

January 21, 2002

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd 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 9 copies of the Exceptions of CEPA et al. to the Compliance Filing which the Philadelphia Gas Works made on January 7, 2002 associated with the Commission's December 6, 2001 Order in this case.

As evidenced by the Certificates of Service attached to these filings, all parties to the proceeding are being served with copies of these documents.

Very truly yours,

Philip A. Bertocci

PHILIP A. BERTOCCI

Attorney for CEPA et al.

cc: Certificate of Service

Enclosures

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JAN 21 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**EXCEPTIONS OF CEPA *et al.*
TO PGW's JANUARY 7, 2002 COMPLIANCE FILING**

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 Exceptions pursuant to 52 Pa.Code §5.592 to the Philadelphia Gas Works' (hereinafter "PGW") January 7, 2002 Compliance Filing associated with the Commission's December 6, 2001 Order in the above-captioned matter.

I. Background.

On January 7, 2002, PGW made a filing purporting to be in compliance with the Commission's December 6, 2001 Opinion and Order (hereinafter "December 6 Order") addressing PGW's Petition for Rehearing and Reconsideration of the Commission's October 4, 2001 Order (hereinafter "October 4 Order") and the Commission's October 12, 2001 Tentative Order (hereinafter "October 12 Order") in this permanent base rate case.

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The October 4 Order had authorized a base rate increase of \$39.1 million on an annualized basis. The October 12 Order, issued sua sponte, made certain corrections to the October 4 Order, and had the effect of reducing the permanent rate increase to be authorized from \$39.1 million to \$33.6 million.¹ On the same day as the issuance of the October 12 Order, PGW made a “Compliance Filing” purporting to implement the October 4 Order, effective October 13, 2001. By that filing, PGW imposed upon customers a rate increase of \$39.1 million on an annualized basis.

On December 6, 2001, the Commission issued its December 6 Order in which in pertinent part, it disposed of PGW’s claims concerning the October 4 and October 12 Orders, and affirmed its October 12 Order authorizing a base rate increase of \$33.6 million. In that December Order, the Commission instructed PGW to make a Compliance Filing within thirty days, and further instructed that PGW should “not implement rates designed to recover the total allowable annual revenues until it has filed, and received Commission approval of, the rates filed in compliance with this Order and Order.” December 6 Order, ¶11, at 38.

In the letter accompanying its January 7, 2002 Compliance Filing, PGW states:

- (a) That the \$33.6 million rate increase should be implemented “prospectively” from that effective date, presumably in March 2002, yet to be determined by the Commission;
- (b) That although the new \$18 monthly customer charge for Rate MS is included in the proposed Tariff Supplement, PGW intends not to charge or implement the new customer charge for Rate MS until such time as this increase is approved by Philadelphia City

¹ In these Exceptions, references to \$39.1 million and \$33.6 million include the \$11 million Interim Base Rate Increase authorized by the Commission’s Order of February 22, 2001 in Pa. PUC v. PGW, R-00005654. Without inclusion of this \$11 million increase, the amounts at issue would be \$28.1 million and \$22.6 million as reflected in the Commission Orders of October 4, October 12 and December 6.

Council;²

(c) That the base rates implemented in the October 12, 2001 Compliance Filing would result in an overcollection of approximately \$226,910 between October 13, 2001 and March 2002 due to PGW's failure to base its calculations on the Commission endorsed calculations of the Office of Trial Staff regarding the number and average use of PGW's residential customers.

II. Exceptions.

1. The Compliance Filing Provides for a Base Rate Increase of Substantially More than the \$33.6 Million Increase from October 6, 2001 Authorized by the December 6 Order.

In its December 6 Order, the Commission confirmed the Commission's earlier October 12 determination that the October 4 Order had improperly overstated the amount of the allowable base rate increase by \$5.5 million.³ Thus, the Commission ordered that "the Opinion and Order entered October 4, 2001, is hereby adopted as modified by the Tentative Order entered October 2001...." December 6 Order, ¶ 1, at 36. The intent to grant a \$33.6 million base rate increase effective October 6 is confirmed by Ordering Paragraph 9, which states that PGW shall "file within thirty (30) days of the date of entry of this Opinion and Order, a Tariff Supplement designed to produce an increase in total allowable annual revenues in the amount of \$22,558,000 effective upon one day's notice for service on and after October 6, 2001."(emphases added). December 6 Order, ¶9 at 37. Consistent with these determinations, the Commission concluded that the October

² In addition, the proposed Tariff Supplement regarding the MS Rate states: "The rate change was ordered by the Commission in its December 6, 2001 Order at Docket No. R-00006042, et al. By law, the rate change is subject to approval by the City Council for the City of Philadelphia and the rate change will not be charged or implemented until such time as City Council approval is received."

³ \$39.1 million - \$33.6 million = \$5.5 million.

12 Compliance Filing was not in compliance with the October 4 Order as amended by the Commission. As the Commission stated:

the Compliance Filing of Philadelphia Gas Works filed on October 12, 2001 to the Order entered October 4, 2001, is hereby found to be not in compliance with the Opinion and Order entered October 4, 2001, as modified by the Tentative Opinion and Order entered October 12, 2001, relative to the total allowable annual revenues and the rates designed to recover those revenues.

December 6 Order, ¶3 at 36.

Notwithstanding this December 6 Order, PGW maintains that it may implement the \$33.6 million increase “prospectively” in March, 2002 and makes no provision for returning to customers through rate adjustment, refund or any other mechanism the sums, estimated to be at least \$3.7 million, to be collected from customers between October 13, 2001 and the time when the January 7, 2002 Compliance Filing, as revised by Commission Order, will become effective.

This contention is incorrect. The Commission may amend a rate order sua sponte, so long as there has been notice and opportunity to be heard. See 66 Pa.C.S. §703(g); Scott Paper v. Pa. P.U.C., 558 A.2d 914 (Pa.Cmwlth. 1989); Tranter v. Pa. P.U.C., 288 A.2d 837 (Pa.Cmwlth. 1972). Such an amendment may relate back to the date of the original Order, where as here, the amendment occurs only a few days after the issuance of that original Order, on the same day or before the filing of a Compliance Filing based on the original Order, and before the effective date of that Compliance Filing.

Moreover, PGW may not be heard to argue that the implementation of its October 12 Compliance Filing on October 13, 2001 insulates the October 4 Order from Commission amendment, except on a prospective basis after notice and hearing. The

October 12, 2001 Compliance Filing received no affirmative approval or acceptance prior to implementation the next day. Section 5.592 of the Administrative Code states that “[n]o rates contained in a tariff revision filed in compliance with a Commission order may be imposed prior to entry of a subsequent order by the Commission approving the compliance filing.” 52 Pa.Code §5.592(d). The October 4 Order also provided that the Compliance Filing was subject to “acceptance and approval” of the Commission. October 4 Order, ¶¶ 6, 27, at 107, 108, 111. At most, the Commission posed no objection to the Compliance Filing taking effect. Because there was no affirmative acceptance or approval of the Compliance Filing, the Commission may not be barred or estopped from requiring rates arising from the amended Order to be applicable from the date of the original Order.

To allow a Compliance Filing effective on one day’s notice to bar the implementation of an amended rate Order from the date of the original Order is also contrary to public policy. Such allowance would further encourage the type of precipitous and self-serving Compliance Filing which occurred here, rather than careful and deliberate efforts on the part of utilities to file Supplemental Tariffs which fully capture the Commission’s intent. It is additionally to be noted that the October 4 Order, unlike many Commission rate orders, did not specifically provide that a Compliance Filing based upon the October 4 Order could become effective on one day’s notice. If PGW had used the full thirty days provided for making its October 12 Compliance Filing, as it did in connection with the instant Compliance Filing, customers would not have had to suffer the imposition of the unwarranted charges associated with the \$5.5 million miscalculation in the October 4 Order.

For these reasons, CEPA et al. request that the Commission order PGW to provide for immediate refund to customers of amounts charged to customers since October 13,

2001 to the extent that customers were billed at a rate greater than that sufficient to provide \$33.6 million in additional base rate revenues on an annualized basis.

2. The Tariff Provision Concerning the Inapplicability of the Municipal or MS Customer Charge is Contrary to Law.

The proposed Tariff Supplement regarding the Municipal or MS Rate provides for a monthly customer charge of \$18 and otherwise retains the existing volumetric base rate of 64.13 cents per ccf, the same volumetric rate which existed prior to the Interim Base Rate Filing and the current Permanent Base Rate Filing. At the same time, the Tariff Supplement states with reference to the \$18 customer charge that “The rate change was ordered by the Commission in its December 6, 2001 Order at Docket No. R-00006042, et al. By law, the rate change is subject to approval by the City Council of the City of Philadelphia and the rate change will not be charged or implemented until such time as City Council approval is received.” This statement of non-compliance is without legal justification.

In their appeals of the December 6 Order to the Commonwealth Court, the City and PGW both take the position that the Commission does not have the authority to require PGW to alter the MS rate without approval of the City Council of the City of Philadelphia. Neither PGW nor its owner, the City of Philadelphia, has obtained a supersedeas with respect to the December 6 Order. Absent such a supersedeas, the statement of non-compliance contained in PGW’s proposed Supplemental Tariff is contrary to law, to the extent that it states that the City will not be charged a rate contained in a legally enacted Tariff.

Moreover, the Gas Choice Act confers broad powers upon the Commission to regulate and control PGW “with the same force as if the service were rendered by a

public utility.” 66 Pa.C.S. §2212(b). While Section 2212 (s) of the Gas Choice Act preserves certain “executive and legislative powers” to the City with regard to PGW, the authority to set rates, particularly MS and PHA rates, is not among those specifically designated powers.

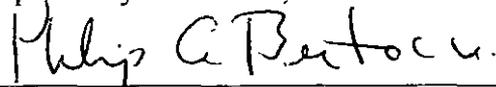
The position taken by the City and by PGW on this subject underscores once more the City’s settled intention to saddle all the financial burdens of PGW’s refurbishment on ratepayers, and to avoid even paying its fair share in rates for natural gas services provided by PGW to the City.

For these reasons, CEPA et al. request that the Commission require PGW to strike the statement of non-compliance.

III. Conclusion.

For all the foregoing reasons, CEPA et al. request that the Commission grant their Exceptions and require that PGW: (1) refund immediately to customers amounts paid in excess of what would be required if PGW had implemented a \$33.6 million rate increase as of October 6, 2001; (2) strike PGW’s statement of non-compliance from its proposed Supplemental Tariff for Rate MS; (3) grant such other relief as is just and proper.

Respectfully submitted,



PHILIP A. BERTOCCI, ESQUIRE
EDWARD A. MCCOOL, ESQUIRE
Attorneys for CEPA et al.

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

January 21, 2002

R-00006042

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Exceptions of CEPA et al. to PGW's January 7, 2002 Compliance Filing upon the participants listed below in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a participant).

Via First Class U.S. Mail, Postage Prepaid

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Tanya Mc Closkey, Esquire
Stephen Keene, Esquire
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PA Public Utility Commission
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Philip A. Bertocci
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Date: January 22, 2002
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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

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IN REPLY PLEASE
REFER TO OUR FILE

January 22, 2002

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

Re: Pennsylvania Public Utility Commission

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

DOCUMENT
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Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the Office of Trial Staff's Comments Regarding the Philadelphia Gas Works' Compliance Filing, in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

JES:em

Enclosure

cc: Parties of Record
Chief Counsel Pankiw
Director Walker-Davis, Office of
Special Assistants
Director Rosenthal, Bureau of
Fixed Utility Services

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

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Docket No. R-00006042, et al.

v.

Philadelphia Gas Works

**DOCUMENT
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**THE OFFICE OF TRIAL STAFF'S
COMMENTS REGARDING
THE PHILADELPHIA GAS WORKS'
COMPLIANCE FILING**

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I. Introduction

On August 7, 2001, Administrative Law Judge Cynthia Williams Fordham issued a Recommended Decision in the above-captioned proceeding. By an Opinion and Order entered October 4, 2001 ("October 4th Order"), the Pennsylvania Public Utility Commission ("Commission") considered and disposed of the Exceptions to the Recommended Decision, and the Philadelphia Gas Works ("PGW") was ordered to file a Tariff supplement ("Compliance Filing I") designed to change rules, regulations and rates calculated to produce \$28,067,000

in additional revenues in addition to the \$11,000,000 interim relief implemented in March 2001.

On October 12, 2001, PGW filed Compliance Filing I based upon its interpretation of the Commission's October 4, 2001, Order which established the approved request for a base rate increase. By coincidence, on October 12, 2001, while PGW was filing Compliance Filing I, the Commission was issuing a Tentative Opinion and Order ("October 12th Order"), proposing to modify the October 4th Order due to an apparent error in the calculation of the bad debts expense. The October 12th Order proposed to reduce the allowable annual revenues to \$22,558,000 over and above the \$11 million interim rate relief and set a period of ten days for the respective parties to file comments, if any, to the Tentative Opinion and Order.¹

During the time period between October 22, 2001 and December 5, 2001, a number of filings were made by the respective parties in this proceeding. For example, the filings included, but were not limited to, PGW's Petition for Reconsideration, PGW and PICGUG's Joint Petition, and the subsequent Answers from the respective parties to each of those documents. In addition, OTS and the Office of Consumer Advocate ("OCA") filed objections to PGW's filed Compliance Filing I, which followed with PGW filing reply comments to the

¹ On October 22, 2001, PGW filed its Comments to the Commission October 12th Order, in which, PGW agreed "that if the PUC intended to adhere to the OTS' recommended ratemaking methodology, the iterative adjustment proposed in the Tentative Order was appropriate." Additionally, in its Comments, PGW maintained "that the Tentative Order contained other computational errors and iterative adjustments which should be also made if the OTS approach is to be adopted."

objections that were raised by OTS and OCA. Since there were numerous outstanding Petitions and Answers filed by the respective parties in this proceeding, and the Commission's October 12th Order, the Commission issued an *Opinion and Order entered December 6, 2001* ("December 6th Order").

The December 6th Order addressed the outstanding issues, including whether PGW's Compliance Filing I filed on October 12, 2001 to the October 4th Order was in compliance, as modified by the October 12th Order, relative to the total allowable annual revenues and the rates designed to recover those revenues. In that regard, the Commission in its December 6th Order determined that PGW's Compliance Filing I was not in compliance with the Commission's October 4th Order, as modified by the October 12th Order. Accordingly, the Commission in its December 6th Order, ordered PGW to file a Tariff Supplement designed to produce an increase in total allowable annual revenues in the amount of \$22,558,000 effective upon one day's notice for service on and after October 6, 2001.

In accordance with the Commission's December 6th Order, on January 7, 2002, PGW filed a Tariff Supplement ("Compliance Filing II") designed to produce an increase of allowable annual revenues in the amount of \$22,558,000 effective upon one day's notice for service on and after October 6, 2001. Upon receiving PGW's Compliance Filing II, OTS took the opportunity to examine the Tariff Supplement for compliance with the Commission's December 6th Order. After reviewing the filing, OTS is of the opinion that PGW's Compliance Filing II did not properly implement the letter nor spirit of the Commission's Order.

II. Specific Comments

A. The Overcollection Calculation Produced By PGW Is Incorrect

In its Compliance Filing II, PGW has calculated that it will have overcollected approximately \$226,910 between October 13, 2001 and March 2002. The time period of October 13, 2001 through March 2002, represents that PGW filed Compliance Filing I on October 12, 2001, and that Filing went into effect on October 13, 2001; however, it is anticipated by PGW that Compliance Filing II will go into effect some time in March 2002. The \$226,910 represents PGW utilizing the incorrect number and average use of its residential heating customers in Compliance Filing I, and the correct calculations being utilized in Compliance Filing II pursuant to the Commission December 6th Order.

On face value, it would appear that PGW has fully complied with the spirit of the Commission's December 6th Order. However, a careful reading of the December 6th Order in ordering paragraph number 9 provides as follows:

That Philadelphia Gas Works shall file, within thirty (30) days of the date of entry of this Opinion and Order, a Tariff Supplement designed to produce an increase in total allowable annual revenues in the amount of \$22,558,000 effective upon one day's notice for service on and after October 6, 2001.

While PGW has filed, in Compliance Filing II, a Tariff Supplement designed to produce an increase in annual revenues in the amount of \$22,558,000, PGW has failed to make any provision to account for the overcollection of revenues since the effective date of Compliance Filing I. In that regard, since October 13, 2001,

pursuant to Compliance Filing I (which the Commission has rejected), PGW has been collecting an increase in annual revenues in the amount of approximately \$28,067,000. Depending on the time period, the Commission selects for calculating the overcollection, from October 2001 through March 2002, PGW would overcollect \$3,779,039, and from December 2001 through March 2002, PGW would overcollect \$3,423,327.² Regardless of the time period selected, PGW should be ordered to refund to its customers an amount in excess of \$3 million in overcollected revenues.

