

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

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 PENNSYLVANIA PUBLIC UTILITY COMMISSION :Docket Nos.
 v. :R-00061931
 PHILADELPHIA GAS WORKS :R-00061931C0001
 General Rate Increase. :through
 Evidentiary hearings. :R-00061931C0071
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Pages 711 through 922 Hearing Room No. 1
 State Office Building
 Broad and Spring Garden Streets
 Philadelphia, Pennsylvania

Wednesday, May 23, 2007

Met, pursuant to notice, at 9:08 a.m.

BEFORE:

CYNTHIA WILLIAMS FORDHAM, Administrative Law Judge
 ANGELA T. JONES, Administrative Law Judge

SECRETARY'S OFFICE
 2007 MAY 29 PM 1:51

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1 P R O C E E D I N G S

2 ADMINISTRATIVE LAW JUDGE FORDHAM:

3 Good morning. I'm Administrative Law Judge Cynthia
4 Williams Fordham. And beside me is Administrative
5 Law Judge Angela T. Jones.

6 We're the Judges that have been
7 assigned to hear this case.

8 This is a further hearing in the
9 matter of Pennsylvania Public Utility Commission
10 versus Philadelphia Gas Works at Docket Number
11 R-00061931 and R-00061931C0001 through C00071.

12 At this time I would ask counsel to
13 enter their appearance beginning with Mr. Clearfield.

14 MR. CLEARFIELD: Good morning, Your
15 Honor. I'm Dan Clearfield of Wolfe Block. With me
16 is Deanne O'Dell, and we're representing PGW.

17 JUDGE FORDHAM: Thank you.

18 MR. STUNDER: Good morning, Your
19 Honor. Gregory Stunder for PGW.

20 JUDGE FORDHAM: Thank you.

21 MR. LAWRENCE: Good morning, Your
22 Honor. Darryl Lawrence representing the Office of
23 Consumer Advocate.

24 MS. McCLOSKEY: Good morning, Your
25 Honor. Tanya McCloskey representing the Office of

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1 Consumer Advocate.

2 MR. HINERMAN: Good morning. Philip
3 Hinerman representing the Housing Authority.

4 MS. KASTER: Good morning, Your Honor.
5 Allison Kaster representing the Office of Trial
6 Staff.

7 MR. KANASKI: Good morning, Your
8 Honor. Rick Kanaski, the Office of Trial Staff.

9 MR. SHORE: Good morning, Your Honor.
10 Miles Shore for the School District of Philadelphia
11 as an Intervenor.

12 MS. APPLEBY: Good morning, Your Honor.
13 Christy Appleby with the Office of Consumer Advocate.

14 MS. WEBB: Good morning, Your Honor.
15 Sharon Webb with the Office of Small Business
16 Advocate.

17 MR. PLONSKI: Robert Plonski Office of
18 Trial Staff.

19 JUDGE FORDHAM: Do you want to --
20 okay. I'm sorry. Go ahead, Ms. Tran.

21 MS. TRAN: Okay. Thu Tran with
22 Community Legal Services for Action Alliance.

23 JUDGE FORDHAM: Thank you. We did
24 have some outstanding matters from yesterday. Shall
25 we dispose of those at this time? Mr. Stunder, did

1 you have something regarding --

2 MR. STUNDER: Your Honor, I just
3 handed Mr. Hinerman a Stipulation, and I'm waiting
4 for his signature.

5 ADMINISTRATIVE LAW JUDGE JONES: Are
6 there any other preliminary matters that anyone
7 wishes to bring before us before we -- while we wait
8 for Mr. Hinerman to review the Stipulation?

9 Mr. Kanaski.

10 MR. KANASKI: Thank you, Your Honor.
11 At some point when we get a break or there's an
12 opportunity we need to stipulate Ms. Markovich's
13 testimony into the record. We can save that for some
14 break in the activity.

15 JUDGE JONES: Is there a reason while
16 we're waiting -- can we do that now?

17 MR. KANASKI: That's fine with me,
18 Your Honor.

19 JUDGE JONES: Go ahead. You may
20 proceed, Mr. Kanaski.

21 MR. KANASKI: Your Honor, we have
22 clearly identified four documents. We've identified
23 OTS Statement Number 2, OTS Exhibit Number 2, OTS
24 Statement Number 2-SR, and OTS Exhibit Number 2-SR.

25 We've previously distributed copies of

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1 these to the parties, and we are now providing the
2 Court Reporter with two copies.

3 These documents represent Ms.
4 Markovich's direct testimony and surrebuttal
5 testimony.

6 By agreement with counsel originally
7 the document had been filed with proprietary and
8 non-proprietary versions. After consulting with the
9 Company, it's been determined that none of the
10 information contained is proprietary.

11 JUDGE JONES: You're referring to
12 document OTS Statement 2-SR?

13 MR. KANASKI: Yes, Your Honor. What
14 we'll also distribute today to the parties are copies
15 of the affected pages from the document that was
16 labeled as proprietary. That will be pages 6, 7 and
17 8 that contained proprietary information that's not
18 deemed proprietary.

19 So the parties now will have complete
20 documents that have been filed.

21 JUDGE JONES: So you're removing from
22 the cover the designation that is marked proprietary?

23 MR. KANASKI: Yes, Your Honor.

24 JUDGE JONES: And you're providing
25 those pages that were proprietary that were redacted.

1 You're providing those pages with the full text?

2 MR. KANASKI: Exactly, Your Honor.

3 JUDGE FORDHAM: We noticed that the
4 copy that you gave to the Court Reporter still has a
5 red cover on it?

6 MR. KANASKI: Correct, but we've taken
7 the proprietary limitation off of it as opposed to
8 recovering it.

9 And we would ask that the State
10 withdrew copies that are now non-proprietary.

11 JUDGE JONES: You may continue.

12 MR. KANASKI: By agreement with the
13 parties based on no indication in cross-examination,
14 all parties have agreed to stipulate to the admission
15 of these documents that -- at this time if I could
16 ask that they be marked for identification.

17 JUDGE FORDHAM: These will be so
18 marked.

19 MR. KANASKI: If Ms. Markovich were to
20 testify today she would testify that these documents
21 were indeed prepared by her or under her supervision;
22 that it does not contain any corrections that need to
23 be done.

24 And if I were to ask her the questions
25 contained in these documents again today, her answers

1 would be the same. Those answers would be true to
2 the best of her knowledge and belief.

3 Again, as stipulated by the parties,
4 there was no cross-examination. We'd ask that these
5 documents be moved into the record at this time.

6 JUDGE FORDHAM: The direct and
7 surrebuttal testimony and the accompanying exhibits
8 of Ms. Markovich are so admitted.

9 (Whereupon, the documents were marked
10 as OTS Statement 2 and Statement 2SR for
11 identification, and were received in evidence.)

12 (Whereupon, the documents were marked
13 as OTS Exhibit Nos. 2 and 2SR for identification, and
14 were received in evidence.)

15 MR. KANASKI: With the corrected
16 pages.

17 JUDGE FORDHAM: Yes, with the
18 corrected pages indicated in the surrebuttal
19 testimony, pages 6 through 8. The information that
20 was previously marked proprietary is no longer
21 proprietary.

22 MR. KANASKI: Correct. Thank you,
23 Your Honor.

24 JUDGE FORDHAM: You're welcome.

25 MR. CLEARFIELD: Your Honor, may I

1 just note for the record that PGW's waived cross of
2 Ms. Markovich because OTS and PGW have entered into a
3 Stipulation, at least in principle, on the one issue
4 upon which PGW was considering cross-examination,
5 that is the appropriate level of bad debt expense for
6 the company in the pro forma test year. And we've
7 agreed to stipulate to a 4.5 percent bad debt expense
8 level.

9 With Your Honor's permission, we'll
10 conform that to a document subsequently and provide
11 it.

12 Since it's not an evidentiary issue,
13 and the stipulation between the two parties we did
14 not believe there's a need to enter it into the
15 record, but if you have a different view, we'd be
16 happy to get that done before the record closes.

17 Or maybe that statement that I just
18 made, with Mr. Kanaski's nodding consent, is
19 sufficient.

20 JUDGE JONES: To make sure that the
21 record is complete, we would appreciate it.

22 MR. CLEARFIELD: Okay. And we're
23 still closing the record tentatively on the 25th,
24 this Friday?

25 JUDGE JONES: Yes.

1 MR. CLEARFIELD: So we'll definitely
2 get that to you before then.

3 JUDGE JONES: Thank you very much.

4 MR. CLEARFIELD: Thank you. Your
5 Honor, we have one other small housekeeping matter.
6 We moved Mr. Muntzer's testimony in by stipulation
7 Monday.

8 It turns out that Mr. Muntzer had some
9 very small typographical errors to his typed
10 testimony that he -- and we'd like to try to enter
11 into his rejoinder.

12 What we've handed out to all the
13 parties previously, and to the Court Reporter, are
14 those five pages on which those corrections occurred.

15 We've also actually marked the copies
16 that will go into the record so that the record will
17 have these on those, and we ask that they be
18 accepted.

19 I'm not sure if I need to make a
20 Motion or make an exhibit.

21 JUDGE JONES: Let the record reflect
22 that Mr. Muntzer's -- this is his --

23 MR. CLEARFIELD: PGW Statement 11.

24 JUDGE JONES: -- PGW statement 11 at
25 page 5, line 16, after design the word day, D-A-Y, is

1 inserted.

2 And page 8, line 9, after the word
3 cash, the word out is inserted.

4 And page 12, line 21, there appears a
5 the after the word that. That the is to be deleted.

6 On page 15, line 17 the word charges
7 is to be changed to changes.

8 On page 17, line 21 twice there
9 appears the word Hess's. Hess's is to be changed
10 both times to I-G-S's; that is I-G-S apostrophe S.

11 Those were all the changes to Mr.
12 Muntzer's testimony, PGW Statement 11.

13 MR. CLEARFIELD: Thank you, Your
14 Honor.

15 JUDGE JONES: Are we still waiting for
16 the Stipulation regarding Mr. Gorman?

17 MR. HINERMAN: If I could speak with
18 Mr. Stunder, I have a couple of questions, Your
19 Honor. Do you want us to do it now, or do you want
20 us to do it during break?

21 JUDGE JONES: Why don't we wait so
22 that you can confer with Mr. Stunder as far as any
23 questions or concerns that you may have, and -- it
24 appears, however, that we will not be calling Mr.
25 Gorman by telephone; is that correct, Mr. Hinerman?

1 MR. HINERMAN: At this point, but we
2 --

3 JUDGE JONES: Okay. Then let me ask
4 Mr. Stunder, do you have Mr. Hinerman -- I mean, Mr.
5 Gorman on deck for a specific time?

6 MR. STUNDER: I spoke to Mr. Gorman
7 today. He's -- yesterday. He's not available today.
8 He's available tomorrow.

9 JUDGE JONES: All right.

10 JUDGE FORDHAM: But Mr. Hinerman's not
11 available tomorrow.

12 MR. HINERMAN: We'll see what we can
13 work out and we'll cross the bridge when we come to
14 it.

15 JUDGE JONES: Okay.

16 MR. STUNDER: If we could -- tomorrow,
17 if we need to do it tomorrow, that's considered time,
18 but --

19 MR. HINERMAN: If it's first thing in
20 the morning I can actually be here. I won't have to
21 leave until 11:00.

22 JUDGE JONES: You gentlemen need to
23 work this out. Possibly we do not have to bother Mr.
24 Gorman.

25 Is counsel ready for presentation of

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1 witnesses?

