availability of current gas transportation on PGW's system by establishing a Pilot Program that permits a greater number of qualifying PGW industrial and commercial customers to subscribe to interruptible gas transportation service in accordance with reasonable terms and conditions. The Pilot Program would be in place until PGW's restructuring goes into effect. In consideration of the PUC's adoption of this Stipulation in the manner set forth below, PICGUG withdraws the positions it took before the ALJ and the

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PUC with respect to PGW's gas transportation rules and regulations, as well as PGW's revenue requirement. This Stipulation does not affect PICGUG's position on allocation among classes of any authorized rate increase. This Settlement Stipulation ("Stipulation") represents a comprehensive resolution of the gas transportation issues raised by PICGUG in the above-captioned proceeding. The signatories to this Stipulation aver that the Stipulation is in the public interest and, therefore, request that the PUC: (1) approve the Stipulation without modification; and (2) adopt an order authorizing PGW to make the tariff and rule changes set forth in the enclosed Attachment "A."

1. The signatories to this Stipulation, intending to be legally bound and for due consideration given, agree to terms and conditions set forth in Attachment A hereto, which is hereby incorporated herein.

2. This Stipulation will go into effect upon the PUC's entry of a final order approving the Stipulation, in full and without modification. If the PUC rejects the Stipulation, it automatically will terminate and be null and void with the exception of paragraph 3 below, which will continue in full force and effect. The Stipulation also shall automatically become null and void (except for paragraph 3, below) if the PUC, in approving the Stipulation, modifies any of its terms or conditions or adds any conditions, unless it is subsequently accepted by the aggrieved signatory party, or parties, as so modified. If the PUC approves the Stipulation in full and without modification, the Stipulation:

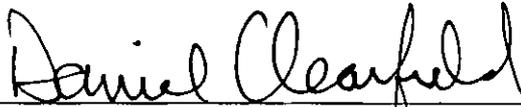
- a) shall be deemed to resolve with prejudice all issues raised by PICGUG related to gas transportation rules, rates, terms and conditions raised in the above-captioned proceeding; and
- b) shall be implemented and shall be enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the PUC's approval, unless such implementation and enforcement of the Stipulation is stayed or enjoined by the PUC, another regulatory agency, or a court having competent jurisdiction over the matter.

3. This Stipulation is made without admission against or prejudice to any factual or legal positions which any of the signatories hereto may assert in subsequent litigation in the event that the PUC does not issue a final Order approving this Stipulation in full and without modification. If the PUC does not adopt this Stipulation in accordance with the terms set forth herein, all parties reserve their full right to argue that the PUC is without the legal authority to order the implementation of all or part of the terms and conditions set forth in Attachment "A" and no party shall be deemed to have waived or be estopped from asserting such a position before the PUC or before any court.

4. This Stipulation may be executed in counterparts, all of which shall constitute one agreement binding on all signatories, and shall have the same force and effect as an original

instrument, notwithstanding that the signatories may not be signatories to the same original or the same counterpart.

Respectfully submitted,



Daniel Clearfield, Esq.  
WOLF, BLOCK, SCHORR AND SOLIS-COHEN LLP  
212 Locust Street, Suite 300  
Harrisburg, PA 17101  
(717) 237-7173  
Counsel to Philadelphia Gas Works



David M. Kleppinger, Esq.  
Charis M. Burak, Esq.  
McNEES, WALLACE & NURICK  
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Counsel to Philadelphia Industrial and Commercial Gas  
Users Group

Dated: September 20, 2001

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# ATTACHMENT A

R-00006042

## Term Sheet For PGW-PICGUG Settlement of Permanent Base Rate Case - 9/20/01

1. Transportation.

(1) PGW will modify its tariff to institute the following Pilot Program (with a beginning target date of December 1, 2001) so as to permit any current customer's\* individual meter to take interruptible transportation service if:

- a) That customer is taking (or would be eligible to take if it is a new customer) service pursuant to PGW's BPS, LBS or Cogeneration tariff rate schedules;
  - b) Agrees to have installed and maintained, at the customer's expense, special daily metering equipment in accordance with agreed to specs. and rules; and
  - c) uses no less than 15,000 Dth/yr per customer.
- (2) a) A Customer that cannot otherwise meet the above requirements can meet an alternate minimum volume requirement by pooling no more than ten (10) individual customers into a buyer group of meters so long as the total annual throughput from the pooled customers equals or exceeds 15,000 Dth/yr.
- b) PGW, at its sole discretion, may also include in the Pilot, a token number of GS customers (i.e., no more than 1), which also has at least one interruptible account, in order to gain experience providing transportation service to this type of load, so long as the GS customer has operational

---

\* Definition: Customer – as defined in this document, is an account or "separately metered process" or any group of accounts or "separately metered processes", owned by a single legal entity. A "meter" is a separately metered process including parallel meter sets.

## Term Sheet For PGW-PICGUG Settlement of Permanent Base Rate Case - 9/20/01

characteristics that substantially satisfy paragraph 1 above and is capable of complying with all rules otherwise applicable to Pilot customers.

- (3) Cap on number of transportation service customers:
  - a) Total number of new transportation customer meters shall be limited to 100 for the first year of Pilot, added on a “first come-first serve” basis (with the selection process determined on a basis mutually acceptable to PGW and PICGUG).
  - b) Second group of an additional 100 meters that meet the above requirements added (Phase 2) starting 1 year after transportation for first group starts; the entire Pilot terminates when PGW unbundled tariffs go into effect pursuant to its restructuring case.
  - c) PGW reserves the right to escalate the date of Phase 2, increase the number of customer meters or add other phases at their discretion.

(4) PGW reserves right to terminate phase 2, or to modify or close the Pilot Program completely if in its view such is threatening PGW's ability to provide adequate service to Pilot customers or its remaining customer base. All Pilot customers at the time that the Pilot is modified or closed will have the right to remain Pilot customers.

2. Pooling. All customers who meet the above requirements may source their gas from pools. A single customer can be a pool.

