



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

R-00006042C001 et al.

IN REPLY PLEASE
REFER TO OUR FILE

FEBRUARY 8, 2001

R-00006042

R-00006042C001, et al.

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DOCUMENT
FOLDER

Pennsylvania Public Utility Commission
V.
Philadelphia Gas Works

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on February 8, 2001 has adopted an Order in the above-entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
FG

See Attached Listing for Additional Parties of Record

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held February 8, 2001

Commissioners Present:

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

Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works

Docket No. R-00006042
R-00006042C001, et. al

ORDER

BY THE COMMISSION:

On January 5, 2001, Philadelphia Gas Works (Respondent) filed Supplement No. 7 to Tariff Gas-Pa. P.U.C. No. 1 to become effective March 6, 2001, containing proposed changes in rules, regulations and rates calculated to produce \$65,000,000 in additional annual revenues. Pursuant to 66 Pa. C.S. §1308(d), the filing will be suspended by operation of law on March 6, 2001, until October 6, 2001, unless permitted by Commission Order to become effective at an earlier date. To date 59 formal complaints have been filed.

In addition, Respondent filed a petition for waiver of potentially applicable notification and filing requirements and establishment of expedited hearing schedule for base rate proceeding. Pursuant to 52 Pa. Code §§ 5.41 and 5.43, 66 Pa. C.S. §§ 2212(c), (d) and (e), Chapter 13 and Section 2212(c) of the Public Utility Code (“Code”), Philadelphia Gas Works (“PGW”) requests that the Commission:

- (1) acknowledge that certain notification provisions in the Commission’s regulations are not presently applicable to the extent that they are deemed to apply to PGW to waive them;
- (2) acknowledge that certain filing requirements in the Commission’s regulations applicable to the filing of a base rate case are not presently applicable to PGW, or to the extent deemed applicable, to waive them; and
- (3) to establish an expedited hearing schedule culminating in a Commission decision no later than on or around June 1, 2001 for the base rate case.

Comments to PGW’s Petition were filed by the Office of Consumer Advocate (“OCA”), Office of Trial Staff (“OTS”), Philadelphia Industrial and Commercial Users Group (“PICGUG”) and the Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, Action Alliance of Senior Citizens of Greater Philadelphia, and Tenants’ Action Group (collectively “CEPA et al.”).

The following are the issues addressed by the various commentors.

Section 53.45(a) - Notice to PUC

Pursuant to 52 Pa. Code § 53.45(a), a utility is required to file written notice 30 days prior to filing a new tariff informing the Commission of the anticipated filing of a general rate increase. PGW seeks a waiver of this requirement because the base rate filing accompanying this Petition was required as part of the interim rate proceeding,

The OCA comments that this regulation is intended to ensure that timely notice is provided by a public utility as to any proposed changes in rates. The OCA points out under Subsection (a) of §53.45, PGW was required to provide 30 days notice of the instant filing to the PUC, with additional copies served upon the OCA and the Office of Small Business Advocate (“OSBA”). The OCA comments that it does not oppose the waiver of this requirement, provided appropriate notice of this filing is given to customers.

CEPA et al. comments that it does not oppose this request and supports the OCA’s position.

Section 53.45(b)(4) - Notice to Customers

PGW proposes to provide notice to customers under the alternative method set forth in 52 Pa. Code § 53.45(b)(4). This provision reads:

Alternative method. In lieu of the method described in paragraph (2), a public utility on a 1-month billing cycle filing a proposed general rate increase may notify its customers by means of a bill insert.

The OCA comments that this Subsection allows utilities with monthly billing cycles, such as PGW, to notify customers via bill inserts, rather than written or printed notices as required in Subsection (b)(2) of §53.45. The OCA comments that it does not object to PGW's use of the alternative bill insert method, so long as PGW remains under obligation to provide the forms of notice called for by Subsections §53.45(b)(1) and (b)(3). The OCA comments that Subsection (b)(1) requires notice posting in each of PGW's offices that accept payments and Subsection (b)(3) requires PGW to distribute news releases to major newspapers, radio and television stations serving the Company's territory on the date that the rate increase is filed. The OCA argues that these requirements should not be waived.

The OCA submits that PGW's preference to use bill inserts rather than written or printed notice mailed to its customers may create a problem since PGW's billing, collections and customer service ("BCCS") system has not operated properly and many customers have not been receiving monthly bills. If the BCCS system is incapable of ensuring that bills reach PGW's customers, mailing of individual notices as provided for in Subsection (b)(2) would be more appropriate. The OCA submits that PGW should only be permitted to use the alternative bill insert method if it can verify to the Commission that the problems with the BCCS have been corrected.

CEPA et al. argues that PGW's "Notice to Customers" does not satisfy PUC requirements. CEPA et al. comments that 52 Pa. Code §53.45(b)(4)(i) requires that the Notice shall be printed on "distinctive color paper..." CEPA et al. comments that the Notice provided by PGW was printed on white paper and therefore is not in compliance with Section 53.45(b)(4).

