

THE SCHOOL DISTRICT OF PHILADELPHIA
SCHOOL REFORM COMMISSION

440 N. BROAD STREET, SUITE 313
PHILADELPHIA, PENNSYLVANIA 19130-4015

OFFICE OF GENERAL COUNSEL

TELEPHONE (215) 400-4120
FAX (215) 400-4121

ORIGINAL

MILES H. SHORE
DIRECT DIAL: (215) 400-5162
E-MAIL: mshshore@phila.k12.pa.us

Via UPS

June 11, 2007

RECEIVED

JUN 11 2007

Pennsylvania Public Utility Commission
Secretary's Bureau
Commonwealth Keystone Building
2nd Floor, Room N-201
400 North Street
Harrisburg, PA 17120-3265

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works
Docket No. R-00061931

Dear Secretary:

I represent The School District of Philadelphia, Intervenor. Enclosed for filing are the original and nine copies of the Main Brief of The School District with Certificate of Service. Kindly time-stamp the enclosed extra copy and return it to me in the enclosed envelope. Also enclosed is a copy of the Brief on a CD in Microsoft Word.

Thank you very much.

Very truly yours,

DOCUMENT
FOLDER

Miles H. Shore

Miles H. Shore
Assistant General Counsel

MHS/jmc
Enclosures

cc: Administrative Law Judges
Service List of Active Parties

131

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PHILADELPHIA GAS WORKS

Docket No. R00061931

RECEIVED

JUN 11 2007

**DOCUMENT
FOLDER**

MAIN BRIEF

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

OF

**THE SCHOOL DISTRICT OF PHILADELPHIA,
INTERVENOR**

DOCKETED
JUN 13 2007

Miles H. Shore
Attorney I.D. No. 03274
Assistant General Counsel
The School District of Philadelphia
440 N. Broad Street, Suite 313
Philadelphia, PA 19130
(215) 400-5162
(215) 400-4121 fax
mhshore@phila.k12.pa.us

June 12, 2007

Attorney for
The School District of Philadelphia,
Intervenor

TABLE OF CONTENTS

Page

I. INTRODUCTION..... 1

II. SUMMARY OF ARGUMENT..... 3

III. RATE BASE [Omitted Per Pre-Hearing Order #4]

IV. REVENUES [Reserved]*

V. EXPENSES [Reserved]*

VI. TAXES [Omitted Per Pre-Hearing Order #4]

VII. RATE OF RETURN [Omitted Per Pre-Hearing Order #4]

VIII. MISCELLANEOUS ISSUES

Statement of Question Involved..... 4

Proposed Ordering Paragraph..... 11

IX. RATE STRUCTURE [Reserved]*

X. CONCLUSION..... 11

* The School District is not submitting Main Brief positions on these issues, but reserves discussion of these topics for its Reply Brief.

JUN 11 2007

I. INTRODUCTION**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

The School District of Philadelphia (the "School District") is an active intervenor in this case.¹ The School District, the largest in the Commonwealth of Pennsylvania and eighth largest in the United States, is responsible for the education of more than 207,000 students in the City of Philadelphia. The School District oversees the operations of more than 327 buildings and support facilities.

The School District's current (2006-2007) annual operating budget is \$2.04 billion. Virtually all of its funding for operations is from public sources, the majority of which comes from the Commonwealth. The balance of funding comes largely from the City of Philadelphia, through local taxes and non-tax revenue and a small amount (less than \$200,000) is provided by the federal government. As a result of funding shortfalls, the School District has been forced to undertake substantial cost-cutting measures, including the elimination of positions. The School District is actively working to reduce its energy costs, which are substantial in part due to the age of many of its facilities.

The rate increase requested by the Philadelphia Gas Works ("PGW") in this case, if approved, will increase the School District's energy costs substantially and will cause the School District to reduce expenditures devoted to the education of its students and the safety of its students and staff in order to operate within its publicly-financed budget. Such reductions would be in addition to those the School District needs to make as a result of its budgeted revenue shortfall.

For the foregoing reasons, the School District urges the Commission to ensure that PGW's rate increase request is thoroughly scrutinized in this proceeding, that PGW

¹ Intervention was granted at the pre-hearing conference held February 23, 2007 without objection and memorialized in Pre-Hearing Conference Order #3 issued March 9, 2007.

receives through its tariffed rates no more than is absolutely necessary for it to provide safe, adequate and reliable service, that the apportionment of cost responsibility to PGW's customers is fair and equitable, and that all customers, including the School District, are neither disadvantaged nor given preference with regard to the provision of PGW's services.

The School District provided testimony in this proceeding, through its Chief Executive Officer, Paul G. Vallas, its Director of General Services, James Lewis, and its consultant, Judith L. Mondre, President of Mondre Energy, Inc.² Mr. Vallas and Mr. Lewis have provided an overview of the School District's financial matters and the impact that PGW's rate increase, if approved, would have on the School District, as well as issues with regard to discriminatory practices of PGW. Recent published reports have shown that the School District's financial problems have not been corrected. Ms. Mondre provided testimony amplifying these concerns and on aspects of PGW's proposed revenue requirement, allocation of cost increase responsibility to the School District's firm service rate class, and operational practices.

While the School District limited its testimony to certain issues, it has an interest in all of the issues and concerns raised by the other active parties to this proceeding. The School District focuses in this Main Brief on matters raised by it in this proceeding. However, it reserves the right, pursuant to 52 Pa. Code § 5.502(b)(2), to discuss in its Reply Brief any and all issues raised by other parties in their respective Main Briefs.

² Mr. Vallas' direct testimony is in evidence as School District St. 1. Mr. Lewis' direct testimony is in evidence as School District St. 2. Ms. Mondre's direct and surrebuttal testimony is in evidence as School District St. 3 and School District St. 4, respectively.

II. SUMMARY OF ARGUMENT

The School District focuses on what it believes are unlawful, discriminatory practices of PGW in regard to funding and refunding of service extensions to the School District's facilities. PGW's approved rules with regard to such funding and refunding are contained in Section 10 to its Gas Service Tariff ("Tariff"). Based on the record in this case, the School District has demonstrated by a preponderance of the evidence that PGW's practices are in violation of Section 1502 of the Public Utility Code, 66 Pa. C.S.A. § 1502. The School District proposes a reasonable remedy by requesting that the Commission order PGW to undertake immediately an accounting with respect to School District's service accounts to determine the amount of a refund due the School District and to remit such amount in a timely manner.

In accordance with Pre-Hearing Order #4, the School District is placing its presentation of this matter under Section VIII, Miscellaneous Issues, to the standardized brief format. The School District reserves its right under 52 Pa. Code § 5.502(b)(2) to discuss in its Reply Brief other issues relevant to this rate proceeding.³

[III. RATE BASE

IV. REVENUES

V. EXPENSES

VI. TAXES

VII. RATE OF RETURN]

³ Specifically, the School District is not submitting a Main Brief position on these issues, but reserves its rights with respect to Section IV (Revenues), Section V (Expenses) and Section IX (Rate Structure) of the standardized brief format.

VIII. MISCELLANEOUS ISSUES

Statement of Question Involved: Whether PGW has lawfully applied with its Tariff with respect to the funding and refunding of capital costs for service extensions to School District facilities.

Section 10, Extensions and Rights-of-Way, of PGW's Tariff sets forth the Commission-approved rules for the financing of new service extensions and apportionment of costs between PGW and the customer. PGW does not propose revisions to Section 10 in this case, and the Section is currently as approved by the Commission, effective September 1, 2003. See, Pa. P.U.C. No. 2, Tariff Supplement No. 16, dated December, 2006,⁴ Original pp. 50-51.

Section 10.1.B provides the basis for apportionment of costs between PGW and the School District for new School District facilities.⁵ It states:

10.1.B Commercial and Industrial Gas Service. For permanent commercial and industrial Customers or developers making application for extensions or enlargements, where the Company in its sole judgment anticipates long-term, continuous usage at projected volumes of Gas: (a) where the combined estimated cost of delivery-main and service-delivery pipe is less than \$10,000, the company will furnish and install, at no cost to the Customer or developer, service-delivery pipe and delivery-main of an amount up to three times the anticipated annual base rate revenue less the fuel cost component included therein, and the Customer or developer shall pay for any costs in excess of this allowance; or (b) where the combined estimated cost of delivery-main and service-delivery pipe installation is \$10,000 or more, the customer or developer shall pay a customer contribution for the amount of the estimated cost in excess of the investment determined by the Company to be warranted by the anticipated revenue to be derived from the extension. Included in the calculation of the above cost may be an appropriate allowance for transmission and distribution main extensions required to furnish the Gas supply to local areas where new facilities which required a customer contribution from an original Customer or developer within the previous three years shall be deemed to have made application at the same time as the original

⁴ Both the original and proposed Gas Service Tariffs are included in Vol. I to PGW's initial filing in this case.

⁵ The School District is a "Commercial Customer" pursuant to the Definitions section of PGW's Tariff, Original Page 11.

contributing Customer or developer and shall pay a pro rata customer contribution for such facilities to be determined by the Company.

Section 10.6 provides for a customer's right to request an accounting for credits, if any, to customer contributions as a result of experienced consumption levels in connection with any service extension. It states:

10.6 EXTENSION OR ENLARGEMENT REFUNDS. A pro rata portion of a Customer or developer's contributions made pursuant to Section 10.1, above, may be refunded by the Company without interest if, within three years of the commencement date of the original Customer or developer's service agreement, new Customer loads are added to such new facilities. For purposes of making refund computations, the original and new loads will be deemed to have been installed at the same time. Refunds will be paid only to a contributing Customer or developer, and the original contribution shall be the maximum aggregate refund. Upon receipt of a written request by a Customer or developer made no earlier than the end of the third year following the date of the original agreement for new Gas Service, PGW will: (a) review its records to determine if a refund is due the Customer or the developer for additional Customers that attached to the facilities paid for by the Customer or the developer within three years after the execution date of the agreement for new Gas Service, and (b) within 120 days of receipt of such request, (i) make payment to the Customer or developer of any refund due and (ii) provide the Customer or developer with documentation substantiating the refund calculations and identifying the attached loads for which the Customer or developer was credited.

The School District receives gas service for numerous accounts under Rate Schedule MS, BPS-L and BPS-S; in 2006 the School District consumed 5,656,993 ccf of firm supply under Rate Schedule MS, and 4,688,842 ccf in aggregate under interruptible Rate Schedules BPS-L and BPS-S. School District St. 3, at 5 and 38. The combined billing to the School District for its gas consumption in 2006 was \$18,376,708.67. Id.

The record reveals a dispute occurred between the School District and PGW nearly a decade ago as to whether the School District met its contractual requirements for gas consumption at certain facilities (accounts). School District St. 4, at 13-15; PGW St. 5R, at 22, 23. The record shows that a limited number of the School District's accounts were subject to such dispute, although the parties have a difference as to the number of

accounts at issue with respect to meeting gas consumption requirements. School District St. 4, at 13 (citing 35 total accounts in dispute, or less than 10% of the School District's accounts); PGW St. 5R, at 23 (claiming PGW failed to recover capital costs for extensions to 80 schools). The record further shows that the accounts primarily in dispute had or have the ability to use both oil and natural gas (i.e., "dual-fuel capability"). School District St. 4, at 14 and Exhibit B thereto; Tr. at 686,687.

The record further reveals that PGW undertook unilateral remedies with respect to the disputed accounts. For seven accounts, PGW increased revenue recovery by moving those accounts to rate classes with greater delivery charges. School District St. 4, at 14, 15. PGW also adopted a policy of requiring the School District to pay "up front" the full costs for extensions to any and all new facilities, regardless of whether the facility is dual-fuel capable, and without any cost apportionment as contemplated under Section 10.1B of the Tariff, claiming the discretionary right to do so under that Section. PGW St. 5R, at 22, 23. PGW witness Craig White, Interim Chief Operating Officer, states that PGW will provide a reimbursement or credit to the School District in connection with new extensions when the School District fulfills its contractual criteria "as outlined in each contract." *Id.*, at 23. Mr. White further stated, without any supporting documentation whatsoever, that the School District has "not yet successfully fulfilled the contract criteria set forth qualifying the School District for reimbursement or credit." *Id.*

In imposing its up-front payment obligation for alleged breach of contractual consumption requirements, PGW is in effect treating all of the School District's facilities as somehow subject to an umbrella agreement, such that it can impose the up-front payment obligation on School District accounts, each subject to its own contract, that

have nothing to do with the accounts subject to the original dispute, also each subject to its own contract. At the same time, PGW in this case is opposing the School District's proposal to consider all of the School District's accounts under an umbrella agreement arrangement for ratemaking and rate design purposes. PGW St. 5R, at 23-25. The School District submits that PGW cannot have it both ways.

PGW witness White cites to the phrase "in its sole judgment" in Section 10.1.B for the proposition that PGW "can apply this tariff provision in any manner necessary to protect the interests of the Company." *Id.*, at 22. The School District submits that PGW interprets that discretionary language too broadly. The language pertains to anticipation of "long-term, continuous usage of gas" in relation to a customer request for a service extension. As shown by Mr. White's own testimony, PGW's February 11, 1999 letter to the School District,⁶ and Section 10.6 of the Tariff, PGW enters into a service agreement with a customer on a facility-specific basis setting forth the facility-specific gas usage obligations in connection with recovery of extension costs and any prospective refund to the customer.

Contrary to PGW's assertion, the Tariff cannot reasonably be read to give PGW the discretion to impose up-front payments for a service extension at a School District facility because of disputes between PGW and the School District over meeting usage obligations in connection with prior service extensions at unrelated School District facilities that are subject to separate and unrelated service agreements. Stated differently, PGW's discretion under the Tariff to consider in a reasonable manner anticipated usage in order to apportion service extension costs between it and a customer does not extend to

⁶ School District St. 4, Exhibit B.

invoking self-help remedies for allegations by PGW of experienced shortfalls in usage at entirely unrelated facilities.

School District witness Mondre has asserted that PGW is in fact treating the School District differently than its other customers in regard to service extensions. School District St. 3, at 13. PGW has neither denied nor refuted such claim.⁷

Section 1502 of the Public Utility Code, 66 Pa. C.S.A. § 1502, which prohibits unreasonable discrimination among customers, states:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

The duty under Section 1502 applies to a public utility's interpretation and application of the provisions for service extensions under the utility's approved tariff. *Keystone Water Co. v. Pa. P.U.C.*, 100 Pa. Commw. 644, 515 A.2d 367 (1986). Further, the Commonwealth Court has stated, "[A]s a general matter, utility management is in the hands of the utility, and the Commission may not interfere with lawful management decisions . . . unless, on the basis of record evidence, it finds an abuse of the utility's managerial discretion. [citation omitted]." *Nat. Fuel Gas Dist. Corp. v. PA. P.U.C.*, 76 Pa. Commw. 102, 128, 464 A.2d 546, *aff'd on remand, Welch v. Public Utility Com'n*, 131 Pa. Commw. 59, 569 A.2d 413 (1990).

Here, the School District has established that PGW is in fact applying Sections 10.1.B and Section 10.6 of its Tariff in a manner that is an abuse of its managerial

⁷ PGW waived cross-examination of Ms. Mondre on all issues raised by her. Hearing Transcript ("Tr.") at 896.

discretion, with the result that PGW is acting in a manner discriminatory to the School District. The School District submits that PGW is unlawfully abusing its discretion by imposing up-front capital cost contributions for all new School District facilities, each of which has its own contract and contractual commitments and regardless of whether such facilities are dual-fuel capable, because of the above-described dispute occurring nearly a decade ago over sufficiency of consumption at primarily some of the School District's dual-fuel capable accounts. Nothing in the Tariff gives the PGW the discretionary right to impose remedies for alleged breach of contractual commitments in connection with some School District accounts on other School District accounts. Moreover, PGW has yet to provide the School District with any accounting to support its contention that the School District has "not yet fulfilled its contractual commitments."

The record also shows that the School District, as the proponent on this matter, has met its burden of proof under the Commission's established standards. *Replogle v. Pennsylvania Electric Co.*, 54 PUC 528 (1980); *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98 (1980). The School District has shown, by a preponderance of the evidence,⁸ that PGW, under the guise of "discretion" under Section 10.1.B of its Tariff, has subjected and continues to subject the School District to unreasonable and discriminatory treatment by imposing up-front payments on School District facilities for service extensions as a self-help remedy for alleged breaches of contract consumption requirements involving unrelated School District facilities arising nearly a decade ago.

⁸ As explained by the Commission, "[T]he term 'preponderance of the evidence' means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party [citation omitted]." *Re Equitable Resources, Inc.*, Application 122250F5000, 2007 WL 1175710 (April 13, 2007).

In light of these abusive practices by PGW, and in light of PGW's stated commitment to provide refunds or credits as may be due the School District, the School District submits that the Commission should order PGW immediately to perform an analysis for each School District account to assess whether reimbursements are due the School District pursuant to each account's contract, and if such account has fulfilled its contractual requirements obligation, promptly reimburse the School District amounts as appropriate and provided for under Section 10.6 of the Gas Service Tariff.

Furthermore, PGW should be ordered on a going forward basis to treat each School District request for a new service extension on its own terms and to apply Section 10.1.B to the School District accounts fairly and in a manner that is consistent with how it apportions initial costs for new service extensions requested by other customers.

Simply stated, it is time for PGW to stop unlawfully holding all School District accounts "hostage" for service extension costs based on a dispute over contractual requirements obligations for some accounts occurring nearly a decade ago.


Proposed Ordering Paragraph: The Commission orders PGW immediately to undertake and complete within 90 days of the date of the Commission's final rate order an accounting for sums due the School District, if any, with respect to credit or reimbursement for service extensions. The Commission further orders PGW to apply its apportionment of service extension costs to new School District accounts in a non-discriminatory manner. Any amounts due the School District as a result of the analysis shall be promptly furnished to the School District. The Commission shall retain jurisdiction over this matter and either party may request that the Commission resolve any disputes between the parties arising from the analysis ordered hereby.

[IX. RATE STRUCTURE]

X. CONCLUSION

For the foregoing reasons, the School District respectfully requests that the Commission find that PGW is engaged in unlawful, discriminatory practices under Section 10 of its Tariff and that the Commission order the remedy proposed by the School District.

Respectfully submitted,



Miles H. Shore
Attorney I.D. No. 03274
Assistant General Counsel
The School District of Philadelphia
440 N. Broad Street, Suite 313
Philadelphia, PA 19130
(215) 400-5162
(215) 400-4121 fax
mhshore@phila.k12.pa.us

Attorney for The School District of
Philadelphia, Intervenor

RECEIVED

JUN 11 2007

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I am serving a true copy of the attached Main Brief, in accordance with the requirements of 52 Pa.Code §1.54, upon the following persons by electronic mail, with a hard copy by First Class Mail, postage prepaid:

The Hon. Cynthia Williams Fordham
Administrative Law Judge
Pa. Public Utility Commission
1302 State Office Building
Broad and Spring Garden Sts.
Philadelphia, PA 19130
cfordham@state.pa.us

The Hon. Angela T. Jones
Administrative Law Judge
Pa. Public Utility Commission
1302 State Office Building
Broad and Spring Garden Sts.
Philadelphia, PA 19130
angeljones@state.pa.us

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf Block Schorr & Solis-Cohen LLP
213 Market Street, 9th Floor
P. O. Box 865
Harrisburg, PA 17108-0865
dclearfield@wolfblock.com
akohler@wolfblock.com
Attorneys for **Philadelphia Gas Works**

Richard A. Kanaskie, Esquire
Allison C. Kaster, Esquire
Pa. Public Utility Commission
Office of Trial Staff
P. O. Box 3265
Harrisburg, PA 17105-3265
rkanaskie@state.pa.us
akaster@state.pa.us
Attorneys for **Office of Trial Staff**

Christy M. Appleby, Esquire
Darryl Lawrence, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
cappleby@paoca.org
DLawrence@paoca.org
TMcCloskey@paoca.org
Attorneys for **Office of Consumer Advocate**

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
dkleppin@mwn.com
cmincavage@mwn.com
Attorneys for **Philadelphia Industrial and Commercial Gas Users Group**

Sharon E. Webb, Esquire
Lauren M. Lepkoski, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
swebb@state.pa.us
Attorneys for **Office of Small Business Advocate**

Gregory J. Stunder, Senior Attorney
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
Greg.stunder@pgworks.com
Attorney for **Philadelphia Gas Works**

Phillip A. Bertocci, Esquire
Thu B. Tran, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
pbertocci@clsphila.org
ttran@clsphila.org
Attorneys for **Action Alliance, et al.**

Shari C. Gribbin, Esq.
Kent D. Murphy, Esq.
Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
shari.gribbin@exeloncorp.com
kent.murphy@exeloncorp.com
Attorneys for **Exelon Business Services Company**

John F. Povilaitis, Esq.
Ryan, Russell, Ogden & Seltzer P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
JPovilaitis@RyanRussell.com
Attorney for **Hess Corporation**

Todd S. Stewart, Esquire
Hawke, McKeon, Sniscak & Kennard LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17101
tsstewart@hmsk-law.com
Attorney for **Interstate Gas Supply Inc.**

Philip L. Hinerman, Esq.
Jill A. Guldin, Esq.
Fox Rothschild LLP
2000 Market St., 10th Floor
Philadelphia, PA 19103-3291
phinerman@foxrothschild.com
jguldin@foxrothschild.com
Attorneys for **Philadelphia Housing Authority**

Katherine Guerry, Esquire
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
Attorney for **Hess Corporation**



Miles H. Shore
Attorney for
School District of Philadelphia

Dated: June 11, 2007



ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff

Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

June 12, 2007

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

SECRETARY'S BUREAU

2007 JUN 12 AM 9:47

RECEIVED

RE: Pennsylvania Public Utility Commission v. Philadelphia Gas Works; Docket No. R-00061931; **MAIN BRIEF OF INTERSTATE GAS SUPPLY CO, INC.**

Dear Secretary McNulty:

Enclosed please find the original and nine (9) copies of the Main Brief of Interstate Gas Supply Co., Inc., in the above-captioned matter. As indicated on the attached Certificate of Service, all parties in this proceeding have been served with two copies of this Brief.

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

Very truly yours,

Todd S. Stewart
Counsel for Interstate Gas Supply Co., Inc.

TSS/bks
Enclosure

cc: The Honorable Cynthia Fordham, ALJ (via Federal Express-Overnight)
The Honorable Angela Jones, ALJ (via Federal Express-Overnight)
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

12

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, ET AL.,

Complainant

v.

THE PHILADELPHIA GAS WORKS,

Respondent

Docket No. R-00061931

**DOCUMENT
FOLDER**

**MAIN BRIEF OF
INTERSTATE GAS SUPPLY, INC.**

SECRETARY'S BUREAU

2007 JUN 12 AM 9:47

RECEIVED

ORIGINAL

DOCKETED
JUN 12 2007

Todd S. Stewart (Attorney I.D. No. 75556)
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1178
Harrisburg, PA 17101
Telephone: (717) 236-1300
Facsimile: (717) 236-4841
tsstewart@hmslegal.com

Counsel for Interstate Gas Supply, Inc.

Dated: June 12, 2007

TABLE OF CONTENTS

I. STATEMENT OF THE CASE..... 1

II. STATEMENT OF QUESTION PRESENTED..... 3

III. PROPOSED FINDINGS OF FACT 4

IV. SUMMARY OF THE ARGUMENT 6

V. ARGUMENT..... 7

 A. PGW's CURRENT SYSTEMS AND PRACTICES MUST BE
 CHANGED IN ORDER TO ALLOW COMPETITION TO OCCUR.7

 B. PGW SHOULD BE REQUIRED TO JUMPSTART AN OTHERWISE
 NON-EXISTANT COMPETITIVE MARKET.....9

VI. PROPOSED CONCLUSIONS OF LAW AND ORDERING
PARAGRAPHS..... 10

 A. PROPOSED CONCLUSIONS OF LAW10

 B. PROPOSED ORDERING PARAGRAPHS.....11

VII. CONCLUSION 12

TABLE OF AUTHORITIES

Statutes

Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201, *et seq.* 6, 8, 9

66 Pa. C.S. § 2205(c) 7, 8, 11

66 Pa. C.S. § 2203..... 11

Section 2203(4)..... 8

I. STATEMENT OF THE CASE

Philadelphia Gas Works ("PGW") has requested a substantial increase in rates for distribution service to its customers. As part of its filing in this matter, PGW has requested that the Commission allow it to eliminate the long-standing practice of sharing with customers the margins generated from capacity release and other off-system sales activity and instead to retain those funds and use them for system improvements. Interstate Gas Supply, Inc. ("IGS") supports the result of that change. As its witness, Vincent Parisi testified, margins earned on the use of assets paid for by all customers should be returned to all customers, and using those funds to support system improvements effectively returns the benefit to all customers. (IGS St. No. 1, p. 6). The Office of Small Business Advocate agrees with this view. (IGS Hearing Exhibit 1). Assets paid for by all customers must be used in a competitively neutral manner. Mr. Parisi also testified that in his view, sharing equally the margin on assets paid for by all customers (through base rates) among only PGC customers, as is the current practice, creates inequity "and unfairly burdens one class of customers over another." (IGS St. No. 1 at p. 6:20-23.)

The focus of Mr. Parisi's testimony, however, is the current lack of competition on the PGW system and his proposals to address a situation which Mr. Parisi believes is problematic. In short, since there is no competition for the smaller customers on the PGW system, PGW is not willing to expend any resources to create an environment where competition could actually occur. Conversely, competitive suppliers such as IGS are unwilling to enter a market unless the incumbent utility creates an atmosphere in which competition has an opportunity to take hold. On utility systems where inequities

exist that compel retail customers to make a choice between a competitive price that includes all the components of providing commodity service, such as bad debt, working capital on gas in storage¹, asset costs and administrative overhead, and continue to pay for the same costs through base rates for sales customers without contributing to the creation of those costs or having access to the assets, it becomes virtually impossible to create effective competition. It is clear that the present environment in the PGW service territory is not conducive to competition. Mr. Parisi concludes that the current state of affairs in the PGW service territory with regard to competitive markets is untenable in light of the uncontraverted evidence that competition can bring benefits to PGW and its customers. Accordingly, Mr. Parisi recommends that PGW be required to implement programs.

