

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	R-00061931
v.	:	R-00061931C0001 <u>et al.</u>
	:	
Philadelphia Gas Works	:	

**ORDER # 7 REGARDING
OUTSTANDING MOTIONS**

BACKGROUND

**DOCUMENT
FOLDER**

By Order #3 dated March 9, 2007; the procedural schedule for this proceeding was affirmed. The procedural schedule included the date the record would close, which was by 4:30 p.m. on May 25, 2006. On Thursday, May 24, 2007, counsel for Philadelphia Gas Works ("PGW" or "Company"), Mr. Daniel Clearfield, Esquire and Mr. Gregory Stunder, Esquire, stated that the on-the-record data request from the Office of Trial Staff ("OTS") regarding PGW witness, Ms. Barbara Bisgaier's, Exhibit BB-4 had not been answered by the Company and a stipulation between OTS and the Company regarding bad debt had not been completed to submit into the record. The presiding officers stated that these two items could be presented to be admitted into the record on or before 4:30 p.m. June 1st, 2007; otherwise the record would close as established by the March 9th Order by 4:30 p.m. May 25, 2007.

The counsel for the Archdiocese of Philadelphia ("Archdiocese") was not present at the evidentiary hearings. (Tr. 449-50, 978) On May 24, 2007, counsel for PGW moved to dismiss the intervenor status of the Archdiocese for failure to participate. (Tr. 978-79). Administrative Law Judge ("ALJ") Fordham added that the Archdiocese failed to: (1) appear to submit testimony into the record; (2) respond to the objection submitted by PGW on May 18, 2007; (3) respond to

ALJ's request for presentation of witnesses; and (4) be present at any evidentiary hearing. (Tr. 421-23, 979-80).

On May 18, 2007, PGW provided a written motion to strike portions of the surrebuttal testimony of Ms. Mondre, the School District of Philadelphia's ("PSD") witness, pre-filed as School District #4. (Tr. 424-29). On May 21, 2007, PGW's counsel reiterated the motion on the record and PSD's counsel responded orally. On May 22, 2007, the ALJs ruled that the motion was granted in part and denied in part. (Tr. 463-64).

By electronic mail at 12:17 p.m. on Friday, May 25, 2007, counsel for Philadelphia Housing Authority ("PHA"), Ms. Jill Guldin, Esquire, and Mr. Phillip Hinerman, Esquire, submitted a Motion to Supplement the Record ("Motion"). (The electronic mail was followed by first class mail). The Motion stated that PHA's cross examination of PGW's witness, Mr. Craig White's rebuttal testimony, PGW Statement 5R and related exhibit marked as CW-10, yielded no information regarding the PHA gas service rate prior to 1993. Through its Motion PHA requests that the attachment, Exhibit A, supplement the record pursuant to 52 Pa.Code §§ 5.103(a) and (b) to render more complete data of the monthly gas service rate from January 1990 to May 2007 for the following classes: General Service – Residential, General Service – Commercial, General Service – Industrial, Municipal Service, and Philadelphia Housing Authority.

At 2:06 p.m. on Friday, May 25, 2007, PGW sent, by electronic mail followed by first class mail, Exhibit BB-4A to respond to the on-the-record data request of OTS. Pursuant to 52 Pa.Code § 5.351, PGW requested that PGW Exhibit BB-4A be admitted into the record.

The record closed at 4:30 p.m. May 25, 2007, without a request for reopening the record regarding resolution of the pending Motion. Monday, May 29, 2007, was a national holiday and thus, the state offices were closed.

By electronic mail on Tuesday, May 29, 2007, counsel for PGW, Mr. Gregory Stunder, Esquire requested guidance from the presiding officers for a deadline to answer the

Motion. By electronic mail on Tuesday, May 29, 2007, PGW and all parties were directed that any response to the pending Motion would be due no later than 1:30 p.m. Wednesday, May 30, 2007.¹

By 1:19 p.m. on Wednesday, May 30, 2007, PGW submitted its Answer to the Motion requesting that the Motion be dismissed. PGW excepts to the Motion on procedural grounds. PGW states that the evidence pending in the Motion is responsive to Mr. White's rebuttal testimony and not Mr. White's cross-examination. PGW Answer at ¶ 6. Hence, PGW states that admission of the evidence contained in the Motion would violate PUC regulations on procedure and timing of evidence. PGW asserts that the appropriate response would have been surrebuttal testimony which was due May 15, 2007, and not cross-examination conducted May 22, 2007. PGW Answer at ¶ 8. PGW also asserts that it has the burden of proof since it is the utility requesting the rate increase. Pursuant to 52 Pa.Code § 5.242 PGW is permitted to close the case. PGW asserts that a grant of the Motion would violate Section 5.242 of the Pennsylvania Code. PGW Answer at p. 3. PGW excepts to the Motion substantively in that the Company cannot verify the source of the data or corroborate the authenticity of the data. PGW Answer ¶ 8.