2 MR. CLEARFIELD: We do have one other
3 stipulation, Your Honor, if you want to take care of
4 that housekeeping matter, or we can --

5 JUDGE FORDHAM: You may proceed, Mr.
6 Clearfield.

7 MR. CLEARFIELD: Thank you, Your
8 Honor. I think I mentioned that OTS and PGW were
9 able to arrive at a stipulation with respect to an
10 issue regarding gas safety that was raised by one of
11 the OTS witnesses involving Class 2 leak repair.

12 And the stipulation resolved that
13 issue and we're handing it out to the parties and to
14 Your Honor.

15 And in light of your previous desire
16 to have these stipulations entered into the record,
17 since it has been executed, we can -- we'd ask that
18 it be marked as PGW Hearing Exhibit 3.

19 JUDGE FORDHAM: It shall be so marked.

20 MR. CLEARFIELD: And that it be
21 entered into the record. As I said, it's
22 self-explanatory. If you'd like I can provide a
23 summary, but all the details are set forth therein.

24 JUDGE FORDHAM: PGW Hearing Exhibit 3
25 is admitted.

1 (Whereupon, the document was marked as
2 PGW Exhibit No. 3 for identification, and was
3 received in evidence.)

4 MR. CLEARFIELD: Thank you, Your
5 Honor. I think we're ready now.

6 JUDGE JONES: Mr. Clearfield, we're
7 ready for presentation of your witness.

8 MR. CLEARFIELD: We'd like to begin
9 with Ms. Bisgaier.

10 JUDGE FORDHAM: Good morning. Please
11 raise your right hand.

12 BARBARA BISGAIER, having been duly
13 sworn, testified as follows:

14 JUDGE FORDHAM: Please be seated.
15 Would you state your name and business address for
16 the record, and please spell your last name.

17 THE WITNESS: Barbara Bisgaier,
18 B-I-S-G-A-I-E-R, 2 Logan Square, Suite 1600,
19 Philadelphia, Pennsylvania 19103.

20 JUDGE FORDHAM: Thank you. You may
21 proceed, Mr. Clearfield.

22 MR. CLEARFIELD: Thank you, Your
23 Honor. Your Honor, we previously distributed to all
24 the parties and to Your Honor a multi-page document
25 which is entitled, Testimony of Barbara Bisgaier,

1 which consists of several questions -- several pages
2 of questions and answers and two exhibits marked BB-1
3 and BB-2, and we premarked it as PGW Statement 3, and
4 we ask that it be marked for identification in that
5 manner.

6 JUDGE FORDHAM: It shall be marked.

7 MR. CLEARFIELD: Thank you.

8 (Whereupon, the document was marked as
9 PGW Statement No. 3 for identification.)

10 DIRECT EXAMINATION

11 BY MR. CLEARFIELD:

12 Q. Ms. Bisgaier, you have before you what
13 we've marked for identification as PGW Statement 3?

14 A. Possibly. Yes.

15 Q. Another ornery witness. That's your
16 prepared direct testimony for purpose of this
17 proceeding?

18 A. Yes, it is.

19 Q. And was it prepared by you or under your
20 supervision and direction?

21 A. Yes, it was.

22 Q. Do you have any additions or corrections
23 you'd like to make to PGW Statement 3 at this time?

24 A. No, I don't.

25 Q. And is the testimony true and correct to

1 the best of your information, knowledge and belief?

2 A. Yes, it is.

3 Q. If I asked you the questions set forth
4 therein today, your answers would be the same?

5 A. That's correct.

6 MR. CLEARFIELD: Now, Your Honor,
7 we've also distributed previously a document which is
8 entitled -- actually it's entitled, The Testimony of
9 Barbara Bisgaier, and it's been premarked as PGW
10 Statement 3, Capital R, and it consists of several
11 pages of questions and answers and Schedules BB-3
12 through BB-6. And we ask that be marked for
13 identification in that manner.

14 JUDGE FORDHAM: It shall be so marked.

15 (Whereupon, the document was marked as
16 PGW Statement No. 3-R for identification.)

17 BY MR. CLEARFIELD:

18 Q. Ms. Bisgaier, you have before you what's
19 been marked for identification PGW Statement 3-R?

20 A. I do.

21 Q. And is that your rebuttal testimony for
22 this proceeding?

23 A. Yes, this is.

24 Q. Was it prepared by you or under your
25 supervision and direction?

1 A. Yes, it was.

2 Q. Do you have any additions or corrections
3 or clarifications you want to make?

4 A. No, I don't.

5 Q. Is it true and correct to the best of your
6 information, knowledge and belief?

7 A. Yes, it is.

8 Q. If I asked you the questions set forth
9 therein, your answers would be the same?

10 A. They would.

11 MR. CLEARFIELD: Your Honor, we have a
12 short rejoinder at this time, and --

13 JUDGE FORDHAM: You may proceed.

14 MR. CLEARFIELD: Thank you.

15 BY MR. CLEARFIELD:

16 Q. Ms. Bisgaier, looking first at the
17 surrebuttal of Mr. Lelash, in your direct testimony
18 you indicated that if PGW awards a \$25 million -- I'm
19 sorry -- if the PUC awards a \$25 million rate
20 increase, that the rating agencies and insurers will
21 immediately reevaluate PGW's credit rating.

22 Mr. Lelash responded to that in
23 surrebuttal and indicated that the fact that PGW just
24 issued \$200 million in long-term bonds indicates to
25 him that investors are not concerned about the

1 outcome of this case.

2 Can you respond?

3 A. Yes, PGW was able to issue bonds,
4 literally last week was the closing, because they
5 still have an investment grade credit rating. They
6 have the lowest investment grade credit rating, but
7 they do have access to the market because of that.

8 Also because of having an investment
9 grade credit rating, they were able to purchase bond
10 insurance which allows them to sell the bonds as
11 though they were Triple A rated bonds.

12 When PGW goes to the financial markets
13 it goes to both the rating agencies and the bond
14 insurers as a preliminary to offering their bonds to
15 the public. And in the course of doing that there's
16 certain documents that are prepared and submitted
17 that describe how things are at PGW.

18 And the most important document is
19 something called the Independent Engineer's
20 Feasibility Study.

21 MR. CLEARFIELD: Your Honor, we'd like
22 to have marked for identification as a rejoinder
23 exhibit several pages from the independent
24 consultant's engineering report that Ms. Bisgaier
25 just referred to.

1 I believe that would be PGW Rejoinder
2 Exhibit 5. And we have to change that definition on
3 the top there.

4 JUDGE FORDHAM: Instead of --

5 MR. CLEARFIELD: Yeah, I think if we
6 keep with the convention it would be PGW Rejoinder
7 Exhibit 5 paren Bisgaier.

8 JUDGE FORDHAM: It shall be so marked.

9 (Whereupon, the document was marked as
10 PGW Rejoinder Exhibit No. 5 (Bisgaier) for
11 identification.)

12 MR. CLEARFIELD: Thanks.

13 BY MR. CLEARFIELD:

14 Q. Ms. Bisgaier, you have before you what we
15 just marked as PGW Rejoinder Exhibit 5?

16 A. I do.

17 Q. Can you explain what that is, please.

18 A. Yes, as I was saying, that when PGW gets
19 ready to market its bonds -- and this would be true
20 not just of PGW, but of all public utilities --
21 municipal utilities when they sell bonds -- they
22 bring in an independent engineer feasibility
23 consultant who evaluates both the physical plant of
24 the utility and the financial condition of the
25 utility.

1 And they prepare a very extensive
2 hundred-plus page report. And the rating agencies
3 and the bond insurers place a great deal of reliance
4 on that outside independent engineer's report.

5 In the case of this bond issue, as in
6 the case of the last several, the report was prepared
7 by a nationally recognized firm in that area called
8 Black and Veatch.

9 The -- I don't know what you call this
10 -- the exhibit that Mr. Clearfield just handed you is
11 a portion -- an excerpt from that report that has to
12 do with the part of the report where they look
13 forward and make a statement to the investors about
14 what the prospects of the company are financially, on
15 a going forward basis.

16 Because of the pendency of the rate
17 case when this was prepared, they had to make a
18 judgment about what the impact of a successful
19 proceeding in the rate case would be and include it
20 in their report.

21 So they have reflected in the report,
22 and this again was the report that was looked at --

23 MR. LAWRENCE: Your Honor, the Office
24 of Consumer Advocate is going to object to the
25 introduction of this testimony and this exhibit at

1 this time based on the fact that for one, it's an
2 unfair surprise at this stage of the proceeding.

3 The OCA was handed this document
4 approximately a half-an-hour ago by counsel for PGW.
5 We've had scant time to review this report. Our OCA
6 experts obviously had no time to look at this report.

7 It was prepared by an independent
8 party outside of these proceedings and is not
9 available for the OCA to ask questions of or conduct
10 any investigation of in this proceeding.

11 And the fact that this is an
12 incomplete document, and what I mean by that if you
13 look at the first page of text it starts referring to
14 pages 16, in the middle of the page, Table 17, Table
15 10. Obviously this is an excerpt from a larger
16 report that OCA has not had access to, has not been
17 given -- has not been given the availability to
18 investigate prior to Ms. Bisgaier's testimony here
19 this morning.

20 Based on that, the OCA would move to
21 have this exhibit stricken from the record, and any
22 testimony that Ms. Bisgaier has given to this point
23 in regards to this exhibit be stricken from the
24 record.

25 MR. CLEARFIELD: Well, it's not

1 improper in any way, Your Honor.

2 First of all, this is the Rejoinder to
3 Mr. Lelash's testimony which we received Tuesday
4 night, about a week ago. So I don't -- this is the
5 forum, if you will, in which was established three
6 months ago that PGW would be able to respond to
7 surrebuttal. And we've had about 5 business days to
8 examine.

9 His testimony that we're responding to
10 is in direct response to his testimony as is
11 indicated on pages 10 and 11 of his testimony. He
12 references Ms. Bisgaier's statement about the fact
13 that the investment community, the insurers and the
14 rating agencies, were going to reevaluate PGW's
15 credit.

16 And he says, the fact that we were
17 able to issue \$200 million worth of bonds, which by
18 the way just happened a few days ago, is indication
19 that they're not concerned about the outcome of this
20 rate case.

21 Ms. Bisgaier is responding directly to
22 that, and is referencing this exhibit to show that,
23 in fact, the report that accompanied the bonds to the
24 investors had a section which made certain
25 assumptions about the rate case. This is the basis,

1 if you will, this is the information that was before
2 the bond holders.

3 Now, we're not offering this for the
4 truth of the statements that are contained in Mr. --
5 in the Black and Veatch report. We're offering it to
6 show that, in fact, it was made. So it's not hearsay
7 in any way, and I don't believe it's improper.

8 Finally, I would note, and I'm sure --
9 I'm sure Mr. Lawrence just overlooked this, that this
10 official statement was provided to OCA and all the
11 parties electronically as soon as it was issued, as
12 soon as it was final, both as part of a response to
13 an Interrogatory and because in Section 2212 --
14 forgive me, I can't remember the exact subsection --
15 we're actually required to provide documents that we
16 provide -- that we used to provide to the City
17 Council in this format, and the Gas Commission with
18 respect to bonds.

19 We're also supposed to file them with
20 the PUC. And this is, in fact, filed with the PUC,
21 the entire document, and Mr. McNulty.

22 Now, if the problem is that there's
23 only a few pages that we've excerpted, we'd be happy
24 to make the whole 150-page official statement an
25 exhibit, or we can agree to make it an item by

1 reference. As I said, all the parties have the
2 document. This is entirely appropriate, and I
3 believe it's very important to present -- to respond
4 to this testimony that we just received.