Mr. Parisi's recommendations are sensitive, however, to the lack of resources available to PGW, and his recommendation of a pilot program would begin with a market share threshold ("MST") program that would migrate a certain number of customers to willing and qualified competitive suppliers as an intermediate step. (IGS St. No. 1, p.7:7). By creating a phased in approach to retail competition at the residential and small commercial level, suppliers willing to participate in the program and PGW could, through three steps, gather valuable information about (i) supplying load on the PGW system; (ii) communication between PGW and the suppliers; and (iii) communicating between PGW

¹ LNG costs to build storage are built into base rates and no LNG storage migrates with the customers as they move to competitive suppliers. As such, those that would choose to take commodity service from an entity other than the utility have to continue to pay for the LNG costs through base rates but have no access to those assets. Bad debt is another example of the same issue, since bad debt is included in base rates and PGW does not purchase receivables, choice customers ultimately pay for the bad debt created by sales customers, contributing nothing to the creation of that cost, and have to pay for the same expense through choice prices. LNG provides storage and hedge and price mitigation opportunities and simply by taking service from a competitive supplier, such customers are deprived of the use of that asset in the same manner they would have if they remained on sales service.

and suppliers related to customer transactions. All of the collective wisdom of the suppliers that would participate in such a program could be brought to the table through the three phase process as a prerequisite to participation, so that the existing systems and communication protocol could be evaluated and enhanced where and if needed to create a vibrant choice program. Such a program should jumpstart competition in the PGW service territory and reduce PGW's costs. (IGS St. No. 1 at p. 7:7-23.) Mr. Parisi's proposal would use some of the savings provided to shopping customers in the MST program to be shared with the company in order to allow the company to invest in a billing system, to allow further competition to be more robust. Costs to make changes would also be reduced because as a prerequisite to participating in the program suppliers must be willing and able to provide resources to help evaluate the program, supply functions, communication functions and other components needed for an effective competitive choice market to exist.

In short, IGS submits that the status quo, namely, no competition on the PGW system, is unacceptable and that PGW cannot be allowed to continue to stall competition on its system simply by refusing to implement required systems and necessary programs.

II. STATEMENT OF QUESTION PRESENTED

1. Can PGW avoid complying with statutory requirements regarding competition by claiming insufficient funds to comply with those requirements?

Suggested Answer: No

2. Should the PGW, in this case, be ordered to take steps calculated to encourage and promote the development of competition on the PGW system?

Suggested Answer: Yes

III. PROPOSED FINDINGS OF FACT

1. According to IGS's witness, Mr. Parisi, the major failure of PGW's filing is that it fails to consider a lack of residential competition on its system and it does not propose any concrete steps to promote competition. (IGS St. No. 1, p. 1:20-21.)

2. While there is some shopping among larger commercial industrial customers on the PGW system, there is no shopping among residential customers and very little among small commercial customers. (IGS St. No. 1, p. 2:8-11.)

3. One reason why there may be little competition on the PGW system is the unique position of PGW in that it has no on-system storage and a large percentage of its deliverability is based upon LNG storage, and because the LNG storage is not made available to customers that migrate on a basis that is equivalent to sales customers, Choice customers take a back seat on PGW's system. (IGS St. No. 1, p. 2:17-23.)

4. PGW's current billing system has limitations which make it very difficult for competitive suppliers to serve mass market customers. Those deficiencies include its inability to handle multiple rate schedules and the fact that the system simply was not designed to allow for billing for competition. (IGS St. No. 1, p. 3:1-6.)

5. PGW's supplier tariff contains a number of open-sided or open-ended provisions that would be potentially costly for natural gas suppliers ("NGS") on its system. (IGS St. No. 1, p. 3:8-11.)

6. In the opinion of IGS's witness, upgrading PGW's billing system, in isolation, will be insufficient to allowing benefits of choice to be brought to PGW's customers. (IGS St. No. 1, p. 4:19-23.)

7. Choice brings many benefits to customers including attractive alternatives to utility based pricing such as fixed rates, summer/winter pricing, and other guaranteed savings products and valued added services. (IGS St. No. 1, p. 5:1-4.)

8. Increased competitive migration of retail customers off of PGW's system would reduce the company's exposure associated with the costs of being in the gas sales business including the cost of debt and others. (IGS St. No. 1, p. 5:5-6; 8:8-4, 12-17.)

9. IGS supports PGW's proposal in this case to take the revenue from off-system sales and capacity release that typically have been shared with customers, and to use those revenues to fund delivery system improvements because it will help to "ensure that choice customers are in the same position relative to the use of [customer paid for assets] as choice customers." (IGS St. No. 1, p. 6:11-13.)

10. It is fundamental to the development of a competitive market that customers are not asked to pay for assets for which they do not derive the full benefits or to have assets denied to those customers simply for seeking or selecting an alternative supplier. It is equally as important that if assets are paid for by all customers, any revenues derived from the use of those assets are used in a competitively neutral manner. (IGS St. No. 1, p. 6:14-19; IGS Hearing Exhibit 1).

11. IGS witness Parisi recommends as a first step to develop competition in the PGW service territory the implementation of an MST program that would transition 30% of customers to willing and qualified natural gas suppliers at a guaranteed discount

off of PGW's GCR rates. This program would be a three year pilot program that would use revenues produced by the savings in the first year to fund upgrades to PGW's billing system. (IGS St. No. 1, p. 7:19; 8:11.)

12. Once competition has stabilized at the 30% level, Mr. Parisi suggests that a DEO type auction process may be appropriate to incorporate into a longer term strategy for PGW. (IGS St. No. 1, p. 8:10-11.)

IV. SUMMARY OF THE ARGUMENT

IGS's position in this matter is not difficult to understand, nor does it rely upon some arcane interpretation of a statute. Rather, the law here is clear, the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201, *et seq.*, includes certain threshold requirements to enable choice in Pennsylvania. Those requirements, including billing systems, and uniform application of rules, apply to each NGDC, and they apply to PGW. PGW has no small customer choice, and has never had any, largely because it does not meet those threshold requirements, and despite the fact that there are clearly benefits from competition both for customers and PGW itself. PGW must be required, as a condition of any rate increase, to take action, not only to fix the problems, but to bring those benefits now. IGS has proposed some mechanisms to accomplish those ends and those programs should be required here.

V. ARGUMENT

A. PGW's CURRENT SYSTEMS AND PRACTICES MUST BE CHANGED IN ORDER TO ALLOW COMPETITION TO OCCUR.

PGW is required to bill customers on behalf of NGSs and to implement billing systems that allow NGSs to bill their services to customers. PGW does not have such systems in place and it should be required to develop and implement such systems as a condition of any rate increase. Moreover, PGW's rules for suppliers are one-sided and contrary to the development of meaningful competition.

The Pennsylvania Public Utility Code requires that a natural gas distribution company "shall be responsible for billing each of its retail gas customers for natural gas distribution service, consistent with the orders or regulations of the Commission, regardless of the identity of the provider of natural gas supply services." 66 Pa. C.S. § 2205(c). The Act also requires that:

Bills rendered by a natural gas distribution company on behalf of a natural gas supplier shall include, in a form and manner determined by the natural gas distribution company in consultation with the natural gas supplier, the following information with respect to natural gas supplier services: the name of the natural gas supplier; the rates, the charges or prices of natural gas supply services billed, including adjustments to prior period billings, if applicable, and taxes, if applicable . . .

66 Pa. C.S. § 2205(c).

Mr. Parisi discusses in his direct testimony (IGS St. No. 1, p. 3) that PGW's current billing system does not provide the functionality necessary to allow suppliers to bill their customers by any practical means. Such a circumstance cannot be allowed to continue, particularly where PGW is here asking for a rather large rate increase. Simply

put, competitive requirements cannot be forced off the agenda due to a claimed lack of funds when such a large increase in rates is being sought.

The record in this case is replete with complaints regarding PGW's rules and practices, including the use of capacity resources, which discriminate against NGS. That is, customers of natural gas suppliers receive different treatment with respect to the use of storage and deliverability from the storage in the winter time than do sales customers of PGW. This type of discriminatory treatment violates Section 2203(4). These rules identified by IGS's witness Mr. Parisi and Hess' witness, Mr. Mangnani, impede the ability of NGSs to deliver gas to customers on the PGW system and must be reviewed and modified. (IGS St. No. 1, p. 3; Hess St. No. 1, pp. 3-7). Moreover, PGW's likely response, that it doesn't have the funds sufficient to make the changes that are necessary to make choice work, ring hollow. In fact, Mr. Parisi has testified that a program to bring competition into PGW's service territory could be accomplished without increase in costs to PGW. (IGS St. No. 1, pp. 7-8). Accordingly, PGW's apparent willingness to make these changes must be attributed to a lack of desire for competition in general, rather than a lack of funds.

PGW simply cannot be allowed to claim poverty in order to avoid complying with the mandates of the Natural Gas Choice and Competition Act. In a case such as this where it is seeking increase to its distribution rates and seeking to retain previously shared revenues from all system sales and other transactions, it should be required to make changes necessary to allow for competition.

B. PGW SHOULD BE REQUIRED TO JUMPSTART AN OTHERWISE NON-EXISTANT COMPETITIVE MARKET.

There is no real dispute in this case that PGW's record on competition, particularly with small customers, is poor. There is no real contention, either, that effective competition would bring benefits to PGW and its customers. In fact, Mr. Parisi testified to that fact, that there are benefits to customers and PGW for having choice on its system (IGS St. No. 1, pp. 4:19-5:6), and PGW itself acknowledges that a competitive market in its service territory could provide benefits to customers at all levels and may assist PGW in reducing costs. (PGW Hearing Exhibit No. 2.) Even OCA's witness, Mr. Lelash, admitted under cross-examination that competition would relieve PGW of certain gas costs responsibilities. (Tr. 884:16). Finally, PGW's customers want competitive alternatives and understand the overall nature of the benefit. (School District St. No. 4, pp. 17-18). There is no real dispute that there is no competition on PGW for small customers and that if there were competition, all customers, and PGW would benefit.

Nonetheless, Mr. Parisi testified that merely changing a few rules and potentially changing the billing system to allow competitive suppliers the opportunity to compete on PGW's system, may not be sufficient to allow competition and the associated benefits to become readily available to customers. (IGS St. No. 1, pp. 4:19; 5:11). Rather, Mr. Parisi testified that some sort of jump start program may be necessary, and he proposed a three year pilot program that would migrate a significant percentage of PGW's customers to willing and able choice suppliers at a discount to PGW's current PGC rates. (IGS St. No. 1, pp. 7:7-8:11). Such a program would not only bring benefits to individual customers in the form of savings off of the PGC rate, it would bring benefits to the PGW system as a whole by reducing the costs of PGW's natural gas procurement. (IGS St. No. 1, p. 8:1).

As Mr. Parisi testified, a 30% migration would allow for a thorough examination of the efficacy of competition on the PGW system, would provide significant benefits in the form of a sharing of the discount to fund improvements to PGW's billing system without the need to spend additional PGW dollars, and would create a base of knowledge in house at PGW that would allow it to learn how to operate a competitive market structure with the assistance of the marketers on the system. (IGS St. No. 1, pp. 7-9).

Mr. Parisi did not recommend, however, the immediate implementation of a Dominion East Ohio type program, even though he believes that in the long-term a fully phased in program as contemplated by Dominion East Ohio may be beneficial to PGW. (IGS St. No. 1, p. 8:10). The reason he believed that it is better to wait is that simply implementing a DEO type program at this point would be a replacement for the current supplier of last resort, and that no real market change would necessarily flow from such a substitution. Actual retail competition must be present before a DEO type mechanism can work for all customers. (IGS St. No. 1, p. 7:13).

Accordingly, IGS submits that in light of the benefits of competition, and the lack of competition on the PGW system despite a clear statutory mandate for competition, PGW must be ordered to implement the proposed program to immediately bring the benefits of competition to PGW and its customers.

VI. PROPOSED CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

A. PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission has the authority to require the natural gas distribution companies including city natural gas distribution operations to

provide acceptable and workable billing options for suppliers to choose to use the billing system of the NGDC to bill customers for natural gas supply services. 66 Pa. C.S. § 2205(c).

2. The Pennsylvania Public Utility Code requires that natural gas distribution companies provide service to customers of natural gas suppliers on the same terms and conditions as they provide sales and services to their own customers including rules for use of storage and deliverability. 66 Pa. C.S. § 2203.

3. PGW's current billing system does not reasonably allow for choice and must be modified in order to comply with the requirements of the Public Utility Code.

4. PGW must be required to modify its supplier tariff and other provisions of service in order to make service to suppliers and its customers equivalent to service at PGC customers of PGW.

5. It is in the public interest to require PGW to migrate 30% of its customers to an MST program.

B. PROPOSED ORDERING PARAGRAPHS

1. PGW shall be required immediately to convene a working group of interested stakeholders to develop a plan and specifications for modifying its billing system to allow for acceptable billing practices for competitive suppliers.

2. PGW is required to implement this new billing system beginning within twelve months from the date of this order.

3. The costs associated with implementing the new billing system shall be recovered through a sharing of part of the discount provided through the MST program as discussed in the testimony of Mr. Parisi for IGS. Said MST program shall be employed by PGW no later than January 1, 2009, for a three year period, and will provide for the migration by the third phase of at least 30% of PGW's customers to competitive suppliers.

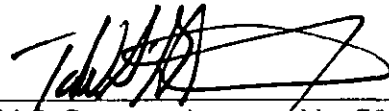
4. The Commission shall convene a working group within thirty days following the entry of this order, which shall conclude its work no later than 120 days following the implementation of this order, that will establish the rules and procedures for the market share threshold program including a mechanism to share a portion of the discount provided by suppliers with PGW for modifications to its billing system discussed above.

VII. CONCLUSION

For all of the reasons stated herein, IGS requests that the Presiding Administrative Law Judges, and the Commission, consider the lack of Competition on the PGW system,

and the lack of even the most basic effort on the part of PGW to allow competition to happen, despite the acknowledged benefits, and require that PGW take affirmative and meaningful steps, as discussed, to bring those benefits immediately to all customers.

Respectfully submitted,



Todd S. Stewart, Attorney No. 75556
Hawke McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
Telephone: (717) 236-1300
Facsimile: (717) 236-4841
tsstewart@hmslegal.com

Counsel for Interstate Gas Supply, Inc.

Dated: June 12, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

Daniel Clearfield, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP
213 Market Street, 9th Floor
P.O. Box 865
Harrisburg, PA 17108-0865
dclearfield@wolfblock.com

Johnnie Simms, Esquire
Richard Kanaskie, Esquire
Allison Kaster, Esquire
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
simmsj@puc.state.pa.us
rkanaskie@state.pa.us
akaster@state.pa.us

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees, Wallace, Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
dkleppin@mwn.com
cmincavage@mwn.com

Stephen Gray, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
sgray@state.pa.us

Richard Lelash
18 Seventy Acre Road
Redding, CT 06896
lplash@snet.net

Tanya McCloskey, Esquire
Christy M. Appleby, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
tmccloskey@paoca.org
cappleby@paoca.org
dlawrence@paoca.org
jhorner@paoca.org

Philip Bertocci, Esquire
Thu Tran, Esquire
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
pbertocci@clsphila.org

Robert D. Knecht
Industrial Economic Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
rdk@indecon.com

Michael Bleiweis
243 Banks Road
Easton, CT 06612
mikeblei@optonline.net

RECEIVED
2007 JUN 12 AM 9:47
SECRETARY'S BUREAU

Richard Galligan
Exeter Associated, Inc.
5565 Sterrett Place, Suite 310
Columbia, MD 21044

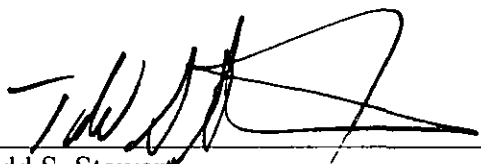
John F. Povilaitis, Esquire
Ryan Russell Ogden & Seltzer, PC
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
rgalligan@exeterassociates.com

Miles Shore, Esquire
School District of Philadelphia
Office of General Counsel
440 N. Broad Street, 3rd Floor
Philadelphia, PA 19130-4015
mhshore@phila.k12.pa.us

Shari C. Gribbin, Esquire
Kent Murphy, Esquire
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
shari.gribbin@exeloncorp.com
kent.murphy@exeloncorp.com

Philip L. Hinerman, Esquire
Jill Guldin, Esquire
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
phinerman@foxrothschild.com
jguldin@foxrothschild.com

Andrew S. Levin, Esquire
Stradley Ronon Stevens & Young LLP
2600 One Commerce Square
Philadelphia, PA 19103-7098
alevine@stradley.com



Todd S. Stewart

Dated this 12th day of June, 2007.



Fox Rothschild LLP
ATTORNEYS AT LAW

2000 Market Street, Tenth Floor
Philadelphia, PA 19103-3291
Tel 215.299.2000 Fax 215.299.2150
www.foxrothschild.com

Philip L. Hinerman
Direct Dial: (215) 299-2066
Internet Address: phinerman@foxrothschild.com

ORIGINAL

RECEIVED
2007 JUN 12 PM 3:21
SECRETARY'S BUREAU

June 12, 2007

VIA HAND DELIVERY

Pennsylvania Public Utility Commission
Secretary's Bureau
Commonwealth Keystone Building
2nd Floor, Room N-201
400 North Street
Harrisburg, PA 171020-3265

**DOCUMENT
FOLDER**

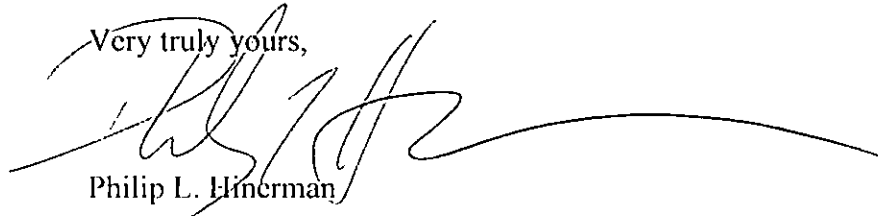
**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works
Docket No. R-00061931**

Dear Secretary:

Enclosed for filing is an original and nine (9) copies each of the Main Brief of the Philadelphia Housing Authority in the above-captioned proceeding,

Copies are being served on all active parties of record.

Very truly yours,



Philip L. Hinerman

PLH/mn

Enclosures

cc: The Honorable Cynthia W. Fordham (w/encl.)
The Honorable Angela T. Jones (w/encl.)
Parties of Record (w/encl.)

A Pennsylvania Limited Liability Partnership

California Delaware Florida Nevada New Jersey New York Pennsylvania

35

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PHILADELPHIA GAS WORKS

:
:
:
:
:
:

Docket No. R-00061931

**DOCUMENT
FOLDER**

**MAIN BRIEF OF
PHILADELPHIA HOUSING AUTHORITY**

PHILIP L. HINERMAN, ESQUIRE, I.D. #55496
JILL A. GULDIN, ESQUIRE, I.D. #93657
FOX ROTHSCHILD LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2000

Attorney for Petitioner,
PHILADELPHIA HOUSING AUTHORITY

DOCKETED
JUN 13 2007

SECRETARY'S BUREAU
2007 JUN 12 PM 3:21

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF ARGUMENT 2

III. STATEMENT OF QUESTIONS INVOLVED 4

IV. REVENUES 4

V. EXPENSES 4

VI. MISCELLANEOUS ISSUES 4

 A. Proposed Tariff Adjustments 4

 B. The PHA Rate Is Already the Highest of All Rate Classes And Any Rate
 Increase Only Perpetuates the Gap. 5

 C. PHA’s Rate Should Be Reclassified 8

 D. PGW’s Proposed Increase Comes in a Very Trying Time for PHA..... 10

 1. Funding Cuts Have Crippled PHA 10

 2. The Utility Allowance Issue is Outside the Scope of This Proceeding 11

VII. RATE STRUCTURE..... 13

VIII. PROPOSED ORDERING PARAGRAPHS 13

IX. CONCLUSION..... 13

TABLE OF AUTHORITIES

FEDERAL CASES

Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944).....3

STATE CASES

Berner v. Pa. P.U.C., 382 Pa. 622, 116 A.2d 738 (1955).....3

Brockway Glass v. Pa. P.U.C., 63 Pa. Commw. Ct. 437 A.2d 1067 (1981).....2

Lower Frederick Twp. v. Pa. P.U.C., 48 Pa. Commw. Ct. 409 A.2d 505 (1980).....2

Pa. P.U.C. v. Equitable Gas Company, 57 Pa. P.U.C. 423 (1983).....3

Pa. PUC v. PGW, 79 Pa. PUC 349 (1993).....8

Pennsylvania Public Utility Com'n v. PPL Elec. Utilities Corp. 237 P.U.R.4th 419.....3

Pennsylvania Public Utility Com'n v. PPL Gas Utilities Corp., 2007 WL 517121
(Pa.P.U.C. Feb. 9, 2007).....2

University of Pennsylvania v. Pa. P.U.C., 86 Pa. Commw. Ct. 410, 485 A.2d 1217
(1984).....3

DOCKETED CASES

McDowell v. PHA, Civil Action No. 97-230211

STATUTES

35 P.S. § 15459

66 Pa.C.S.A. § 315.....2

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :

v. :

Docket No. R-00061931

PHILADELPHIA GAS WORKS :

**MAIN BRIEF OF THE
PHILADELPHIA HOUSING AUTHORITY**

I. INTRODUCTION

On December 22, 2006, the Philadelphia Gas Works (“PGW”) filed Supplement No. 16 to Tariff Gas – Pa. P.U.C. No. 2, to become effective February 20, 2007 (the “Proposed Tariff”). In the Proposed Tariff, PGW seeks to change certain rules, regulations and rates in an effort to produce an additional \$107 million in annual revenue.

By Order of February 8, 2007, the Public Utility Commission (“PUC”) instituted an investigation into the lawfulness, justness and reasonableness of PGW’s Proposed Tariff and rate increase. The proposed tariff was suspended by operation of law on February 8, 2007 until September 20, 2007. The matter was then assigned to the Office of Administrative Law Judge for resolution by hearing and for the issuance of a Recommended Decision.

On February 16, 2007, the Philadelphia Housing Authority (“PHA”) filed a petition to intervene. That petition was granted in Prehearing Order No. 2 on February 26, 2007.

The parties prepared and submitted direct, rebuttal and surrebuttal testimony according to a procedural schedule established in Prehearing Conference Order No. 3. Public hearings were held, and from May 21, 2007 through May 24, 2007, evidentiary hearings for cross-examination of all witnesses, and live rejoinder, were conducted. The record was closed on May 25, 2007.

II. SUMMARY OF ARGUMENT

As an initial note, PHA has not been a participant in prior PGW rate proceedings. In this proceeding, it chooses to focus its main brief on issues unique to PHA. Several other intervenors have raised issues regarding the propriety of the total amount of the proposed increase to all affected classes. PHA reserves the right to address these issues in its reply brief and also to address any issues raised in other briefs. PHA will solely address, in this Main Brief the propriety of the proposed PHA rate and its effect on PHA and its tenants.

Distilled to its very essence, PHA's proposed rate increase, as it applies to PHA, is neither reasonable nor just. The Commission's inquiry and investigation is to determine the fairness, reasonableness and justness of rates proposed by PGW. Section 315(a) of the Public Utility Code provides as follows:

Reasonableness of rates – in any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon a 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 principle has been interpreted by the Commonwealth Court as follows:

Section 315(a) under the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of the proposed rate hike squarely on the public utility. It is well established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. P.U.C., 48 Pa. Commw. Ct. 222, 226-27, 409 A.2d 505, 507 (1980); Brockway Glass v. Pa. P.U.C., 63 Pa. Commw. Ct. 238, 437 A.2d 1067 (1981).

It is well settled at the Commission and in the courts that the utility's burden to establish the justness and reasonableness of every component of its rate request is an affirmative one that remains with the public utility throughout the course of the proceeding. Pennsylvania Public Utility Com'n v. PPL Gas Utilities Corp., 2007 WL 517121 (Pa.P.U.C. Feb 09, 2007);

Pennsylvania Public Utility Com'n v. PPL Elec. Utilities Corp., 237 P.U.R.4th 419 (Pa.P.U.C. 2004). Among other things, the utility has the burden of persuasion that a test year is a reasonable and appropriate one. Pa. P.U.C. v. Equitable Gas Company, 57 Pa. P.U.C. 423, 471 (1983); University of Pennsylvania v. Pa. P.U.C., 86 Pa. Commw. 410, 485 A.2d 1217 (1984). There is no similar burden placed on an intervener to disprove a utility's claim. Berner v. Pa. P.U.C., 382 Pa. 622, 116 A.2d 738 (1955).

The "rate-making process ... involves a balancing of the investor and the consumer interests." Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944). As such, the Commission must not only look at the effect the rate increase has on PGW; it must also examine the effect the increase has on the consumer. The Commission should also consider the historic overpayments from PHA, as well as the financial crisis that PHA is facing, while reviewing the justness and reasonableness of the rate increases to PHA. After doing so, the Commission will see what PHA has been reiterating all along: PHA is currently overcharged by PGW, and in turn, PGW is profiting from PHA.

Though it is clearly PGW's burden to demonstrate not only that the amount of the increase is just and reasonable, but also that the components of the increase applied to PHA are just and reasonable, PGW cannot meet its burden. PGW has utterly failed to articulate a just or reasonable explanation for the proposed increase in the currently profitable PHA Rate.

No increase in cost of service that was unique to PHA was presented by PGW. In sum, given the financial problems of PHA, historical and proposed overcharges, the proposed increase is neither reasonable nor just.

III. STATEMENT OF QUESTIONS INVOLVED

The question involved in this case is whether PGW's proposed rate increase, as it applies to the Philadelphia Housing Authority, is both reasonable and just.

IV. REVENUES

The propriety of the proposed PHA rate and its effect on PHA and its tenants is addressed by PHA in Section VI, Miscellaneous Issues. PHA reserves the right to address issues pertaining to this section in its reply brief and also to address any issues raised in other briefs.

V. EXPENSES

The propriety of the proposed PHA rate and its effect on PHA and its tenants is addressed by PHA in Section VI, Miscellaneous Issues. PHA reserves the right to address issues pertaining to this section in its reply brief and also to address any issues raised in other briefs.

VI. MISCELLANEOUS ISSUES

A. Proposed Tariff Adjustments

The Proposed Tariff, like the current one, has three rates potentially applicable to PHA and its tenants. These rates are the GS Residential Rate, the PHA Rate and the Municipal Service Rate. Supplement No. 16, revised p. 3 summarizes the three rates and the proposed increases.

The delivery charge under the GS-Residential Rate, applicable to "Residential and Public Housing customers", would increase from \$0.42124 to \$0.60799 per ccf, yielding a \$0.18675 per ccf increase. Proposed Tariff Revised page 83.

The Municipal Rate delivery charge would increase \$0.17946 per ccf, from a current rate of \$0.031470 to \$0.049416 per ccf. Proposed Tariff Revised page 87.

The PHA Rate would increase from \$0.42952 per ccf to \$0.66390 per ccf, equating to a \$0.23438 per ccf increase. The PHA Rate has the largest proposed increase, followed by the Residential Rate and the Municipal Rate. Proposed Tariff Revised page 87.