3. Balancing. PGW's current transportation service tolerances, surcharges, and cash out methodologies shall apply to Pilot service. PGW, PICGUG and interested parties shall immediately initiate a collaborative to attempt to reach consensus on revised banking and balancing provisions for the Pilot. Any proposed revisions arrived at by the collaborative or which PGW wishes to propose shall be presented to the PUC as proposed tariff revisions and

## **Term Sheet For PGW-PICGUG Settlement of Permanent Base Rate Case - 9/20/01**

will be subject to PUC approval subject to appropriate notice and an opportunity to be heard for interested parties. .

4. OFOs. PGW may declare an Operational Flow Order(s) ("OFO") at any time whenever the Company believes that the operation of its distribution system may be jeopardized including, without limitation, the need to protect daily and seasonal supply of firm customers. Additional and more specific OFO rules will be determined in the collaborative process. Until the PUC approves any additional OFO provisions, no enhanced penalties will be applicable.

5. Intra day Nominations. (I.N.) Intra day nominations will be permitted where the nomination otherwise meets all pipeline conditions. PGW may decline the nomination for a specific operational reason, where granting I.N. would threaten the reliability of firm supply. In any instance in which an I.N. is declined, PGW shall provide the customer or supplier a explanation for the denial upon request.

6. Bulletin Board. PGW will expedite its planned development and implementation of an interactive bulletin board system to handle nominations, scheduling and upstream PGW capacity information. PGW will use best efforts to make the bulletin board system available for the second phase of the Pilot Program. In the interim, PGW will make available daily usage information via e-mail, fax or comparable method at a fee that would reflect PGW's incremental cost of complying, maintaining and disseminating the information.

7. Unaccounted For Gas. The percentage charged for unaccounted for gas (UAF) will be the level utilized in arriving at PGW's currently effective GCR factor. Any party may petition to PUC, in PGW's GCR proceeding or separately, to revise the UAF so that it is customer class specific, so long as the revisions are revenue neutral to PGW.

8. Transportation Rates. PGW will establish maximum transportation rates based upon the applicable margin in the interruptible sales rate schedule that customers eligible for

## **Term Sheet For PGW-PICGUG Settlement of Permanent Base Rate Case - 9/20/01**

transportation presently are utilizing, or for which a new customer would qualify if that customer were going to subscribe to interruptible sales service. Max transportation rates shall be subject to negotiation for Pilot customers to the same extent as PGW's current interruptible transportation rates. An individual customer's transportation rate shall reflect all pre-existing agreements or requirements.

### 9. Tariff.

- a) Details of PGW's transportation rules, rates, pooling operation requirements, balancing rules, other conditions for transporting gas, time frames of sign on, PGW OFO procedure and penalty levels, etc., will be set forth in its Tariff. The parties will attempt to negotiate transportation tariff provisions that would be applicable to the Pilot Program within thirty (30) days of execution of the settlement. Any party shall have the right to raise unresolved Pilot supplier tariff issues with the PUC for resolution.
- b) PGW will initiate customer meetings prior to the effective date of PGW's restructuring filing, to discuss revisions to the tariff as part of restructuring.

10. PGW reserves the right to withdraw from the Settlement if, in PGW's sole discretion, and after consultation with PICGUG, it determines that the overall rate relief awarded by the PUC is so insufficient to provide it with the resources to implement the Pilot Program. PGW shall provide supporting documentation to PICGUG if it makes such a determination.

**CERTIFICATE OF SERVICE**

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

**VIA E-MAIL, HAND DELIVERY AND/OR FIRST CLASS MAIL**

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Daniel Clearfield, Esquire

Dated: September 20, 2001

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**Philadelphia Gas Works**

Craig White  
Senior Vice President  
Marketing and Supply Services



800 W. Montgomery Avenue, Philadelphia, PA 19122  
Telephone: 215-684-6746  
Fax: 215-787-1213  
E-mail: cwhite@pgworks.com

October 12, 2001

James McNulty, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg, 2nd Floor  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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RE: Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042 et al.

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works ("PGW") attached hereto are the following items in compliance with the Pennsylvania Public Utility Commission's ("PUC") Opinion and Order entered October 4, 2001, in the above matter:

1. A schedule setting forth the calculation of PGW's Proof of Revenue for its Base Rates, increased in compliance with the October 4<sup>th</sup> Order. The rates reflect required adjustments to PGW's original filing, and are based on the Office of Trial Staff's calculations regarding the number and average use of PGW's residential and commercial heating customers with one revision for a mathematical calculation discrepancy. The Attachment A explains this necessary revision.

2. Proposed revised tariff pages, to be effective on one day's notice, setting forth the revised customer and commodity charges under Rate GS of PGW's Tariff. The revisions further include the addition of a new section, at section 2.3, allowing for stipulated negotiated rates and terms of service contracts with certain customers, and clarifications to the terms of Rates BPS-S and BPS-L.

59

Please contact me if you have any additional comments or questions.

Sincerely,



Craig White  
Chief Operating Officer  
For: Philadelphia Gas Works

cc: All Parties of Record w/enc.

Karen Moury, Esq. Law Bureau w/enc.

Robert Rosenthal, Director, Fixed Utility Services w/enc.

Daniel Clearfield, Esq.

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**PHILADELPHIA GAS WORKS**  
**DOCKET R-00006042**  
**PROOF OF REVENUE**

This schedule shows:

- The rates in the current tariff excluding the effect of the interim rates (columns E1 and F1) and the revenue produced by these rates (columns G1, H1 and I1);
- The rates in the accompanying tariff (columns E2 and F2) and the revenue produced by these rates (columns G1, H1 and I1);
- *Increase in revenue of \$39,065,094 produced by the rates in the accompanying tariff over the rates in the current tariff (columns G, H and I); this increase represents an increase of \$39,067,000 stated in the Order less a small rounding difference.*

The rates in the accompanying tariff include:

- Monthly Customer Charge (column E2): Residential - 12/month; Commercial - \$18/month; Industrial- \$50/month; All other classes- same as current tariff.
- Base Rate (column F2): All classes other than Residential- same as current tariff; Residential- \$6.9119/mcf, the amount needed for the increase in total revenue of \$39,067,000.