5 JUDGE FORDHAM: Mr. Clearfield, when
6 was this filed with the Commission?

7 MR. CLEARFIELD: I'd have to check
8 exactly, Your Honor, but I believe it was not last
9 week but the middle of the week before. I can -- I
10 can check with my secretary, you know, at break, and
11 ask her to get the exact day.

12 JUDGE FORDHAM: That is when it was
13 sent to PGW?

14 MR. CLEARFIELD: It was sent to the
15 other parties at that time.

16 JUDGE FORDHAM: Yeah, I mean from
17 Black and Veatch.

18 MR. CLEARFIELD: The Black and Veatch
19 report was attached to the official statement. The
20 official statement was finished once the bonds -- it
21 becomes final once the bonds are closed, I guess, and
22 it was relatively a few days after that that we sent
23 it out. It's not official until that actually
24 happens.

25 JUDGE FORDHAM: And the parties have

1 an electronic version sent as part of your Response
2 to Interrogatories.

3 MR. CLEARFIELD: The parties were sent
4 an electronic version, Your Honor.

5 JUDGE FORDHAM: Mr. Lawrence.

6 MR. LAWRENCE: Your Honor, subject to
7 check, I would not disagree with counsel for PGW that
8 we may have a copy of this document, although I have
9 no independent knowledge of that.

10 However, it is still a fact that the
11 people who prepared this report aren't on the witness
12 list for PGW. They are not witnesses in this
13 proceeding, and we still object on that basis, that
14 these documents should not be brought into evidence
15 at this point.

16 MR. CLEARFIELD: Your Honor, this is
17 an official document. It's filed with the Commission
18 and we're not offering it --

19 JUDGE FORDHAM: Okay. This -- Mr.
20 Clearfield has indicated that Ms. Bisgaier is
21 responding to Mr. Lelash's surrebuttal, pages 10 and
22 11, which indicates that Mr. Lelash looked at Ms.
23 Bisgaier's testimony on page 10 and indicates that
24 PGW's rating agencies and bond insurers would
25 immediately reevaluate PGW's credit. And they were

1 waiting for the Decision.

2 And Mr. Lelash said that he does not
3 believe that the lenders are waiting for the
4 Decision.

5 I believe that what Ms. Bisgaier is
6 going to testify to, although I cannot say for sure,
7 is that they are not waiting -- they are waiting.
8 She has indicated that.

9 Further in terms of the truth of the
10 document, what exactly is in there, we don't need to
11 know that, but I will allow her to respond to Mr.
12 Lelash.

13 MR. CLEARFIELD: Thanks, Your Honor.

14 BY MR. CLEARFIELD:

15 Q. Can you proceed or do you need another
16 question?

17 A. No, I think I can proceed. Basically, the
18 bond insurers and the rating agencies, in doing their
19 pre-sale evaluation of PGW, rely heavily on the
20 outside report. And in the outside report Black and
21 Veatch talk about specifically what the benefits to
22 PGW would be if they were successful in the rate
23 case, and --

24 Q. So we're assuming that the --

25 A. Yes, they were assuming that PGW would be

1 successful, and that based on that success, they did
2 a projection of what the financial position of PGW
3 would be in a 5-year planning period going forward
4 from this date.

5 And the issues specifically that they
6 addressed were what the impact of the rate increase
7 would mean to PGW. And they -- at the bottom of page
8 B-8 of this exhibit -- B-58, rather, of the exhibit,
9 they list seven items that they believe would be
10 accomplished if PGW were successful.

11 They would have the ability to cover
12 the non-gas operating expenses and interest that have
13 arisen since the 2002 case, provide sufficient funds
14 to meet gas service coverage on all the outstanding
15 bonds, including the \$200 million of bonds that were
16 proposed to be issued, insure adequate liquidity for
17 the company that would be generated internally to pay
18 the \$45 million City loan in full by 2008, to
19 recommence making the annual payment of \$18 million
20 to the City in 2011, to repay the commercial paper,
21 not to get rid of it, but to repay it so it would
22 remain as a facility that PGW could rely on, but not
23 have it fully lent out at any given time, and to
24 provide for additional debt reduction so that PGW
25 could avoid going into the bond market as frequently

1 as it has in the past and start to whittle away at
2 its very high debt level.

3 JUDGE FORDHAM: Mr. Clearfield, before
4 you proceed, I would just note that the objection of
5 OCA in terms of not being able to cross-examine Black
6 and Veatch, that these things that were listed by Ms.
7 Bisgaier were just things that they indicated, and we
8 will not take that into consideration when we make a
9 Decision.

10 MR. CLEARFIELD: Thank you, Your
11 Honor.

12 BY MR. CLEARFIELD:

13 Q. Let's turn to another subject in this, Ms.
14 Bisgaier. At page 11 of his surrebuttal, Mr. Lelash
15 suggests that you have said that PGW's current
16 financial problems are a result of management
17 dysfunction and the billing system problems that PGW
18 experienced in the mid to late '90s.

19 Is that what you said, and is that
20 true?

21 A. I don't believe it's what I said, and I
22 don't believe it's true.

23 Certainly the man -- the frequent
24 management changes over the period of 2000 -- 1992 to
25 2000 were unsettling to the company. I would agree

1 that the billing system was one of the things that
2 had a severe financial impact on the company.

3 The other thing included the fact that
4 over that time period PGW had no rate increases. So
5 they were having to make do with rates that were set
6 prior to 1992. They experienced in the late 1990s
7 extraordinarily warm weather, which had an impact on
8 reducing margins in the company.

9 The billing system failure that when
10 it was introduced in 1999, had spectacularly negative
11 impact on the company. And, then the severe
12 skyrocketing of gas prices also contributed to the
13 financial distress of PGW.

14 Q. On page 10 of Mr. Lelash's surrebuttal he
15 suggests that it's not necessary to address PGW's
16 alleged lack of liquidity or its high debt levels in
17 its capital structure in this rate case because these
18 are not test year problems, and PGW can always file
19 for additional rates in the future to address them.

20 Can you respond?

21 A. Well, I'd like to divide my answer into
22 two parts. The first is that I do believe that this
23 rate case addresses a problem in the test year.

24 I've had the opportunity to review Mr.
25 Bogdonavage's exhibit, JR -- pardon me -- JRB-8, and

1 in JRB-8, Mr. Bogdonavage has modeled the impact of a
2 \$25 million rate increase on PGW to determine what
3 the company would look like, both in the test year
4 and a going forward basis. And basically what that
5 shows is that PGW would end the year with \$50 million
6 of cash. But that cash would have been generated by
7 borrowing.

8 At the same time that they have \$50
9 million in cash, it would have \$95 million of
10 commercial paper outstanding.

11 So, in effect, they have a negative
12 \$45 million. A negative \$45 million if they were to
13 be forced to use their cash to pay down the
14 commercial paper. So they have no cash that was
15 generated from their internal operation. Which my
16 understanding is that that forces them to -- they're
17 not in compliance with the Management Agreement which
18 requires them to have cash and cash equivalent
19 included in rate.

20 The only way they have cash is by
21 borrowing.

22 Q. What about the debts and level of debt; is
23 that a problem in the test year as well?

24 A. It's a problem in the test year because
25 their debt is so extensive, and --

1 Q. And the level?

2 A. The level of debt is -- they have a debt
3 to equity ratio of 83 percent which is
4 extraordinarily high.

5 And, then I guess the --

6 Q. What about the fact that this can be
7 repaired in future cases allegedly?

8 A. Well, if the second part of the -- that
9 point is that because of the situation of having no
10 cash and no internally generated funds, PGW will not
11 have the ability over the next five years to pay down
12 bonds or to avoid -- and kind of the more significant
13 point, to avoid issuing new bonds.

14 And the JRB-8 exhibit includes the
15 need to issue two additional series of bonds over the
16 five-year time horizon. That would increase PGW's
17 annual debt service by \$35 million, from about 90 a
18 year, or about \$91 million to \$126 million.

19 PGW -- PGW's coverage requirement
20 requires them to set rates to cover that by 1.5
21 times, one-and-a-half times. So the \$35 million
22 increase in debt service start -- that would
23 accumulate and hit in 2012 would require them to
24 raise \$52 million a year in rates to cover that
25 obligation. And they would have to raise that in

1 rates for 27 years after that. So the point is that
2 if this isn't addressed now, the Company would be
3 just teed up to not solve the problem in the future,
4 but have the problem become substantially worse.

5 Q. Let's just deal with this issue. In your
6 rebuttal you said that you weren't familiar with the
7 details of the regulatory evaluation of rates. But
8 Mr. Lelash suggests in his surrebuttal that your
9 testimony on the appropriateness of looking beyond
10 the test year should be discounted for that reason.

11 Can you respond to that, Ms. Bisgaier?

12 A. Yeah, I'm --

13 Q. It's page 5 and 6 of his surrebuttal.

14 A. I'm not an expert in the procedures of the
15 PUC. And particularly don't know all of the terms of
16 art and convention that you use, but what I am
17 familiar with is PGW, the cash flow method of setting
18 rates, and the need to look beyond one year when you
19 know that there's this giant problem looming out
20 there, and if it's not dealt with now, it's only
21 going to get worse.

22 MR. HINERMAN: Excuse me, Your Honor.

23 Could we have a clarification of exactly where in
24 surrebuttal this was?

25 MR. CLEARFIELD: I believe it was on

1 Mr. Lelash's testimony on page 5 and 6 where he
2 references Ms. Bisgaier's alleged lack of
3 familiarity.

4 I found my copy. Oh, I'm sorry. It's
5 on page 6, by her own admission -- I don't want to
6 read it in again. It's bad enough the first time.

7 Page 6, Ms. Bisgaier's rebuttal.
8 That's what we're responding to. We're responding to
9 that.

10 MR. HINERMAN: Thank you.

11 BY MR. CLEARFIELD:

12 Q. Let's turn to Mr. Plonski's testimony for
13 a moment. He dismisses your testimony that PGW would
14 not have adequate liquidity if it only receives a \$25
15 million rate increase in part by indicating that you
16 have not included an analysis of all items easily
17 converted to cash, such as gas inventories, capital
18 funding funds, accounts receivable, that he alleges
19 rating agencies acknowledge are items that could be a
20 legitimate part of available working capital for the
21 company.

22 In your opinion, how would the
23 investment community and the rating agencies respond
24 if PGW met its working capital on a regular basis by,
25 for example, selling gas inventories or factoring

1 accounts receivable?

2 A. Well, those are obviously two very
3 different things, but selling gas, that's all PGW has
4 to make money with, and they would view that as a
5 disastrous means of funding working capital.

6 If they were to sell the gas, all
7 they'd have to do is go out and buy it again to
8 remain a viable company.

9 So that really -- selling inventory is
10 hardly what the -- anybody would view as liquidity or
11 working capital.

12 Q. But the Company -- you're aware that the
13 Company in the past couple years has engaged in gas
14 cost deferral transactions, are you not?

15 A. I am.

16 Q. You're aware that the Company effectively
17 delayed its obligation to pay for natural gas until
18 some point in the future; is that right?

19 A. That's right.

20 Q. How did the investment community view
21 those transactions?

22 A. They also -- they view those as an
23 expensive way for PGW to deal with their cash flow
24 problems.

25 In the gas deferral deals, PGW is

1 essentially entering into an agreement with a gas
2 provider who says, I'll deliver the gas to you now
3 and you can pay me for it later.

4 Well, they don't do that for free.
5 And they do it as their cost of funds, which is a
6 taxable cost of funds. It's kind of like a sub-prime
7 mortgage. They've got you where they want you and
8 they can charge fully, and they do for that.