The proposed rate increase widens the gap between the PHA rate and the other two rates. Currently, the difference between the Residential Rate and the PHA Rate is \$0.00828 ccf. If the proposed increase is granted, the difference will be \$0.05591 ccf. The current difference between the Municipal Rate and PHA rate is \$0.11482 ccf. If the proposal is granted, the gap widens to \$0.16974 ccf.

PHA tenants are currently billed at one of two rates. PHA tenants who are shown on the customer rolls for PGW are billed at the Residential Rate. Some of these customers obtain a utility allowance from the PHA based on PHA's projected utility expense for the tenant. Other PGW customers who are PHA tenants may have direct payments of the utility allowance to PGW if they are parties to a lawsuit discussed below.

PGW has designed the PHA Rate for use at all sites in which there is one master meter for all individual PHA tenants. Invoices are sent directly to the PHA. In the past, PHA has paid 100% of these invoices.

There are two obvious questions. First, why do the current and proposed tariffs target PHA with a rate that exceeds the Residential and Municipal Rate? Second, why does PHA not qualify for the Municipal Rate?

B. The PHA Rate Is Already the Highest of All Rate Classes And Any Rate Increase Only Perpetuates the Gap.

There is a discussion of the history of the PHA Rate in Craig White's Rebuttal testimony, PGW-5R, which includes Exhibit CW-10. There are also publicly available records at PGW. Mr. White, in PGW Statement 5R, 25:14-17, states that the PHA Rate charged has

been higher than the Municipal Rate, and comparable to or higher than the General Service Commercial, Industrial and Residential Rate classes, at least since 1993. A review of Mr. White's Exhibit CW-10 in PGW Statement 5R, demonstrates that, from September 1, 1993 until April 16, 2002, PHA had the highest rate of *all* of those rate classes. It was not until April 2002 that the commercial and industrial rates exceeded the PHA rate for the first time. Exhibit CW-10 also shows that after September 1993, the first date on PGW's chart, the PHA rate has never been equal to or less than the Municipal or Residential Rate. It has always been more.

In discovery, PHA requested information regarding the reasons for the proposed increase in the PHA Rate. Specifically, PHA wanted to understand why its unusually high rate is proposed to be raised even more than the residential and municipal rates. On its face, the proposed increase merely perpetuates the growing gap between PHA and other customers' gas rates. No explanation was provided by PGW.

The basis for these concerns is graphically demonstrated in the Cost of Service Study at Exhibit HSG-1, attached to PGW Statement 8R. At the beginning of the Exhibit, Mr. Gorman provides amended test year 2007 summary results at page 1 and 2. Those results show, at line 22 of page 1, that, even at current revenue before the proposed rate increase, the Housing Authority RC-9 rate is \$1,242,000 over total requirements for the test year. In stark contrast, the Residential Heat Rate Class (RC-2) revenue is \$12,391,000 under total requirements for the test year. Why then does PHA face yet another increase, if not to backfill PGW's deficits from residential service?

PGW and PHA agreed to stipulations on the record. (Hearing Transcript "Transcript", 815:14). It was stipulated by PGW and PHA that the cost of service study performed by Mr. Gorman did not examine the cost of service for any period other than 2007. It is apparent that

Mr. Gorman did not apply any unique considerations to PHA's status as a financially distressed public agency when calculating the cost of service.

The other directions that Mr. Gorman received from PGW for preparing his cost of service study are summarized in Mr. White's PGW Statement 5, 9:14-24; 10:1-4. PGW's direction with respect to the PHA Rate was the same as the directions applicable to the Municipal and Residential Rate. Mr. Gorman was instructed to observe the principles of gradualism and to avoid rate shock. PGW directed Mr. Gorman to make no changes in several rate classes. However, the PHA rate class was not a class that was exempted from increase.

In essence, Mr. Gorman merely raised the PHA Rate to a higher amount because PHA already was higher than the Municipal Rate or the Residential Rate.

The problem with the PHA increase is more evident when reviewed in light of Mr. White's comments at the hearing in response to questions on the history of the rate. Try as he might, Mr. White could not articulate a reason for the higher PHA rate.

Q. Why is (the PHA rate) higher?

A. Its been higher for many years.

Q. Why?

A. Don't know the answer to that.

THE WITNESS: No, I didn't know the reason. I mean the rates were not done on a cost of service basis when these rates were first established. They were done many, many years ago.

Transcript 649: 9-23.

The initial PHA Rate was not based on cost of service and PGW can not articulate a reason it is higher today and proposed to be raised again. When Mr. Gorman applies his class

allocation values in Exhibit HSG-5C he, in essence, exaggerated the inequity by incrementally increasing all of the rates without regard to PHA's inflated current rate. The PHA Rate was instituted without a reasonable or just premise – raising it more now when it is already disproportionately high is equally and impermissibly arbitrary.

A “quid pro quo relationship exists between the utility and its rate payors. In return for providing safe and adequate service, the utility is entitled to recover through rates these enumerated costs”. Pa. PUC v. Penn Gas & Water Company, 79 Pa. PUC 349, 414. However, PGW is not entitled to a windfall profit from PHA.

C. PHA's Rate Should Be Reclassified

It is undisputed that PHA residents are billed at two different rates. PGW has some consumers who are PHA tenants that pay the Residential Rate where separate meters are present. When one master meter is in place, PGW bills PHA at the higher rate for those tenants at those facilities. Not only has PGW failed to meet its burden to prove that there is a just or reasonable basis to bill PHA more for the gas serving its tenants through one meter than the gas provided to tenants who have individual meters, PGW has never even attempted to do so. Instead, it has relied on history which does not explain why there is a difference.

There are substantial reasons that *no* distinction should exist and that PHA should have been billed at a lower rate. The reasons include:

1. Each of PHA's residents must meet similar eligibility requirements for PHA assistance or they cannot be a tenant of PHA. There is no difference in the gas provided to persons at the PHA Rate and the gas provided to persons who receive the Residential Rate, Transcript 609:2-8.
2. PHA pays 100% of the charges that it is invoiced by PGW. White Testimony, Transcript 669:2-8.
3. The PHA Rate has provided a 38.8% return over the cost of service. PHA-2, 3:13.

Any one of these reasons alone should be sufficient to cause the Commission concern about the need to raise a rate which is already artificially high. The concern intensifies when the dollar amount of the proposed PHA Rate increase is greater than the proposed Residential and Municipal Rate increase.

There are two rate classes in which all those in the class are relatively the same – the Municipal Rate class and the PHA Rate class. PHA is the only “consumer” in the PHA rate class. Therefore, it is easy to review the just and reasonable application of the rate increase upon PHA alone. PGW has not attempted to do that.

PHA has many of the characteristics of a municipality, and a strong argument could be made that PGW should have been billing PHA under the Municipal Rate. For example, PHA not only has a Philadelphia residency requirement, but state statute also sets out that PHA board members are to be appointed by the mayor and city controller. See 35 P.S. § 1545. Further, the service area for the Philadelphia Housing Authority is solely Philadelphia. In short, it is hard to take the “Philadelphia” out of the Philadelphia Housing Authority.

Furthermore, there is no reasonable explanation as to why PHA would be charged the PHA Rate when the Residential Rate in both the existing and the proposed tariff clearly applies to “public housing” and “public housing customers.” PGW could bill PHA at these rates without modification of the tariff, and would save PHA money if it did so.

Application of the proposed PHA Rate would lead PHA to pay additional charges that will again exceed PGW’s cost of service by more than \$1 million. PHA-2, 10:l. 3-4. Additionally, based on the comparison with the Municipal Rate, PHA has overcompensated PGW by approximately \$2,815,000 from calendar year 2002 through 2006. PHA-2,11:l. 7-9; 12: 9-11.

There is no justification in the cost of service study or in past history for an allocation of higher costs to PHA, or for a higher rate for gas going through a PHA master meter than for gas going through PHA residents meter.

D. PGW's Proposed Increase Comes in a Very Trying Time for PHA

1. Funding Cuts Have Crippled PHA

PHA's cutbacks in funding and staffing are literally front-page news. PHA, which is the largest landlord in the City of Philadelphia with over 83,000 tenants, has been forced to endure continuous and severe funding cuts from U.S. Department of Housing and Urban Development ("HUD"). PHA-1, p.3. In 2006, HUD funded only 86% of the PHA operating budget which caused PHA to reduce its budget by over \$15 million. An additional 4% of its budget was cut for year 2007 (to 82%), and the Bush Administration's proposed funding for 2008 is further reduced to only 80% of what is necessary. PHA-1, p. 3, 4.

In January, 2007, PHA made major news when it was forced to lay off 355 employees, or about 22% of the work force, due to the HUD budget cuts. PHA-1, p.3. There has been a significant impact on the security of the residents due to cuts required to the police force and to maintenance staffing. For example, twenty officers were cut from PHA's police force and had to be replace by municipal police service. PHA-1, p. 3, 4.

In the face of these significant and escalating budget pressures, a PGW increase adds fuel to the raging fire and dramatically affects PHA's bottom line. Moreover, PHA does not get its own "rate increase," regardless of whether or not its own articulated needs are just or reasonable. PHA is not directly reimbursed by HUD for its energy costs due to its status as a "Moving to Work" ("MTW") agency. PHA-2 SUR, pg. 4;

<http://www.hud.gov/offices/pih/programs/ph/mtw/plansandreportsgrant.cfm>. PHA does not have

an additional funding source to recover this money. Therefore, the proposed PGW increases occur at the most inopportune time for PHA and creates significantly more financial hardship.

PHA made the point both in the direct testimony (PHA-2) and in the cross-examination of Mr. White of PGW that several rates could have applied to PHA tenants. PGW has consistently chosen to bill PHA at the highest possible rate. PHA can no longer absorb the effects of this higher rate without jeopardizing other critical programs.

2. The Utility Allowance Issue is Outside the Scope of This Proceeding

The Philadelphia Housing Authority provides a utility allowance to its tenants that have accounts with PGW. The utility allowance is intended to assist public housing residents to pay for their utilities. Regulations of the United States Department of Housing and Urban Development govern PHA's calculation of the amount of the utility allowance. (PHA-2-SUR, 4:20-21).

PHA is an MTW Agency, and does not receive a direct HUD subsidy earmarking the amounts required to provide those utility allowances. PHA residents currently receive a utility allowance credit on any rental payment that they may owe to PHA. For example, if a resident's rent is \$150 per month and PHA calculates a \$100 utility allowance, the tenant would receive a credit and pay PHA \$50. (PHA-2-SUR, 4:20-22, 35-38).

In some instances, the utility allowance has been paid directly to Philadelphia Gas Works. Payments are also impacted by a case pending in the United States District Court for the Eastern District of Pennsylvania, entitled McDowell v. PHA, Civil Action No. 97-2302. That Court has entered orders on utility allowance payments for a number of residents. PHA-2-SUR, 5:3-6. The docket, available to the public at <https://ecf.paed.uscourts.gov/cgi-bin>, confirms that a motion to modify the current utility allowance order to reflect PHA's status as a Moving to Work Agency is pending before Senior U.S. District Judge John P. Fullam.

PGW has not taken a position in either this proceeding or in the Proposed Tariff advocating a modification of PHA's utility allowance policy or practice. However, in his rebuttal testimony, Roger D. Colton, on behalf of the Office of Consumer Advocate, argues that all utility allowances paid by PHA should be based on full residential rates and should be paid directly to PGW, rather than to the tenants. (OCA Statement 4-R, 25: 4-18). There are significant problems with Mr. Colton's proposal.

In her surrebuttal, Ms. Mondre responds to Mr. Colton's hypothesis. (PHA-2-SUR, 4:7). HUD does not provide a direct source of funds for PHA to meet its utility allowance. Instead, PHA credits tenants and develops the formula. (PHA-2-SUR 4:10-38). In fact, Ms. Mondre discusses the fact that the McDowell litigation would also have to be considered and might preempt any decision in this proceeding. (PHA-2-SUR, 5:1-6).

Mr. Colton's argument also lacks foundation. In his cross examination, Mr. Colton admitted that he does not know the specifics of how funds are transferred between the federal budget and PHA. Transcript 833:13-14. Mr. Colton admitted that he was unaware of the status of PHA's Moving to Work program which impacts the funding options available. Transcript 835:23-25, 836:3-9. Mr. Colton also acknowledged that any excess funds from utility allowances exceeding a customer's gas bill could also be used for other tenant-based PHA programs. Transcript 846:8-10.

Mr. Colton admitted that he had suggested that PHA directly pay PGW at full Residential Rates without any knowledge of the financial consequences of his proposal. He was unaware of how many tenants are on the CRP program. Transcript 847:5-6. He did not understand how much funding was involved. Transcript 848:18-25. He had not analyzed the financial impact of changing PHA's practice of crediting and what it would require for the tenant to pay PHA a higher rent. Transcript 850:19-22. He acknowledged that the amount of rent the PHA would

have to collect would increase. Transcript 852:22-25. He did not perform a financial analysis on the impact on PHA of increased rentals it would have to collect. Transcript 857:13-16. Finally, he is not aware of the status of the lawsuit. Transcript 853:24-25, 854:1.

As acknowledged by Mr. Colton, HUD does not compensate PHA dollar for dollar for that amount that PHA pays or credits for the utility allowance. Transcript 861:1-2. He was not aware of source of funds if a financial shortfall occurs, as has occurred in 2005. Transcript 867:18-23.

Mr. Colton's suggestion cannot be accepted. The federal court review in McDowell, the MTW Program, and the funding cuts all have a dramatic impact on the utility allowance and PHA's financial condition, and thus place the issue outside the scope of this proceeding.

VII. RATE STRUCTURE

The propriety of the proposed PHA rate and its effect on PHA and its tenants is addressed by PHA in Section VI, Miscellaneous Issues. PHA reserves the right to address issues pertaining to this section in its reply brief and also to address any issues raised in other briefs.

VIII. PROPOSED ORDERING PARAGRAPHS

1. PGW failed to meet its burden of proof to show that its proposed rate increase, as it applies to the Philadelphia Housing Authority, is just and reasonable.
2. PGW has failed to demonstrate any reason that PHA's rate should increased more than the Residential or Municipal Rate.
3. PGW's application for a rate increase, as it applies to PHA, is hereby denied.

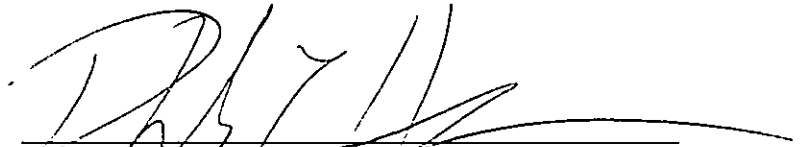
IX. CONCLUSION

PGW has not met its burden of proving that the justness or reasonable of a PHA rate increase. In fact, any rate increase that is granted by this Commission should account for the fact

that PHA has overpaid for gas services for years. Therefore, PHA's rate should not be raised at all. In fact, the rate should be on parity with the Municipal Rate.

In Craig White's rebuttal testimony, PGW Statement 5R, p. 27, he states that PGW would not object to reclassifying PHA's rate for its conventional sites, currently billed under the PHA Rate, to the Municipal Rate. This is precisely what the Commission should do. In the alternative, the Commission should not increase PHA's Rate as PGW has failed to show that increases are just or reasonable.

Respectfully submitted,



PHILIP L. HINERMAN, ESQUIRE, I.D. #55496
JILL A. GULDIN, ESQUIRE, I.D. #93657
FOX ROTHSCHILD LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2000

Attorney for Petitioner,
PHILADELPHIA HOUSING AUTHORITY

Dated: June 12, 2007

RECEIVED
2007 JUN 12 PM 3:21
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I am serving a true and correct copy of the foregoing Main Brief of the Philadelphia Housing Authority in accordance with the requirements of 52 Pa.Code §1.54 upon the following person(s) via First Class Mail, postage prepaid:

The Honorable Cynthia W. Fordham
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
E-Mail: cfordham@state.pa.us

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolfe Block Schorr & Solis-Cohen LLP
213 Market Street, 9th Floor
P. O. Box 865
Harrisburg, PA 17108-0865
**E-Mail: dclearfield@wolfblock.com
akohler@wolfblock.com**
Attorneys for Philadelphia Gas Works

Christy M. Appleby, Esquire
Darryl Lawrence, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-5048
**E-Mail: cappleby@paoca.org
dlawrence@paoca.org
tmccloskey@paoca.org**
Attorneys for Office of Consumer Advocate

Steven C. Gray, Esquire
Sharon Webb, Esquire
Lauren M. Lepkoski, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
E-Mail: sgray@state.pa.us
Attorney for Office of Small Business Advocate

The Honorable Angela T. Jones
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
E-Mail: angeljones@state.pa.us

Richard A. Kanaskie, Esquire
Allison C. Kaster, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
P. O. Box 3265
Harrisburg, PA 17105-3265
**E-Mail: rkanaskie@state.pa.us
akaster@state.pa.us**
Attorneys for Office of Trial Staff

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
**E-Mail: dklepping@mwn.com
cmincavage@mwn.com**
Attorneys for Philadelphia Industrial and Commercial Gas Users Group

Gregory J. Stunder, Esquire
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
E-Mail: greg.stunder@pgworks.com
Attorney for Philadelphia Gas Works

RECEIVED
2007 JUN 12 PM 3:21
SECRETARY'S BUREAU

Phillip A. Bertocci, Esquire
Thu B. Tran, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
**E-Mail: pbertocci@clsphila.org
ttran@clsphila.org**
Attorneys for Action Alliance, et al.


Shari C. Gribbin, Esquire
Kent D. Murphy, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
**E-Mail: shari.gribbin@exeloncorp.com
kent.murphy@exeloncorp.com**
Attorneys for PECO Energy Company

John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer, P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
E-Mail: jpovilaitis@ryanrussel.com
Attorney for Hess Corporation

Todd S. Stewart, Esquire
Hawke, McKeon, Sniscak & Kennard LLP
100 North Tenth Street
P. O. Box 1778
Harrisburg, PA 17101
E-Mail: tsstewart@hmsk-law.com
Attorney for Interstate Gas Supply Inc.

Sherry A. Swisky, General Counsel
Miles H. Shore, Assistant General Counsel
The School District of Philadelphia
440 North Broad Street
Philadelphia, PA 19130
**E-Mail: sswirsky@phila.k12.pa.us
mhshore@phila.k12.pa.us**
Attorneys for Philadelphia School District

Katherine Guerry, Esquire
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
E-Mail: kguerry@hess.com



PHILIP L. WINERMAN

Dated: June 12, 2007

ORIGINAL

RYAN, RUSSELL, OGDEN & SELTZER
A PROFESSIONAL CORPORATION

SUITE 101
800 NORTH THIRD STREET
HARRISBURG, PENNSYLVANIA 17102-2025
TELEPHONE: 717-236-7714
FACSIMILE: 717-236-7816
WWW.RYANRUSSELL.COM

WYOMISSING OFFICE
SUITE 210
1150 BERKSHIRE BOULEVARD
WYOMISSING, PENNSYLVANIA
19610-1208
TELEPHONE 610-372-6761
FACSIMILE 610-372-6177

June 12, 2007

VIA HAND DELIVERY

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

Re: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works, Docket No. R-00061931

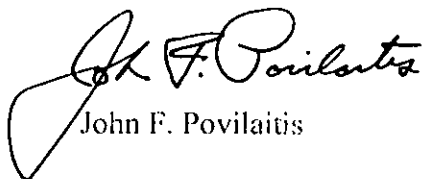
RECEIVED
2007 JUN 12 PM 2:29
SECRETARY'S BUREAU

Dear Secretary McNulty:

Enclosed are an original and nine (9) copies of the Main Brief of Hess Corporation in the above-captioned proceeding. Copies of the Main Brief have been served in accordance with the attached Certificate of Service.

DOCUMENT
FOLDER

Very truly yours,


John F. Povilaitis

Enclosure
JFP:ck

c. Certificate of Service

The Honorable Cynthia W. Fordham
The Honorable Angela T. Jones

33

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission :
v. : Docket No. R-00061931
Philadelphia Gas Works :

MAIN BRIEF OF HESS CORPORATION

DOCUMENT
FOLDER

RECEIVED
2007 JUN 12 PM 2:29
SECRETARY'S BUREAU

DOCKETED
JUN 13 2007

John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
Email: JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

June 12, 2007

Counsel for Hess Corporation

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Summary of Argument	5
III.	Rate Base	6
IV.	Revenues.....	6
V.	Expenses	6
VI.	Taxes.....	6
VII.	Rate of Return.....	6
VIII.	Miscellaneous Issues	6
	A. Legal Standards	6
	B. PGW Has Failed to Meet its Burden of Proof that Hess’s Proposals to Improve Competition Should Not be Adopted.....	8
	C. Proposals to Improve Competition on the PGW System.....	9
	1. Nomination deadlines and retroactive nominations	10
	2. Daily Balancing, Monthly Balancing and Cash Outs.....	14
	3. Annual Firm Transportation Cash Out Rate.....	20
	4. Trading Between Suppliers and Within a Supplier’s Pools to Resolve Imbalances	21
	5. Availability of Customer Information to Suppliers	23
	6. Hess’s Proposals Support Good Public Policy	26
IX.	Rate Structure	28
X.	Conclusion	29

TABLE OF AUTHORITIES

CASES

1. Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1961).....7

2. Investigation into the Natural Gas Supply Market: Report to the General Assembly On Competition In Pennsylvania’s Retail Natural Gas Supply Market, Docket No. I-00040103 (October 6, 2005).....1, 2, 4, 6

3. Motheral, Inc. v. Duquesne Light Co., 2001 Pa. PUC LEXIS 47

5. PaPUC v. Philadelphia Gas Works, Docket No. R-00061931 (February 8, 2007).....6

6. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1954).....7

STATUTES

66 Pa. C.S. § 102.....6

66 Pa. C.S. § 315(a)6

66 Pa. C.S. § 1308.....6

66 Pa. C.S. § 2203(2)7

66 Pa. C.S. § 2204(g)1

66 Pa. C.S. § 2206(c).....23

66 Pa. C.S. § 2212(g),(j)7

I. Introduction

This introduction to Hess Corporation's ("Hess") Main Brief in PGW's rate proceeding has already been written by the Pennsylvania Public Utility Commission ("Commission") itself. The Commission adopted and entered an order on October 6, 2005 with respect to its investigation into Pennsylvania's natural gas supply market and its Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market.¹ The objective of this investigation was to assess "the effectiveness of competition in the [Pennsylvania] natural gas industry."² The Commission's order concluding this investigation stated as follows:

It is the Commission's judgment that the existence of "effective competition" in the retail natural gas supply market in Pennsylvania would be demonstrated by participation in the market by many buyers and sellers, the lack of substantial barriers to market entry for suppliers, the lack of substantial barriers that would discourage customer participation, and the presence of sellers offering buyers a variety of products and services. Based on this standard and the record in this proceeding, there is not "effective competition" in the retail natural gas supply market on a statewide basis at this time.³

This determination that effective competition is lacking in the Pennsylvania natural gas supply market was supported by a number of specific Commission findings, several of which are directly relevant to the issues Hess brings before the Administrative Law Judges ("ALJs") and the Commission in this proceeding. Hess has raised issues involving nominations, delivery requirements and penalties and respectfully urges the ALJs and Commission to adopt improvements in these practices in the PGW territory via

¹ *Investigation into the Natural Gas Supply Market: Report to the General Assembly On Competition In Pennsylvania's Retail Natural Gas Supply Market*, Docket No. I-00040103 (October 6, 2005) ("*Competition Report Order* and associated "*Report on Competition*").

² Section 2204(g), 66 Pa. C.S. § 2204(g) of the Public Utility Code ("Code") required the Commission to investigate and evaluate the level of competition five years after the 1999 effective date of the Natural Gas Choice and Competition Act.

³ *Competition Report Order* at 4.

the instant proceeding to counter the negative trends in natural gas competition it documented in its Report to the General Assembly.⁴ The Commission's overall conclusion that effective competition was lacking was bolstered by the following specific findings:

The record demonstrates a lack of participation by natural gas suppliers and buyers in the retail natural gas supply services market on a statewide basis.

According to suppliers, substantial barriers to supplier participation in the retail natural gas supply market exist because of penalties placed on suppliers that vary among natural gas distribution company systems and that are not cost-based.⁵

Since the enactment of the Competition Act, there has been little to no change in the throughput of competition volumes. In 1999, approximately 50% of the gas flowing in Pennsylvania was under a competitive tariff. In 2004, the volume was approximately 47.5%.

Penalties for non-delivery or under delivery of natural gas by a NGS ["Natural Gas Supplier"] vary by NGDC ["Natural Gas Distribution Company"] and for the most part, these penalties are not cost-based.

According to suppliers, the differing penalties among natural gas distribution companies act as a substantial barrier to NGS entry and continued participation in marketing retail natural gas supply service in multiple NGDC service territories.⁶

Based on this Report's conclusion that remedial action was needed with respect to NGS issues, the Commission instituted a stakeholder process that included issues such as nomination and delivery requirements, penalties for non-delivery, supplier tariff requirements and market information.⁷ The Commission has gathered information on

⁴ The Commission noted that not only is the average number of NGSs per NGDC decreasing, but the total number of NGSs licensed in Pennsylvania has decreased. *Competition Report Order* at 5-6; *Report on Competition* p. 32.

⁵ *Competition Report Order* at 4.

⁶ *Competition Report Order* at 5-6; *Report on Competition*, pp. 64-65.

⁷ *Report on Competition*, pp. 67-69.

these issues through the stakeholder process and will be considering further action to improve the level of competition.

However, the pending generic consideration of issues should not impede the important task of examining nomination, delivery requirements and penalties, and customer information issues as part of this rate case. The Commission's continuing industry-wide examination of these issues signals the importance of these issues. It would be short-sighted to defer consideration of competitive improvements specific to PGW's practices and Hess' efforts to be competitive on this system because the Commission may be considering further rulemakings or orders on the issue of gas competition. Given the Commission's finding that competition is not currently effective, measures must be taken as soon as possible to remedy this situation. This case represents an opportunity to start bringing effective competition to Pennsylvania's largest city, which will benefit not only suppliers and customers,⁸ but also PGW.