1 Philadelphia Gas Works  
 2 Docket R-00006042  
 3 Proof of Revenue Schedule 1

					Current Tariff				
				Monthly	Customer		Base Rate		Total
Number of	Number of	Annual	Dis-	Customer	Base Rate	Charge	Base Rate	Revenue	Revenue
Customers	Annual	Sales (mcf)	count	Charge	(per mcf)	Revenue	Revenue		
A	B=A*12	C	D	E1	F1	G1=B*E1	H1=C*F1		I1=G1+H1
						Less	Less		
						discount	discount		
<b>7 Non-Heating:</b>									
8 Residential	58,693	704,310	1,932,718	-	\$ 8.00	\$ 6.6130	5,634,480	12,781,064	18,415,544
9 Residential-Senior	6,956	83,466	182,395	20%	\$ 8.00	\$ 6.6130	534,182	964,943	1,499,125
10 CRP	2,230	26,757	184,455	-	\$ 8.00	\$ 6.6130	214,056	1,219,801	1,433,857
11 CRP-Senior	102	1,224	9,446	20%	\$ 8.00	\$ 6.6130	7,834	49,973	57,807
12 Commercial	5,822	69,866	1,886,320	-	\$ 10.00	\$ 7.1200	698,660	13,430,598	14,129,258
13 Commercial-Senior	1	12	43	20%	\$ 10.00	\$ 7.1200	96	245	341
14 Industrial	388	4,656	548,742	-	\$ 20.00	\$ 7.1200	93,120	3,907,043	4,000,163
15 Municipal/MS	343	4,116	228,441	-	\$ -	\$ 6.4130	0	1,464,992	1,464,992
16 Municipal/GS	9	108	417	-	\$ 10.00	\$ 7.1200	1,080	2,969	4,049
17 PHA	8	96	36,655	-	\$ -	\$ 7.1260	0	261,204	261,204
18 Total Non-Heating Firm	74,551	894,611	5,009,632				7,183,508	34,082,832	41,266,340
<b>20 Heating:</b>									
21 Residential	295,698	3,548,375	28,446,137	-	\$ 8.00	\$ 6.6130	28,387,000	188,114,304	216,501,304
22 Residential-Senior	78,264	939,164	7,607,347	20%	\$ 8.00	\$ 6.6130	6,010,650	40,245,909	46,256,558
23 CRP	44,189	530,262	5,992,589	-	\$ 8.00	\$ 6.6130	4,242,096	39,628,991	43,871,087
24 CRP-Senior	5,478	65,734	849,487	20%	\$ 8.00	\$ 6.6130	420,698	4,494,126	4,914,824
25 Commercial	19,087	229,041	9,113,613	-	\$ 10.00	\$ 7.1200	2,290,410	64,888,925	67,179,335
26 Commercial-Senior	25	300	6,141	20%	\$ 10.00	\$ 7.1200	2,400	34,979	37,379
27 Industrial	785	9,424	930,507	-	\$ 20.00	\$ 7.1200	188,480	6,625,210	6,813,690
28 Municipal/MS	549	6,588	1,056,589	-	\$ -	\$ 6.4130	0	6,775,905	6,775,905
29 Municipal/GS	3	36	73,992	-	\$ 10.00	\$ 7.1200	360	526,823	527,183
30 PHA Rate 8	470	5,640	134,850	-	\$ -	\$ 7.1260	0	960,941	960,941
31 PHA/GS	4,016	48,189	1,122,137	-	\$ 8.00	\$ 6.6130	385,510	7,420,692	7,806,202
32 Total Heating Firm	448,563	5,382,753	55,333,389				41,927,604	359,716,805	401,644,408
33									
34 Total Heating & Non-Heating	523,114	6,277,364	60,343,021				49,111,112	393,799,636	442,910,748

1 Philadelphia Gas Works  
 2 Docket R-00006042  
 3 Proof of Revenue Schedule 1

	PUC Order					Increase		
	Monthly Customer Charge	Base Rate (per mcf)	Customer Charge Revenue	Base Rate Revenue	Total Revenue	Customer Revenue	Base Rate Revenue	Total Revenue
	E2	F2	G2=B*E2 Less discount	H2=C*F2 Less discount	I2=G2+H2	G=G1-G2	H=H1-H2	I=G+H
7 Non-Heating:								
8 Residential	\$ 12.00	\$ 6.9119	8,451,720	13,358,754	21,810,474	2,817,240	577,689	3,394,929
9 Residential-Senior	\$ 12.00	\$ 6.9119	801,274	1,008,557	1,809,830	267,091	43,614	310,705
10 CRP	\$ 12.00	\$ 6.9119	321,084	1,274,935	1,596,019	107,028	55,134	162,162
11 CRP-Senior	\$ 12.00	\$ 6.9119	11,750	52,232	63,982	3,917	2,259	6,176
12 Commercial	\$ 18.00	\$ 7.1200	1,257,588	13,430,598	14,688,186	558,928	0	558,928
13 Commercial-Senior	\$ 18.00	\$ 7.1200	173	245	418	77	0	77
14 Industrial	\$ 50.00	\$ 7.1200	232,800	3,907,043	4,139,843	139,680	0	139,680
15 Municipal/MS	\$ -	\$ 6.4130	0	1,464,992	1,464,992	0	0	0
16 Municipal/GS	\$ 18.00	\$ 7.1200	1,944	2,969	4,913	864	0	864
17 PHA	\$ -	\$ 7.1260	0	261,204	261,204	0	0	0
18 Total Non-Heating Firm			11,078,333	34,761,528	45,839,861	3,894,825	678,696	4,573,521
19								
20 Heating:								
21 Residential	\$ 12.00	\$ 6.9119	42,580,500	196,616,854	239,197,354	14,193,500	8,502,550	22,696,050
22 Residential-Senior	\$ 12.00	\$ 6.9119	9,015,974	42,064,977	51,080,952	3,005,325	1,819,069	4,824,394
23 CRP	\$ 12.00	\$ 6.9119	6,363,144	41,420,176	47,783,320	2,121,048	1,791,185	3,912,233
24 CRP-Senior	\$ 12.00	\$ 6.9119	631,046	4,697,255	5,328,302	210,349	203,129	413,478
25 Commercial	\$ 18.00	\$ 7.1200	4,122,738	64,888,925	69,011,663	1,832,328	0	1,832,328
26 Commercial-Senior	\$ 18.00	\$ 7.1200	4,320	34,979	39,299	1,920	0	1,920
27 Industrial	\$ 50.00	\$ 7.1200	471,200	6,625,210	7,096,410	282,720	0	282,720
28 Municipal/MS	\$ -	\$ 6.4130	0	6,775,905	6,775,905	0	0	0
29 Municipal/GS	\$ 18.00	\$ 7.1200	648	526,823	527,471	288	0	288
30 PHA Rate 8	\$ -	\$ 7.1260	0	960,941	960,941	0	0	0
31 PHA/GS	\$ 12.00	\$ 6.9119	578,266	7,756,099	8,334,364	192,755	335,407	528,162
32 Total Heating Firm			63,767,836	372,368,145	436,135,981	21,840,233	12,651,340	34,491,573
33								
34 Total Heating & Non-Heating			74,846,169	407,129,672	481,975,842	25,735,058	13,330,036*	39,065,094