OTS has provided the overcollection calculation for two different periods due to the tentative nature of the Commission's October 12th Order. As previously referenced in these Comments, the October 12th Order was a Tentative Opinion and Order, proposing to modify the October 4th Order due to an apparent error in the calculation of the bad debts expense. While PGW was put on notice that the October 4th Order contained an error, the tentative nature of the October 12th Order was not removed until the issuance of the Commission's December 6th Order. With the issuance of the December 6th Order, it should have been clear to PGW that the Commission was allowing the Company to increase its annual revenues to \$22,558,000. Consequently, the approximately \$28,067,000 that the Company has been collecting since October 13, 2000 is no longer allowed, and any overcollection associated with the \$28,067,000 should be returned to ratepayers. PGW appears to have taken the position that the Company

² The difference in the amounts depending on the time period selected is \$355,712.

is entitled to retain the difference between the \$28,067,000 (collected since October 13, 2001), and the Commission allowed amount of \$22,558,000, which has resulted in at least \$3,423,327 in overcollection from the ratepayers. Simply put, PGW is seeking a “windfall” from the ratepayers, and it is a “windfall” that should be disallowed.

The Commission must order PGW to refund the difference between the \$28,067,000 (collected since October 13, 2001) and the Commission approved amount of \$22,558,000.³ OTS recommends that the refunds be collected through a surcharge so that the refunds can be easily identified, and assure that the refunds will go to PGW’s heating customers, the customers presently paying the higher non-approved rates.

B. Customer Charges for Customer Class MUN/MS

It must be remembered that it was PGW who first introduced in this proceeding a customer charge for MUN/MS customers. While PGW has included a new customer charge for Rate MS in the proof of revenue statements, such an inclusion does not satisfy the Commission’s December 6th Order. In that regard, PGW, in Compliance Filing II, has failed to follow the letter of the December 6th Order by failing to include any tariff language recognizing a customer charge for Rate MS. Consequently, from a legal viewpoint, PGW is

³ OTS has collected the overcollected amounts with a projected date for approval of PGW’s Compliance Filing. Consequently, if the Compliance Filing is not approved by March 2002, the overcollected amounts will increase.

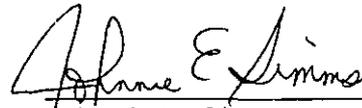
under no obligation to recognize the customer charge in any future calculations of revenues available to the Company.

Accordingly, the Commission should order PGW to provide the appropriate tariff language with its Compliance Filing to legally satisfy the Commission's December 6th Order.

III. Conclusion

WHEREFORE, for the foregoing reasons, Philadelphia Gas Works' Compliance Filing filed on January 7, 2002 should be rejected by the Pennsylvania Public Utility Commission as not being in compliance with its Opinion and Order of December 6 2001 in the above-captioned proceeding.

Respectfully submitted,



Johnnie E. Simms
Senior Prosecutor

The Office of Trial Staff
P.O. Box 3265
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(717) 787-1976

Date: January 22, 2002

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Office of Trial Staff's Comments Regarding the Philadelphia Gas Works' Compliance Filing**, dated January 22, 2002, either personally, by first class mail, express mail, electronic mail, or by fax upon the persons listed below:

Honorable Cynthia W. Fordham
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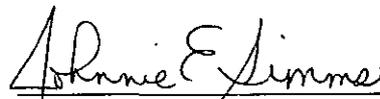
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Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

SECRETARY'S BUREAU

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Dated: January 22, 2001
Docket No. R-00006042, et al.



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Harrisburg, Pennsylvania 17101-1923
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JAN 22 PM 3:49
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E-Mail: paoca@ptd.net

IRWIN A. POPOWSKY
Consumer Advocate

January 22, 2002

ORIGINAL

James J. McNulty, Secretary
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400 North Street
P.O. Box 3265
Harrisburg, PA 17120

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

DOCUMENT
FOLDER

Dear Secretary McNulty:

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

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

Sincerely yours,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosure

cc: All parties of record

67365

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission

v.

R-00006042

Philadelphia Gas Works

OFFICE OF CONSUMER ADVOCATE'S
EXCEPTIONS TO PHILADELPHIA GAS
WORKS' COMPLIANCE FILING

DOCKETED
JAN 24 2002

DOCUMENT
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I. INTRODUCTION

On January 7, 2002, Philadelphia Gas Works ("PGW") submitted a compliance filing ("January 7 Compliance Filing") which is purported to bring PGW's tariff and rates into compliance with the Commission's Order entered December 6, 2001 ("December 6 Order") in the above-captioned matter. The OCA submits the following exceptions to PGW's January 7 Compliance Filing.

II. EXCEPTIONS

Exception No. 1: PGW Should Be Directed To Refund The Amount Reflecting The Difference Between The \$39 Million Rate Increase It Implemented With Its October 12, 2001 Compliance Filing And The \$33.6 Million Rate Increase That The Commission Has Approved In This Case.

On October 4, 2001, the Commission entered an Order permitting PGW to increase its base rates to generate an additional \$39 million of annual revenues¹ ("October 4 Order"). Subsequently, the Commission modified the level of the rate increase in a Tentative Order entered October 12, 2001 ("October 12 Order") that revised the October 4 Order by reducing the level of the annual rate increase from \$39 million to \$33.6 million.² The overall increase in base rates was reduced in the Tentative Order due to a computational error in the October 4 Order that overstated PGW's bad debt expense by \$5.4 million. October 12 Order at 3-4. On the same day that the Commission's Tentative Order was entered, October 12, 2001, PGW made a compliance filing ("October 12 Compliance Filing") that implemented an increase in annual revenues of \$39 million. See October 12 Compliance Filing, Proof of Revenue Schedule 1, Page 2. The OCA and OTS filed comments to that compliance filing identifying numerous aspects of the compliance filing that were inconsistent with the Commission's October 4 and October 12 Orders. The OCA's comments to

¹ The \$39 million rate increase approved in the October 4 Order was comprised of a \$28 million increase in base rates plus the \$11 million interim base rate increase awarded in the Interim Rate Proceeding at Docket No. R-0005654.

² The \$33.6 million rate increase approved in the October 4 Order was comprised of a \$22.6 million increase in base rates plus the \$11 million interim base rate increase from the Interim Rate Proceeding.

PGW's October 12 Compliance Filing also specifically noted that PGW would need to make another compliance filing that would reflect the \$33.6 million rate increase rather than the \$39 million increase that the Company sought to implement through its October 12 Compliance Filing. The Commission did not rule on the issues raised in those comments until the December 6 Order.

The Company did not make a subsequent compliance filing to bring its rates and tariff into conformance with the October 12 Order. Rather, it began to charge the rates contained in its October 12 Compliance Filing. Therefore, the Company began to charge, and has continued to charge, rates based upon an increase in annual revenues of \$39 million rather than the \$33.6 million finally approved by the Commission.

On October 19, 2001, PGW filed a Petition for Rehearing and Reconsideration ("Petition for Reconsideration") seeking reconsideration of the Commission's determination in its October 4 Order and its October 12 Tentative Order that PGW was entitled to a \$33.6 million rate increase. On December 6, 2001, the Commission entered an Order denying PGW's Petition for Reconsideration and ruling on the OTS and OCA comments to the October 12 Compliance Filing. In its Order, the Commission specifically found:

That the Compliance Filing of Philadelphia Gas Works filed on October 12, 2001 to the Order entered October 4, 2001, *is hereby found to be not in compliance* with the Opinion and Order entered October 4, 2001, as modified by the Tentative Opinion and Order entered October 12, 2001, relative to the total allowable annual revenues and the rates designed to recover those revenues.

December 6 Order at 36 [emphasis added]. The Commission's Order also directs:

That Philadelphia Gas Works shall file, within thirty (30) days of the date of entry of this Opinion and Order, a Tariff Supplement designed to produce an increase in total allowable annual revenues in

the amount of \$22,558,000 effective upon one day's notice *for service on and after October 6, 2001.*

December 6 Order at 37 [emphasis added].

The December 6 Order makes it clear that the rates that PGW put into effect in the October 12 Compliance Filing are not in compliance with the Commission's determination that the Company is entitled to a \$33.6 million rate increase. The December 6 Order also makes it clear that the Company was to file a tariff supplement that would implement the \$33.6 million increase for service on and after October 6, 2001. Instead, in the instant compliance filing, the Company has filed a tariff supplement that reduces rates to a level that will collect the \$33.6 million in additional revenue for service rendered after the new tariff is approved, but does not address the over-charges from October 12, 2001 until the date of final Commission approval of this compliance filing. Thus, PGW has made no provision for the refund of the amount that PGW has over-recovered from ratepayers as a result of the \$39 million rate increase that it implemented in October 2001.

The OCA submits that the difference between the \$33.6 million rate increase authorized by the Commission and the \$39 million that the Company has been collecting since October 12, 2001 should be refunded to ratepayers. Section 1312 of the Public Utility Code provides the Commission with authority to order a utility to refund any rate received by that utility that was unjust or unreasonable, or was in violation of any regulation or order of the Commission. 66 Pa.C.S. §1312. Such refunds shall be made along with interest at the legal rate. *Id.* The decision of whether to require a refund of rates previously collected by a utility is a matter charged to the sound discretion of the Commission. Nat'l Fuel Gas Dist. Corp. v. Pa.P.U.C., 464 A.2d 546 (Pa. Commw. 1983).

In the instant case, PGW implemented a \$39 million increase with a tariff supplement filed on October 12, 2001. On the same day, the Commission entered a tentative order that authorized only a \$33.6 million rate increase. The October 12 compliance filing and tariff supplement were not approved by the Commission and were still the subject of pending exceptions as well as the Company's own Petition for Reconsideration. Additionally, the Commission made it clear in its October 12 Order that the \$39 million rate increase was not correct since it included a computational error. October 12 Order at 3-4. This was reaffirmed in the Commission's December 6 Order which specifically directed the Company to file a compliance tariff "designed to produce an increase in total allowable annual revenues in the amount of \$22,558,000 effective upon one day's notice *for service on and after October 6, 2001.*" December 6 Order at 37 [emphasis added].

The OCA submits, therefore, that October 12 tariff supplement was *not* finally approved by the Commission. It was still subject to challenge from the OCA and OTS, both of which filed comments to the October 12 Compliance Filing. Notwithstanding the filing of exceptions to a compliance tariff, the Commission may allow the compliance rates to become effective. 52 Pa.Code §5.592. Where the Commission allows rates to go into effect, pending a decision concerning their lawfulness, refunds will be available if the increase is later held to be unjustified. City of Pittsburgh v. Pa.P.U.C., 423 A.2d 454 (Pa.Comm.w. 1980).

The Commission subsequently *did* find that the appropriate level of the rate increase was \$33.6 million, *not* the \$39 million that PGW had implemented on October 12. The OCA submits that because the October 12 tariff supplement was never approved by the Commission, any rates collected pursuant to it must be subject to refund. Therefore, PGW should be directed to refund

the difference between the \$39 million and \$33.6 million that it has been collecting since October 12, 2001.

Any refund directed should be returned promptly to customers. Generally, the period for which a refund to customers may be granted is a matter largely within the discretion of the Commission. Riverton Consol. Water Co. v. Pa.P.U.C., 140 A.2d 114 (Pa.Super. 1958). The Company has been collecting the higher rates from customers during the winter heating season. While there are many ways that the Company could refund this money, the OCA submits that the best way is through a one-time credit to customers in February or March, which is before the end of the heating season. March is still primarily a heating profile month and a refund credited to customers' bills in March would return the money substantially to those from whom it was collected. That way, heating customers will receive a proportional share of the refunds. If the refunds are delayed into the late spring or summer, then heating customers may not receive a fair proportion of the refund.

Exception No. 2: The Company Should Be Directed To Collect The Rate MS Customer Charge Or Impute That Revenue To Its Cash Flow Analysis If It Foregoes Collection Of The Customer Charge.

As the OCA noted in its comments to the October 12 Compliance Filing, there currently is no customer charge for Municipal Service provided under Rate MS (tariff page 85) or for Philadelphia Housing Authority Service provided under Rate PHA (tariff page 87). In its original filing, PGW proposed to establish a customer charge for these service categories, and to set it at \$25 per month, which is the same as PGW's proposed customer charge rate for Commercial customers

taking General Service under Rate GS. PGW St. 4.0 at 8. However, these proposed new customer charges were absent from PGW's October 12, 2001 compliance filing.

In its reply to the OCA and OTS comments to the October 12 Compliance Filing, PGW claimed that it could not impose a customer charge on class MUN/MS because Philadelphia City Council must approve such a charge and PGW believes that Council would not now approve such a customer charge. PGW Reply Comments to Compliance Filing Comments of OCA and OTS at 2. In its December 6 Order, the Commission rejected this argument and specifically directed PGW to implement a customer charge for Rate MS. In its January 7 Compliance Filing, PGW included a customer charge for Rate MS, but stated in a footnote that it will not charge the customer charge to Rate MS customers "until such time as City Council approval is received." Supp. No. 16 to Tariff Gas - Pa.P.U.C. No. 1, Second Revised Page No. 85.

In the event the Company foregoes collection of the Rate MS customer charge or the City Council refuses to approve the charge, then that revenue shortfall should be imputed to any cash flow analysis that the Company presents to the Commission. These revenues should also be imputed to the Company for purposes of any future rate proceeding that the Company may file. Simply put, the failure of the Company to require the Municipal Service Class to pay the customer charge approved by the Commission should not be borne by other ratepayers.

III. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Commission direct PGW to modify its Compliance Tariff consistent with the positions set forth in the OCA's Exceptions above and to make any further modifications deemed necessary upon further review conducted by the Commission.

Respectfully submitted,



Stephen J. Keene
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
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Dated: January 22, 2002

67302

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing documents, Office of Consumer Advocate's 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 22nd day of January, 2002.

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James A. Mullins
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COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

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Bernard A. Ryan, Jr
Small Business Advocate

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(717) 783-2831 (FAX)

DOCUMENT
FOLDER

January 22, 2002

HAND DELIVERED

ORIGINAL

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

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

Dear Mr. McNulty:

Enclosed please find the original and nine (9) copies of the Exceptions on behalf of the Office of Small Business Advocate to the Compliance Filing of Philadelphia Gas Works dated January 7, 2002. 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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101

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

DOCUMENT
FOLDER

EXCEPTIONS TO THE
JANUARY 7, 2002 COMPLIANCE FILING
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

SECRETARY'S BUREAU

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DOCKETED

JAN 23 2002

Steven C. Gray
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(717) 783-2525

Dated: January 22, 2002

I. INTRODUCTION

The Office of Small Business Advocate (“OSBA”) files this Exception to the January 7, 2002 Compliance Filing (“January Compliance Filing”) of Philadelphia Gas Works (“PGW” or “the Company”). PGW’s Compliance Filing is purported to implement the terms of the Pennsylvania Public Utility Commission’s (“PUC”) Opinion and Order, entered December 6, 2001 in this docket.

II. HISTORY OF THE PROCEEDING

PGW filed Supplement No. 7 Tariff Gas – Pa. P.U.C. No. 1 (“Supplement No. 7”) on January 5, 2001. The PUC suspended the operation of Supplement No. 7 until October 6, 2001, and ordered an investigation into the lawfulness, justness, and reasonableness of the proposed rate increases. On October 4, 2001, the PUC entered an Opinion and Order permitting PGW to increase its total annual revenues by \$28,067,000 in addition to the \$11 million granted for interim rate relief in February 2001.

On October 12, 2001, PGW filed a Compliance Filing to implement the terms of the October 4th PUC Opinion and Order, to become effective on October 13, 2001. Also on October 12, 2001, the PUC issued a Tentative Opinion and Order reducing the total annual revenue increase from \$28,067,000 to \$22,558,000 (in addition to the February 2001 \$11 million interim rate relief). The PUC’s October 12th Tentative Opinion and Order was issued on the same day as PGW’s October 12th Compliance Filing, and *prior* to the Compliance Filing’s October 13th effective date.

On December 6, 2001, the PUC entered its final order on PGW's 2001 Base Rates case. The December 6th Order dealt with a wide range of substantive and procedural issues raised by the Parties. See, e.g., Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042, Opinion and Order entered December 6, 2001, at 20 ("Opinion and Order"). Ultimately, the PUC affirmed the tentative decision set forth in its October 12th Opinion and Order, whereby PGW would be allowed to increase its total annual revenues by \$33,558,000 "for service on and after October 6, 2001." Opinion and Order, at 37.