The more successful NGSs are in acquiring customers, the less PGW is required to obtain the funds needed to meet its enormous gas procurement expenses. PGW itself has identified its gas expenses and the cash flow needed to meet these expenses on a timely basis, as a major challenge to getting its finances on a proper footing.⁹ Essentially, NGS success on the PGW system benefits PGW. Despite this financial reality, PGW appears disinterested in expanding the number of NGSs operating on their system. In response to a Hess discovery request PGW confirmed that until 2006 there were no suppliers operating on its system, and there are currently only two suppliers assisting

⁸ In its testimony, the School District of Philadelphia, which is a large customer in the PGW service territory, agrees that natural gas competition in PGW's service territory is lacking and declares that PGW should be more aggressive in advancing competition. SDPHL St. No. 3 (Mondre) p. 9, lines 12-21; SDPHL St. No. 4 (Mondre SR) pp. 17-18.

⁹ PGW St. 1R p. 4, lines 5-11; PGW St. 2R pp. 8-10.

PGW with its merchant function.¹⁰ Moreover, PGW has no plans at the present to implement any process or incur any expenditures to increase the current level of customer information available to NGSs.¹¹

Witness Craig White for PGW, has indicated that PGW's system has already been opened to suppliers, and therefore it need not be concerned about soliciting suppliers to become active on its system.¹² This acceptance of the status quo is completely at odds with the Commission's documented goal of enhancing gas competition on all NGDC systems as detailed in its *Competition Report Order* and *Report on Competition*. The ALJs and the Commission should adopt Hess' proposals on nominations, delivery tolerances, penalties, supply trading and customer information to take supplier participation on the PGW system to a much needed higher level.

¹⁰ Hess Corporation Hearing Exhibit No. 1. In contrast the *Report on Competition* states that Peoples had 20 NGSs active during the second quarter of 2004. *Report on Competition*, p. 31.

¹¹ Hess Corporation Hearing Exhibit No. 2.

¹² PGW St. 5R p. 21, lines 10-12.

II. Summary of Argument

The Commission has confirmed in its Order and Report required by Section 2204(g) of the Code that natural gas competition in Pennsylvania is not effective and that steps must be taken by the Commission to improve the availability of NGSs, and their services and products, on systems such as PGW. This case represents an opportunity for a major step in the direction of achieving the Commission's goal.

In its Main Brief, Hess has detailed how PGW's tariffs can be amended to increase the attractiveness of its service territory to NGSs and to relieve PGW from costly and risky gas supply responsibilities, without harming PGW's supplier of last resort customers. Hess has proposed specific tariff improvements that include revisions to nomination rules, balancing rules, penalties, cash outs, supplier trading and the availability of customer usage data. Adoption of these proposals will take customer choice to a new, more successful level on the PGW system, and allow NGSs to expand the availability of their services and products to more and more customers.

PGW has raised the customary arguments against pro-competitive rules – the risk of operational problems and expense. However, these arguments have not been persuasively supported by PGW. Any actual operational problems can be remedied by further tariff revisions. However, PGW has failed to demonstrate that any expenses are material or significant. Moreover, PGW has not added the expense savings that would accrue from successful NGS operations into its analysis of the expense of implementing Hess' proposals.

Hess' recommendations are good public interest policies that should be adopted by the ALJs and the Commission because they will benefit all interest groups represented in these proceedings and achieve the Commission's own legal and policy objectives.

III. Rate Base

Hess is not submitting a Main Brief position on rate base issues.

IV. Revenues

Hess is not submitting a Main Brief position on revenue issues.

V. Expenses

Hess is not submitting a Main Brief position on expense issues.

VI. Taxes

Hess is not submitting a Main Brief position on tax issues.

VII. Rate of Return

Hess is not submitting a Main Brief position on rate of return issues.

VIII. Miscellaneous Issues

A. Legal Standards

This proceeding is an investigation and hearing commenced by the Commission pursuant to Section 1308 of the Code.¹³ The burden of proof is on PGW in this proceeding initiated on the Commission's own motion.¹⁴ The scope of the investigation includes not only PGW's proposed changes in its tariffs, but all other provisions of PGW's existing tariffs.¹⁵ Tariffs include all rates, rules, regulations and practices of PGW.¹⁶

¹³ 66 Pa. C.S. § 1308.

¹⁴ 66 Pa. C.S. § 315(a).

¹⁵ *PaPUC v. Philadelphia Gas Works*, Docket No. R-00061931 (February 8, 2007) at 2.

¹⁶ 66 Pa. C.S. § 102, "Tariff".

PGW must meet its burden of proof by a preponderance of evidence.¹⁷ A preponderance of the evidence means that one party must present evidence which is more convincing by even the smallest amount, than the evidence presented by an opposing party.¹⁸ The ALJ's Recommended Decision and the Commission's decision also must be supported by substantial evidence or "relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere trace of evidence of a suspicion of the existence of a fact sought to be established."¹⁹

This proceeding also implicates legal issues that relate to the Commission's duties under Chapter 22 of the Code.²⁰ The Commission is obligated to ensure that customers of NGDCs have a choice of natural gas suppliers and that these customers should have an increasing choice of supply products and pricing options as competition progresses. Section 2203(2) states:

Consistent with section 2204 (relating to implementation), the commission shall allow retail gas customers to choose among natural gas suppliers and natural gas distribution companies to the extent that they offer such natural gas supply services. Retail gas customers shall be able to choose from these suppliers a variety of products, including, but not limited to, different supply and pricing options, and services that evolve as the competitive marketplace matures. (emphasis added).²¹

As customers of a restructured "city" natural gas utility, PGW's customers have the right to an opportunity to purchase gas supply services either from an NGS or the NGDC.²² Therefore, it is the Commission's duty to ensure that PGW is not permitted to

¹⁷ *Motheral, Inc. v. Duquesne Light Co.*, 2001 Pa. PUC LEXIS 4 at 9; citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1954).

¹⁸ See *Se-Ling Hosiery*, supra.

¹⁹ *Motheral, Inc.* at 10-11, citing *Murphy v. Pa. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super 1961).

²⁰ Chapter 22 is known as the Natural Gas Choice and Competition Act ("Gas Choice Act").

²¹ 66 Pa. C.S. § 2203(2).

²² 66 Pa. C.S. § 2212(g),(j).

maintain tariff rules or practices that impede the availability to customers of competitive suppliers and their services.

B. PGW Has Failed to Meet its Burden of Proof that Hess' Proposals to Improve Competition Should Not be Adopted.

PGW has attempted to counter Hess' specific recommendations with two general themes. It argues that implementing Hess' proposals will either cause it to incur additional costs or lead to operational problems on the PGW system. PGW has not met its burden on either argument.

Generally, PGW has not attempted to quantify in dollars specific costs it alleges it will incur if it is required to implement Hess' proposed standards. Therefore it has not met its burden of showing whether the alleged new costs are significant and materially higher or merely incidental, given the total size of PGW's revenue requirement. Nor has PGW acknowledged any offsetting expense decreases that would accrue to PGW if improved tariff rules and practices make its system more attractive to suppliers, the most important of which is a reduced merchant gas role for PGW.

With respect to operational concerns, PGW has presented no evidence that Hess' proposals will definitely create operational problems. Operational problems are always depicted as possibilities. PGW takes the stance that the rules governing suppliers in 2003 should be maintained indefinitely, despite the experience that has been accumulated by PGW and the two suppliers operating on its system. If there was any justification for these first generation rules, tolerances and penalties being narrow and strict, in 2007 this justification no longer exists. If implementation of Hess' proposals permits any supplier to create an operational problem, PGW is always free to submit a tariff provision that will address and remedy the problem. Its position that new rules and standards for suppliers

will create operation problems is mere speculation, driven by a preference not to revisit the supplier tariff rules and practices established in its restructuring case.

C. Proposals to Improve Competition on the PGW System.

Hess has presented several proposals in the areas of gas supply nominations, balancing tolerances, penalties and cash outs. It has also addressed the issues of supplier trading and availability of customer information. Adoption of these proposals by the ALJs and the Commission will assist Hess in offering alternative competitive supply services and make the PGW service territory more attractive to suppliers. In that way, the proposals will assist PGW by reducing its gas merchant obligations and help the Commission fulfill its duties to provide reasonable utility rates, as well as supplier choice in the PGW service territory.

In support of its proposals, Hess has presented the Direct and Surrebuttal Testimony of Randy Magnani, as well as four Hearing Exhibits.²³ Mr. Magnani, has twenty-seven years of experience working for Brooklyn Union Gas Company and its affiliates. He has also been employed as an independent consultant, has worked for Hess since 2001 and previously testified as an expert before the FERC as well as several state commissions. His overall conclusion is that tariff and operational rule changes need to be made to remove barriers to competitive entry and growth in the PGW service territory.²⁴

Specifically, Mr. Magnani presented recommendations to improve PGW's operational rules, communication and information exchange. He also addressed the policy justification for these recommendations.

²³ Hess introduced into evidence four discovery responses marked as Hess Corporation Hearing Exhibits 1-4.

²⁴ Hess St. No. 1, pp. 2-3.

1. Nomination deadlines and retroactive nominations

Witness Magnani explained that “nominations” are the means by which NGSs notify PGW of the physical quantity of gas scheduled on the interstate pipelines for delivery to PGW’s city gate under current purchase, sale and transposition agreements. There is an interstate pipeline nomination deadline of 12:30 p.m. PGW’s tariff requires NGSs to submit a nomination prior to that deadline at 12:00 p.m.²⁵ The earlier 12:00 p.m. deadline of the downstream entity, requires Hess to submit its nominations prior to the pipeline deadline where upstream contracts may still be provided to NGSs for nomination. A 2:00 p.m. nomination deadline for PGW is beneficial because, as Mr. Magnani stated:

This will benefit NGSs, PGW and consumers because it will reduce the potential for errors and the need for nomination adjustments. Reducing errors will have a favorable impact on price. Errors, especially those that are not permitted to be corrected, result in penalties to NGSs, which can be reflected in higher customer prices. Reducing errors will also reduce PGW’s risks associated with having to cover short supply imbalances on its system.²⁶

In response, PGW witness Mr. Muntzer conceded that PGW could move its nomination deadline to 12:30 p.m., but testified that any later deadline may jeopardize the safety and reliability of the system.²⁷ However, notably absent from Mr. Muntzer’s testimony is any explanation of how that would occur. Mr. Muntzer added that PGW allows intra day nominations which should address NGS concerns.²⁸ In oral rejoinder,

²⁵ Hess St. No. 1, pp. 3-4.

²⁶ Hess St. No. 1, p. 4.

²⁷ OCA stated it was understandable for NGSs to seek nomination flexibility, but also saw it reasonable to have operational requirements. OCA St. No. 1-R, p., 7, lines 4-6. In response, Hess noted that it sought this deadline change for concrete reasons involving the pipeline deadline and the availability of contracts. The change is sought for “feasibility” and not mere “flexibility” as OCA witness LeLash erroneously concluded. Hess St. No. SR-1, p. 8, lines 20-28.

²⁸ PGW St. No. 11, p. 3.

witness Muntzer added that a later nomination deadline would be an administrative burden, but did not specify the scope or magnitude of the burden.²⁹ Witness Muntzer assumed that Hess was requesting additional time to submit nominations to PGW to get its calculations in order.³⁰ It is PGW's preference to consider later nominations on a completely discretionary case-by-case "best efforts" basis.³¹

On Surrebuttal, Mr Magnani clarified that Hess was not seeking additional time to get calculations in order, but rather to allow for the finalization of gas contracts on upstream pipelines at 12:30 p.m. and to allow time for those results to be communicated between Hess and its trading partners, and finally transmitted to PGW via an electronic bulletin board.³² Mr. Magnani added that a simultaneous 12:30 p.m. PGW/pipeline nomination deadline does not allow NGSs to utilize the full breadth of gas contracts being traded on the pipeline, many of which are not finalized until 12:30 p.m. and still have time to provide timely nominations to PGW.³³ A later deadline is beneficial to all concerned because it would reduce clerical errors, reduce penalties to NGSs and reduce the need for PGW to balance its system when imbalances are caused by nomination errors.³⁴

Requested Relief: PGW's tariff should include a 2:00 p.m. deadline for NGS nominations on its system. This change would benefit NGSs, transportation customers and PGW itself. PGW has raised only vague and unsubstantial concerns about reliability and unspecified administrative burdens and has not met its burden on this issue.

²⁹ PGW St. No. 11-RJ, p. 2

³⁰ PGW St. No. 11, p. 3

³¹ PGW St. No. 11, p. 4; PGW St. No. 11, p. 2.

³² Hess St. No. SR-1, p. 1, lines 16-31, p. 2, lines 1-5.

³³ Hess St. No. SR-1, p. 1, lines 23-30.

³⁴ Hess St. No. SR-1, p. 2, lines 1-5.

Moreover, the record evidence is clear that a later nomination deadline is beneficial to all parties involved.

Hess also points out that PGW does not permit NGSs to submit retroactive nominations even where a pipeline allows a retroactive nomination. Mr. Magnani testified that PGW should accept retroactive nominations when a pipeline has confirmed it has issued one, and the retroactive nomination is caused by a simple unintentional error or a disruption in gas supply beyond the NGS's control.³⁵ He added that retroactive corrective nominations ensure the delivery of gas and relieve PGW of bearing the risk and financial burden of covering supply shortfalls that could be prevented.³⁶ Mr. Magnani explained that PGW's policy of denying retroactive nominations, unless in its sole judgment it decides to permit one, completely frustrates the benefit NGSs receive from retroactive pipeline nominations and destroys the symmetry between a competitive suppliers' pipeline and NGDC nominations.³⁷

In response to this request, PGW argues that retroactive nominations should not be permitted for essentially the same reasons it opposed a later-in-the-day nomination deadline. Mr. Muntzer added that in his view, permitting nomination error corrections placed PGW in the position of making subjective judgments and its actions could be perceived as arbitrary or depicted as favoritism.³⁸ In Rejoinder Testimony, Mr. Muntzer pointed out that PGW allows nomination adjustments for errors, but these are on a case-by-case discretionary basis where operations will not be affected.³⁹ He added that if retroactive nominations were permitted, PGW would have to revise spread sheets and the

³⁵ Hess St. No. 1, p. 4, lines 14-18.

³⁶ Hess St. No. 1, p. 4, lines 18-22.

³⁷ Hess St. No. SR-1, p. 2, lines 5-11.

³⁸ PGW St. No. 11, p. 3, lines 21-23, p. 4, lines 1-4.

³⁹ PGW St. No. 11-RJ, p. 2.

Company's administrative work would increase if more suppliers were involved. Witness Muntzer dismissed the fact that interstate pipelines permit retroactive nominations, and argued for retroactive nominations being on a discretionary basis when in PGW's sole judgment, operations would not be adversely affected.⁴⁰

PGW's concerns in these regards are unfounded. Mr. Magnani responded to PGW's concerns regarding retroactive nominations by explaining that such a provision would not place PGW in the position of favoring specific NGSs. Most NGDCs allow NGSs latitude for nomination correction, particularly when clearly innocent mistakes have been made, such as the transposition of two numbers in a lengthy contract number, which must be manually entered each day and when the gas was in fact delivered to the city gate under the correct contract numbers.⁴¹ This would not be some extraordinarily subjective exercise, as PGW suggests. Moreover, because PGW prefers to consider nomination changes on a purely discretionary basis, it already employs a subjective process. PGW would be free to decline accepting a retroactive nomination when there is evidence an NGS is abusing this flexibility.⁴²

Requested Relief: PGW should be directed to amend its tariff to allow retroactive nominations, as they are already permitted by interstate pipelines and other NGDCs. Retroactive nominations coordinate pipeline and PGW city gate nominations and should be viewed as a normal business practice that corrects errors and conforms record keeping to the reality of how much gas it actually delivered. Again, PGW has not documented that any material expenses or operational problems would arise from implementation of this proposal, and therefore it should be adopted.

⁴⁰ PGW St. No. 11-RJ, pp. 2-3.

⁴¹ Hess St. No. SR-1, p. 2, lines 15-27.

⁴² Hess St. No. SR-1, p. 2, lines 17-22.

2. Daily Balancing, Monthly Balancing and Cash Outs.

Hess witness Magnani explained in his testimony that PGW's tariff sets rules for the daily and monthly balancing of customers' gas usage and NGS gas deliveries. Daily balancing refers to the tolerance level set by the NGDC for the difference between the quantity of gas an NGS customer uses and the quantity of gas delivered by an NGS. Daily penalties are those based on the quantity by which the NGS is out of balance each day. Monthly cash out penalties are assessed on the degree of imbalance for the month as a whole.⁴³ At the end of a month, any excess gas is cashed out, or sold, to the LDC, while any short gas positions are cashed out, or purchased from the LDC. Both transactions are intended to eliminate any imbalance remaining at month-end.

A supplier operating on the PGW system faces a daily balancing tolerance level, with associated daily penalties, and a separate monthly balancing tolerance level with a further monthly penalty in the form of a cash out. As Mr. Magnani explained:

PGW allows a daily tolerance level of 5%. Therefore, if an NGS's customer uses more than 105% of the quantity delivered by the NGS, then the NGS is out of balance and must pay a penalty of \$.50 per Dth outside the 5% range. At month's end, NGSs may carry over within 2.5% of their deliveries for the month, but beyond that tolerance, are cashed out at unreasonably low or high percentages of the market value of the gas, dependent on whether it was an over or under delivery, respectively.⁴⁴

PGW's tariff requires NGSs to deliver a volume each day that is dictated by PGW for firm transportation customers.

The problem with PGW's balancing rules is that its tariffed operational tolerance standards for being in balance impose higher levels of performance on NGSs than PGW itself could attain. These unreasonable performance standards are then coupled with a

⁴³ Hess St. No. 1, p. 4, lines 26-31, p. 5, lines 1-8.

⁴⁴ Hess St. No. 1, p. 5, lines 16-22.

penalty of unreasonably high or low percentages of the market value of the gas. In combination, these performance standards and penalties are overly punitive rather than reasonable standards that would encourage NGS operation on the PGW system, while still protecting PGW's supplier of last resort customers.⁴⁵

To remedy this situation, Hess proposes that monthly balancing alone is sufficient *and daily balancing requirements should cease. Rather than cashing out NGSs on a daily and monthly basis, there should be a reconciliation between delivered and consumed volumes only at the end of the month.*⁴⁶ If in actual practice the elimination of daily balancing is associated with operational problems, the daily and monthly tolerance and cash out levels should, at a minimum be amended to more reasonable, market-based levels.⁴⁷

In Hess' view, cash out rates and multipliers should be fair so that they do not unduly penalize NGS behavior that cannot be improved, even with the best of intentions and the highest level of expertise. PGW's daily tolerance band of 5% and its monthly cash out imbalance standard of 2.5% is so tight, that NGSs are often unable to avoid the daily penalties and monthly cash outs.⁴⁸ These tolerance bands go beyond deterrent and become punishment for punishment sake. As Mr. Magnani stated, "PGW appears to believe that NGSs could forecast more accurately than they do, and therefore have the ability to avoid these penalties. This is simply untrue."⁴⁹

⁴⁵ Hess St. No. 1, p. 5, line 31, p. 6, line 1.

⁴⁶ Hess St. No. 1, p. 6, lines 24-28.

⁴⁷ Hess St. No. 1, p. 5, lines 1-4.

⁴⁸ Hess Corporation Hearing Exhibit No. 4

⁴⁹ Hess St. No. SR-1, p. 3, 25-27.

On over deliveries outside the 2.5% tolerance band, NGSs are paid only 75% of an already low cash out rate. On under-deliveries, NGSs must pay PGW 150% of an already high cash out rate. This is in addition to the payment of daily penalties.⁵⁰

For over-deliveries, PGW only pays NGSs a cash out rate of the average of the lowest daily prices for the month for its interstate pipelines, Transco and Tetco. For under-deliveries, PGW charges Hess the cash out rate of the average of the highest daily prices for the month for Transco Zone 6, Non-New York and Tetco M3. Again, these rates are further worsened by the multipliers of 75% and 150% on over-and under-deliveries respectively.⁵¹

Hess proposes the following reasonable tolerance levels, penalties and cash out rates for monthly imbalances, and also for daily imbalances as an alternative to the complete elimination of daily balancing:

- A wider tolerance band of 10% for the month for over and under-deliveries to interruptible customers should be set.
- Outside this tolerance band reasonable multipliers should be used; a 90% payout to NGSs for over-deliveries outside + 10% and a 110% charge to NGSs for under-deliveries outside -10%.
- The cash out for both firm and interruptible customers for over/under deliveries should be set at a market index such as the Gas Daily Average ("GDA") for the month for Transco and Tetco based on some blend of these pipelines' prices.⁵²

PGW defends its daily balancing requirements and penalties as necessary for PGW to control its system and to avoid unnecessary LNG withdrawals and excessive storage injections and withdrawals.⁵³ Witness Muntzer believes these tight levels of

⁵⁰ Hess Corporation Hearing Exhibit No. 4.

⁵¹ *Id.*

⁵² *Id.*

⁵³ PGW St. No. 11, p. 5, lines 5-7.

tolerances and high penalties are necessary to create incentives for NGSs to accurately nominate and deliver gas supply and protect PGW's supplier of last resort responsibility.⁵⁴ Mr. LeLash for OCA also expressed concern that additional delivery latitude would shift costs to “incumbent ratepayers.”⁵⁵

However Mr. Magnani successfully refutes these concerns by pointing out that the volume of deliveries involved in the expanded tolerance band sought by Hess is small, meanwhile, the prime effect of current tolerance bands is to increase NGS costs, which increases cost pressure on transportation customers, while failing to avoid any negative impact to PGW.⁵⁶ PGW is reluctant to use what it views as its limited storage capacity to cope with system imbalances.⁵⁷ In PGW's view, daily swings in load threaten its control of its system and it argues that if given the chance, NGSs will engage in gaming-type conduct such as delivering no gas at all on Day 1 and double its daily delivery on Day 2.⁵⁸

PGW views Hess' alternative to the elimination of daily balancing to be much more reasonable, i.e. expanded tolerance levels, a reduction in the imbalance penalty and cash out rates at market-based levels. However, PGW still believes its current tolerances, penalties and cash out rates are appropriate and necessary, and that if suppliers devote sufficient resources to their operations they could meet current thresholds.⁵⁹ In Rejoinder, Mr. Muntzer added the point that as competitive suppliers, NGSs should be able to forecast customer usage with sufficient precision to avoid penalties and that as

⁵⁴ PGW St. No. 11, p. 5, lines 8-13.

⁵⁵ OCA St. No. 1-R, p. 7, lines 10-19.

⁵⁶ Hess St. No. SR-1, p. 9, lines 3-24.

⁵⁷ PGW St. No. 11, p. 6, lines 3-17.

⁵⁸ PGW St. No. 11, p. 7, lines 1-16.

⁵⁹ PGW St. No. 11, p. 7, lines 21-24, p. 8, lines 1-21.

supplier activity grows on PGW's system, overly liberal tolerance and penalty rules could lead to an unacceptable swing in deliveries from suppliers.⁶⁰ He also suggested that because the existing PGW tolerances and penalties were set in PGW's Restructuring Tariff, a settled case, they should not be re-evaluated.⁶¹

Mr. Magnani effectively responds to PGW's defense of its tolerance levels, penalties and cash out rates in his Surrebuttal Testimony. He rejects PGW's fundamental argument that PGW's tight tolerance band and severe penalties act as a disincentive to NGS gaming misbehavior. He also explains that when an NGS forecasts customer usage and the weather forecast is only 5 degrees off from actual temperatures, usage will be vastly different than predicted.⁶² NGSs cannot be expected to perform better than professional meteorologists. Therefore PGW's penalties fail to produce more efficient service from NGSs, but only place unreasonable costs on NGSs, and as a byproduct, their customers, purportedly to control behavior that cannot be appreciably improved.⁶³ PGW's theory that reduced tolerances and penalties will allow NGSs to shift their gas assets to service territories where they will be more economically valuable assumes an NGS forecasting ability that does not exist. If NGSs could forecast that accurately to arbitrage better business opportunities, they would also be able to meet PGW's tolerances and avoid penalties – which they cannot. Therefore PGW's tariff rules constitute punishment rather than a deterrent.⁶⁴

Mr. Magnani provided an illustration of how PGW's concerns about delivery swings jeopardizing its control of its system and increasing costs to firm customers is

⁶⁰ PGW St. No. RJ-11, p. 3.

⁶¹ PGW St. No. 11, p. 8, lines 5-8.

⁶² Hess St. No. SR-1, p. 3, lines 28-31, p. 4, line 1.

⁶³ Hess St. No. SR-1, p. 4, lines 3-13.

⁶⁴ Hess St. No. SR-1, p. 4, lines 13-21.

grossly exaggerated. If an NGS serves a daily load of 5,000 dekatherms (“dth”), and a 5% tolerance level equates to 250 dth, an expanded tolerance level of 10% (Hess’ recommended level) only allows a swing of 500 dth per day. This amount of swing cannot have any appreciable impact on a system such as PGW’s where hundreds of thousands of dths are flowing daily.⁶⁵

Mr. Muntzer’s Rejoinder that operations issues could develop once more suppliers participate on the PGW system is a hollow point. Unless PGW’s rules are made fair, other suppliers are unlikely to operate on this system. Hess does not agree that problems would develop even if more suppliers were active on the system. Mr. Magnani’s point is that it would take an extremely large volume of gas being transported on the PGW system before there could possibly be any significant impact. Rather than harm customers, Hess’ proposal of a 10% tolerance would reduce NGS’s costs and thus, reduce costs for transportation customers.⁶⁶

Mr. Magnani also dispatches PGW’s argument that because the current tariff rules are a product of a settled restructuring proceeding, they should not be re-examined. As a legal matter, the Commission’s order setting all of PGW’s existing tariffs for investigation provided a due process opportunity for any party to weigh-in on these issues. Moreover, as Mr. Magnani pointed out, it is the Commission’s right and duty to examine its prior decision in light of new conditions. Just as the Commission was not deterred from reviewing these issues in the statewide gas investigation it launched after its Section 2204(g) report to the General Assembly, PGW’s restructuring-era rules should be re-examined based on Hess’ real world experience on the PGW system as well as

⁶⁵ Hess St. No. SR-1, p. 4, lines 27-31, p. 5, lines 1-7.

⁶⁶ *Id.*

many other systems, which allows Hess to explain what is not working and how existing requirements can be improved.⁶⁷

Requested Relief: PGW's daily imbalance tolerances and penalties should be removed from its tariff, and its monthly tolerances, penalties and cash outs should be updated as recommended by Hess witness Magnani. If daily requirements are maintained, their tolerances, penalties and cash out rates should be updated to the new requirements Hess recommends for monthly tolerances, penalties and cash outs.

