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June 12, 2007

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Pennsylvania Public Utility Commission  
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: PA PUC v. Philadelphia Gas Works**  
**Docket No. R-00061931**

Dear Secretary McNulty:

Enclosed please find for filing the original and nine (9) copies of the Main Brief of Action Alliance of Senior Citizens of Greater Philadelphia and Tenant Union Representative Network, in the above-captioned proceeding. A copy of the Main Brief is also on the enclosed CD. Copies of the Main Brief have been served on the presiding officers and active parties as indicated in the attached Certificate of Service.

Very truly yours,

Thu B. Tran, Esquire  
Philip A. Bertocci, Esquire

Attorneys for Action Alliance et al.

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**ORIGINAL**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

**v.**

**PHILADELPHIA GAS WORKS**

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**Docket No. R-00061931**

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**JUN 1 2 2007**

**MAIN BRIEF**

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

**ON BEHALF OF ACTION ALLIANCE *et al.***

**(ACTION ALLIANCE OF SENIOR CITIZENS  
OF GREATER PHILADELPHIA AND  
TENANT UNION REPRESENTATIVE NETWORK)**

**DOCUMENT  
FOLDER**

**June 12, 2007**

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**JUN 14 2007**

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**I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

As of December 1 in each of the past two winters, over 9,000 PGW heating customers whose service had been terminated in the previous eleven months had been unable to meet PGW's terms for service reconnection and were still without service. More than half of these terminated customers were verified low-income, with household incomes below 150%FPL. Complainants Action Alliance of Senior Citizens of Greater Philadelphia and the Tenant Union Representative Network (TURN) (hereinafter, collectively "Action Alliance") submit that the appallingly high number of customers in this situation constitutes an unreasonable failure to adopt collection policies which take into account the demographics of PGW's customer base, and consequently represents inadequate service within the meaning of the Public Utility Code. In applying the applicable constitutionally based "just and reasonable" standard, the Commission is required to consider not merely issues of cash flow and debt reduction, but also the level of service provided to customers. In this proceeding, PGW has provided no plan to correct the significant inadequacy of its service, by reducing the numbers of heating customers without service at the approach of winter, when heat is an absolute necessity.

PGW's policies do not place sufficient emphasis upon maintaining access to utility service for low and lower income customers. The Company has not adopted sufficient measures to avoid termination of customers who, when their service is terminated, will have inordinate difficulty obtaining service restoration.

- In light of the demographics of its service territory, PGW has not been sufficiently active in enrolling low-income customers in its Customer Assistance Program (CAP), known as the Customer Responsibility Program (CRP), and in providing the necessary support services to maintain them in CRP.

- The Company's standards for payment agreements for customers receiving service may violate Chapter 14, and even if they do not, they are an abuse of discretion in light of the numbers of customers without service at the approach of winter.
- The Company has adopted policies with regard to service reconnection which, in light of the numbers of heating customers without service at the approach of winter, represent an abuse of discretion.

Finally, PGW has proposed certain revisions to its existing Tariff which are contrary to due process principles, or unreasonably deprive customers of information necessary to enforce their rights, or which in other ways deprive them of existing consumer protections.

Action Alliance therefore requests that the Commission deny PGW's request for a \$100 million rate increase because PGW's service is inadequate. To the extent that the Commission grants PGW any increase in rates, it is bound by sound ratemaking principles to limit that increase to \$22.5 to \$25 million and to condition such increase upon implementation of measures aimed at improving the Company's service, as set forth in the Conclusion of this Brief.

## **II. HISTORY OF THE PROCEEDING.**

Action Alliance incorporates by reference the History of the Proceeding submitted by the Office of Consumer Advocate (OCA).

### III. STATEMENT OF QUESTIONS INVOLVED.

1. Should PGW's request for a base rate increase of \$100 million and additional revenues from off-system sales and capacity release be denied for failure to provide "reasonably continuous service without unreasonable interruptions and delay" as required by Section 1501 of the Public Utility Code?

**Action Alliance answer: Yes.**

2. If the Commission grants PGW's request for additional revenues, should the Commission condition its order upon PGW's taking the following measures with the goal of substantially reducing the number of terminated heating customers who as of December 1 have not been able to obtain service reconnection, as indicated by the Cold Weather Survey, including but not limited to the following measures?

- (a) PGW shall reduce its Reconnection Fee to \$50.00.
- (b) PGW shall waive its Excavation Charge for customers and applicants with household income at or below 150%FPL, and shall allow customers and applicants with household income between 150%FPL and 250%FPL to pay the excavation charge as part of the remaining balance to be paid in monthly installments pursuant to the reconnection agreement.
- (c) PGW shall waive deposit requirements for customers and applicants whose household income is at or less than 150%FPL.
- (d) Between November 15 and April 1, PGW shall accept a LIHEAP Crisis grant as sufficient to reconnect service upon being offered such grant by the Department of Public Welfare on behalf of the LIHEAP Crisis applicant.
- (e) PGW shall refer to CARES for on-going case management those customers who are receiving service or whose service has been terminated for non-payment and who have exhausted 3 monthly medical certifications and have not been able to make a payment agreement; and PGW shall allow such customers to maintain service so long as they continue to provide medical certifications and make equitable monthly payments on current bills.
- (f) PGW shall not count a customer's historical default on CRP payments resulting in service termination as a default for purposes of determining whether a non-CRP customer will be offered a payment agreement; if the non-CRP customer has been terminated, PGW shall not count the customer's historical CRP default in determining whether that customer will be required to pay upfront the total outstanding balance in order to obtain a service reconnection.
- (g) PGW shall not count a customer's prior default on a payment agreement, which was cured prior to termination, as a prior default for the purposes of determining whether the customer will be offered a payment agreement; if the non-CRP customer has been terminated, PGW shall not count the customer's historical CRP default in determining whether that customer will be required to pay upfront the total outstanding balance in order to obtain a service reconnection.
- (h) PGW shall institute a budget billing plan which automatically provides for payment of "true-up" amounts in installments and which allows customers to enroll in budget billing without making a payment agreement or an upfront payment for any arrearages up to 70 days past due.

**Action Alliance answer: Yes.**

#### **IV. ARGUMENT.**

##### **A. Uncontested Cold Weather Survey Statistics Are Substantial Evidence That PGW Fails to Provide Adequate Service To Its Customer Base.**

In this case, Action Alliance provided testimony concerning the results of the Commission's Cold Weather Survey for the calendar years 2005 and 2006, as set forth on PGW's Cold Weather Survey, Form A. This data, as summarized by Mr. Geller, reveals that as of December 1 in each of these years, there were over 9,000 PGW heating customers whose service had been terminated within the calendar year who had been unable to obtain service reconnection. In 2005, the 9,015 reported PGW households without heat related service represented 51% of all terminated natural gas heating customers state-wide still without service. In 2006, the 9,298 reported PGW households without heat related service represented 55% of all natural gas heating customers state-wide who were without service. The numbers of terminated PGW heating customers without service was grossly disproportionate to PGW's overall 20% share of all natural gas heating customers in the state. Action Alliance St. No. 1, at 5-7 (hereinafter "AA St.1").

As a point of contrast, PECO Energy provides electric service to approximately 1.4 million customers in southeastern Pennsylvania, including all residential customers in PGW's service territory. At least for its Philadelphia customers, it must address the same levels of poverty as PGW. Yet in its whole service territory, including all of Philadelphia and beyond, it reported only 53 customers without electric and/or natural gas heat related service as of December 1, 2005; as of December 1, 2006, its results were similar, only 207 customers without

heat-related service. AA St.1, at 7.

The Cold Weather Survey results derive added significance from the fact that in each calendar year for which data is available, more than one half of the PGW customer households without service at the onset of cold weather, between 4,000 and 5,000 households, were verified low-income households, households with household income at or below 150%FPL. These customers were without service despite the fact that they would have been eligible for substantial LIHEAP Crisis grants to assist them to make a payment agreement and obtain service reconnection. The amounts available for LIHEAP Crisis grants were \$600 in calendar 2005 and \$400 in calendar 2006. AA St.1, at 6.

In the Commission's assessment of whether PGW is providing adequate service to its customer base, this uncontroverted evidence must be given great weight. It covers PGW performance over two consecutive years. It describes the situation not of a few customers, but of a significant number of PGW heating customers. In fact, in certain respects, these statistics are conservative. In the Cold Weather Survey, the raw data has been adjusted to eliminate houses where service was terminated, but which have been judged by the utility to be vacant at the time of the survey, notwithstanding the fact that service termination may have been the cause of the abandonment. The data focuses on a particularly important point in time for the purposes of measuring the reasonableness of PGW's universal service programs and policies, termination policies and reconnection policies. It focuses on December 1, the onset of cold weather, when low and lower income customers are most likely to have maximized whatever resources they might have in order to meet payment demands necessary to obtain service reconnection considered critical for family health and welfare.

**B. Policies Resulting in Unreasonable Impairment of Access to Service Violate the Public Utility Code and Require Denial of PGW's Rate Increase as Unjust and Unreasonable.**

1. Unreasonable Impairment of Access to Service Constitutes Inadequate Service.

Section 1501 of the Public Utility Code requires that a public utility “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and that such service must be “reasonably continuous and without unreasonable interruptions or delays.” 66 Pa.C.S. § 1501. Under the Public Utility Code, the definition of reasonable service is very broad and inclusive. It includes:

any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public....

66 Pa.C.S. §101 (Definition: “Service”). The words “any and all acts done, rendered, or performed” include not only the maintenance of an efficient physical system for the continuous distribution of a commodity like natural gas, but also the adoption of business practices which will result in ensuring the reasonable availability of natural gas service to all customers and applicants, regardless of income level, within the utility’s jurisdictional boundaries. Under the Public Utility Code, a Pennsylvania natural gas public utility is required to adhere to “universal service” policies which, in purpose and result, will protect the access of low and lower income households to utility service by minimizing utility terminations of service for non-payment, and by preventing reconnection terms from unreasonably impairing access to utility service.

The General Assembly and the Commission have long recognized that public utilities providing natural gas service in Pennsylvania must adopt universal service policies. The Gas Choice Act defines “Universal service and energy conservation” as follows:

Policies, practices and services that help residential low-income 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. The term includes retail gas customer assistance programs, termination of service protections and consumer protection policies and services that help residential low-income customers and other residential customers experiencing temporary emergencies to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs and consumer education.

66 Pa.C.S. § 2202 (Definitions: Universal service and energy conservation). Section 2203 provides that the commission “shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory.” 66 Pa.C.S. § 2203(8). Section 2203(7) of the Gas Choice Act states requires that the Commission “at a minimum, continue the level and nature of the consumers protections, policies and services within its jurisdiction ... to assist low-income retail gas customers to afford natural gas services.” 66 Pa.C.S. § 2203(7).

These universal service provisions in the Gas Choice Act confirm and expand longstanding Commission policy supporting the principle that even customers who due to their low income are not able to pay a bill based on the standard residential rate, or who can not pay their monthly bill in full and on time, should be provided with reasonable means of avoiding termination and if terminated, reasonable means of obtaining service reconnection. The preliminary provisions of Chapter 56 state that “adequate provision of residential utility service” requires policies to restrict unreasonable termination of service or refusal to provide that service

and to provide functional alternatives to termination or refusal to provide that service.” 52 Pa.Code § 56.1. As Administrative Law Judge Allison K. Turner has explained, the term “service” in Section 1501 is “clearly broad enough to include the billing and collections practices of a public utility, including PGW. The Commission has interpreted and applied Section 1501 to include adequate customer service, see, e.g., Chapter 56 of the Commission’s regulations in Title 52 of the Pennsylvania Code (regarding Standards and Billing Practices for Residential Customers).” Roderick Berry v. Philadelphia Gas Works, 99 PA PUC 125, 2004 WL 1778058 (Pa.P.U.C.), at 11.<sup>1</sup> Failure to implement satisfactory and effective universal service policies is a strong negative factor in any assessment of the adequacy of service provided by a public utility.

2. The Commission May Deny PGW’s Rate Increase Request on the Grounds That Its Customer Service Is Inadequate.

As the Commission has recognized, the constitutionally based “just and reasonable” standard is the “basic and fundamental” standard which must be applied in PGW rate cases. Pa. P.U.C. v. Philadelphia Gas Works, Rulemaking Proceeding 00006042, 213 P.U.R.4th 280, 2001 WL17044791 (Pa.P.U.C.), at 18. This standard requires the balancing of the interests of the utility and its owner, the City of Philadelphia, against the interests of customers. Id., at 13, 18. A revenue requirement based solely on application of the cash flow method contained in the Management Agreement Ordinance is not per se “just and reasonable.” The “just and reasonable” standard is distinct from the cash flow method of ratemaking. Id., at 18.

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<sup>1</sup> In this Opinion and Order, the Commission adopts this aspect of the Initial Decision, while modifying the ALJ’s conclusions on certain other issues and referring the case to the Office of Administrative Law Judge for mediation.

In explaining how the “just and reasonable” standard is applicable to the municipally owned PGW, the Commission has repeated its longstanding position that “service is an essential consideration in determining just and reasonable rates.” In taking this position, the Commission has relied on Section 526 of the Public Utility Code, 66 Pa.C.S. § 526, which states that the Commission may reject a request for increased rates when it concludes that the utility has not provided an adequate quality of service.<sup>2</sup> In addition, citing the landmark case, D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, 466 F.2d 394, 422 (D.C. Cir. 1972, cert. denied, 409 U.S. 1086, the Commission has also stressed that the requirement that service quality be considered in ratemaking has a constitutional basis, which can not be trumped by ordinance or statute. Pa.P.U.C. v. Philadelphia Gas Works, 94 Pa.P.U.C. 479, 489, 2000 WL 33143808.

3. Chapter 14 Does Not Provide a Justification for PGW’s Failure to Provide Reasonably Continuous Service.

PGW claims that its policies regarding payment agreements, reconnection terms, and budget billing are consistent with existing law and regulations. Even though the Cold Weather Survey results show over 9,000 terminated heat-related customers still without service and unable to meet unreasonably demanding and uncompromising reconnection standards at the approach of winter, PGW claims that its failure to avoid these appalling results does not constitute a failure to provide reasonably continuous service.

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<sup>2</sup> Section 526(a) provides: “General rule. – the commission may reject, in whole or in part, a public utility’s request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.” 66 Pa.C.S. § 526.

Action Alliance disputes this claim on two legal grounds: (1) In certain instances, existing PGW policies, such as the failure to comply with Chapter 56 Section 56.97 in negotiations regarding payment agreements for “on” customers, are not in compliance with existing law. These instances will be treated in this Brief on a topical basis; (2) In other instances, Action Alliance contends that PGW’s actions, even if not expressly forbidden by Chapter 14, represent a misuse of the discretion provided to utilities under that Chapter, because they have directly contributed to the failure to provide reasonably continuous service, as demonstrated by the Cold Weather Survey results.

As Mr. Geller testified, the fact that particular payment agreement terms or reconnection terms are not expressly forbidden by Chapter 14 does not mean that such terms are per se reasonable. “Chapter 14 did not provide a license for utilities to set aside the universal service requirements contained in the Gas Choice Act or to escape the Public Utility Code Section 1501 requirement that the utility provide ‘reasonably continuous service.’” AA St.1, at 7. The Chapter 14 Declaration of Policy clearly states that the aim of the statute was to eliminate “opportunities for customers capable of paying to avoid the timely payment of public utility bills.” While seeking to reduce uncollectible accounts, the General Assembly “[a]t the same time... seeks to ensure that service remains available to all customers on reasonable terms and conditions.” With regard to PGW, the General Assembly provided additional collection tools (e.g., Section 1406(e)(2), (e)(3) regarding winter terminations; Section 1414 regarding liens; Section 1413 regarding PGW access to DPW information for LIHEAP and/or CAP purposes), while at the same time stressing that utility service was to be provided for the benefit of all city residents. 66 Pa.C.S. § 1401(4).

Section 1405 defines a framework establishing the most affordable terms that the Commission may offer, while allowing utilities the discretion to offer more favorable terms. 66 Pa.C.S. §§ 1405(a), (b). That same Section also provides discretion to utilities with regard to second or subsequent payment agreements and to payment agreements for CAP participants. 66 Pa.C.S. §§ 1405(c), (d). Section 1407 defines a framework within which utilities may establish reconnection terms, without danger of citation for an “infraction” by BCS, even when BCS might revise these utility terms. 66 Pa.C.S. §§ 1407(c). Neither Section 1405 nor 1407 should be interpreted to “authorize” a utility to demand as a matter of policy the maximum amount specified by Chapter 14 to be at the outer limits of the utility’s discretion, even when the result is so unreasonable that it prevents a customer not only from avoiding termination, but once terminated, from obtaining reconnection of heat related service at the approach of cold weather.

This conclusion is consistent with the Commission’s December 21, 2006 Order in its review of Equitable Gas Company’s Universal Service and Energy Conservation Plan. In that matter, the Pennsylvania Utility Law Project challenged the adequacy of the utility’s universal service plan on the grounds that its termination levels were inordinately high and that its CAP enrollment was insufficient. The Commission recognized that these claims raised issues whether Equitable’s design and operation of its universal service plan was consistent with Section 1501 and Chapters 14 and 22 of the Public Utility Code.<sup>3</sup> Chapter 14 did not trump other portions of the Code, but rather was to be interpreted in conjunction with Chapters 15 and 22.

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<sup>3</sup> Re: Equitable Gas Company’s Universal Service and Energy Conservation Plan Submission Pursuant to 52 Pa. Code § 62.4, Docket No. M – 000061959 (Order entered December 21, 2006) at 9; see also AA St.1, at 7-8, and footnote 10.

4. The Commission Should Deny PGW's Rate Increase Request Because the Company Has Failed to Provide Reasonably Continuous Service.

In this case, PGW continues to operate as if Chapter 14 authorized the unacceptable numbers of terminated heating customers without service at the onset of winter, without regard for the requirements of Chapters 15 and 22. PGW has requested increased rates of over \$100 million per year, but proposes no measures to improve the adequacy or continuity of service. The Company concedes that this level of rate increase is substantially more than is necessary to meet its bond covenants and to assure that the Company will have sufficient working capital. In fact, both the OCA and OTS have taken the position that an increase in the range of \$22.5-25 million is all that is necessary for PGW to continue to provide service at existing levels and to eliminate the Company's \$45 million debt to the City of Philadelphia. OCA St.1, at 4-7, 17; OTS St.1, at 17. PGW persistently claims that it does not have the resources to adopt policies that would significantly reduce the number of heat related households without service at the approach of winter, while steadfastly maintaining that its service levels are reasonable. PGW St. 6, at 2-6; PGW St. 6R, at 3-7; Tr. 937-38. To the extent that increased rates will not be used to provide service at existing levels, they will be exclusively dedicated to achieving a level of debt reduction which is far greater than necessary. OCA St.1, at 14. And, in addition, in FY2011 and FY2012, the Company proposes to utilize funds derived from this rate increase to resume making payments totaling \$36 million over these two year to the City of Philadelphia. Tr. 565-566. In sum, despite the Cold Weather Survey results of the past two years, the Company proposes not to devote even one penny more to reduce the unreasonable numbers of heating customers without service at the approach of winter.

The unacceptable number of PGW heating customers whose service has been terminated who have been unable to obtain reconnection at the approach of winter requires regulators to focus on how PGW implements measures intended to minimize service terminations and denials of service reconnection, such as PGW's universal service policies, including its CAP and CAP related programs, and its collections policies, including such matters as payment agreements, reconnection terms, and budget billing policies. Taken together, a utility's universal service policies should be reasonably calculated to prevent termination of heat-related service to substantial numbers of customers who will not be able to satisfy the reconnection terms imposed by the utility. AA St.1, at 7; AA St.1SR, at 2-3. In his testimony, Mr. Geller identifies an array of policies, which when taken together, have resulted in the failure by PGW to provide reasonably continuous service. In light of PGW's Cold Weather Survey results, it has been unreasonable for PGW to fail to adjust these policies and it is unreasonable for PGW to insist on continuing such policies. For these reasons, its rate increase request must be denied.

**C. PGW's Does Not Take Sufficient Measures To Assist Customers To Avoid Unnecessary Service Terminations.**

**1. PGW's Universal Service Programs Are Inadequate.**

The extent to which PGW has met Commission goals for mandated universal service programs is an integral factor in determining whether PGW is providing adequate and reasonable service to its customers. The Gas Choice regulations provide in pertinent part that the universal service and energy conservation program goals are as follows:

- (1) To protect consumers' health and safety by helping low-income customers

- maintain affordable natural gas service.
- (2) To provide for affordable natural gas service by making available payment assistance to low-income customers.
  - (3) To help low-income customers conserve energy and reduce residential utility bills.
  - (4) To ensure universal service and energy conservation programs are operated in a cost-effective and efficient manner.

52 Pa. Code § 62.3. The high numbers of service terminations to low income customers for non-payment and the inability of thousands of these customers to obtain affordable restoration terms at the start of the winter season calls into question whether PGW has taken sufficient action to achieve the mandated universal service goals.

a. CRP Enrollment Processes Are Inadequate.

PGW could better ensure continuity of service to its low income customers by enrolling more low income customers into CRP, so that these customers may have more affordable bills and thereby decrease the risk of service termination due to nonpayment. Only about half of PGW's income eligible customers are enrolled in CRP. AA St. 1, at 11. According to the December 2006 Cold Weather Survey, only 3,000 of the 4,700 verified low income customers without service at the start of winter were enrolled in CRP. AA St. 1, at 6. During these proceedings, PGW provided no explanation as to why 1700 verified low income customers, who were without service, were not enrolled in CRP.

PGW misses opportunities to enroll low income customers into CRP. As Mr. Geller describes in his testimony, PGW does not adequately inform its low income customers of the availability of CRP. AA St. 1, at 11-12. The Commission's CAP Policy Statement provides that the utility "should make automatic referrals to CAP when a low-income customer calls to make

payment arrangements." 52 Pa. Code § 69.265(6)(i). PGW's procedures for CRP referral are anything but automatic. When a customer calls PGW for a payment arrangement, the CSR will follow PGW's Payment Arrangement Guidelines, which is in the record as Exhibit HSG-5. After obtaining income level information, the CSR is instructed to "Ask for FULL AMOUNT first, and then negotiate your way down." AA St. 1, at 11-12, and Exhibit HSG-5. References to CRP in other parts of the Guidelines apply only to those customers who steadfastly insist on their inability to make whatever non-CRP payment terms may be offered.

When an already vulnerable low income customer with a shut-off notice calls PGW for a payment arrangement, the customer may accept any terms less than the full amount in order to suspend termination to the customer's household, even if the terms are unaffordable. AA St. 1, at 27. For precisely this reason, the CAP Policy Statement provides for "automatic referrals" and not just for referrals after failed negotiations for full payment or a non-CRP payment arrangement.

During rejoinder, PGW witness, Mr. Gyory, explains that the Payment Arrangement Guidelines are only part of a bigger collection of the training materials provided to CSRs, that CSRs are trained to refer low income customers to CRP, and that the Guidelines themselves eventually do instruct CSRs to refer eligible customers to CRP. Tr. 940-942. However, PGW has produced no training materials that demonstrate that PGW gives high priority to making automatic referrals to CRP of low income customers who call for payment arrangements. Nowhere in the record is it contradicted that the CSR should negotiate for full payment from a low income person before making a referral to CRP. Mr. Gyory does not correct the information on the Guidelines. He confirms that it is a current document that is enlarged as a color poster and

posted near his desk and the desks of CSRs for easy reference. Tr. at 959-960, 965.

PGW can also do more to assure that CRP customers remain in the program so long as they are income eligible. PGW could improve awareness of CRP program rules. Mr. Geller pointed out in his direct testimony that the APPRISE evaluation of the CRP programs included recommendations to increase awareness of the arrearage forgiveness rules, as the study found that PGW CSRs often were not informing new CRP participants of these rules and many CRP participants were simply unaware of this important incentive for full and timely payment of CRP bills. AA St. 1, at 12-14. The CAP Policy Statement provides that "a complete and thorough explanation of the CAP components should be provided to participants." 52 Pa. Code § 69.265(6)(iv). As Mr. Geller recommended, to build a strong CAP program, PGW must undertake a thorough, continuing and repetitive educational process to ensure that CAP customers understand all benefits of timely CAP payments and corresponding arrearage forgiveness. AA St. 1, at 13.

b. PGW's CARES Program Is Inadequate.

PGW has not developed a CARES program which would operate to improve continuity of service to its most vulnerable customers. AA St. 1, at 16-18. The purpose of CARES is to help "selected, payment-troubled customers" or those customers with special needs who have trouble paying their bills. 52 Pa.Code § 62.2. This special needs group includes persons with mental or emotional problems, household dynamics issues, physical health issues, low housing quality, poverty issues, and other extenuating circumstances. AA St. 1, at 17. The vulnerability of these customers requires that PGW take special steps to help them avoid gas service

termination and/or to assist in service reconnection.