\* Adjusted for a necessary mathematical revision as detailed on Attachment A.

**ATTACHMENT A**

<u>Sales (Mcf)</u>	<u>OTS</u>	<u>PGW</u>	<u>Difference PUC v. PGW</u>	<u>Rudden</u>				
					<u>Firm Sales</u>	<u>Senior Disc. Sales</u>	<u>Applicable Sales</u>	
Calendar Year 2000 -- Firm Residential Heating <sup>(1)</sup>	42,293,783	42,293,783	0	N/A				
Calculated Normalized Firm Sales <sup>(5)</sup>	44,069,567	44,025,143	(44,424)	N/A				
Residential Heating Applicable Sales <sup>(6)</sup>	N/A	42,326,300	N/A	42,326,300	Residential	28,446,137	-	28,446,137
					Residential Senior	7,607,347	1,521,469	6,085,878
					CRP	5,992,589	-	5,992,589
					CRP-Senior	849,487	169,898	679,589
					PHA/GS	1,122,137	-	1,122,137
<u>Number of Customers</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(7)</u>				
Calendar Year 2000 -- Average Residential Heating	424,099	427,576	3,477	427,576				
Test Year (Budgeted Customers)	412,910	416,858	3,948	416,858		44,017,697	1,691,367	42,326,330
Difference/Adjustment	11,189	10,718		10,718		Incremental Diff. Base Rate		\$ 0.2989
								<u>\$12,651,340</u>
<u>Average Use Customer</u>					<u>Per Proof of Revenue Base <sup>(8)</sup></u>			
Normalized Sales	44,069,567	44,025,143			Residential Heating			\$ 8,502,550
Customers	424,099	427,576			Residential Heating Senior			\$ 1,819,069
					CRP Heating			\$ 1,791,185
Average Use/Customer	103.91	102.96			CRP-Senior Heating			\$ 203,129
Calculated Normalized Usage -- Firm Sales	44,069,567	44,025,143	(44,424)		PHA/GS Heating			\$ 335,407
								<u>\$12,651,340</u>

**Notes:**

- (1) Sales from three classes of customers: Residential, CRP and Philadelphia Housing Authority. (See OTS Exhibit No. 2, Schedule 5, p.2, & pp 4-7)
- (2) Average customers from only two classes: Residential and CRP. Philadelphia Housing Authority not included. (See OTS Exhibit No. 2, Schedule 2, p.2 & p.4)
- (3) Average customers from three classes: Residential, CRP and Philadelphia Housing Authority. Budgeted numbers used because actual included non-PHAGS customers.
- (4) Average adjustment of 3,477 customers based off September 2000 through December 2000 average customers. Only PHAGS actual breakout data available (See Exhibit 4)
- (5) Difference (44,424 Mcf) due to revision in customer count for PHAGS and its effect on the average base load calculation June, July and August 2000 and average Mcf/DD calculation. (See attached worksheets, Exhibits 1 and 2)
- (6) Arrived at by taking the increased effect on total sales from the change in customer counts (10,718) added back to the test year (budgeted) Applicable Sales. (See attached Exhibit 3).
- (7) Adjustment to Test Year (Proof of Revenue) customer count = 10,718
- (8) See Proof of Revenue

Philadelphia Gas Works  
Weather Normalization Calculation  
Residential Heating Sales  
11/1/00 - 12/31/00

EXHIBIT 1

Months (A)	No. of Customers (B)	Actual Sales Mcf (C)	Base Load Customers Mcf (D=B*BLoad)	Temperature Sensitive Load of Customers Mcf (E=C-D)	Actual Deg. Days (F)	Temperature Sensitive Load Mcf/DD (G=E/F)	PGW Exhibit CW-1 Normal Deg. Days (H)	Normalized Temperature Sensitive Load Mcf/DD (I=G*H)	Normalized Load (Mcf) (J=D+I or C)
Jan-00	416,773	7,173,279	937,739	6,235,540	974	6,402	983	6,293,166	7,230,905
Feb	418,071	8,208,061	940,660	7,267,401	738	9,847	825	8,123,775	9,064,435
Mar	419,064	4,812,965	942,894	3,870,071	456	8,487	657	5,575,959	6,518,853
Apr	422,455	3,255,134	950,524	2,304,610	329	7,005	346	2,423,730	3,374,254
May	425,132	2,070,280	956,547	1,113,733	75	14,850	108	1,603,800	2,560,347
Jun	427,904	2,605,691	962,784	1,642,907	19	86,469	12	1,037,628	2,000,412
Jul	430,075	989,539	967,669	21,870	1	21,870	1	989,539	989,539
Aug	430,761	980,482	969,212	11,270	1	11,270	1	980,482	980,482
Sep	430,761	921,912	969,212	(47,300)	57	(830)	37	921,912	921,912
Oct	423,513	1,778,521	952,904	825,617	197	4,191	249	1,043,559	1,996,463
Nov	422,815	2,994,691	951,334	2,043,357	537	3,805	521	1,982,405	2,933,739
Dec-00	421,864	6,503,228	949,194	5,554,034	1,011	5,494	828	4,549,032	5,498,226
<b>Total</b>	<b>5,089,188</b>	<b>42,293,783</b>	<b>11,450,673</b>	<b>30,843,110</b>	<b>4,395</b>	<b>178,860</b>	<b>4,568</b>	<b>32,633,054</b>	<b>44,069,567</b>