These matters are ripe for ruling.²

DISCUSSION

PHA Motion

The applicable section of the Public Utility Code, 66 Pa. C. S. A. § 315(a) reads in relevant part:

(a) Reasonableness of rates.-In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any

¹ The time given provided the parties twenty-four (24) hours from the time the request for guidance was submitted to provide a response.

² PHA submitted by electronic mail a response to PGW's Answer at 11:28 a.m. on May 31, 2007. This Order did not consider PHA's response as PUC regulations do not provide for a response to an Answer; and thus, we do not find PHA's response proper. Any response to the PHA response on May 31, 2007 is moot as the PHA response was not considered.

public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

The Pennsylvania Code ("Code") states, "In a proceeding, the party having the burden of proof, shall open and close..." 52 Pa.Code § 5.242(a). The Code also states, "A party will not be permitted to introduce evidence during a rebuttal phase which: ... (2) Should have been included in the party's case-in-chief." 52 Pa.Code § 5.243(e)(2). The facts and these regulations work in this proceeding to the detriment of the Motion. Based on the facts and the appropriate regulations the Motion is denied.

PGW, as the utility requesting the rate increase, is allowed to close the case. A grant of the Motion would result in PHA closing the proceeding. PGW is correct in that granting the Motion would violate Section 5.242 of the Code, 52 Pa.Code § 5.242. ^{OK} Thus, procedurally we are prohibited from granting the Motion for it would violate our regulations.

Furthermore, the Motion addresses the **rebuttal** Exhibit CW-10 sponsored by PGW's witness in pre-filed testimony dated May 4, 2007. PHA does not explain why its witness, Ms. Mondre, did not address any discrepancy with the data or its appropriate timeframe in its **surrebuttal** testimony pre-filed on May 15, 2007, which responded to PGW rebuttal testimony. Additionally, if the Motion were granted, PHA does not provide PGW with an opportunity to challenge the authenticity and veracity of the Exhibit A data presented in the Motion. If PHA had presented the Exhibit A data in question at the surrebuttal testimony phase of the proceeding, the obstacle of PGW's ability to challenge the authenticity and veracity of the data would have been removed. PGW would have had the opportunity to address any inadequacies it perceived in the Exhibit A data through its rejoinder. PHA missed its opportunity to timely address the data in PGW Exhibit CW-10 and in essence has waived its right to do so now.

PHA's Motion fails to comply with the public utility regulations of timing in presenting testimony; that is testimony presented must regard directly prior testimony. Pursuant to Section 5.243(e)(2) of the Code, it is found that PHA should have properly addressed the data at

issue contained in its Motion regarding accuracy and appropriate history of PGW Exhibit CW-10 in its surrebuttal testimony on May 15, 2007. 52 Pa.Code § 5.234(e)(2).

PGW Exhibit

The request for admission into the record of PGW Exhibit BB-4A was timely. No party has objected to the admission of PGW Exhibit BB-4A. This request having no objection is granted.

Bad Debt Stipulation

By electronic mail at 3:31 p.m. on June 1, 2007, PGW and OTS submitted for admission into the record what had been marked as PGW Hearing Exhibit 5. PGW Hearing Exhibit 5 is a stipulation between PGW and OTS that the Company's pro forma test year bad debt expense for present and proposed rate is 4.5%. The parties jointly request that this exhibit be admitted into the record.

The request for admission into the record of PGW Hearing Exhibit 5 was made timely. No party has objected to the admission of PGW Hearing Exhibit 5. This request having no objection is granted.

Status of Archdiocese of Philadelphia

The motion to dismiss the Intervenor status of Archdiocese by PGW was made timely. No party objected to this motion. This request having no objection was granted. (Tr. 980).

THEREFORE,

IT IS ORDERED:

1. That the Motion to Strike portions of the School District of Philadelphia's surrebuttal testimony marked School District #4 was granted in part and denied in part.

2. That the Philadelphia Housing Authority's Motion to Supplement the Record is denied and Exhibit A attached to the Motion is not admitted into the record consistent with this Order.

3. That the Motion by Philadelphia Gas Works to admit Exhibit BB-4A is granted and that exhibit is admitted into the record.

4. That the Joint request to admit PGW Hearing Exhibit 5 is granted and that exhibit is admitted into the record.

5. That the Motion by Philadelphia Gas Works to dismiss the Archdiocese of Philadelphia as an Intervenor was granted.

Date: June 4, 2007


Cynthia Williams Fordham and
Angela T. Jones
Administrative Law Judges

Pennsylvania Public Utility Commission v. Philadelphia Gas Works
Docket Nos. R-00061931, R-00061931C0001 et al.

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