PGW fails to recognize its obligations to provide meaningful CARES services. AA St. 1-SR, at 11-12; PGW St. 7R, at 13-14. PGW has a legal duty to provide universal service programs, including CARES, as provided by the Gas Choice Act, 66 Pa.C.S. § 2201 et seq., and the accompanying regulations at 52 Pa. Code § 62.1 et seq. In the Gas Choice regulations, CARES (Customer Assistance and Referral Evaluations Services) is defined as a program that "helps selected, payment-troubled customers" and "provides a casework approach to help customers secure energy assistance funds and other needed services." 52 Pa.Code § 62.2. PGW claims that its CARES program does indeed provide a casework approach. PGW St. 7R, at 2. PGW's CARES documentation suggests that the program includes a casework approach. AA St. 1, Exh. HSG-7. PGW's Universal Service Manual even states that CARES "Quick Fix" and "Case Management" services could be tracked in PGW's customer information system. AA St. 1, Exh. HSG-9.

However, in actuality, PGW's CARES program has no designated staff and there is no accounting of the CARES services, if any, that are provided. This reality was confirmed in PGW's response to an Action Alliance data request, in which PGW states:

PGW does not have staff dedicated and/or assigned specifically to CARES. The CARES program entails referrals to customers. Referrals are made by all customer service representatives (CSR) in Customer Service. CRS (sic) may refer customers to any program available, including LIHEAP and Crisis, or to any agency outside of PGW. PGW does not track the percentage of time its representatives spent on referrals. Occasionally CSRs in the call center of customer service center will escalate the call to a universal representative for additional discussion. In these infrequent cases, the universal service representative will call the customer back and also call a particular agency to link the parties. That is the full extent of the program.

AA St. 1, Exh. HSG-8. PGW's response indicates that the most extensive CARES service is infrequent and does not even approximate a casework approach. Without any designated CARES staff or even the least bit of an accounting of CARES services provided, PGW CSRs are not incentivized to maximize CARES services and PGW cannot even show what, if any, CARES services it has provided to its customers. AA St. 1-SR, at 12-13.

A utility, such as PGW, with high numbers of low and lower income customers cannot provide adequate service without a strong CARES program. AA St. 1, at 18-19. PGW is not providing adequate service when over 4700 of its low income customers, who were terminated, were still unable to obtain service reconnection at the approach of last winter. AA St. 1, at 6. At the least, clearly designated CARES duties must be assigned and CARES services that are provided must be tracked. Customer Service Representatives must be trained to recognize CARES cases and to provide CARES services or make CARES referrals. For instance, PGW must improve its Payment Arrangement Guidelines, which are used by CSRs at their desks to guide them through negotiations with customers requesting payment arrangements and reconnection terms. Nowhere in these Guidelines are CSRs instructed to refer customers to CARES or to provide any of the CARES services that are supposed to be provided by all CSRs. AA St. 1, Exh. HSG-5.

c. PGW Misses Opportunities to Generate Hardship Fund Resources.

The fundamental problem for low income customers is the lack of adequate income to meet household expenses. The Gas Choice regulations recognize that CAP programs may not be enough in themselves to make gas bills affordable and provide that the universal service and

energy conservation plans may include "CAP, LIURP, CARES, Hardship Funds and other programs, policies and protections." 52 Pa. Code § 62.4(b). In particular, PGW should improve its fundraising efforts for its hardship fund, UESF. Despite the fact that it terminates so many low income customers for nonpayment, PGW has done virtually nothing to utilize available opportunities to maximize UESF levels that could assist in service reconnection.

PGW does not dispute that it has the lowest level of customer contributions of all the hardship funds in the entire state of Pennsylvania. AA St. 1, at 19; PGW St. 7R, at 15-16. With approximately 500,000 customers, PGW should be able to raise more than a couple thousand dollars a year for its hardship funds. PGW misses opportunities to solicit and encourage its customer base to make tax deductible contributions to UESF. As Mr. Geller recommended, PGW should include a contributions check-off on all its bills. In a major metropolitan city like Philadelphia, PGW cannot argue that its customers will not increase contributions given the means to easily make contributions.

PGW could pair UESF advocacy with other efforts, discussed above, to increase CRP enrollment and increase awareness of pre-CRP arrearage forgiveness rules. PGW has a high number of customers with large balances that put these customers at risk of service terminations and prevent them from obtaining affordable reconnection terms. According to the APPRISE Report, 25% of CRP participants had pre-CRP arrearages of between \$1000 and \$2000, and 25% had pre-CRP arrearages over \$2000. PGW St. 7, Exh. CC-2, APPRISE Report, at 30.

UESF has an eligibility requirement of customer household income at or below 175% of poverty. PGW St. 7, at 8. CRP income eligibility is at or below 150% of poverty. *Id.*, at 3. Therefore, all CRP customers would be income eligible for UESF assistance. Increased

arrears forgiveness and increased availability of hardship funds can help eliminate large balances and assure continuity of service to low income customers, in decreasing the instances of service termination and improving reconnection terms for low income customers.

2. PGW Does Not Recognize Its Chapter 56 Obligation To Make “Equitable Arrangements” with Customers Receiving Service Under a Medical Certification.

PGW’s medical certification policies prevent sick and disabled customers who have used three medical certificates from preserving service even when they commit to pay for existing service going forward during the continuing pendency of their medical emergencies.

Under Chapter 56 Sections 56.111-114, which address medical emergency procedures, customers and occupants are allowed an original medical certification lasting for thirty days, and two 30 day renewals, in situations where a medical professional has certified that an occupant is seriously ill or has a medical condition which would be aggravated by loss of utility service. On this basis, utilities are required to stay a pending service termination or, if service has already been terminated, restore service, and continue to supply service for 30 days, and for the period of two more certification renewals. Chapter 56 Section 56.116 also provides that “[w]henver service is restored or termination postponed under the medical emergency procedures, the ratepayer shall retain a duty to equitably arrange to make payment on all bills.” 52 Pa.Code § 56.116. Chapter 14 has not diminished the rights of persons receiving service under medical certifications. Re: Chapter 14 Implementation, Docket No. M-00041802F0002 (Second Implementation Order, entered September 12, 2005) at 27.

As Mr. Geller testified, Chapter 56 Section 56.116 provides that the utility is under an

obligation to try to make an “equitable arrangement” with the customer concerning payment of bills which takes into account all the individualized circumstances of the particular customer, regardless of whether or not the customer has defaulted on previous payment agreements. AA St.1, at 33. As the Commission stated in the Second Implementation Order, such an equitable arrangement must be a good faith negotiation conducted pursuant to Chapter 56 Section 56.97(b). Re: Chapter 14 Implementation, Docket No. M-00041802F0002 (Second Implementation Order, entered September 12, 2005) at 27. Scrupulous compliance with Chapter 56 Section 56.116 would allow those low and lower income chronically sick and disabled customers to avoid termination by making agreed upon good faith efforts to pay for service even when unable to meet the payment agreement terms or the reconnection agreement terms dictated by PGW Payment Arrangement Guidelines.

PGW refuses to recognize that Chapter 56 Section 56.116 imposes additional obligations upon the utility beyond the quantitative standards set forth in Chapter 14 Sections 1405 and 1407. As Mr. Geller testified, PGW “does not consider that the ‘equitable arrangement’ requirement entails anything more than a suspension of termination for the period of time not to exceed three months, depending on the number of 30 day medical certifications that the customer has already had.” AA St.1, at 33. Again, in light of the level of service terminations coupled with the number of terminated heating customers who have been unable to obtain service reconnection even with the approach of cold weather, PGW’s policy is not reasonable. In this respect, as in its failure and refusal to develop a CARES function which provides the individualized service necessary for the most vulnerable in a large indigent population, PGW is not meeting its responsibilities as the monopoly provider of a basic necessity of life to adjust its policies to the

needs and condition of its customer base.

For these reasons, the Commission should condition any rate increase that may be granted upon the requirement that PGW refer customers who have exhausted 3 monthly medical certifications and have not been able to make a payment agreement to CARES for on-going case management and allow such customers to maintain service so long as they continue to provide medical certifications and make equitable monthly payments on current bills. AA St.1, at 47-8.

3. Payment Agreement Terms Which PGW Offers to Customers Receiving Service Violate Regulatory Standards and/or Are a Misuse of the Discretion Provided by Chapter 14.

The Commission has long insisted that public utilities make good faith efforts to enroll customers who are delinquent on their payments in affordable payment agreements, which are important functional alternatives to service termination. Now, as before the enactment of Chapter 14, service termination is intended to be utilized only as the last resort, when it has become clear that customers with the capacity to pay their bills are unwilling to do so. PGW's inordinately high level of service terminations, coupled with the disturbing numbers of terminated heating customers who have been unable to obtain reconnection even with the approach of cold weather, is strong evidence that PGW's payment agreement policies and standards for delinquent customers whose service is on represent a misuse of discretion provided to utilities by Chapter 14, and in some cases, are outright inconsistent with Chapter 14 standards.

In the first Implementation Order interpreting Chapter 14, the Commission rejected claims by utilities, including PGW, that Chapter 14 Section 1405 had superseded the requirement in Chapter 56 Section 56.97(b) that the utility exercise "good faith" in establishing a payment

agreement, taking into account at least four factors, “the size of the unpaid balance, the ability of the ratepayer to pay, the payment history of the ratepayer and the length of time over which the bill accumulated.”<sup>4</sup> PGW’s Payment Arrangement Guidelines, however, demonstrate that PGW does not actually apply the “good faith” standard and each of the four standards required by Chapter 56 Section 56.97(b) in establishing payment agreements for delinquent customers whose service is on. As Mr. Geller testified, the PGW Payment Arrangement Guidelines do not prompt PGW customer service representatives to seek to assure that the payment agreement is one that the low or lower income customer can afford to make. AA St.1, at 27. The Commission may confirm this observation by examining the PGW Payment Arrangement Guidelines chart attached as Exhibit HSG-5 to AA St.1. Although this document uses the term “Guidelines,” “negotiate” and “request,” the realities are that: (1) the so-called Guidelines do not set ranges of acceptable upfront payments and monthly payments on arrears but quantitative minimum payments for the various Income Levels;<sup>5</sup> (2) the only negotiation that is allowed is one which allows PGW to obtain the customer’s acquiescence to monthly payments greater than the minimums set forth in the so-called Guidelines; (3) the term “request” really means “require,” since the Guidelines do not authorize offering lower payments than the prescribed minimums.

In addition, contrary to the requirements of Chapter 56.97(b), the so-called Guidelines do

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<sup>4</sup> 52 Pa.Code § 56.97(b); Re: Chapter 14 Implementation, PUC Docket No. M – 00041802F0002 (Order entered March 4, 2005), at 14-15.

<sup>5</sup> The PGW Payment Arrangement Guidelines provide for only very limited flexibility in the upfront payment required from customers receiving service who are seeking payment agreements. Although the minimum is 40% upfront for customers with household income above 150%FPL, Customer Service Representatives may seek between 50% and 80% of the arrearage upfront from certain customers with household income levels above 200%FPL. AA St.1, Exh. HSG-5.

not incorporate any consideration of the customer's payment history to determine whether the customer appears to be making a good faith effort to pay the gas bill. Nor does it consider the period of time over which the bill accumulated, to determine the utility's share of responsibility for the level of the unpaid balance due to inattentive collections practices.

As Mr. Geller notes, the PGW Payment Arrangement Guidelines also indicate that the payment agreements that PGW offers to customers whose service is on are much more severe than the agreements which BCS is authorized to offer, under Chapter 14 Section 1405(b). AA St.1, at 28. PGW has established minimum monthly payments on arrears which are not authorized by Chapter 14 and PGW requires upfront payments which are not authorized by Chapter 14. These payment agreement terms, upfront payments and minimum monthly payments, are not consistent with Chapter 14. Even assuming for the purposes of argument that these terms are not barred by Chapter 14, they are not reasonable for a utility with a customer base which contains such a large percentage of households who are low or lower income.

Section 1405(b) provides a schedule which reflects the General Assembly's determination concerning what constitutes a reasonable length for a payment agreement, depending on the customer's income level: five years for a low-income household with income not exceeding 150%FPL, two years for a household with income between 150%FPL and 250%FPL, one year for a household with income between 250%FPL- 300%FPL, and six months for a household with income over 300%FPL. The statute does not provide for shortening these time periods by means of establishing minimum monthly payments on arrearages. However, as the PGW Payment Arrangement Guidelines show, PGW has unilaterally established its minimum payments, with the result that many customers are required to pay off their arrearages in a shorter time than the

statutory standard of reasonableness would allow.<sup>6</sup> By demanding monthly payments on arrears which are not reasonable, PGW increases the likelihood that the customer will default on the payment agreement. When customers default on payment agreements, they increase the likelihood that their service will be terminated, and that once terminated, they will not be financially able to meet PGW's reconnection terms.

As the PGW Payment Arrangement Guidelines indicate, PGW also requires that customers whose service is on who are seeking a payment agreement must make a substantial upfront payment on the arrears. Low-income non-CRP customers below 150%FPL must pay 20% of the arrears, lower income customer between 150%FPL and 200%FPL must pay 40% of the arrears, lower income customers between 200%FPL and 250%FPL must pay up to 50% of their arrears, customers between 250%FPL and 300%FPL must pay up to 50% of their arrears, and customers over 300%FPL must pay up to 80% of their arrears. Nothing in Chapter 14, and specifically Section 1405, authorizes utilities to require upfront payments from delinquent customers as a pre-condition for establishing payment agreements. AA St.1, at 28. The Commission has not addressed whether the requirement of upfront payments as a precondition for Section 1405 payment agreements are permissible, and if so, whether the substantial requirements that PGW has been imposing are reasonable.<sup>7</sup> In some cases, customers who make an unaffordable upfront payment, will so upset

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<sup>6</sup> For instance, consider the case of a lower income customer with income between 150-200%FPL, with a total outstanding balance of \$835, and who is not on a payment agreement. In order to avoid termination, this customer will be required to pay 40% of this arrearage upfront, leaving a balance of \$500 to be paid in installments. Because PGW requires a minimum of \$40 per month on the arrearage, this customer would be required to pay off the remaining \$500 arrearage in no more than 13 months, in almost 50% less time than the allowable 24 months under Chapter 14 Section 1405(b). AA St.1, Exh. HSG-5.

<sup>7</sup> The Commission's interpretation of Section 1407, which limits the amount of the upfront payment to one installment on the payment agreement, is precedent for a determination that at a minimum, the "upfront payment may not be any amount that the utility decides is appropriate." Re: Chapter 14 Implementation, Docket No. M-

their household budgets that as a consequence, they will soon default on their payment agreement. As Mr. Geller testifies, “PGW appears to impose these upfront payment requirements without regard for their likely effect on the ability of customer to comply with the payment agreement.” AA St.1, at 28.

PGW’s imposition of upfront payments at the levels dictated by the PGW Payment Arrangement Guidelines for customers whose service is on and who are seeking a payment agreement constitutes an unreasonable barrier for customers seeking to avoid termination. PGW has in the past attempted to justify these requirements on the grounds that once the upfront payment is made, the amount of the monthly payments to be made under the payment agreement are more affordable. However, the Commission, recognizing the barrier that unreasonable upfront payments pose to making any agreement at all, has rejected that argument: “...we see little value in lowering subsequent monthly payments if a customer can’t afford a large initial up-front payment ...” Re: Chapter 14 Implementation, Docket No. M-00041802F0002 (Second Implementation Order, entered September 12, 2005), at 33.

4. PGW’s Policy of Refusing to Establish Second or Subsequent Payment Agreements with Customers Seeking to Avoid Service Termination Is a Misuse of the Discretion Provided by Chapter 14.

As PGW’s Payment Arrangement Guidelines show, the Company as a matter of policy does not establish a second payment agreement for a customer who is about to default or has defaulted on an existing payment agreement, unless the customer is able to demonstrate a change in income

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00041802F0002 (Second Implementation Order, entered September 12, 2005) at 31-33; Re: Chapter 14 Implementation, Docket No. M-00041802F0002 (Declaratory Order, entered November 21, 2005) at 9.

within the meaning of Chapter 14 Section 1403. 66 Pa.C.S. § 1403 (Definitions: “Change in income”). Thus, the so-called Guidelines instruct the customer service representative to require that a customer who has had one or more payment agreements or been broken from CRP must pay the “catch-up/cure amount.” While Section 1405(d) specifically delegates discretion to the utility to “enter into a second or subsequent payment agreement with a customer,” PGW consistently refuses as a matter of policy to exercise that discretion in favor of a customer seeking to avoid termination. 66 Pa.C.S. § 1405(d). For a utility with such an inordinately high number of service terminations coupled with the high number of terminated heating customers unable to obtain service reconnection at the approach of cold weather, this policy represents a misuse of the discretion granted it by the General Assembly. As Mr. Geller concludes in his discussion of this policy, “PGW’s actions do not appear to give sufficient weight to the policy considerations of avoiding termination of low and lower income customers and the dangers inherent in service terminations.” AA St.1, at 32.

5. PGW’s Budget Billing Policies Unreasonably Restrict Access to the Program.

In light of the number of service terminations, and the related number of heating customers without service at the approach of cold weather, PGW has not taken sufficient steps to remove potential obstacles to greater enrollment in budget billing. In July 2006, two thirds of PGW’s 45,000 budget billing participants were on payment agreements, where budget billing is compulsory. AA St.1, at 34-35. According to Mr. Geller, there are almost 100,000 additional payment troubled PGW customers who could benefit from budget billing. AA St.1, at 34.

Mr. Geller identified several reasons for the lack of appeal of PGW's budget billing program.

One reason is that PGW's "true-up" policies result in substantial numbers of customers receiving at least once a year a "true-up" bill which is as large as the budget bill itself. The average true-up amount according to PGW's July, 2006 review for the 17,000 customers owing a true-up amount was \$165. About 4,300 of these customers received a "true-up" bill of over \$200. As Mr. Geller stated, of the 34,000 customers who had been on budget billing for 12 months or more in July 2006, for "perhaps as many as one half, budget billing resulted in a large surprise bill, exactly the thing that budget billing is supposed to avoid." AA St.1, at 36. He concluded that such unexpected results have a negative effect on the credibility of PGW's budget billing program, and cause customers who due to their limited incomes should be on budget billing to avoid the program, even at the risk of service termination. AA St.1, at 36-37.

PGW persists in billing customers for the true-up in one lump sum, rather than automatically providing for payment of the true-up in installments. In a recent Interpretative Order, the PUC has recommended that budget billing customers be automatically provided three to six months to pay a true-up bill when the true-up bill is less than a monthly budget bill. When the true-up amount is more than that amount, the Commission has recommended that the true-up amount be automatically rolled into the next year's budget bill.<sup>8</sup>

In addition to its true-up policies, PGW also has imposed unreasonable barriers to entry into budget billing. It requires customers who are more than 10 days past due on their bills to pay off the

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<sup>8</sup> In re: Insuring Consistent Application of 52 Pa.Code § 56.12(7) Equal Monthly Billing, PUC Docket No. M – 0005925 (Final Interpretive Order, dated June 2, 2006).

arrears or enter into a payment agreement as a pre-condition for enrolling in budget billing. In recent times, PGW has increased, rather than eliminated, this barrier to budget billing, because it previously allowed customers who had no arrears more than 40 days past due to enter budget billing without bringing the account current or entering into a payment agreement. AA St.1, at 37-38.

According to Mr. Geller, PGW should enroll customers into budget billing who have no arrears more than 70 days past due, without requiring as a pre-condition that they enter into a payment agreement or pay off the outstanding balance. PGW's claim that it would be more in the customer's interest to enter a payment agreement than roll a 70 days past due bill into a twelve month budget billing plan does not withstand critical analysis. PGW's payment plan terms are such that no payment agreements would be permitted that did not pay off the balance in less than twelve months. AA St.1SR, at 7.

For these reasons, the Commission should condition any rate increase upon PGW's agreement to implement a budget billing plan which provides for payment of true-up amounts in installments consistent with the Commission's Final Interpretative Order and which allows customers to enroll in budget billing without a payment agreement or upfront payment for any arrearages up to 70 days past due. AA St.1, at 48.

**D. PGW Has Not Taken Sufficient Measures to Assist Customers To Obtain Service Reconnection.**

1. PGW's Standards for Requiring the Total Outstanding Balance Upfront from Customers Seeking Reconnection Violate Regulatory Standards and/or Are a Misuse of the Discretion Provided by Chapter 14.

In this proceeding, Action Alliance has provided evidence that PGW's inordinately high

number of heating households without service at the approach of winter arises from collection policies which impose unreasonable and unaffordable reconnection terms on customers.

Some of these policies may not comply with limitations on utility actions imposed by Chapter 14, and as such they are per se unreasonable. However, even if they are not in violation of Chapter 14, they constitute a misuse of the discretion provided to utilities by the legislature, because they have resulted in PGW's failure to provide reasonably continuous service, as required by the Public Utility Code. Among those policies are:

- (1) the establishment of unaffordable payment agreements for delinquent customers whose service is on, with the result that such payment agreements are broken;
- (2) unreasonably broad interpretation of the phrase "defaulted" in the phrase "defaulted on two or more payment agreements" in Chapter 14 Section 1407(c)(2)(i), with the result that terminated customers are unable to obtain service reconnection, due to PGW's refusal to accept less than the total outstanding balance as a condition of reconnection;
- (3) unreasonably broad interpretation of the term "payment agreement" in the phrase "defaulted on two or more payment agreements" in Chapter 14 Section 1407(c)(2)(i), with the result that terminated former CRP customers are unable to obtain service reconnection, due to PGW's refusal to accept less than the total outstanding balance as a condition of reconnection.

Under Chapter 14 Section 1407(c)(2)(i), a utility is authorized to require upfront payment of the reconnection fee, 50% of the applicable deposit, and the total outstanding balance from a customer whose service has been terminated when the customer has "defaulted on two or more

payment agreements.” 66 Pa.C.S. § 1407(c)(2)(i).<sup>9</sup> As described in Section C.3 of this Main Brief, PGW has adopted policies for payment agreements for customers whose service is on which are more demanding than the Commission’s Bureau of Consumer Services would require, and therefore more likely to be unaffordable. When they are unaffordable, they are more likely to be broken, increasing the numbers of customers potentially with “two or more broken payment agreements” who when terminated, will be required to pay the “total outstanding balance” rather than provided with a reconnection agreement.

In addition, PGW has interpreted Section 1407 in a manner which also is likely to increase the number of customers deemed to have “defaulted on two or more payment agreements,” within the meaning of Chapter 14.

First, PGW interprets the term “defaulted” in an unreasonably broad manner.

A customer who has been on a payment agreement and falls two payments behind is deemed to have “defaulted” within the meaning of Section 1407(c)(2)(i), even if the customer cures the default prior to termination of service. In the Chapter 14 Second Implementation Order, the Commission held that a customer who had defaulted on payment obligations and received a termination notice, could avoid termination by curing the default prior to termination.<sup>10</sup> As Mr. Geller testified:

in light of the Commission’s recognition that a customer who has defaulted on a payment agreement may prevent termination by curing that default prior to termination, a more reasonable interpretation of applying Chapter 14 to low and

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<sup>9</sup> Independent deposit requirements for terminated customers are set forth in Chapter 14 Sections 1404(a), 1404(e), and 1404(h). 66 Pa.C.S. §§ 1404(a), 1404(e), 1404(h).

<sup>10</sup> Re: Chapter 14 Implementation, PUC Docket No. M – 00041802F0002 (Order entered September 12, 2005), at 21-22.

lower income households would acknowledge that a payment agreement default that has been cured prior to termination is not to be considered a “default” for the purposes of determining whether a customer who has been terminated may be required to pay the total outstanding balance as a condition of reconnection.

AA St.1, at 24.

Second, PGW also interprets the term “payment agreement” for Section 1407(c)(2)(i) purposes in an unreasonably broad manner. According to PGW, a CRP customer whose service has been terminated for failure to make CRP payments is considered to have “defaulted” on a payment agreement. However, under Chapter 14, both “payment agreement” and “Customer Assistance Program” are defined terms and are clearly distinguishable. There is nothing approaching an “agreement” in a Customer Assistance Program. Chapter 14 defines “Customer Assistance Program” as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation ... in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403 (Definitions: “Customer assistance program”).

In contrast, a “Payment Agreement” is defined as “[a]n agreement where a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa.C.S. § 1403 (Definitions: “Payment agreement”). Significantly, a Customer Assistance Program, unlike a “payment agreement,” does not involve amortization of an unpaid balance, but rather involves forgiveness of the unpaid balance over time. Moreover, entry into a CAP program is not specifically conditioned upon admission of liability for the unpaid balance.