9 So it's viewed as a weakness of PGW by
10 the credit agencies, that they have to rely on deals
11 like that to manage their cash flow over the winter.

12 Q. Are they always available?

13 A. PGW has, in the past, had several
14 different providers of these deals, but at its most
15 financially stressed point in the past, there was
16 only one provided who is even willing to entertain
17 doing these deals with PGW because they perceive,
18 like the financial market, that there was a risk in
19 doing a financial transaction where they had to wait
20 to get paid by PGW.

21 There would be some risk in the future
22 if PGW's condition were to worsen that this would
23 cease to be an opportunity for that reason, because
24 the gas providers just wouldn't take the risk, and
25 they would essentially demand cash before they

1 delivered gas.

2 Q. If you know, are we talking about several
3 million dollars of cash that would be produced or
4 hundreds of millions?

5 A. In the tens of millions.

6 Q. Mr. Plonski also suggested that PGW could
7 also utilize its capital funds derived from proceeds
8 from long-term bonds as a source of working capital.

9 Again, how does the financial
10 community and the rating agencies view PGW's use of
11 its capital funds to pay for day-to-day operations?

12 A. Well, there are two parts to that, I
13 think. One is that PGW's not allowed to do that
14 except on an interim basis, and it must repay that
15 money by the end of its fiscal year. So it can use
16 it for interim purposes, but it has to put it back by
17 August 30th of every year.

18 The second thing is, the Federal Tax
19 Code doesn't let you use the money for that. It
20 requires you to use the money for capital purposes.
21 It doesn't let you borrow on a tax exempt basis to
22 fund operations.

23 So when the financial market sees PGW
24 using that as a source of liquidity during the course
25 of the year, it sends a signal to the market, the

1 people who follow this, that PGW is not able, from
2 its own funds, to pay for the normal cost of
3 operations, and it has to dip into its capital money.

4 Q. Is there any accumulative effect of the
5 use of all these factors that the investing community
6 or the rating agencies realize?

7 A. The cumulative of all of these is a
8 presentation to the financial market that says, PGW
9 does a whole series of moves, if you will,
10 transactions, the deferral, the borrowing from
11 capital, to get through the year.

12 If you look at PGW's bonds, it's a
13 highly leveraged company. If you add to that the
14 fact that it's borrowing for operating expenses all
15 year long, it has no internally generated funds. I
16 would analogize the bonds to a home mortgage that
17 you're paying, and, then you're borrowing to pay for
18 food and transportation, and not producing enough
19 revenue to simply cover your costs.

20 Q. What's the effect of all that on the view
21 of PGW in the financial community?

22 A. Well, the financial community feels that
23 PGW lurches from crisis to crisis and they're always
24 at risk that the lack of real cash working capital
25 generated from rates is going to put them in a

1 position where a crisis might hit and they would have
2 no more opportunity to use one of these techniques,
3 and really it could put PGW in a position of not
4 being a viable financial --

5 Q. Does the increased risk cause costs today?

6 A. Yes, it does. I mean, PGW pays top dollar
7 for all of these borrowings that it does. Even when
8 it sells its bonds, the fact that the bonds are
9 Triple A should insure investors that they're going
10 to get paid.

11 Because of PGW's underlying credit
12 rating, many investors can't even buy it with bond
13 insurance, and that translates into higher interest
14 rates on PGW's bonds.

15 Q. Just to summarize, what does the financial
16 community and the rating agencies expect to see in
17 order to view PGW as a safe, stable, going concern
18 company?

19 A. As they do with all municipal utilities,
20 they expect rates to be sufficient to operate the
21 company, pay its bills, and not have to resort to a
22 whole period of one off transactions in order to make
23 it through from year to year.

24 MR. CLEARFIELD: Thank you. Your
25 Honor, that's all we have.

1 JUDGE JONES: I'm sorry. I'm writing
2 your testimony. I'm sorry.

3 I have OCA and OTS, OTS having
4 extensive cross. Is OTS willing to go first and,
5 then followed by OCA?

6 MS. KASTER: Yes, Your Honor.

7 JUDGE JONES: And Ms. Kaster, you will
8 be providing the cross?

9 MS. KASTER: That is correct, Your
10 Honor.

11 JUDGE JONES: You may proceed, Ms.
12 Kaster.

13 MS. KASTER: Your Honor, may we take a
14 brief moment to discuss rejoinder testimony?

15 JUDGE JONES: We'll take a 10-minute
16 break.

17 MS. KASTER: Also, before we take the
18 break, I note for the record that I believe in our
19 updated cross-examination matrix we indicated that we
20 have limited cross.

21 JUDGE JONES: Okay.

22 (Recess)

23 JUDGE FORDHAM: We're back on the
24 record.

25 This morning when counsel entered

1 their appearance, I did not note that the following
2 was not here: counsel for PECO Energy, counsel for
3 Archdiocese. PICGUG counsel informed the Judges that
4 she would not be present at any further hearings
5 because her witnesses had been completed.

6 IGS informed the Judges that he --
7 counsel informed us that he would be present this
8 afternoon for Mr. Lelash.

9 And Hess counsel has informed us that
10 he would not be present at any further hearings
11 because his business was completed the first day.

12 And I believe Mr. Clearfield has an
13 addition regarding the prior exhibit, the Rejoinder
14 exhibit.

15 MR. CLEARFIELD: Yes, Your Honor.
16 Just for clarity of the record, I've been informed
17 that PGW filed the official statement with the
18 Secretary on May 8th, and that would have been sent
19 out to the parties on that day.

20 And again just to clarify, the section
21 that I was referring to, the specific subsection of
22 2312 that requires PGW to file that with the
23 Secretary is 2312e, small E.

24 And I want to thank OTS for lending me
25 their copy of the Public Utility Code.

1 JUDGE JONES: Thank you, Mr.
2 Clearfield. Ms. Kaster, we're ready for your cross.

3 MS. KASTER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. KASTER:

6 Q. Good morning, Ms. Bisgaier. My name is
7 Allison Kaster, and I'm a prosecutor in the
8 Commission's Office of Trial Staff. I just have a
9 few questions for you today about your -- mainly
10 about your rebuttal testimony. How long has PGW been
11 operating and providing service?

12 A. For over 100 years. I'm not sure the
13 exact -- for over 100 years.

14 Q. Can I just refer you quickly to your
15 rebuttal testimony, page 5, line 18.

16 On line 18 through 19 you state that
17 PGW needs to generate sufficient cash from operations
18 to meet its obligations on a timely basis.

19 For how many of those over 100 years
20 that PGW has been operating has there generally been
21 internal funds sufficient to meet its obligations?

22 A. For the vast majority of that -- pardon
23 me. For the vast majority of that time period it
24 did.

25 It wasn't until either 1992 or 1993,

1 and I don't recall specifically, but in that time
2 frame that it began to not generate sufficient cash
3 from operations to sustain itself.

4 Q. And on page 8 of your rebuttal, line 19
5 through 21, you discuss that under the cash flow
6 methodology it's your opinion that PGW might have at
7 least 200 days of cash on hand; is that correct?

8 A. I don't tie it to the cash flow
9 methodology. I said that that is the standard that
10 is used by the rating agencies to measure liquidity
11 in a company. They measure liquidity as being cash,
12 working capital, as well as an ability to borrow on a
13 short-term basis.

14 In this instance they're talking about
15 actual cash, and it is based on the standards. It's
16 based on how other utilities across the country
17 perform.

18 Q. As support for the position that you just
19 articulated, you provided an exhibit identified as
20 BB-3, which shows the days of liquidity in debt to
21 aggregate ratios for hundreds of -- several hundred
22 of utilities. To be specific it consists of five
23 pages, very smally spaced.

24 And on this exhibit the second column
25 identifies the days of liquidity for the identified

1 municipal companies, correct?

2 A. Correct.

3 Q. Would you agree with me that liquidity is
4 not defined on this exhibit?

5 A. That's correct.

6 Q. And can you please explain to me what your
7 understanding of the definition of liquidity is as
8 pertaining to this exhibit?

9 A. I have a very specific understanding of
10 this definition because this is -- excuse me -- this
11 is a report that was assembled from a survey that was
12 done by the American Waterworks Association, and this
13 was self-reporting by each of these entities so that
14 each of them chose their own definition of liquidity.

15 So I can't say that there is one
16 specific definition that they all adhered to.

17 Q. Would you agree that approximately 20 of
18 the utilities identified in this exhibit have 10
19 years or more of liquidity?

20 A. I didn't count -- that's probably true.

21 Q. For example, on page 2 of BB-3 the City of
22 Newark, Ohio, the Division of Water and Wastewater
23 has identified that it has 100,075 days of liquidity.

24 Would you agree with me that this
25 equates to over 274 years of liquidity?

1 A. If that's the arithmetic, sure.

2 Q. And also on the same page, this is another
3 example, the City of Idaho Falls indicated that they
4 have 34,752 days liquidity. And would you agree,
5 subject to check, that that equates to 95 years?

6 A. Yes.

7 Q. Would you further agree with me, again
8 subject to check, that 21 of the utilities listed on
9 BB-3 have indicated that they have 0 percent equity?

10 A. Yes, and the reason for that would be that
11 even if they have no debt themselves, or some other
12 entity has issued debt for them.

13 So for example, if you had a municipal
14 water department, and the city issued general
15 obligation bonds to fund the capital requirements for
16 that water department, the water department, itself,
17 would have no debt.

18 Q. Do you have any personal knowledge of
19 that?

20 A. Yes. Yes.

21 Q. For all -- at least 21 or 20 utilities
22 that have 0 percent equity?

23 A. No, but I know how -- I have knowledge of
24 that being a format that's used in various
25 governmental entities.

1 Q. Turning your attention back to the City of
2 Idaho Falls, we previously discussed that they have
3 95 years of liquidity, and this is one of the
4 utilities that has indicated that they have 0 percent
5 equity.

6 Can you explain why they would have
7 this high liquidity but 0 equity?

8 A. Well, this would mean that they had no
9 debt. So I think those things go very well together.
10 If you have no debt you're going to save up lots of
11 money and have a lot of liquidity.

12 MS. KASTER: Can I take a moment,
13 please.

14 (Pause)

15 BY MS. KASTER:

16 Q. Can you turn your attention to Exhibit
17 BB-4, please. Am I fair to characterize that this
18 exhibit identifies utilities from BB-3 that you were
19 previously discussing that are specifically energy
20 utilities, correct?

21 A. Actually I would have to check to make
22 sure each of these is on the other exhibit.

23 Q. So out of the hundreds of utilities
24 presented in your prior exhibit, BB-3, only 13, those
25 listed on this exhibit, were related to energy

1 service?

2 A. If you did the count, then that's correct.

3 Q. Of these 13 utilities identified on your
4 BB-4, can you please identify which utilities provide
5 gas service?

6 A. I don't know specifically whether any of
7 these does.

8 MR. CLEARFIELD: We can check and
9 provide it, if you like.

10 MS. KASTER: We would appreciate that.

11 MR. CLEARFIELD: We'll see if we can
12 find that out.

13 BY MS. KASTER:

14 Q. And along that line of questioning, do you
15 know which if any of these utilities provide solely
16 gas service, not a combination of gas, electric,
17 water, wastewater, solely gas service?

18 A. I don't know.

19 Q. On page 9 of your surrebuttal -- of your
20 rebuttal testimony, excuse me, line 18 through 23,
21 you refer to Exhibit BB-5 and 6, indicating that they
22 show the use of cash for several entities in
23 Pennsylvania.

24 Can you please identify for me which
25 column on BB-5 and 6 supports your claim that 200

1 days of cash on hand is appropriate for PGW?