Avg No  
of Customers 424,099

Degree Day Variance (Warmer)/Colder (173)

Average Use per Customer 8.66 Mcf per Month 103.91 Mcf per Year

	Customers	Mcf Sales
July	430,761	989,539
Aug	430,761	980,482
Sept	423,513	921,912
<b>Total</b>	<b>1,285,035</b>	<b>2,891,933</b>

Base Load (Mcf) Per Customer (BL) 2.25

es = Vols from Exh # 2 Schedule #5 (PGW Sales) These Sales have the PHA P-2 sales include in the Residential Sales  
tomers = Residential and CRP customers from schedule 1 and 2 of Exhibit NO. 2. (PGW Customer Counts) The P-2 PHA residentials are not included in the Customer Count of Co

EXHIBIT 2

Philadelphia Gas Works  
Weather Normalization Calculation  
Residential Heating Sales  
11/1/00 - 12/31/00

Months (A)	No. of Customers (B)	Actual Sales Mcf (C)	Base Load Customers Mcf (D=B*BLoad)	Temperature Sensitive Load of Customers Mcf (E=C-D)	Actual Deg. Days (F)	Temperature Sensitive Load Mcf/DD (G=E/F)	PGW Exhibit CW-1 Normal Deg. Days (H)	Normalized Temperature Sensitive Load Mcf/DD (I=G*H)	Normalized Load (Mcf) (J=D+I or C)
Jan-00	420,250	7,173,279	932,955	6,240,324	974	6,407	983	6,293,166	7,226,121
Feb	421,548	8,208,061	935,837	7,272,224	738	9,854	825	8,123,775	9,059,612
Mar	422,541	4,812,965	938,041	3,874,924	456	8,498	657	5,575,959	6,514,000
Apr	425,932	3,255,134	945,569	2,309,565	329	7,020	346	2,423,730	3,369,299
May	428,609	2,070,280	951,512	1,118,768	75	14,917	108	1,603,800	2,555,312
Jun	431,381	2,605,691	957,666	1,648,025	19	86,738	12	1,037,628	1,995,294
Jul	433,552	989,539	962,485	27,054	1	27,054	1		989,539
Aug	434,232	980,482	963,995	16,487	1	16,487	1		980,482
Sep	434,232	921,912	963,995	(42,083)	57	(738)	37		921,912
Oct	427,018	1,778,521	947,980	830,541	197	4,216	249	1,043,559	1,991,539
Nov	426,289	2,994,691	946,362	2,048,329	537	3,814	521	1,982,405	2,928,767
Dec-00	425,331	6,503,228	944,235	5,558,993	1,011	5,499	828	4,549,032	5,493,267
<b>Total</b>	<b>5,130,915</b>	<b>42,293,783</b>	<b>11,390,631</b>	<b>30,903,152</b>	<b>4,365</b>	<b>189,765</b>	<b>4,568</b>	<b>32,633,054</b>	<b>44,025,143</b>

Avg No  
of Customers 427,576

Degree Day Variance (Warmer)/Colder (173)

Average Use per Customer 8.58 Mcf per Month 102.96 Mcf per Year

	Customers	Mcf Sales
July	433,552	989,539
Aug	434,232	980,482
Sept	434,232	921,912
<b>Total</b>	<b>1,302,016</b>	<b>2,891,933</b>

Base Load (Mcf) Per Customer (BL) 2.22

No. of Customers = Residential , CRP and P2 PHA



## Residential Heating Customers

	OTS	PGW	Difference
Jan-00	416,773	420,250	3,477
Feb	418,071	421,548	3,477
Mar	419,064	422,541	3,477
Apr	422,455	425,932	3,477
May	425,132	428,609	3,477
Jun	427,904	431,381	3,477
Jul	430,075	433,552	3,477
Aug	430,761	434,232	3,471
Sep	430,761	434,232	3,471
Oct	423,513	427,018	3,505
Nov	422,815	426,289	3,474
Dec-00	<u>421,864</u>	<u>425,331</u>	<u>3,467</u>
	5,089,188	5,130,915	41,727
	424,099	427,576	3,477

3477 = Sept 2000 thru dec 2000 avg

3948 = 2000-01 rudden run average

471

11,189      (471)      10,718

PHILADELPHIA GAS WORKS

GAS SERVICE TARIFF

**DOCKETED**

OCT 25 2001

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Issued by: Les A. Fyock  
Vice President  
Regulatory Affairs  
PHILADELPHIA GAS WORKS  
800 West Montgomery Avenue  
Philadelphia, PA 19122

NOTICE

This Tariff Supplement Makes Increases and Changes in Existing Rates, Terms and Conditions

LIST OF CHANGES MADE BY THIS TARIFF SUPPLEMENT

**REGULATION 2.3 – OTHER CONTRACTS – (First Revised Page No. 14)**

Added new section for stipulated negotiated rates and terms of service contracts for certain customers.

**GENERAL SERVICE – RATE GS – COMMODITY CHARGE - (First Revised Page No. 83)**

Increased Customer Charge and Commodity Charge for Residential, Municipal, Public Housing Authority, Commercial, and Industrial Customers.

**BOILER AND POWER PLANT SERVICE - SMALL VOLUME – RATE BPS-S – COMMODITY CHARGE (First Revised Page No. 90)**

Clarifies that floor price is one hundred and ten percent of the incremental gas costs.

**BOILER AND POWER PLANT SERVICE - LARGE VOLUME – RATE BPS-L – COMMODITY CHARGE (First Revised Page No. 94)**

Clarifies that floor price is one hundred and ten percent of the incremental gas costs.