The effect of this overbroad interpretation of the term “payment agreement” is to place lower income customers who have had a service termination while on CRP at some prior time in a situation where, if they suffer a subsequent termination, they will be required to pay the total outstanding balance on the grounds that they have defaulted on “two or more payment agreements.” As Mr. Geller testifies, former CRP customers often have balances extending from their pre-CRP period which are in the thousands of dollars. AA St.1, at 25. Such a customer, when required to pay the entire outstanding balance as a condition of service reconnection, is likely to join the thousands of PGW heating customers who have been unable to obtain service reconnection even at the approach of cold weather.

For these reasons, the Commission should condition any rate increase upon PGW’s commitment not to count an historical default on CRP payments resulting in service termination as a default for the purposes of determining whether a terminated non-CRP customer will be required to pay upfront the total outstanding balance in order to obtain a service reconnection. AA St.1, at 47.

2. The Amount of PGW’s Reconnection Fee Is an Unreasonable Barrier to Service Reconnection.

PGW charges a reconnection fee of \$123.23, the largest by far of any utility in the state. It does not propose in this proceeding to change the amount of the charge. Proposed Tariff Section 5.13.A. The average reconnection fee is \$58.58 and the median fee is \$50. AA St.1, HSG -15. As Mr. Geller testified, combined with other charges imposed by PGW upon customers or applicants seeking reconnection, the magnitude of PGW’s reconnection fee is an “unwarranted impediment to

service reconnection.” AA St.1, at 29. In light of the numbers of PGW customers who once terminated, have difficulty obtaining service reconnection, it is unreasonable for PGW to maintain a reconnection fee at this level.

The amount of PGW’s reconnection fee is particularly inappropriate given the large numbers of low and lower income customers in PGW’s service territory. Customers who are on CRP are already paying a monthly amount for gas service which is at the upper limits of PUC affordability standards. AA St.1, at 29. The high amount of the reconnection charge is also an unreasonable barrier for non-CRP low income customers (who would be income eligible for CRP, but not benefit due to their household composition), because in terms of household income, they are considered low-income for energy related purposes like LIHEAP and/or Hardship Fund eligibility. AA St.1, at 29. PGW’s high reconnection fee is also an unreasonable barrier to service access for Level 2 customers, customers whose household income is between 150%FPL and 250%FPL. As Mr. Geller recognizes, these lower income households, “which include the working poor, are hard pressed under Chapter 14 standards to pay the outstanding balance and/or to maintain timely payments on reconnection agreements which would require arrearages to be paid off within twelve months.” AA St.1, at 29.

PGW attempts to justify its reconnection fee on the grounds that \$123.23 is the actual cost associated with a service reconnection. However, given the magnitude of this charge, the issue becomes not merely a matter of cost of service, but one of preserving reasonable access to utility service for low and lower income persons whose service has been terminated for non-payment. As Mr. Geller testified, for PGW’s customer base with a large proportion of low and lower income customers, the access issue is critical. AA St.1SR, at 4. In order to address this issue, any rate

increase should be conditioned upon reduction of PGW's reconnection charge to \$50.00. AA St.1, at 29-30, 47.

3. PGW's Excavation Charge Is An Unreasonable Barrier to Service Reconnection.

When PGW is unable to obtain access to a dwelling in order to terminate service, and if the dwelling is among the approximately 50% of dwellings receiving residential service where the Company has not installed a curb valve, then service is terminated by "excavation" – digging up the street to terminate service at the gas main. When service termination is accomplished by excavation, PGW's Tariff provides that the Company may charge a "dig-up charge," to cover excavation cost, which PGW currently has set at \$372. Proposed Tariff Section 5.13.C. Counting the reconnection fee, customers whose service has been terminated by excavation must therefore pay upfront almost \$500 in reconnection related charges, in addition to applicable deposits and all or part of the existing outstanding balance.

PGW does not propose to change the "dig-up charge" in this proceeding. However, the amount of the charge is three times the reconnection fee. The "dig-up" charge is an unreasonable impediment to service reconnection for low and lower income customers and applicants, even more so than the reconnection fee and for the same reasons. AA St.1, at 30. Moreover, to the extent that absence of a curb valve is caused not by any fault of the customer, but rather by a historical failure of PGW to install curb valves, the "dig-up" charge is unfair. AA St.1SR, at 5. In order to make service reasonably continuous for low and lower income customers, PGW should not continue to impose the requirement that terminated customers pay a "dig-up" charge upfront as a condition of

reconnection. For this reason, the Commission should condition any rate increase granted upon PGW taking the steps recommended by Mr. Geller – waiving the “dig-up” charge for terminated Level 1 customers, and allowing terminated Level 2 customers to pay the “dig-up” charge as part of the remaining balance to be paid in monthly installments pursuant to the reconnection agreement. AA St.1, at 30, 47.

4. PGW’s Deposit Requirements for Non-CRP Low-Income Customers Are a Misuse of Discretion.

Consistent with Chapter 14 Sections 1404(f)(2) and 1407(c)(2)(iii), PGW does not require deposits from CRP eligible applicants for service and from terminated CRP customers seeking service restoration. 66 Pa.C.S. §§ 1404(f)(2), 1407(c)(2)(iii). However Level 1 customers who are income eligible for CRP (household income at or below 150%FPL), but who due to household size and/or consumption levels would not benefit from CRP are required to pay a deposit upfront equal to two estimated monthly bills. If the customer is a new applicant, the whole deposit must be paid upfront as a condition of service. If the customer is seeking reconnection, PGW requires 50% of the deposit upfront, with 25% thirty days later, and 25% thirty days after that. AA St.1, at 31.

For Level 1 customers who are not on CRP, the deposit is an unreasonable impediment to access to utility service. As Mr. Geller testified: “Given the fact that these households are as indisputably low income as other households who benefit from CRP, and that undue numbers of PGW households have a demonstrated financial inability to obtain service reconnection even with the approach of winter, it is unreasonable to require a deposit from Level 1 customers as a condition of service reconnection.” AA St.1, at 31.

For these reasons, the Commission should condition any rate increase granted upon PGW's waiver of deposit requirements for all Level 1 customers, whether CRP eligible or not. AA St.1, at 31, 47.

5. PGW's Reconnection Policies For Terminated Customers Who Have Obtained LIHEAP Crisis Grants Are Unreasonable.

The Cold Weather Survey results for the past two years have shown that there have been over 4500 low-income who had been terminated during the year, and had not been able to obtain service reconnection with the approach of cold weather. With incomes at or below 150%FPL, these households are eligible for LIHEAP Crisis grants. Even when customers have demonstrated eligibility for these grants, which have provided at least \$300, PGW has refused to accept the grant and promptly reconnect service, in situations where the amount from the grant and additional funds that the customer may be able to provide are not sufficient to satisfy the amount dictated by the PGW Payment Agreement Guidelines. As a result, service reconnections in the Cold Weather season have been delayed or not been accomplished, depending upon the customer's ability to obtain supplementary grants and or obtain additional funds from other sources. AA St.1, at 14-15.

As Mr. Geller testified, a more reasonable policy would be for PGW to reconnect service upon the Department of Public Welfare's approval of the LIHEAP Crisis application, "with the added requirement that the customer apply for and assign to PGW other specified grants as they may become available." Such reconnection could also be linked with a payment agreement providing a CRP customer with the opportunity to pay their CRP arrearages over 12 to 24 months. AA St. 1, at 15.

For these reasons, the Commission should condition any rate increase upon PGW's agreement to adopt a policy of accepting a LIHEAP Crisis grant and reconnecting service to any previously terminated heating customer without service as of November 15. AA St.1, at 47.

**E. Certain Proposed Tariff Revisions Are Unreasonable.**

1. Definition of "Applicable Law" (Proposed Tariff Definitions).

In the parts of its proposed Tariff which contain customer service rules and standards, PGW has in numerous instances, amended its current Tariff to eliminate specific substantive provisions and to substitute in their place the statement that PGW will comply with "Applicable Law." The statement that PGW will comply with "Applicable Law" is misleading. As Mr. Geller points out, PGW's definition of "applicable law" is impermissible and unreasonably broad. It contains not only the provisions of PGW's Tariff, the Public Utility Code and legally binding regulations interpreting the Code, but also "Company Policy ... as amended from time to time." AA St.1, at 39.<sup>11</sup>

The proposal to include present and future "Company Policy" within the definition of Applicable Law should be rejected, because it does not recognize the nature of an approved Tariff under Pennsylvania law. An approved Tariff has the force of law.<sup>12</sup> A Tariff acquires the force of law not when it is proposed by a public utility, but when it is reviewed and approved by the Public

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<sup>11</sup> PGW Exhibit RG-2, which follows PGW St. 6, contains a red-lined version of PGW's current Tariff which reflects the proposed changes. See the Definitions of "Applicable Law" and "Company Policy" contained in the Definitions Section of this red-lined Tariff.

<sup>12</sup> Stiteler v. Bell Commw., 32 Pa.Cmwlth 319, 379 A.2d 339 (1977); Brockway Glass Co. v. Pa. Public Utility Commission, 63 Pa.Cmwlth 238, 437 A.2d 1067 (1981)

Utility Commission. In contrast, PGW's proposal gives force of law to company policies which have not received prior Commission review and approval. In fact, PGW declined even to present in discovery the "numerous" company policies which if this Tariff provision were approved, would be ratified by the Commission as having the force of law. In making this proposal, PGW is requesting that the Commission essentially provide it with the equivalent of a regulatory "blank check." AA St. 1SR, at 8.

To allow PGW to retain this provision in its proposed Tariff would be not only detrimental to the authority of the Commission, but also prejudicial to the interests of residential customers, applicants and occupants. In its proposed Tariff, PGW commits to follow its unilaterally broadened conceptions of "Applicable Law" in numerous areas critical for residential customers, applicants and occupants. Applications for service and credit standards, billing practices, termination standards and procedures, reconnection standards and procedures, and dispute and complaint procedures are affected by these proposed changes.<sup>13</sup>

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<sup>13</sup> In addition to termination practices and procedures discussed below as a concrete example, the proposed Tariff contains provisions committing the utility to comply with "Applicable Law" (including "Company Policy") in the following critical areas:

*Applications for Service and Credit Standards.* Proposed Section 2.4.B provides that PGW "may reject requests for Gas Service in accordance with any right set forth in Applicable Law ...." Proposed Section 2.4.C provides that when PGW rejects an application for service, the Company "shall inform the Applicant as required by Applicable Law." Proposed Sections 3.1.A and 3.1.B provide that PGW will require a deposit in "in accordance with Applicable Law," and eliminates almost three pages of current Tariff provisions concerning credit and deposit standards and procedures, security deposits, security deposits for continued or renewed service. Proposed Section 3.2 states in sub-parts that interest on deposits will be calculated and deposits will be "returned or credited" "in accordance with Applicable Law."

*Billing Practices.* In Proposed Section 4, PGW has added the statement that "PGW's billing practices shall be in accordance with Applicable Law," (Proposed Section 4.1) while eliminating detailed descriptions concerning Application of Payment (Current Section 4.2) and the current provisions concerning "make-up bills" (Current Section 4.5.A).

*Reconnection Standards and Procedures.* Proposed Section 5.8 concerning Residential Service Restoration, PGW proposed to add that "Gas Service will be restored to Residential Customers in accordance with

In the strictly regulated area of termination standards and procedures, PGW's proposed language would enable the Company to adopt policies that are inconsistent with Commission standards and maintain those policies so long as the Commission has not formally invalidated the policy in a legally binding order. In Proposed Section 5, PGW has added the provision that "PGW may terminate Gas Service to any dwelling or account in accordance with Applicable Law" (Proposed Section 5.1) while eliminating specific Tariff provisions concerning Termination Notices (Current Sections 5.3.A - 5.3.A.9), pre-termination personal contact requirements (Current Sections 5.3.B. - 5.3.C.2), Medical Emergency Procedures (Current Sections 5.5 - 5.5.G). In Proposed Section 6.1 concerning Termination Without Notification For Safety-Related Reasons Or For Unauthorized Use, PGW has added that "reasons for termination shall include those permitted by Applicable Law...." Customers, applicants or occupants contesting a Company action based on a Company Policy never actually reviewed or approved by the Commission would have the burden before the Commission of overcoming the presumption of validity of an "approved" Tariff provision.

As Mr. Geller testified:

Customers should not be given the impression by PGW Customer Service Representatives that PGW policies have the force of law when, in fact, they are only policies and not approved Tariff provisions. And informal and formal complainants

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Applicable Law" (Proposed Section 5.8.A), while eliminating specific provisions concerning restoration terms and the timing of restoration.

*Dispute and Complaint Procedures.* In Proposed Section 7 concerning the Inquiry, Review, Dispute, and Appeals Process, PGW has added the statement that "PGW will handle inquiries and/or disputes in accordance with Applicable Law" (Proposed Section 7.1) while eliminating specific provisions concerning customer inquiries, disputes and appeals to the Commission's Bureau of Consumer Services.

before the PUC should not have to overcome PGW arguments that challenged Company actions are consistent with corporate policy and therefore, by definition, PUC endorsed.

AA St.1SR at 7-8.

At the hearings, PGW stated that the Company might “modify the language regarding company policy” to specify that “company policy” conforms with “applicable law.” However, that modification does not address Action Alliance’s due process objection. Company policies, present and future, should not have the force of law unless explicitly approved by the Commission. Tr. at 943-44. A provision in the Tariff which states that company policies are all consistent with state law and regulation, even when they have not been specifically approved by the Commission, does not make inclusion of “Company Policy” as part of “Applicable Law” any less objectionable. All this modification does is state that PGW believes that its policies conform with state law and regulation. However, PGW’s good faith belief that such is true, is no substitute for actual compliance, as determined by the Commission. Inclusion of “Company Policy” in the Tariff definition of “Applicable Law” is misleading to customers.

For these reasons, the commission should deny approval of PGW’s inclusion of “Company Policy” within the definition of Applicable Law in its proposed Tariff.

2. “Sole Discretion” to Determine Adequate Assurances (Section 8.3.B).

PGW proposes to amend Section 8.3.B of its current Tariff, which addresses the terms of reconnection for applicants or customers whose service has been terminated for unauthorized use, to add that it shall be in the “sole discretion” of PGW to determine whether “satisfactory assurance” has been given that “no damage or unauthorized interference or diversion or use will be caused in

the future.” This provision is related to Chapter 56 Section 56.191(3) concerning service reconnection to premises where unauthorized use has occurred. Section 56.191(3) authorizes a utility to require as a condition of reconnection that a customer provide “[a]dequate assurances that any unauthorized use or practice will cease” plus a reconnection fee and applicable deposits.

PGW’s claim of “sole discretion” misrepresents the law. PGW does not have “sole discretion” to make the determination that a customer has not provided adequate assurances. Under Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, the Commission has jurisdiction over the application of Chapter 56. A utility does not have “sole” discretion to decide the terms on which a customer may obtain service reconnection. A customer has a right to appeal a utility refusal to provide service or to impose unreasonably onerous conditions upon service restoration. It is confusing and misleading for PGW to inform the customer that it has sole discretion or to show the customer a provision in its Tariff stating that it has “sole discretion.” This is true even if PGW at the same time informs the customer of his/her right to appeal to the Commission. As Mr. Geller testified, a “customer confronted with this amended Tariff provision might well conclude that the words ‘sole discretion’ mean that even the Commission will not in fact exercise its authority to review an adverse determination by PGW concerning what is necessary to provide ‘satisfactory assurance.’” AA St.1, at 41.

For these reasons, the Commission should deny approval of the addition of the words “sole discretion” in Section 8.3.B. of the proposed Tariff.

### 3. Failure to Distinguish “Unauthorized Use” from “User Without Contract.”

PGW’s proposed Tariff contains several provisions which make reference to “unauthorized

use.” However, under Pennsylvania public utility law and regulation regarding residential service, the term “unauthorized use” has a specialized meaning. As Mr. Geller testifies, it refers to use of gas which results from “unauthorized physical alterations of meters and supply equipment (self turn-on, meter tampering or meter bypass, all forms of unauthorized use)....” AA St.1, at 42; 52 Pa.Code § 56.2 (Definition: “Unauthorized use of utility service”). It does not include “users without contract,” occupants who have “taken or accepted utility service without the knowledge or approval of the utility” without self-turn-on, meter tampering or meter bypass.<sup>14</sup> Occupants become users without contract in many situations, some actively fostered by the utility policies of utilizing a “soft-off” to terminate service to a tenant/customer pending the replacement of that tenant customer by a successor tenant customer. In other circumstances, a customer of record may leave the account premises without notifying the public utility, and the remaining occupants may continue to pay the bill without taking the steps to put the bill in the name of one of the remaining occupants.

The distinction between an “unauthorized user” and a “user without contract” is too important a distinction not to be included in PGW’s Tariff. As a matter of clarity, the distinction must be included in the Tariff. AA St.1, at 42. Without this express distinction, unauthorized users may face terminations without notice and denial of other protections to which they are entitled. The Commission has recognized that “users without contract,” unlike “unauthorized users,” must be provided with written 72 hour pre-termination notices. Because “users without contract” have not engaged in theft or fraudulent conduct, they should be accorded other consumer protections

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<sup>14</sup> 52 Pa.Code § 56.91 (referring to “any taking or acceptance of utility service without the knowledge or approval of the utility, other an unauthorized use of service as defined in § 56.2”). Since the passage of Chapter 14, the Commission has consistently held that there is nothing in Act 201 which has invalidated the historical distinction between “unauthorized use” and “user without contract.” Re Chapter 14 Implementation, PUC Docket No. M – 00041802 F0002 (Order entered March 4, 2005), at 8-10; Re: Chapter 14 Implementation, PUC Docket No. M – 00041802 F0002 (Order entered June 2, 2005), at 10-13.

available to customers, such as medical emergency protection, and protection against winter termination depending on household income.

Moreover, PGW continues unreasonably to maintain that the Commission's interpretation of Chapter 14 on this issue is erroneous. As Mr. Gyory testified, PGW has complied with the Commission's Implementation Order only as a matter of "company policy." PGW St. 6R, at 17. This provides no assurance to consumers, because PGW policies are not expressly set forth in the Tariff, and unlike the Tariff, may be amended at any time, without the need for Commission review and approval.

In the interest of assuring that customers are not misled by PGW's Tariff into believing that "users without contract" may be terminated without prior written notice, and have no basis for claiming other consumer protections available to customers and occupants, the Commission must require as a condition of approval of the proposed Tariff that PGW clarify its use of the term "unauthorized use" and similar terms in its Tariff. As Mr. Geller recommends, the Commission must require that PGW include in its Tariff the statement that "a residential occupant who has taken or accepted utility service without the knowledge or approval of the utility (without a self-turn on, a meter bypass or meter tampering) is not a person who has committed 'unauthorized use' or 'used Gas Service without PGW authorization' within the meaning of this Tariff." AA St.1, at 42.

#### 4. Amendment to Notice of Rejection (Section 2.4.C).

PGW's current Tariff Section 2.4.E provides:

Where PGW rejects an application for Gas Service, PGW shall inform the Applicant in writing of: (1) the specific reason(s) why service is not being provided, (2) any conditions that must be met in order to obtain service, (3) an itemization of the

amount for any charges that must be paid in order to obtain service, (4) a description of the process by which the Applicant can Dispute PGW's decision.

PGW St.6, Exh. RG-2, Section 2.4.C. This provision applies to all applications for gas service, and requires the communication of a full and complete itemized statement concerning all conditions of service, including but not limited to the amount of an outstanding balance, the terms of a payment agreement including the amount of an upfront payment, payment of a reconnection fee if applicable, payment of an excavation fee if applicable, payment of a deposit if applicable, and the terms of the payment of a deposit. In fact, as is evident on the document which PGW is currently utilizing when it denies service to an applicant, information concerning whether a deposit will be required, and if so, the amount and timing, represents only a fraction of the vital information which may give rise to a rejection of an application for service. AA St.1, Exh. HSG-25.

In contrast, in its proposed Tariff, PGW provides only: "Where PGW rejects an application for Gas Service, PGW shall inform the applicant as required by Applicable Law." Applicable Law, in turn, is contained at Chapter 56 Section 56.36, which limits the subject matter for which a written notice is required to information relating to the deposit. Section 56.36 states in pertinent part:

A utility shall establish written procedures for determining the credit status of an applicant.... (1) *Reasons for denial of credit.* If credit is denied, the utility shall inform the ratepayer or applicant in writing of the reasons for the denial.

52 Pa.Code § 56.36. Nothing in Section 56.36 requires a utility to provide an applicant with a full and complete itemized statement of all sums to be paid of which the deposit is only one element.

The requirement that PGW provide a full and complete itemized statement of the reasons for rejection is an important customer protection. As Mr. Geller explained:

PGW's existing notice requirement is more useful to applicants seeking service or customers/applicants seeking service reconnection because it addresses the full range

of actions and payments which PGW is requiring in order for the applicant/customer to obtain service. The existing PGW notice is important for customers, because it requires PGW to set forth exactly what is required for service reconnection. Often, substantial time will elapse between the initial application for service and the time when the customer is able to meet all the requirements. Without the written notice, customers may misunderstand or forget certain specific requirements. Or, also, when the customer without a written notice reaches the point where he/she believes he can satisfy PGW's requirements, he encounters what are or appear to be a different sum to be paid or actions to be taken from what had originally been stated or understood. In my years of experience talking with advocates for utility customers, there is universal agreement concerning the importance for all concerned of a detailed written notice of rejection.

AA St.1, at 43.

Under Gas Choice Act Section 2203(7), the Commission is required, "at a minimum [to] continue the level and nature of the consumers protections, policies and services ... that are in existence as of the effective date of this chapter to assist low-income retail natural gas customers to afford natural gas services." 66 Pa.C.S. § 2203(7). This traditional PGW consumer protection assists low-income customers to afford natural gas services, because it requires PGW to provide the necessary information and/or well defined financial objectives without which low income customers without service have greater difficulty in marshaling their resources to obtain natural gas service.

PGW can not remove this existing notice requirement without running afoul of constitutional due process requirements. As a municipally owned utility, PGW's actions constitute state action. Under the Public Utility Code, a public utility is required to provide service without "unreasonable delay." 66 Pa.C.S. § 1501. A public utility also may not unreasonably discriminate against a customer or applicant, and may only deny service to an applicant for cause. 66 Pa.C.S. § 1502. For these reasons, PGW may not deny utility service to an applicant without providing written notice providing an adequate description of the utility's requirements and informing the

applicant of the procedure for contesting the utility's denial. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 98 S.Ct 1554 (1978).

For these reasons, the Commission should deny PGW's proposal to amend Section 2.4.E of its current Tariff.

5. Elimination of Protection for Persons Not Responsible for Unauthorized Use (Section 8).

Section 8 of PGW's current Tariff contains a provision at Section 8.3.D that provides that PGW "shall not refuse to provide Gas service to an Applicant who is not responsible for the damage or for the unauthorized use of Gas." PGW St.6, Exh. RG-2, deleted Section 8.3.D. This provision should be read in tandem with other provisions of Section 8, in which the Company asserts broad authority to withhold gas service from premises where it claims unauthorized use has occurred. Section 8.1.D states that a customer is "responsible" for the protection of the Company's property at the premises (like the meter) and may be required to pay the costs of repairs or replacement of the equipment. Section 8.3 provides that a customer being supplied with gas as a result of meter tampering or other interference with PGW equipment may be required prior to reconnection to pay for the gas used and for the costs of inspections, replacement and repairs to the equipment. Section 8.3.B. provides that PGW is not required to replace any equipment until the value of the gas used as a result of tampering or other interference with the equipment has been paid for and given satisfactory assurance that no such tampering or other interference will occur in the future. Under the current Tariff, as under the proposed Tariff, PGW has the right to terminate service without prior written notice to premises where unauthorized use has occurred. Section 8.3.D ensures that

current or prior customers and current or prior occupants who are not responsible for the unauthorized use may not be denied service solely because they were a customer or occupant or otherwise associated with premises where unauthorized use occurred.

In its proposed Tariff, PGW has eliminated the protection that Section 8.3.D provides to innocent customers and applicants. In defense of its position, the Company claims that the Public Utility Code and Commission regulations do not allow innocent persons to be held responsible for unauthorized use they did not commit. However, as Mr. Geller observes, there is no explicit provision in the Code or supporting regulations specifically protecting non-responsible applicants against over-reaching by utilities who may be more concerned with recovery of their loss than fairly allocating responsibility. He further notes that “PGW has retained in Sections 6 and 8 of its tariff many provisions concerning its rights against those who have committed theft or tampering. It is only fair to leave intact the historical protection in the tariff which specifies and clarifies those not ‘responsible’ for theft or tampering may not be required to pay for the stolen service.” AA St.1SR, at 10.