3. Annual Firm Transportation Cash Out Rate.

In its Direct Testimony, witness Magnani points out that PGW's firm transportation customer cash out rate, applied to annual imbalances was not clearly set forth in either PGW's retail tariff or its supplier tariff. Therefore he recommended that the firm transportation annual cash out rate should be clearly identified in PGW's tariff and set at a reasonable, market-based rate.⁶⁸

In rebuttal, Mr. Muntzer contended that PGW does not impose a cash out for annual imbalances and only requires that if the forecasted load exceeds pipeline capacity, gas is loaned to the supplier by PGW, but it must be returned to PGW at a FERC interest rate.⁶⁹ PGW acknowledged that its practice should be set forth in its tariff.⁷⁰

In discovery, Hess requested an explanation of PGW's practices on annual imbalances, and specifically requested that PGW explain Mr. Muntzer's testimony that cash outs were not required in the context of PGW's tariff language, and another discovery response by PGW representative Mr. LaPergola. PGW's two page response,

⁶⁷ Hess St. No. SR-1, p. 5, lines 17-28.

⁶⁸ Hess ST. No. 1, p. 6, lines 6-13.

⁶⁹ PGW St. No. 11, p. 9, lines 7-17.

⁷⁰ *Id.*

provided by Mr. Muntzer, is attached to Hess' Main Brief as Appendix 1.⁷¹ Hess invites the ALJs and the Commission to review this response, because it confirms Hess' position that in its compliance filing, PGW must be required to redraft its annual firm transportation imbalance rules so that they are clear and understandable.

Requested Relief: PGW should be directed to revise its tariff to clearly explain that no annual cash out is required and clearly delineate supplier responsibilities and costs associated with annual over and under deliveries.

4. Trading Between Suppliers and Within a Supplier's Pools to Resolve Imbalances.

Under PGW's tariff, each NGS is responsible for being in daily, monthly and annual balance. In addition, the NGS may have separate "pools" of gas, e.g. firm and interruptible, that must meet balancing requirements. One tool that NGSs have on many LDC systems is the ability to trade with each other to resolve imbalances. This makes sense because if one NGS has under-delivered and another has over-delivered by the same amount, the overall system is in balance, but each NGS still faces penalties for being out of balance individually.⁷² Allowing these NGSs to "trade" their imbalances would allow each supplier to avoid a penalty, which reduces their costs, and is appropriate since PGW did not suffer an actual imbalance on its system. Absent trading, a double charging of penalties would occur while PGW's system was completely unaffected.⁷³ Trading within the same NGS's pools is also feasible, and similarly would reduce penalty exposure to the supplier and reflect actual gas deliveries.

⁷¹ Hess Corporation Hearing Exhibit No. 3.

⁷² Hess St. No. 1, p. 6, lines 19-25.

⁷³ Hess St. No. 1, p. 6, lines 25-30.

This trading does not affect actual deliveries – those have already occurred. PGW is not required to expend any effort on the transaction. It must merely adjust NGS volumes in its records.⁷⁴

PGW responds with its now familiar retort that it does not have systems in place to track trading, and the generalization that such systems would cost several hundred thousand dollars.⁷⁵ That said, PGW indicates that if trading is ordered by the Commission, it should be limited to similar pools of gas, e.g. firm pool to firm pool, interruptible pool to interruptible pool.⁷⁶ It qualifies that position further by stating that trading should be limited to interruptible service only.⁷⁷ PGW also hypothesizes that a trading program would require it to act as arbitrator on NGS disputes among themselves and fail to benefit customers.⁷⁸ In rejoinder, PGW finally provides details on the record keeping required to incorporate trading transactions.⁷⁹ However, again, the rejoinder fails to provide a cost estimate of these record keeping changes, therefore the record does not substantiate that these costs are material or significant. The inference therefore, is that they are not unduly costly.

In Surrebuttal, Mr. Magnani explains that trading does not implicate PGW acting as an arbitrator or incurring any significant administrative costs. The actual trading is handled outside the PGW system by the NGSs and PGW need only change each NGS's imbalance to reflect the traded volume. A simple Excel electronic file would suffice, which PGW already uses to provide imbalance reports to NGSs.⁸⁰ OCA noted that if

⁷⁴ Hess St. No. 1, p. 7, lines 6-13.

⁷⁵ PGW St. 11, p. 10, lines 8-14.

⁷⁶ PGW St. No. 11, p. 10, lines 15-18.

⁷⁷ PGW St. No. 11, p. 10, lines 21-23, p. 11, lines 1-2.

⁷⁸ PGW St. No. 11, p 11, lines 3-7.

⁷⁹ PGW St. No. 11-RJ, p. 4.

⁸⁰ Hess St. No. SR-1, p. 6, lines 3-16.

PGW accepts imbalance trading it should be allowed to terminate such trading if NGSs fail to coordinate and document offsets.⁸¹ Hess agrees that if NGS misconduct occurs after trading is permitted, a termination right for specifically delineated misconduct is appropriate. A termination of trading at PGW's sole of discretion however, would not be reasonable. Hess agrees, however, that trading within an NGS's own pools should be allowed only from the interruptible pool to the firm pool.

Witness Magnani notes also that, once again, in its cost equation used to analyze this proposal PGW has ignored the fact that trading only reduces penalties to NGSs when the PGW system was not, in fact, out of balance. Trading therefore would impose no harm on PGW, but would reduce costs to suppliers, which in turn reduces costs to transportation customers.⁸²

Requested Relief: PGW should be required to modify its tariff to permit trading between NGSs and between pools of an NGS in order to reduce unwarranted NGS penalties and produce NGS and customer savings at a non-material cost to PGW.

5. Availability of Customer Information to Suppliers.

The Commission has a duty under Section 2206(c) of the Code to ensure, by order or regulation, that each NGDC provides adequate customer information so that customers can make "informed choices" regarding the purchase of gas supply services.⁸³ Gas suppliers such as Hess assist with that shopping effort by obtaining a customer's usage history and by working with the customer to formulate a service that is appealing to that customer. In response to Hess' Direct Testimony, PGW clarified that it uses an advanced

⁸¹ OCA St. No. 1-R, p. 8, lines 13-15.

⁸² Hess St. No. SR-1, p. 6, lines 28-31, p. 7, lines 1-6.

⁸³ 66 Pa. C.S. § 2206(c).

XML-based system that uses EDI standards for transactions. However, PGW does not use its XML system for marketing information.⁸⁴

Mr. Magnani explains that because it is difficult to obtain accurate usage information directly from customers, Hess requests that PGW provide a consistent and straightforward process for providing NGSs accurate customer information on a timely basis.⁸⁵ In response, PGW Witness Mr. Muntzer indicates the Company provides marketing information to suppliers via a "Marketing File," but only on a quarterly basis.⁸⁶ He conceded that PGW could run the Marketing File on a monthly basis to reduce the time suppliers must wait for customer authorization of the information's release.⁸⁷

Hess Witness Magnani clarifies that he was not advocating that PGW install any new system, or obtain customer information without authorization. However, Hess is requesting that for customers who have already provided authorization, that customer usage information be released by PGW upon request, rather than quarterly or even monthly.⁸⁸ He explained why this request is reasonable and necessary:

When an NGS is constructing a bid for a customer, it is imperative that we have the most recent usage information in order to base our quote on the customer's likely future usage patterns. It is unrealistic to expect the customer to wait until a new quarter for that usage to be available in order to be able to switch to a new supplier.⁸⁹

⁸⁴ PGW St. No. 11, p. 12, lines 5-12.

⁸⁵ Hess St. No. 1, p. 8, lines 10-15.

⁸⁶ PGW St. No. 11, p. 13, lines 3-8.

⁸⁷ PGW St. 11, p. 13, lines 8-11.

⁸⁸ Hess St. No. SR-1, p. 7, lines 21-26.

⁸⁹ Hess St. No. SR-1, p. 7, lines 26-30.

Mr. Magnani further explains that no elaborate system is required to send this data to an NGS, merely a simple Excel spreadsheet via e-mail or posted on an electronic bulletin board with password protection.⁹⁰

With respect to customers who have not yet authorized PGW to provide suppliers their usage information, Mr. Magnani points out that some customers opt out of information release programs to avoid mass mailings and other direct marketing campaigns. But, if a customer is interested in working with an NGS to explore switching their commodity service to a competitive alternative, the customer should have a reasonable mechanism available to authorize PGW to provide usage history to the NGS.⁹¹

PGW should adopt a simple authorization form utilized by most NGDCs that can be faxed to PGW, and the customer should receive an e-mailed Excel file or a posting on an electronic bulletin board. This maintains customer privacy while also providing current usage data on request.⁹² Mr. Magnani counters Mr. Muntzer's theory that NGSs may be misusing the Marketing File and that is the reason for their dissatisfaction.⁹³ The reality is that the Marketing File is inadequate in its present quarterly form and lacks current data.⁹⁴

PGW contests this reasonable request by Hess in its Rejoinder Testimony by citing statistics on how long it would take to process all customer usage files (24 hours) and what an enormous undertaking this represents if 5 to 10 suppliers posed 500 requests for information per day. This purported example is merely an implausible exaggeration,

⁹⁰ Hess St. No. SR-1, p. 7, lines 30-31, p. 8, lines 1-3. OCA Witness LeLash supported PGW and interested suppliers working out an acceptable, economical process to address suppliers' concerns. OCA St. No. 1-R, p. 9, lines 7-12. Mr. Magnani has proposed such a process.

⁹¹ Hess St. No. SR-1, p. 8, lines 3-9.

⁹² Hess St. No. SR-1, p. 8, lines 9-12.

⁹³ PGW St. No. 11, p. 12, lines 21-23, p. 13, lines 1-2.

⁹⁴ Hess St. No. SR-1, p. 8, lines 13-16.

given that only two suppliers are currently active on PGW's system. Certainly, the process Hess requests is manageable at this point in time and PGW's ability to provide timely customer usage information should grow as competition grows on its system. Moreover, the 24 hour file processing time covers all customers, residential, commercial and industrial. These latter C&I customers, who are the current focus of Hess' sales efforts, require much less processing time than the residential class, which is by far more numerous.⁹⁵

Requested Relief: PGW should be required, on request, to provide current customer usage information via e-mail or an electronic bulletin board, rather than quarterly or monthly, for customers who have already authorized release of their information. In addition, customers who submit a faxed information release form should also promptly receive their usage information by e-mail or electronic bulletin board. PGW's exaggerated estimates of time and effort to produce this information under a scenario where 5 to 7 times the current number of suppliers are operating on their system should not deter the ALJs and the Commission from granting these reasonable customer information requests.

6. Hess' Proposals Support Good Public Policy.

Hess' proposals in this proceeding are not the equivalent of a Christmas wish list. Mr. Magnani stresses in his testimony that its proposals support good public policy in the following manner:

- The Commission has made it a policy objective in its statewide investigation of gas competition at Docket I-00040103 to improve gas competition. Increased competition in the PGW service territory is consistent with the Commission's own objectives.

⁹⁵ PGW St. No. 11-RJ, pp. 5-7.

- Growth of competition provides customers with more options on the number, types and prices of services on products available. Customers will have more access to services and products that meet their needs, and have greater opportunities to pursue gas supply savings.⁹⁶
- As PGW is relieved of commodity procurement and supply obligations, it can focus more heavily on its distribution obligations and avoid the financial risk associated with purchasing gas supply.⁹⁷

All of Hess' proposals can be addressed through tariff changes filed in the compliance phase of this proceeding. As Mr. Magnani testified, the greater the opportunities customers have to minimize gas costs using NGSs, the more these customers can offset rate increases they must absorb from the outcome of this case. Hess' goal of increasing gas competition in PGW's service territory is directly related to the core financial requirements of PGW that compelled the filing of this rate case.⁹⁸

Commission approval of these proposals by Hess will put suppliers well along the road to being able to market to residential customers.⁹⁹ Additional improvements outside the scope of this case such as a purchase of accounts receivable program with utility billing and a phase-in plan to serve residential customers would also be necessary. Thus, adoption of Hess' proposals speeds the day when residential customers in Philadelphia can have supply choices. This case is a "golden opportunity" for the Commission to

⁹⁶ Hess St. No. 1, p. 9, lines 11-23.

⁹⁷ Hess St. No. 1, p. 9, lines 25-31.

⁹⁸ Hess St. No. 1, p. 10, lines 2-12.

⁹⁹ OCA Witness LeLash expresses concern that NGSs have made no commitments to residential customers and the Hess proposals may constitute subsidies. OCA ST. No. 1-R, p. 10, lines 5-8. Mr. Magnani in his Surrebuttal Testimony responded by noting that Hess' recommendations were not subsidies, but rather were improvements needed to make PGW's system truly open to competitors. In addition, Mr. LeLash was failing to recognize the benefit to all PGW customers, including residential customers, that arises from NGS marketing by reducing PGW's responsibility to buy and resell large quantities of gas. As PGW exits that role, its gas supply expenses and cash flow needs are reduced. Hess St. No. SR-1, p. 10, lines 8-22.

advance its natural gas competition improvement objectives, in conjunction with its other pro-competition efforts.

IX. Rate Structure

Hess is not submitting a Main Brief position on rate structure issues.

X. Conclusion

A preponderance of evidence supports the granting of Hess' proposals to spur competition by NGSs in PGW's service territory. These proposals support the objective of Chapter 22 of the Code to give customers viable competitive choices for their gas supply, and they also comport with the Commission's current gas policy objectives.

Hess' requests for improvements to PGW's tariffs that will benefit suppliers, customers and PGW itself should be granted.

June 12, 2007

Respectfully submitted,



John E. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
Email: JPovilaitis@RyanRussell.com
MTotino@RyanRussell.com

APPENDIX 1

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

Docket No. R-00061931

PGW Response to Hess Set II-I
Discovery Request

RESPONSE TO HESS CORPORATION DATA REQUEST
REGARDING PGW'S BASE RATE FILING
DOCKET NO. R-00061931

Question Hess-Set II-1: RE: PGW's Rebuttal Testimony of William C. Muntzer, (p. 9, lines 7-17). Mr. Muntzer states that "...PGW does not impose a cash-out for annual imbalance penalties for firm transportation customers... We only require that the loaned gas be returned to PGW, plus a carrying charge."

PGW's tariff states (p.118),

[a]ll volumes delivered to the Company that remain unaccepted by the Customer, in excess of the allowable monthly underrun may be offered for sale to the Company or stored at the Customer's option. Gas may be purchased by the Company at a rate not to exceed the Company's avoided cost of Gas for the month of delivery. In the event that the Company does not elect to purchase volumes in excess of the allowable underrun, a service charge for all such volumes carried forward by the Company will be made..... The unit rate for this service charge will be the volumetrically weighted average of the 100% load factor unit cost of the Company's pipeline storage contracts as utilized in the Company's annual operating budget authorized by the Commission.

The tariff language seems to address underruns only, while Mr. Muntzer's testimony only addresses over deliveries. Moreover, in responses to Hess, Set I-12, Mr. LaPergola states that PGW's "tariff does not specify a cash out rate,," indicating that a cashout provision does exist but that the rate is simply unspecified in the tariff.

- a) Please explain how and when a Supplier is trued up. Are suppliers trued up monthly or annually?
- b) Please explain how and when a Supplier is cashed out.
- c) Please indicate the rate or index at which the Supplier is cashed out.

Response Provided By: William C. Muntzer

Response: PGW believes that that Hess may have a misunderstanding of PGW's tariff regarding this issue. Further, there appears

to be a misunderstanding of what services the Company offers coupled with a mixing of terms and concepts.

First, the Company offers *Interruptible Transportation* under its various IT rate schedules. Under the IT rates the supplier provides profiling and forecasting of customer usage and schedules nominations for that quantity of commodity. Failure to deliver the nominated quantity daily results in penalties as identified in PGW's Customer Tariff, Rate Schedule DB, Section 6(d). Treatment of gas quantities forecasted and delivered by the supplier that are over or under the amount used by the customer, and fall beyond the monthly threshold limits, are addressed in Section 6(f).

Second, the Company provides *Firm Transportation* under rates GS, MS and PHA. Under these services, the Company calculates the forecasted usage for the supplier's pool(s). The supplier is responsible for delivering the forecasted quantity. If the actual quantity used exceeds the forecasted quantity, the supplier is loaned the gas to be replenished at a future date, and must pay a carrying charge.

The third group of customers are the *Gas Transportation Service (GTS)* customers. This is a group of customers that were actively transporting gas on PGW's system prior to PGW's restructuring. This service is grandfathered for those customers who used the service on or before September 1, 2003.

The cited tariff language appears on pages 122 and 128 of the current tariff (not page 118). This language is only relevant for grandfathered customers receiving GTS Firm and GTS Interruptible services. It does not deal with supplier transactions as contemplated under Gas Choice. Essentially, from the Company's standpoint, under the existing GTS rates the supplier is irrelevant. While the customer may use a supplier, or act as its own supplier when procuring supply under the GTS rate schedules, all over/under deliveries are the responsibility of the customer, not the supplier. The language cited above simply identifies that the Company has the option of purchasing any excess gas from the GTS customer or storing the gas for that customer based upon existing storage contract costs.

With regard to Mr. LaPergola's interrogatory response, Hess infers that because the Company's tariff does not

specify a cash out rate, we are not calculating the cash out amount. In reality, it means that the cash out rate is not stated in the tariff because it does not apply. Gas for Firm Suppliers is loaned and replenished, not cashed out.

- a) Under rates GTS-Firm and GTS-Interruptible, suppliers communicate with their customers regarding the required delivery quantity. A supplier delivers gas on the customer's behalf. Any imbalance between usage and delivered quantity is the responsibility of the customer. Therefore, no supplier true up is necessary.
- b) Under Gas Choice for PGW's firm tariff rates (GS, MS and PHA), the Company generates customer load profiles and forecasts to provide the supplier with a monthly Daily Deliver Quantity (DDQ) for the month. The supplier is responsible for delivering the DDQ for its customers. There are three scenarios that could occur: a supplier over delivers, under delivers, or simply delivers the correct amount. In the event that the supplier over or under delivers gas quantities necessary to meet its DDQ, steps are identified in Section 9.10 of the PGW's Supplier Tariff. The Company is not obligated to accept nominations in excess of the DDQ. Penalties for over or under deliveries are set forth in Sections 9.10 and 9.11 of the Supplier Tariff.

If the supplier correctly delivers its DDQ, the next step is to determine if the supplier's customers utilized the amount forecasted by the Company. If the customers utilized more than the forecasted DDQ, the excess amount was provided to the customers from PGW's contracted pipeline storage and on site LNG. Such quantities would then be required to be replenished during the non-peak period. Such payback is calculated into the DDQ for those periods. Because the supplier is only allocated firm transportation, it is unlikely that it would ever be in a position of not owing the Company gas. Any excess delivery between the Company forecasted level and the actual usage would be used to credit the amount owed. Therefore, there is no cash out required.

- c) As indicated in the response above and my previously provided testimony, there is no cash out for firm transportation suppliers.

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2007 JUN 12 PM 2:29
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission :
v. : Docket No. R-00061931
Philadelphia Gas Works :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

VIA FIRST CLASS AND ELECTRONIC MAIL

Gregory J. Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122-0050
(215) 684-6878
(215) 684-6798
greg.stunder@pgworks.com

Daniel Clearfield, Esquire
Wolf Block Schorr Solis-Cohen, LLP
213 Market Street – 9th Floor
Harrisburg, PA 19108-0865
(717) 237-7173
(717) 237-7161
dclearfield@wolfblock.com
PGW

Tanya McCloskey, Esquire
Christy Appleby, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17105-1923
(717) 783-5048
(717) 783-7152
cappleby@paoca.org
dlawrence@paoca.org
tmccloskey@paoca.org

Richard Kanaskie, Esquire
Allison C. Kaster, Esquire
Pennsylvania Public Utility Commission
400 North Street – 3rd Floor
Commonwealth Keystone Building
Harrisburg, PA 17120
(717) 787-1976
(717) 772-2677
rkanaskie@state.pa.us
akaster@state.pa.us

Sharon E. Webb, Esquire
Lauren M. Lepkoski, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 N. 2nd Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831
swebb@state.pa.us
llepkoski@state.pa.us

Shari C. Gribbin, Esquire
Kent D. Murphy, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-4941 (Murphy phone and fax)
(215) 841-3606 (Gribbin phone)
(215) 568-3389 (Gribbin)
shari.gribbin@exeloncorp.com
kent.murphy@exeloncorp.com

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
(717) 236-4841
tsstewart@hmslegal.com
Interstate Gas Supply, Inc.

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick
100 Pine Street
Harrisburg, PA 17108
(717) 232-800
(717) 237-5300
cmincavage@mwn.com
Philadelphia Industrial and Commercial
Gas Users Group

Philip A. Bertocci, Esquire
Thu B. Tran, Esquire
Action Alliance of Senior Citizens
1424 Chestnut Street
Philadelphia, PA 19102-2505
(215) 981-3702
(215) 981-0435
pbertocci@clsphila.org
ttran@clsphila.org
Action Alliance, TURN

Philip L. Hinerman, Esquire
Jill A. Guldin, Esquire
Fox Rothschild LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2000
(215) 299-2150
PHinerman@foxrothschild.com
jguldin@foxrothschild.com
Philadelphia Housing Authority

Sherry A. Swirsky, Esquire
Miles H. Shore, Esquire
The School District of PA
440 N. Broad Street
Philadelphia, PA 19130
(215) 400-5162
(215) 400-4121
sswirsky@phila.k12.pa.us
mhshore@phila.k12.pa.us

Date: June 12, 2007



John F. Povilaitis
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
Phone: (717) 236-7714
Fax: (717) 236-7816
Email: JPovilaitis@RyanRussell.com

Counsel for Hess Corporation

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

June 12, 2007

DOCUMENT
FOLDER

HAND DELIVERED

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

ORIGINAL

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works
Docket No. R-00061931**

Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Main Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

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

Sincerely,

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

RECEIVED
2007 JUN 12 PM 3:44
SECRETARY'S BUREAU

60

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC
UTILITY COMMISSION

v.

PHILADELPHIA GAS WORKS

:
:
:
:
:
:

DOCKET NOS. R-00061931
R-00061931C0001

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

ORIGINAL

DOCUMENT
FOLDER

Sharon Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Lauren M. Lepkoski
Assistant Small Business Advocate
Attorney ID No. 94800

For: William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Dated: June 12, 2007

DOCKETED
JUN 13 2007

RECEIVED
2007 JUN 12 PM 3:44
SECRETARY'S BUREAU

Cases

Lloyd v. Pennsylvania Public Utility Commission,
804 A.2d 1010 (Pa. Cmwlth. 2006), petitions for
allowance of appeal denied.....3, 5, 6, 14, 37, 42, 43, 45

*Application of Equitable Gas Company for Approval of Natural Gas
Choice and Competition Act Restructuring Filing*,
Docket No. R-00994784 (Order entered Sept. 12, 2002)12

*Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern
Union Company for approval of: 1) the transfer by sale of all property used
or useful in providing natural gas service to the public to UGI Corporation;
2) the immediate retransfer of all such property, by UGI Corporation, including
gas supply and pipeline and storage capacity contracts, by UGI Corporation
to UGI Newco Utilities, Inc., 3) the initiation by UGI Utilities Newco, Inc. of
natural gas service in all territory in this Commonwealth where Southern Union
Company does or may provide natural gas service; 4) the abandonment by
Southern Union Company of all natural gas service in this Commonwealth;
and 5) transfer by UGI Corporation of all stock of UGI Utilities Newco, Inc.
to UGI Utilities, Inc.,*
Docket Nos. A-120011F2000, A-125146F5000, and A125146
(Order entered August 18, 2006).....12, 50, 51

*Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms
Final Investigatory Order*,
Docket No. M-00051923 (Ordered entered December 18, 2006).....9, 13, 14, 15, 16, 21, 51, 52

*Investigation into Financial and Collections Issues Regarding the Philadelphia
Gas Works*,
Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061,
and P-00042117 (Order entered October 27, 2004).....9, 15, 50

Pennsylvania Public Utility Commission v. Equitable Gas Company,
Docket No. R-901595, 73 Pa. PUC 301 (Order entered November 21, 1990).....11, 50

*Pennsylvania Public Utility Commission v. Metropolitan Edison Company
and Pennsylvania Electric Company, Petition of Metropolitan Edison Company
for Approval of a Rate Transition Plan, Petition of Pennsylvania Electric Company
for Approval of a Rate Transition Plan, and RE: Merger Savings*,
Docket Nos. R-00061366, R-00061366C001, R-00061366C002, R-00061366C003,
R-00061366C005, R-00061366C0013, R-00061367, R-00061367C0001,
R-00061367C0002, R-00061367C0003, R-00061367C0005, R-00061367C0007,
R-00061367C0008, P-00062213, P-00062214, A-110300F0095,
and A-110400F0040 (Order entered January 11, 2007).....14, 21, 22, 51, 52, 53

Pennsylvania Public Utility Commission v. Philadelphia Gas Works,
Docket Nos. M-00021612 M-00021612C0001, M-00021612C002,
M-00021612C000 (Order Entered March 31, 2003).....8, 15, 34

Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation,
Docket No. R-00049255 (Order entered December 22, 2004).....11, 26, 50, 54

Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation,
Docket Nos. R-00061398, R-00061398C0001, R-00061398C0002, R-00061398C0003,
and R-00061398C0004 (Order entered February 8, 2007).....14, 22, 43, 45, 52, 53

Pennsylvania Public Utility Commission v. Valley Energy, Inc., Docket Nos.
R-00049345 and R-00049345C0001 (Order entered April 21, 2005).....12

*Petition by Equitable Gas Company for Authorization To Use a Portion of an
Equitrans, LP Refund To Benefit Low Income Customers,*
Docket No. P-00052192 (Order entered December 15, 2005).....12

Statutes

1 Pa C.S. §1921(b).....	31
66 Pa C.S. §1307(f).....	6, 8, 10, 19, 49, 53, 57
66 Pa.C.S. §§ 2201 <i>et seq.</i> (Natural Gas Choice and Competition Act)	8
66 Pa. C.S. §2202.....	20, 52
66 Pa.C.S. §2203(6).....	20, 25, 52, 56
66 Pa. C.S. §2211(c).....	15
66 Pa. C.S. §2212.....	8, 15, 33
66 Pa. C.S. §2212(r).....	33
66 Pa. C.S. §2802(17)	30, 31, 55

Additional Sources

House Bill 1331, Printer's Number 2212 (1999 Session).....	23, 53
Legislative Journal-House, June 14, 1999.....	23, 24, 53

I. INTRODUCTION-PROCEDURAL HISTORY

On December 22, 2006, Philadelphia Gas Works ("PGW" or the "Company") filed Tariff Supplement 16 to Gas Service Tariff – Pa. P.U.C. No. 2 ("Supplement No. 16") to become effective February 20, 2007. The PGW filing proposed an increase in its total operating revenues of \$100 million per year.

The Office of Small Business Advocate ("OSBA") filed a Complaint on January 18, 2007.