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PHILADELPHIA GAS WORKS

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- b. Is a former Customer who has not paid a final bill in full, or
  - c. Is a former Customer whose service was terminated for non-payment shall execute any required payment agreement and submit any required down payment, deposit, and/or supporting documentation.
- c. An in-person application interview may be required for any applicant who:
- 1. Is a former Customer whose service was terminated for unauthorized usage and/or tampering with the meter or other utility equipment, or
  - 2. Is applying for service at a service address at which service was terminated for non-payment within the preceding one hundred twenty (120) days or where the home telephone number supplied by the applicant is the same as the home telephone number for a previously terminated account at the same address.
  - 3. The purpose of the interview shall be to determine whether the applicant is responsible for the unauthorized usage and/or tampering and/or the prior usage at the service address.
- d. Any applicant for service who cannot complete his/her application by telephone or mail and for whom a personal visit to one of PGW's District Offices is a severe hardship due to disability, may request that a PGW customer representative complete the application at the applicant's residence.
- e. Each applicant for service shall designate, in written form to PGW, whether or not the application is for residential service to a tenant-occupied property. If the property is tenant-occupied, a list of tenants shall be submitted by the landlord-customer to PGW on an annual basis. The Company shall have the obligation of informing the landlord-customer that an updated list of tenants is due.

## 2.2 STANDARD SERVICE CONTRACT

Any application for gas service, upon acceptance by the Company, constitutes a contract between the Company and the Customer.

## 2.3 OTHER CONTRACTS

(N)

Contracts stipulating negotiated non-scheduled rates and/or terms of service may also be entered into between the Company and the Customer when the Company, in its sole discretion, deems such offerings to be economically advantageous to the Company. (N)

## 2.4 RIGHT TO REJECT

- a. PGW may limit the amount and character of gas service it shall supply or may reject requests for initial or increased service if this is necessary to protect the supply of service to any Customer.
- b. PGW may reject requests for service for good and sufficient reason in accordance with the policies and regulations of the Commission.

(N) – New

**GENERAL SERVICE - RATE GS**

Rate: Applicable to all gas consumed on or after October 13, 2001  
Air Conditioning Provision: Effective July 14, 2000  
Compressed Natural Gas Provision: Effective July 14, 2000

(C)

**AVAILABILITY**

Available for any purpose where the Company's distribution mains adjacent to the proposed gas service location are, or can economically be made, suitable to supply the quantities of gas required. Gas service is also available under this rate for comfort cooling and/or pilot usage for buildings served under seasonal rates, during those periods of the year when gas service is not ordinarily available under such seasonal rates.

**RATES**

**CUSTOMER CHARGE:** Per Meter (except parallel meters)

\$ 12.00	per month for Residential and Public Housing Authority Customers.	(I), (C)
\$ 18.00	per month for Commercial and Municipal Customers	(I), (C)
\$ 50.00	per month for Industrial Customers	(I)

Plus

<b>COMMODITY CHARGE</b>	69.119¢ per 100 cubic feet for Residential and Public Housing Authority Customers	(I), (C)
	71.200¢ per 100 cubic feet for Commercial and Municipal Customers	(C)
	71.200¢ per 100 cubic feet for Industrial Customers	

**SPECIAL PROVISION – AIR CONDITIONING** – For the billing months May through September, the Commodity Charge shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. Provided, however, if one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company exceeds 40.00 cents per 100 cubic feet, then the rate under this provision shall be the lesser of one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company, or the applicable Commodity Charge set forth above. This rate is applicable for directly and indirectly fired gas cooling equipment of minimum cooling capacity of 3 tons, installed on or after September 1, 1990. Where practicable, such equipment must be separately metered and the cost for any additional metering, related equipment and installation shall be subject to Regulation 10 of the Rules and Regulations of this tariff. Where separate metering is impracticable for directly or indirectly fired gas cooling and heating equipment, one meter shall be installed for the heating/cooling equipment and such gas rendered to the Customer through such meter will be charged the full Rate GS for the billing months October through April. Under no circumstances will Customers be permitted to use gas rendered through such meter for any purpose other than cooling or heating.

(I) - Increase; (C) - Change

PHILADELPHIA GAS WORKS

Plus

**COMMODITY CHARGE:**

Commodity Charge: The rate per Mcf shall be calculated by Company within a range computed to be from twenty percent (20%) above to twenty percent (20%) below the numerical average of the high and the low posted reseller tank car price for No.2 oil, at Philadelphia, as posted on the first twelve (12) business days (excluding Saturdays and Sundays) of the calendar month in which the calculation is being made, as published in THE JOURNAL OF COMMERCE, or a successor publication, or where none exists, a publication selected by the Company pending final approval of the Commission, adjusted for Btu equivalence. (One cent per gallon being equivalent to 7.30 cents per Mcf.) Provided, however, in any month when the floor price calculated using the JOURNAL OF COMMERCE posted prices is more than ten percent (10%) higher than the preceding month's floor price, the floor price shall instead be one hundred and ten percent (110%) of the preceding month's floor price. Provided further that the rate per Mcf shall not be set at a level greater than ninety percent (90%) of the General Service Rate (including the Gas Cost Rate) for Commercial and Industrial Customers. In no event, however, shall such rate be less than one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes, as determined by the Company. (C)

The Commodity Charge for Rate BPS-S Customers, as calculated above, will be available by the eighteenth (18th) working day of each month, and will be applicable for the subsequent calendar month, to the extent that service under this rate can be made available.

**SPECIAL PROVISION - AIR CONDITIONING** - For the billing months of May through September, the Commodity Charge shall become the lower of the prevailing month's BPS-S rate or 40.00 cents per 100 cubic feet for all gas used for cooling purposes. Provided, however, if one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company exceeds 40.00 cents per 100 cubic feet, then the rate under this provision shall be one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company. This rate is applicable for directly and indirectly fired gas cooling equipment of minimum cooling capacity of 3 tons, installed on or after September 1, 1990. Where practicable, such equipment must be separately metered and the cost for any additional metering, related equipment and installation shall be subject to Regulation 10 of the Rules and Regulations of this tariff. Where separate metering is impracticable for directly or indirectly fired gas cooling and heating equipment, one meter shall be installed for the heating/cooling equipment and such gas rendered to the Customer through such meter will be charged at Rate BPS-S for the billing months October through April. Under no circumstances will Customers be permitted to use gas rendered through such meter for any purpose other than cooling or heating

**MINIMUM CHARGE:** The monthly Minimum Charge is the Customer Charge set forth above.

Customer Charges will be determined at the commencement of each of the Company's fiscal years based upon Customer's consumption during the previous twelve (12) months or, in the event of new Customers, on annual projected consumption. Charges so established will remain in force for the ensuing twelve (12) months.