For these reasons, the Commission should deny PGW’s proposal to delete Section 8.3.D from its Tariff.

6. Elimination of “Severe Hardship” Home Visit Provision (Section 2).

Section 2.1.D of PGW’s current Tariff provides that “[a]ny Applicant for Gas Service who cannot complete his/her application by telephone or mail, and for whom a personal visit to one of PGW’s Customer Service Centers is a severe hardship due to disability, may request that a PGW Customer representative complete the application at the Applicant’s residence.” In its proposed

Tariff, PGW has eliminated this provision. PGW St.6, Exh. RG-2, deleted Section 2.1.D.

Action Alliance views this proposal by PGW as yet one more reflection of the inadequate attention which PGW gives to the CARES aspect of its universal service programs. These inadequacies have been fully discussed above in an earlier part of this Brief. PGW now proposes to remove a historical provision in its Tariff which provides that upon a customer request, in cases of “severe hardship,” when other means of completing an application for service are not feasible, the Company shall arrange for a representative to make a home visit for the purpose of assisting a disabled customer with an application for service.<sup>15</sup> As Mr. Geller testified, this is “the type of individualized service that the Commission has recognized that utilities must provide to the sick, infirm and vulnerable.” AA St.1, at 45. Given the inadequacy of PGW’s CARES efforts, it is not reasonable to remove this universal service provision from PGW’s Tariff.

For these reasons, the Commission should deny PGW’s proposal to eliminate Section 2.1.D from its Tariff.

7. Discontinuance of Service to Leased Premises (Sections 5.2.B., 5.5.A., 5.6.A.).

In proposed Sections 5.2.B, 5.5.A, 5.6.A, PGW indicates that the Company will comply with the state USTRA (Utility Service Tenants’ Rights Act) statute. PGW St.6, Exh. RG-2, Sections 5.2.B., 5.5.A., 5.6.A. As Mr. Geller testified, with the enactment of the Gas Choice Act, jurisdiction over PGW was transferred from the Philadelphia Gas Commission to the PUC. Utilities under PUC jurisdiction are subject not to USTRA, but to a similar statute entitled

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<sup>15</sup> PGW has a practice of scheduling a home visit in some circumstances for CRP and LIHEAP enrollment purposes. See AA St. No. 1, Exh. HSG-9.

Discontinuance of Service to Leased Premises, 66 Pa.C.S. §§1521 et seq. PGW has conceded that these proposed Tariff Sections should be amended to reflect that the applicable statute is 66 Pa.C.S. §§ 1521 et seq. PGW St. 5R, at 18. For these reasons, the Commission should therefore order that PGW amend these provisions of its proposed Tariff accordingly.

## V. CONCLUSION.

In this Main Brief, Action Alliance has focused on the inadequacy of PGW's service – as described by Action Alliance's witness Harry S. Geller. On the basis of that demonstrated inadequacy, which is consistently leaving over 9000 heating customers per year without service even at the approach of cold weather, Action Alliance respectfully submits that the Commission should deny PGW's requested rate increase in its entirety.

However, in the event that the Commission determines that it should grant a base rate increase to PGW, Action Alliance supports the testimony presented by the Office of Consumer Advocate and by the Office of Trial Staff that the constitutionally based "just and reasonable" standard, long established "test year" ratemaking principles and application of the cash flow method as set forth in the Management Agreement Ordinance do not allow the Commission to provide a base rate increase of more than \$22.5-\$25 million. For the reasons advanced by OCA and OTS, Action Alliance also opposes PGW's proposal to divert the proceeds from off-system sales and capacity release credits to fund capital projects from their existing use as a credit to PGW's Gas Cost Rate, thereby directly reducing rates to customers. In the event that the Commission grants any rate increase and/or grants any change in the use of the proceeds of off-system sales and capacity release credits, Action Alliance requests that the Commission require that PGW take the

following measures as a condition of receiving such increased revenues:

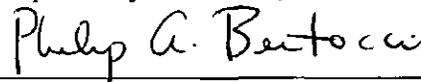
- (a) PGW shall reduce its Reconnection Fee to \$50.00.
- (b) PGW shall waive its Excavation Charge for customers and applicants with household income at or below 150%FPL, and shall allow customers and applicants with household income between 150%FPL and 250%FPL to pay the excavation charge as part of the remaining balance to be paid in monthly installments pursuant to the reconnection agreement.
- (c) PGW shall waive deposit requirements for customers and applicants whose household income is at or less than 150%FPL.
- (d) Between November 15 and April 1, PGW shall accept a LIHEAP Crisis grant as sufficient to reconnect service upon being offered such grant by the Department of Public Welfare on behalf of the LIHEAP Crisis applicant.
- (e) PGW shall refer to CARES for on-going case management those customers who are receiving service or whose service has been terminated for non-payment and who have exhausted 3 monthly medical certifications and have not been able to make a payment agreement; and PGW shall allow such customers to maintain service so long as they continue to provide medical certifications and make equitable monthly payments on current bills.
- (f) PGW shall not count a customer's historical default on CRP payments resulting in service termination as a default for purposes of determining whether a non-CRP customer will be offered a payment agreement; if the non-CRP customer has been terminated, PGW shall not count the customer's historical CRP default in

determining whether that customer will be required to pay upfront the total outstanding balance in order to obtain a service reconnection.

- (g) PGW shall not count a customer's prior default on a payment agreement, which was cured prior to termination, as a prior default for the purposes of determining whether the customer will be offered a payment agreement; if the non-CRP customer has been terminated, PGW shall not count the customer's historical CRP default in determining whether that customer will be required to pay upfront the total outstanding balance in order to obtain a service reconnection.
- (h) PGW shall institute a budget billing plan which automatically provides for payment of "true-up" amounts in installments extending over 3 to 6 months when the true-up amount is less than one monthly budget bill, and in installments extending over the next budget year when the true-up amount is more than one monthly budget bill; PGW shall also allow customers to enroll in budget billing without making a payment agreement or an upfront payment for any arrearages up to 70 days past due.

Finally, no matter what action the Commission might take with regard to the above rate related matters, Action Alliance submits that the Commission should deny PGW's requests to revise certain provisions of its Tariff as set forth in Section IV(E) of this Main Brief and in the Form of Order attached as Appendix B.

Respectfully submitted,



PHILIP A. BERTOCCI, ESQUIRE  
THU B. TRAN, ESQUIRE

Attorneys for Action Alliance of Senior  
Citizens and TURN

## Appendix "A"

### Schedule of Action Alliance Testimony and Exhibits

Direct Testimony of Harry S. Geller, incorporating Exhibits HSG-1 through HSG-27, identified as Action Alliance Statement No. 1 on May 22, 2007 and admitted on the same date.

Rebuttal Testimony of Harry S. Geller, identified as Action Alliance Statement No. 1-R on May 22, 2007 and admitted on the same date.

Surrebuttal Testimony of Harry S. Geller, incorporating Exhibits HSG-28 through HSG-33, identified as Action Alliance Statement No. 1-SR on May 22, 2007 and admitted on the same date.

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Appendix "B"

Proposed Form of Order

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

And now, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of the  
Petition of Philadelphia Gas Works for a base rate increase and other revisions to its Tariff,

- (1) the Petition of the Philadelphia Gas Works for a base rate increase is hereby denied;
- (2) the Petition of the Philadelphia Gas Works to allow the Company to utilize proceeds from capacity release credits and off-system sales to fund capital projects rather than to apply them as a credit to the gas cost rate is hereby denied;
- (3) the Petition of the Philadelphia Gas Works to revise its Tariff is denied to the extent that the proposed Tariff:
  - (a) includes "Company Policy" within the definition of "Applicable Law" in the Definitions Section of the proposed Tariff;
  - (b) includes the words "sole discretion" in Section 8.3.B of the proposed Tariff.
- (3) the Petition of the Philadelphia Gas Works to revise its Tariff is denied to the extent that the proposed Tariff:
  - (a) fails to include a statement that "a residential occupant who has taken or accepted utility service without the knowledge or approval of the utility (without a self-turn on, a meter bypass or meter tampering) is not a person who has committed 'unauthorized use' or 'used Gas Service without PGW authorization' within the meaning of this Tariff."
  - (b) amends Section 2.4.E of its current Tariff concerning the contents of the written Notice of Rejection.
  - (c) deletes Section 8.3.D concerning the customer protections for persons who are "not responsible" for unauthorized use of gas.
  - (d) deletes Section 2.1.D of its current Tariff providing for Home Visits to severely disabled applicants and customers in certain situations.
  - (e) fails to substitute the words "Discontinuance of Service to Leased Premises, 66 Pa.C.S. §§ 1521 et seq." for "Utility Service Tenants' Rights Act, 68 P.S. §§ 399.1, et seq."

Pennsylvania Public Utility Commission :  
v. : Docket Nos. R-00061931  
Philadelphia Gas Works :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Main Brief upon the presiding officers and the active parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (service by a participant) and § 1.59 (number of copies to be served), in the manner and upon the persons listed below:

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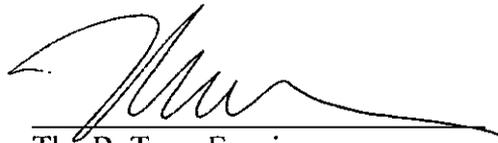
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June 12, 2007

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Re: Pennsylvania Public Utility Commission v.  
Philadelphia Gas Works

Docket No: ~~R-00061391~~ R-00061931

Dear Secretary McNulty:

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

As evidenced by the enclosed Certificate of Service, copies are being served on all active parties of record.

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FOLDER

Sincerely,

Richard A. Kanaskie  
Prosecutor  
Office of Trial Staff  
PA Attorney I.D. #80409

Enclosure  
RAK/clp  
cc: Parties of Record

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission**

v.

**Philadelphia Gas Works**

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**Docket No. R-00061931**

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OF THE  
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Dated: June 12, 2007

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## I. INTRODUCTION

The Office of Trial Staff (OTS), in its statutory duty to represent the public interest in this base rate proceeding, analyzed the Philadelphia Gas Works (PGW or Company) filing and concluded that there is no evidence contained in the test year data to support any increase in rates, let alone, the staggering amount requested by the Company. The Company's own exhibits consistently identify sufficient debt service coverage in the future test year. A 1.34x debt service coverage is above investment grade and is not indicative of a utility in such dire straits that it requires over \$100,000,000 in additional annual revenue.

OTS maintains that it is necessary that the three main stakeholders in this Company, namely, the City of Philadelphia as the owner, the Company and the ratepayers all must shoulder a proportional share of the modest corrective measures needed based on this filing. OTS, accordingly, recommends an equity infusion by the owner, recognition of operating efficiencies by the Company and increased contributions from ratepayers through the OTS recommended \$25 million increase to base rates as a means of addressing the Company's debt position.

To accomplish this, OTS believes the Company must request forgiveness of the payment of its \$45 million loan due to the owner of the utility. This action on the part of the City will affirm its commitment to making the Company successful. Furthermore, OTS has identified \$11,338,000 adjustments, as identified in OTS Table 1, to the Company's Operation and Maintenance expense claims that should be recognized. Rather than lower its overall recommendation to increase base rates by \$25 million, OTS

believes that the funds associated with these adjustments should be applied to lowering the Company's debt position. Finally, by recommending this \$25 million increase, OTS recognizes that the ratepayers of PGW must contribute to the ongoing provision of safe and reliable service.

OTS maintains that the only responsible solution to the Company's operating deficiencies is for all interested parties to contribute to maintaining, and improving, the Company's service. OTS, in a normal rate case proceeding, would advocate that its adjustments must be recognized by a reduction to the OTS recommended increase. In this case, OTS did not reduce its recommended \$25 million increase, but believes that recognition of the adjustments is appropriate in offering guidance to the Company in identifying operational efficiencies that can be applied to reducing the Company's debt. This approach is in the public interest because it balances the need of the Company to reduce its debt, but does not put that burden solely on ratepayers.

A. History of the Proceeding

On December 22, 2006, Philadelphia Gas Works filed Supplement No. 16 to Tariff Gas-Pa. P.U.C. No. 2 to become effective February 20, 2007, containing proposed changes in rates, rules, and regulations calculated to produce \$107 million (11.0%) in additional annual revenues.

On February 8, 2007, the Commission issued an Order suspending the filing pursuant to 66 Pa. C.S. §1308(d). This suspension will remain in effect from February 20, 2007, until September 20, 2007, unless permitted by Commission Order to become effective at an earlier date. The Commission directed that an investigation be instituted

to determine the lawfulness, justness and reasonableness of the Company's proposed tariff. Furthermore, this investigation was ordered to include a review of the Company's existing rates, rules and regulations.

The Office of Trial Staff filed its Notice of Appearance on December 28, 2006, and complaints were filed by the following parties: Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Action Alliance, Philadelphia Industrial and Commercial Gas Users Group. Moreover, PECO Energy Company, Interstate Gas Supply, Philadelphia Housing Authority, the School District of Philadelphia, and Hess Corporation filed Petitions to Intervene.

This filing was assigned to Administrative Law Judges Cynthia W. Fordham and Angela T. Jones (ALJs) for the prompt scheduling of hearings to result in the issuance of a Recommended Decision. The ALJs served notice of an Initial Prehearing Conference that was held on February 23, 2007. A second Prehearing Conference was held on March 2, 2007, which resulted in the establishment of a procedural schedule.

Public Input Hearings were held on March 26, 2007 at the Dorothy Emanuel Recreation Center; March 28, 2007 at George Washington High School; and afternoon and evening sessions were held on April 9, 2007 at the Community College of Philadelphia.

Evidentiary hearings were held in Philadelphia on May 21, 2007 through May 24, 2007, with ALJs Fordham and Jones presiding. During the evidentiary proceeding, OTS testimony and exhibits were entered into the record on the following days:

- May 21, 2007-- OTS Statement 3, 3-SR; OTS Statement 4, 4-SR; OTS Statement 5, 5-SR
- May 23, 2007-- OTS Statement 1, 1-SR; OTS Statement 2, 2-SR

In accordance with the procedural schedule established at the Prehearing Conference and pursuant to the requirements of Commission regulations<sup>1</sup>, the Office of Trial Staff hereby submits this Main Brief in support of the positions set forth in the testimony and exhibits of its expert witness presented in this proceeding.

B. Evidentiary Standard and Burden of Proof

The Company has the burden of proving the reasonableness of each and every element of its claim. Section 1301 of the Public Utility Code (Code), states that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with regulations or orders of the commission.”<sup>2</sup> The Code also provides that the burden of establishing the justness and reasonableness of rates is clearly on the public utility.<sup>3</sup> The very purpose of this proceeding is to assure that just and reasonable rates are established for the customers of PGW.

The standard to be met by PGW is set forth at Section 315(a) of the Public Utility Code where it is established that:

**[r]easonableness 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 complaint involving any proposed increase in rates, the

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<sup>1</sup> 52 Pa. Code § 5.501  
<sup>2</sup> 66 Pa. C.S.A. §1301.  
<sup>3</sup> 66 Pa. C.S.A. §315(a).

burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.<sup>4</sup>

The relevant statutory provision of Section 315(a) of the Public Utility Code clearly shows that the legislature intended that the utility carry the burden of proving the justness and reasonableness of its proposed and existing rates.

The Commonwealth Court in reviewing Section 315(a) interpreted the utility's burden of proof in rate proceedings as follows:

[s]ection 315(a) of the Public Utility Code, 66 Pa. C.S. §315(a), places the burden of proving the justness and reasonableness of a 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.<sup>5</sup>

The legislative intent regarding the extent of a utility's burden of proof is further supported by the pronouncements of the Pennsylvania Supreme Court in Burleson v. Pennsylvania Public Utility Commission<sup>6</sup>, which clearly defined the dimensions of this obligation.

While the Burleson case involved a billing dispute, obliging the customer complainant to carry the burden of proof, the same rationale applies to a utility's obligation in a proceeding arising out of its general rate filing.

Submission of the proposed tariff and supporting data may establish a prima facie case. However, data composing a prima facie case does not meet the utility's burden of proving the elements of its proposed tariff with substantial evidence. As noted by the

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<sup>4</sup> 66 Pa. C.S. §315(a).

<sup>5</sup> Lower Frederick Twp. v. Pennsylvania Public Utility Commission, 48 Pa. Cmwlth. 222, 226-227, 409 A.2d 505, 507 (1980). See also, Brockway Glass v. Pennsylvania Public Utility Commission, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981).

<sup>6</sup> Burleson v. Pennsylvania Public Utility Commission, 501 Pa. 433, 461 A.2d 1234 (1983)

Supreme Court in Burleson “there is clear distinction between the weight of evidence required to support a prima facie case and the weight necessary to meet a complainant's burden of proof.” The court in Burleson further opined that:

... the elements of that cause of action are proven with substantial evidence that enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.

Substantial evidence has been defined as “. . . that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion.”<sup>8</sup>

The Commission has continued to affirm the utilities' burden of proof in base rate proceedings. In Pennsylvania Public Utility Commission v. Breezewood Telephone Company<sup>9</sup>, the Commission made the following ruling:

[t]hus, where a party has raised a question concerning an element at issue, the affirmative burden of proving justness and reasonableness of its claim is upon BTC.

The Commission and the Courts have clearly held that the burden of proof does not shift to the party challenging a requested rate increase. While the burden of going forward may shift, the burden of finally and convincingly establishing the justness and reasonableness of every component of a requested rate increase remains on the utility. The opposing parties have no such burden. As stated by the Pennsylvania Supreme Court in Berner v. Pa. P.U.C.,<sup>10</sup>:

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<sup>7</sup> Id. at 437.

<sup>8</sup> Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975), as quoted in Norfolk & Western Railway Co. v. Pennsylvania Public Utility Commission, 489 Pa. 109, 128 (1980).

<sup>9</sup> Pennsylvania Public Utility Commission v. Breezewood Telephone Company, 74 Pa. PUC 431, 442 (1991)

<sup>10</sup> Berner v. Pennsylvania Public Utility Commission, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955)

[t]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations . . . .

On this subject, the Commission has ruled as follows:

[t]here is no presumption of reasonableness which attached to a utility's claim, at least none which survives the raising of credible issues regarding a utility's claims. A utility's burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims.<sup>11</sup>

In the proceeding before us, it is the obligation of the Company to affirmatively prove the reasonableness of each and every element of its claim. A review of the record will demonstrate that PGW has failed to do this. In a number of instances identified herein the Company has failed to prove the reasonableness of every element of its claims. As such, these claims should be rejected based primarily upon the Company's failure to sustain its burden of proof. As an alternative, OTS has recommended adjustments to the Company's original claim that, when adopted, will maintain that any new rates would satisfy the statutory provision requiring that they be "just and reasonable."

C. Questions Presented

1. Q. Does PGW's current level of revenue, without an increase in base rates, enable it to satisfy its obligations under the cash flow method of ratemaking?

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<sup>11</sup> Pennsylvania Public Utility Commission v. Equitable Gas Co., 57 Pa. PUC 423, 444 (fn. 37) (1983).

- A. OTS maintains that the answer to this question is yes.
2. Q. Does the application of test year data create an appropriate basis for regulating under the cash flow method of ratemaking?
- A. OTS maintains that the answer to this question is yes.

## II. SUMMARY OF ARGUMENT

The Company has not borne the burden of proving that its requested rate relief is necessary. The Company has not provided substantial evidence in support of its request. Relying instead on a series of wants and wishes, the Company has failed to demonstrate what it needs with respect to rates in order to provide safe and reliable service. The burden is not on the Intervenors to demonstrate why the Company's request is not appropriate. The burden to prove the justness and reasonableness of the requested rate relief remains with the Company throughout this entire proceeding.

The Company's revenue must be adjusted to reflect the proper number of residential heating customers. OTS agrees that the Company will lose customers in the test year but takes issue with the projected number. The Company has agreed with the OTS recommendation in Rebuttal Testimony adjusting the calculation of the corresponding increase in universal service, restructuring, and consumer education costs.

OTS has reviewed and analyzed the Company's Operation and Maintenance Expense Claim and has determined that it is overstated. However, OTS has declined to adjust its rate relief recommendation in this proceeding to account for those adjustments. OTS prefers instead to suggest that the Company use the funds identified in these

overstated claims as a means of reducing its outstanding line of credit. OTS has focused only on the claims made within the proper regulatory framework. The only potential expense occurring beyond the test year that has been acknowledged in the OTS analysis is the requirement made by the owner of the utility that the Company repay a \$45 million outstanding loan. Because of this repayment obligation, OTS recommended a \$25 million increase in base rates. Outside of the loan obligation repayment to the City of Philadelphia, the record evidence does not support any rate relief at this time.

The Company's Management Incentive Program Expense Claim should not be recognized as it is poorly documented and does not offer sufficient detail explaining how it improves the level of service that the Company offers. Expenditures in this program should not be recognized in rates.

The Company's claimed Bad Debt Expense is ill founded and must be rejected. The Commission has rejected the concept of funding a reserve in past proceedings and the Company has not presented any persuasive evidence as to why that practice should change in this proceeding. OTS and the Company have agreed to a stipulated bad debt percentage. The proper allocation of this bad debt stipulation of 4.5% is against total jurisdictional revenues. The Commission has previously applied bad debt expense claims to total gas revenues. This is appropriate and must be continued. Applying the 4.5% to total revenues would include non-jurisdictional services. Doing so is improper because a bad debt allowance collected from jurisdictional ratepayers should not cover non-jurisdictional services.

The Company's Marketing – Promotional Expense claim must be reduced as the Company has failed to demonstrate that this expense is connected to the provision of safe and reliable service. Furthermore, the claimed activities fall outside the test year.

The rates requested that are associated with the Management Incentive Program, Bad Debt Expense and Marketing that have been identified by OTS should be used to reduce the balance of the Company's Line of Credit.

Lobbying expenses have not been recognized by the Commission as legitimate operating expenses to be recovered from ratepayers. The portion of the Company's outside services contract claim that is attributable to lobbying activities must be rejected. The inappropriate claim is found in two different accounts and proper ratemaking requires its removal from both.

The Company's request for funds for Injuries and Damages must be reduced as the claim is both speculative and non-recurring. When, and if, the expense becomes ripe for resolution, OTS will analyze the claim and suggest the proper regulatory treatment. As a non-recurring expense, it should be amortized over a reasonable time period. However, until a legitimate test year expense is incurred, ratepayers should not be required to include any payment of this claim in their rates.

The Company's Advertising Expense claim is slightly overstated and should be adjusted. Cost associate with customer satisfaction surveys and similar activities should not be recovered from ratepayers.

Similar to the expense claims above, rates associated with Lobbying, Injuries and Damages and Advertising should be applied to the Company's Line of Credit.

The Company's expense claim for Regulatory Fines and Penalties should not be acknowledged in this proceeding. In essence, the Company is requesting ratepayer funds for planned violations of accepted policies and practices. OTS does not believe it is in the public interest to require ratepayers to fund the Company's illicit activities.

Merger expenses are improper in this proceeding and have been withdrawn by the Company in its Rebuttal Testimony. These expenses have been determined to not be ongoing.

PGW has also agreed to adjust the Prescription Plan component of its Health Care expense claim to reflect the appropriate amount as recommended by OTS.

As with other Operation and Maintenance expense claims, OTS has not adjusted its rate relief recommendation in this proceeding to acknowledge the removal of Regulatory Fines and Penalties, Merger Expenses or the Prescription Plan component. Instead, rate associated with these claims should be applied to PGW's Line of Credit.

PGW's debt service coverage exceeds the amount mandated by its existing bond covenants and its overall coverage of 1.34x as presented on its Exhibit for the future test year exceeds the financial communities standard for investment grade bonds. The cash flow method of regulation requires sufficient funds for the Company to meet its debt service obligation while retaining a reasonable level of working capital. The Company's excessive cash request is unjustified and must not be acknowledged. OTS has presented the proper interpretation of liquidity and offers a sound alternative that will protect the ratepayers while allowing the Company to address its level of debt and continue to provide safe and reliable service.

PGW's requested 50/50 "capital structure" is unsupported by credible evidence and must not be acknowledged. Because of the Company's narrow definition of liquidity and its desire to look beyond the future test year, its proposal cannot be accepted. Requiring only "free cash" and receiving it only from ratepayers in the form of increased rates violates the public interest and must be rejected. Moreover, utility regulation in Pennsylvania is based on a test year. The Company has not presented substantial evidence as to why this practice must be abandoned in this proceeding.

The Company's proposal to redirect funds provided by Purchased Gas Cost (PGC) customers to fund capital projects is fatally flawed and must be summarily rejected. This proposal violates long-standing policies and regulations designed to protect ratepayers and guarantee compliance with the statutory least cost procurement provisions. Mitigating gas costs is a requirement of a least cost procurement strategy. The Company's proposal violates this fundamental ratemaking tenet. Furthermore, there is no evidence to indicate that funds from this proposal are necessary for the Company to cover its debt service obligations and provide safe and reliable service.