III. EXCEPTION

A. **PGW's Compliance Filing Misrepresents the Total Refund Required by the PUC's Order**

The January Compliance Filing sets forth the proposed customer and commodity charges for the various PGW customer classes. See, e.g., PGW Proof of Revenue Schedule 1, January 7, 2002 Compliance Filing. It should be noted that PGW chooses a target date of March 1, 2002, as the date that these rates will most likely go into effect. See Cover Letter of Craig White (January 7, 2002). PGW's suggests that it will take that long for the PUC to take action, and therefore believes that "March 1, 2002 [is] around the time that PGW expects the Commission to approve this Compliance Filing." Id. The OSBA adopts PGW's March 2002 assumption simply for the purpose of keeping the math which follows consistent between PGW's January Compliance Filing and the OSBA analysis in this Exception.

PGW does correctly modify its residential distribution charge in order to account for "the OTS' calculations regarding the number and average use of PGW's residential heating customers." Id. See also, Opinion and Order, at 13. PGW's schedules demonstrate that

PGW will overcollect roughly \$226,910 between October 13, 2001 and March 2002 due solely to the use of incorrect billing determinants in its October 12, 2001 Compliance Filing. See PGW Estimated Overcollection Schedule. PGW does propose to refund this \$226,910 over-collection. See, e.g., Cover Letter of Craig White (January 7, 2002).

However, what PGW does not propose to refund is the over-collection of the Company's total annual revenues that will have occurred since PGW's October 12, 2001 Compliance Filing as a result of the reduced revenue award contained in the December 6th Opinion and Order. The October 12th Compliance Filing was designed to recover an increase in total annual revenues of \$39,067,000, not the \$33,558,000 as ordered by the PUC on December 6th. See Opinion and Order, at 37. As noted previously, the customer rates set forth in PGW's October 12th Compliance Filing are currently in effect.

Specifically, in regards to the OTS corrections to customer and volumetric sales numbers, Attachment 1 to this Exception demonstrates that PGW has calculated a projected refund of \$226,910 by applying a factor of \$0.0081 per Mcf to applicable sales over the October 2001 to March 2002 period. The refund amount of \$0.0081 per Mcf is derived as the difference between the residential distribution charge implemented on October 13, 2001 (i.e., \$6.9119) and the hypothetical distribution charge (i.e., \$6.9038) that PGW would have implemented if the Company had properly incorporated higher residential billing determinants in its original compliance filing. However, both of these distribution charges are based upon a total annual revenue increase of \$39.1 million, not \$33.6 million as set forth in the December 6th Opinion and Order.

Therefore, PGW must correct its refund calculation in order to incorporate the difference between the residential distribution charge implemented on October 13, 2001

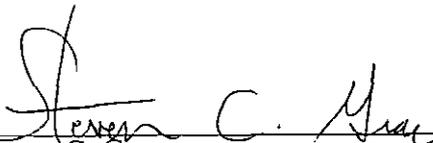
(\$6.9119 per Mcf, which excludes the OTS customer and volumetric sales numbers) and the final residential distribution charge (\$6.7770 per Mcf) that PGW proposes to go into effect in March 2002. See PGW Proof of Revenue Schedule 1, January 7, 2002 Compliance Filing. As set forth in Attachment 1 to this Exception, the difference between these two distribution charges results in an overcollection of \$0.1349 per Mcf. This overcollection will obviously cease, according to PGW's plan, in March 2002. However, the nearly five months that the \$0.1349 per Mcf overcollection will be in effect includes the 2001-2002 winter heating season. Thus, using the October 2001 through March 2002 timeframe employed by PGW in its Estimated Overcollection Schedule, this \$0.1349 per Mcf overcollection would award the Company an additional \$3.8 million above the total annual revenue increase that is set forth in the PUC's December 6th Opinion and Order. See OSBA Attachment 1.

The solution to avoiding a windfall of additional millions for PGW is simply to refund this overcollection using the same mechanism that is proposed by PGW for the \$226,910 over-collection cited in its January 7, 2002 Compliance Filing. Therefore, PGW should be required to refund \$0.1349 per Mcf instead of the \$0.0081 per Mcf as originally proposed by the Company. Obviously, if PGW's assumption of a March 2002 effective date proves to be incorrect, the distribution charge refund of \$0.1349 per Mcf would be applied to more or less Mcf as appropriate.

IV. CONCLUSION

The Office of Small Business Advocate respectfully requests that the January 7, 2002 Compliance Filing of PGW be approved subject to the modification that PGW will refund \$0.1349 per Mcf to the residential distribution charge, for all Mcf used between October 13, 2001 and the date final rates are implemented.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate

Date: January 22, 2002

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Philadelphia Gas Works
January 7, 2002 Overcollection Calculation

Per Company

	Oct	Nov	Dec	Jan	Feb	Mar	Total
Applicable Mcf	181,208	2,455,650	4,323,134	9,333,661	8,402,907	3,317,069	
Overcharge / Mcf *	<u>\$0.0081</u>	<u>\$0.0081</u>	<u>\$0.0081</u>	<u>\$0.0081</u>	<u>\$0.0081</u>	<u>\$0.0081</u>	
Amount	\$1,468	\$19,891	\$35,017	\$75,603	\$68,064	\$26,868	<u>\$226,910</u>

* **Derivation**

\$ 6.9119	Residential base rate per 10/12/01 Compliance Filing (i.e., in effect)
\$ 6.9038	Residential base rate per Revised 10/12/01 Compliance Filing (i.e., corrected for OTS billing deter. only)
\$ 0.0081	Overcharge per Mcf

Per Final Rates

	Oct	Nov	Dec	Jan	Feb	Mar	Total
Applicable Mcf	181,208	2,455,650	4,323,134	9,333,661	8,402,907	3,317,069	
Overcharge / Mcf **	<u>\$0.1349</u>	<u>\$0.1349</u>	<u>\$0.1349</u>	<u>\$0.1349</u>	<u>\$0.1349</u>	<u>\$0.1349</u>	
Amount	\$24,445	\$331,267	\$583,191	\$1,259,111	\$1,133,552	\$447,473	<u>\$3,779,039</u>

** **Derivation**

\$ 6.9119	Residential base rate per 10/12/01 Compliance Filing (i.e., in effect)
<u>\$ 6.7770</u>	<u>Residential base rate per 1/07/02 Compliance Filing</u>
\$ 0.1349	Overcharge per Mcf

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 Exceptions to the Compliance Filing on behalf of the Office of Small Business Advocate upon the persons addressed below:

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Administrative Law Judge
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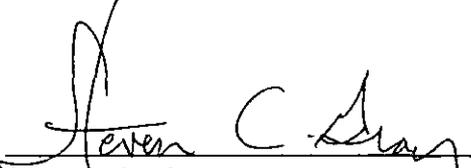
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Steven C. Gray
Assistant Small Business Advocate

Dated: January 22, 2002

DATE: January 24, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *J.J.*

Philadelphia Gas Works

Attached is a copy of Comments of Office of Trial Staff, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Wilson
Law Bureau

was

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DATE: January 24, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *J.M.*

DOCKETED
JAN 24 2002

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FOLDER**

Philadelphia Gas Works

Attached is a copy of Exceptions of Office of Consumer Advocate, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Wilson
Law Bureau
Ots

was

DATE: January 24, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *J.J.*

DOCKETED
JAN 24 2002

**DOCUMENT
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Philadelphia Gas Works

Attached is a copy of Exceptions of Office of Small Business Advocate, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Wilson
Law Bureau
Ots

was

DATE: January 24, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *JJM*

Philadelphia Gas Works

Attached is a copy of Exceptions of CEPA, et al, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Wilson
Law Bureau
Ots

was

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JAN 28 2002

ORIGINAL

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January 30, 2002

VIA HAND DELIVERY

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

DOCUMENT
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SECRETARY'S BUREAU
02 JAN 30 PM 4:07

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

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and nine copies of its Reply Exceptions to the Office of Consumer Advocate's, CEPA, et al.'s and the Office of the Small Business Advocate's Exceptions to its January 7, 2002 Compliance Filing as well as Reply comments to the Office of Trial Staff's Comments Regarding the Compliance Filing with regard to the above referenced matter. All parties of record have been officially served as evidenced by the attached Certificate of Service.

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

Respectfully submitted,

Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/sam
Enclosure

cc: Parties of Record

DSH:30809.1/PHI211-151946

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Pennsylvania Public Utility
Commission**

v.

Philadelphia Gas Works

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Docket Number R-00006042, et. al

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

DOCKETED

FEB 14 2002

**PHILADELPHIA GAS WORKS' REPLY EXCEPTIONS TO THE OFFICE OF
CONSUMER ADVOCATE'S, CEPA et al.'s, AND THE OFFICE OF THE SMALL
BUSINESS ADVOCATE'S EXCEPTIONS TO ITS JANUARY 7, 2002
COMPLIANCE FILING AS WELL AS REPLY COMMENTS TO THE OFFICE
OF TRIAL STAFF'S COMMENTS REGARDING THE COMPLIANCE FILING**

**DOCUMENT
FOLDED**

I. INTRODUCTION AND SUMMARY

Philadelphia Gas Works' ("PGW") January 7, 2002 Compliance Filing is completely consistent with the Commission's December 6, 2001 Order, and therefore should be approved by the Commission. As detailed below, the main objection raised by the Office of Consumer Advocate ("OCA"), CEPA et al. ("CEPA"), the Office of Small Business Advocate ("OSBA") and the Office of Trial Staff ("OTS"), that PGW should not apply the rates approved by the December 6, 2001 Order prospectively but rather should refund the difference between the rates approved in the December 6 and October 4, 2001 Orders, represents an unreasonable interpretation of the Commission's Orders and would clearly require illegal retroactive ratemaking and the retroactive refund of a Commission-made rate.

On October 4, 2001, the Commission issued a final Order disposing of PGW's request for a \$65 million base rate increase. The October 4 Order was indisputably a final order, and had the Commission not entered such an order by October 6, 2001, the

statutory suspension period would have expired and PGW would have been entitled to implement the entire \$65 million rate increase as proposed. On October 12, 2001, PGW submitted a Compliance Filing ("Original Compliance Filing"), implementing the \$39 million increase explicitly and indisputably authorized by the October 4, 2001 Order. Other than a legitimate dispute over compliance with the final, October 4, 2001 rate Order pertaining to PGW's computation of the number and average usage of certain customers ("Customer Count Compliance Issue"), no party challenged the revenues implemented by the Company's Original Compliance Filing. Accordingly, upon the effective date of PGW's compliance tariff, PGW properly began charging its customers the Commission-made rates required by the Commission's October 4 final rate Order.

More than one week later, on October 12, 2001 the PUC issued a Tentative Order suggesting that it might have overstated PGW's allowed revenue requirement and requesting comments from the parties. However, the Tentative Order was "tentative" and made no final decision on PGW's revenue requirement.

Only following the issuance of the Tentative Decision and consideration of the comments of all parties, on December 6, 2001, the Commission issued an Order reducing the rate increase it finally approved in the October 4, 2001 Order. The objecting parties are now attempting to force PGW to retroactively reduce and refund the Commission-made rates PGW has been properly and legally collecting since the October 13, 2001 effective date of its Original Compliance Filing. Further, the parties assert that the Commission should use the prospective rates it established in its December 6, 2001 Order to refund to customers alleged excess revenues received by PGW starting on October 6 even though the December 6 rates had not been ordered and were not in effect during the

applicable period. While these parties assert various interpretations of the Commission's December 6, 2001 Order, only one interpretation is consistent with the governing law which prohibits retroactive ratemaking – that the Commission's December 6 Order was only intended to apply prospectively. Accordingly, interpretations advanced by the public advocates to apply the December 6 Order retroactively (or to any period prior to Commission approval of the January 7, 2002 Compliance Filing) are not legally supportable.¹

It is important to understand (as the public advocates overlook) that there is a vast distinction between reviewing a compliance filing to ensure that the filing itself complies with the Commission order it is implementing (and requiring a refund if it does not) and changing the rate awarded in a final order and requiring a refund retroactive to the date of that final order. In the Commission's December 6, 2001 Order, it did the former in relation to the Customer Count Compliance Issue, finding that PGW had used incorrect figures in implementing the October 4, 2001 Order in regard to the number and average usage of residential heating customers. Accordingly, PGW's January 7, 2002 Compliance Filing calculates a refund to customers for that discrepancy and PGW is not disputing in any way the PUC's authority to order such a refund.

However, the parties are requesting that the Commission do far more and require PGW to retroactively refund or reduce the currently effective rates approved by the Commission in its October 4 Final Order. Such a request is prohibited by law, as the change in Commission-made rates effected by the December 6, 2001 Order may only be

¹ See Cheltenham & Abington Sewerage Co. v. Pa. Public Utility Comm'n, 25 A.2d 334 (Pa. 1942); West Penn Power v. Pa. Public Utility Comm'n, 100 A.2d 110 (Pa. Super. 1953); Metropolitan Edison Co. v. Pa. Public Utility Comm'n, 437 A.2d 76 (Pa. Cmwlth. 1981).

applied prospectively. Thus, the parties' objections to PGW's January 7, 2002 Compliance Filing must be rejected by the Commission.

II. BACKGROUND

On January 5, 2001, PGW filed a tariff supplement, Supplement No. 7, which proposed to increase its base rates by \$65 million dollars. On February 8, 2001, the Commission suspended the tariff increase and began an investigation into the lawfulness of the rates under 66 Pa. C.S. § 1308(d). In accordance with both Sections 1308(d) and 1309(b) of the Code, the Commission was required to make a final decision before the expiration of the suspension period. Therefore, the Commission was under a statutory obligation to issue its final decision in PGW's \$65 million base rate case by October 6, 2001.²

In compliance with its statutory obligations, the Commission entered its final decision on October 4, 2001. That final decision permitted PGW to increase its rates to produce \$28,067,000 in additional revenue over the \$11,000,000 interim relief authorized by the Commission and implemented in March 2001. On October 12, 2001, PGW submitted its Original Compliance Filing to be effective on one day's notice in conformance with 52 Pa. Code § 5.592(b).³ By law, PGW was required to submit a

² If the Commission had failed to issue its final decision by this date, PGW would have been entitled to put into effect the entire \$65 million rate increase.

³ Section 5.592(b) provides that unless the Commission specifies otherwise in its order, a tariff revision shall be effective upon statutory notice to the Commission and the public. 52 Pa. Code § 5.592. The Commission made no contrary specification in its October 4, 2001 Order, and thus, the statutory notice period under Section 1308 of the Code having passed, PGW was entitled to implement that Order immediately and did so on one day's notice. The Commission was well aware of this action by PGW and, as admitted by the parties, the Commission allowed the October 12, 2001 compliance rates to become effective.

compliance filing and increase its rates consistent with the result in the Commission's October 4, 2001 final rate Order. Therefore, PGW began collecting the increased rates in accordance with its duly filed tariff and the Commission's underlying decision.

Also on October 12, 2001, the Commission issued a Tentative Opinion and Order. In that Tentative Order, the Commission provided notice to the parties that there may be a "potential error" that the Commission was "proposing" to fix.⁴ In fact, the Commission very clearly stated that it was not until (and if) the Tentative Order was finalized that PGW might have to reduce its rates consistent with that future Order.⁵ The Commission then stated that the Tentative Order would only become final if comments were not timely filed.⁶ However, comments were timely filed by all parties, including PGW, and under the Commission's own directive, the Tentative Order did not become final at that time. On December 6, 2001, the Commission issued its Final Opinion and Order reviewing the Tentative Decision. In the Order, the Commission adopted the October 4,

⁴ Even OTS acknowledges, in its Comments regarding PGW's January 7, 2002 Compliance Filing, that the Commission's October 12, 2001 Tentative Order was not immediately effective upon being entered and did not become final until the issuance of the December 6, 2001 Order. OTS Comments at 5.

⁵ Tentative Order at Ordering Paragraph 3. The Ordering Paragraph makes it clear that the Commission contemplated that following a Commission order finalizing the October 12, 2001 Tentative Order, PGW would have to implement that order on a prospective basis.

⁶ Ordering Paragraph 5. Both CEPA and OCA ignore this language in their Exceptions, arguing that the October 12, 2001 Tentative Order had the actual effect of reducing the approved rate increase. CEPA's Exceptions at 2; OCA's Exceptions at 2. Beyond ignoring the text of the Tentative Order, if the Commission had *sua sponte* changed PGW's rates without providing PGW any notice and opportunity to be heard, as these parties suggest, it would have violated the requirements of 66 Pa. C.S. § 703(g) and basic due process requirements. Scott Paper Co. v. Pa. Public Utility Comm'n, 558 A.2d 914, 919 (Pa. Cmwlth. 1989); West Penn Power v. Pa. Public Utility Comm'n, 100 A.2d 110, 114 (Pa. Super. 1953).