(C) - Change

Plus

**COMMODITY CHARGE:**

Commodity Charge: The rate per Mcf shall be calculated by Company within a range computed to be from twenty percent (20%) above to twenty percent (20%) below the numerical average of the high and the low posted reseller tank car price for No.2 oil, at Philadelphia, as posted on the first twelve (12) business days (excluding Saturdays and Sundays) of the calendar month in which the calculation is being made, as published in THE JOURNAL OF COMMERCE, or a successor publication, or where none exists, a publication selected by the Company pending final approval of the Commission, adjusted for Btu equivalence. (One cent per gallon being equivalent to 7.30 cents per Mcf.) Provided, however, in any month when the floor price calculated using the JOURNAL OF COMMERCE posted prices is more than ten percent (10%) higher than the preceding month's floor price, the floor price shall instead be one hundred and ten percent (110%) of the preceding month's floor price. Provided further that the rate per Mcf shall not be set at a level greater than ninety percent (90%) of the General Service Rate (including the Gas Cost Rate) for Commercial and Industrial Customers. In no event, however, shall such rate be less than one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes, as determined by the Company. (C)

The Commodity Charge for Rate BPS-L Customers, as calculated above, will be available by the eighteenth (18th) working day of each month, and will be applicable for the subsequent calendar month, to the extent that service under this rate can be made available.

**SPECIAL PROVISION - AIR CONDITIONING** - For the billing months of May through September, the Commodity Charge shall become the lower of the prevailing month's BPS-L rate or 40.00 cents per 100 cubic feet for all gas used for cooling purposes. Provided, however, if one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company exceeds 40.00 cents per 100 cubic feet, then the rate under this provision shall be one hundred and ten percent (110%) of the incremental gas costs for gas sold under this rate schedule plus an adjustment for all applicable taxes as determined by the Company. This rate is applicable for directly and indirectly fired gas cooling equipment of minimum cooling capacity of 3 tons, installed on or after September 1, 1990. Where practicable, such equipment must be separately metered and the cost for any additional metering, related equipment and installation shall be subject to Regulation 10 of the Rules and Regulations of this tariff. Where separate metering is impracticable for directly or indirectly fired gas cooling and heating equipment, one meter shall be installed for the heating/cooling equipment and such gas rendered to the Customer through such meter will be charged at Rate BPS-L for the billing months October through April. Under no circumstances will Customers be permitted to use gas rendered through such meter for any purpose other than cooling or heating.

**MINIMUM CHARGE:** The monthly Minimum Charge is the Customer Charge set forth above.

Customer Charges will be determined at the commencement of each of the Company's fiscal years based upon Customer's consumption during the previous twelve (12) months or, in the event of new Customers, on annual projected consumption. Charges so established will remain in force for the ensuing twelve (12) months.

(C) - Change

**CERTIFICATE OF SERVICE**

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

**VIA FAX, HAND DELIVERY AND/OR FIRST CLASS MAIL**

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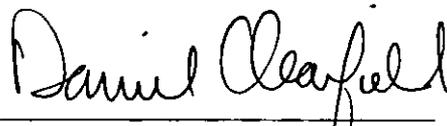
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Dated: October 12, 2001

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October 19, 2001

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

VIA HAND DELIVERY

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

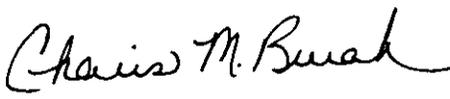
Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Joint Petition for Reconsideration of the Philadelphia Industrial and Commercial Gas Users Group and Philadelphia Gas Works in the above-referenced proceeding.

As reflected in the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes. Thank you for your attention to this matter.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Charis M. Burak

Counsel for the Philadelphia Industrial and  
Commercial Gas Users Group

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Enclosures

CMB/lhe

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

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ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

PHILADELPHIA GAS WORKS

DOCKETED

DOCKET NO. R-00006042

OCT 23 2001

DOCUMENT  
FOLDER

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**JOINT PETITION FOR RECONSIDERATION OF THE  
PHILADELPHIA INDUSTRIAL AND COMMERCIAL GAS USERS GROUP  
AND PHILADELPHIA GAS WORKS**

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TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.572, the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") and Philadelphia Gas Works ("PGW" or "Company") submit this Joint Petition for Reconsideration and respectfully request that the Pennsylvania Public Utility Commission ("PUC" or "Commission") reconsider its Order entered October 4, 2001, in the above-captioned proceeding. In support thereof, PICGUG and PGW state as follows:

**I. INTRODUCTION**

1. On January 5, 2001, PGW filed Supplement No. 7 to Tariff Gas – Pa. PUC No. 1 ("Supplement No. 7") with the PUC. Supplement No. 7 proposed to implement a \$65 million base rate increase consisting of a flat increase to the Company's customer charge and volumetric increase to customer rates.

2. On February 2, 2001, PICGUG filed a Complaint in this proceeding. PICGUG is an ad hoc association of energy-intensive industrial and commercial customers receiving service from PGW under various rate schedules.

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3. During the course of this proceeding, PICGUG raised issues related to PGW's transportation rules and regulations. Specifically, PICGUG requested that the PUC modify and enhance PGW's transportation rules and regulations in order to enable large commercial and industrial customers to begin effectively transporting on PGW's system. As part of this proposal, PICGUG requested the following modifications: (1) lowering the Company's volumetric transportation requirement to 5,000 Mcf per year; (2) permitting transportation customers to aggregate facilities served by multiple accounts and account numbers for purposes of qualifying for transportation service; (3) expanding PGW's Buyers Group to allow for an inclusion of a minimum of two individual customers and a maximum of at least ten individual customers; (4) allowing transportation customers to make intra-day nominations if their upstream pipeline suppliers allow such changes to be made, or, in the alternative, require PGW to establish criteria to be utilized by a transportation customer to determine whether an intra-day nomination will be granted by PGW; (5) requiring PGW to provide daily balancing information to transportation customers on a seven day a week, twenty-four hour a day basis; and (6) requiring PGW to provide lost and unaccounted for gas percentage information.