On February 8, 2007, the Pennsylvania Public Utility Commission ("Commission" or "PUC") suspended Supplement No. 16 until September 20, 2007, in order to conduct an investigation into the lawfulness, justness and reasonableness of PGW's proposed rate increase. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of PGW's existing rates. The matter was assigned to Administrative Law Judges ("ALJs") Cynthia Williams Fordham and Angela T. Jones.

On February 23, 2007, a prehearing conference was held before ALJ Fordham and ALJ Jones. A second prehearing conference was held on March 2, 2007.

The following parties listed below are the known active parties involved with PGW's base rate filing: the OSBA; the Office of Consumer Advocate ("OCA"); the Office of Trial Staff ("OTS"); Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") and Tenant Union Representative Network ("TURN"); the Philadelphia Industrial and Commercial Users Group ("PICGUG"); PECO Energy Company ("PECO"); Interstate Gas Supply Inc. ("IGS"); the Philadelphia Housing

Authority (“PHA”); the School District of Philadelphia (“SDP”); and Hess Corporation (“Hess”).¹

Public input hearings were held on March 26, 2007; March 28, 2007; and April 9, 2007.

On April 6, 2007, the OSBA submitted the direct testimony of Robert D. Knecht.

On May 4, 2007, the OSBA submitted the rebuttal testimony of Mr. Knecht.

On May 15, 2007, the OSBA submitted the surrebuttal testimony of Mr. Knecht.

Evidentiary hearings were held before ALJ Fordham and ALJ Jones from May 21, 2007, through May 24, 2007.

The OSBA submits this main brief pursuant to the procedural schedule and Special Instructions for Briefs and Exceptions in Major General Rate Increase Proceedings set forth in the ALJs’ March 22, 2007, Prehearing Conference Order #4.

¹ The Archdiocese of Philadelphia (“Archdiocese”) was an active party in this proceeding. However, because counsel for the Archdiocese was not present during the evidentiary hearings, the ALJs denied the Archdiocese intervenor status.

II. STATEMENT OF QUESTIONS

1. Should PGW's non-residential customers be required to contribute toward PGW's universal service costs?

Suggested answer: No

2. Should PGW's non-residential customers be relieved of having to contribute toward PGW's universal service costs through a three-year phaseout plan?

Suggested answer: Yes

3. Is PGW's bundled cost of service study appropriate for setting class rates in a distribution rate case?

Suggested answer: No.

4. Is PGW's unbundled cost of service study, submitted as a corrected response to OSBA-I-2A (Revised), appropriate for setting class rates in a distribution rate case?

Suggested answer: Yes.

5. Is PGW's proposed revenue allocation consistent with the Commonwealth Court's holding in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006)?

Suggested answer: No

6. Should the awarded revenue requirement be allocated such that the percentage increase for the residential class is 1.2 times the system average and that the percentage increases for the non-residential classes are scaled back proportionately from the percentage increases proposed by PGW?

Suggested answer: Yes.

III. SUMMARY OF ARGUMENT

The OSBA's goal in this case is to ensure that small business customers' rates have a basis in, and move towards, the actual cost incurred by PGW to provide service to those customers.

The PGW cost of service study ("COSS") contains errors and methodological biases which harm the commercial class. Nevertheless, the OSBA will accept the Company's unbundled COSS for the purposes of the revenue allocation in this proceeding.

Even with the errors which harm the commercial class, PGW's COSS shows that commercial customers (and the other non-residential classes) are overpaying their cost of service at present rates and that the residential class is underpaying its cost of service at present rates. Despite that fact, PGW's proposed revenue allocation actually moves class rates farther away from allocated costs rather than closer to those costs.

Specifically, PGW has proposed a system average rate increase of 33.9%. However, contrary to the results of its own COSS, PGW has proposed to give residential customers a *smaller* than system average increase of 30.0%. Furthermore, PGW has proposed to allocate a *larger* than system average increase of 49.5% to the commercial class, 35.3% to the industrial class, 51.5% to the municipal class, and 42.4% to the housing authority. Each of these non-residential classes is currently overpaying based on the Company's own COSS. PGW's proposal to move the customer classes farther away from cost of service is inconsistent with *Lloyd v. Pennsylvania Public Utility*

Commission, 904 A.2d 1010 (Pa. Cmwlth. 2006), *petitions for allowance of appeal denied*.

There are only three revenue allocation proposals in the record of this proceeding: 1) PGW's proposal, which is inconsistent with *Lloyd*; 2) the OSBA's proposal, which would assign the underpaying residential class a percentage rate increase which is 1.2 times the system average and proportionately scale back the rate increases proposed by PGW for the overpaying non-residential classes; and 3) the OTS proposal, which would provide first dollar relief to the overpaying non-residential classes. The Commission must reject PGW's proposal as inconsistent with *Lloyd*. The Commission should select the OSBA's proposal in order to comply with the principles laid down by the Commonwealth Court in *Lloyd*. However, if the Commission reduces the requested revenue increase to \$73 million or less, the OTS proposal would be an acceptable alternative.

Historically, PGW's universal service costs have been recovered from all classes of customers in spite of the fact that only residential customers are permitted to participate in the Company's universal service programs. Under Commission policy and the precedent with regard to other utilities, non-residential customers are not required to contribute toward universal service costs. Therefore, the requirement that PGW's customers contribute toward universal service costs should be phased out over three years, beginning with the Company's 2008 proceeding under Section 1307(f) of the Public Utility Code.

IV. REVENUES

The OSBA is not briefing any revenue issues but reserves the right to address such issues in its reply brief.

V. EXPENSES

The OSBA is not briefing any expense issues but reserves the right to address such issues in its reply brief.

VI. MISCELLANEOUS ISSUES: Universal Service Costs

A. OSBA's Proposal

As set forth more fully below, the OSBA is proposing that non-residential customers be relieved of having to contribute toward PGW's universal service costs. Specifically, the OSBA is proposing that the current requirement on non-residential customers be reduced by one-third in PGW's 2008 proceeding under Section 1307(f) of the Public Utility Code, 66 Pa. C.S. §1307(f); be reduced by one-half of the remaining revenue requirement in the 2009 proceeding; and be eliminated entirely in the 2010 proceeding.

B. Commission Precedent

PGW is a municipal natural gas distribution company ("NGDC"), which was previously regulated by the Philadelphia Gas Commission, a local agency of the City of Philadelphia.² On June 22, 1999, the Natural Gas Choice and Competition Act ("Gas Choice Act"), 66 Pa. C.S. §§2201-2212, was enacted to provide a competitive and non-discriminatory market for natural gas supply services within the Commonwealth.³ Pursuant to the Act, the Commission assumed jurisdiction over the natural gas services provided by PGW on July 1, 2000.⁴ On July 1, 2002, PGW filed its Restructuring Petition in order to meet the requirements of the Gas Choice Act.⁵

² *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket Nos. M-00021612, M-00021612C0001, M-00021612C002, M-00021612C000 (Order Entered March 31, 2003) at 5 ("Restructuring Order").

³ Restructuring Order at 2

⁴ Restructuring Order at 5

⁵ Restructuring Order at 2

Prior to becoming subject to the Commission's jurisdiction, PGW allocated its universal service costs to all firm sales service rate classes.⁶ PGW did *not* allocate any universal service costs to either PGW's interruptible sales service rate classes or to PGW's large volume transportation service rate classes ("GTS/IT").⁷

During PGW's Restructuring Proceeding, PGW proposed to continue to collect universal service costs from firm sales service customer classes.⁸ The Commission agreed that universal service costs should continue to be allocated to all firm sales service rate classes.⁹ Specifically, the Commission stated, "These [universal service] costs have traditionally been included in PGW's gas cost rate ('GCR') and that such a cost allocation [to the residential classes only] would involve massive cost shifting between classes prohibited by Sections 211(c) and (h) of the Act. This is a restructuring proceeding and not a base rate case. Therefore, the record does not contain a cost study that would support a shift in rate design."¹⁰

The issue of how PGW's universal service costs should be allocated among rate classes arose again in *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061, and P-00042117 (Order entered October 27, 2004) at 23-24. However, the

⁶ Restructuring Order at 64 and *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Ordered entered December 18, 2006) at 31.

⁷ If PGW had any smaller retail "Choice" customers who took gas supply service from an alternative natural gas supplier ("NGS"), these customers would also be assigned universal service costs. PGW Exhibit HSG-6T indicates that all retail customers take gas supply service from PGW. For convenience, this brief refers to PGW's policy as allocating universal service costs to all firm sales service customers.

⁸ Restructuring Order at 62

⁹ Restructuring Order at 64

¹⁰ Restructuring Order at 64

Commission stated in that Investigation that it did not “intend to address [universal service] cost allocation. Cost allocation is an issue best left to a base rate proceeding. At PGW’s next base rate proceeding, the OSBA will have sufficient opportunity to raise the issue of the proper size of PGW’s CRP and argue its position regarding the proper cost allocation for Universal Service Programs.”

Because the Commission has consistently deferred making a decision regarding how PGW’s universal service costs should be allocated, PGW continues to allocate its customer assistance program (“CAP”) costs to all firm service sales rate classes. As OSBA witness Knecht testified:

The vast majority of the program costs associated with PGW’s CAP costs are allocated to all firm service sales customers on a volumetric basis, and are recovered from those classes using a constant dollar per Mcf Universal Service and Energy Conservation Surcharge (‘USEC Surcharge’). The costs consist of the Customer Responsibility Program (‘CRP’) of \$90.1 million, the Senior Citizen Discount (‘SCD’) of \$16.4 million, the Customer Weatherization Program (‘CWP’) of \$2.0 million, and prior period undercollections of \$23.1 million.

Because both the CRP and SCD costs are relatively large, and because they vary with the market price of natural gas, PGW is permitted to reconcile the costs and revenues associated with these programs on an annual basis. This reconciliation takes place as part of PGW’s annual 1307(f) GCR process.¹¹

The Commission should reject the Companies’ current methodology for allocating PGW’s CAP costs and setting rates for recovering those costs because that methodology is contrary to the Commission’s established precedent on this issue. Now that PGW is under the Commission’s jurisdiction, it should be subject to the

¹¹ Knecht, OSBA Statement No. 1 at 28-29

Commission's policy. In numerous proceedings, the Commission has affirmed that universal service cost recovery should be restricted only to the residential class.

In a 1990 proceeding, Equitable Gas proposed that its version of the CAP, the Energy Assistance Program ("EAP"), be assigned to all classes. However, the Commission decided upon a CAP cost allocation it has followed ever since in both electric and gas proceedings:

We recognize that the EAP is expected to lower the Company's total costs of service. Thus, arguably, all ratepayers should benefit through a lower uncollectibles expense and reduced costs of credit and collections. However, in the instant proceeding we shall direct that the expenses associated with this EAP 'pilot' program be allocated to the residential customer class during the experimental period. We will further direct that this customer class expense allocation issue be addressed in our Generic proceeding for final resolution.¹²

In a more recent case involving PPL's electric distribution rates, the OCA argued that universal service costs should be allocated across all customer classes. The Commission rejected the OCA's proposal, as follows:

Universal service programs, by their nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class. We note that neither the OCA nor Mr. Epstein have presented any concrete evidence in the form of costs studies to support their respective proposals that the universal service program cost should be more broadly allocated. Accordingly, we will adopt the ALJ's recommendation on this issue.¹³

¹² *Pennsylvania Public Utility Commission v. Equitable Gas Company*, Docket No. R-901595, 73 Pa. PUC 301 (Order entered November 21, 1990) at 340.

¹³ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004) at 97-98.

Moreover, in several subsequent gas proceedings, the Commission reiterated the well-established precedent of allocating universal service costs to only the residential class.¹⁴ For example, in *UGI/PGE Merger*, the industrial intervenors, in their reply exceptions, requested that a collaborative on universal service not be permitted to address funding mechanisms.¹⁵ The industrial intervenors were concerned that if the parties to the collaborative were allowed to address funding mechanisms for universal service, the collaborative would depart “from the Commission’s well established precedent requiring universal service program costs to be collected only from the customer classes that benefit from the program.”¹⁶ The Commission stated in response to the industrial intervenors’ argument:

Based upon the record evidence and Commission precedent, we agree with UGI and PGE Industrial Intervenors that the requested clarification is appropriate. Our precedent on this issue is well established and allowing the proposed collaborative to delve into this issue would represent an inefficient use of Commission and intervenor resources.¹⁷

¹⁴ See *Application of Equitable Gas Company for Approval of Natural Gas Choice and Competition Act Restructuring Filing*, Docket No. R-00994784 (Order entered September 12, 2002); *Pennsylvania Public Utility Commission v Valley Energy, Inc.*, Docket No. R-00049345 (Order entered April 21, 2005); *Petition by Equitable Gas Company for Authorization to Use a Portion of an Equitrans, LP Refund to Benefit Low Income Customers*, Docket No. P-00052192 (Order entered December 15, 2005); and *Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern Union Company for approval of: 1) the transfer by sale of all property used or useful in providing natural gas service to the public to UGI Corporation; 2) the immediate retransfer of all such property, by UGI Corporation, including gas supply and pipeline and storage capacity contracts, by UGI Corporation to UGI Newco Utilities, Inc., 3) the initiation by UGI Utilities Newco, Inc. of natural gas service in all territory in this Commonwealth where Southern Union Company does or may provide natural gas service; 4) the abandonment by Southern Union Company of all natural gas service in this Commonwealth; and 5) transfer by UGI Corporation of all stock of UGI Utilities Newco, Inc. to UGI Utilities, Inc.*, Docket Nos. A-120011F2000, A-125146F5000, and A125146 (Order entered August 18, 2006) (“*UGI/PGE Merger*”) at 31-32.

¹⁵ *UGI/PGE Merger* at 31.

¹⁶ *UGI/PGE Merger* at 31.

¹⁷ *UGI/PGE Merger* at 32.

Furthermore, in a generic proceeding decided in December 2006, the Commission continued its policy that CAP costs should be allocated to residential customers only. In so doing, the Commission stated as follows:

After careful consideration of the comments and the arguments presented, the Commission will continue its current policy of allocating CAP costs to the only customer class whose members are eligible for the program – residential customers. The Commission believes that we should not initiate a policy change that could have a detrimental impact on economic development and the climate for business and jobs within the Commonwealth.

Since the Commission first encouraged utilities to initiate CAP programs on a voluntary basis, it has allocated CAP costs to the residential class, with a few exceptions. It is true that, in the early stages of these programs, the Commission indicated the possibility that this policy could change in the future. However, the Commission has continued to follow this policy even after universal service programs became mandatory with the passage of the Competition Acts. In fact, less than two years ago, the Commission held that '[u]niversal service programs, by their nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class.'¹⁸

The Commission has continued to follow its ruling in the *CAP Final Investigatory Order*. For example, the Commission stated in the *Met-Ed and Penelec Consolidated Case*:

We concur with the ALJs who correctly approved the use of the USCR to recover universal service costs. Further, the ALJs correctly limited recovery of the USCR to residential customers. These recommendations are consistent with the Commission's Order on *Customer Assistance Programs*:

¹⁸ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006) ("*CAP Final Investigatory Order*").

Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923 (December 18, 2006).¹⁹

The Commission also stated in a recent *PPL Gas* proceeding:

The ALJ properly denied the OCA's proposal to amend the Company's COSS to allocate CAP costs to all customer classes with the exception of the storage class. Contrary to the OCA's reading, the Commonwealth Court in *Lloyd* did not address how universal service costs were to be allocated, it simply rejected PPLICA's argument that conservation program funding should come (if at all) through generation rates and not through distribution rates. Therefore, *Lloyd* is not precedent for the OCA's argument that universal service costs are to be allocated to all customer classes. We concur with the ALJ who correctly limited recovery of the CAP costs to residential customers. This recommendation is consistent with cost causation and the Commission's Order on *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (December 18, 2006). As such, the OCA's Exception on this issue is denied.²⁰

In the instant proceeding, PGW's witness Mr. Steve Hershey, OCA's witness Mr. Roger Colton, and Action Alliance's witness Mr. Harry Geller all argue that OSBA's proposal to recover universal service costs only from residential customers is not consistent with Commission precedent. These three witnesses make similar arguments with respect to Commission precedent: 1) that the Commission articulated a specific

¹⁹ See *Pennsylvania Public Utility Commission v. Metropolitan Edison Company and Pennsylvania Electric Company, Petition of Metropolitan Edison Company for Approval of a Rate Transition Plan, Petition of Pennsylvania Electric Company for Approval of a Rate Transition Plan, and RE: Merger Savings*, Docket Nos. R-00061366, R-00061366C001, R-00061366C002, R-00061366C003, R-00061366C005, R-00061366C0013, R-00061367, R-00061367C0001, R-00061367C0002, R-00061367C0003, R-00061367C0005, R-00061367C0007, R-00061367C0008, P-00062213, P-00062214, A-110300F0095, and A-110400F0040 (Order entered at January 11, 2007) ("*Met-Ed and Penelec Consolidated Case*") at 182.

²⁰ *Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation*, Docket Nos. R-00061398, R-00061398C0001, R-00061398C0002, R-00061398C0003, and R-00061398C0004 (Order entered February 8, 2007) ("*PPL Gas*") at 116.

policy for PGW's CAP cost allocation in PGW's Restructuring Proceeding; and 2) that the Commission in the *CAP Final Investigatory Order* did not change the Commission's policy regarding PGW's CAP cost allocation.²¹

The first argument represents an incorrect reading of the Commission's decision in the Restructuring Proceeding. As mentioned above, the Commission, in the Restructuring Proceeding, did not finally resolve the issue of the proper allocation of PGW's CAP costs. Rather, the Commission simply deferred making a decision on the issue until PGW's next base rate case.²² The Commission did conclude in PGW's Restructuring Proceeding that Section 2211(e) of the Public Utility Code, 66 Pa. C.S. §2211(e), barred a change in the universal service cost allocation methodology *within that proceeding*, on the grounds that interclass and intraclass cost shifts were prohibited by that section of the Gas Choice Act within the context of a restructuring proceeding.²³ However, Section 2211(e) does not presently apply to PGW.

Specifically, Section 2211(e) states in pertinent part:

Except as provided in section 2212, for the period from the effective date of this chapter *until January 1, 2001*, interclass or intraclass cost shifts are prohibited.

(emphasis added). Interclass and Intraclass cost shifts are now allowed for PGW since it is after January 1, 2001. Furthermore, this instant proceeding is PGW's first base rate case after its Restructuring Proceeding; therefore, the ALJ and the Commission can now

²¹ Hershey, PGW Statement No. 1R at 15-16 and 19-20; Colton, OCA Statement No. 4-R at 19-20; Geller, Action Alliance Statement No.1-R at 3.

²² Restructuring Order at 64 and *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Work*, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061, and P-00042117 (Order entered October 27, 2004) at 23-24.

²³ Restructuring Order at 64

determine the issue of whether PGW's CAP costs should be brought into compliance with the Commission's policy on this issue.

PGW, OCA, and Action Alliance also argue that the Commission did not reach a determination about the cost allocation issue for PGW in the *CAP Final Investigatory Order*. These parties reason that in discussing the CAP cost allocation issue, the Commission recognized that there were "a few exceptions" relative to allocating CAP costs exclusively to the residential class. In a footnote, the Commission specifically identified PGW as one of those exceptions, noting that "PGW's cost allocation was determined prior to the Commission's oversight of the Company."²⁴ The Commission did *not* conclude that PGW should be a *permanent* exception to Commission policy. Rather, the Commission merely observed that PGW's current policy represented an exception to the policy. Furthermore, the Commission expressed no intention to rescind its prior decision to defer the matter to the next base rates proceeding.

C. Impact on Residential Customers

Mr. Hershey and Mr. Geller argue that shifting the CAP costs solely to the residential class will have a huge detrimental impact on the residential class.²⁵ Contrary to this argument, the OSBA's proposal would not have an unduly detrimental impact on the residential class. The OSBA is not proposing that all CAP costs be immediately recovered from only residential customers. Instead, the OSBA is proposing that CAP costs gradually be shifted to residential customers in order for PGW to comply with the

²⁴ Hershey, PGW Statement No. 1R at 15-16 and 19-20; Colton, OCA Statement No. 4-R at 19-20; Geller, Action Alliance Statement No. 1-R at 3.

²⁵ Hershey, PGW Statement No. 1R at 20; Geller, Action Alliance Statement No. 1-R at 3.

Commission's policy that applies to all other Pennsylvania NGDC's. As Mr. Knecht testified:

[P]GW's annual reconciliation of the USEC affords the Commission with an opportunity to phase out the USEC charges to non-residential customers on a regular and gradual basis over a number of years. In light of the revenue allocation that I propose in the previous section for base rates, I recommend that the adjustment to the USEC not begin until PGW's 2008 GCR proceeding. At that time, I recommend that the responsibility of the non-residential customers for the USEC be reduced by one-third. A second one-third reduction would then take place in PGW's 2009 GCR proceeding, and the phase-out would be complete in PGW's 2010 GCR proceeding.²⁶

Mr. Knecht testified as to the magnitude of the rate impact the OSBA's proposal would have on PGW's residential and commercial customers in the 2008 GCR proceeding:

Table IEC-4 below shows the impact of my proposed change for 2008, assuming that 2008 GCR and USEC Surcharge costs are equal to those in PGW's 2007 GCR filing. For the purpose of this exhibit, I assume that PGW's proposal for base rates revenue allocation is adopted.

²⁶ Knecht, OSBA Statement No. 1 at 31.

Table IEc-4				
Impact of One-Third Phase-Out of Non-Residential USEC				
	<i>Residential</i>		<i>Commercial</i>	
	<i>Current</i>	<i>Proposed</i>	<i>Current</i>	<i>Proposed</i>
GCR	\$10.1812	\$10.1812	\$10.1812	\$10.1812
USEC Surcharge	2.2985	2.5650	2.2985	1.5323
Sub-Total GCR	12.4797	12.7462	12.4797	11.7135
<i>Percent Change</i>		<i>2.1%</i>		<i>-6.1%</i>
Base Rates	7.8230	7.8230	7.3244	7.3244
Total Bill	20.3027	20.5693	19.8041	19.0379
<i>Percent Change</i>		<i>1.3%</i>		<i>-3.9%</i>
Notes:				
As proposed by PGW, base rates include the Restructuring and Consumer Education Surcharge. Also included are average customer charge revenues per Mcf.				
Details of the calculations are shown in Exhibit IEc-7.				

Table IEc-4 demolishes a popular misconception. I have observed in previous PGW proceedings that many parties believe that PGW's USEC Surcharge costs are so enormous that it would be impossible to eliminate or even contemplate phasing out the business class's responsibility for these costs without putting an enormous burden on residential customers. Table IEc-4 demonstrates that 'it just ain't so.' While PGW's CAP costs are indeed very high, the amount of those costs that are currently recovered from non-residential customers is relatively low. That occurs because (a) residential firm sales volumes are nearly three times as large as the total non-residential firm sales volumes, and (b) none of PGW's interruptible or GTS transportation customers currently contribute to the recovery of these costs. Thus, a one-third phase-out of the USEC Surcharge for non-residential customers would result in only a 2.1 percent impact on the residential rates at issue in next year's GCR, and only a 1.3 percent impact on a total bill basis. Continuing the phase-out in 2009 and 2010 would have impacts of similar magnitude in each of those years.

For those reasons, I conclude that bringing PGW's CAP funding into compliance with the rest of the NGDCs in Pennsylvania does not constitute an insurmountable

problem, and it can reasonably be achieved in a three-year period without violating the principle of gradualism.²⁷

The OSBA observes that no party questioned Mr. Knecht's calculations with respect to the impact on the residential class in any single year's Section 1307(f) rate proceeding. Mr. Geller and Mr. Hershey do complain that OSBA's proposal to phase-out USEC charges over three years allegedly masks a large deleterious impact on residential ratepayers.²⁸ However, this is not the case. Mr. Knecht responded to these complaints as follows:

While I retain my proposal for a three-year phase-out, I show the implications of a one-year phase-out in Exhibit IEc-S1. Even under that proposal, the impact on the residential class is \$0.80 per Mcf, which represents about 6.4 percent of the costs involved in a PGW GCR proceeding and about a 3.9 percent increase on a total bill basis. Such an increase, spread over three years, is simply not rate shock.

Moreover, if Mr. Hershey does consider an increase of \$0.80 per Mcf spread over three years to be rate shock for residential customers, the impact of PGW's proposed rate increase on commercial customers of \$2.42 per Mcf in a single year would have to be considered tantamount to getting the electric chair.²⁹

D. Statutory Construction

Not only is PGW's current allocation of universal service costs contrary to the Commission's precedents, but it unfairly requires small business customers to help finance low-income energy programs for which they do not qualify.

²⁷ Knecht, OSBA Statement No. 1 at 32-33

²⁸ Hershey, PGW Statement No. 1R at 20; Geller, Action Alliance Statement No. 1-R at 6.

²⁹ Knecht, OSBA Statement No. 3 at 13

The Gas Choice Act indicates that universal service and energy conservation programs are to be part of the competitive environment. In that regard, the Act defines “[u]niversal service and energy conservation” as:

Policies, practices and services that help *residential* low-income retail gas customers and other *residential* retail gas customers experiencing temporary emergencies, as defined by the commission, to maintain natural gas supply and distribution services.

66 Pa. C.S. § 2202 (emphasis added). Thus, by definition, gas universal service and energy conservation programs are *not* intended to assist payment-troubled business customers. All the benefits of these programs are designated for residential customers only.

According to Section 2203(6) of the Public Utility Code, 66 Pa. C.S. §2203(6):

[T]he commission shall establish for each natural gas distribution company an *appropriate* nonbypassable, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company’s universal service and energy conservation costs over the life of these programs.

(emphasis added).

OCA’s witness Mr. Colton testified that “non-bypassable” in Section 2203(6) constitutes legislative endorsement of the concept that all customers should help pay for universal service costs.³⁰ In response, Mr. Knecht testified:

In my experience, the reference to ‘non-bypassable’ in utility industry restructuring usually means that customers cannot avoid the charge by leaving utility supply service and switching to an alternative supplier. It does not refer to the issue of which rate classes are responsible for any

³⁰ Colton, OCA Statement No. 4-R at 2.

particular cost item. However, I am informed by OSBA counsel that this issue is now before the Commonwealth Court. Because my proposal on this subject does not go into effect until late in 2008, I assume that the Commonwealth Court will have resolved this issue by that time. There is therefore no reason to reject my proposal in the current proceeding. If my proposal were adopted and the Commonwealth Court subsequently ruled that all classes must pay for universal service programs, my proposal would simply not go into effect.