2 A. I don't think I said that; that I made
3 that cross reference.

4 The 200 days of cash is a standard
5 that the rating agencies use as guidance.

6 BB-5 does not have liquidity -- does
7 not deal with issues of cash and liquidity.

8 MS. KASTER: We have nothing further,
9 Your Honor.

10 JUDGE FORDHAM: Thank you.

11 JUDGE JONES: Thank you, Ms. Kaster.
12 Who's doing the cross, Mr. Lawrence?

13 MR. LAWRENCE: Yes, Your Honor.

14 JUDGE JONES: You may proceed, sir.

15 MR. LAWRENCE: Thank you.

16 CROSS-EXAMINATION

17 BY MR. LAWRENCE:

18 Q. Ms. Bisgaier, some of the questions that
19 I'm going to ask you involve the rebuttal testimony
20 of Mr. Bogdonavage, specifically the Schedules that
21 he has attached to that rebuttal testimony.

22 I do have a copy in front of me with
23 these Schedules tagged which may make things go a
24 little faster.

25 MR. CLEARFIELD: Well, Ms. Bisgaier

1 has a copy of that. Do you have an extra copy that's
2 tagged?

3 MR. LAWRENCE: Yes, I have a copy
4 right here with the Schedules tagged.

5 MR. CLEARFIELD: Do you have the
6 suggested answers, too.

7 MR. LAWRENCE: Yes, they're in the
8 back. Your Honor, when we get to that part of the
9 cross, I'll be referring to Mr. Bogdonavage's
10 Schedules JRB-8 and JRB-14.

11 JUDGE FORDHAM: Thank you.

12 MR. LAWRENCE: I'll apologize in
13 advance to Mr. Bogdonavage if I mispronounce his
14 name, as I'm sure I will again.

15 BY MR. LAWRENCE:

16 Q. Ms. Bisgaier, if you could please turn to
17 your rebuttal testimony on page 8, line 21 through
18 24, wherein you state that utilities must be
19 producing cash and internal funding on a consistent
20 basis, not paper funds from accounting conventions,
21 depreciation.

22 Please explain what the difference
23 between depreciation and amortization expenses?

24 MR. CLEARFIELD: I'm sorry, Your
25 Honor. Is there a reference to amortization expenses

1 in Ms. Bisgaier's testimony?

2 MR. LAWRENCE: Your Honor --

3 MR. CLEARFIELD: I'm going to object
4 as beyond the scope.

5 JUDGE JONES: Mr. Lawrence.

6 MR. LAWRENCE: Your Honor, I'm asking
7 the question so I can probe the depth of Ms.
8 Bisgaier's understanding when she talks about
9 depreciation, and I would say amortization is
10 inexorably linked to that same topic. And it is
11 nothing that's contained in the Schedules.

12 And I think that on cross I should
13 have the ability to probe the witness' knowledge of
14 these matters. She is the Company's financial
15 expert.

16 MR. CLEARFIELD: Well, Your Honor, I'm
17 not sure this is the right -- Ms. Bisgaier made a
18 narrow point, which is that depreciation is not cash
19 items or cash working capital item. I guess we could
20 see where it goes, but if there's specific questions
21 about from the accounting standpoint with respect to
22 how PGW treats depreciation and amortization, Mr.
23 Bogdonavage happens to be here. He could ask those
24 questions of him.

25 MR. LAWRENCE: Your Honor, I would

1 volunteer to limit the scope of our questions to
2 depreciation if that's acceptable.

3 MR. CLEARFIELD: Why don't we see if
4 she can answer it.

5 I'll withdraw the objection.

6 JUDGE FORDHAM: Well, I was going to
7 give you my ruling. My ruling was that he could ask
8 the question of the witness in terms of what the
9 definitions were. If she does not know, she can say
10 that.

11 Ms. Bisgaier, I know we have confused
12 you, but would you answer Mr. Lawrence's original
13 question, as what is the definition of depreciation
14 and amortization, if you know.

15 THE WITNESS: I am not an accountant,
16 and I was not a financial advisor to PGW with regard
17 to the preparation of their financial statements. I
18 advise them with regard to their dealings with the
19 capital markets and what the capital markets expect
20 of them.

21 I do know that depreciation is a line
22 cash item. It's an item that has to do with, from a
23 layperson's perspective, the reduction in value of
24 assets over time as they age.

25 BY MR. LAWRENCE:

1 Q. Thank you. Now, if you could please turn
2 to Mr. Bogdonavage's Schedule JRB-14. Looking at
3 JRB-14, Ms. Bisgaier, does the determination of net
4 income for PGW include depreciation expense?

5 A. Yes.

6 Q. Thank you. Now, if you'd refer to
7 Schedule JRB-8, and specifically the cash flow
8 statement for 2007, which should be page 2 of that
9 exhibit.

10 A. I think I'm looking at this. It has no
11 yellow marks on it; is that correct?

12 Q. Yeah, this would be JRB-8. At the top it
13 says, Cash Flow Statement.

14 Got it?

15 A. I do.

16 Q. Now, are there any uses shown on this
17 Schedule for depreciation?

18 A. No.

19 Q. Thank you. Now, staying on that same Cash
20 Flow Statement on that page, is it correct that under
21 Sources of Cash there is net income, depreciation and
22 amortization are all shown?

23 A. Yes.

24 Q. So just to be clear, depreciation is
25 charged against revenues in PGW's income statement,

1 but no cash is paid out for those expenses; is that
2 correct?

3 A. This is really not my expertise. I really
4 shouldn't try and address this with you because I
5 really don't know the accounting procedures.

6 MR. CLEARFIELD: Mr. Bogdonavage is
7 here if you want to ask him. He made your same point
8 in his testimony. You could have cross-examined him
9 on that point.

10 BY MR. LAWRENCE:

11 Q. That's fine, Ms. Bisgaier. Would you
12 please go to page 4, line 4 of your rebuttal
13 testimony. Therein that part of your rebuttal
14 testimony you use the term, internally generated
15 funds. Can you explain how internally generated
16 funds differs from funds from operations?

17 A. Internally generated funds is cash. It's
18 money that's available to be spent for the cost of
19 operating the company.

20 Q. Your definition of internally generated
21 funds is cash only?

22 A. Yes, cash and cash equivalents. And cash
23 equivalents would be short term investments and
24 varying liquid assets of PGW.

25 Q. The cash equivalents would include

1 commercial paper?

2 A. No, commercial paper is a borrowing.

3 MR. CLEARFIELD: I'm sorry. Just a --
4 are we talking about PGW's commercial paper that it
5 issues, or commercial paper that PGW would purchase?

6 MR. LAWRENCE: Specifically referring
7 to PGW's issuance.

8 MR. CLEARFIELD: Okay. I think I
9 heard --

10 THE WITNESS: Right. If PGW invested
11 in someone's commercial paper, that would be a cash
12 equivalent.

13 Issuing their own debt, commercial
14 paper is a debt. It's a -- it's not a cash
15 equivalent.

16 MR. LAWRENCE: Thank you. Your Honor,
17 can I ask the Court's indulgence for a moment.

18 JUDGE JONES: Sure.

19 MR. LAWRENCE: Thank you.

20 (Pause)

21 MR. LAWRENCE: Your Honor, the OCA has
22 no further questions of this witness.

23 JUDGE JONES: Thank you. Ms.
24 Bisgaier, I think I missed something in reference to
25 Mr. Lawrence's last question. I believe he asked,

1 what's the difference between internally generated
2 funds and funds from operations. And you defined
3 what internally generated funds were. So are you
4 saying funds from operations are not cash?

5 THE WITNESS: It would include
6 non-cash items like depreciation.

7 JUDGE JONES: Okay. So an example of
8 a non-cash item is depreciation. Okay.

9 Just a moment.

10 THE WITNESS: Sure.

11 (Pause)

12 JUDGE JONES: In reference to BB-3,
13 your exhibit, I believe you explained that this was
14 self-reporting from some water association?

15 THE WITNESS: American Waterworks
16 Association, which is the industry's association of
17 municipal waterworks companies, or waterworks
18 utilities.

19 JUDGE JONES: And, then you stated
20 that BB-4, subject to check, is a subset of BB-3,
21 where the entities all have some dealings with
22 energy.

23 THE WITNESS: Yes.

24 JUDGE JONES: Okay. And you also
25 offer -- or counsel offered that they would check to

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1 see if any of these subsets put in BB-4 actually are
2 gas companies, correct?

3 MR. CLEARFIELD: Yes, Your Honor. Or
4 provide gas as one of --

5 JUDGE JONES: Their services.

6 MS. KASTER: And we further requested
7 --

8 MR. CLEARFIELD: Right, if they solely
9 provide gas.

10 MS. KASTER: Solely provide or as part
11 of their operations provide.

12 MR. CLEARFIELD: Correct. We'll try
13 to find that out.

14 THE WITNESS: I think it's unlikely
15 that they solely provide because they were on this
16 survey by virtue of the fact that they're water
17 utilities.

18 JUDGE JONES: That's where I was going
19 to go.

20 THE WITNESS: The reason that they
21 would be on this list -- a good example would be
22 Memphis Light, Gas and Water, that does electric, gas
23 and water. So they answer in their water context.
24 They were asked and they -- there's no way to tell if
25 they responded in that example, water only or all

1 three of their subsets.

2 JUDGE JONES: So it would be a fair
3 assumption to make that the likelihood of these being
4 a sole gas provider is slim.

5 THE WITNESS: I agree.

6 JUDGE JONES: And that's based on the
7 assumption that you stated that they were
8 self-reporting under the American Water --

9 THE WITNESS: American Waterworks
10 Association.

11 JUDGE JONES: Okay. That's all.
12 Thanks.

13 MR. CLEARFIELD: Could we take a
14 moment to confer on redirect?

15 JUDGE JONES: You may.

16 (Discussion off the record)

17 JUDGE FORDHAM: We're back on the
18 record. Mr. Clearfield, redirect.

19 MR. CLEARFIELD: Thank you, Your
20 Honor. A few questions, Your Honor.

21 JUDGE FORDHAM: You may proceed.

22 REDIRECT EXAMINATION

23 BY MR. CLEARFIELD:

24 Q. Ms. Bisgaier, you were asked some
25 questions about your rebuttal testimony, I think,

1 also your direct testimony, where you indicated that
2 200 days of liquidity were a benchmark that PGW
3 should be measured against.

4 Can you restate the basis for that
5 recommendation, and explain how your Schedules BB-3
6 and 4 relate to that?

7 A. The basis for my statement is many, many
8 years of experience as a financial advisor to
9 municipal utilities.

10 In addition to that that's given me a
11 chance to work with the rating agencies for more than
12 25 years now, and I'm aware of the standards because
13 of that experience and that contact.

14 The Schedules were meant to be
15 supportive of that position. They weren't meant to
16 be determinate of anything.

17 Q. I see. Do you know how PGW prepares for
18 that 200 days that is in the industry the standard
19 amount that's kept?

20 A. If PGW were completely successful in this
21 rate case, and got \$100 million rate increase, they
22 would have 54 days of liquidity.

23 Q. And the liquidity again is?

24 A. Cash working capital with short term
25 borrowing.

1 Q. You discussed internally generated funds,
2 and the fact that you view that as cash as opposed to
3 other sources of funds. Where's the cash have to
4 come from?