4. During the litigated phase of this proceeding, PGW opposed implementation of PICGUG's proposed enhancements and modifications. Despite PGW's initial opposition, PICGUG and PGW engaged in discussions in an attempt to resolve these issues prior to completion of the litigation. Because of the substantial amount of issues to be addressed during the course of these discussions, settlement was not reached between PICGUG and PGW until after Exceptions and Reply Exceptions were filed.

5. As a result of these intensive discussions, PICGUG and PGW were able to reach settlement with respect to the aforementioned transportation service issues. Specifically, on

September 20, 2001, PGW and PICGUG filed a proposed "Settlement Stipulation" with the PUC addressing various natural gas transportation rules and regulations issues raised in this proceeding. Pursuant to this Stipulation, PGW agreed to implement numerous changes to the Company's transportation regulations, including a Pilot Program that would allow a large number of large volume customers to avail themselves of PGW's transportation service.<sup>1</sup> Specifically, this Pilot Program would provide PGW significant experience prior to the Company's forthcoming restructuring proceeding.

6. On September 21, 2001, the PUC held a public meeting to address PGW's base rate filing, with the results of this meeting set forth in an Order entered on October 4, 2001. According to the PUC Order, the Commission received PGW and PICGUG's proposed Settlement Stipulation, which included indications by the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") that these parties did not object to the proposed Settlement Stipulation. The Consumer Education and Protective Association, et al. ("CEPA") and the Office of Trial Staff ("OTS"), however, had not commented on the Stipulation. According to the PUC, while the Commission encourages the settlement of contested issues,

the process is designed to afford all Parties the opportunity to file timely comments. The proposed Settlement Stipulation was submitted to us on the eve of the Public Meeting on which we were to consider the ALJ's Recommendation Decision herein. Accordingly, all Parties were not afforded the opportunity to file timely comments to it. Therefore, we reject the proposed Settlement Stipulation.

October 4 Order, pp. 92-93.

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<sup>1</sup> As indicated in the Settlement Stipulation, PGW's ability to implement the Settlement would depend upon the Company's financial resources. As such, PGW's support of this Joint Petition for Reconsideration and ability to implement the Settlement Stipulation, if approved by the PUC, is similarly conditioned upon the Company having the financial wherewithal to implement these enhancements and modifications as set forth in the Stipulation.

7. Based upon the aforementioned statement by the PUC, rejection of the proposed Settlement Stipulation was not based upon any substantive findings, but rather, was denied due to the lack of comments by CEPA and OTS regarding the Stipulation.

## **II. LEGAL STANDARDS**

8. The Commission enumerated its standard for reconsidering orders in Duick v. Pennsylvania, 56 Pa. PUC 553, 559 (1982). In part, the Commission stated that "[a] petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matter designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part," and that the Commission "expect[s] to see raised in such petitions ... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Id.

## **III. BASIS FOR RECONSIDERATION**

9. PICGUG and PGW submit that the Commission should exercise its discretion in order to amend its October 4 Order in order to allow for the adoption of the proposed Settlement Stipulation between PGW and PICGUG because since the filing of the Stipulation, the OTS and CEPA have had adequate opportunity to review and comment upon the Stipulation.

10. As indicated in the PUC Order, neither CEPA or OTS had commented on the proposed Settlement Stipulation, which was filed on September 20, 2001. Because the PUC ruled on the Stipulation on September 21, 2001, the parties' ability to review the proposed Settlement was limited, although both the OCA and OSBA were able to express their non-objection during this short time. Since that time, however, CEPA and OTS have had adequate opportunity to review and comment on the proposed Settlement Stipulation. Specifically, since the PUC's decision on September 20, 2001, both CEPA and the OTS have had approximately one month in order to

review the proposed Settlement Stipulation. Accordingly, this time should have provided both parties adequate opportunity to review and object to any concerns regarding the Stipulation. In addition, upon the filing of this Joint Petition for Reconsideration, CEPA and OTS will have opportunity to comment on PICGUG and PGW's request by responding to this Joint Petition. Moreover, in order to alleviate any concerns of CEPA and OTS, if the PUC approves the Settlement Stipulation, PICGUG and PGW would be willing to discuss the details surrounding implementation of the Stipulation with all parties, including CEPA and the OTS, in order to provide a forum for the parties to raise any concerns or questions prior to implementation of the Settlement.

11. Because neither CEPA nor OTS have provided any objections regarding the Stipulation, the PUC should utilize its discretion in order to examine the substantive provisions of the Settlement Stipulation and not present a barrier to parties resolving their differences amicably. The Stipulation is demonstrably in the public interest and provides PGW the opportunity to increase its familiarity and experience with transporting natural gas for customers in order to facilitate its unbundling obligations at restructuring. For this, and other reasons, this Stipulation provides benefit to all parties and customers involved in this proceeding. Thus, the Stipulation should be approved on both a substantive and procedural basis.

III. CONCLUSION

WHEREFORE, the Philadelphia Industrial and Commercial Gas Users Group and Philadelphia Gas Works respectfully request that the Pennsylvania Public Utility Commission reconsider its Order entered October 4, 2001, in this proceeding in order to approve and adopt the Settlement Stipulation filed by PGW and PICGUG modifying the natural gas transportation rules and regulations on the Company's system.

Respectfully submitted,

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Dated: October 19, 2001

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**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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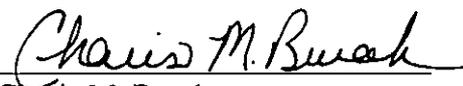
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Dated this 19<sup>th</sup> day of October, 2001, in Harrisburg, Pennsylvania.