2001 Order, as modified by the October 12, 2001 Tentative Order. The Commission then directed PGW to file a compliance filing in accordance to this new decision. However, the Commission, in its December 6, 2001 Order, unlike its October 4, 2001 Order, specifically prohibited PGW from changing any rates until it approved PGW's revised compliance tariff filing.

PGW filed this Revised Compliance Filing on January 7, 2002. In the Revised Compliance Filing presently before the Commission, PGW projected the date that the new rates at issue would become effective as March 1, 2002. PGW also stated that these rates would be applied prospectively, except where the Commission found that PGW's October 12, 2001 Compliance Filing was inconsistent with the Commission's October 4, 2001 Order regarding the number and average use of residential and commercial heating customers. PGW anticipates overcollecting approximately \$226,910.00 between October 13, 2001 and March 2002 due to its incorrectly calculating the number and average use of residential and heating customers in its October 12, 2001 Compliance Filing. Support for this calculation is included in the Compliance Filing and, once approved by the Commission, those monies will be returned to customers in an appropriate manner.

III. REPLY TO EXCEPTIONS AND COMMENTS

- A. The Commission's December 6, 2001 Order may only be applied prospectively; any other application would result in retroactive ratemaking and the refund of Commission-made rates.

Ratemaking, by its nature, is prospective, and because of this prospective nature a rule against retroactive ratemaking has been developed and uniformly enforced.⁷ The rule against retroactive ratemaking has been clearly stated as prohibiting this Commission

⁷ Popowsky v. Pa. Public Utility Comm'n, 642 A.2d 648, 651 (Pa. Cmwlth. 1994).

from "setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits."⁸ The Commonwealth Court of Pennsylvania recently reiterated this long-standing rule and further expanded it, stating that "the Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations."⁹

One of the seminal cases involving retroactive ratemaking in Pennsylvania is Cheltenham & Abington Sewerage Co v. Pennsylvania Public Utility Commission,¹⁰ decided by the Supreme Court of Pennsylvania in 1942. In that case, the Commission, on its own motion, reevaluated and changed a previous rate decision just as it did, here, with its December 6, 2001 Order. In Cheltenham, the Commission began its investigation in December 1934 and concluded it in August 1935, when it issued its decision to reduce rates. Arguments were made, similar to the arguments now before the Commission, that the company should be required to refund any overcollections from the date the Commission began the reevaluation process rather than prospectively.¹¹

However, the Pennsylvania Supreme Court specifically rejected the argument that the Commission could order refunds back to the date that the investigation began. The Supreme Court found that an investigation into the reasonableness of prior rates does not

⁸ Id.; see, Pa. Public Utility Comm'n v. Citizens Utilities Water Company of Pennsylvania, 1996 Pa. PUC LEXIS 167, *49-50.

⁹ Popowsky, 642 A.2d at 651 (emphasis added) (citing Pike County Light & Power Company v. Pa. Public Utility Comm'n, 487 A.2d 118 (Pa. Cmwlth. 1985)).

¹⁰ 25 A.2d 334 (Pa. 1942).

¹¹ Id. at 336.

by its mere inception dictate the result.¹² Quite the contrary, the court declared that the Commission could not subsequently “ignore” and “retroactively repeal” its own prior determination and authorization of a rate as reasonable.¹³

Similarly, the PUC’s October 4, 2001 Order authorized PGW’s rates at the \$39 million rate increase level. When the Commission issued its October 12, 2001 Tentative Order it began the investigative process to examine a “potential error which may result in a reduction” in the rate increase awarded on October 4, 2001.¹⁴ Nothing in that October 12, 2001 Tentative Order, however, actually changed the rates that the Company was permitted to collect in the meantime. Rather, the Tentative Order specifically stated that it would not become final if any of the parties filed comments. All the parties did in fact file comments. Therefore, the Tentative Order did not have the legal effect of changing PGW’s authorized rates, and PGW was both entitled and obligated to collect the amount of the rate award in the October 4, 2001 Order, as implemented by its Original Compliance Filing.¹⁵ Further, the PUC’s December 6, 2001 Order may not be read to

¹² Id. at 338.

¹³ Id. at 337.

¹⁴ Tentative Order at 2.

¹⁵ As the Cheltenham court held, a company is “entitled to rely upon the declaration of the commission as to what was a lawful and reasonable rate until a change was made by the commission acting in its quasi legislative capacity.” 25 A.2d at 336. The court further held that the Commission “may not in a subsequent proceeding, acting in its quasi judicial capacity [investigating the reasonableness of the prior rates], ignore its own pronouncement promulgated in its quasi legislative capacity [setting rates] and retroactively repeal its own enactment as to the reasonableness of the rate it has prescribed.” Id. at 337.

permit it to ignore its prior order “retroactively repeal” its authorization of the rates in its October 4, 2001 Order.¹⁶

Moreover, the retroactive refunds sought by the parties are also prohibited by the rule that bars such a remedy in relation to Commission-made rates. As in Cheltenham, the Commonwealth Court again rejected such refund efforts in West Penn Power v. Public Utility Commission,¹⁷ where the Commission had modified a previous rate decision and parties asserted that the modification should apply retroactively. In that case, the main issue was whether the Commission's initial decision was a final rate decision, because the Commission conceded that if the court found that it was, then the initial decision was a Commission-made rate and no refunds could be ordered for rates collected by the company.¹⁸ The court found that the Commission, having approved the rates, could not summarily reverse its order and apply such a reversal retroactively.¹⁹ The same is true here.

1. *PGW's rates from October 13, 2001—December 6, 2001*

Given these decisions, any arguments that PGW should be required to refund any rates collected over the \$33.6 million clearly must fail.²⁰ On October 4, 2001, the

¹⁶ Id.

¹⁷ 100 A.2d 110 (Pa. Super. 1953). See also Metropolitan Edison Company v. Pa. Public Utility Comm'n, 437 A.2d 76, 79 (Pa. Cmwlth. 1981) (rates approved by the Commission are “immune from retroactive alteration”); Cheltenham, 25 A.2d at 336.

¹⁸ West Penn Power, 100 A.2d at 111-12.

¹⁹ Id. at 114.

²⁰ There is absolutely no legal support for CEPA's assertion that the Commission may amend a rate order and such amendment may “relate back to the original Order, where as here, the amendment occurs only a few days after the issuance of

Commission issued an Order that approved a rate increase of \$39.6 million. The October 4, 2001 Order was indisputably a final Commission Order consistent with the statutory requirements of 66 Pa. C.S. §§ 1308–1309. PGW was both entitled and obligated to collect rates that complied with this Commission’s Order.²¹

The Commission’s subsequent investigation into potential miscalculations of its October 4, 2001 Order had no bearing on the actual legality of the October 4, 2001 Order. PGW “was entitled to rely upon the declaration of the [C]ommission as to what was a lawful and reasonable rate until a change was made by the [C]ommission.”²² The Commission did not make that change until it entered its December 6, 2001 Order. While parties such as CEPA cite to the Commission’s authority to amend or modify its prior orders with notice and a hearing under Section 703(g), that authority is not disputed by PGW and the parties’ comments are inapposite.²³ The Commission clearly has the

that original Order.” CEPA Exceptions at 4. In fact, all legal authority points to the opposite result. The only time a subsequent rate decision can be applied retroactively is where the utility originally petitioned for a reduction of its rates. 66 Pa. C.S. § 1309(b). Only in that situation did the Legislature envision and approve applying rates retroactively. The rules of statutory construction compel the conclusion that, by specifically allowing for retroactive rates in this instance only, the Legislature prohibited them in all other instances. See Commonwealth v. Charles, 411 A.2d 527, 530 (Pa. Super. 1979) (citing maxim of *expressio unius est exclusio*).

²¹ Cheltenham, 25 A.2d at 336.

²² Id.

²³ See CEPA Exceptions at 4 (citing Scott Paper v. Pa. Public Utility Comm’n, 558 A.2d 914 (Pa. Cmwlth. 1989)). The Scott Paper case is completely irrelevant to the question presently before the Commission. There, the court merely held that the Commission, prior to effecting a substantive change to an order, had to afford the interested parties due process rights of notice and hearing. Id. at 919. Clearly, the Commission was entitled, upon providing due process to PGW, to make the substantive change to its October 4, 2001 Order of reducing the allowed rate increase. But, the Scott Paper case says nothing about the Commission’s ability

power to modify one of its final orders, such as the October 4th Order, but it does not have the authority to apply such modifications retroactively as they concern rates. As the Commonwealth Court held in Popowsky, "the Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations."²⁴

2. *PGW's rates from December 7, 2001—the date of Commission approval of its Compliance Filing*

As to PGW's rates post-December 6, 2001, the Commission, in its December 6th Order, specifically prohibited the Company from changing any rates until it has approved the revised tariff filing. If the Commission had not placed this condition on the effectiveness of the new rates, the reduced rates would have become effective upon one day's notice of PGW's January 7, 2002 Compliance Filing. Ultimately, as to its rates after December 6, 2001, PGW is merely complying with the Commission's Order, and should not be punished for doing so. Thus, due to the Commission's preservation of the status quo, PGW is appropriately and legally charging its customers Commission-approved rates (rates from the October 4, 2001 Order).²⁵

to apply such a substantive change retroactively – which is the crux of CEPA's request and is patently illegal.

²⁴ 642 A.2d at 651 (emphasis added). Ironically, the OCA, who successfully appealed from the Commission's attempt to engage in retroactive ratemaking in Popowsky, is now, in this matter, proposing that the Commission engage in the very same illegal, retroactive ratemaking it previously opposed.

²⁵ The fatal flaw in the parties' requests for refunds is revealed by the contradictory stance they would clearly assume if the Commission had ruled differently on PGW's Petition for Reconsideration. If the Commission in its December 6, 2001 Order had ruled that PGW was due additional rate relief above that contained in the October 4, 2001 Order and PGW filed its tariff to collect the newly increased rate effective October 13, 2001, the intervenors would certainly argue that the

Furthermore, the statutory language in the Public Utility Code regarding the effectiveness of rates supports PGW's position that rates can only be applied prospectively. Section 1309(a) states the general rule for setting rates: "the commission shall determine the just and reasonable rates, including maximum or minimum rates, to be *thereafter* observed and in force and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this part."²⁶ The legislative mandate is clear that the Commission is charged with setting rates and that once they are set, they shall "*thereafter*" apply. The Public Utility Code provides the Commission with no authority to set rates retroactively, only prospectively.

One of the fundamental reason for the prospective nature of ratemaking is basic due process and fairness. As the Pennsylvania Supreme Court stated in Cheltenham: "It is inevitable that in any rate making proceeding few factors can be determined with exactness and when an error appears it may affect adversely either customer or utility."²⁷ Applying the change retroactively would result in either the utility or the consumer having its property rights altered before it even knew that its right to collect (or pay) rates

Company's tariff was barred by the rule against retroactive ratemaking and that it could only implement the new rates prospectively.

²⁶ 66 Pa. C.S. §1309 (emphasis added). See also § 1308 (c) ("[T]he commission shall determine the just and reasonable rate to be charged or applied by the public utility for the service in question, and shall fix the same by order to be served upon the public utility and such rate shall *thereafter* be observed until changed as provided by this part") (emphasis added); Lehigh & N.E.R. Co. v. Public Service Commission, 212 A. 205, 206 (Pa. 1923) (emphasizing the same "thereafter" language as in § 1309, and noting that the new rates fixed by the Public Service Commission after the complaint process would have prospective effect only).

²⁷ Cheltenham, 25 A.2d at 338.

at a certain level was in question. The courts have fairly addressed this concern by stating that where there are inaccuracies in prior rate authorizations the Commission cannot establish rates that would "retroactively recover surpluses or refund deficits."²⁸

B. The Commission's authority to grant refunds under Section 1312 of the Public Utility Code is inapplicable to this case.

In its Exceptions, the OCA has incorrectly suggested that the Commission could require refunds pursuant to Section 1312 of the Code.²⁹ The Commission is only authorized to require refunds where it has determined that the rate received by the public utility was: 1) unjust or unreasonable; 2) in violation of any regulation or order of the Commission; or 3) in excess of the applicable rate contained in an existing and effective tariff. 66 Pa.C.S.A. §1312(a).³⁰ Clearly, none of those scenarios are present in this matter to support the level of refunds sought by the OCA.

In its October 4, 2001 Order, the Commission expressly found that the rates authorized therein – and unchanged until December 6, 2001 – were just and reasonable.³¹ In its December 6, 2001 Order, the Commission did find that PGW's October 12, 2001 Compliance Filing was not in compliance with the October 4 Order in regard to the

²⁸ Popowsky, 642 A.2d at 651.

²⁹ OCA Exceptions at 4-5.

³⁰ Furthermore, before a utility is required to make a refund the Commission "shall state in a refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact." 66 Pa. C.S. § 1312(a). There is no legislative expectation that a utility will proactively refund its customers any amounts the Commission may deem unreasonable, unlawful or excessive. Here, PGW's rates – which were approved by the Commission on October 4, 2001 – are neither unreasonable, unlawful nor excessive, since they were charged pursuant to a then valid order of the PUC, and the Commission has not issued they type of order required by Section 1312.

³¹ October 4, 2001 Order at 24-27.

number and average use of residential heating customers. Consequently, PGW has adjusted these figures in its January 7, 2002 Compliance Filing, and has calculated that this change will result in a \$226,910 overcollection between October 12, 2001 and March 2002 which it will refund to customers.³²

However, this is very different from the argument set forth by the OCA which suggests that PGW's October 12, 2001 Compliance Filing placed rates into effect that were in violation of the October 12 Tentative Order.³³ This argument is plainly without merit. First, as clearly stated in its text and as acknowledged by all parties except the OCA and CEPA, the Tentative Order was just that – tentative and not final. The Commission in its October 12, 2001 Tentative Order was very careful to ensure that all parties were aware of the "potential error" and that it was "proposing" to fix a schedule that "appears to contain a computational error." The Tentative Order further stated that if comments were filed by the parties, which they were, it would not become effective without further Commission action, which occurred only on December 6, 2001. Nothing in the "Tentative" Order actually changed or in any way affected the rates that PGW was permitted to charge its customers. Accordingly, like all other Commission Tentative Orders, the October 12, 2001 Tentative Order provided no legal weight and was nothing

³² Contrary to the assertions of OSBA, PGW did not misrepresent to the Commission the nature or character of the overcollection amount it was proposing to refund to customers. PGW very specifically stated in its transmittal letter in the January 7, 2002 Compliance Filing the source of the calculation of the overcollection. OSBA calculates that between October 13, 2001 and March 2002, PGW would overcollect \$3,779,039. However, this calculation relies on the *unlawful refunds and assumes that the increased rates are collected throughout March 2002*. Without the calculation for March, the total would be reduced by \$447,473.

³³ OCA Exceptions at 4.

more than a Commission proposal to be reviewed after receiving comments from the parties.

Second, PGW filed its Compliance Filing on the very same day that the Tentative Order was issued and prior to receiving any knowledge of its existence. It is impossible for PGW to have violated the future terms of a Tentative Order, the issuance of which or the outcome of which were totally unknown at the time of the filing of its October 12, 2001 Compliance Filing.³⁴

- C. PGW's January 7, 2002 Compliance Filing complies with the Commission's December 6, 2001 Order regarding the MUN/MS customer charge, and does impute that revenue to its cash flow analysis submitted with its filing.

While the OTS is correct in its statement that it was PGW that originally proposed changing the MS rate, PGW was always constrained from unilaterally effecting that change without the approval of Philadelphia City Council. According to the Management Agreement, gas rates for municipal purposes are subject the approval of City Council.³⁵ Based upon the unmistakable language of Section 2212(e) of the Code, the Management Agreement's restriction in this regard carries over to this Commission. The Commission's October 4, 2001, Order recognized its duty under Section 2212(e) to

³⁴ Further, any suggestion in the December 6, 2001 Order, where it describes PGW's October 12 Compliance Filing as "interim or temporary," that the rates approved by the Commission in its October 4, 2001 Order were temporary rates is plainly erroneous. December 6, 2001 Order at 10. Notably, no party has asserted such a position. Temporary rates are expressly prohibited in a Section 1308(d) general rate case. 66 Pa. C.S. § 1308(d). Moreover, the Commission never stated in its October 4, 2001 Order that the rates it was approving were anything but finally-approved, permanent rates.