The Company's Gas Safety practices have been reviewed and compromises have been reached in order to assure that the Company's practices in conformity with its obligation to provide safe and reliable service. OTS and the Company have presented a Stipulation addressing a key component of the Company's Gas Safety practice.

The Company's requested rate increase will have a dramatic impact on customers. The Company has not presented evidence with respect to the impact its request will have on its ratepayers. The demographic data with respect to the Company's service territory

supports the premise that the ratepayers of Philadelphia are ill equipped to handle a rate increase of this magnitude.

The Company's Rate Structure proposal must be adjusted as it relies on a flawed Cost of Service Study and it fails to move customer classes toward the cost of providing service. Proper rate design moves classes closer to the cost of providing it service. The Company's proposal is flawed in that it actually grants a larger increase to a class of customers that is already providing a subsidy to other classes. OTS offers that First Dollar Relief is necessary to cure the defects in the Company's proposal.

PGW's Cost of Service Study contains errors that must be adjusted before it can be relied on as a guide in designing rates in this proceeding. The errors involve the classification and allocation of Distribution Mains Costs as well as the allocation of Industrial Measuring and Regulating Station Equipment Costs. Distribution mains should be allocated on a volumetric basis using the average and excess method to assign the cost of a shared asset to the various customer classes. The Company has agreed to re-allocate its Industrial Measuring and Regulating Equipment costs.

The Company's revenue allocation must be adjusted to reflect the proper balance based on the OTS First Dollar Relief proposal in conjunction with a rate reduction to the relief requested by the Company.

## ARGUMENT

### III. RATE BASE

The Company is regulated under the cash flow method as a means of determining the necessary amount of revenue needed to operate safely and reliably. An analysis of the Company's Rate Base is not required in this proceeding.

### IV. REVENUES

The Company's present rate revenues are understated and must be adjusted. Proper ratemaking requires an accurate statement of present revenues. Only when correct present rate revenues are established can an analysis of the justness and reasonableness of existing and proposed rates be undertaken. In the instant proceeding, PGW has understated its present rate revenue as a result of miscalculating its residential heating customer count. OTS recommended that present rate revenue be increased by \$6,496,600 with a corresponding increase in the cost of gas expense of \$3,673,900, resulting in an increase in net present revenue of \$2,282,700.<sup>12</sup> Concurrently, OTS recommended that revenue under proposed rates would increase by \$7,100,000 with the same \$3,673,900 corresponding increase in the cost of gas expense, resulting in a net increase of \$3,426,100 in revenue at proposed rates.<sup>13</sup> In Rebuttal Testimony, the Company agreed that the additional revenue and corresponding increase in gas costs should be reflected but included an additional corresponding expense of \$872,100 at present rates and \$850,000 at proposed rates to properly reflect the cost of universal service, restructuring

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<sup>12</sup> OTS Ex. No. 3, Sch. No. 3, Col. C.

<sup>13</sup> OTS St. No. 3, p. 22.

and consumer education.<sup>14</sup> OTS has modified its recommendation and includes the additional expense of \$872,100 at present rates and \$850,000 at proposed rates to reflect the corresponding additional expenses. The inclusion of these expenses results in an increase in net revenue at present rates of \$1,950,600 and an increase in net revenue at proposed rates of \$2,576,000.

This adjustment to revenue is necessary due to the correction to the Company's proposed customer count in order to reflect the appropriate number of residential heating customers. An accurate customer projection is important as it represents an integral input in the determination of projected revenue. If the projected number of customers is too low, claimed revenue will be understated presenting the perceived need for a higher rate increase. Conversely, if the customer projection is too high, revenues will be overstated and the Company may not receive the appropriate level of rate relief. OTS maintains that every revenue projection must include an accurate customer count. The OTS methodology for calculating customers should form the basis for calculation of customers in future PGW proceedings.

OTS agrees with the Company and anticipates that PGW will continue to lose customers. However, the Company's original claim lacks evidentiary support and must be modified. As detailed in OTS Witness Kubas's Direct Testimony,<sup>15</sup> the proper number of residential heating customers to be included in the Company's analysis is 418,183. This recommendation reflects a loss of 1,794 residential heating customers for

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<sup>14</sup> PGW St. No. 5R, p. 15.

<sup>15</sup> OTS St. No. 2, pp. 3-10.

the year ending December 31, 2007.<sup>16</sup> Mr. Kubas's recommendation is based on his analysis of the comparison of the last known customer count from the previous base rate proceeding in 2001 and the claimed count in this proceeding. In this proceeding, by using a five-year average for residential heating customers, it was calculated that PGW loses an average of 1,794 customers per year. This analysis formed the basis for OTS Witness Kubas's recommendation. The Company's projected customer loss of 5,544 residential heating customers in 2007 distorts its rate relief request by understating its present rate revenues. This understatement leads to a perceived larger level of rate relief than is necessary.

The Company has acknowledged the projections presented by OTS Witness Kubas in its Rebuttal Testimony.<sup>17</sup> The recommended adjustment to reflect the revenue and corresponding expenses that must be added to present an accurate forecast has been incorporated into the OTS analysis and is not the subject of dispute in the instant proceeding. OTS presents this analysis to reaffirm the proper methodology in determining projected customer counts.

## V. EXPENSES

The Company's expense claim is overstated and must be adjusted to reflect the appropriate level of expense that will be incurred during the period rates will be in affect.

It is well established that a public utility is entitled to recover, through ratepayer funds, all reasonable and normal operation and maintenance expenses associated with the

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<sup>16</sup> OTS St. No. 3, p. 7.

<sup>17</sup> See PGW St. No. 5R, pp. 14-16.

provision of the regulated service.<sup>18</sup> Recovery is limited to expenses demonstrated to be prudently incurred and necessary for the provision of safe and adequate service.

Abnormal or extraordinary expenses merit special ratemaking consideration.

Ratemaking in Pennsylvania is based on the principle of a test year. A test year in Pennsylvania may be either historic or future.<sup>19</sup> Proper regulation requires recognition of expenses occurring during the Company's claimed test year. Exceptions to expense claims occurring outside the test year are limited and are only recognized based on the principle of expenses that are "known and measurable." Generally limited to a time period of six months, the exception also requires that the adjustment be quantifiable. "This six month limitation and the requirement that the adjustment be quantifiable are designed to prevent abuses."<sup>20</sup> Data contained in the test year is designed to accurately reflect the operating condition of the utility for the period that rates will be in effect. Future projections are speculative and therefore less reliable and do not form the basis for ratemaking in Pennsylvania.<sup>21</sup> In this proceeding, the Company has utilized the heading Budget 2006 - 2007 as representative of its test year.<sup>22</sup>

OTS has identified several misstated operating expenses that do not merit recovery from ratepayers. These recommended adjustments are identified for the benefit of the Company to assist in improving the efficiency of its operation and to mitigate the level of

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<sup>18</sup> Western Pa. Water Co. v. Pennsylvania Public Utility Commission, 54 Pa. Cmwlth. 187, 422 A.2d 906 (1980).

<sup>19</sup> OTS St. No. 1, p. 9.

<sup>20</sup> Rate Case Handbook, A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission, by James H. Cawley and Norman James Kennard (1983).

<sup>21</sup> OTS St. No. 1, p. 17. See also, Tr., p. 573.

<sup>22</sup> Tr., p. 573.

future requested rate relief. OTS, in its role of protecting the public interest, believes that the application of these savings from operating efficiencies would be better served as a means of addressing the Company's claimed need to reduce its short term debt. Rather than reducing the overall recommendation in this proceeding, OTS opines that the savings that will be realized from these adjustments are more beneficial when applied to reducing the Company's line of credit. Continued application of operating efficiencies will enable the Company to improve its asset position with respect to its debt level.

A. Management Incentive Compensation

The Company's Management Incentive Compensation expense claim violates the public interest and should not be recognized. The Company has failed to demonstrate with any, yet alone substantial, evidence that this expense is directly connected to the "implementation of improvements in the operational, service level and/or financial condition of PGW."<sup>23</sup> Absent any evidence indicating that ratepayers benefit from this claimed expense, it should not be recognized. The Company has failed to provide the kind of documentation and detail of the program to provide a nexus to the provision of safe and reliable service.

The Company's claim that the Incentive Compensation Program is necessary to retain management employees is not supported by credible evidence on the record in this proceeding. There have been no studies or submission of data to support the Company's claimed inability to retain competent management personnel.<sup>24</sup>

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<sup>23</sup> OTS St. No. 2, p. 6.

<sup>24</sup> OTS St. No. 2-SR, p. 6.

Rates in Pennsylvania are set based on expense claims supported by substantial evidence. For this particular claim, there are two levels to satisfy. The first is that this program is necessary to retain the current management staff. There is no evidence to indicate that turnover for this Company is outside of the norm for the industry. Nor has substantial evidence been submitted indicating how the operation of the Company has been impacted. Furthermore, the Company has failed to demonstrate how the Incentive Compensation has improved any measurable operational aspects of the utility. The parameters for receiving Incentive Compensation are based on subjective criteria and no documentation has been presented on the record supporting the Company's assertion that ratepayers will benefit from PGW paying its managers more. If retaining this management group will improve the operational capabilities of the utility, recognition of the expense may be warranted. This is not the case in this proceeding. Based on the Company's claimed financial condition, OTS maintains that it should evaluate the efficacy of this program. OTS believes that the claimed expense of \$500,000 would be better utilized in reducing the Company's balance on its line of credit.

B. Bad Debt Expense

The Company improperly bases its Bad Debt Expense claim on its practice of funding a bad debt reserve balance. The Company's calculation of its claimed bad debt expense is not based solely on a projection of uncollectible amounts.<sup>25</sup> As such, its claimed expense is overstated and must be adjusted. The Company's same claimed

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<sup>25</sup> OTS St. No. 2, p.11.

methodology was rejected in the last fully litigated base rate proceeding<sup>26</sup> and its continued application in this proceeding is unwarranted. OTS acknowledges that the Company will experience a level of uncollectible accounts that will impact its operations. In fact, a Stipulation has been entered into the record establishing this projected uncollectible level at 4.5%. As a cash flow company, collecting 95.5% of billed revenue impacts the Company only in the year in which it is not collected. Calculating this quantity to fund a bad debt reserve is an unnecessary exercise and not appropriately connected to the setting of rates in this proceeding. The bad debt reserve is set at a level based on the discretion of PGW's management. Its use as a means of establishing rates to be collected from its customers is flawed. The OTS recommendation allows the Company to collect the projected 4.5% deficiency upfront and on an ongoing basis so that any shortfalls are alleviated. In other words, the Company is being allowed to overcollect from its remaining customers so that the impact of the projected uncollectible accounts is all but eliminated. The only true measure of funds necessary to account for bad debt is the sum of the projected shortage multiplied by projected billed revenue. An artificial bad debt reserve is unnecessary and improper in setting rates.

An uncollectible allowance must be based only on jurisdictional revenues. Jurisdictional revenues in this proceeding are limited to the overall cost of gas. The OTS recommendation allows for the deficiency created by uncollectible accounts in the cost of gas to be considered when setting rates.

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<sup>26</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042 (2001).

By their very nature, non-jurisdictional revenues are not subject to review by the Commission. It would be improper to make an allowance in jurisdictional rates for non-jurisdictional activities. Furthermore, the Commission has correctly applied the calculated uncollectible percentage to overall gas revenues in prior proceedings. In its Final Order, Entered December 6, 2001, the Commission revisited its discussion with respect to bad debt expense and offered the following clarification:

In our October 12<sup>th</sup> Order we noted as follows:

The income statement attached to our Final Order, as Appendix A, appears to contain a computational error regarding the bad debt expense. Within that schedule, bad debt expense is reflected as \$61,128,000, representing 7.616% of the OTS recommended total gas revenues. However, it was our intention to apply the 7.616% factor to our overall determination of total gas revenues, rather than that submitted by the OTS, to arrive at the proper bad debt expense allowance level....

By this Tentative Opinion and Order, we simply propose to correct the bad debt expense allowance consistent with our adoption of the OTS methodology....<sup>27</sup>

Therefore, OTS maintains that the 4.5% uncollectible level agreed upon in the stipulation must only be applied to jurisdictional gas revenues.

C. Marketing – Promotion Expense

The Company's claimed expense for Marketing – Promotion is overstated and must be adjusted. "Promotional expenses are associated with the marketing department initiatives to expand the use of natural gas in all market segments by providing customer

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<sup>27</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042 (Order Entered December 6, 2001).

incentives.”<sup>28</sup> As OTS Witness Markovich has testified “[i]ncentive payments of this nature are not in the public interest and are not necessary to provide safe and reliable service.”<sup>29</sup> Furthermore, the vast majority of the claimed expense will not take place in the Company’s claimed test year.<sup>30</sup> OTS has modified its original recommendation and now asserts that only \$25,000 of the Company’s original request be recognized in rates. This adjustment reduces the Company’s claim by \$475,000.<sup>31</sup>

The Company has failed to present convincing evidence that the ratepayers of PGW benefit from these types of programs. The standard for recovery of a claimed expense in rates remains that the action must be a claimed test year expense and it must be necessary to provide safe and reliable service. Absent any demonstrated benefit to ratepayers, the claimed expense must be rejected. In fact, including this expense in rates only increases the overall cost of service.<sup>32</sup>

OTS is not adjusting its overall rate relief recommendation to acknowledge removal of this claim. Instead, OTS maintains that it would be more beneficial to ratepayers to have the funds collected for this claimed expense be applied to assist in lowering the Company’s balance on its line of credit.

#### D. Lobbying Expense - Outside Services – Dues and Subscriptions

OTS recommends that the portion of the Company’s claimed expense for outside services contracted with Wolf Block and Mardi Enterprises pertaining to lobbying

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<sup>28</sup> OTS St. No. 2, p. 14.

<sup>29</sup> Id. p. 15.

<sup>30</sup> OTS St. No. 2-SR, p. 18, OTS Ex. No. 2-SR, Sch. 1, p. 2.

<sup>31</sup> OTS St. No. 2-SR, p. 18.

<sup>32</sup> OTS St. No. 2, pp. 15; OTS St. No. 2-SR, p. 16.

activities not be recognized in this proceeding. In addition, a portion of PGW's dues and subscriptions expense claim is attributable to lobbying activities. As OTS Witness Markovich has testified, "[l]obbying expense is found in two separate accounts. "[The OTS] recommendation for lobbying expense is to reduce the Company's claim for outside services by \$230,000 and reduce the Company's claim for dues and subscriptions by \$15,200."<sup>33</sup>

Lobbying activities do not provide a recognizable direct benefit to ratepayers. These activities are not connected to the Company's legal obligation to provide safe and reliable service. Absent a demonstrable benefit to ratepayers, the portion of the Company's claimed expense related to lobbying efforts must not be recognized and recovered through rates. The Commission has recognized the lack of a nexus between lobbying expenses and ratepayer benefits on numerous occasions. A similar claim was denied in a previous PGW base rate proceeding.<sup>34</sup> Similarly, in a proceeding involving the National Fuel Gas Distribution Corporation (NFGD), the Commission determined that "NFGD did not prove that the services provided by New York Division's Government Affairs...confer any benefit to ratepayers or are necessary for the provision of natural gas service."<sup>35</sup> As it has been consistently determined by the Commission that

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<sup>33</sup> OTS St. No. 2, p. 19.

<sup>34</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042 (Order adopted December 5, 2001, Order Entered, December 6, 2001).

<sup>35</sup> Pennsylvania Public Utility Commission v. National Fuel Gas Dist. Corp., 84 Pa. PUC 134, 196 (1995). See also, Pennsylvania Public Utility Commission v. Pennsylvania-American Water Co., 79 Pa. PUC 25 (1993), Pennsylvania Public Utility Commission v. Duquesne Light Co., 59 Pa. PUC 67 (1985), Pennsylvania Public Utility Commission v. Metropolitan Edison Co., 60 Pa. PUC 349 (1985).

lobbying expenses do not provide a direct benefit to ratepayers, the recovery of this claimed expense in rates must be denied.

OTS believes that it is imprudent for the Company to continue with these activities. PGW's focus must remain on providing safe and reliable service while avoiding actions that negatively impact ratepayers. Attempting recovery of expenses not connected to the provision of service is an example. OTS is not adjusting this expense from its \$25 million recommendation but urges the presiding officers, and the Commission, to give no credence to the Company's request for recovery of lobbying expenses. OTS maintains that the funds expended in this endeavor should instead be used to pay down the Company's line of credit.

#### E. Injuries and Damages

The Company's claim for recovery of test year expenses related to Injuries and Damages is overstated and must be adjusted. OTS Witness Markovich has recommended a reduction of \$475,000 to the Company's claim for Injuries and Damages as well as a \$250,000 reduction for special legal expenses. Both of these claims are associated with PGW's involvement in a class-action suit. The Company's requested ratemaking treatment of these claimed expenses violates sound regulatory principles and must be rejected. The resolution of this class-action suit in the test year is speculative and the Company is trying to recover annually for a non-recurring expense. If, and when, these expenses are ripe for review, the proper regulatory treatment would be to amortize such costs. This would allow the Company to fully recover its expenditure while protecting ratepayers from unreasonable rates.

Until these claims can be examined in the proper regulatory environment, their recognition in this proceeding must be ignored. There is no demonstrative evidence on the record indicating when this action will be resolved. Also, the Company has failed to present any credible evidence to support its premise that this type of expense claim is an ongoing, normal part of operations. In fact, “the Company stated that they have not had any other class action suits and did not expect any future class action suits.”<sup>36</sup>

OTS recommends that the expenses claimed by the Company associated with the class-action suit be denied regulatory recognition in this proceeding. This claim can appropriately be reviewed when it is ripe for disposition. OTS declines to make an adjustment to its rate relief recommendation, instead offering that the rate recovered for this claim be used to reduce the Company’s outstanding line of credit.

#### F. Advertising

The Company has overstated its claim for recovery of Advertising Expenses and a slight reduction is necessary. Improperly included in the Company’s claim is a \$35,000 marketing expense that is related to customer satisfaction, education and promotion.<sup>37</sup>

The Company has failed to present adequate evidence to support any claim that ratepayers will benefit from this type of activity. OTS has acknowledged the Company’s Rebuttal Testimony and has revised its recommendation by withdrawing its criticism of the \$175,000 claim for corporate communications expense for PGW’s corporate awareness program. However, OTS does not believe the remaining \$35,000 should be

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<sup>36</sup> OTS St. No. 2, p. 20.

<sup>37</sup> OTS St. No 2-SR, p. 24.

acknowledged in rates in this proceeding. These funds should be applied to the Company's outstanding line of credit.

G. Regulatory Fines and Penalties

The Company overstates its Operating and Maintenance Expense claim by improperly including an allowance for regulatory fines and penalties. Proper regulatory treatment of this request requires that the expense claim be denied and that "Other Income" should be increased on the Company's Income Statement to reflect this change.

Civil fines and regulatory penalties are only imposed on activities deemed to be in violation of accepted practices and principles. Activities that would result in fines and penalties cannot be deemed as a reasonable expense and a necessary part of doing business. PGW's bold statement that it will likely incur these types of expenses in the future test year is, in essence, an intention to violate accepted standards and practices. PGW has not indicated which standard or practice it intends to violate, so a complete analysis is not possible. The very premise that PGW should be allowed to recover, in rates, the fines it will incur violates the public interest and should not be considered.

OTS has not adjusted its rate relief recommendation to reflect this claim but suggests that the Company would be better served by not violating Commission Regulations and practices so as not to incur fines and penalties. These funds allotted for this ill-advised expense can be used to reduce the Company's outstanding line of credit.

H. Merger Activity Expense

The Company's original proposal included an expense claim for the recovery of "Merger Activity" expenses. Subsequent discussions have determined that this is not an

ongoing expense and the Company has agreed to withdraw this claim in its Rebuttal Testimony. The savings generated by the Company's withdrawal of this expense claim should be used to pay on its line of credit.

I. Prescription Plan Expense

The Company's overall claim for Health Care Benefits included an overstatement of its projected Prescription Plan component. OTS has recommended an adjustment of \$460,787 to the Company's claim. This recommendation has been acknowledged by the Company and has been withdrawn from its claim.

OTS has declined to adjust its rate relief recommendation in this proceeding to account for the withdrawal of this claim. OTS maintains that the funds designed to be recovered for this expense claim should be used to reduce the level of the Company's line of credit.

VI. TAXES

As a municipal utility, PGW has no tax liability. Therefore, there is no impact on ratepayers.

VII. DEBT SERVICE COVERAGE

A. Introduction

Under the Natural Gas Choice and Competition Act (Act), the Commission assumed jurisdiction of PGW. Accordingly, the Company is "subject to regulation and control by the commission with the same force as if the service were rendered by a public

utility.”<sup>38</sup> Section 2212(e) of the Act requires the Commission, when determining PGW’s “revenue requirement and approving overall rates and charges, the commission shall follow the same ratemaking methodology and requirements that were applicable to the city natural gas distribution operation prior to the assumption of jurisdiction by the commission...”<sup>39</sup>

Prior to assumption of jurisdiction by the Commission, the ratemaking methodology applicable to PGW was the cash flow method. The genesis of the cash flow method is the Management Agreement between the City of Philadelphia and the Philadelphia Facilities Management Corporation. Under this methodology, revenues must be sufficient to cover all cash needs, including debt obligations and a reasonable level of working capital, that become due in the test period.<sup>40</sup>

The cash flow methodology differs from the rate base/rate of return methodology, which is the primary method used to set rates for utilities under Commission jurisdiction. Under the rate base/rate of return methodology, a company’s revenue requirement includes operating and maintenance expenses, depreciation expense and a rate of return on rate base. Those expenses are based on a test year, which is the best way to accurately represent the revenue requirement of the utility during the time in which the rates will be in effect. Under this methodology, the Company is permitted to earn a return on rate base and a return of rate base through depreciation expense. However, under the cash flow

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<sup>38</sup> 66 Pa.C.S. § 2212(b).

<sup>39</sup> 66 Pa.C.S. § 2212(c).

<sup>40</sup> OTS St. No. 1, pp. 5-6; PGW Rejoinder Exh. 1 (Bogdonavage).

methodology, the company earns a return of and return on capital through debt service and margin.

Despite the differences in the methodology used to determine PGW's rates, it is clear that the Commission is permitted to use other statutory directives, such as the determination of just and reasonable rates, in accordance with Public Utility Code and the Act.<sup>41</sup>

The parties have presented testimony with respect to revenue requirement that is worlds apart. Specifically, OTS recommends that PGW be granted \$25 million in rate relief solely to enable the Company to repay the \$45 million loan due to the City of Philadelphia in 2008. In contrast, the Company maintains that it must receive \$100 million in rate relief and approximately \$10 million generated from off system sales and capacity release transactions. Despite the vast disparity in the perceived need of PGW to obtain rate relief, the issue in the case is very simple. PGW, under the cash flow methodology, is requesting that the Commission abandon the future test year concept, which it claims "is a very limiting and potentially inaccurate mechanism for cash flow companies"<sup>42</sup>. In lieu of this well established ratemaking concept, PGW proposes that the Commission grant the requested rate relief based on its concept of a five year planning horizon.<sup>43</sup> While PGW has not demonstrated a need for any rate relief in its future test year, ending August 31, 2007, the Company nevertheless maintains that it must receive a significant increase to ensure that it enhances its liquidity and capital

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<sup>41</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042, pp. 14-16 (Order Entered October 4, 2001).

<sup>42</sup> PGW 2R, p. 21.

<sup>43</sup> Tr., pp. 571-572.

structure by 2012. For the reasons articulated in detail below, OTS maintains that PGW's attempt to abandon this fundamental ratemaking principle is untenable and must be rejected by the Commission.

#### B. Debt Service Coverage

The OTS analysis indicates that PGW's filing has not supported a need for a base rate increase at this time. The OTS position is based on the undisputed fact that the Company is able to meet its debt service coverage during the future test year.<sup>44</sup>

Under the cash flow methodology, PGW must satisfy its debt service coverages, which is represented as a ratio of annual funds to cover annual debt service divided by the annual debt service requirement. The City Ordinance sets the specific debt service requirements as follows: 1.5x for the 1975 bonds; 1.5x for the senior 1998 bonds; and 1.0x for the subordinate 1998 bonds. Moreover, for a municipal utility to maintain investment grade, the financial community has indicated that it should cover its annual debt service at 1.2x.<sup>45</sup>

The Company's ratemaking request far exceeds those requirements. As the Company's schedules show, if it is granted its full rate relief of \$100 million increase in base rates and \$10 million in off system sales and capacity release, debt service coverage is projected to be 6.98x for the 1975 bonds, 4.01x for the senior 1998 bonds; and 80.72x for the subordinate 1998 bonds. PGW ST. 2, Exh. JRB-1, p. 8. The \$100 million increase also provides for annual debt service coverage of 2.51x.