5 A. It -- cash has to come from rates. It
6 can't come from an outside source.

7 Q. Like borrowing?

8 A. Like borrowing.

9 MR. CLEARFIELD: That's all we have.

10 JUDGE JONES: Any recross based on the
11 redirect?

12 MR. LAWRENCE: Can we have a moment,
13 Your Honor.

14 JUDGE JONES: You may.

15 MS. KASTER: Your Honor, OTS doesn't
16 have anything further.

17 MR. LAWRENCE: OCA doesn't have
18 recross, Your Honor.

19 JUDGE JONES: Ms. Bisgaier, you are
20 excused. Thank you for your testimony.

21 (Witness excused)

22 JUDGE FORDHAM: Mr. Clearfield, would
23 you like to move?

24 MR. CLEARFIELD: Yes, Your Honor. I
25 move for submission of PGW Exhibit 3, 3-R and PGW

1 Rejoinder Exhibit 5 into the record at this time.

2 JUDGE FORDHAM: We have PGW Statement
3 3, which is the direct testimony of Ms. Bisgaier, and
4 3-R, which is the rebuttal testimony. And, then we
5 have 50 Schedules and, then we have the Rejoinder
6 exhibit.

7 Are there any objections?

8 MR. LAWRENCE: Your Honor, we
9 previously objected.

10 JUDGE FORDHAM: PGW Exhibit -- excuse
11 me -- Statements 3, 3-R with the accompanying
12 Schedules, and Rejoinder Exhibit are admitted.

13 (Whereupon, the documents marked as
14 PGW Statements 3 and 3-R and Rejoinder Exhibit No. 5
15 were received in evidence.)

16 MR. CLEARFIELD: Thank you, Your
17 Honor.

18 JUDGE JONES: Mr. Clearfield, are you
19 ready for presentation of your next witness?

20 MR. CLEARFIELD: That would be Mr.
21 D'Attilio.

22 Whereupon,

23 ALBERT D'ATTILIO, having been duly
24 sworn, testified as follows:

25 JUDGE FORDHAM: Please be seated.

1 Please state your name and business address for the
2 record, and please spell your last name.

3 THE WITNESS: Albert L, as in Lewis,
4 D'Attilio, capital D apostrophe capital
5 A-T-T-I-L-I-O.

6 JUDGE FORDHAM: Thank you. You may
7 proceed.

8 MR. CLEARFIELD: Thank you, Your
9 Honor. Your Honor --

10 JUDGE FORDHAM: Oh, I'm sorry. Did
11 you give us your business address?

12 THE WITNESS: Oh, I'm sorry.
13 Philadelphia Gas Works, 800 West Montgomery Avenue,
14 1st Floor, Philadelphia, Pennsylvania 19122.

15 JUDGE FORDHAM: Thank you. You may
16 proceed, Mr. Clearfield.

17 MR. CLEARFIELD: Thank you, Your
18 Honor. We previously distributed to all the parties
19 and the Court Reporter a document entitled, Rebuttal
20 Testimony of Albert L. D'Attilio, consisting of
21 several pages of questions and answers and three
22 exhibits that have been marked as AD-1 through AD-3,
23 and we've premarked the statement as PGW Statement
24 12, and ask that it be marked for identification.

25 JUDGE FORDHAM: It shall be so marked.

1 (Whereupon, the document was marked as
2 PGW Statement No. 12 for identification.)

3 DIRECT EXAMINATION

4 BY MR. CLEARFIELD:

5 Q. Mr. D'Attilio, do you have before you
6 what's been marked for identification as PGW
7 Statement 12?

8 A. Yes, I do.

9 Q. And is that your prepared rebuttal
10 testimony for the purposes of this proceeding?

11 A. Yes, it is.

12 Q. Was it prepared by you or under your
13 supervision and direction?

14 A. Yes, it was.

15 Q. Do you have any additions or corrections
16 that you'd like to make to that statement at this
17 time?

18 A. I would just redact the second sentence of
19 the first question, I've been employed by -- employed
20 at PGW since May of 2005. I've been employed by PGW
21 since March 1st, 1999. It's actually the next line
22 that's correct.

23 Q. Tell us exactly, just take out the --

24 A. Just take out the; I have been employed by
25 PGW since May, 2005.

1 Q. Sorry about that. With that correction is
2 your testimony true and correct to the best of your
3 information, knowledge and belief?

4 A. Yes.

5 Q. And if I ask you the questions set forth
6 therein today, would your answers be the same?

7 A. Yes.

8 MR. CLEARFIELD: Your Honor, we have a
9 short Rejoinder from Mr. D'Attilio. It's in two
10 parts. A few questions that I'll present with
11 respect to Ms. Markovich's surrebuttal testimony.
12 And, then a presentation that Mr. Stunder will make
13 with respect to the School District witness, Mondre.

14 JUDGE FORDHAM: Thank you. You may
15 proceed.

16 BY MR. CLEARFIELD:

17 Q. Mr. D'Attilio, Ms. Markovich continues to
18 contend in her surrebuttal that the costs associated
19 with the company's Management Incentive Compensation
20 Plan should be denied.

21 She first contends that the Plan is
22 not sufficiently documented, and lists several
23 questions and alleged deficiencies that she claims
24 that the available documentation do not address.

25 Can you respond, please.

1 A. While it's true that there isn't a single
2 document that documents the Incentive Compensation
3 Program, or as we prefer to refer to it as the At
4 Risk Program, it has been well documented in the
5 various responses to discovery by the -- in this
6 forum and the Philadelphia Gas Commission.

7 With respect to the questions that
8 were raised, there are answers to those questions,
9 and I can provide them.

10 Q. Well, have you provided those answers, or
11 many of the answers to Ms. Markovich in discovery?

12 A. I believe I have. For the record, the
13 Board of the Philadelphia Facilities Management
14 Corporation determined -- authorized the Incentive
15 Program, authorized the amount that would be funded
16 for the Incentive Program.

17 The actual awards were calculated on
18 the basis of a spreadsheet. They were submitted to
19 the Gas Commission -- the Gas Works Executive
20 Committee, including Mr. Knudson, our President and
21 CEO, and Mr. White, our Chief Operating Officer.

22 They ultimately approve the
23 distribution. So there is the checks and balances
24 that Ms. Markovich is looking for.

25 Q. Who approves the total amount of the

1 compensation?

2 A. The Board.

3 Q. Ms. Markovich also suggests -- actually,
4 this will lead into this answer, I think -- that
5 while the Incentive Plan cost in 2005 was
6 \$518,000.00, it could have cost as much as
7 \$700,000.00; is that right?

8 A. It could not.

9 Q. Why?

10 A. Because the Board has only authorized
11 \$518,000.00. The way the spreadsheet works is we put
12 that number into the spreadsheet. The spreadsheet
13 then takes a look at the performance rating,
14 distribution, as well as the pay grades of the
15 individuals above, and it distributes that
16 \$518,000.00, you know, across the management team.

17 We weren't authorized to spend more
18 than \$518,000.00, and we couldn't do that.

19 Q. All right. Now, in your testimony, you
20 presented or discussed the results of a Hay Group
21 study which showed that PGW's salaries for management
22 generally were at the lower end of the pay range for
23 comparable companies.

24 And Ms. Markovich suggested she didn't
25 have enough information to evaluate the Hay Group

1 analysis, which conducted that study. And that that
2 study might not be reliable.

3 Do you have a response?

4 A. We provided every document that we've had
5 that has been requested. The Hay Group is a group
6 that's been in existence, I believe, for about 65
7 years. It's an internationally renown HR consulting
8 firm. They have clients. They have over 7,000
9 clients. Their clients include IBM, Microsoft,
10 AstraZeneca, Wal-mart, Mitsubishi. I think their
11 reputation stands on its own.

12 Q. Was this conducted independently for PGW,
13 this study?

14 A. Was the study conducted -- well, Hay has a
15 tremendous -- because of their 7,000 clients, they
16 have a tremendous amount of benchmarking material.

17 We utilize, you know, their expertise
18 in benchmarking against -- against the appropriate
19 utilities and, you know, private industry within the
20 northeast sector.

21 Q. Finally, Ms. Markovich suggested that the
22 formula that PGW uses in its Incentive Compensation
23 Plan could lead to compensation for all management
24 employees at the midpoint of their pay range?

25 A. That would be ideal. We're not there.

1 Q. Oh, you're not disagreeing with that?

2 A. I'm not disagreeing with that. I think,
3 as I said in my rebuttal testimony, the way the
4 compensation is set up, our competent or proficient
5 employees should be paid at the midpoint.

6 Q. Are they?

7 A. No, they're paid at 83 percent on average
8 of the midpoint, which actually drops our
9 benchmarking down to the 25th percentile, meaning
10 that 75 percent of our benchmarking utilities or
11 private industry are actually paying their comparable
12 employees more than we are. So we're at the low end
13 of the scale.

14 And when you look at it, you have to
15 understand that from 1999 to 2005 non-union employees
16 at PGW received one increase, and that was a 2
17 percent increase in 2003.

18 So, you know, we've been frugal at
19 best in how we compensate our employees, and it
20 creates a continuous struggle for us to not only
21 recruit but to retain our help because we're
22 constantly struggling with better job offers on the
23 outside.

24 MR. CLEARFIELD: Thank you. We're
25 going to turn to another subject and Mr. Stunder's

1 going to be taking the Rejoinder.

2 THE WITNESS: All right. Thank you.

3 DIRECT EXAMINATION

4 BY MR. STUNDER:

5 Q. Mr. D'Attilio, I'm going to direct your
6 attention to the Post Retirement Healthcare Benefits
7 discussed in Ms. Mondre's surrebuttal testimony.

8 Now, she alleges that providing these
9 benefits for PGW's retirees is unreasonable.

10 Can you comment on that?

11 A. While she acknowledges that she's not an
12 expert, I guess I would refer to the fact that an AGA
13 Survey that was conducted this year shows that 93
14 percent of the utilities offer post retirement
15 healthcare.

16 The Commonwealth of Pennsylvania
17 offers 100 percent post retirement benefits --

18 JUDGE FORDHAM: Wait a minute. I
19 think there was an objection to that part. Didn't we
20 delete that from her --

21 JUDGE JONES: We did strike that
22 testimony from Ms. Mondre.

23 MR. STUNDER: That's correct, but
24 there are portions of the testimony that are not
25 stricken that -- this is responsive to that portion

1 of it.

2 It's on pages -- the testimony about
3 post retirement benefits begins on page 4.

4 Now, what Mr. D'Attilio is testifying
5 to is responsive to a portion of the testimony on
6 page 5, which PGW did not request to be stricken.
7 Testimony was not stricken until page 6, line 18.

8 But Ms. Mondre states in her testimony
9 on page 5, line 14, where she says, but there's not
10 any contributions made.

11 JUDGE FORDHAM: Okay. But how does
12 this relate to the Commonwealth?

13 MR. STUNDER: Because Mr. D'Attilio is
14 testifying to other organizations where there are not
15 any contributions made, a rejoinder to what she
16 states on page 5, where she says -- she refers to an
17 exhibit, which was a response, and she says that --
18 she complains that they didn't make any contributions
19 to their respective health plans, and cost the
20 company \$11 million.

21 So this is rejoinder to her complaint
22 that there's not a contribution.

23 JUDGE FORDHAM: From PGW?

24 MR. STUNDER: From PGW's retirees. So
25 in Mr. D'Attilio's rejoinder, he's going to discuss

1 organizations that also don't have retirees
2 contribute towards their pension plans.

3 JUDGE FORDHAM: We can't have it both
4 ways.

5 MR. SHORE: Your Honor --

6 JUDGE FORDHAM: Go ahead, Mr. Shore.

7 MR. SHORE: Thank you, Your Honor. I
8 wanted to be heard on this. This is not fair, Your
9 Honors, because I did not intend to cross-examine Mr.
10 -- it's not fair to the School District's position.
11 They had the Company move to strike Ms. Mondre's
12 surrebuttal testimony on this issue, starting at page
13 6 through most of page 10.