There is, however, an intriguing aspect to Mr. Colton's argument. As Mr. Colton indicates, the Act requires that the universal service costs be 'appropriate non-bypassable competitively neutral' charges. As I explained earlier, PGW's current USEC charges simply fail the test of being competitively neutral, in that some business customers are subject to the charges and some are not. PGW's approach therefore provides competitive advantages to some business customers over others. Thus, based on Mr. Colton's reading of the Act, PGW would need to modify its policy such that all customers are subject to the USEC. Based on PGW's testimony in this proceeding, I expect that such a change would cause PGW to lose all of its GTS/IT load.³¹

Furthermore, in the *CAP Final Investigatory Order* at 31, fn. 24, the Commission stated its disagreement with Mr. Colton's position as follows:

We disagree with the argument of OCA that the creation of a 'non-bypassable' surcharge for recovery of universal service costs shows a legislative intent to recover universal service costs from all customer classes. *OCA comments* at 29-30. As the Industrial Energy Consumers of Pennsylvania correctly point out, the Competition Acts reflect a concern that shopping would allow customers to avoid certain costs (if those costs were put in supply charges), and all customer classes can shop. Accordingly, the creation of a 'non-bypassable' recovery mechanism does not reflect a legislative intent to extend recovery of universal service costs to business customers. *IECPA comments* at 5-6.

Even after the Commission's ruling in the *CAP Final Investigatory Order*, the OCA continued to make the same legal argument in the *Met-Ed and Penelec*

³¹ Knecht, OSBA Statement No. 3 at 11-12

Consolidated Case and in the *PPL Gas* case. In both of these proceedings, the ALJs and the Commission did not determine OCA's argument to be persuasive. Specifically, ALJ Jones stated:

The Commission also clarified the term 'non-bypassable' is in regards to 'shopping' or delving into a competitive market of energy suppliers and not allowing customers to avoid certain costs. The Commission interprets the legislative intent regarding a non-bypassable recovery mechanism as meaning customers are responsible for the charge whether they decide to shop or not for suppliers. The Commission does not interpret the legislative language to require non-residential customers to contribute to CAP costs. *CAP Joint Motion* at 7. (See *PPL Gas RB* at 41-42; *OSBA RB* at 10; *PGLUG RB* at 6-7).³²

Mr. Colton also presents another argument about why he believes "non-bypassable" means that every class must pay universal service costs rather than that both shoppers and non-shoppers must pay. Specifically, Mr. Colton bases his statutory construction argument on the fact that the residential class does not shop.³³ The only shopping that occurs is done by commercial and industrial customers.³⁴ As Mr. Knecht's testimony cited above suggests, this is a somewhat peculiar argument for Mr. Colton to make. Mr. Colton supports PGW's cost allocation methodology, which specifically exempts the transportation customers in the GTS/IT rate classes from contributing to universal service cost recovery. Thus, if his argument were correct, that argument would be grounds for Mr. Colton to reject PGW's methodology.

³² *PPL Gas Utilities Corporation*, Docket Nos. R-00061398, R-00061398C0001, R-00061398C0002, R-00061398C0003, and R-00061398C0004 (Order entered February 8, 2007) at 74.

³³ Colton, OCA Statement No. 4-R at 2.

³⁴ *Id.*

However, even if that peculiar aspect of his argument is put aside, Mr. Colton is missing a very important point. The intent of the Gas Choice Act depends on what the General Assembly expected at the time the legislation was enacted, not on what currently is happening.

The title of the Gas Choice Act is "An Act amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for supply choice for customers of the natural gas utilities and for restructuring of the natural gas utility industry; and making repeals."³⁵ Representative Frank Tulli, who was one of the sponsors of the Act, explained during the legislative debate that the purpose of the legislation was to extend choice to *residential* customers:

We are running out of time to give 2 million people, 2 million families in Pennsylvania, the opportunity to save money on their natural gas bill as the large companies and commercial groups have been able to do for years.³⁶

I think that if you add the gross receipts tax to savings that a shopping customer can get, it will probably be in the vicinity of totaling 7 to 9 to 10 percent, in that area. It is certainly not as great as the reductions Pennsylvanians are experiencing with electricity competition, but it is out there, and we have offered this choice to industries and big commercial establishments for years. It is time that the average homeowner, the 2 million families that heat with natural gas, have the same opportunities to save on their natural gas purchases.³⁷

But if you are not happy with your supplier, you will have the choice of leaving that supplier and going to another

³⁵ See House Bill 1331, Printer's Number 2112 (1999 Session).

³⁶ Legislative Journal-House, June 14, 1999, at 1328.

³⁷ Legislative Journal-House, June 14, 1999, at 1331.

one, and that is a choice that big companies and large commercial establishments have had since 1984, and the only ones we have deprived of that choice are the homeowners in Pennsylvania, the residential users of natural gas, and that is what we are going to be changing this week.³⁸

Therefore, regardless of the fact that PGW's residential customers are not shopping, Mr. Colton's argument is not supported by the legislative history.³⁹

E. Cost Causation

It is a principle of utility regulation that costs be assigned to those rate classes that cause those costs to be incurred. For example, PGW witness Mr. Howard Gorman testifies that "[t]he Revenue Requirement for a Rate Class is that portion of the total costs of service incurred by PGW, that can be attributed to that Rate Class on a cost-causality basis."⁴⁰ (emphasis added)

The OSBA submits that the principle of cost causation should also apply to universal service costs. In that respect, Mr. Knecht testified:

The CAP costs are associated with programs that are available to residential customers who apply and demonstrate an annual household gross income at or below certain Federal poverty guidelines, or to residential customers who qualify for the SCD based on age.⁴¹ These programs are available only to residential customers, and therefore all benefits associated with these programs accrue

³⁸ Legislative Journal-House, June 14, 1999, at 1338.

³⁹ See also Section 2212(j) of the Public Utility Code, 66 Pa. C.S. §2212(j), which expressly provides that "all retail gas customers of city natural gas distribution operations shall have the opportunity to purchase natural gas supply services from a natural gas supplier or the city natural gas distribution operation to the extent it offers the service."

⁴⁰ PGW Statement No. 8 at 5. See also OSBA Statement No. 2 at 10, where Mr. Knecht testifies as follows: "Cost allocation analysts generally agree that the most important principle for allocating costs is to assign them to the customer classes which cause those costs to be incurred."

⁴¹ As Mr. Knecht pointed out, the SCD is gradually being phased out. Existing customers' eligibility has been grandfathered and no new customers may enter the program.

to residential customers. Likewise, all of the costs associated with these programs are incurred on behalf of the residential class.⁴²

In summary, the Company's allocation method makes small business customers who are ineligible for universal service programs pay for the costs of this program. Therefore, contrary to the requirements of Section 2203(6), PGW's current methodology is not "appropriate." Rather, PGW's current methodology "unreasonably discriminates" against business customers for the benefit of residential customers. As Mr. Knecht testified:

One way to look at the CAPs is as a form of insurance. The residential customers who are currently not low-income customers may not *presently* qualify for CAP benefits but, if their circumstances change, they may become eligible for those benefits. However, unlike residential customers, commercial and industrial customers can never qualify for such programs. Since only the residential class is covered by the 'insurance' offered by the CAPs, it is appropriate that only the residential class pay the associated insurance premiums, i.e., universal service costs.⁴³

F. Economic Benefit and Public Good

Mr. Hershey, Mr. Colton and Mr. Geller all testify that the universal service programs benefit the entire community and, therefore, that firm business gas customers should pay for them.⁴⁴ However, there are two major problems with their theories. As Mr. Knecht testified:

⁴² Knecht, OSBA Statement No. 1 at 29

⁴³ Knecht, OSBA Statement No. 1 at 29-30

⁴⁴ Hershey, PGW Statement No. 1R at 17-20; Colton, OCA Statement No. 4-R at 3-14; Geller, Action Alliance Statement No.1-R at 1-3.

- Assigning costs on the basis of vague and unquantified indirect social benefits is not consistent with sound regulatory policy.
- PGW's proposal represents a pretty poor effort at matching the direct costs of these programs with the alleged indirect beneficiaries.⁴⁵

In *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004), the Commission placed the burden of proof squarely on the proponent advocating for the allocation of CAP costs beyond the residential class. The Commission did not explicitly identify what kind of cost studies might fulfill the burden of proof; however, the Commission did indicate that it would have to be a cost study providing "concrete evidence" of the benefits of CAP to non-residential customers.⁴⁶

Mr. Colton, Mr. Geller, and Mr. Hershey do not offer any quantitative analysis to demonstrate the specific magnitude of the social benefits that they believe businesses receive from PGW's universal service programs. As Mr. Knecht testified:

I will assume that the universal service program will provide the social benefits alluded to by Messrs. Hershey, Geller and Colton. Mr. Geller argues that the costs of these benefits should be distributed as widely as possible, because the benefits are widely distributed. Unfortunately, PGW's proposal represents a pretty poor effort at matching the broad benefits with broad cost recovery.

First, as Messrs. Geller, Hershey and Colton recognize, PGW's service territory is a relatively low-income service territory, and PGW's universal service program is considerably larger and more expensive than those of other NGDCs. These witnesses also generally agree that municipal ownership of PGW must be recognized in

⁴⁵ Knecht, OSBA Statement No. 3 at 7

⁴⁶ *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004) at 97-98.

evaluating how the costs of the program should be recovered. In effect, they argue that the social welfare and tax policy of the City must be considered by the Commission in this decision. Unfortunately, recovering the costs of this social welfare program through a volumetric tax on gas consumption represents dubious tax policy at best. With respect to taxes on individuals, even if we assume that all of the citizens of Philadelphia would be subject to this tax, the burden of an energy tax tends to fall disproportionately on lower income individuals. As a percentage of household income, energy costs are higher for low-income families than for higher income families. Thus, at the start, PGW is proposing to recover these costs with what economists call a *regressive* tax.

Second, the indirect social benefits of these programs presumably accrue to all businesses and citizens of Philadelphia, and not only those that consume natural gas. However, the USEC can only apply to gas consumers. In effect, PGW's proposal allows individuals and businesses that are not gas consumers to be 'free-riders' for the social welfare benefits associated with PGW's programs.

Third, PGW proposes to continue to exempt over half of the throughput to business customers from the 'responsibility' to contribute to these costs. Of PGW's 30.5 Bcf of annual non-residential throughput, some 3.3 Bcf (11 percent) goes to interruptible sales rate classes and 13.3 Bcf (44 percent) goes to GTS/IT transportation customers. Neither the interruptible sales rate classes nor the GTS/IT customers are subject to PGW's USEC charge. While I recognize that it is unlikely that PGW could recover universal service costs from these classes, it must be recognized that PGW's proposal allows the majority of its business load to be a free-rider for the social benefits. Also, because PGW's proposal is not consistent across the business rate classes, it is anti-competitive. PGW's proposal will have the effect of providing cost advantages to certain businesses, particularly those that are large enough to use transportation service, at the expense of smaller business customers.

Fourth, even within the subset of business customers that it proposes to tax, PGW offers no evidence that the social benefits of the universal service program are proportional to gas consumption. It would be more logical to assume that any such benefits would be more related to a

company's revenues, profits or employment levels than they are to gas consumption. Again, PGW's proposed matching of direct costs and indirect benefits is poor.

Thus, rather than proposing a broad-based recovery mechanism, the City of Philadelphia, through its municipally-owned gas utility, proposes a narrow, regressive and anti-competitive tax burden on a subset of its gas consumers.⁴⁷

Even if universal service programs are of value to all members of society, it is still inappropriate to require business customers to pay for them. As Mr. Knecht testified:

Using indirect social benefits as a cost allocation criterion is an invitation to open Pandora's box to other similarly vague cost allocation proposals in regulatory proceedings. While it can perhaps be argued that the universal service programs result in indirect social benefits, it can also be argued that having a healthy and cost competitive small business community will result in indirect social benefits to individuals. As Mr. Colton recognizes, healthy small businesses provide employment for low-income individuals. Therefore, under the 'who benefits' standard for cost allocation, it can readily be argued that residential customers should provide a subsidy to small businesses.

In practice, it makes more sense for utility regulators to rely on hard cost causation principles for cost and revenue allocation, rather than indirect social benefits. The issue of balancing social benefits with the cost responsibility for those benefits is better left to government spending and tax policymakers, who have more options and greater flexibility.⁴⁸

Mr. Hershey testified that non-residential customer classes receive reduced rates that are analogous to the universal service cost issue. Mr. Hershey also stated the OSBA "would not object to residential customers picking up the burden when PGW provides a

⁴⁷ Knecht, OSBA Statement No. 3 at 9-10

⁴⁸ Knecht, OSBA Statement No. 3 at 7-8

discounted rate to a small business.” However, contrary to Mr. Hershey’s assumption, the OSBA *would* object to such a proposal. As Mr. Knecht testified:

In fact, I would object to such a proposal, and I have objected to such proposals in the past, except when it can be quantitatively demonstrated that such discounted rates *provide hard financial benefits to the classes who must make up the shortfall.*

Mr. Hershey refers to economic development rates or bypass rates. In my experience, these rates are offered, not to small business customers, but to larger business customers. As such, it would be relatively unusual for small business customers to be offered these rates in the first place. Small businesses are most often targeted as the source for the subsidies, rather than the beneficiaries of the discounts.

Nevertheless, it is my view that economic development and bypass rates should only be justified on the basis that, if the discount were not offered, the utility would lose the volume. And if the utility loses volume, it loses the financial margin that would otherwise be provided by those customers. The shortfall resulting from the lost margin would then be shifted to other ratepayers. Thus, by providing the discount, the utility retains at least some of the distribution margin that it would otherwise lose, thereby providing a specific and quantifiable cost savings to the other ratepayers.

PGW’s universal service costs do not meet this standard. CRP revenues are insufficient to recover the incremental cost of purchasing gas, much less make any contribution to fixed costs. In addition, PGW offers no evidence that its CRP, its SCD or its CWP customers would discontinue gas service if the programs were eliminated. Mr. Hershey’s assertion therefore provides yet another reason to reject PGW’s proposal.⁴⁹

The OSBA is not proposing that the Commission set tax policy for the City of Philadelphia. As Mr. Knecht testified in surrebuttal:

⁴⁹ Knecht, OSBA Statement No. 3 at 8-9

In fact, I propose just the reverse. I propose that the Commission treat PGW in the same manner that it treats every other NGDC in the Commonwealth. Moreover, I propose that the Commission apply the regulatory standard of cost causation to the allocation of these costs, rather than adopting a tax policy to recover social benefits.

If the Commission takes my proposed approach, the City of Philadelphia will retain the responsibility for the policy decision regarding how large a benefit it should provide through PGW, and how much of a benefit it should provide through other means. In effect, the City will retain the responsibility to determine how large a universal service cost burden should be imposed on residential gas ratepayers, and how much of the cost of low-income assistance programs should be funded through alternative means. If the City chooses to recover the costs of those programs through narrow, regressive and anti-competitive taxes, it should take that responsibility upon itself.

My proposal leaves tax policy in the hands of the City of Philadelphia. Messrs. Hershey, Geller and Colton want the Commission to either be an active participant in the process, or to simply issue a rubber stamp approval of the City's policy despite its inconsistency with Commission policy.⁵⁰

Mr. Colton also testified that the Pennsylvania legislature declared universal service programs to be a "public good" under Section 2802(17) of the Public Utility Code, 66 Pa. C.S. §2802(17).⁵¹ However, Mr. Colton is mistaken.

Section 2802(17) states:

There are certain public *purpose* costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public *purpose* is to be promoted by continuing universal service and energy

⁵⁰ Knecht, OSBA Statement No. 3 at 10-11. See also Mr. Knecht's testimony in footnote 4 of OSBA Statement No. 3 at 11: "Assistance to low-income customers is, of course, also the purview of the state and federal governments. I expect that the City of Philadelphia would also avail itself of funding from these sources to the extent possible."

⁵¹ Colton, OCA Statement No. 4-R at 2-3

conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism. (emphasis added)

According to Mr. Colton:

The Pennsylvania legislature declared universal service programs to be a public *good* when it stated in Section 2802(17) that the public *purpose* is to be promoted by continuing universal service and energy conservation policies, protections and services; and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.⁵² (emphasis added)

However, the General Assembly made no such declaration. The language of Section 2802(17) mentions the “public purpose” of certain policies and services, but nowhere in the statute is the phrase “public good” to be found. The plain language of the General Assembly should not be misconstrued in pursuit of some underlying “spirit.”⁵³

Mr. Colton also testified to three other reasons why he believes universal service costs should be borne by PGW’s business customers. First, Mr. Colton argues that PGW’s business customers should pay CAP costs because PGW’s residential customers did not benefit from industry restructuring, whereas business customers did.⁵⁴ As Mr.

Knecht testified:

First, I have some difficulty understanding how the benefits of industry restructuring, as measured by shopping statistics, are relevant to cost causation for universal service costs. However, if I accept Mr. Colton’s line of reasoning for the sake of argument, then PGW’s cost recovery mechanism is exactly backwards. PGW imposes USEC costs only on businesses that do not shop, and it does not impose the USEC on transportation customers who do

⁵² Colton, OCA Statement No. 4R at 2-3.

⁵³ 1 Pa. C.S. § 1921(b).

⁵⁴ Colton, OCA Statement No. 4R at 20

shop. Under Mr. Colton's logic, the reverse should be true.⁵⁵

Second, Mr. Colton argues that the City of Philadelphia provides large cost savings to PGW through the use of eminent domain, and that these cost savings are passed on to ratepayers of all classes.⁵⁶ This argument does not justify assigning universal service costs to all rate classes. As Mr. Knecht testified:

PGW's proposed distribution rates, even without universal service costs, are far in excess of those at any other Pennsylvania NGDC. Thus, it is hard to see how the City's power of eminent domain has resulted in any material rate benefits to ratepayers. It is likely that PGW's historical inefficiencies, that may or may not be related to municipal ownership, have drowned out whatever benefits that accrue from the power of eminent domain. Moreover, I note that Mr. Colton provides zero quantitative analysis in support of the specific magnitude of the eminent domain benefits. As such, Mr. Colton has no basis to conclude that these benefits offset the costs of contributing to universal service costs, in whole or in part.⁵⁷

Third, Mr. Colton argues:

. . . to allocate universal service costs exclusively to the residential customer class today would remake the bargain that the City of Philadelphia made with its natural gas utility customers. The offer of programs in support of universal service for all customers is an explicit quid pro quo that was exacted in exchange for substantial—and continuing—public perquisites provided to the natural gas utility. So long as all customer classes enjoy the fruits of that exchange, they should also contribute to paying for the obligations that were bargained for as part of that exchange.⁵⁸

⁵⁵ Knecht, OSBA Statement No. 3 at 12

⁵⁶ Colton, OCA Statement No. 4-R at 22

⁵⁷ Knecht, OSBA Statement No. 3 at 12

⁵⁸ Colton OCA Statement No. 4-R at 21

Notwithstanding Mr. Colton's argument, the only so called "bargain" that the City of Philadelphia made with its natural gas utility customers was in Section 2212. That section specifically addresses city natural gas distribution companies such as PGW. Section 2212(r) requires that the Commission continue the Senior Citizen Discount for those individuals who were already enrolled in the program when jurisdiction over PGW was transferred to the Commission. However, Section 2212 does not address any other universal service programs, nor does it address the funding mechanism for any programs. If the legislature intended that PGW's CAP costs be paid by all rate classes even after the Commission assumed jurisdiction over PGW, Section 2212 would have limited the Commission's ability to scale back PGW's then-existing universal service programs or would have prohibited the Commission from changing the method of funding universal service programs.

Mr. Colton's testimony that universal service costs are not caused by one particular customer class relies on a 1992 Bureau of Consumer Services ("BCS") report stating that "the problem of the inability of some low income customers to pay their entire home energy bills is caused primarily by societal economic conditions that are unrelated to any one rate class."⁵⁹ However, the Commission has not adopted BCS's 1992 report in the 15 years since the report was submitted. Instead, in a long line of cases decided after the 1992 BCS study and cited earlier in this brief, the Commission has allocated universal service costs to the residential classes rather than to all rate classes.

⁵⁹ Colton, OCA Statement No. 4R at 15

VII. RATE STRUCTURE

A. Cost of Service

In its initial filing, PGW submitted a cost of service study (“COSS”) which improperly “bundled” items including all gas supply, transportation, load balancing, distribution, and customer assistance programs. As Mr. Knecht testified, using a bundled COSS to set rates for PGW would be inconsistent with the principles of cost causation because PGW has unbundled its rates.⁶⁰ Without an unbundled cost of service study, it is impossible to determine whether each component of PGW’s unbundled rates is or is not consistent with allocated costs.⁶¹ PGW unbundled its rates pursuant to its gas industry restructuring proceeding.⁶² PGW’s tariff has separate charges for gas supply (the GCR), distribution, and customer services (base rates), and USEC. As Mr. Knecht points out in his direct testimony, it makes little sense to continue to allocate those costs on a fully bundled basis, as PGW proposed in this proceeding.⁶³

In response to the OSBA’s discovery requests, PGW submitted unbundled corrected COSSs (“CCOSS”) to reflect GCR costs, base rates costs, and USEC costs, accordingly. For purposes of this proceeding, the OSBA generally accepts PGW’s

⁶⁰ Knecht, OSBA Statement No. 1 at 5

⁶¹ As Mr. Knecht observed, it is not always necessary to develop separate COSSs, as long as costs within each study are segregated into categories (or “functions”) that are consistent with the unbundled rates. Thus, for example, the allocation of USEC costs in PGW’s COSS is generally not problematic, because the costs that are associated with USEC revenues can be readily segregated. However, PGW’s COSS does not clearly segregate GCR-related costs and revenues, which are intermingled with non-GCR production and storage costs. Therefore, separate studies are required for PGW’s GCR and base rates costs. OSBA Statement No. 1 at 5-6.

⁶² *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00021612 (Order entered March 31, 2003).

⁶³ Knecht, OSBA Statement No. 1 at 6

unbundled *distribution* CCOSS methodology for setting base rates. The OSBA generally accepts this study's methodology regarding the allocation of *distribution* costs, with the knowledge that the study contains certain errors and methodological biases which result in the over-allocation of costs to commercial customers.⁶⁴ These errors and biases are discussed in greater detail in Mr. Knecht's direct testimony at pages 10-13.⁶⁵ Because PGW was unwilling to make an electronic version of its CCOSS available to the intervenors, the OSBA did not develop a corrected version of PGW's CCOSS to account for the errors and biases identified in Mr. Knecht's direct testimony. However, the OSBA requests that the Commission direct PGW to evaluate the issues identified by Mr. Knecht carefully before submitting its next base rate increase request.

PGW's unbundled CCOSS, which includes all distribution base rates costs, was submitted as a corrected response to OSBA-I-2A (Revised).⁶⁶ However, that CCOSS remains partially bundled, in that it includes both distribution costs and universal service costs. With respect to the latter, the revenues and costs associated with PGW's universal service programs are allocated on a volumetric basis and are, therefore, in balance. Fortunately, the universal service revenues and costs are easily segregated from base rates costs in this CCOSS. However, as Mr. Knecht testified, and as discussed more fully above in Section VI, current Commission policy is that the recovery of universal service costs should be treated separately from base rates issues.⁶⁷ Thus, for purposes of the

⁶⁴ Knecht, OSBA Statement No. 1 at 2

⁶⁵ Knecht, OSBA Statement No. 1 at 10-13

⁶⁶ This document refers to the full updated response to OSBA-I-2A circulated by PGW on March 30, 2007.

⁶⁷ Knecht, OSBA Statement No. 1 at 13

OSBA's analysis of base rates cost allocation and revenue allocation issues, universal service costs and revenues have been excluded.⁶⁸

Even with its errors and biases that are unfavorable to non-residential customers, PGW's CCOSS indicates that non-residential firm sales customers provide revenues that are well in excess of allocated costs and that residential customers provide revenues that are below allocated costs.⁶⁹ The results of PGW's distribution cost allocation study are shown in Table IEC-1 below.

Table IEC-1 PGW Base Rates CCOSS Summary of Results for Firm Sales Customers at Present Rates \$000				
	Revenues	Total Costs	Difference	Revenuc- Cost Ratio
Residential	264,747	281,203	(16,456)	94.1%
Commercial	52,317	39,766	12,551	131.6%
Industrial	5,432	3,996	1,436	135.9%
Municipal	4,417	3,275	1,142	134.9%
Housing Auth.	4,751	3,423	1,328	138.8%
Total	331,664	331,664	--	100.0%
Source: Exhibit IEC-4				

B. Revenue Allocation

One of the principal purposes of a cost of service study is to allocate the proper overall revenue requirement among the customer classes, thereby providing the regulator with a cost basis to be used as a guide for adjusting utility rates. Ultimately, this allocation determines the percentage by which the rates of each customer class should

⁶⁸ *Id.*

⁶⁹ Table IEC-1 can be found at OSBA Statement No. 1 at 14.

increase or decrease at the end of a base rate case. The Commonwealth Court has characterized cost of service as the “polestar” of ratemaking concerns.⁷⁰

As Mr. Knecht testified, in addition to the cost criterion, regulators will often use the “gradualism” criterion, to avoid rate shock or to prevent a rate class from experiencing too large a rate increase relative to other classes (while still making progress towards cost-based rates). In addition, Mr. Knecht indicated that regulators will often use the “value of service” criterion, to mitigate rate increases for customers with relatively “elastic” demand.⁷¹ PGW essentially agrees with these criteria.⁷²

Thus, from a practical and legal standpoint, evaluating the revenue allocation proposals put forth in this proceeding should be focused on the cost of service, tempered by reasonable consideration of value-of-service and gradualism.

1. PGW’s Proposal

Despite the Company’s CCROSS, PGW’s revenue allocation proposal actually moves class rates *farther* away from allocated costs rather than closer to those costs.⁷³ In other words, PGW’s proposal actually increases the cross-subsidies among the rate classes rather than decreases them. As explained in greater detail by Mr. Knecht, a cross-subsidy represents the relationship between the revenues provided by a rate class and the

⁷⁰ *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006).

⁷¹ Knecht, OSBA Statement No. 1 at 15

⁷² Knecht, OSBA Statement No. 1 at 15, *citing* PGW Statement No. 5 at 10

⁷³ Knecht, OSBA Statement No. 1 at 16

costs allocated to the class. It is typically referred to as a “cross-subsidy,” because a subsidy that is received by one class must be provided by other classes.⁷⁴

As shown in Table IEc-2, PGW’s proposed revenue allocation for firm sales customers is based on a system average increase of 33.9%. However, even though residential customers are currently underpaying based on cost of service, PGW proposes to assign the residential class a *lower* than system average increase (30.0%). At the same time, PGW assigns a *larger* than system average increase to the other classes (commercial: 49.5%, industrial: 35.3%, municipal: 51.5%, and the housing authority: 42.4%) even though those other classes are all currently *overpaying* based on cost of service. For ease of reference, Table IEc-2 is reprinted below.