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<sup>44</sup> PGW St. 2, Ex. JRB-1 p. 3; PGW St. 2, p. 6.

<sup>45</sup> OTS St. 1, pp. 8-9.

The Company's inflated ratemaking claim must be rejected because it is clear that, even without an increase, PGW satisfies the coverage requirements in the future test year. The OTS analysis indicates that coverage for the 1975 bonds to be 4.0x, the coverage for the senior 1998 bonds to be 2.03x, and the coverage for the subordinate 1998 bond to be 27.7x.<sup>46</sup> This analysis is mirrored in the Company's own exhibits.<sup>47</sup> All of these ratios are well in excess of what is required under the City Ordinance. Moreover, PGW's schedules show that, with no increase to base rates, it will have debt service coverage of 1.34x in the future test year, which is in excess of the 1.2x needed to sustain its investment grade.<sup>48</sup> There is little dispute about these findings given that PGW admits that it is able to satisfy its bond coverages and maintain an investment grade rating in the test year without an increase.<sup>49</sup>

Although the Company's own filing and exhibits illustrate that its financial picture is adequate to satisfy its future test year obligations and that a rate increase is not presently warranted, OTS recommended that PGW receive a \$25 million increase to enable it to satisfy a \$45 million loan payment due to the City in fiscal year 2008. Additionally, by recommending the \$25 million in rate relief, OTS also did not take into account the \$11,338,000 million in expense adjustments presented in this proceeding.<sup>50</sup> If those adjustments had been incorporated into the OTS recommendation, the adjustments would have increased PGW's debt service coverage ratios, which further

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<sup>46</sup> OTS St. 1, pp. 14-15.

<sup>47</sup> PGW St. 2, Ex. JRB-1, p. 3, attached as OTS Appendix E.

<sup>48</sup> PGW St. 2, Ex. JRB-1, p. 3. See also, OTS St. 1, p. 14.

<sup>49</sup> PGW St. 2, p. 6.

<sup>50</sup> OTS Sts. 2, 2-SR, 3, 3-SR.

illustrates that the Company's requested \$100 million of rate relief is not warranted.

While it would be entirely appropriate for OTS to incorporate those adjustments into the recommendation, the recommended \$25 million did not reflect the adjustments in an effort to give PGW a level of rate relief to help it improve its debt position. OTS is charged with representing the public interest and maintains that the recommended \$25 million base rate increase balances the interests of the Company with the need of its ratepayers to avoid the rate shock of the Company's requested \$100 million rate increase.

It is unsurprising that the \$25 million OTS recommendation further increases the Company's debt service coverage given that such coverage was satisfied even if the Company receives no rate increase. As shown in PGW's response to a discovery request, a \$25 million rate increase will not change the 1.34x coverage for 2006-2007; however, it will provide for coverage of 1.38x in 2007-2008, 1.39x in 2008-2009, and 1.36x in 2010-2012.<sup>51</sup> This represents an increase over the following coverage trend if no rate relief is granted: 1.11x coverage in 2007-2008, 1.07x coverage in 2008-2009, 0.95x coverage in 2009-2010, 0.79x coverage in 2010-2011, and 0.71x coverage in 2011-2012. Therefore, while OTS could have taken the position that the Company should not receive any rate relief based on the future test year, the recommended \$25 million will have a positive effect on satisfying PGW's debt service obligations through 2012.

PGW argues that the OTS recommendation is inadequate and, to provide support for that position, its testimony is riddled with worst case scenarios of what will occur at a future date if the Commission adopts the recommended \$25 million increase. For

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<sup>51</sup> OTS St. 1, Ex. 1, Sch. 8, attached as OTS Appendix F.

example, the Company acknowledges that the recommended \$25 million rate relief will allow it to meet its FY 2008 requirements, but laments that “minimum investment grade coverages would fall to almost unacceptable levels in FY 2009 and below acceptable levels in FY 2010”.<sup>52</sup> Additionally, the Company projects that in FY 2010 the 1998 Bond Ordinance coverage would fall below the minimum level to avoid a default.<sup>53</sup> As discussed above, these dire projections are unsupported given that PGW’s own response to an interrogatory shows a fixed coverage of 1.36x through 2011-2012 if it is granted a \$25 million increase in this proceeding.<sup>54</sup> Accordingly, the Company’s predictions of future financial ruin must be ignored.

Additionally, all of these predictions will occur outside the future test year. The test year concept is a fundamental ratemaking principle by which every regulated utility in the state abides. Under Commission regulations, rate filings are presented on the basis of a test year, which provides the very foundation for the calculation of just and reasonable rates.<sup>55</sup> The premise behind the test year is that expenses are more easily and accurately projected on a limited basis rather than far out into the future. In other words, utilization of a test year is the best way to obtain an accurate picture of the utility’s revenue and level expenses during the time when the rates will be in effect. The test year convention does not limit, in any way, the number of base rate cases that a utility can file. PGW would be permitted to file a base rate case five times within a five year period; however, it should not be permitted to obtain rate relief in the instant base rate proceeding

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<sup>52</sup> PGW St. 2R, pp. 7-8.

<sup>53</sup> Id.

<sup>54</sup> OTS St. 1, Ex. 1, Sch. 8.

<sup>55</sup> 52 Pa. Code §§ 53.53, 53.56.

based on projections that may or may not occur five years from now. Therefore, OTS maintains that the Company's \$100 million rate relief request must be rejected as it circumvents the future test year concept which is a fundamental ratemaking principle that ensures rates are just and reasonable.

### C. Capital Structure and Internally Generated Funds

The Company has strenuously argued that the requested \$100 million in rate relief is necessary because it will allow PGW to internally generate funds and move closer to a 50/50 capital structure by the fiscal year ending 2012.<sup>56</sup> The Company has characterized this as its "Financial Stability Plan" and has determined that the plan should accomplish substantial financial goals in approximately five years.<sup>57</sup> However, the Company cautions that, "only when PGW has available the full rate increase request and the off-system sales/capacity release proceeds (projected at \$10 million a year) does it have a good chance of achieving its goal of a 50/50 capital structure by FY 2012."<sup>58</sup>

The Company contends that implementing this plan is necessary to avoid a financial crisis and reduce the Company's financial risk. According to the Company, its inability to generate internal funds means that it is at risk of not meeting debt service payment requirements and compromises its ability to access long term debt markets.<sup>59</sup> Despite the Company's claims, OTS fails to understand how this is true based on the Company's own schedules showing that, even without a base rate increase, it would be able to meet its debt service payment requirements in the future test year. As discussed

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<sup>56</sup> PGW St. 2, p. 12; PGW St. 3, p. 15.

<sup>57</sup> PGW St. 2, p. 15.

<sup>58</sup> PGW St. 2, p. 17.

<sup>59</sup> PGW St. 3R, p. 12.

above, PGW's ability to meet those obligations with the recommended \$25 million increase is extended to 2012. PGW further contends that bond analysts and insurers will immediately re-evaluate PGW's credit if it receives a \$25 million rate increase and that they are waiting for this decision.<sup>60</sup> However, the Company's ability to access the long term debt markets does not appear to be constrained given that in the middle of litigating this proceeding, PGW issued approximately \$200 million in new debt.<sup>61</sup> Furthermore, rating agencies have acknowledged progress at PGW given that Fitch Ratings have taken PGW off negative watch due to its increased customer collections.<sup>62</sup> Therefore, OTS maintains that the dire predictions posited by the Company for ratemaking purposes and the reality of the Company's financial picture simply do not match.

The Company's \$100 million base rate increase request must also be rejected from a ratemaking standpoint because this five year plan is far outside the scope of the Company's future test year. As has been repeated throughout the OTS position, the Company's five year plan violates this fundamental ratemaking principal. PGW disagrees with this test year argument and claims that it is not a proper regulatory tool for utilities utilizing a cash flow methodology.<sup>63</sup> OTS maintains that the Company's position is simply incorrect and not in accord with sound ratemaking principles. PGW is permitted to utilize the cash flow methodology; however, the Commission has the authority to determine and ensure that PGW's rates are just and reasonable. One of the fundamental ratemaking concepts used to develop just and reasonable rates is the test

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<sup>60</sup> PGW St. 3R, p. 10.

<sup>61</sup> PGW St. 2R, p. 39.

<sup>62</sup> OTS St. 1, p. 13, OTS St. 1, Ex. 1, Sch. 5.

<sup>63</sup> PGW St. 2R, p. 21.

year. While PGW is different in the sense that it utilizes the cash flow methodology, that difference does not allow it to violate traditional ratemaking concepts. Accordingly, PGW's scenarios and hypothetical discussions of impending financial ruin if it does not receive its full rate request must simply be rejected. For example, the Company laments that because the \$25 million recommendation does not look beyond the future test year, the Company will continue to issue more debt causing the debt percentage to increase from 81% in FY 2010 to 83% by FY 2012.<sup>64</sup> OTS correctly maintains that, because 2012 is five years away, PGW is entirely unable to predict its debt percentage. That percentage may decrease for a variety of reasons that are unknown at the present time when the rates are being set. For example, the Company's debt will decrease if the City forgives repayment of the \$45 million loan, if the price of gas dramatically decreases, or if the Company's collection efforts continue to improve. These variables are precisely why the Commission does not, and should not, regulate any jurisdictional utility based on a five year planning horizon.

In the alternative, the Company claims that its high level of debt is, in fact, a test year problem.<sup>65</sup> According to the Company, the only way to solve this problem is to substantially increase PGW's rates to allow it to internally generate funds.<sup>66</sup> Again, this argument is related to the fact that the Company wants to receive money now to accomplish a goal that is many years away. The Company satisfies its debt service coverage with no rate increase and that debt service coverage is even higher with the \$25

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<sup>64</sup> PGW St. 3R, p. 11.

<sup>65</sup> PGW St. 2R, p. 21.

<sup>66</sup> PGW St. 2R, p. 21.

million recommend rate increase. All of the additional revenue that is not needed to satisfy the debt service coverage can be used by PGW management at their discretion. OTS recommends that PGW use it to reduce debt which will improve its capital structure.

Moreover, even if the Company's plan did not violate ratemaking principles, its goal to achieve a 50/50 capital structure is inappropriate for a municipal utility. While such a capital structure is representative of an investor owned gas utility, there is no evidence to support the claim that it is similarly appropriate for a municipal gas utility regulated under the cash flow methodology. Unlike the traditional rate base/rate of return regulation, the cash flow methodology does not account for a utility's capital structure because the utility does not receive a return on depreciation expense or rate base. As previously discussed, the cash flow methodology requires sufficient revenues to cover cash needs, such as expenses, debt service coverage, and working capital, during the test year. All of those elements are covered by the \$25 million recommendation given that the proposed increase satisfies PGW's bond obligations and the additional revenue not needed to satisfy those obligations belongs to the Company to use at its discretion.

Additionally, it is distressing that PGW looks solely to its financially troubled ratepayers to bear the cost of this significant change in capital structure. OTS testified that it would be appropriate for the City, as the owner of PGW, to contribute to PGW management's long term financial goals by forgiving the \$45 million City loan.<sup>67</sup> Such an equity infusion from the City would decrease the Company's debt by \$45 million and

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<sup>67</sup> OTS St. 1-SR, pp. 19-21.

increase its equity account by the same amount.<sup>68</sup> The City, as the owner of PGW, has the responsibility to help the Company achieve its financial goals. Astoundingly, the Company contends that even if the City did forgive the \$45 million loan, the Company's risk as viewed by the financial markets would not change.<sup>69</sup> Such an opinion is fundamentally incorrect given that the significant equity infusion would make the Company less leveraged, which is indicative of lower financial risk. To contend that rating agencies would be concerned that the Company's risk was reduced by forgiveness of the City loan rather than from ratepayers only highlights the Company's unswerving position that ratepayers, and ratepayers alone, must bear the costs of the PGW's capital structure change. Such a rigid position is untenable in light of the fact that PGW has a significant number of financially troubled ratepayers. Ratepayers, through the recommended \$25 million increase, will do their part to help balance PGW's debt to equity ratio. If the City forgives the \$45 million loan, the Company's debt will be further reduced. Moreover, OTS identified \$11,338,000 operating efficiencies through expense reductions that illustrates the Company, like ratepayers and the City, can do its share to achieve the desired capital structure.<sup>70</sup> Unlike the Company's sole focus on ratepayers, this unified approach serves the public interest and moves PGW closer to its goal of a more balanced capital structure.

#### D. Liquidity and Working Capital

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<sup>68</sup> OTS St. 1-SR, p. 27.

<sup>69</sup> PGW St. 3-R, p. 13.

<sup>70</sup> OTS Sts. No. 2, 2-SR.

As support for the requested \$100 million in rate relief, PGW has stated that it is appropriate to grant PGW sufficient rate relief to enable it to substantially increase its cash working capital and liquidity. This position is flawed because the Company has requested rate relief in the instant proceeding in order to achieve these financial goals five years from now in violation of the future test year. Moreover, the Company's definitions of liquidity and cash working capital are inappropriately narrow and do not accurately depict PGW's true financial position.

As discussed above, it is inappropriate to violate the future test year based on PGW's projections of what it will need in 2012. Although the Company has elected to use a future test year ending August 31, 2007 as the basis for analyzing its operating needs, it nevertheless maintains that it is appropriate to look well beyond the scope of that period as a basis to grant its requested \$100 million in rate relief. Doing so is inappropriate because trying to plan beyond a future test year yields unreliable results. Logically, short term predictions are more accurate than long term, five year estimates. The Company's consistent updates and changes to its schedules in this proceeding prove this very point. For example, PGW filed multiple exhibits in rebuttal testimony that presented updates to those presented in the Company's direct testimony. This alone shows that in the short time span between PGW's testimony filing dates that its financial picture has changed. Ratemaking is not an exact science, but the Company's continuous updates illustrates that a future test year is more accurate than five year projections. For that reason, it would be appropriate for the Company to file several base rate cases during

a five year period, but wholly inappropriate to establish rates in this proceeding to meet PGW's financial goals that are five years away.

The Company's attempt to eradicate the concept of the test year, in favor of its proposed planning horizon must be rejected because the PUC does not regulate utilities based on planning horizons. PGW admits that its planning horizon is simply its five year budget as approved by the Philadelphia Gas Commission.<sup>71</sup> However, the Commission has previously determined that it is the appropriate administrative body to determine the justness and reasonableness of PGW rates.<sup>72</sup> In other words, the Commission is not required to accept the level expense approved by the Philadelphia Gas Commission because PGW has the burden of proving that all rates are just and reasonable before the Commission.<sup>73</sup> Moreover, there is no presumption that expenses approved in the City budget satisfy the just and reasonable standard.

Even assuming that going beyond the scope of the test year was appropriate in the instant proceeding, PGW's definition of liquidity is inappropriately narrow in order to distort the Company's true liquidity position. In testimony, PGW recognized that it has four principal sources of liquidity: commercial paper, \$45 million line of credit, borrowing from bond-funded capital account, and gas storage deferral contract.<sup>74</sup> However, for ratemaking purposes, the Company wants the Commission to define

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<sup>71</sup> PGW St. 2R, p. 15.

<sup>72</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042 (Order Entered October 4, 2001).

<sup>73</sup> 66 Pa.C.S. § 1301.

<sup>74</sup> PGW St. 3, pp. 6-9.

liquidity as only cash and short term borrowing.<sup>75</sup> While this definition bolsters PGW's claim for an increased level of rate relief, it is incorrect. As discussed in OTS testimony, liquidity is defined as an ability to turn an asset into cash or cash equivalents.<sup>76</sup> As such, cash, gas inventories, money markets, commercial paper, short-term treasury bonds are examples of liquid assets. This broader definition of liquidity is also mirrored in the Management Agreement between the City and the Philadelphia Facilities Management Corporation which requires that the Company have sufficient funds "[t]o provide cash, **or equivalent**, for working capital in such reasonable amounts..."<sup>77</sup> Additionally, rating agencies also accept the OTS definition given that Standard and Poors view unspent proceeds of bonds for capital projects and gas storage deferral contracts as liquidity tools.<sup>78</sup> Moreover, during cross-examination, PGW witness Bogdonavage recognized that there are other sources, such as accounts receivable and some gas inventories, that are, in fact, sources of liquidity.<sup>79</sup> Therefore, the Company's attempt to support its requested \$100 million base rate increase by altering a fundamental accounting definition must be rejected.

To support this position, the Company engaged in an analysis of days of cash on hand, which is how liquidity is typically measured.<sup>80</sup> PGW posits that the "standard rule of thumb for 'free' cash for a municipal utility whose rates are set using a cash flow methodology of **at least** 200 days of only cash (not cash and short term debt at year

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<sup>75</sup> PGW St. 3R, p. 3-4.

<sup>76</sup> OTS St. 1-SR, p. 8.

<sup>77</sup> PGW Rejoinder Exh. 1 (Bogdonavage) (Emphasis added).

<sup>78</sup> PGW St. 3, Ex. BB-2.

<sup>79</sup> Tr., p. 585.

<sup>80</sup> PGW St. 3, p. 10.

end.)”<sup>81</sup> To bolster the claim that 200 days of free cash is reasonable, PGW provided a schedule showing the days of liquidity of several hundred municipal companies, which resulted in an average of 691 days of cash on hand.<sup>82</sup> However, when asked how liquidity is defined on the exhibit, PGW witness Bisgaier admitted that not one universal definition of liquidity was used because all of the utilities identified on the exhibit self-reported the information for an American Waterworks Association survey.<sup>83</sup> When asked how many of the several hundred utilities identified on the exhibit provide gas service, the Company, through a response to an on-the-record data request, answered that only three of the utilities provide gas service and none solely provide natural gas service.<sup>84</sup> OTS maintains that these exhibits fail to support the Company’s position given that the list is not representative of PGW because few of the utilities provide gas service and none, unlike PGW, solely provide gas service. Rather, PGW’s exhibits illustrate days of liquidity for municipal water companies, which is wholly irrelevant when determining the financial needs of a municipal gas company. Moreover, the analysis in the exhibit is skewed given that several of the utilities have an inordinate amount of liquidity, which influenced the overall average.<sup>85</sup> For example, the City of Newark claimed to have 100,075 days, or 274 years, of liquidity and the City of Idaho Falls indicated that they have 34,752 days, or 95 years, of liquidity.<sup>86</sup> In fact, approximately 20 of the utilities

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<sup>81</sup> PGW St. 3R, p. 8.

<sup>82</sup> PGW St. 3R, Ex. BB-3, 4.

<sup>83</sup> Tr. p. 757.

<sup>84</sup> PGW Ex. BB-4A (Response dated May 25, 2007).

<sup>85</sup> OTS St. 1-SR, p. 25.

<sup>86</sup> PGW St. 3R, Ex. BB-3. See also, Tr., pp. 757-758.

listed on PGW's exhibit had 10 years or more of liquidity.<sup>87</sup> Moreover, these liquidity levels indicate that the utilities listed on PGW's exhibits do not support the Company's definition of liquidity because it would be highly unusual for a municipal utility to have 274 or 95 years of free cash on hand. Given these high liquidity levels for predominantly municipal water companies, PGW witness Bisgaier's exhibits fail to illustrate an appropriate level of liquidity for a natural gas utility and, as such, should be afforded little weight.

OTS did not recommend an appropriate level of liquid assets in this proceeding; however, based on the appropriate definition of liquidity, PGW's current assets that can readily be converted into cash would likely exceed 200 days.<sup>88</sup> OTS made no recommendation primarily because the cash flow method does not focus on the concept of days of liquidity. As previously discussed, the cash flow method requires adequate debt service coverage and a reasonable working capital. Due to a number of variables, it would be difficult for OTS to definitively calculate PGW liquid assets. However, PGW's cash, gas inventories, money markets, commercial paper, and short-term treasury bonds most likely produce more than 200 days of liquidity. As a comparison, it is useful to point out that rate base/rate of return analysis uses the one-eighth method, or 45 days, to calculate an appropriate cash working capital allowance. While such an analysis is inappropriate for a cash flow company, it further highlights that PGW's liquidity request is unsupported and must be rejected.

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<sup>87</sup> Tr., p. 757.

<sup>88</sup> OTS St. 1-SR, p. 26.

## VIII. MISCELLANEOUS ISSUES

### A. Off System Sales/Capacity Release

In the instant proceeding, PGW has proposed to use 100% of the revenue derived from capacity release and off-system sales to flow to the Company to fund construction projects.<sup>89</sup> Historically, 100% of the revenue from these transactions has been returned to PGW ratepayers through the PGC mechanism. OTS maintains that the Company's proposal must be rejected as it will violate the Company's obligation to pursue a least cost fuel procurement policy to the detriment of its PGC customers.

The Public Utility Code mandates that the Company pursue a least cost fuel procurement policy in the determination of just and reasonable rates.<sup>90</sup> PGW's proposal violates this statutory obligation because none of the revenue from these transactions will be used as a credit against their purchased gas costs. The Company asserts that its obligation to pursue a least cost fuel procurement policy is "unrelated to the ratemaking treatment of any savings or reductions in gas costs that the Company is able to realize in pursuit of such a policy."<sup>91</sup> Such an assertion is not founded in sound ratemaking principles as it is well-settled that an NGDC's least cost procurement obligation includes the requirement that the utility pursue capacity releases and off-system sales. In the Peoples Natural Gas Company 1994 § 1307(f) proceeding, the Commission stated:

We are of the opinion, and so find, that Peoples is required to release any excess firm transportation capacity as

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<sup>89</sup> PGW St. 1, p. 5.

<sup>90</sup> 66 Pa.C.S. §§ 1307(f), 1317, 1318.

<sup>91</sup> PGW St. 1R, p. 11.

aggressively as possible pursuant to the least cost gas requirement of our regulations.<sup>92</sup>

Moreover, the requirement to pursue such transactions as a cost mitigation strategy in adhering to least cost procurement obligations is reflected in the following Commission Policy Statement:

**§ 69.343. Capacity release on interstate gas pipelines.**

(a) The Commission encourages its jurisdictional local distribution companies (LDCs) to efficiently utilize interstate pipeline capacity as a valuable resource for those retail and transportation customers desirous of the capacity. The Pennsylvania LDCs should strive to utilize interstate pipeline capacity as efficiently as possible and to assist in the development of a competitive natural gas market including efficient capacity release programs. With the advent of Federal Energy Regulatory Commission (FERC) Order No. 636, the Commission encourages the LDCs to do the following:

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(2) To the fullest extent legally permissible under FERC Rules and Regulations, maintain the LDC's contractual rights to necessary interstate pipeline capacity while mitigating the costs associated with the capacity through marketable assignments, brokering arrangements, capacity sharing arrangements, prearranged deals and buy/sell transactions.

Therefore, OTS submits that the Commission's position is well-settled that the Public Utility Code's least cost procurement obligation requires PGW to pursue capacity release and off-system sales in order to reduce PGC costs.

PGW's proposal violates this statutory mandate because, rather than crediting the revenue against the PGC, the Company wants to use it to fund a variety of capital

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<sup>92</sup> Pennsylvania Public Utility Commission v. Peoples Natural Gas Co., 83 Pa. PUC 22, 65 (Order entered September 30, 1994).

projects, including but not limited to the LNG Liquefaction Plant capacity expansion or an update to the customer billing system.<sup>93</sup> The diversion of this revenue for these projects presents many concerns. First, as previously discussed, it violates the least cost procurement mandate because purchased gas costs will be higher if the off system sales and capacity releases are not credited back to 1307(f) customers. The Company does not dispute the fact that, in the scope of a 1307(f) proceeding, purchased gas costs will be higher.<sup>94</sup> Second, PGW's testimony on where, when and how this revenue will be utilized is remarkably vague. While the Company sites several projects to which the revenue will be applied, it does not propose a definite plan with respect to how this projected \$10 million in revenue will be utilized. Third, the proposed projects will provide benefits to all ratepayers, not just PGC customers.<sup>95</sup> PGW does not dispute this but asserts that "capital projects will primarily benefit firm sales customers, even if transportation or interruptible customers stand to benefit as well."<sup>96</sup> This is troubling given that the money to fund the off system sales and capacity release transactions comes solely from PGC customers.<sup>97</sup> The record evidence shows that the Company does not dispute this fact.<sup>98</sup> As such, PGC customers alone should receive a benefit through the reduction of their purchased gas costs. If there are capital projects that require funding that will benefit all customers, then all customers should pay. The Company is able to recover the cost of such capital projects through base rates from all customer classes;

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<sup>93</sup> PGW St. 1R, p. 12.

<sup>94</sup> Tr., p. 496.