Furthermore, CEPA et al. submits that PGW's Notice is not in compliance with Section 53.45(b)(4) since it does not provide a deadline that accurately describes the time frame within which customers may file a Complaint.

Section 53.52 and 53.53 – Waiver of Filing Requirements

PGW's Petition also addresses Sections 53.52 and 53.53 of Chapter 52. PGW seeks a blanket waiver from "any additional requirements, including, without limitation, the requirements set forth at 52 Pa. Code §§ 53.52 and 53.53". Section 53.52 sets forth mandatory information to be included when a public utility files for a rate change. Section 53.53 is captioned "Information to be furnished with proposed general rate increase filings in excess of \$1 million".

PGW believes that it is complying with all applicable filing requirements, however, if the PUC believes that any other filing requirements apply, PGW requests a waiver of such provisions. PGW indicates that it has not been able to establish or prepare a data base containing all the information required by the Commission in connection with the filing of a base rate case.

The OCA argues that to waive the filing of the supporting information required in a base rate filing would compromise the ability of the parties to review and analyze this filing and may only unnecessarily delay the proceeding. Furthermore, the OCA comments that even if certain provisions of Sections 53.52 and 53.53 are inapplicable to PGW, a blanket waiver of these provisions would be inappropriate.

OTS submits that PGW knew as early as June 22, 1999, the date Governor Ridge signed into law the Natural Gas Choice and Competition Act that the Commission would assume jurisdiction of PGW on July 1, 2000. In addition, the OTS comments that PGW knew on August 17, 2000 that a full base rate case would have to be filed with the Commission on or before January 1, 2001. Therefore, the OTS argues that PGW had ample notice to examine the Commission's regulation and comply with those regulations.

The OTS submits that the Commission's regulations are important in that any utility's request for a rate increase is, in essence, a request for a review of their financial position in order to determine whether a rate increase is justified. The OTS argues that the Commission's regulations should not be waived for PGW's base rate filing.

PICGUG submits that Section 2112(e) does not prohibit the PUC from requiring PGW to provide additional filing information, but rather, addresses issues related to PGW's previous ratemaking methodology. PICGUG argues that requiring PGW to provide additional information needed in order to fully review the Company's base rate filing does not contradict any of the provisions in Section 2212(e). In fact, PICGUG posits that the clear motivation and intent of Section 2212(e), with respect to

ratemaking methodology, was to provide PGW with some level of certainty in ratemaking methods until the Company's bonds are retired. PICGUG argues that this financial protection clearly would not be compromised by the PUC requiring the submission of supporting information and documentation.

PICGUG refutes PGW's argument that if Sections 53.52 and 53.53 are deemed to apply to PGW, then these provisions should be waived. PICGUG argues that PGW has been aware of the base rate filing requirements since August 17, 2000 and therefore a waiver of these provisions is not justified. PICGUG submits that the PUC is not required to immediately waive all applicable Commission provisions prior to proceeding with review of PGW's filing and PICGUG believes the PUC should have the opportunity to review the filing and address issues on an individual basis during the course of the proceeding, rather than provide one blanket waiver of all PUC regulations and procedures.

CEPA et al. admits that PGW has accurately quoted language contained in Sections 2212(c) and 2212(e) of the Gas Choice Act. CEPA et al. argues that the quoted language does not trump any other language in the Code as suggested by PGW's use of the phrase "notwithstanding any other provision in the Code." However, CEPA et al. submits that the quoted language does not mean that the PUC may waive constitutionally based provisions contained in the Public Utility Code. Furthermore, CEPA et al. comments that PGW's rates are subject to the federal and state constitutional requirement that they be just and reasonable.

CEPA et al. submits that the Commission is not required to follow the procedures formerly used by the PGC as alleged by PGW. CEPA et al. argues that limiting the information available to the parties would subvert the ability of the parties and the Commission to determine what base rate increase would be just and reasonable.

CEPA et al. agrees with the OCA reasons and opposes PGW's request for a blanket waiver of the requirements of 52 Pa. Code §§53.52 and 53.53.

Expedited Proceeding

PGW requests that the Commission issue an Order in the instant proceeding "on or around June 1, 2001". Such a modification would shorten the typical base rate time from 9 months to 5 months. In support of its request, PGW argues that under PGC jurisdiction, base rate increases were completed in 5 months. Also, PGW contends that due to its fiscal year (September 1- August 31) and ongoing financial crisis, rate relief is needed no later than June 1, 2001.

The OCA submits that the Company has not provided any demonstration that the PGC has an established procedure or time frame for consideration of a base rate increase request of this magnitude. The OCA argues that PGW is now under the PUC's jurisdiction and this filing is being made under the Commission's regulations. The OCA argues that to allow this case to be decided in nearly half the time that is allotted for cases of this magnitude is unreasonable and therefore PGW's request for an expedited proceeding should be denied.