14 And now they've called -- I thought
15 they told the Judges that if the testimony was not
16 stricken, then they may have a rejoinder witness.
17 But the testimony was stricken. So I think it's
18 unfair to call the witness now.

19 But on the other hand I was going --
20 he's opened the door now to get back into evidence
21 the testimony that was stricken on the grounds that
22 Ms. Mondre was not competent, I assume, to give that
23 opinion.

24 I would now like to either ask the
25 Court to reconsider the granting of the Motion to

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1 Strike, or allow me to cross-examine. Let him finish
2 his testimony, and allow me -- I'm going to ask him
3 those same questions on cross-examination that were
4 stricken from Ms. Mondre's testimony. It's not fair.

5 JUDGE FORDHAM: I agree with you for
6 sure that it's not fair. However, one of the reasons
7 that Mr. Stunder put in his Motion for objecting to
8 Ms. Mondre's testimony is that it was hearsay.

9 And I want to know why it's not
10 hearsay for Mr. D'Attilio.

11 MR. STUNDER: Well, that's an
12 interesting point, Your Honor.

13 JUDGE FORDHAM: Thank you.

14 MR. STUNDER: Ms. Mondre is an energy
15 consultant. She's not an employee benefits
16 consultant.

17 Now, the case that was cited in our
18 Motion to Strike, and that Mr. Miles Shore references
19 in his argument talked about when somebody's an
20 expert they can use hearsay.

21 Well, Ms. Mondre is not an expert.
22 Mr. D'Attilio is the head of our HR Department, and
23 deals with employee benefits day in and day out. So
24 Mr. D'Attilio can rely on hearsay testimony evidence
25 whereas Ms. Mondre can't.

1 JUDGE FORDHAM: No.

2 MR. STUNDER: That's the state of the
3 law. It's cited in our Motion to Strike. I mean,
4 Mr. Shore argued that very point in his response to
5 our Motion to Strike. That's exactly --

6 MR. SHORE: There's a case that
7 changed it, the Droughton case in Commonwealth Court.
8 I said, did not involve -- did not involve an expert
9 witness. It was the standard hearsay rule.

10 MR. STUNDER: Right.

11 MR. SHORE: And I said it's Rule 703
12 of the Pennsylvania Rules of Evidence, which does say
13 that experts may rely on information that's not
14 admissible evidence if it's of the type that's relied
15 upon by experts in that particular field.

16 Mr. D'Attilio now is going to confirm
17 that this information is relied upon by experts,
18 assuming he is a qualified expert, that he -- this is
19 now going to be admissible which would lead to
20 cross-examination. And I have the right to do that.

21 Mr. STUNDER: Well, Your Honors, what
22 I would ask --

23 JUDGE FORDHAM: Just a minute.

24 MR. STUNDER: Okay.

25 JUDGE FORDHAM: Thank you. The ruling

1 is, if Mr. Stunder wants the initial ruling of the
2 Judges to remain, then Mr. D'Attilio cannot testify
3 regarding that.

4 If Mr. D'Attilio testifies regarding
5 this issue, we will revisit our ruling on this
6 matter.

7 MR. STUNDER: Meaning strictly about
8 the other organizations that --

9 JUDGE FORDHAM: Yes.

10 JUDGE JONES: Yes.

11 MR. STUNDER: -- have -- okay. Your
12 Honors, if I could have a minute.

13 JUDGE FORDHAM: Yes.

14 (Discussion off the record)

15 JUDGE FORDHAM: We're back on the
16 record.

17 MR. STUNDER: I do have one request
18 though in light of our discussion here, that on page
19 5, lines 12 to 16 be stricken as well because it is a
20 complaint.

21 JUDGE JONES: You're talking about the
22 School District testimony?

23 MR. STUNDER: Ms. Mondre's School
24 District surrebuttal.

25 JUDGE FORDHAM: You would like this

1 stricken because?

2 MR. STUNDER: Because it is a
3 complaint that retirees do not make a contribution.

4 It suffers from the same defect as the
5 -- what we complained of in our Motion to Strike.

6 So basically on lines 12 to 16, Ms.
7 Mondre states that no retirees, whether Union or
8 management, make any contributions to their
9 respective health plans. I'd like that stricken as
10 well.

11 JUDGE FORDHAM: But you say that it's
12 based on a document that you gave OCA.

13 MR. STUNDER: That's correct.

14 JUDGE FORDHAM: So you're saying that
15 your document is incorrect?

16 MR. STUNDER: No, what I'm saying is,
17 I would like to strike that portion of her testimony
18 where she complains of that.

19 JUDGE FORDHAM: I still don't
20 understand why.

21 MR. STUNDER: Well, she's making a
22 complaint that retirees don't make any contributions
23 to their health plans.

24 JUDGE FORDHAM: Mr. Shore.

25 MR. SHORE: Your Honor, this is not an

1 expert opinion. This is a matter of fact that comes
2 from a discovery document.

3 I have the exhibit here. I was going
4 to cross-examine Mr. D'Attilio on it, and he would
5 admit it, I'm sure --

6 JUDGE FORDHAM: Your Motion is denied.

7 BY MR. STUNDER:

8 Q. Mr. D'Attilio, are PGW's post retirement
9 benefits vested rights?

10 A. I'd say that for the --

11 JUDGE FORDHAM: Mr. D'Attilio, please
12 keep your voice up.

13 THE WITNESS: I'm sorry. For those
14 employees who have already retired, I believe that
15 they had an expectation that their rights have
16 vested.

17 For current employees who are subject
18 to -- on the Union side to collective bargaining
19 limitations that prevent us from just unilaterally
20 changing the post retirement health benefits, it has
21 been the topic of previous contract negotiations, and
22 will probably be the topic of future contract
23 negotiations as well.

24 BY MR. STUNDER:

25 Q. Now, why are PGW's offerings post

1 retirement benefits reasonable?

2 MR. SHORE: Objection to the form of
3 the question.

4 JUDGE FORDHAM: Could you rephrase the
5 question.

6 BY MR. STUNDER:

7 Q. Are PGW's offerings of post retirement
8 medical benefits reasonable?

9 A. I believe so. We are not unique. Other
10 utilities -- according to an AGA survey, 93 percent
11 of utilities surveyed, and there were 42 responding,
12 offer post retirement health benefits.

13 Our Union will tell you that over the
14 years they had negotiated for post retirement health
15 benefits and have traded for those benefits wage
16 demands.

17 A number of employees have retired
18 under early retirement programs, and have been
19 assured that post retirement health benefits would
20 continue. So it was basically consideration for the
21 early retirement program.

22 It is something that helps us to
23 retain talent at PGW, because it is a goal that
24 employees have. And it's important for us to do
25 that, not only because of their expertise and the

1 effect it would have if we would lose those people,
2 but also because when we have to go out into the
3 market and recruit replacements, it typically costs
4 us more to recruit someone from the outside who has a
5 higher salary than any of our current employees.

6 Q. What has PGW done to mitigate the cost of
7 post retirement healthcare benefits?

8 A. We have been as active as we can since
9 2001 in trying to constrain the rising costs of
10 healthcare at PGW. We have successfully negotiated
11 several plan designs.

12 Back in 2001, prior to our labor
13 contract, we were offering a very generous PPL, a
14 Personal Choice as a base plan. Over the years we
15 have reduced our base plan to a Keystone HMO product,
16 and we continue to make plan designs to lessen the
17 cost of those products.

18 We have instituted mandatory mail
19 order for our active employees that help control the
20 rising cost of prescription benefits.

21 We meet with the Union regularly to
22 discuss, you know, changes that they may agree to
23 that would also control healthcare costs.

24 Rising healthcare costs is a problem.
25 We're actively trying to address that problem as best

1 we can.

2 Q. Now, you mentioned that there was a base
3 plan for retiree benefits, and that was instituted in
4 2001. Now, if somebody selects a plan that's
5 different than the base plan, if you will, better
6 than the base plan --

7 A. They pay the additional cost.

8 Q. And do you know what --

9 A. The other thing that we've -- let me just
10 add, the other thing that we've done in 2001 -- it
11 used to be that you retired with the benefits -- the
12 benefits that you had.

13 In 2001 we negotiated with the Union
14 that you would retire only with Keystone 5 as a base
15 plan, and if you wanted something better you would
16 have to buy up to it.

17 We recently renegotiated our contract
18 with Local 686, so that, effective September 1st,
19 employees retiring now retire with Keystone 10 as a
20 base plan, which gave us additional savings.

21 Q. Now, what is the annual cost -- what is
22 the range of annual cost if somebody does upgrade
23 during retirement, above the Keystone 10?

24 Are you aware of what the annual cost
25 is from individual to family coverage?

1 A. Well, on the active side we're looking at
2 -- I don't have the data in front of me. We're
3 looking at 3 to \$400.00 a month buy-up for someone
4 who went to a Personal Choice product over the
5 Keystone base plan.

6 Personal Choice continues to
7 experience double digit rating increases, while the
8 Keystone plan has been averaging 1 to 2 percent
9 increases over the past year. So that belt is
10 getting bigger and bigger.

11 MR. STUNDER: Thank you, Mr.
12 D'Attilio.

13 JUDGE FORDHAM: That ends your direct?

14 MR. STUNDER: Yes.

15 JUDGE FORDHAM: This witness is
16 eligible for cross?

17 MR. STUNDER: Yes, Your Honor.

18 JUDGE JONES: The School District
19 wishes to proceed first or OCA?

20 MR. SHORE: No, I'll defer to OCA,
21 Your Honor, we're the Intervenor.

22 JUDGE FORDHAM: Ms. Appleby, you'll be
23 conducting the cross?

24 MS. APPLEBY: Yes, either OTS, or I
25 can go it first.

1 JUDGE FORDHAM: OTS, would you like to
2 proceed first.

3 MR. KANASKI: I will go first. I will
4 be brief, Your Honor.

5
6 JUDGE JONES: Mr. Kanaski, you may
7 proceed, sir.

8 MR. KANASKI: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KANASKI:

11 Q. Good morning, Mr. D'Attilio. My name's
12 Rick Kanaski. I'm an attorney with the Office of
13 Trial Staff. I have a couple brief questions. First
14 on your rejoinder, you had mentioned that PGW's
15 constantly struggling to retain employees; is that a
16 correct --

17 A. Yes, sir.

18 Q. -- assessment?

19 A. That's correct.

20 Q. In this filing, is there anything in the
21 record indicating the turnover rate that you
22 experience -- and if I could rephrase. I'd rather
23 refer to the 45 or 55 employees eligible for the
24 Management Incentive Program.

25 So with that backdrop, do you have any

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1 data indicating the turnover rate?

2 A. I could talk to you about it. I don't
3 know if there's anything in the records.

4 Q. All right. Let's --

5 MR. STUNDER: Or whether there's -- in
6 an Interrogatory Response; is that what you mean?

7 Whether we --

8 MR. KANASKI: I want to explore the
9 turnover. He mentioned that we're having difficulty
10 retaining employees. And of these management
11 employees --

12 BY MR. KANASKI:

13 Q. Basic data. If you can answer it, great.
14 If not, we'll move on.

15 A. I think we've lost -- over the past four
16 years we've lost 10 Directors slash Vice Presidents
17 from the management -- or what we now refer to as the
18 management team. Our management team, over half of
19 our management team is retirement eligible as we sit
20 here today on the basis of age.

21 We anticipate that close to 40 percent
22 of our management team will probably retire by 2012
23 based on the fact that they become eligible for a
24 30-and-out retirement program they have. It's
25 clearly the most popular retirement mechanism that we

1 have at PGW.