<sup>95</sup> OTS St. No. 4, p. 8.

<sup>96</sup> PGW St. 1R, p. 12.

<sup>97</sup> OTS St. 4, p. 8. OTS St. 4-R, p. 6.

<sup>98</sup> Tr., 498.

however, the current base rate filing did not include a claim for such costs. PGW should not be permitted to circumvent the traditional base rate process by collecting \$10 million in PGC revenues that belong solely to PGC customers in order to fund these projects given that the base rate process provides the proper funding mechanism.

While OTS recognizes that other NGDCs in the Commonwealth are permitted to retain a limited portion of revenue derived from off system sales and capacity release through various sharing mechanisms, it must be remembered that PGW is not proposing to share these credits.<sup>99</sup> Rather, it is requesting to keep the entirety of such revenue. Doing so ignores the very reasoning for the creation of the sharing mechanisms in place for other NGDCs. Sharing mechanisms were introduced in §1307(f) proceedings to encourage transactions that would recover a portion of fixed costs and reduce the overall PGC rate. Although utilities are not permitted to make a profit on the sale of natural gas, such mechanisms created an exception to that rule by providing an incentive for utilities to maximize efforts in the management of capacity release and off-system sales by permitting utilities to make a profit. Any profit received by the utility from off system sales and capacity release transactions is considered below the line revenue; however, the overall PGC profit is above the line and subject to Commission regulation. PGW, as a regulated municipal utility, is not entitled to any revenue from off-system sales and capacity release transactions because it does not have investors or a profit motive. Moreover, while there are a variety of different sharing mechanisms in place, no NGDC

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<sup>99</sup> OTS St. No. 4, p. 9. OTS St. No. 4-SR, p. 4.

receives more than 20%-30% of those margins. Certainly, no NGDC retains 100% of such revenue as requested by the Company.

PGW has, in the past, been permitted to retain a portion of PGC funds; however, it has not demonstrated that such relief is necessary in the instant proceeding. In 2001, the Company was granted permission to retain \$10.58 million in GCR overcollections to enable it to meet bond ordinance covenant requirements through January 2002.<sup>100</sup> However, such action is not necessary in the instant proceeding as the Company's filing has not demonstrated the need for rate relief. PGW's own exhibits show that it has sufficient funds to meet its bond ordinance absent any rate increase; therefore, the circumstances that arose in 2001 that contributed to the Commission allowing PGW to keep a portion of GCR revenue are clearly not present today. If PGW required additional revenue to fund capital projects, it had the ability to properly include the cost of those projects in its base rate filing. At that time, the parties would have had the ability to analyze the projects and conduct discovery about issues relating to those projects. However, the Company failed to do so and has instead proposed to recover the costs of these unspecified projects by taking off system sale and capacity release credits that belong to the PGC customers. Doing so is wholly unsupported by sound ratemaking principles and must be rejected by the Commission.

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<sup>100</sup> OTS St. No. 4, pp. 10-11.

## B. Gas Safety

OTS presented the testimony of Ralph Graeser, a Gas Safety Inspector in the Commission's Bureau of Transportation and Safety, who addressed three issues concerning PGW's gas safety management.<sup>101</sup>

First, OTS witness Graeser recommended that PGW implement a computerized leak monitoring system to ensure that the Company's leak history is readily available and easily accessed. The Company testified that such a program is being developed and is projected to be in use by the first quarter of fiscal year 2008.<sup>102</sup>

Second, OTS witness Graeser recommended that PGW implement a schedule to repair Class 2 leaks to ensure that active leaks are repaired before they become hazardous to the public. The Company replied that it manages leaks in a comprehensive manner, that repairing Class 2 leaks is not more economical, that it must have the flexibility to manage its leaks, and that a rigid schedule may interfere with the Company's cast iron replacement program. These arguments were addressed in OTS witness Graeser's surrebuttal testimony.<sup>103</sup> During the evidentiary hearings, PGW and OTS stipulated to resolve this issue, which was entered into the record on May 23, 2007.<sup>104</sup> The stipulation requires the Company to conduct an independent evaluation of its Class 2 leak repair policies within nine months of entry date of the Commission Order in this proceeding. A report must be filed with OTS and the Gas Safety Division of the Commission's Bureau

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<sup>101</sup> OTS St. Nos. 5, 5-SR.

<sup>102</sup> PGW St. 5R, p. 10.

<sup>103</sup> OTS St. No. 5-SR, pp. 5-11.

<sup>104</sup> Tr. p. 728.

of Transportation and Safety within 60 days of completion of the evaluation. This stipulation is in the public interest because it ensures that PGW's leak repair policy will be reviewed by an independent party to assist PGW in determining whether its current leak repair policy best serves the interests and safety of its ratepayers. While the stipulation does not require PGW to accept the recommendations, it allows OTS and other parties to challenge PGW's rejection of such recommendations by initiating a proceeding before the Commission seeking an order to require PGW to implement the recommendations. The parties agreed to use the Commission's Alternative Dispute Resolution (ADR) process but further agreed that, if ADR fails to resolve the matter, it will be scheduled for hearings.

OTS further recommended that PGW continue to meet and exceed the 1% replacement rate of cast iron pipe on its system because cast iron main breaks are the leading cause of leaks in PGW's distribution system. PGW responded that it will continue to budget for the 1% cast iron replacement rate and that it will exceed that standard if possible.<sup>105</sup>

### C. Customer Impact

OTS maintains that the recommended \$25 million increase is in the public interest because it moderates the rate impact on PGW ratepayers while still allowing the Company to recover the costs of a known and measurable expense. While the effect of a rate increase on the Company will be discussed throughout this brief and the briefs of all the parties, it is important to remember that the increase will also dramatically affect

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<sup>105</sup> PGW St. 5R, p. 10.

PGW ratepayers. Throughout the extensive public input testimony presented during the four public input sessions, PGW customers made it abundantly clear that a significant increase in base rates would present a substantial financial hardship. The focus of this proceeding is on the revenue that PGW needs or, more precisely, what it wants.

However, the Commission can not lose sight of the fact that such rate relief will burden those customers who testified at the public input sessions and many others who struggle to pay their gas bills.

The Company's position that it must rectify its capital structure and liquidity issues solely by increasing rates for its customer base in a relatively short period of time, fails to recognize the impact on its customers. PGW's financial deterioration occurred over many years; however, the Company is looking solely to ratepayers to remedy this situation within an artificial five year deadline. Doing so is inappropriate because the City of Philadelphia, as the owner of PGW, and the Company, through increased operating efficiencies, should contribute to achieving PGW's financial goals. PGW claims that it is not practical or legal to look to the City to resolve PGW's debt and liquidity issues.<sup>106</sup> While OTS did not recommend that the City contribute funds to the Company, OTS did comment that PGW's capital structure could be greatly improved if the City forgave repayment of the \$45 million City loan.<sup>107</sup> Doing so is appropriate because, as the owner of PGW, the City has a responsibility to help the Company. The Commission recognized the importance of this relationship in the following Order:

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<sup>106</sup> PGW St. 2R, p. 5. PGW Sts. 9, 10.

<sup>107</sup> OTS St. 1-R, p. 19.

However, we urge the City of Philadelphia, as owner of PGW, to continue to take measures to insure the financial health of PGW. It is the expectation of this Commission that the City of Philadelphia, as owner of PGW, continue to assist PGW in its cash flow requirements so that a financial crisis does not take place. One way of insuring PGW's overall financial health is to grant back or waive, in part or in total, the City payment when necessary. We hope that the City of Philadelphia will be as diligent in its concern for the financial health of PGW as the Commission is in granting the rate relief described herein.<sup>108</sup>

PGW clamors that it needs to be "fixed,"<sup>109</sup> but it must be emphasized that the Company is looking solely to ratepayers to bear the cost of this "fix" within its proposed five year planning horizon. Doing so is not in the public interest given that PGW's rate relief request will disproportionately burden its ratepayers who are among the most payment troubled in the Pennsylvania.

## IX. RATE STRUCTURE

Rate structure involves the allocation of the Commission's allotted revenue to the various rate classes contained in the utility's tariff. Rate design focuses on how the revenue allotted will be generated. A properly designed rate structure will not unduly burden one class of ratepayers to the benefit of another. The Public Utility Code maintains that rates "shall be just and reasonable and in conformity with regulations or orders of the commission."<sup>110</sup> The Code further dictates that "[n]o public utility shall...make or grant any unreasonable preference to any person, corporation....No public utility shall establish or maintain any unreasonable difference as to rates, either as

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<sup>108</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. R-00006042, p. 34 (Order entered October 4, 2001).

<sup>109</sup> PGW St. 1R, p. 8; PGW St. 2R, p. 15.

<sup>110</sup> 66 Pa. C.S. §1301.

between localities or as between classes of service.”<sup>111</sup> Proper interpretation of this statute does not require each class to be charged the same rate. The Court has upheld differences in rates charged to different classes to the extent there was a reasonable basis for the discrepancy.<sup>112</sup>

Succinctly stated in *Pa. P.U.C. v. West Penn Power*:

*[p]ublic utility rates should enable the utility to recover its cost of providing service and should allocate this cost among the utility’s customers in a just, reasonable and nondiscriminatory manner.*<sup>113</sup>

Cost based allocation based on cost-of-service studies must be done with caution as the basis for the determinations may not be exact:

While the commission recognizes that cost-of-service is always an important and normally the primary basis of pricing, it is not the only consideration. In the first place, even though the cost-of-service studies may be done in a craftsmanlike manner, this does not mean that they can be blindly relied upon. Judgment and some assumptions must be made in cost-of-service studies; cost-of-service studies are not perfect or precise.<sup>114</sup>

In the instant proceeding, cost-of-service determinations must take into account the unique characteristics of the Company’s customer base. The inordinately high percentage of low-income customers requires that the Commission use its judgment in establishing the proper rate structure. Setting rates is within the expertise of the

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<sup>111</sup> 66 Pa. C.S. §1304.

<sup>112</sup> *Peoples Natural Gas Company v. Pennsylvania Public Utility Commission*, 47 Pa. Cmwlth 512, 409 A.2d 446 (1979).

<sup>113</sup> 73 Pa.PUC 454, 510, 199 PUR 4<sup>th</sup> 110 (1990).

<sup>114</sup> *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 31 PUR 4<sup>th</sup> 15, 84 (1978).

Commission and will not be overturned as long as the determination is based on the presentation of substantial evidence.<sup>115</sup>

A. Cost of Service

The Cost of Service Study (COSS) presented by the Company in this proceeding is slightly flawed and must be corrected. OTS has identified two issues with the submitted COSS that require correction. First, the Company improperly classified and allocated the cost of distribution mains. Second, the Company misallocated the cost of industrial measuring and regulatory station equipment.<sup>116</sup> Proper allocation of costs in a COSS is necessary to enable the study to be used as a guide in assigning responsibility for rates to each of PGW's customer classes. Allocating costs is not an exact science; however, a reasonable COSS will provide appropriate guidance in establishing rates by class. Its use as a guide does not diminish the importance of making corrections that are clearly identifiable and readily rectified. In the instant proceeding, the two errors identified by OTS are easily corrected thereby providing a more accurate guide in setting rates.

1. Classification and Allocation of Distribution Main Costs.

PGW improperly classified 25% of its distribution main investment as a customer cost.<sup>117</sup> The remaining 75% of its distribution mains cost was allocated as demand related. OTS maintains that this is improper as the entire cost of distribution mains

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<sup>115</sup> City of Pittsburgh v. Pennsylvania Public Utility Commission, 106 Pa. Cmwlth. 437, 526 A.2d 1243 (1987)

<sup>116</sup> OTS St. No. 3, p. 11.

<sup>117</sup> OTS St. No. 3, p. 12, PGW Ex. HSG-3, p. 8, l. 43.

should be allocated on a volumetric basis utilizing the average and excess (A&E) demand method.<sup>118</sup>

As identified in OTS Direct Testimony, "...the quantity and investment in mains does not change significantly if one customer joins or leaves the system. Mains were built to deliver gas, and the cost of mains cannot be assigned to one specific customer."<sup>119</sup> As such, "no portion of the fixed costs or depreciation expense associated with mains should be allocated to the customer cost function."<sup>120</sup> In the recent, fully litigated, PPL gas base rate case<sup>121</sup> this very issue was adjudicated. The Commission accepted the allocation method offered by PPL Gas which classified the distribution mains costs as 40% commodity usage and 60% excess demand. Furthermore, the Commission has previously offered an explanation as to the items included in fixed costs when they offered that direct customer costs include "the depreciation, return and income taxes associated with meter and service investment, the operation and maintenance expense for meters and services, and the expense associated with meter reading and billing."<sup>122</sup> There is no distinguishing the instant proceeding from this cited case as the focus is on the inclusion, or more appropriately, the exclusion of distribution mains from the discussion of direct customer costs. The Commission has clearly acknowledged the recommendation of OTS Witness Kubas in past proceedings and its application is

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<sup>118</sup> OTS St. No. 3, p. 13.

<sup>119</sup> OTS St. No. 3, p. 12.

<sup>120</sup> *Id.*

<sup>121</sup> Pennsylvania Public Utility Commission v. PPL Gas Utilities Corporation, Docket No. R-00061398, Order Entered February 8, 2007.

<sup>122</sup> OTS St. No. 3, p. 12 referring to Pennsylvania Public Utility Commission v. Pennsylvania-American Water Company, Docket No. R-00932670, Order Entered July 26, 1994.

appropriate here. After properly removing the costs classified by the Company in the customer function, OTS then allocated the fixed cost and depreciation expense to the various customer classes based on the A&E demand method. The capacity of mains is shared by the various classes in varying amounts throughout the year. Since the capacity of mains is shared by the various classes, it is appropriate to allocate the cost of mains to the various classes on a reasonable basis. The A&E demand method has been accepted by the Commission as a reasonable basis for allocating the cost of shared assets to the various customer classes. The OTS application of the A&E method is proper in that “[i]t allocates the costs of the mains on a straightforward basis, giving equal weight to the average flow and excess of average flow through the mains.”<sup>123</sup> OTS Witness Kubas has explained that “mains were built to deliver volumes of gas, on a daily basis, during both average and peak times”<sup>124</sup> therefore, allowing for an equal amount of weight to be given to these elements of use. Hence, the 50/50 allocation recommended by OTS. Furthermore, as described above, the Commission recently approved a 40/60 allocation method in the PPL Gas base rate proceeding referenced earlier.

This adjustment helps to make the submitted COSS more accurately reflect the costs associated with each customer classification. An accurate cost representation is necessary in order to provide assistance in designing just and reasonable rates.

2. Allocation of Account 385 – Industrial Measuring and Regulating Station Equipment Costs.

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<sup>123</sup> OTS St. No. 3-SR, p. 9.

<sup>124</sup> Id.

The Company improperly allocated 77.0% of the total cost of the industrial measuring and regulating station equipment to the residential class. Lesser amounts were allocated to the other tariff rate classes while nothing was allocated to the remaining customers in the interruptible classes.<sup>125</sup> “Since the Company installed industrial measuring and regulation station equipment to serve industrial customers, it is reasonable to allocate these costs to the Industrial and interruptible customers.”<sup>126</sup> This recommendation was acknowledged and accepted by the Company in its Rebuttal Testimony.<sup>127</sup>

The impact on the COSS of these two recommendations is to reduce the costs allocated to the residential class by \$1,043,000 while increasing the allocation to the GTS/IT class by \$636,000. The remaining costs are allocated among the other rate classes as demonstrated in OTS Exhibit Number 3 on Schedule 4 at page 1.

With these corrections, the Company’s COSS provides a reasonable guide in setting rates by classification based on the cost of providing service. As presented earlier, the COSS is a guide in determining rates but is not the sole criteria. This premise does not excuse the need for an accurate representation of the costs associated with each tariff class. The OTS recommendations are necessary to correct the defects in the Company’s Cost of Service Study.

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<sup>125</sup> OTS St. No. 3, p. 15.

<sup>126</sup> Id. at 16.

<sup>127</sup> PGW St. No. 8R, p. 20.

## B. Revenue Allocation

The Company's proposed revenue allocation violates the principle of cost based rates and must be rejected. OTS Witness Kubas has testified that one goal of revenue allocation is "to design proposed rates so that the revenue received from each class is equal to the cost of providing service to that class as determined by the cost of service study."<sup>128</sup> The Company's proposed revenue allocation does not accomplish this goal. For some tariff classes, the Company's proposed revenue allocation actually moves the customers further away from cost based rates.

Arguably, there are different ways to achieve the goal of moving customer classes toward the cost of providing service. However, "[t]his goal is generally accomplished by proposing a greater rate increase in the classes in which the rate of return is below the system average rate of return, and a lesser increase, or no increase, for classes where the rate of return is well above the system average rate of return."<sup>129</sup> There are, obviously, exceptions to this principle in the case of customers operating under negotiated rates. An example provided by OTS Witness Kubas is the Interruptible class. The caveat is that rates not increased for this class must be made up in the other classes. This general premise may require that customer classes that already exceed the system average rate of return be required to receive an increase in rates to support the Interruptible class. In the instant proceeding, this impact is minimal and offers no support for the Company's misguided revenue allocation. Inexplicably, the Company's proposed revenue allocation

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<sup>128</sup> OTS St. No. 3, p. 18.

<sup>129</sup> Id.

burdens the Commercial and Housing GS classes with the largest percentage increase in rates. Based on the Company's own, unadjusted COSS the rate of return under present rates for the Commercial class is 12.6%. The corresponding rate of return for the Housing GS class is 13.6%. This is more than double the system average rate of return of 5.8%.<sup>130</sup> Although not as severe, the Industrial class is similarly affected. The proposed increase for the Industrial class is 9.3%. This is on top of the highest rate of return on PGW's system of 14.4%.<sup>131</sup>

OTS maintains that the proper solution to the flawed revenue allocation proposed by the Company is a targeted scale back of the affected classes. OTS Witness Kubas specifically targets the Commercial, Industrial and Housing GS classes for first dollar relief. First dollar relief is based on the premise that the Commission does not allow the full increase as requested by the Company. First dollar relief provides that the affected classes receive the benefit of reduced rate relief by not receiving an increase until the threshold level of increase has been reached. OTS Witness Kubas has recommended that the Commercial, Industrial and Housing GS classes not receive any increase in this proceeding unless the Commission was to grant rate relief in excess of \$74,231,000. In other words, the benefit of the first \$25,769,000 reduction should go to these targeted classes. As mentioned earlier, these classes are currently significantly overpaying based on the Company's submitted COSS.<sup>132</sup> The next beneficiary of reduced rate relief should

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<sup>130</sup> Id. pp. 19-20.

<sup>131</sup> The terms rate of return and system average rate of return as referred to in this sections are meant to be used as reference points when comparing the customer classes in the context of revenue allocation and cost causation. As a cash-flow company, PGW is not regulated on traditional rate base/rate of return principles.

<sup>132</sup> Rate of Return by Customer Class is shown on OTS Exhibit No. 3, Sch. No. 4, pp. 2-3.

be the Municipal class. OTS Witness Kubas recommends that the next \$1,317,000 of reduced rate relief should flow to the Municipal class. This is a 60% reduction to the Company's proposed increase for this class.<sup>133</sup> This adjustment is necessary due to the class's excessive proposed rates compared to the relative cost indicated in the COSS. Finally, as OTS Witness Kubas has illustrated, any rate relief below \$72,914,000 should be used to reduce the proposed Residential Usage Rate and the remaining increase in the Municipal Usage Rates in proportion to the percent increase originally proposed for these classes.<sup>134</sup> This approach is consistent with traditional regulatory treatment of revenue allocation as it moves customer classes toward their respective costs of service while acknowledging, and respecting, the principle of gradualism.

The OTS proposed revenue allocation is a scale back proposal that targets relief to those customer classes who rates exceed its cost of service. Proposing a greater than average increase to classifications already providing a subsidy violates regulatory principles and is inconsistent with the Commonwealth Court decision that addresses this very issue.<sup>135</sup>

OTS proposed a targeted scale-back of rates by class should the Commission grant less than the full request. The OTS proposal is designed to move the relative rates of return of the various customer classes closer to the cost of providing that service. OTS addresses this goal by proposing a greater increase to the classes where the rate of return is below the system average and a lesser increase, or in some cases no increase, to the

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<sup>133</sup> OTS St. No. 3, p. 26.

<sup>134</sup> OTS St. No. 3, p. 24.

<sup>135</sup> Lloyd v. Pennsylvania Public Utility Commission, 904 A.2d 1010 (Pa. Cmwlth. 2006).

classes significantly above the average system rate of return.<sup>136</sup> OTS further recommends that any reduction in usage rates should be proportional to the percentage increase proposed by the Company for each usage rate in each class. The original, specific recommendation by class is demonstrated in OTS Statement Number 3 on page 24.

C. *Tariff Structure*

The Office of Trial Staff did not raise any issues with the Company's tariff. The OTS analysis did not reveal any egregious mistakes that required remediation. OTS offers no recommendations in this area.

D. *Summary and Alternatives*

OTS advocates a targeted scale back of the Company's proposed revenue allocation in order to address the level of subsidy that exists within the Company's rate structure. The OTS proposal is commonly referred to as a First Dollar Relief proposal and it targets the Commercial, Industrial and Housing GS classes. This immediate relief is necessary as these customers have been paying in excess of the system average rate of return. The Company's proposal is flawed in, that not only does it not correct this subsidy, it actually increases it. Attached below is a chart summarizing the OTS recommendation:

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<sup>136</sup> OTS St. No. 3, p. 18.

### OTS Scale-Back Proposal

<b>Increase Request:</b>  <b>\$100,000,000</b>	<b>Classes</b>	<b>Remaining</b>
First \$24,919,000 Reduction	Commercial, Industrial, and Housing GS Classes	\$75,081,000
Next \$1,317,000 Reduction	Municipal Class	\$73,764,000
Below \$73,764,000	Residential and Municipal Classes	

However, since OTS agreed that the net additional revenue would be \$850,000 less at proposed rates than shown on OTS Ex. No 3. p. 1, lines 2 and 9 and as described on PGW St 5-R, page 15, the above "First Dollar Relief" amount of \$24,919,000 should be increased by \$850,000 to \$25,769,000 with corresponding changes to the amounts under the "Remaining" column as described below:

### Revised OTS Scale-Back Proposal

<b>Increase Request:</b>  <b>\$100,000,000</b>	<b>Classes</b>	<b>Remaining</b>
First \$25,769,000 Reduction	Commercial, Industrial, and Housing GS Classes	\$74,231,000
Next \$1,317,000 Reduction	Municipal Class	\$72,914,000
Below \$72,914,000	Residential and Municipal Classes	

Applying this targeted scale-back proposal to the OTS recommendation to increase base rate revenue by \$25,000,000 results in the following increases by class:

Residential	\$24,642,000
Commercial	\$0
Industrial	\$0
Housing GS	\$0
Municipal	\$297,000
Interruptible	\$61,000
 Total	 \$25,000,000

## X. CONCLUSION

The Company's requested rate relief must be denied as it is excessive and will result in rates that are neither just, nor reasonable. As a utility regulated under the cash flow method, PGW must have sufficient funds to cover its debt obligations while retaining a reasonable level of working capital that become due in the test period. The record evidence in this proceeding indicates that the Company has sufficient funds to satisfy this mandate, without a rate increase. The exhibits presented by the Company clearly show that it does not have a test year deficiency in revenue. Attempts to capture expenses and concepts well beyond the test year are contrary to sound regulatory principles and must be rejected. Utility regulation in Pennsylvania is well established and this filing attempts to circumvent long-standing practices by introducing speculative data and events that, if they occur, will be far beyond the regulatory framework of a test year. The dizzying array of constantly updated and revised balance sheets and income statements does nothing more than draw attention away from the clear evidence presented in its test year data. The Company's request for a rate increase is not supported by the evidence in this proceeding and must be rejected.

The cash flow method of regulation provides what the utility needs to honor its obligations. The present filing has offered no reason to violate this principle. By continually offering narrow definitions of accepted concepts the Company has attempted to interject its "wants" in place of what it needs. The Company wants liquidity to only be measured as free cash while the most appropriate interpretation is all assets readily converted to cash or its equivalents. By manipulating this interpretation, the Company

has attempted to create this revenue dilemma that it believes can only be resolved by receiving an inordinate amount of rate relief from its already financially challenged ratepayers.