OTS submits that the time frame associated with PGW's prior base rate cases has no relevance to this proceeding. OTS argues that it is an overly broad interpretation of Section 2212 to suggest that the Commission must utilize the five month time frame of the PGC in addressing PGW's base rate filing, rather than the nine month time frame utilized by the Commission.

OTS comments that PGW is suggesting that dire financial conditions will be created without an increase in a certain time frame. OTS submits that the Company made a management decision not to place into effect the interim rate of \$11 million and therefore, PGW must now live with the consequences of its decision. There is no justification, argues OTS, to limit the time period for PGW's first full base rate proceeding under the Commission's jurisdiction to five months.

PICGUG objects to PGW's request that the PUC expedite the hearing schedule for this proceeding. PICGUG also objects to PGW's claims that an expedited proceeding is needed due to the financial crisis currently facing the Company. PICGUG submits that PGW's financial crisis claims are merely an attempt to avoid full review of the Company's filing by the PUC. PICGUG notes that as a condition to the expedited interim rate proceeding PGW was required to file a full base rate case with the PUC to provide adequate opportunity for the parties to review and analyze PGW's current tariff. To expedite this proceeding, PICGUG argues, would result in nothing less than a second interim rate proceeding.

CEPA et al. argues that the Commission should deny PGW's request for expedited hearing in this proceeding.

Resolution

We will grant PGW's request for a waiver of 52 Pa. Code § 53.45(a) which requires timely notice be provided by a public utility as to proposed changes in rates. With regard to Customer Notice we will grant PGW's request to provide notice to customers under the alternative method set forth in 52 Pa. Code § 53.45(b)(4). This method allows PGW to notify customers via bill inserts, rather than written or printed notices. We agree with the OCA that Subsection (b)(1) requiring notice posting in each of PGW's offices that accept payments should not be waived. Also, Subsection (b)(3) requiring PGW to distribute news releases to major newspapers, radio and television should not be waived.

We will not grant PGW a blanket waiver of filing requirements. We agree with the OCA that any waiver request should identify the specific requirements not being fulfilled and explain why PGW is unable to comply with them. Also, as OTS noted, PGW has had ample time to review the Commission's regulations setting forth the filing requirements. Importantly, we seek to ensure that parties have the opportunity to review all relevant information pertaining to the various issues related to this proceeding. To the extent that PGW has failed to comply with certain filing requirements, it must either promptly respond to requests for such information from the parties or seek a specific waiver from the Commission regarding that particular requirement.

We agree with the parties that PGW's request for an expedited hearing schedule which would culminate in the issuance of an Order "on or around June 1, 2001" is unreasonable and therefore, we will deny PGW's request. We recognize that the parties need sufficient time to review the information presented by PGW and to litigate any disputed issues. Nevertheless, if the parties are amenable to a shortened hearing process or are able to present a settlement to the Commission, an earlier decision than would otherwise occur under a fully litigated proceeding might be possible.

Investigation and analysis of the tariff filing and the supporting data indicate that the proposed changes in rates, rules and regulations may be unlawful, unjust, unreasonable, and contrary to the public interest; **THEREFORE,**

IT IS ORDERED:

1. That an investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness, and reasonableness of the rates, rules and regulations proposed in Supplement No. 7 to Tariff Gas-Pa. P.U.C. No. 1.
2. That Supplement No. 7 to Tariff Gas-Pa. P.U.C. No. 1 be, and hereby is, suspended until October 6, 2001, unless otherwise directed by Order of this Commission.
3. That this investigation shall include consideration of the lawfulness, justness and reasonableness of Respondent's existing rates, rules, and regulations.

4. That the Office of Administrative Law Judge shall assign this case to an Administrative Law Judge, who shall schedule such hearings as may be necessary culminating in the issuance of a Recommended Decision.

5. That the petition for waiver of potentially applicable notification and filing requirements and establishment of expedited hearing schedule for base rate proceeding be granted in part and denied in part.

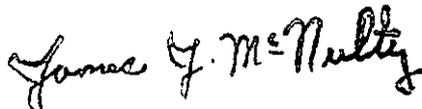
6. That PGW's request for waiver of 52Pa. Code § 53.45(a) which requires that a utility file with the Commission written notice 30 days prior to filing be granted.

7. That PGW's request to provide notice to customers under the alternative method set forth in 52 Pa. Code § 53.45(b)(4) be granted.

8. That PGW's request for waiver from providing the information required at 52 Pa. Code §§ 53.52 and 53.53 be denied.

9. That a copy of this Order shall be served upon the Respondent, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, and any persons who have filed Formal Complaints against Respondent's proposed rate changes.

BY THE COMMISSION



James J. McNulty,
Secretary

(SEAL)

ORDER ADOPTED: February 8, 2001

ORDER ENTERED: FEB - 8 2001