³⁵ See Management Agreement between the City of Philadelphia and the Philadelphia Facilities Management Corporation at Section VII(3). The Management Agreement was adopted as an ordinance of the City Council.

adhere to PGW's prior ratemaking method and requirements and that the prior method and requirements were lodged in the Management Agreement, as is the restriction on increasing MS rates. Notably, these prior ratemaking requirements apply notwithstanding any other provision of the Code to the contrary. Further, as an ordinance of the City of Philadelphia, the Management Agreement has the full force and effect of a statute.³⁶

In addition, contrary to the claims of certain parties, PGW did impute that revenue to its proof of revenue analysis submitted with the January 7, 2002 Compliance Filing.³⁷ The parties are incorrect under Section 2212(e) of the Code and PGW's prior ratemaking method, though, when they claim that the MS customer charge revenues must be considered, whether or not the Company realizes that revenue, in any future calculations of revenues available to it. Such positions reflect a continuing misunderstanding and disregard for the protection provided to PGW by Section 2212(e) the Code in regard to its prior ratemaking method and requirements. PGW's 2nd Compliance Tariff should be approved as filed on this issue.

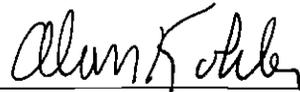
³⁶ School District of Philadelphia v. Zoning Board of Adjustment, 207 A.2d, 864, 871 (Pa. 1965).

³⁷ In other words, in calculating the rate increase for each tariff needed to produce \$33.6 million, PGW treated the MS class as if the rates were increased and PGW was receiving the additional revenue – even though it will not be able to without City Council approval.

IV. CONCLUSION

For the reasons set forth herein, the Exceptions of the OCA, CEPA and OSBA as well as the OTS's Comments have no merit and should be denied. PGW's January 7, 2002 Compliance Filing is completely consistent with the dictates of the Commission's December 6, 2001 Order, and therefore should be approved.

Respectfully submitted,



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Date: January 30, 2002

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CERTIFICATE OF SERVICE

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

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Dated: January 30, 2002

Daniel Clearfield / *ak*

Daniel Clearfield, Esquire

02 JAN 30 PM 14:07
SECRETARY'S BUREAU

DATE: February 14, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *JJ*

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FEB 14 2002

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Philadelphia Gas Works

Attached is a copy of Reply Exceptions of Philadelphia Gas Works, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Pizzingrilli
Commissioner Wilson
Law Bureau
Ots

was

Philadelphia Gas Works
Legal Department



800 W. Montgomery Avenue, Philadelphia, PA 19122
Fax: (215) 684-6798

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DOCUMENT
February 28, 2002

FEB 28 2002

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Secretary McNulty,

Enclosed for filing please find PGW's Tariff Supplement No. 20, in compliance with the Commission's Order entered February 21, 2002 as well as the Commission's Opinion and Order entered December 6, 2001 at Docket No. R-00006042. Attached to Tariff Supplement No. 20 is documentation that supports PGW's calculations. The adjustments included in Tariff Supplement No. 20 do not affect PGW's Proof of Revenue calculations which are filed at Docket No. R-00006042 and are incorporated herein by reference.

Between December 6, 2001 and March 1, 2002, PGW continued to charge its customers the previously approved Commission rates that increased total annual revenues by \$28,067,000 in addition to the \$11,000,000 interim rates prior to the Commission's downward adjustment to \$22,558,000 which the Commission has now determined became effective on December 6, 2001. PGW calculated the actual overcollection between December 6, 2001 and March 1, 2002 and the actual amount overcollected is \$2,267,023. In accordance with discussions with Commission Staff, PGW is complying with the Commission's directive by refunding to customers the actual amount of the overcharge.

Furthermore, through this compliance filing, PGW is providing an additional refund to customers of \$184,638 which reflects the Commission ordered actual overcharge pertaining to customer count and usage of PGW's residential heating customers. Accordingly, the total amount of the refund pertaining to both of the above described issues is \$2,451,661.

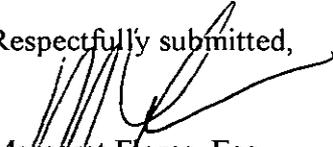
This overcollection, in aggregate, will be returned to customers through a Commodity Charge Credit of \$0.1850 per Mcf to begin with the first billing cycle in March 2001. This rate will remain in effect for six months. At the end of the six months, PGW will provide the Commission, within thirty (30) days, a reconciliation showing the amount of revenues that have been refunded through the credit.

105

Tariff Supplement No. 20 sets forth: a) the revised customer and commodity charges under Rate GS; b) the commodity charge credit; c) the addition of a new customer charge for Rate MS and Rate PHA; d) the addition of a new section, at section 2.3, allowing for stipulated negotiated rates and terms of service contracts with certain customers; and e) clarifications to the terms of Rates BPS-S and BPS-L. The rates will become effective on March 1, 2002 pursuant to ordering paragraph #4 of the Commission's Order adopted February 21, 2002 in this matter. While the new customer charge for Rate MS is included in the proof of revenue statements as required by the Commission's Order, by law, the rate change is subject to approval by the City Council of the City of Philadelphia and the rate change will not be charged or implemented until such time as City Council approval is received.

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

Respectfully submitted,



Margaret Flores, Esq.
For: Philadelphia Gas Works

cc: All parties of Record w/enc.
Karen Moury, Esq. Law Bureau w/enc.
Veronica Smith, Executive Director w/enc.
Robert Rosenthal, Director, Fixed Utility Services w/enc.
Daniel Clearfield, Esq.

R-00006042

SUPPLEMENT NO. 20 to
Tariff Gas - Pa. P.U.C. No. 1
Twentieth Revised Page No. 1
Canceling Nineteenth Revised Page No. 1

PHILADELPHIA GAS WORKS

PHILADELPHIA GAS WORKS
GAS SERVICE TARIFF

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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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 – (Third 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 - (Fifth Revised Page No. 83)

Commodity Charge Credit for Residential, and Public Housing Authority Customers served by this rate. **

MUNICIPAL SERVICE – RATE MS - COMMODITY CHARGE - (Third Revised Page No. 85)

New Customer Charge for Municipal Customers served by this rate. *

PHILADELPHIA HOUSING AUTHORITY SERVICE – RATE PHA - COMMODITY CHARGE - (Fourth Revised Page No. 87)

New Customer Charge for Philadelphia Housing Authority Customers served by this rate.

BOILER AND POWER PLANT SERVICE - SMALL VOLUME – RATE BPS-S – COMMODITY CHARGE (Third 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 (Third Revised Page No. 94)

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

* This rate change was approved and put into effect at Docket No. R-00006042, et. al. entered December 11, 2001. This rate is subject to approval by the City Council of the City of Philadelphia.

** This rate will be in effect for a six-month period as ordered in Docket R-00006042 entered February 21, 2002.

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- ii. Is a former Customer who has not paid a final bill in full, or
 - iii. 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

(C)

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. (C)

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.

(C) - Change

GENERAL SERVICE - RATE GS

Rate: Applicable to all gas consumed on or after March 1, 2002 (C)

Air Conditioning Provision: Effective July 14, 2000

Compressed Natural Gas Provision: Effective July 14, 2000

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

COMMODITY CHARGE	67.770¢	per 100 cubic feet for Residential and Public Housing Authority Customers	(D)
CREDIT	(01.850¢)		(D) *
COMMODITY CHARGE	71.200¢	per 100 cubic feet for Commercial and Municipal Customers	
COMMODITY CHARGE	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, (D) - Decrease; * This rate will be in effect for a six-month period as ordered in Docket R-00006042 entered on February 21, 2002.

MUNICIPAL SERVICE - RATE MS

Rate: Applicable to all gas consumed on or after March 1, 2002
Air Conditioning Provision - Effective March 10, 1991
Compressed Natural Gas Provision: Effective July 14, 2000

AVAILABILITY

Available to properties owned or occupied by the City of Philadelphia or the Board of Education, or any of their respective agencies or instrumentalities, for any type of gas service, unless purchased for resale to others, and where the Company's distribution mains adjacent to the proposed gas service locations are, or can economically be made, suitable to supply the quantities of gas required; provided, however, that the rate shall not be available to commercial tenants of any such property.

This rate is also available for service at such locations, served under seasonal rates for comfort cooling and/or pilot usage, during periods of the year when gas is not ordinarily available under such seasonal rates.

RATE

CUSTOMER CHARGE: Per Meter (except parallel meters) (C) (I)*
\$ 18.00 per month. ↓

Plus

COMMODITY CHARGE The rate per hundred cubic feet 64.13¢

SPECIAL PROVISION - AIR CONDITIONING - For the billing months of May through September, the rate shall become 40.00 cents per 100 cubic feet for all gas used for cooling purposes. This rate is applicable for directly and indirectly fired gas-cooling equipment (gas engine, absorption, adsorption) of minimum cooling capacity of 15 tons, installed on or after September 1, 1990. Such equipment must be separately metered and the cost for any additional metering, related equipment, and installation, remain the responsibility of the customer.

SPECIAL PROVISION - COMPRESSED NATURAL GAS (CNG) - Natural gas provided under this rate schedule for purposes of fueling CNG vehicles shall be dispensed on a liquid gallon basis but billed on an Mcf basis. The conversion between liquid gallons and Mcf shall use a ratio in which the numerator is the Department of Energy BTU energy content of one gallon of gasoline and the denominator is the Lower Heating Value (LHV) in BTUs of the Company's average annual natural gas sendout.

GAS COST RATE CLAUSE

The Gas Cost Rate Clause as set forth in Regulation 11 of the Rules and Regulations of this Tariff shall apply to the above rate.

(C) - Change, (I) - Increase; * The rate change was ordered by the Commission in its December 11, 2001 entered Order at Docket No. R-00006042, et al. By law, the rate change is subject to approval by the City Council of the City of Philadelphia and the rate change will not be charged or implemented until such time as City Council approval is received.

PHILADELPHIA HOUSING AUTHORITY SERVICE - RATE PHA

Rate: Applicable to all gas consumed on or after March 1, 2002
 Air Conditioning Provision: Effective July 14, 2000

AVAILABILITY

Available for all gas usage in multiple dwelling residential buildings containing ten or more dwelling units, owned and operated by the Philadelphia Housing Authority, where cooking shall be performed exclusively with gas and where gas service shall be supplied through one or more single point metering arrangements at locations where the Company's distribution mains adjacent to the proposed gas service locations are, or can economically be made, suitable to supply the quantities of gas required.

This rate is also available for all gas usage in single and multiple dwelling residential buildings, containing less than ten dwelling units, provided, and only so long as, gas is used exclusively for cooking, water heating and space heating for all such residential buildings owned and operated by the Philadelphia Housing Authority, except (1) buildings operated by the Philadelphia Housing Authority, prior to the original effective date of this rate (January 1, 1969), and (2) buildings for which, in the judgment of the Company, such gas service cannot be provided economically.

This rate is also available in buildings, meeting the above specifications, served under seasonal rates for comfort cooling and/or pilot usage, during periods of the year when gas service is not ordinarily available under such seasonal rates.

		RATE	
CUSTOMER CHARGE:	Per Meter (except parallel meters) \$ 18.00 per month		(C) (I) ↓

Plus

COMMODITY CHARGE:	The rate per hundred cubic feet	71.26¢
--------------------------	---------------------------------	--------

(C) - Change, (I) - Increase

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

Overcollection 33.5MM Rate Increase

	October 01 (actual)	November 01 (actual)	December 01 (actual)	January 02 (actual)	February 02 (estimate)	March 02 (estimate)
Residential GS/PHA GS Sales(MCF)	1,453,875	2,548,958	3,491,860	7,037,472	7,127,587	6,732,342
Less-Discounted MCF	49,512	93,308	127,265	254,475	257,238	242,944
Applicable Sales	1,404,363	2,455,650	3,364,595	6,782,997	6,870,349	6,489,398
Overcollection-Cust. Count & Usage (\$/MCF)	\$ 0.0081	\$ 0.0081	\$ 0.0081	\$ 0.0081	\$ 0.0081	\$ 0.0081
" " " -Revenue	\$ 1,468	\$ 19,891	\$ 27,253	\$ 54,942	\$ 55,650	\$ 25,434
" " " -\$39MM vs. \$33.5MM (\$/MCF)			\$ 0.1268	\$ 0.1268	\$ 0.1268	\$ 0.1268
" " " -Revenue			\$ 137,623	\$ 860,084	\$ 871,160	\$ 398,156
Total Overcollection	\$ 1,468	\$ 19,891	\$ 164,876	\$ 915,026	\$ 926,810	\$ 423,590
Cumulative Overcollection	\$ 1,468	\$ 21,359	\$ 186,235	\$ 1,101,261	\$ 2,028,071	\$ 2,451,661

Calculation of Negative Surcharge
(PUC Order Adopted 2/21/02)

Applicable Sales (MCF)*

	March 02	April 02	May 02	June 02	July 02	August 02	Sept 02	Total Applicable Sales (MCF)	Negative Surcharge Amount	Negative Surcharge per MCF
Non Heating-Residential	110,557	208,936	157,113	136,216	91,957	91,881	40,980	837,640		
Non-Heating-CRP	16,058	23,353	12,799	10,161	7,656	7,534	3,382	80,943		
Heating-Residential	2,374,160	3,247,963	1,515,702	961,914	709,924	706,427	317,363	9,833,453		
Heating CRP	598,745	807,905	359,234	208,023	148,701	146,339	65,766	2,334,713		
Cycle P2	29,685	40,238	18,176	10,815	7,884	7,868	3,534	118,200		
Senior Citizen P2	1,592	2,157	968	566	411	411	185	6,290		
Lg User - PHA	9,235	10,697	5,747	5,068	4,197	4,197	2,132	41,272		
Total GS Resd./PHA	3,140,032	4,341,249	2,069,739	1,332,763	970,730	964,657	433,340	13,252,510	\$ 2,451,661	\$ 0.1850

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 participants).

RECEIVED

FEB 28 2002

VIA EXPRESS MAIL, FAX AND FIRST CLASS MAIL

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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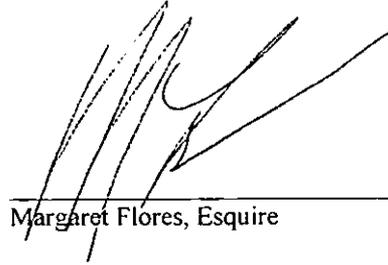
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Dated: February 28, 2002



Margaret Flores, Esquire



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

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(717) 783-5048

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
E-Mail: paoca@ptd.net

March 8, 2002

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

DOCUMENT
FOLDED

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

Dear Secretary McNulty:

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

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

Sincerely yours,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosure

cc: All parties of record

61762

RECEIVED
02 MAR -- 8 PM 4: 12
PA.P.U.C.
SECRETARY'S BUREAU

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ORIGINAL

BEFORE THE
PUBLIC UTILITY COMMISSION

DOCKETED
MAR 18 2002

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

Docket No. R-00006042

PHILADELPHIA GAS WORKS

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SECRETARY'S BUREAU

OFFICE OF CONSUMER ADVOCATE'S
PETITION FOR RECONSIDERATION

Pursuant to Section 5.572 of the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.572, the Office of Consumer Advocate ("OCA") respectfully requests that the Pennsylvania Public Utility Commission ("Commission") reconsider its Order entered February 21, 2002 in the above-captioned proceeding. In support of this Petition, the OCA respectfully sets forth as follows:

DOCUMENT
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1. On February 21, 2002 ("February 21 Order"), the Commission entered an Order that accepted in part and denied in part the exceptions of the OCA, Office of Trial Staff ("OTS"), Office of Small Business Advocate ("OSBA") and Consumers Education and Protective Association ("CEPA") with respect to PGW's Compliance Tariff filed January 7, 2002.

2. The OCA filed an exception to PGW's January 7 Compliance Tariff which sought the refund of the over-collected amount reflecting the difference between the \$39 million rate increase PGW implemented in its October 12 Compliance Filing and the \$33.6 million rate increase that the Commission ultimately approved in this case. OCA Exception No. 1

3. In the February 21 Order the Commission directed that PGW refund the over-collected amount for the months of December 2001 through February 2002, but did not direct a refund of the overcollected amounts from October 12 through December 6, 2001. More specifically, the Commission's February 21 Order stated:

This Commission in its December 6th order clearly intended for PGW to increase its annual revenues by \$22,558,000, and the ordering of a refund of the overcollection for the period beginning December 6, 2001, would not constitute an example of retroactive ratemaking. The overcollection shall be calculated for the months of December 2001 through February 2002 and cannot be absolutely determined at this time, because the MCF data was estimated for the time period in question.

February 21 Order at 4.