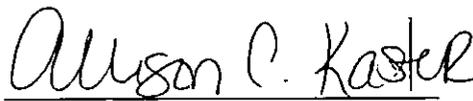
The record evidence also clearly indicates that, absent the necessity that PGW repay a loan to its corporate parent, the City of Philadelphia, absolutely no rate increase would be justified. OTS maintains that only through the cooperative sacrifices involving the City, the Company and its ratepayers can an equitable solution be attained. All three major components must be responsible for ensuring the continued viability of the Company. The OTS recommendation incorporates these aspects by asking the City, as the parent, to help, requiring the Company to identify and institute certain operating efficiencies and finally, asking ratepayers to contribute a reasonable amount. To further this proposal, OTS has not recommended adjustments to its rate relief determination to reflect changes to the Company's claimed expenses. Instead, OTS would implore the Company to apply these funds to reduce the balance of its line of credit. Coupled with an equity infusion from the City in the form of a forgiven loan and additional revenue supplied by ratepayers, the Company can begin to rebuild its capital structure and reduce its reliance on debt.

For the reasons stated herein, the Office of Trial Staff respectfully requests that the Administrative Law Judges and the Commission adopt its recommendations in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard A. Kanaskie", written over a horizontal line.

Richard A. Kanaskie  
Prosecutor  
Attorney ID #80409

A handwritten signature in black ink, appearing to read "Allison C. Kaster", written over a horizontal line.

Allison C. Kaster  
Prosecutor  
Attorney ID #93176

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Dated: June 12, 2007

# APPENDIX A

## PROPOSED FINDINGS OF FACT

1. In this base rate case, the Company is requesting a \$107 million increase in base rates and has proposed to collect the revenue from off system sales and capacity release transaction.
2. Ratemaking in Pennsylvania is based on the principle of a test year, which may be either historic or future. OTS St. No. 1, p. 9; 52 Pa. Code §§ 53.53, 53.56.
3. Data contained in the test year is designed to accurately reflect the operating condition of the utility for the period that rates will be in effect. Future projections are less reliable and do not form the basis for ratemaking in Pennsylvania. OTS St. No. 1, p. 17; Transcript, p. 573.
4. The Company has utilized a future test year ending August 31, 2007.
5. The City Ordinance sets the specific debt service requirements as follows:  
1.5x for the 1975 bonds; 1.5x for the senior 1998 bonds; and 1.0x for the subordinate 1998 bonds. OTS St. 1, pp. 8-9
6. For a municipal utility to maintain investment grade, the financial community has indicated that it should cover its annual debt service at 1.2x. OTS St. 1, pp. 8-9
7. Under the Company's \$100 million rate increase and \$10 million in off system sales and capacity release, debt coverage is projected to be 6.98x for the 1975 bonds, 4.01x for the senior 1998 bonds; and 80.72x for the subordinate 1998 bonds. PGW ST. 2, Exh. JRB-1, p. 8.

8. PGW's schedules show that, with no increase to base rates, it will have debt service coverage of 1.34x in the future test year. PGW St. 2, Ex. JRB-1, p. 3. See also, OTS St. 1, p. 14.
9. PGW recognizes that it is able to satisfy its bond coverages and maintain an investment graded rating in the test year without an increase. PGW St. 2, p. 6.
10. A \$25 million rate increase will not change the 1.34x coverage for 2006-2007, but it will provide for coverage of 1.38x in 2007-2008, 1.39x in 2008-2009, and 1.36x in 2010-2012. OTS St. 1, Ex. 1, Sch. 8.
11. Fitch Ratings have taken PGW off negative watch due to its increased customer collections. OTS St. 1, p. 13, OTS St. 1, Ex. 1, Sch. 5.
12. The City of Philadelphia owns PGW.
13. An equity infusion from the City to forgive the \$45 million loan would decrease the Company's debt by \$45 million and increase its equity account by the same amount. OTS St. 1-SR, p. 27.
14. PGW has four principal sources of liquidity: commercial paper, \$45 million line of credit, borrowing from bond-funded capital account, and gas storage deferral contract. PGW St. 3, pp. 6-9.
15. Liquidity is defined as an ability to turn an asset into cash or cash equivalents, such as gas inventories, money markets, commercial paper, and short-term treasury bonds. OTS St. 1-SR, p. 8.
16. The Management Agreement between the City and the Philadelphia Facilities Management Corporation which requires that the Company have sufficient

funds “[t]o provide cash, or equivalent, for working capital in such reasonable amounts...” PGW Rejoinder Exh. 1 (Bogdonavage).

17. The Company agreed to increase its present rate revenues because it miscalculated its residential heating customer count, which resulted in a \$1,950,600 increase in net revenue at present rates. PGW St. No. 5R, p. 15, OTS St.
18. OTS adjusted PGW’s \$500,000 Management Incentive Compensation expense claim. OTS St. No. 2, pp. 3-8; OTS St. No. 2-Sr, pp. 2-9.
19. OTS adjusted the Company’s claim for prescription plan expense by \$460,787, which was accepted by the Company. OTS St. No. 2, pp. 8-10. PGW St. 12, p. 97.
20. The Company and OTS entered a Stipulation into the record setting the uncollectible level of bad debt expense at 4.5%. PGW Hearing Exhibit No. 5 (Submitted June 1, 2007).
21. OTS is applying the 4.5% bad debt ratio only to jurisdictional gas revenues. OTS St. No. 2, pp. 10-14. OTS St. No. 2-SR, pp. 9-16.
22. OTS adjusted the Company’s marketing and promotion expense claim by \$475,000. OTS St. 2, pp. 14-17. OTS St. No. 2-Sr, p. 18. OTS Ex No. 2-SR, Sch.1, p. 2.
23. OTS adjusted the Company’s lobbying expense for outside services by \$230,000 and the Company’s dues and subscriptions claim by \$15,200. OTS St. No. 2, pp. 17-19. OTS St. No. 2, pp. 18-20.

24. OTS adjusted the Company's claim for injuries and damages by \$475,000 and adjusted \$250,000 for special legal expenses. OTS St. No. 2, pp. 19-22. OTS St. No. 2-Sr, pp. 21-22.
25. OTS adjusted the Company's \$35,000 advertising expense claim. OTS St. No. 2, p. 22-24. OTS St. No. 2-SR, pp. 23-25.
26. OTS adjusted the Company's \$50,000 claim for merger activity expense, which was accepted by the Company. OTS St. No. 2, p. 24. PGW St. 2R, pp. 34-35.
27. OTS adjusted the Company's claim of \$50,000 for regulatory fines and penalties. OTS St. No. 2, pp. 25-27. OTS St. 2-SR, pp. 26-27.
28. The money to fund off system sales and capacity release transactions comes solely from PGC customers. OTS St. 4, p. 8; OTS St. 4-R, p. 6; Tr., 498.
29. If off-system sales and capacity releases are not credited to 1307(f) customers, purchased gas costs for those customers will be higher. Tr., p. 496
30. PGW is developing a computerized leak monitoring system that is projected to be in use by the first quarter of fiscal year 2008. PGW St. 5R, p. 10.
31. OTS proposed two adjustments to the Company's Cost of Service Study. OTS Main Brief, pp. 53-54.
32. OTS testified that PGW misallocated the cost of industrial measuring and regulatory station equipment. OTS St. No. 3, p. 11. OTS Main Brief, p. 54.

33. PGW has agreed to allocate the costs of Industrial Measuring and Regulating Station Equipment Costs to the Industrial and Interruptible customers. OTS Main Brief, pp. 56-57, PGW St. No. 8R, p. 20.
34. OTS proposed that distribution main costs be excluded from direct customer costs. OTS St. No. 3, p. 12.
35. OTS proposed that the fixed costs and depreciation expense of shared assets be allocated using the Average and Excess demand method.
36. A goal of revenue allocation is to design rates so that revenue received from each class is equal to the cost of providing service to that class. OTS St. No. 3, p. 18.
37. OTS proposed a targeted scale back to move all classes closer to their cost of service. OTS St. No. 3, pp. 17-28
38. OTS proposed that Commercial, Industrial and Housing GS classes receive first dollar relief. As such, these classes would receive the first \$24,919,000 of reduced rate relief. OTS St. No. 3, p. 24. This recommendation must be adjusted to recognize the \$850,000 decrease in additional net revenue.  
  
Therefore, the revised OTS scale back position is that Commercial, Industrial and Housing GS classes would receive the first \$25,769,000 in rate relief.  
  
OTS Main Brief, pp. 61-62.
39. Under the OTS proposal, the Municipal class would receive the next \$1,317,000 of reduced rate relief. OTS St. No. 3, p. 24. OTS Main Brief, pp. 61-62.

40. OTS proposed that all rate relief below \$73,764,000 be borne by Residential and Municipal classes. When taking into account the \$850,000 adjustment to net revenue at proposed rates, the scale back is revised to show that those classes should be responsible for the total increase below \$72,914,000. OTS St. No. 3, p. 24. OTS Main Brief, pp. 61-62.

# APPENDIX B

## PROPOSED CONCLUSIONS OF LAW

1. PGW is a "City natural gas distribution operation" as defined in the Public Utility Code over which the Commission has jurisdiction. 66 Pa. C.S. § 102.
2. Rates shall be just and reasonable. 66 Pa.C.S. § 1301.
3. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.
4. The burden of proof to establish the justness and reasonableness of every element of PGW's base rate increase rests solely upon the public utility. 66 Pa.C.S. 315(a).
5. A public utility is entitled to recover, through ratepayer funds, all reasonable and normal operation and maintenance expenses associated with the provision of the regulated service. Western Pa. Water Co. v. Pa. P.U.C., 54 Pa. Cmwlth, 187, 422 A.2d 906 (1980).
6. The Public Utility Code mandates that the Company pursue a least cost fuel procurement policy in the determination of just and reasonable rates. 66 Pa.C.S. §§ 1307(f), 1317, 1318.
7. The Public Utility Code states that "[n]o public utility shall...make or grant any unreasonable preference to any person, corporation....No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service." 66 Pa. C.S.A. §1304.

8. The Company has not sustained its burden of proving that a rate increase of \$107 million and the approximately \$10 million in revenue from off system sales and capacity release is just and reasonable.

# APPENDIX C

## PROPOSED ORDERING PARAGRAPHS

### IT IS ORDERED:

1. That Philadelphia Gas Works' Supplement No. 16 to Tariff Gas-Pa. P.U.C. No. 2, Docket No. R-00061931 is hereby denied.
2. That Philadelphia Gas Works is hereby authorized to file a Tariff Supplement designed to change rules, regulations and rates calculated to produce \$25,000,000 in additional revenues.
3. That the rate increase shall be allocated to the customer classes as proposed by the Office of Trial Staff.
4. That all complaints filed in opposition to the Philadelphia Gas Works' base rate increase are dismissed and marked closed.
5. That the record at Docket No. P-00062241 is hereby marked closed.

# APPENDIX D

**PHILADELPHIA GAS WORKS  
INCOME STATEMENT  
FISCAL YEAR ENDING AUGUST 31, 2007**

	<b>OCA -Set III-Q.17 Budget 2006-07 (Dollars in Thousands)</b>	<b>OTS Adjustments (Dollars in Thousands)</b>	<b>OTS Adjusted Budget 2006-07 (Dollars in Thousands)</b>
<b>OPERATING REVENUES</b>			
Non-Heating	\$114,834		\$114,834
Gas Transport Service	7,256		7,256
Heating	820,732	\$6,497	\$827,229
Proposed Base Rate Increase		25,000	<u>\$25,000</u>
CRP/CWP/Senior Discount		\$0	\$0
Extraordinary Rate Relief	0	\$0	\$0
Electric Cost from GCR		\$0	\$0
Co. Adj Restructuring Chg		(\$3,396)	(\$3,396)
<i>Unbilled Adjustment</i>	<i>(732)</i>		<i>(\$732)</i>
<b>Total Gas Revenues</b>	<b>\$942,090</b>		<b>\$970,191</b>
Appliance Repair & Bill Paid Turn-Ons	10,532		10,532
<i>Other Operating Revenues</i>	<i>18,032</i>		<i>18,032</i>
<b>Total Other Operating Revenues</b>	<b>28,564</b>		<b>28,564</b>
<b>Total Operating Revenues</b>	<b>\$970,654</b>		<b>\$998,755</b>
<b>OPERATING EXPENSES</b>			
Natural Gas	\$630,836	\$4,546	\$635,382
Other Raw Material	5		5
Sub-Total Fuel	\$630,841		\$635,387
Contribution Margins	\$339,813		\$363,368
Gas Processing	15,715		15,715
Field Services	34,698		34,698
Distribution	16,536		16,536
Collection	7,944		7,944
Customer Service	14,125	0	14,125
Customer Accounting-Account Management	7,625	0	7,625
Bad Debt Expense	52,258	(8,608)	43,650
Marketing & Point of Sale Expenses	2,992	\$0	2,992
Administrative & General	43,963	\$0	43,963
Health Insurance	37,784		37,784
Capitalized Fringe Benefits	(11,261)		(11,261)
Capitalized Administrative Charges	(7,950)		(7,950)
Regulatory Asset Amortization	0		0
Amortization of Restructuring Costs	0		0
Year 2000 & Deregulation Amortization	0		0
Pensions	15,075		15,075
Taxes	6,485		6,485
Pro Forma Adjustments	217		217
Labor / Cost Savings	(6,274)	(\$2,680) A	(8,954)
Additional costs for PUC Safety & Other	0		0
Amortization of Non-Recurring IT Costs	0		0
<b>Sub-Total Other Oper. &amp; Maintenance</b>	<b>\$229,932</b>		<b>\$218,644</b>

**PHILADELPHIA GAS WORKS  
INCOME STATEMENT  
FISCAL YEAR ENDING AUGUST 31, 2007**

	<u>OCA -Set III-Q.17</u> <u>Budget 2006-07</u> (Dollars in Thousands)	<u>OTS Adjustments</u> (Dollars in Thousands)	<u>OTS Adjusted</u> <u>Budget 2006-07</u> (Dollars in Thousands)
Depreciation	\$38,213		\$38,213
Cost of Removal	3,200		\$3,200
To Clearing Accounts	<u>(3,217)</u>		<u>(\$3,217)</u>
	<b>\$38,196</b>		<b>\$38,196</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$898,969</b>		<b>\$892,227</b>
<b>OPERATING INCOME</b>	<b>\$71,685</b>		<b>\$106,528</b>
Other Income	11,212	50	11,262
Income Before Interest	<b>\$82,897</b>		<b>\$117,790</b>
Interest			
Long-Term Debt	56,437	2708	59,145
Other	13,186		13,186
AFUDC	(1,202)		(1,202)
Loss From Extinguishment of Debt	<u>5,557</u>		5,557
Total Interest	<b>\$73,978</b>		<b>76,686</b>
<b>NET INCOME</b>	<b>\$8,919</b>		<b>\$41,104</b>
City Payment	<u>0</u>		<u>\$0</u>
<b>Net Earnings</b>	<b><u>\$8,919</u></b>		<b><u>\$41,104</u></b>

<b>A Expense Adjustments</b>	<u>(000's)</u>
Management Incentive Comp	\$500
Benefits - Rx coverage	460
Marketing - Promotions	475
Lobbying - Outside Services	230
- Dues and Subscriptions	15
Injuries and Damages	475
Special legal services	250
Advertising - Marketing	35
Meger Activity/Authority Expense	<u>240</u>
<b>Total</b>	<b><u>\$2,680</u></b>

**PHILADELPHIA GAS WORKS  
DEBT SERVICE COVERAGE  
FISCAL YEAR ENDING AUGUST 31, 2007**

<u>DEBT SERVICE COVERAGE</u>	<u>OTS Ajusted</u> <u>Revised Budget 2006-07</u> (Dollars in Thousands)
<b>FUNDS PROVIDED</b>	
Total Gas Revenues	\$970,191
Other Operating Revenues	<u>28,564</u>
Total Operating Revenues	998,755
Other Income Less Restricted Funds	11,262
AFUDC (Interest)	<u>1,202</u>
<b>TOTAL FUNDS PROVIDED</b>	<b>\$1,011,219</b>
<b>FUNDS APPLIED</b>	
Fuel Costs	\$635,387
Other Operating Costs	<u>256,840</u>
Total Operating Expenses	892,227
PMA Lease Cost	0
Capital Lease Cost	0
\$23M Capital Lease Cost	0
Less: Non-Cash Expense	<u>38,196</u>
<b>TOTAL FUNDS APPLIED</b>	<b>\$854,031</b>
Funds Available to Cover Debt Service	157,188
Add-back Lease Costs	0
Funds Available Excluding Lease Costs	157,188
1975 Ordinance Bonds Debt Service	35,748
Debt Service Coverage 1975 Bonds	4.40
Net Available after Prior Debt Service	121,440
PMA & Other Capital Leases	<u>0</u>
Net Available after Prior Capital Leases	121,440
1998 Ordinance Bonds Debt Service	58,458
Debt Service Coverage New Bonds	2.08
Net Available after New Debt Service	62,982
1998 Ordinance Subordinate Bond Debt Service	1,987
Debt Service Coverage Subordinate Bond	31.70
Net Available To Service Aggregate Debt Service	157,188
Aggregate Debt Service	96,193
Fixed Coverage Ratio	1.6341

# APPENDIX E

PHILADELPHIA GAS WORKS  
DEBT SERVICE COVERAGE  
( Dollars in Thousands )

	ACTUAL 2004-05	ESTIMATE 2005-06	BUDGET 2006-07	FORECAST 2007-08	FORECAST 2008-09	FORECAST 2009-10	FORECAST 2010-11	FORECAST 2011-12
<b>FUNDS PROVIDED</b>								
Total Gas Revenues	\$830,500	\$868,882	\$842,000	\$870,861	\$837,130	\$877,070	\$872,020	\$884,454
Other Operating Revenues	32,807	28,634	28,804	29,181	28,770	27,855	27,861	28,054
Total Operating Revenues	863,307	897,516	870,804	1,000,142	865,900	904,924	900,881	912,508
Other Income Incr. / (Decr.) Restricted Funds	1,513	12,097	11,250	11,343	8,620	7,720	7,820	7,160
City Grants	18,000	18,000	18,000	18,000	18,000	18,000		
AFUDC (Interest)	507	1,188	1,222	1,022	1,035	1,035	955	959
<b>TOTAL FUNDS PROVIDED</b>	<b>883,777</b>	<b>1,016,361</b>	<b>1,001,106</b>	<b>1,038,487</b>	<b>894,385</b>	<b>931,685</b>	<b>908,415</b>	<b>908,627</b>
<b>FUNDS APPLIED</b>								
Fixed Costs	508,704	630,185	630,841	658,482	623,388	582,401	558,348	550,884
Other Operating Costs	283,208	278,180	289,128	278,151	280,407	283,130	288,883	280,653
Total Operating Expenses	793,012	917,374	919,969	936,633	903,775	865,537	845,241	841,547
Less: Non-Cash Expenses	30,338	40,554	41,887	43,300	44,812	45,907	47,285	47,424
<b>TOTAL FUNDS APPLIED</b>	<b>733,674</b>	<b>876,820</b>	<b>857,982</b>	<b>893,343</b>	<b>858,963</b>	<b>799,630</b>	<b>797,526</b>	<b>794,143</b>
Funds Available to Cover Debt Service	130,103	139,541	144,024	137,144	135,402	132,035	111,559	108,484
1975 Ordinance Bonds Debt Service	38,800	41,849	35,748	34,368	32,388	30,155	30,745	32,164
Debt Service Coverage 1975 Bonds	3.35	3.33	4.03	3.99	4.18	4.38	3.63	3.31
Net Available after Prior Debt Service	91,297	97,592	108,276	102,776	103,034	101,880	80,814	74,320
Other Capital Leases	1,988							
Net Available after Prior Capital Leases	89,299	97,592	108,276	102,776	103,034	101,880	80,814	74,320
1988 Ordinance Bonds Debt Service	45,988	32,487	53,313	67,813	71,727	84,111	85,578	82,018
New Proposed Bond Debt Service								
Total New Debt Service	45,988	32,487	53,313	67,813	71,727	84,111	85,578	82,018
Debt Service Coverage 1988 Bonds	1.84	3.81	2.03	1.52	1.44	1.21	0.94	0.91
Net Available after 1988 Debt Service	43,300	65,125	54,963	34,963	31,307	17,769	(4,765)	(17,698)
1988 Ordinance Subordinate Bond Debt Ser	1,987	1,986	1,987	1,989	1,980	1,986	1,986	1,984
Debt Service Coverage Subordinate Bonds	21.78	32.78	27.86	17.88	15.73	8.95	(2.48)	(8.92)
Net Available To Service Aggregate Debt Serv	111,075	114,184	122,285	118,288	113,028	118,182	107,884	102,883
Aggregate Debt Service	88,788	78,482	81,848	104,187	108,885	118,232	118,312	128,184
Fixed Coverage Charge	1.25	1.48	1.34	1.11	1.87	8.95	0.91	0.91
Fixed Coverage Charge including \$18.8 City Fee	1.04	1.21	1.12	0.94	0.92	0.92	0.79	0.71

1.20

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# APPENDIX F

PHILADELPHIA GAS WORKS  
DEBT SERVICE COVERAGE  
( Dollars in Thousands )

OCA-Set III-17  
\$25.0M

	ACTUAL 2004-05	ESTIMATE 2005-06	BUDGET 2006-07	FORECAST 2007-08	FORECAST 2008-09	FORECAST 2009-10	FORECAST 2010-11	FORECAST 2011-12
<b>FUNDS PROVIDED</b>								
Total Gas Revenues	\$ 830,550	\$ 856,562	\$ 942,080	\$ 1,000,306	\$ 966,138	\$ 906,078	\$ 901,827	\$ 893,451
Other Operating Revenues	32,807	28,534	28,564	29,732	29,321	28,406	28,532	28,605
Total Operating Revenues	863,357	885,096	970,654	1,030,038	995,459	934,484	930,159	922,056
Other Income Incr. / (Decr.) Restricted Funds	1,513	12,097	11,250	17,343	14,967	11,368	8,868	8,868
City Grant	18,000	18,000	18,000	18,000	18,000	18,000	18,000	18,000
AFUDC (Interest)	907	1,188	1,202	1,002	1,038	1,008	985	959
<b>TOTAL FUNDS PROVIDED</b>	<b>883,777</b>	<b>1,018,381</b>	<b>1,001,108</b>	<b>1,068,383</b>	<b>1,029,462</b>	<b>964,860</b>	<b>940,012</b>	<b>931,883</b>
<b>FUNDS APPLIED</b>								
Fuel Costs	509,704	639,185	630,841	658,492	623,368	562,401	558,248	550,894
Other Operating Costs	283,308	278,189	288,128	285,895	288,252	290,014	292,068	295,153
Total Operating Expenses	793,012	917,374	898,969	944,387	911,620	852,415	850,316	846,047
Less: Non-Cash Expenses	39,338	40,554	41,887	43,300	44,612	45,907	47,385	47,404
<b>TOTAL FUNDS APPLIED</b>	<b>753,674</b>	<b>876,820</b>	<b>857,082</b>	<b>901,087</b>	<b>867,008</b>	<b>806,508</b>	<b>802,931</b>	<b>798,643</b>
Funds Available to Cover Debt Service	130,103	139,541	144,024	165,296	162,454	158,352	137,081	133,240
1975 Ordinance Bonds Debt Service	38,806	41,949	35,748	34,368	32,368	30,155	30,745	32,164
Debt Service Coverage 1975 Bonds	3.35	3.33	4.03	4.81	5.02	5.25	4.48	4.14
Net Available after Prior Debt Service	91,297	97,592	108,276	130,928	130,086	128,197	106,336	101,076
Other Capital Leases	1,998	-	-	-	-	-	-	-
Net Available after Prior Capital Leases	89,299	97,592	108,276	130,928	130,086	128,197	106,336	101,076
1998 Ordinance Bonds Debt Service	45,999	32,467	53,313	67,813	66,852	67,966	65,143	60,885
New Proposed Bond Debt Service	-	-	-	-	-	-	-	-
Total New Debt Service	45,999	32,467	53,313	67,813	66,852	67,966	65,143	60,885
Debt Service Coverage 1998 Bonds	1.94	3.01	2.03	1.93	1.95	1.89	1.63	1.66
Net Available after 1998 Debt Service	43,300	65,125	54,963	63,115	63,234	60,231	41,193	40,191
1998 Ordinance Subordinate Bond Debt Ser	1,987	1,986	1,987	1,986	1,990	1,986	1,988	1,984
Debt Service Coverage Subordinate Bonds	21.79	32.79	27.66	31.78	31.78	30.33	20.72	20.26
Net Available To Service Aggregate Debt Serv	111,075	114,154	122,295	143,450	140,690	136,509	133,216	129,319
Aggregate Debt Service	88,790	76,402	91,048	104,167	101,210	100,107	97,876	95,033
Fixed Coverage Charge	1.25	1.49	1.34	1.38	1.39	1.36	1.36	1.36
Fixed Coverage Charge including \$18.0 City Fee	1.04	1.21	1.12	1.17	1.18	1.16	1.15	1.14

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Main Brief**, dated June 12, 2007, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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Dated: June 12, 2007  
Docket No. R-00061931