Under the Company’s proposal, the current cross-subsidies would, therefore, be exacerbated. To reiterate, the residential class, which is currently the only underpaying class based on cost of service, would get a smaller than system average increase, but the overpaying classes would get a larger than system average increase.

⁷⁴ *Id.*

Table IEC-2				
PGW Revenue Allocation Proposal for Firm Sales Customers				
\$000				
	Current Revenues	Allocated Total Costs	Current Rate of Return	Proposed Increase
Residential	264,747	281,203	4.4%	30.0%
Commercial	52,317	39,766	13.5%	49.5%
Industrial	5,432	3,996	16.0%	35.3%
Municipal	4,417	3,275	13.0%	51.5%
Housing Auth.	4,751	3,423	15.9%	42.4%
Total	331,664	331,664	6.0%	33.9%
Interruption sales and transportation customers are excluded from this comparison for reasons discussed below.				
Total costs include all costs, including return on rate base and ratepayer equity contribution.				
Source: Exhibit IEC-4				

Simple logic leads to the conclusion that a class which is overpaying its cost of service at present rates can not be moving closer to the cost of service if it receives a larger than system average rate increase.⁷⁵

2. OCA's Proposal

OCA witness Mr. Galligan does not offer a revenue allocation proposal but supports PGW's proposal as reasonable for residential customers based on the results of his class COSS. (Mr. Galligan requested that PGW simulate its bundled COSS model using a different cost allocation methodology than that proposed by the Company.) As Mr. Knecht testified, Mr. Galligan's conclusion is not reasonable.⁷⁶ Even based on Mr. Galligan's own COSS methodology, the average residential class rate of return at present rates is 4.9%, compared to a system average rate of return of 5.8%. Assuming for

⁷⁵ See OSBA Statement No. 1 at 18-21 and OSBA Statement No. 2 at 19 for an analysis of various metrics for measuring progress toward cost of service.

⁷⁶ Knecht, OSBA Statement No. 2 at 6

discussion purposes that PGW is awarded its full revenue increase request, the proposed base rate tariff increase for the residential class (at the \$100 million base rate increase⁷⁷) is only 30.0 %, compared to a system average of 33.9%.⁷⁸

As Mr. Knecht testified, Mr. Galligan's approach includes other problems relative to cost allocation.⁷⁹ The details of those problems are not repeated here. However, even if the Commission were to accept Mr. Galligan's COSS methodology (which the OSBA does not support), the increase that Mr. Galligan proposes for the residential class results in a larger than system average increase for the overpaying classes, *i.e.*, all rates classes except the residential class. As Mr. Knecht testified, that means that rates would be moving farther away from—rather than closer to—costs.

The implications of the OCA's COSS methodology, in conjunction with PGW's revenue allocation, are set forth in Table IEC-R3.⁸⁰ For ease of reference, the table is reprinted herein below.

⁷⁷ In this proceeding, PGW has requested a \$110 million annual rate increase, which is comprised of \$100 million for base rates and \$10 million in capacity release revenue and off-system sales margin that the Company has proposed to retain. *See* OSBA Statement No. 1 at 4.

⁷⁸ Knecht, OSBA Statement No. 2 at 7

⁷⁹ *See* OSBA Statement No. 2 at 7 for a detailed discussion on Mr. Galligan's assumptions regarding cost allocation methodology.

⁸⁰ Knecht, OSBA Statement No. 2 at 8

Table IEC-R3			
Implications of OCA CCOSS Methodology and PGW Revenue Allocation			
On Rate Class Dollar-Value Cross-Subsidies			
	Tariff Rate Increase %	Subsidy at Present Rates \$000	Subsidy at Proposed Rates \$000
Residential	30.0%	(9,693)	(14,267)
Commercial	49.5%	12,325	22,541
Industrial	35.3%	1,348	1,876
Municipal	51.5%	753	1,437
Housing Authority	42.4%	1,264	1,913
Firm Sales	33.9%	5,997	13,500
Interruptible Sales	NM	(1,483)	(4,114)
GTS/IT	0.0%	(4,512)	(9,384)
Total	NM	0	0

Source: OCA Statement No. 3, Exhibit RAG-1; IEC calculations.
Note: In preparing a cost allocation study for OCA, PGW inexplicably modified its revenue allocation proposal to reduce the rate increase for residential customers and to increase it for other customer classes. As that did not appear to be Mr. Galligan's intent, I re-estimated the subsidies at proposed rates based on PGW's original deficiency allocation. Therefore, both the tariff rate increases and subsidy at proposed rates are based on PGW's original revenue allocation proposal, and they are therefore different from those reported in the PGW IR response. If PGW's revised proposal were adopted along with the cost allocation change, the cross-subsidies from the non-residential firm sales customers would all be worse.

If the Commission were to accept Mr. Galligan's COSS methodology, the result would be the same as under PGW's proposal. The residential class would be underpaying by more than it currently is, and the other classes (residential, commercial, industrial, municipal, and the housing authority) would all be overpaying by more. Further, under Mr. Galligan's proposal, the rates for the overpaying classes would continue to move farther away from the cost of service.

3. OTS' Proposal

OTS witness Kubas recognizes the inequity of giving larger than system average rate increases to the overpaying classes and smaller than system average increases to the underpaying classes. To address the problem, Mr. Kubas proposes to move rates closer to allocated costs with a first dollar relief ("FDR") mechanism. In summary, if the

Commission reduces PGW's requested revenue requirement, Mr. Kubas proposes to reduce (or, if possible, eliminate) the rate increases PGW proposed for the overpaying classes.⁸¹

Although the OSBA's own revenue allocation proposal is set forth below under "D. Summary and Alternatives," the concept underlying Mr. Kubas' proposal is essentially the same as the concept underlying the OSBA's proposal. As Mr. Knecht explains, however, the FDR proposal is only effective in moving rates into line with allocated costs if the Commission substantially reduces the magnitude of the rate increase proposed by the Company.⁸² Therefore, if the Commission reduces PGW's proposed revenue increase by a substantial amount, the OSBA would accept Mr. Kubas' proposal if it were selected by the Commission rather than the OSBA's own proposal. Specifically, because Mr. Kubas's proposal will reduce the Commercial class rate increase to zero at a base rates increase of \$71.655 million, the OSBA will accept Mr. Kubas's proposal if the Commission reduces PGW's \$100 million base rate increase to at or below \$73 million.⁸³

4. Commission Precedent

The Commonwealth Court's recent decision in *Lloyd* stands for the proposition that the cost of providing service is the polestar criterion for ratemaking and trumps other concerns such as gradualism or rate shock.⁸⁴ Furthermore, the Court held in *Lloyd* that

⁸¹ O'IS Statement No. 1 at 20

⁸² Knecht, OSBA Statement No. 1 at 25.

⁸³ Knecht, OSBA Statement No. 2 at 4; OSBA Statement No. 1 at 28.

⁸⁴ *Lloyd* 904 A.2d at 1020.

the revenue allocation is not to be based on the total-bill but, rather, is to be determined by treating distribution, transmission, and generation as separate elements.⁸⁵

The Commission recently applied *Lloyd* to the issue of revenue allocation in PPL Gas' base rates case.⁸⁶ In *PPL Gas*, the utility ignored its own cost of service study in proposing a revenue allocation. Specifically, PPL proposed a higher than system average increase for the small commercial and industrial ("Small C&I") customers who already had an above system average rate of return at present rates. Additionally, rather than basing the revenue allocation on distribution only, PPL proposed to allocate the distribution rate increase by including commodity or purchased gas costs ("PGC"). To remedy the revenue allocation inequity in *PPL Gas*, the OSBA proposed, and the ALJ and the Commission supported, an alternative revenue allocation involving first dollar relief for the Small C&I class.⁸⁷

The similarity of the fact patterns in both *Lloyd* and *PPL Gas* to this case are striking. Every COSS submitted in this proceeding shows that the residential class is underpaying and that the Commercial class is overpaying its cost of service at present rates. Notwithstanding that, and in spite of the aforementioned precedents, PGW has proposed a revenue allocation that would result in a higher than system average increase being imposed on commercial customers while the residential customer class—the only class that is underpaying at present rates—would receive a smaller than system average increase.

⁸⁵ *Id.*

⁸⁶ *Pennsylvania Public Utility Commission v. PPL Gas Utilities ("PPL Gas")*, Docket No. R-00061398 (Order entered February 8, 2007).

⁸⁷ *PPL Gas* at 131.

5. PGW's Justification

As Mr. Knecht testified, PGW's only apparent justification for its proposal is that it results in an *indexed rate of return* at proposed rates that is closer to unity than it is at current rates.⁸⁸ PGW believes that if the class indexed rates of return move closer to unity, then the proposed rates are closer to the current rates.⁸⁹ However, as Mr. Knecht pointed out, the indexed rate of return metric can imply that progress is being made towards cost-based rates, when common sense (and all other metrics) say otherwise.⁹⁰ The fundamental arithmetic problem with the indexed rate of return metric is that it relies on a ratio of ratios.⁹¹

Despite the OSBA's objections to using the indexed rate of return to measure progress, even the indexed rate of return metric demonstrates the inequity in PGW's proposal and the virtue in FDR as proposed by Mr. Kubas and Mr. Knecht. Specifically, the residential class is the only class with an indexed rate of return below 100%. Each of the non-residential classes has an indexed rate of return of greater than 100%.⁹² Therefore, if the Commission awards an overall revenue increase which is smaller than PGW has requested, first dollar relief should go to the non-residential classes with indexed rates of return which are higher than the residential class' indexed rate of return.

⁸⁸ See OSBA Statement No. 1 at 18-21 and Exhibit IEC-5 for a detailed discussion on indexed rate of return.

⁸⁹ Knecht, OSBA Statement No. 1 at 18

⁹⁰ Knecht, OSBA Statement No. 1 at 18. See also Exhibit IEC-5 for a detailed discussion of indexed rate of return.

⁹¹ Knecht, OSBA Statement No. 1 at 19

⁹² Knecht, OSBA Statement No. 1 at Exhibit IEC-4: Table 4D

C. Tariff Structure

The OSBA is not briefing any rate design issues but reserves the right to address such issues in its reply brief.

D. Summary and Alternatives

PGW's proposed revenue allocation is fatally flawed because it proposes rates for customer classes that are moving away from—rather than towards—cost of service. Cost of service must be the “polestar” in ratemaking.⁹³ In spite of the recent precedents such as *Lloyd* and *PPL Gas*, discussed herein above, PGW has not responded to the testimony of Mr. Knecht or Mr. Kubas by proposing any alternative to the revenue allocation made in its initial filing. To recap, that proposal would further benefit the underpaying class (residential) with a smaller than system average increase and burden all of the other customer classes (which are already over-recovering based on cost of service) with a larger than system average increase.

Mr. Knecht offered two alternatives to the Company's proposal, one at the full requested revenue requirement of \$100 million, and a second proposal which uses PGW's proposed rate increases for the rate classes as a starting point, but then assigns FDR to the non-residential classes.⁹⁴

In both proposals, Mr. Knecht accepts PGW's proposed minimal allocation of the revenue increase to interruptible and GTS/IT customers.⁹⁵

⁹³ *Lloyd*, 904 A.2d at 1020.

⁹⁴ Knecht, OSBA Statement No. 1 at 23.

⁹⁵ *Id.* at 23-24. PGW has very little latitude for increasing the rates that it currently charges to either interruptible sales or GTS/IT customers because they would just switch to an alternative fuel source. As such, PGW proposes to increase distribution rates for those classes by some \$0.06 million, compared to its overall proposed increase of \$100 million. See revised Exhibits HSG-6S and HSG-6T.

Each of Mr. Knecht's proposals has advantages and disadvantages. The full revenue requirement approach starts with a clean slate in terms of unencumbered revenues and, therefore, allows a degree of flexibility. However, this approach can also be misleading as a measure of progress unless a scaleback is explicitly factored into the calculations.⁹⁶ A second, and perhaps greater, disadvantage is that this approach may result in rate increases for particular classes that are higher than those proposed and publicized by the utility.⁹⁷

Under FDR, the starting point for the revenue allocation is the utility proposal. Because some classes over-recover allocated costs at the full revenue requirement, any reduction to the overall rate increase granted by the Commission is first assigned to these overpaying rate classes. Therefore, one advantage to FDR is that no class can receive an increase that is larger than that announced by the utility.⁹⁸

The detailed implications of the full revenue requirement proposal are shown in Table 4-B of Exhibit IEC-4 in Mr. Knecht's direct testimony. As reflected in IEC-4, the revenue-cost ratio for each rate class moves almost halfway from where it stands for each class at current rates toward that class' cost of service if the awarded base rate revenue increase were \$60 million.

⁹⁶ Knecht, OSBA Statement No. 1 at 24

⁹⁷ *Id.*

⁹⁸ *See also* OSBA Statement No. 1 at 25

The OSBA's FDR proposal is based on the same basic principles as the full revenue requirements proposal, *i.e.*, the reliance on PGW's unbundled CCOSS as well as a desire to move rates about halfway into line with allocated costs at a \$60 million dollar overall base rate revenue increase.

The detailed implications of Mr. Knecht's FDR proposal are reflected on Table 4-C of IEC-4 attached to OSBA Statement No. 1. As reflected in IEC-4, the revenue-cost ratio for each rate class moves about halfway from current levels into line with allocated costs at a \$60 million dollar increase.

Both of Mr. Knecht's proposals are consistent with the principle of gradualism. While there are no hard-and-fast rules for defining gradualism, some regulators and experts use a rule-of-thumb that any particular rate class' rate increase should not be more 1.5 times or 2.0 times the system average increase. As Mr. Knecht testified, any rate increase in the neighborhood of \$73 million will produce very similar results under each of his proposals.⁹⁹ Therefore, both Mr. Knecht's full revenue requirement proposal and Mr. Knecht's FDR are within the allowable norms since they would require that the residential class increase be approximately 1.2 times the system average at a \$60 million base rate revenue increase.

Because the revenue increase is unknown at this point, the OSBA suggests a simple way of stating the OSBA's revenue allocation proposal which can be applied regardless of the size of the ultimate revenue increase. Specifically, the OSBA proposes that the Commission assign the residential class a base rate percentage increase which is 1.2 times the system average increase. The dollar difference between that rate increase for the residential class and PGW's proposed increase for the residential class should then

⁹⁹ Knecht, OSBA Statement No. 1 at 28

be used to reduce (on a proportionate basis) the rate increase proposed by PGW for each of the non-residential classes.

VIII. CONCLUSION

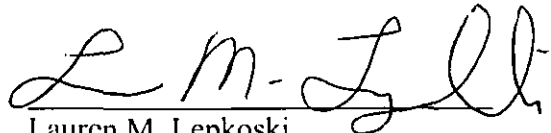
In view of the foregoing, the OSBA respectfully requests that the Commission:

- a. Allocate any awarded rate increase such that the percentage increase for the residential classes is 1.2 times the system average percentage increase and that the percentage increases for the non-residential classes are scaled back proportionately from the percentage increases proposed by PGW for those classes; and
- b. Phase out the funding of PGW's universal service programs by the non-residential classes over three years, beginning with PGW's 2008 proceeding under Section 1307(f) of the Public Utility Code.

Respectfully submitted,



Sharon Webb
Assistant Small Business Advocate
Attorney ID No. 73995



Lauren M. Lepkoski
Assistant Small Business Advocate
Attorney ID No. 94800

For: William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Dated: June 12, 2007

PROPOSED FINDINGS OF FACT

1. Prior to becoming subject to the Commission's jurisdiction, PGW allocated its universal service costs to all rate classes. See Restructuring Order at 64 and *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Ordered entered December 18, 2006) at 31.

2. The issue of how PGW's universal service costs should be allocated was deferred in PGW's Restructuring Proceeding until PGW's next base rate case, which is the instant proceeding. See Restructuring Order at 64 and *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061, and P-00042117 (Order entered October 27, 2004) at 23-24.

3. In *Pennsylvania Public Utility Commission v. Equitable Gas Company*, Docket No. R-901595, 73 Pa. PUC 301 (Order entered November 21, 1990); *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004) at 97-98; and *Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern Union Company for approval of: 1) the transfer by sale of all property used or useful in providing natural gas service to the public to UGI Corporation; 2) the immediate retransfer of all such property, by UGI Corporation, including gas supply and pipeline and storage capacity contracts, by UGI Corporation to UGI Newco Utilities, Inc., 3) the initiation by UGI Utilities Newco, Inc. of natural gas service in all territory in this Commonwealth where Southern Union*

Company does or may provide natural gas service; 4) the abandonment by Southern Union Company of all natural gas service in this Commonwealth; and 5) transfer by UGI Corporation of all stock of UGI Utilities Newco, Inc. to UGI Utilities, Inc., Docket Nos. A-120011F2000, A-125146F5000, A125146 (Order entered August 18, 2006) at 31-32 (hereinafter called “UGI/PGE Merger”), the Commission allocated universal service costs solely to the residential class.

4. In the UGI/PGE Merger case, the Commission recognized that its well-established precedent is to allocate universal service costs to only the residential class. *UGI/PGE Merger* at 32.

5. In *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006), the Commission decided to continue its current policy that CAP costs should be allocated to residential customers only.

6. The Commission has continued to follow its ruling in *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006) in both *Pennsylvania Public Utility Commission v. Metropolitan Edison Company and Pennsylvania Electric Company, Petition of Metropolitan Edison Company for Approval of a Rate Transition Plan, Petition of Pennsylvania Electric Company for Approval of a Rate Transition Plan*, and *RE: Merger Savings*, Docket Nos. R-00061366, R-00061366C001, R-00061366C002, R-00061366C003, R-00061366C005, R-00061366C0013, R-00061367, R-00061367C0001, R-00061367C0002, R-00061367C0003, R-00061367C0005, R-

00061367C0007, R-00061367C0008, P-00062213, P-00062214, A-110300F0095, and A-110400F0040 (Order entered at January 11, 2007), and *Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation*, Docket Nos. R-00061398, R-00061398C0001, R-00061398C0002, R-00061398C0003, and R-00061398C0004 (Order entered February 8, 2007).

7. Section 2202 of the Public Utility Code, 66 Pa. C.S. §2202, defines universal service and energy conservation as “policies, practices and services that help *residential* low-income retail gas customers and other *residential* retail gas customers experiencing temporary emergencies, as defined by the commission, to maintain natural gas supply and distribution services.”

8. The text of Section 2203(6) of the Public Utility Code, 66 Pa. C.S. §2203(6), states that “the commission shall establish for each natural gas distribution company an appropriate nonbypassable, competitively neutral cost-recovery mechanism which is designed to fully recover the natural gas distribution company’s universal service and energy conservation costs over the life of these programs.”

9. “Non-bypassable” as defined in Section 2203(6) of the Public Utility Code, 66 Pa. C.S. §2203(6), does not constitute legislative intent to recover universal service costs from all customer classes. See *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006); *Pennsylvania Public Utility Commission v. Metropolitan Edison Company and Pennsylvania Electric Company, Petition of Metropolitan Edison*

Company for Approval of a Rate Transition Plan, Petition of Pennsylvania Electric Company for Approval of a Rate Transition Plan, and RE: Merger Savings, Docket Nos. R-00061366, R-00061366C001, R-00061366C002, R-00061366C003, R-00061366C005, R-00061366C0013, R-00061367, R-00061367C0001, R-00061367C0002, R-00061367C0003, R-00061367C0005, R-00061367C0007, R-00061367C0008, P-00062213, P-00062214, A-110300F0095, and A-110400F0040 (Order entered at January 11, 2007); and *Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation*, Docket Nos. R-00061398, R-00061398C0001, R-00061398C0002, R-00061398C0003, and R-00061398C0004 (Order entered February 8, 2007).

10. The General Assembly intended, and expected, at the time the Gas Choice Act was enacted that the residential class would be extended the same shopping opportunity that large commercial and industry groups were already able to receive. See House Bill 1331, Printer's Number 2112 (1999 Session); and Legislative Journal-House, June 14, 1999, at 1328, 1331, and 1338.

11. Unlike residential customers, commercial and industrial customers can never qualify for universal service programs. Knecht, OSBA Statement No.1 at 29-30.

12. The OSBA is proposing that the non-residential customers' contribution to universal services be reduced by one-third in PGW's 2008 proceeding under Section 1307(f) of the Public Utility Code, 66 Pa. C.S. §1307(f); be reduced by one-half of the remaining revenue requirement in the 2009 proceeding; and be eliminated in the 2010 proceeding. Knecht, OSBA Statement No.1 at 31.

13. The OSBA's proposal to phase-out USEC charges to non-residential customers over three years would not have a detrimental impact on residential customers. Knecht, OSBA Statement No. 1 at 32-33; and Knecht, OSBA Statement No. 3 at 13.

14. The Commission has placed the burden of proof squarely on the proponent advocating for the allocation of CAP costs beyond the residential class. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004).

15. The proponent advocating for the allocation of CAP costs would meet its burden of proof by showing a cost study that provides "concrete evidence" of the benefits of CAP to non-residential customers. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004).

16. PGW's proposal to recover universal service costs from all rate classes represents a poor effort at matching the broad benefits with broad recovery for three reasons: 1) PGW is proposing to recover USEC costs with what economists call a regressive tax; 2) Since the USEC applies only to gas consumers, PGW's proposal allows individuals and businesses that are not gas consumers to be "free riders" for the social welfare benefits associated with PGW's programs; and 3) Because PGW's interruptible sales rate classes and its GTS/IT customers are not subject to PGW's USEC charge, PGW's proposal allows the majority of its business load to be a free-rider for the social benefits and is anticompetitive since its proposal is not consistent across business rate classes. Knecht, OSBA Statement No. 3 at 9-10.

17. The Pennsylvania legislature did not declare universal service programs to be a “public good” under Section 2802(17) of the Public Utility Code, 66 Pa. C.S. §2802(17). The language of Section 2802(17) mentions the “public purpose” of certain policies and services, but nowhere in the statute is the phrase “public good” to be found. Section 2802(17) of the Public Utility Code, 66 Pa. C.S. §2802(17).

18. All cost of service studies in the record of this proceeding reflect that the residential class is the only class underpaying based on the actual cost of service. Conversely, the same cost of service studies reflect that commercial customers are overpaying based on cost of service.

19. Based on PGW’s cost of service study, the Commercial class should receive a smaller than system average rate increase.

20. Both of the OSBA’s alternative proposals (full requirements and FDR) are in line with the principle of gradualism.

PROPOSED CONCLUSIONS OF LAW

1. Commission precedent requires allocating universal service costs solely to the residential class.

2. Allocating universal service costs to non-residential customers would be inconsistent with Sections 2203(6) of the Public Utility Code, 66 Pa. C.S. §§ 2203(6), which requires the Commission to establish cost recovery mechanisms that are “appropriate” and are implemented in a manner that does not “unreasonably discriminate” against one customer class to benefit another.

3. The revenue allocation applied in this case must result in the overpaying classes making significant progress towards cost based rates.

PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. That PGW's non-residential customers be relieved of having to contribute toward PGW's universal service costs through a three year phase out plan, beginning with PGW's 2008 proceeding under Section 1307(f) of the Public Utility Code; and
2. That the awarded rate increase shall be allocated such that the percentage increase for the residential classes is 1.2 times the system average percentage increase and that the percentage increases for the non-residential classes are scaled back proportionately from the percentage increases proposed by PGW for those classes.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :

v. :

PHILADELPHIA GAS WORKS :

DOCKET NO. R-00061931

RECEIVED
2007 JUN 12 PM 3:14
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Hon. Cynthia W. Fordham
Administrative Law Judge
Pa. Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
(215) 560-2105
(215) 560-3133 (fax)
cfordham@state.pa.us

Hon. Angela T. Jones
Administrative Law Judge
Pa. Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
(215) 560-2105
(215) 560-3133 (fax)
angeljones@state.pa.us

Daniel Clearfield, Esquire
Alan C. Kohler, Esquire
Wolf, Block, Schorr & Solis-Cohen
213 Market St., 9th Floor
P. O. Box 865
Harrisburg, PA 17108-0865
(717) 237-7160
(717) 237-7161 (fax)
dclearfield@wolfblock.com
akohler@wolfblock.com

Darryl Lawrence, Esquire
Christy Appleby, Esquire
Tanya McCloskey, Esquire
Jessica Horner, Esquire
Office of Consumer Advocate
555 Walnut Street 5th FL Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
dlawrence@paoca.org
cappleby@paoca.org
tmccloskey@paoca.org
jhorner@paoca.org
(E-mail and Hand Delivery)

Richard A. Kanaskie, Esquire
Allison C. Kaster, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
rkanaskie@state.pa.us
akaster@state.pa.us
(E-mail and Hand Delivery)

Gregory J. Stunder, Esquire
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6878
(215) 684-6798 (fax)
greg.stunder@pgworks.com

Philip A. Bertocci, Esquire
Thu B. Tran, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
(215) 981-3702
(215) 981-0435 (fax)
pbertocci@clsphila.org
ttran@clsphila.org

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
dkleppinger@mwn.com
cmincavage@mwn.com

John F. Povilaitis, Esquire
Matthew A. Totino, Esquire
Ryan Russell Ogden & Seltzer, PC
800 North Third Street - #101
Harrisburg, PA 17101
(717) 236-7714
jpovilaitis@ryanrussell.com
mtotino@ryanrussell.com

Katherine Guerry
kquerry@hess.com
(E-mail only)

Philip L. Hinerman, Esquire
Jill A. Guldin, Esquire
Fox Rothschild, LLP
2000 Market Street - 10th Floor
Philadelphia, PA 19103-3291
(215) 299-2000
(215) 299-2150 (fax)
phinerman@foxrothschild.com
jguldin@foxrothschild.com

Kent D. Murphy, Esquire
Shari C. Gribbin, Esquire
Exelon Business Services Company
2301 Market Street - #S23-1
Philadelphia, PA 19101
(215) 841-4941
(215) 841-4941 (fax)
kent.murphy@exeloncorp.com
shari.gribbin@exeloncorp.com

Todd S. Stewart, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North 10th Street
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmsk-law.com

Sherry A. Swirsky, Esquire
Miles H. Shore, Esquire
The School District of Philadelphia
440 N. Broad Street
Philadelphia, PA 19130
(215) 400-6710
(215) 400-4122 (fax)
sswirsky@phila.k12.pa.us
mhshore@phila.k12.pa.us

Andrew S. Levine, Esquire
Stradley Ronon Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103
(215) 564-8073
(215) 564-8120 (fax)
alevine@stradley.com

Date: June 12, 2007



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995