4. *The OCA submits that although the Commission is correct in its conclusion that a refund for the months of December 2001 through February 2002 would not constitute retroactive ratemaking, the Commission did not address the issue of the over-collected amounts from October 12 through December 6.*

5. The standard for reconsideration before this Commission is clearly met in this proceeding. As set forth in Duick v. Pennsylvania Gas and Water Co., 56 Pa.P.U.C. 553 (1985), the standards for granting a petition for reconsideration are as follows:

A Petition for Reconsideration, under the provisions of 66 Pa.C.S. §703(g), may properly raise any matters 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. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that '[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them ...' What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considered which appear to have

been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

56 Pa.P.U.C. at 559 [quoting Pennsylvania R.R. Co. V. Pa. Pub. Svc. Comm'n., 118 Pa.Super. 380, 179 A. 850 (1935)]. Through this Petition, the OCA seeks reconsideration of a matter that the Commission did not specifically address in the February 21 Order – whether PGW should refund the over-collected amounts for the time period October 12 through December 6.

6. On December 6, 2001, the Commission entered an Order denying PGW's Petition for Reconsideration and ruling on the OTS and OCA comments to the October 12 Compliance Filing. In its Order, the Commission specifically found:

That the Compliance Filing of Philadelphia Gas Works filed on October 12, 2001 to the Order entered October 4, 2001, ***is hereby found to be not in compliance*** with the Opinion and Order entered October 4, 2001, as modified by the Tentative Opinion and Order entered October 12, 2001, relative to the total allowable annual revenues and the rates designed to recover those revenues.

December 6 Order at 36 [emphasis added].

7. The Commission's December 6 Order also directed:

That Philadelphia Gas Works shall file, within thirty (30) days of the date of entry of this Opinion and Order, a Tariff Supplement designed to produce an increase in total allowable annual revenues in the amount of \$22,558,000 effective upon one day's notice ***for service on and after October 6, 2001.***

December 6 Order at 37 [emphasis added].

8. In response to the Commission's December 6 Order, the Company filed a compliance tariff on January 7, 2002 that reduced rates to a level designed to collect \$33.6 million in additional annual revenue for service rendered after the new compliance tariff was approved, but

did not address the over-charges from October 12, 2001 until the date of final Commission approval of that compliance filing.

9. On January 22, 2002, the OCA filed an exception to the January 7 Compliance Tariff. In its exception, the OCA submitted that the difference between the \$33.6 million rate increase authorized by the Commission and the \$39 million that the Company had been collecting since October 12, 2001 should be refunded to ratepayers. Section 1312 of the Public Utility Code provides the Commission with authority to order a utility to refund any rate received by that utility that was unjust or unreasonable, or was in violation of any regulation or order of the Commission. 66 Pa.C.S. §1312.

10. On January 30, 2002, PGW filed reply exceptions that essentially argued that the Commission was barred from ordering refunds of any over-collected amounts by the Commission-made rate doctrine as expounded in Cheltenham & Abington Sewerage Co. v. Pa.P.U.C., 25 A.2d 334 (Pa. 1942). PGW Reply Exceptions at 6-15. With respect to the over-collection for the period December 6 through the end of February 2002, the OCA is in agreement with the Commission's February 21 Order and its conclusion that this amount should be refunded to ratepayers and does not constitute retroactive ratemaking.

11. However, the February 21 Order does not address the over-collected amount for the period October 12 through December 6. The OCA submits that these over-collections should also be refunded to customers and that such a refund would not constitute retroactive ratemaking since the tariffed rates that were placed into effect on October 12 were still subject to challenge from the parties and further investigation by the Commission, and later deemed to be unjust and unreasonable.

12. The Commission always strives to correct any clerical or computational error in an order as soon as possible after it is brought to its attention. Pa.P.U.C. v. T.W. Phillips Gas & Oil Co., 75 Pa.P.U.C. 237 (1991). Shortly after the Commission entered its October 4 Order, it was brought to the Commission's attention that a computational error was made in the overall level of rate increase for PGW. October 12 Order at 3-4. On October 12, the Commission entered an Order that modified its authorized rate increase from \$39 million to \$33.6 million. Id.

13. When PGW filed a compliance tariff on October 12, implementing a rate increase of \$39 million rather than the authorized amount of \$33.6 million, the OCA and other parties filed exceptions to the compliance tariff. The Commission's regulations provide that no rates contained in a tariff filed in compliance with a Commission order may be imposed prior to entry of a subsequent order by the Commission approving the compliance filing. 52 Pa.Code §5.592(d). However, the Commission may allow the compliance rates to go into effect even though there are exceptions pending. Id. In the instant case, the tariff was allowed to go into effect on one day's notice, despite the exceptions of OCA. Therefore, it is clear that the compliance rates filed October 12 were subject to challenge and not final since the Commission had modified its rate order on the same day the compliance tariff was filed and the OCA had exceptions pending against the compliance tariff.

14. The OCA submits that since the compliance tariff was still subject to challenge and further investigation by the Commission, it was *not* a Commission-approved tariff. The Cheltenham case stands for the proposition that rates collected pursuant to a Commission-approved tariff may not be subject to refund. In Cheltenham, tariff rates that had been previously approved by the Commission became unjust and unreasonable over time and the Commission order

refunds. The Supreme Court held that a refund of rates collected under the Commission-approved tariff could not be ordered. *Cheltenham* at 338. That is not the situation here. In the instant case, the rates contained in the compliance tariff had not been approved by the Commission and, in fact, were still subject to challenge by the OCA's exceptions and were not in compliance with the Commission's modification to the rate order. A Commission-made rate is not established unless and until the compliance tariff is approved by the Commission. *Cohen v. Pa.P.U.C.*, 468 A.2d 1143, 1147 (Pa. Commw. 1983)["... rates fixed by a tariff, *when approved by the Commission as being in compliance with a revenue determination*, are indeed commission-approved rates ..."(emphasis added)]. The OCA submits that these were not Commission-approved rates and never were.

15. The Commission is obligated to fashion just and reasonable rates after considering and deciding each one of many issues in a rate proceeding. *Pa.P.U.C. v. Columbia Gas of PA*, 74 Pa.P.U.C. 711, 716. Commission-made rates can only be the final product of a series of determinations made in a rate proceeding that results in just and reasonable rates. *Id.* In the instant case, that determination yielded an increase in PGW's revenue requirement of \$33.6 million per year, not the \$39 million per year increase that PGW implemented in its October 12 Compliance Filing.

16. The OCA submits that the Company should not be allowed to hang its hat on *the rate award from the October 4 Order since it contained a computational error and claim that it was a Commission-approved rate.* The rate award in the October 4 Order contained a computational error that was corrected shortly thereafter by the Commission. The Company was put on notice on October 12 when the Tentative Order was entered that the just and reasonable level of rates determined in the base rate proceeding resulted in a \$33.6 million rate increase, not \$39 million. Furthermore, the Company's compliance tariff containing the \$39 million rate increase did not

become effective until October 13, 2001. By then the Commission had already modified its rate order. The OCA submits that there is simply no way that the compliance rates that went into effect on October 13 could be deemed to be Commission-approved.

17. Finally, the fact that the October 12 Compliance Tariff rates were unjust and unreasonable was also confirmed in the Commission's December 6 Order. The December 6 Order makes it clear that the rates that PGW put into effect in the October 12 Compliance Filing are not in compliance with the Commission's determination that the Company is entitled to a \$33.6 million rate increase. The December 6 Order also makes it clear that the Company was to file a tariff supplement that would implement the \$33.6 million increase for service **on and after October 6, 2001**. December 6 Order at 37. Thus, the OCA submits that the October 12 Compliance Tariff rates were not Commission-approved and are therefore subject to refund.

WHEREFORE, for the reasons set forth above, the OCA respectfully requests that the Commission reconsider its Order entered February 21, 2002 and direct PGW to refund all over-collected amounts starting from October 12, 2001.

Respectfully submitted,



Stephen J. Keene
Senior Assistant Consumer Advocate
Tanya J. McCloskey
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
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(717) 783-5048

Dated: March 8, 2002

*68066

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 Petition for Reconsideration, 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 8th day of March, 2002.

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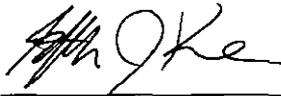
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Office of General Counsel
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61830.wpd

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

ORIGINAL

IN REPLY PLEASE
REFER TO OUR FILE

March 11, 2002

JAMES J. MC NULTY, SECRETARY
PA PUBLIC UTILITY COMMISSION
P O BOX 3265
HARRISBURG PA 17105-3265

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SECRETARY'S BUREAU
P.U.C.

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 **Office of Trial Staff Exceptions to Philadelphia Gas Works' Compliance Filing** 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

Enclosure

c: Parties of Record

DOCUMENT
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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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SECRETARY'S BUREAU

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

**EXCEPTIONS OF THE OFFICE OF TRIAL STAFF
TO PHILADELPHIA GAS WORKS' FEBRUARY 28, 2002
COMPLIANCE FILING**

The Office of Trial Staff ("OTS") hereby submit the following Exceptions pursuant to 52 Pa. Code §5.592 to the Philadelphia Gas Works' ("PGW") February 28, 2002 Compliance Filing associated with the Pennsylvania Public Utility Commission's ("Commission") February 21, 2002 Order in the above-captioned matter.

I. Background

On October 4, 2001, the Commission entered an Opinion and Order authorizing PGW to increase its total annual revenues in the amount of

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**DOCKETED
MAR 18 2002**

\$28,067,000, in addition to \$11,000,000 in interim rate relief granted in February 2001.

On October 12, 2001, a Tentative Opinion and Order was issued proposing to modify the October 4th Order due an error in the calculation of bad debts expense. The October 12th Order ordered PGW to reduce its annual revenue increase of \$28,067,000 to \$22,558,000. ¹

On December 6, 2001, the Commission issued an Opinion and Order permanently addressing the bad debt calculation error, and also found that PGW's filing of Supplement No. 13 to Tariff-Gas Pa. P.U.C. No. 1 was not in compliance with certain aspects of the Commission October 4th Opinion and Order.

Accordingly, in its December 6th Order, the Commission directed PGW to file a compliance tariff supplement designed to produce a \$22,558,000 increase in annual revenues, not to be placed into effect until receiving approval from the Commission.

On January 7, 2002, PGW filed Supplement No. 16 to Tariff-Gas Pa. P.U.C. No. 1, for the purpose of designing rates in compliance with the Commission December 6th Order. PGW also filed workpapers supporting the tariff supplement with a proof of revenues for the annual increase of \$22,558,000 in allowable revenues. On January 24, 2002, OTS filed comments regarding the January 7th compliance filing. The essence of OTS' comments was that PGW's January 7th compliance filing was designed by the Company to overcollect

revenues over and above the level approved by the Commission. Based upon OTS' comments, the Commission in an Opinion and Order concluded in pertinent part "that the overcollection calculation provided by the Office of Trial Staff reflecting \$2,975,854 for the months of December 2001 through February 2002 is accepted."

Accordingly, the Commission ordered PGW in pertinent part as follows:

4. That PGW shall file a tariff supplement reflecting a rate increase of \$22,558,000 and a negative surcharge of \$2,975,854, to become effective on March 1, 2002. The surcharge shall be in effect for a six-month period. At the end of the six-month period, PGW shall provide, within thirty (30) days, reconciliation showing the amount of revenues that have been refunded through the surcharge. *The difference between the amount that should be refunded (\$2,975,854) and the actual amount refunded shall be reconciled through base rates over the remainder of the fiscal year (August 31, 2002).*

In the letter accompanying its February 28, 2002 Compliance Filing, PGW discussed in pertinent part that (a) "between December 6, 2001 and March 1, 2002, PGW continued to charge its customers the previously approved Commission rates that increased total annual revenues by \$28,067,000 in addition to the \$11,000,000 interim rates prior to the Commission's downward adjustment to \$22,558,000 which the Commission has now determined became effective on December 6, 2001. PGW calculated the actual overcollection between December 6, 2001 and March 1, 2002 and the actual amount overcollected is \$2,267,023. In accordance with discussions with Commission Staff, PGW is

¹ Also on October 12, 2001, PGW filed Supplement No. 13 to Tariff-Gas Pa. P.U.C. No. 1 in compliance with the October 4th Order, to become effective October 13, 2001.

complying with the Commission's directive by refunding to customers the actual amount of the overcharge;² (b) Furthermore, through this compliance filing, PGW is providing an additional refund to customers of \$184,638 which reflects the Commission ordered actual overcharge pertaining to customer count and usage of PGW's residential heating customers. Accordingly, the total amount of the refund pertaining to both of the above described issues is \$2,451,661." (See Appendix A)

II. Exceptions

1. The Compliance Filing Is Not In Compliance with the Commission's February 21st Opinion and Order

The Commission's Opinion and Order of February 21, 2002, succinctly and unambiguously ordered that PGW *shall* file a tariff supplement reflecting a rate increase of \$22,558,000 and a negative surcharge of \$2,975,854 to become effective on March 1, 2002. By its letter accompanying the February 28, 2002 Compliance Filing, the Company implies that discussions between PGW and Commission Staff authorize PGW to depart from the express directive in the Commission's Order, and to file a compliance filing refunding \$2,451,661 *as opposed to the Commission's ordered \$2,975,854*. Any such de facto amendment of the Commission's February 21st Order, absent notice and opportunity to be heard by affected parties, is blatantly illegal. If the Commission accepts this compliance filing, it will have completely ignored 66 Pa. C.S.A. §703(g), which

² Emphasis Added

provides for a notice and an opportunity to be heard with respect to rescission and amendment of Commission Orders, as well as long-standing case law to that effect. (see Westinghouse Elec. Corp. v. Pennsylvania Public Utility Commission, 404 A .2d 712, 44 Pa. Cmwlth. 407 (1979))

In the instant Compliance Filing, without even the benefit of a Petition for Rescission and/or Amendment of the Commission's February 21st Order, much less any opportunity for response by OTS to PGW's ex parte representations, PGW, and apparently the Commission's advisory staff, have determined that the amount to be refunded will be \$2,451,661 instead of the Commission ordered \$2,975,854. If the Commission countenances this new procedure, i.e., "Amendment of Commission Order By Discussion With Advisory Staff", it may as well dispense with hearings altogether, and simply let all disagreements be worked out in an ex parte fashion. No longer will the filing of a Petition for Reconsideration be a necessary procedure, but rather, ex parte discussions with unidentified Commission staff will become the acceptable norm for amending Commission Orders.

The refund amount as ordered by the Commission is \$2,975,854. The Office of Trial staff specifically argued and won this point before the Commission. If the Commission permits "amendment" of its orders in this fashion, the clock will be turned back decades to the era of the "smoke filled room." This is totally unacceptable.

III. Conclusion

For all the foregoing reasons, the Office of Trial Staff respectfully requests that the Pennsylvania Public Utility Commission order the Philadelphia Gas Works to fully comply with its Opinion and Order entered February 21, 2002.

Respectfully submitted,


Johnnie E. Simms
Senior Prosecutor


Charles F. Hoffman
Chief Prosecutor

Date: March 11, 2002

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P.U.C.
SECRETARY'S BUREAU

Appendix A

Philadelphia Gas Works
Legal Department800 W. Montgomery Avenue, Philadelphia, PA 19122
Fax: (215) 684-6798

February 28, 2002

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty,

Enclosed for filing please find PGW's Tariff Supplement No. 20, in compliance with the Commission's Order entered February 21, 2002 as well as the Commission's Opinion and Order entered December 6, 2001 at Docket No. R-00006042. Attached to Tariff Supplement No. 20 is documentation that supports PGW's calculations. The adjustments included in Tariff Supplement No. 20 do not affect PGW's Proof of Revenue calculations which are filed at Docket No. R-00006042 and are incorporated herein by reference.

Between December 6, 2001 and March 1, 2002, PGW continued to charge its customers the previously approved Commission rates that increased total annual revenues by \$28,067,000 in addition to the \$11,000,000 interim rates prior to the Commission's downward adjustment to \$22,558,000 which the Commission has now determined became effective on December 6, 2001. PGW calculated the actual overcollection between December 6, 2001 and March 1, 2002 and the actual amount overcollected is \$2,267,023. In accordance with discussions with Commission Staff, PGW is complying with the Commission's directive by refunding to customers the actual amount of the overcharge.

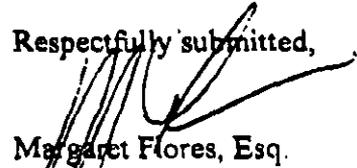
Furthermore, through this compliance filing, PGW is providing an additional refund to customers of \$184,638 which reflects the Commission ordered actual overcharge pertaining to customer count and usage of PGW's residential heating customers. Accordingly, the total amount of the refund pertaining to both of the above described issues is \$2,451,661.

This overcollection, in aggregate, will be returned to customers through a Commodity Charge Credit of \$0.1850 per Mcf to begin with the first billing cycle in March 2001. This rate will remain in effect for six months. At the end of the six months, PGW will provide the Commission, within thirty (30) days, a reconciliation showing the amount of revenues that have been refunded through the credit.

Tariff Supplement No. 20 sets forth: a) the revised customer and commodity charges under Rate GS; b) the commodity charge credit; c) the addition of a new customer charge for Rate MS and Rate PHA; d) the addition of a new section, at section 2.3, allowing for stipulated negotiated rates and terms of service contracts with certain customers; and e) clarifications to the terms of Rates BPS-S and BPS-L. The rates will become effective on March 1, 2002 pursuant to ordering paragraph #4 of the Commission's Order adopted February 21, 2002 in this matter. While the new customer charge for Rate MS is included in the proof of revenue statements as required by the Commission's Order, by law, the rate change is subject to approval by the City Council of the City of Philadelphia and the rate change will not be charged or implemented until such time as City Council approval is received.

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

Respectfully submitted,


Margaret Flores, Esq.
For: Philadelphia Gas Works

cc: All parties of Record w/enc.
Karen Moury, Esq. Law Bureau w/enc.
Veronica Smith, Executive Director w/enc.
Robert Rosenthal, Director, Fixed Utility Services w/enc.
Daniel Clearfield, Esq.

RECEIVED TIME FEB. 28. 3:39PM

PRINT TIME FEB. 28. 3:43PM

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v.

: Docket No. R-00006042, et al.

Philadelphia Gas Works :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Office of Trial Staff**
Exceptions to Philadelphia Gas Works' Compliance Filing, dated March 11,
2002, either personally, by first class mail, express mail, electronic mail, or by fax
upon the persons listed below:

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

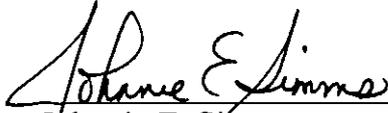
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Philadelphia, PA 19141

Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505



Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

Dated: March 11, 2002
Docket No. R-00006042, et al.

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

DATE: March 18, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *J.J.*

Philadelphia Gas Works

Attached is a copy of Exceptions of the Office of Trial Staff to Philadelphia Gas Works' Compliance Filing, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Pizzingrilli
Commissioner Wilson
Law Bureau
Ots

was

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DOCKETED
MAR 18 2002

DATE: March 18, 2002

SUBJECT: R-00006042

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *JJ*

DOCKETED

MAR 18 2002

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Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works

Attached is a copy of a Petition for Reconsideration, filed by Office of Consumer Advocate in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: FUS
OTS

was

ORIGINAL
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March 19, 2002

VIA HAND DELIVERY

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Harrisburg, PA 17120

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02 MAR 19 PM 3:27
U.S. BUREAU
SECRETARY'S

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

**DOCUMENT
FOLDER**

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works ("PGW"), enclosed for filing please find an original and nine copies of its Reply Exceptions to the Office of Trial Staff's Exceptions contesting PGW's February 28, 2002 Compliance Filing with regard to the above referenced matter. All parties of record have been officially served as evidenced by the attached Certificate of Service.

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

Respectfully submitted,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/sam
Enclosure

cc: Parties of Record

DSH:30809.1/PHI211-151946

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility
Commission

v.

Philadelphia Gas Works

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Docket Number R-00006042, et. al

SECRETARY'S BUREAU

PHILADELPHIA GAS WORKS'
REPLY TO OFFICE OF TRIAL STAFF EXCEPTIONS

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I. INTRODUCTION AND SUMMARY

Philadelphia Gas Works ("PGW") submits this Reply to the Exceptions filed by the Office of Trial Staff ("OTS") contesting PGW's February 28, 2002 Compliance Filing which, if permitted to become effective, would refund \$2,451,661 in overcharges to PGW's ratepayers. Through its exceptions, OTS demands that PGW be required to utilize its estimate of the overcollection identified in the Commission's February 21, 2002 Order rather than the actual amount overcollected by PGW. The OTS's rationale is that, while the Commission's order recognized that \$2.9 million figure was an estimate, it did not actually direct PGW to calculate the actual amount of the overcharge. Furthermore, OTS claims that PGW's procedural discussions with Commission staff regarding the process to be utilized in complying with the Commission's February 21, 2002 Order were allegedly improper.¹

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¹ The essence of OTS's argument is that rather than submit a compliance filing with the actual amount of the overcollection, PGW should have submitted a petition for reconsideration requesting the Commission to expressly direct the Company to replace the estimate with the actual overcollection. Presumably, PGW would then file another compliance filing, similar or identical to the one OTS currently disputes, after the Commission granted PGW's reconsideration petition.

OTS's arguments are not only incorrect, but take form over substance to a new level. OTS apparently does not dispute that the \$2.9 million estimate in the Commission's Order did not foresee, nor could it have foreseen, that January and February were extraordinarily warm months² which, by definition, have the effect of reducing PGW's actual collections below projected levels. Furthermore, OTS does not claim that PGW's \$2,451,661 calculation is inaccurate or that it does not reflect the actual amount of the overcollection. Nor does OTS claim (nor can it reasonably claim), that PGW should be required to refund amounts to customers which it never collected. Indeed, OTS's only argument is that PGW should be required to jump through an additional procedural hoop and file a reconsideration petition, which not only is unnecessary and would require PGW to incur additional costs, but would likely delay refunds to customers.

Furthermore, OTS's implication that PGW's procedural discussions with Commission Staff were improper ex parte communication is completely misplaced. Conferences between utilities and Commission Staff regarding the nature and context of compliance filings are a routine part of the regulatory process utilized by the Commission for as long as one can remember. In this case, PGW's discussions were completely procedural in nature and merely requested staff guidance as to whether PGW could skip the unnecessary step of filing a reconsideration petition and immediately submit a compliance filing which refunded to customers the actual amount overcollected.³ Of course, as expressly indicated in PGW's January 20, 2002 cover letter, PGW followed the procedural guidance of Commission Staff in its filing --

² In fact, the two months were two of the warmest winter months on record.

³ PGW did not discuss the validity of PGW's calculation of actual overcollection with Staff nor did Staff provide any guidance on the merits of that issue.

and appropriately so.⁴ There is nothing unusual or improper about these routine discussions and OTS's exception should be denied.

II. REPLY EXCEPTIONS

Reply To OTS Exception NO. 1⁵ – OTS's Exceptions Place Form Over Substance and PGW's Filing is Compliant With the Substantive Intent of the Commission's February 21, 2002 Order.

The Commission's February 21, 2002 Order required PGW to refund certain monies to ratepayers which the Commission determined had been overcollected by PGW. The refund ordered by the Commission has two components. The first is an overcollection pertaining to PGW's utilization of the number and average use of its residential heating customers which the Commission previously found was inaccurate. The second component of the refunds pertains to PGW rates in effect between December 2001 and February 2002 which the Commission found were non-compliant with the Commission's December 6, 2001 Reconsideration Order at this docket.

In addressing the overall refund obligation in its February 21, 2002 Order, the Commission recognized that OTS had estimated the amount of total overcharge for the period from December 2001 through February 2002 as \$2,975,854 (or \$226,910 for the first component of the overcharge and \$2,748,744 for the second component). However, in recognizing this figure which was included in OTS's January 24, 2002 Exceptions, the Commission expressly

⁴ While these discussions were procedural in nature and did not involve "the merits of any fact in issue" they were completely appropriate under any interpretation of the ex parte rule. Furthermore, it is PGW's understanding that the ex parte rule in 66 Pa. C.S. § 334(c) has never been interpreted to apply between the issuance of a final Commission Order and a utility compliance filing since during that period there is no "matter pending before the commission in any contested on-the-record proceeding." Accordingly, even discussions of the merits of PGW's compliance filing would have been completely appropriate had they occurred.

⁵ OTS Exceptions at 4-6.

found that, **“The overcollection shall be calculated for the months of December 2001 through February 2002 and cannot be absolutely determined at this time because the Company has not, as of the date of this order, billed customers.”**⁶ Accordingly, the Commission specifically recognized that the actual amount of the overcollection would have to be calculated at some point in the future after PGW had billed customers.⁷ PGW has calculated the actual amount of the overcharge utilizing the most recent data available and has included that amount (\$2,454,661 -- \$184,638 relating to the first component and \$2,267,023 relating to the second component) in its Compliance Filing for refund to customers through a six month negative surcharge.

Indeed, it is not surprising that the actual amount of the overcharge is substantially less than the amount estimated by OTS in January of 2002. Both January and February were extraordinarily warm months -- some of the warmest winter months on record -- which could not have been predicted by anyone. The inevitable result is that PGW collected less under the rates in effect from ratepayers than could have been projected through reasonable estimates. The fact of the matter is that, while OTS’s estimates were reasonable at the time they were made, the unusually warm weather caused PGW to overcharge an amount substantially less than that estimate. Apparently, this fact is not in dispute.

⁶ Order at 3 (emphasis added).

⁷ The Commission ordered a true up mechanism to assure that the amount of the overcharge was actually received by customers. However, the Commission did not direct a true up between the estimated overcollection and the actual overcollection indicating that it expected PGW to calculate the actual amount of the refund prior to implementing the negative surcharge mechanism.

No party, including OTS, disputes PGW's calculations.⁸ No party, including OTS, claims that PGW should be or can be required to refund monies it never collected. Apparently, this dispute is whether or not the language of the Commission's Order allows PGW to calculate the refund in its Compliance Filing based on a January estimate (with the estimate to be corrected at some unknown later date) or the most up to date data available.⁹

This debate puts form over substance and should be rejected. If any party disputes PGW's calculation of the actual amount of the overcollection, it should come forward at this time. Absent such an objection, there is no rational reason why PGW should not implement a refund mechanism in an amount based on current data through this Compliance Filing. As the Commission expressly recognized in its Order, the OTS estimate of the overcharge could not have accurately calculated the actual overcharge -- particularly given the unforeseen warm weather in January and February. Accordingly, inclusion of the current amount of the overcharge in this Compliance Filing is fully consistent with the Commission's Order, read as a whole. While such an interpretation is the only rational interpretation of the Commission's Order, PGW conferred with the Commission Staff regarding how it should proceed and received procedural guidance as to Staff's preference. OTS's suggestions that those communications were improper is patently absurd.

⁸ PGW provided the back-up documentation for its calculation with its Compliance Filing. Furthermore, OSBA has discussed the calculations with PGW and, to the best of PGW's knowledge, is satisfied that the calculation is accurate.

⁹ For example, OTS suggests that PGW file a petition for reconsideration to allow it to calculate the refund based on actual data rather than an estimate.

First, there was no discussion of the merits of any fact in issue. Second, even discussions of the merits of the Compliance Filing were appropriate since there was no pending contested on the record proceeding.¹⁰

Overall, PGW's pending Compliance Filing is in substantive compliance with the intent of the Commission's Order. Accordingly, OTS's Exceptions should be denied.

Respectfully Submitted,



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Dated: March 19, 2002

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¹⁰ Ordering Paragraph 4 of the Commission's February 21, 2002 Order is clear and unambiguous "That Docket No. R-00006042 shall be marked closed."

CERTIFICATE OF SERVICE

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

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Dated: March 19, 2002



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March 21, 2002

VIA HAND DELIVERY

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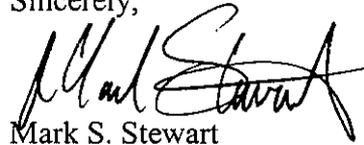
Re: Pa. PUC v. Philadelphia Gas Works;
Docket No. R-00006042, et. al

Dear Secretary McNulty:

Enclosed for filing are the original and three copies of Philadelphia Gas Works' Answer to the Office of Consumer Advocate's Petition for Reconsideration, in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jlg
Enclosures
cc: Certificate of Service (w/enc)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility
Commission

v.

Philadelphia Gas Works

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Docket Number R-00006042, et. al

**PHILADELPHIA GAS WORKS' ANSWER TO THE OFFICE
OF CONSUMER ADVOCATE'S PETITION FOR RECONSIDERATION**

Philadelphia Gas Works ("PGW") submits this Answer to the Office of Consumer Advocate's ("OCA") Petition for Reconsideration. The OCA requests that the Commission reconsider its February 21, 2002 Order, which resolved issues surrounding PGW's Compliance Filing implementing the base rate increase authorized by the Commission's December 6, 2001 Order. Specifically, OCA has asked the Commission to reconsider its decision not to require PGW to issue refunds to its customers for rates collected between October 13, 2001 and December 6, 2001.¹

The OCA's Petition is completely meritless because: (1) it fails to satisfy the standard necessary for granting reconsideration as it simply repeats the same arguments which the Commission rejected in its February 21, 2002 Order; (2) it is based on an utterly erroneous factual predicate – that the Commission's October 12, 2001 **Tentative** Order did more than merely propose to change the October 4 Order and instead finally changed the rate award; and

¹ October 13, 2001 is the effective date of PGW's tariff supplement implementing the rate increase approved by the Commission in its October 4, 2001 Order. December 6, 2001 is the date of the Commission's reconsideration order which adopted the Commission's October 12, 2001 Tentative Decision and finally reduced the rate increase previously ordered on October 4, 2001 by the Commission.

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(3) it requests relief which is not only unsupported by the Public Utility Code, but also violative of the rules against retroactive ratemaking and retroactive refunds of a Commission-made rate.² Consequently, the Commission must deny the OCA's Petition for Reconsideration.

I. THE OCA HAS NOT SATISFIED THE STANDARD FOR GRANTING RECONSIDERATION UNDER THE PUBLIC UTILITY CODE.

1. The OCA properly cites the standard for granting reconsideration pursuant to Section 703(g) of the Public Utility Code as set forth in *Dulick v. Pennsylvania Gas and Water Co.*, 56 Pa.P.U.C. 553 (1985). The relevant portion of that standard provides as follows:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considered which appear to have been overlooked or not addressed by the Commission.

Id. at 559.

2. The OCA's Petition does not meet this standard because it fails to offer any new or novel arguments, and merely repeats the same arguments that the OCA made – and the Commission rejected – in regard to PGW's Compliance Filing of January 7, 2002. Accordingly, the OCA's Petition should be denied.

3. In its Exceptions to PGW's Compliance Filing, which were granted in part and denied in part by the subject February 21, 2002 Commission Order, the OCA argued that PGW was required to provide refunds to customers for rates collected between October 13, 2001 and December 6, 2001. The OCA's position relied on its baseless contention that the Commission's

² PGW incorporates by reference its Reply Exceptions to the OCA, CEPA et al., and the Office of Small Business Advocate's Exceptions to its January 7, 2002 Compliance Filing as well as Reply Comments to the Office of Trial Staff's Comments Regarding the Compliance Filing which was filed on January 30, 2002, in the above-captioned matter.

October 12, 2001 **Tentative** Order finally changed the \$39 million rate increase allowed by the October 4 Order to an approved increase of \$33.6 million.³ The OCA maintained this position despite the fact that the **Tentative** Order was in fact by its terms tentative, that it merely **proposed** to change the October 4 Order based on an apparent computational error, and that the Commission's December 6 Order plainly characterized the October 12 Order as tentative and stated in its ordering paragraphs that the PUC was finally changing the rate award from \$39 million to \$33.6 million.⁴ Moreover, the OCA argued in its Exceptions that the Commission had the authority to require such a refund pursuant to Section 1312 of the Code,⁵ and that the rate that the Commission permitted to go into effect on October 13, 2001, which implemented the increase approved in the October 4 Order, was somehow not consistent with Section 5.592 of the Commission's regulations and therefore not effective.⁶ These arguments were rejected in the PUC's December 6, 2001 Order.

4. In its Petition for Reconsideration, the OCA asserts the exact same argument that PGW should be forced to provide retroactive refunds to customers in relation to the rates collected between October 13, 2001 and December 6, 2001.⁷ Additionally, OCA's argument in

³ OCA Exceptions at 2.

⁴ As stated in the ordering paragraph of the Tentative Decision: "[I]f no comments are filed, this Tentative Opinion and Order shall become final without further Commission action." Tentative Order at ¶ 5. PGW and the other parties did file timely comments.

⁵ OCA Exceptions at 4-5.

⁶ OCA Exceptions at 5.

⁷ Actually, the OCA goes so far as to assert that the refunds should extend back to October 6, 2001, a date that predates even the point at which it maintains that the Commission modified the rate increase approved by the October 4 Order.

its Petition is based on the exact same grounds as those that it raised in its Exceptions to PGW's Compliance Filing which the Commission resolved through its February 21, 2002 Order.

5. Thus, the OCA's Petition for Reconsideration offers no new or novel arguments, and represents exactly the type of "second motion" that raises the "same questions which were specifically considered and decided against them" that the Commission rejected in *Dulick*.⁸

6. To the extent that the OCA asserts that the Commission did not decide the issue of the alleged overcollection from October 13 to December 6, 2001, the assertion is patently incorrect. By affirmatively stating that the overcollection "shall be calculated for the months December 2001 through February 2002," the Commission clearly, if implicitly, rejected the OCA's demand for a greater refund that included the period from October to December 2001.⁹ Furthermore, the Commission's rejection of OCA's position is further evidenced by the fact that the Commission found that, unlike the period in dispute, the refund period ordered was not retroactive ratemaking.¹⁰

7. Read in context, the Commission's Order represents a clear rejection of the OCA's position. To the extent the denial was not expressly stated, arguments which are not specifically addressed by the Commission in issuing its decisions are deemed to have been

⁸ *Dulick*, 56 Pa.P.U.C. at 559.

⁹ February 21, 2002 Order at 4.

¹⁰ After recognizing that the parties, including OCA, were seeking refunds back through October 2001, the Commission determined that "the ordering of a refund of the overcollection for the period beginning December 6, 2001, would not constitute retroactive ratemaking." February 21, 2002 Order at 4 (emphasis added). The correct interpretation of the Commission's Order is that it recognized that requiring refunds for the period which predated December 6 would constitute retroactive ratemaking.

considered and denied.¹¹ The Commonwealth Court has held that the Commission's decisions adequately address the parties' contentions where:

on each of the points [now raised] the Commission was faced simply with a choice of actions, each fully explained in the record and the Commission's choice in each case amounted to an implicit acceptance of the thesis of the party which prevailed and a rejection of the contentions of the loser.¹²

The court's description accurately depicts the Commission's February 21, 2002 Order which the OCA now challenges. The Commission fully explained PGW's position regarding the fact that the requested refunds were inappropriate as well as the positions of the OCA and the other parties who sought to have refunds ordered for the period of October 13, 2001 through February 2002. The Commission then made an express decision limiting the requested refunds to the December 6 – March period, and thereby rejected the OCA's request for the finding of a greater amount of overcollection.

8. As the OCA has failed to satisfy the *Dulick* standard for reconsideration, the Commission must deny its Petition.

II. THE OCA'S PETITION IS BASED ON THE ERRONEOUS FACTUAL PRESUMPTION THAT THE COMMISSION'S OCTOBER 12 TENTATIVE ORDER FINALLY REDUCED THE \$39 MILLION RATE INCREASE AWARDED TO PGW.

9. The OCA's entire argument on reconsideration is based upon its assertion that the PUC finally ruled on October 12, 2001 to reduce PGW's base rate award from \$39 million to \$33.6 million.¹³

¹¹ *University of Pennsylvania v. Pennsylvania Public Utility Comm'n*, 485 A.2d 1217, 1222-23 (Pa. Cmwlth. 1984); see October 4, 2001 Order at 7.

¹² *Id.* at 1223.

¹³ OCA Petition at ¶¶ 12-14 and 17.

10. But, that the Commission's October 12, 2001 Order did not finally change the amount of rate relief awarded to PGW should be clear by its name alone – "Tentative Opinion and Order." Something that is tentative is, by definition, not final.

11. Beyond its name, the text of the October 12 Tentative Order made clear that it did not immediately and finally reduce PGW's approved rate increase from \$39 million to \$33.6 million. As PGW set forth in its Reply Exceptions to these same arguments raised in the OCA's Exceptions to its Compliance Filing, the October 12 Tentative Order addressed a "potential error which may result in a reduction" in PGW's rate increase.¹⁴ The Tentative Order included the following additional passages that clearly indicate its lack of finality:

[W]e have elected . . . to reconsider and propose to amend our Final Order entered on October 4, 2001, after notice and opportunity to be heard by the interested parties.¹⁵

Specifically, by this Tentative Opinion and Order, we propose to correct¹⁶

[W]e became aware of a potential error For this reason, we are proposing to amend our Final Order¹⁷

By this Tentative Opinion and Order, we simply propose to correct¹⁸

12. Moreover, the Tentative Order's ordering paragraphs plainly stated that if comments were timely filed by the parties, the Order would not become final without further

¹⁴ October 12, 2001 Tentative Order at 2 (emphasis added).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.* (emphasis added).

¹⁷ *Id.* at 3 (emphasis added).

¹⁸ *Id.* at 4 (emphasis added).

Commission action.¹⁹ PGW, as well as the other parties, filed timely comments, and thus by the operation of its own terms, the Tentative Order required additional action by the Commission to become final and actually cause a reduction to PGW's approved rate increase. The Commission's December 6, 2001 Order constituted that additional action. Then – and only then – did the Tentative Order become final and result in a reduction in PGW's rate increase to \$33.6 million.

13. The fact that the October 12 Tentative Order was not final and did not, upon issuance, result in a reduction of PGW's rate increase was recognized by the Office of Trial Staff ("OTS") in its Comments to PGW's Compliance Filing. As stated by the OTS, the Commission, in issuing the Tentative Order, was "proposing to modify" and had "proposed to reduce" PGW's rate increase approved in the October 4, 2001 Final Order.²⁰

14. Finally, the Commission, itself, has indicated that it agrees with PGW – and disagrees with the OCA – in considering its October 12 Tentative Order to have merely proposed, and not effected, a change in PGW's rate increase. The following excerpts from the Commission's December 6, 2001 and February 21, 2002 Orders reject the OCA's interpretation of the Tentative Order and the factual predicate to its Petition for Reconsideration:

On October 12, 2001, a Tentative Opinion and Order . . . was issued proposing to modify the October 4th Order due to an apparent error The October 12th Order proposed to reduce the allowable annual revenues . . . and set a period of ten days within which any comments were to be filed.²¹

¹⁹ *Id.* at ¶ 5.

²⁰ OTS Comments at 2.

²¹ December 6, 2001 Order at 8 (emphasis added).

The OCA commented on the need for further revisions to PGW's Compliance Filing based on the October 12th Order. PGW agreed that once the October 12th Order became final, revisions to its tariff would become necessary. We agree that **as a result of our issuance of the instant Opinion and Order** [the December 6th Order], further revisions of PGW's tariff in compliance with this Opinion and Order [December 6th Order] will be necessary."²²

On October 12, 2001, the Commission entered a Tentative Opinion and Order proposing to modify the . . . Order entered October 4, 2001 The proposed correction²³
.....

[W]e hereby conclude that the Tentative Opinion and Order entered October 12, 2001, **shall become final** and that the . . . Order entered October 4, 2001, **is modified** consistent with the disposition of the bad debt expense issue.²⁴

It is Ordered: 1. That the Opinion and Order entered October 4, 2001 **is hereby adopted as modified by the Tentative Order** 2. That the Tentative Opinion and Order . . . **is hereby made a Final Order**.²⁵

On October 12, 2001, a Tentative Opinion and Order was issued proposing to modify the October 4th Order The October 12th Order proposed to reduce the annual revenues²⁶

²² *Id.* at 12 (emphasis added). Significantly, further changes to PGW's tariff were not necessitated by the Tentative Order, but rather by the instant order, the December 6, 2001 Order.

²³ *Id.* at 14 (emphasis added).

²⁴ *Id.* at 14-15 (emphasis added).

²⁵ *Id.* at ¶¶ 1-2 (emphasis added). If the December 6th Order made the Tentative Order a final order, it is axiomatic that it was not a final order upon issuance or by its own operation.

²⁶ February 21, 2002 Order at 1 (emphasis added).

Based on these passages, it is plainly evident that, in the Commission's opinion, the Tentative Order (1) merely proposed to change the rate increase and (2) was not a final order and was only made a final order by the December 6, 2001 Order.

15. Moreover, the Tentative Order did not merely correct a typographical or calculation error. Rather, it posited a position – that the final rate award should be adjusted iteratively to make it consistent with the overall level of revenues authorized, and proposed a specific methodology for doing so. PGW submitted comments on the methodology as well as claims that other factors should be considered to offset the downward effect on the rate award. It was only after the PUC considered – and rejected – these claims that the final rate award could be determined.

16. As the factual predicate to the OCA's Petition is an utter fallacy, and PGW's rate increase was not reduced until December 6, 2001, the Petition has absolutely no basis or merit and must be denied.

III. THE RELIEF REQUESTED BY THE OCA IS PROHIBITED BY LAW.

17. As detailed by PGW in its Reply Exceptions to the OCA's Exceptions to the January 7, 2001 Compliance Filing, where PGW responded to this exact same argument, the relief requested by the OCA would constitute retroactive ratemaking and a retroactive refund of a Commission-made rate – both of which are prohibited by law.

18. The OCA's claims that the Commission's October 4th Order was not final, that PGW's associated October 12, 2001 Compliance Filing was not effective, and that the rates implementing the approved \$39 million rate increase were not Commission-made rates are simply erroneous.²⁷ As noted in the excerpts of the Tentative Order set forth above, the

²⁷ OCA cites *Cohen v. Pa. PUC* for this proposition, emphasizing a passage in which the Commonwealth Court stated that "rates fixed by a tariff, when approved by the

Commission referred to its October 4, 2001 Order as a "Final Order," which it obviously was as it disposed of PGW's permanent base rate case. But for the Commission's October 4th Order, PGW would have been entitled by law to implement the full \$65 million rate increase it had requested as of October 6, 2001.

19. Further, consistent with Section 5.592(b) of the Commission's regulations, PGW was entitled to implement the October 4th Order on one day's notice. Section 5.592(b) provides that unless the Commission specifies otherwise in its order, a tariff revision shall be effective upon statutory notice to the Commission and the public. The Commission made no contrary specification in its October 4, 2001 Order, and the statutory notice period under Section 1308 had passed at the time of PGW's October 12, 2001 Compliance Filing. Thus, PGW was entitled to place into effect the Commission-made rates immediately, and did so on one day's notice.

20. Also, consistent with Section 5.592(d), PGW's rates, as set forth in the Compliance Filing, properly became effective on October 13, 2001. The OCA admits this,²⁸

Commission as being in compliance with a revenue determination, are indeed commission-made rates." 468 A.2d 1143, 1147 (Pa. Cmwlth. 1983). However, the passage is not deserving of the emphasis that the OCA attempts to ascribe to it, and fails to support the OCA's position. The court in *Cohen* did not distinguish between the Commission-made status of rates which took effect pursuant to an approved compliance filing versus those which the Commission allowed to become effective consistent with 52 Pa. Code § 5.592(d). Moreover, *Cohen* simply acknowledges that "the tariff, in order to receive approval as being in compliance, must follow the parameters . . . adopted in the PUC order which made the revenue determination." *Id.* at 1147. In this case, that order is the October 4, 2001 Order. The OCA is not suggesting that PGW's October 12 Compliance Filing was not in conformance with the October 4 Order, but rather that it did not comply with the rate reduction that was proposed by the October 12 Tentative Order. With the exception of a dispute over the number and usage calculations for certain customer classes, in relation to which PGW readily acknowledged that a refund was necessary, PGW's October 12 Compliance Filing complied with the October 4 Final Order, and therefore the rates implemented thereby were Commission-made rates.

²⁸ OCA Petition for Reconsideration at ¶ 13.

noting that, notwithstanding the filing of exceptions by the parties, the Commission may allow the compliance rates to become effective – which is exactly what the Commission did here.

21. Thus, the rates that were implemented pursuant to the October 4, 2001 Final Order were in fact Commission-made rates. Consequently, the rates are not subject to refund, and to require PGW to issue refunds for a period which predated the date on which the Commission ordered a change in the rate increase would constitute unlawful retroactive ratemaking.²⁹

22. Finally, the OCA invokes the Commission's authority to grant refunds under Section 1312 of the Code, but – as explained in response to the same arguments that the OCA raised prior to the February 21, 2002 Order – the Commission's Section 1312 authority is inapplicable to this case. Under that section, the Commission is only authorized to require refunds where it has determined that the rate received by the public utility was: 1) unjust or unreasonable; 2) in violation of any regulation or order of the Commission; or 3) in excess of the applicable rate contained in an existing and effective tariff.³⁰ Clearly, none of those scenarios are present in this matter to support the refunds sought by the OCA.

23. As to the first plausible scenario, the Commission, in its October 4th Final Order, expressly found that the rates authorized therein – and unchanged until the December 6th Order

²⁹ PGW incorporates by reference the arguments set forth in its Reply Exceptions to the OCA, CEPA and OSBA's Exceptions to its January 7, 2002 Compliance Filing as well as Reply Comments to the OTS's Comments. *See Popowsky v. Pa. PUC*, 642 A.2d 648, 651 (Pa. Cmwlth. 1994) (citing *Pike County Light & Power Co. v. Pa. PUC*, 487 A.2d 118 (Pa. Cmwlth. 1985)); *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76, 79 (Pa. Cmwlth. 1981); *West Penn Power v. Pa. PUC*, 100 A.2d 110, 111-12 (Pa. Super. 1953); *Cheltenham v. Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334, 336 (Pa. 1942); and *Pa. PUC v. Citizens Utilities Waier Co. of Pennsylvania*, 1996 Pa. PUC LEXIS 167, *49-50.

³⁰ 66 Pa. C.S. §1312(a).

- were just and reasonable.³¹ There is no legislative expectation in the Public Utility Code that a utility will proactively refund to its customers any amounts that the Commission may deem unreasonable, unlawful or excessive. Here, PGW's rates – which were authorized by the Commission on October 4, 2001 and allowed by the Commission to take effect on October 13, 2001 – were neither unreasonable, unlawful, nor excessive. PGW's rates were charged pursuant to a then valid Order of the Commission, and thus they are not subject to refund under Section 1312.

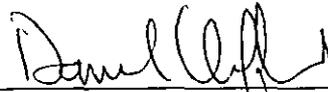
24. As to the second scenario, the only order that the OCA has alleged PGW to have violated is the Tentative Order – which, as detailed above, did not become final and effective until the issuance of the December 6, 2001 Order.³² The OCA has not alleged the presence of the third ground for issuing a refund under Section 1312.

³¹ October 4, 2001 Order at 24-27.

³² In its December 6, 2001 Order, the Commission did find that PGW's October 12, 2001 Compliance Filing was not in compliance with the October 4 Order in regard to the number and average use of residential heating customers. As a result, PGW adjusted the numbers in its January Compliance Filing and provided an appropriate refund for the overcollection. However, this is very different from the argument set forth by the OCA which suggests that PGW's October 12 Compliance Filing was not in compliance with a Tentative Order that did not become final and effective until December 6, 2001.

WHEREFORE, PGW respectfully requests that the OCA's Petition for Reconsideration be denied.

Respectfully submitted,



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Date: March 21, 2002

SECRETARY'S BUREAU
02 MAR 21 PM 3:01

CERTIFICATE OF SERVICE

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

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Dated: March 21, 2002



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March 21, 2002

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RECEIVED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Second Floor, 7 North
400 North Street
Harrisburg, PA 17120

Filed by Fed Ex

DOCUMENT
FOLDER

MAR 21 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Pa. PUC v. Philadelphia Gas Works
R-00006042

Letter Supporting OCA's Petition for Reconsideration of February 21, 2002 Order

Dear Mr. McNulty:

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

This letter is to support OCA's Petition for Reconsideration of February 21, 2002 Order. That Petition requests that the Commission reconsider said Order and direct PGW to refund all over-collected base rate amounts starting from October 12, 2001.

Thank you for your attention to this matter.

Very truly yours,

Philip A. Bertocci

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

Attorneys for CEPA et al.

cc: Certificate of Service

DOCKETED

JUN 17 2002

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R-00006042

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Letter in Support of OCA's Petition for Reconsideration of the Commission's February 21, 2002 Order upon the participants listed below in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a participant).

Via First Class U.S. Mail, Postage Prepaid

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Office of Small Business Advocate
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Harrisburg, PA 17101

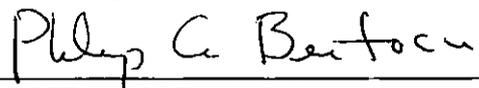
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PHILIP A. BERTOCCI

Date: March 21, 2002

RECEIVED

MAR 21 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DATE: March 22, 2002

SUBJECT: R-00006042

TO: Bureau of Fixed Utility Services

FROM: James J. McNulty, Secretary *JJ*

DOCKETED
MAR 22 2002

**DOCUMENT
FOLDER**

Philadelphia Gas Works

Attached is a copy of Reply Exceptions of Philadelphia Gas Works to the Office of Trial Staff's Exceptions contesting PGW's February 28, 2002 Compliance Filing, filed in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: Chairman Thomas
Commissioner Bloom
Commissioner Fitzpatrick
Commissioner Pizzingrilli
Commissioner Wilson
Law Bureau
Ots

was