2 We're very --

3 JUDGE FORDHAM: Mr. D'Attilio, please
4 keep your voice up.

5 THE WITNESS: I'm sorry.

6 JUDGE FORDHAM: You said there was a
7 30-and-out retirement program. What did you say
8 after that?

9 THE WITNESS: That is the most popular
10 mechanism for an employee to retire from PGW.

11 And within the next five years, at
12 least 25 of our 57 management team members will be
13 eligible for a 30- and-out retirement.

14 JUDGE FORDHAM: And do they have to
15 have a certain age --

16 THE WITNESS: No.

17 JUDGE FORDHAM: -- along with the 30?

18 THE WITNESS: No, that is not age
19 dependent. If you have 30 years of service, you are
20 eligible to retire.

21 JUDGE FORDHAM: Thank you. You may
22 proceed, Mr. Kanaski.

23 MR. KANASKI: Thank you, Your Honor.

24 BY MR. KANASKI:

25 Q. Do you have data or information or your

1 knowledge here indicating how many of these
2 management employees leave PGW to go to another
3 facility, another firm, another entity?

4 A. I don't have that. I can talk on it
5 solely about a few people that I know, but I don't
6 have data on it.

7 Q. So in terms of when we're referring to an
8 Incentive Program to retain employees, would you
9 agree with me that it's probably less effective in an
10 attempt to retain people who are going to retire?

11 A. No, I don't agree with that at all.

12 Q. So it's your belief that given the proper
13 incentive, they'll continue to work at PGW?

14 A. That is one factor in an employee's choice
15 to continue to work, to retire or to seek employment
16 elsewhere.

17 Q. I'll accept that. Let's move to your
18 Exhibit AD-2. Do you have that?

19 A. I do.

20 Q. I'm going to refer you to, I believe it's
21 the second page where it says, Management Incentive
22 Payments.

23 A. Yes.

24 Q. Would you agree that's also described as
25 the one-time at risk payment given in September,

1 2005?

2 A. That's correct.

3 Q. Tell me who approved the one-time at risk
4 program?

5 A. The Board of the Philadelphia Gas Works.

6 Q. Did the Philadelphia Gas Commission, in
7 its 2006 budget, did they approve the one-time at
8 risk payment?

9 A. I'm not sure. I don't believe so.

10 Q. And this may be outside your subject
11 matter, I'll ask it anyway. Would you agree that the
12 Gas Commission approves PGW's budget?

13 A. Yes.

14 Q. Same question for the 2007 budget, has
15 Philadelphia Gas Commission approved this program as
16 an ongoing Management Incentive Program in this
17 budget?

18 A. For the current fiscal year?

19 Q. For 2007, yes.

20 A. No.

21 JUDGE JONES: What was your answer,
22 please.

23 THE WITNESS: No.

24 JUDGE JONES: Thank you.

25 THE WITNESS: I'm sorry.

1 MR. KANASKI: Thank you. I have no
2 further questions.

3 JUDGE FORDHAM: Ms. Appleby.

4 MS. APPLEBY: Yes, Your Honor. I just
5 have a few questions.

6 CROSS-EXAMINATION

7 BY MS. APPLEBY:

8 Q. Forgive me if I tread over anything you've
9 already covered with OTS.

10 Good morning.

11 A. Good morning.

12 Q. My name is Christy Appleby, and I'm with
13 the Office of Consumer Advocate.

14 My first question, am I correct that
15 the Statement of Income for fiscal year 2007, the
16 test year for this proceeding, includes \$500,000.00
17 for an Incentive Bonus Program?

18 A. I believe so, yes.

19 Q. Could you please turn to your exhibit
20 attached to -- as AD-2 to your rebuttal testimony.

21 And I'm looking specifically at the
22 response to OCA's -- PGW's response to OCA-3-35. The
23 second Interrogatory Response attached.

24 A. Do I have that?

25 MR. STUNDER: Yes, you do.

1 THE WITNESS: I'm sorry.

2 BY MS. APPLEBY:

3 Q. Am I correct that AD-2 shows -- to OCA's
4 3-35 Response, that each year of the 5-year forecast
5 includes similar amounts for incentive bonuses
6 ranging from \$510,000.00 for fiscal year 2008, to
7 \$552,000.00 for fiscal year 2012?

8 A. That appears to be correct, yes.

9 Q. When did the Company's Incentive Bonus
10 Program begin?

11 A. We only had one year of it, and that was
12 in September of 2005.

13 Q. And am I correct that no specific formal
14 guidelines for the program have been adopted to date?

15 A. I would say that you're not correct. As I
16 indicated in my prior testimony, I think the program
17 is well documented. While we have not crafted a
18 specific Compensation -- a single document that will
19 totally explain it, with all of our Responses to the
20 Interrogatories, I think the system is very well
21 documented.

22 Certainly our 57 management team
23 members understand the program well.

24 MS. APPLEBY: Could I have a moment?

25 JUDGE FORDHAM: Yes, you may.

1 (Discussion off the record)

2 BY MS. APPLEBY:

3 Q. And I just have one final question. This
4 relates to the response you gave to OTS's question
5 regarding the fiscal year 2007 Operating Budget
6 proceeding before the Philadelphia Gas Commission,
7 and their denial of the Incentive Program as you
8 stated.

9 MR. CLEARFIELD: Objection, Your
10 Honor. That misstates the testimony.

11 He didn't say it denied it in a budget
12 for 2007. It wasn't done yet.

13 JUDGE FORDHAM: I thought he said it
14 was not approved.

15 MR. CLEARFIELD: Well, that doesn't
16 mean it was denied.

17 JUDGE FORDHAM: Okay. That's what I
18 thought he meant.

19 Could you restate --

20 MR. CLEARFIELD: We can clarify that
21 on redirect.

22 MS. APPLEBY: The question does not
23 have that language in it, so I'll just ask a
24 question.

25 BY MS. APPLEBY:

1 Q. Am I correct that in the fiscal year 2007
2 Operating Budget proceeding before the Philadelphia
3 Gas Commission PGW's budget request for incentive
4 bonuses was denied, quote, because clearly
5 articulated, well defined, quantitative goals and
6 criteria are absent?

7 A. Just to be clear, you're talking about our
8 current fiscal year?

9 Q. The fiscal year 2007 Operating Budget
10 proceeding before the Philadelphia Gas Commission.

11 A. And I believe that the language that
12 you're quoting from is language from a Gas Commission
13 Order.

14 MS. APPLEBY: Thank you. Could I ask
15 for one more moment?

16 JUDGE JONES: Yes, you may.

17 MS. APPLEBY: Thank you.

18 (Discussion off the record)

19 MS. APPLEBY: That's all we have, Your
20 Honor.

21 JUDGE FORDHAM: Thank you, Ms.

22 Appleby. Mr. Shore.

23 MR. SHORE: Thank you, Your Honors.

24 CROSS-EXAMINATION

25 BY MR. SHORE:

1 Q. Good morning, Mr. D'Attilio. I'm Miles
2 Shore. I represent the School District of
3 Philadelphia.

4 A. Good morning, Mr. Shore.

5 Q. How long have you been in your present
6 position?

7 A. May of 2005.

8 Q. What's your background and experience in
9 the Human Resources field, how long?

10 A. I've been in Human Resources since 1983.
11 I worked at the City of Philadelphia in the Central
12 Personnel Department from 1983 to 1989.

13 I then went to the Philadelphia
14 International Airport Division of Aviation where I
15 served as their Labor and Safety Director from 1989
16 to January of 1994.

17 At that time I had achieved my law
18 degree, and I went to the City Solicitor's Office
19 where I practiced employment law -- employment and
20 labor law from 1994, January, to March of 1999, when
21 I came to -- there was a brief stint where I
22 practiced at Blank Rome from January of '99 to March
23 of '99.

24 I then came to the Philadelphia Gas
25 Works where I've been, in one form or another, in HR

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1 or an HR-related field since that point in time. I
2 started out as the Director of Labor.

3 I then became the Director of Labor,
4 Safety and -- Labor, Safety and Security. And, then
5 in May I became the Vice President of Human
6 Resources, May of 2005.

7 Q. Are you still an attorney-at-law, admitted
8 to practice in Pennsylvania in good standing?

9 A. I am.

10 Q. You said that the Company has recently
11 renegotiated with the Union for Keystone 10 to be the
12 base plan; is that right?

13 A. Effective September of 2007.

14 Q. And has that been approved by the Board?

15 A. Yes.

16 Q. And it's been approved by the Union?

17 A. It's been approved by the Union.

18 Q. And that amendment is effective prior to
19 the end of the term of the Collective Bargaining
20 Agreement?

21 A. The Collective Bargaining Agreement would
22 have expired in May of 2008. This extends the
23 Collective Bargaining Agreement through May of 2010.

24 Q. Was the entire Collective Bargaining
25 Agreement extended --

1 A. Yes.

2 Q. -- till May, 2010? What is PGW's current
3 -- that is, for the fiscal year 2007, budget for
4 health and welfare costs?

5 A. For this fiscal year I believe it was \$37
6 million, and we expect it to be about \$39 million in
7 the next fiscal year.

8 Q. And of that budget, how much of that is
9 for health and welfare costs for regular retirees?

10 A. Someone indicated it was about \$11
11 million, and I think that was correct.

12 Q. And does that \$11 million include any
13 contribution by employees for health and welfare
14 benefits?

15 A. Well, that's our cost. The act -- I mean,
16 the employees are paying -- employees and retirees
17 are paying more if they choose to either buy up to a
18 plan, or if they live in an area where our base plan
19 isn't there and they have to buy up.

20 Q. Do early retirees get the health and
21 welfare benefits without any contribution?

22 A. Early retirees?

23 Q. Yes.

24 A. Anyone who retired before 2001, they're
25 not contributing at all.

1 Q. And is there a category of employees -- an
2 early retiree category of people who retired before
3 the 30 years of service?

4 Are they called early retirees also?

5 A. There's different -- there's different
6 designations of retirees. Not all retirees have
7 health benefits. You have to either retire at 62 or
8 65, or -- well, first of all you have to go from
9 active service into retirement. You can't have a
10 break between active service and retirement.

11 You have to -- if you're not 65, you
12 have to have a minimum of 15 years of service. And,
13 then we have two categories of early retirees, at 55
14 with 15 years of service, and, then special early at
15 55 with 25 years of service.

16 Q. And of the total budget, this year's
17 budget for health and welfare costs, how much of that
18 is allocated to early retirees?

19 A. To that particular category, I couldn't
20 tell you off the top of my head.

21 Q. Did you consult with anyone other than
22 PGW's attorney to prepare for your oral rejoinder
23 today?

24 A. No.

25 Q. Did you read Ms. Mondre's --

1 MR. STUNDER: Could I ask Mr. Shore to
2 repeat the last question, or could I ask that that
3 question and answer be repeated?

4 Not this one, the one prior to that.

5 JUDGE JONES: I understand, Mr.
6 Stunder. Court Reporter, please read back the
7 question and answer.

8 (Whereupon, the Reporter read from the
9 record as requested.)

10 THE WITNESS: No, not in preparation

11 --

12 JUDGE JONES: Just a moment. Go
13 ahead, Mr. Shore. You have a question.

14 THE WITNESS: I did. I mean, I've
15 talked to people, my own staff, if that's what you're
16 referring to. And I talked to the Union, the
17 collective bargaining history of PGW before I arrived
18 in 1999.

19 JUDGE JONES: Wait a minute.

20 THE WITNESS: I want to be accurate.

21 JUDGE JONES: Mr. D'Attilio, I believe
22 there was an exchange. The Court Reporter said the
23 question and the answer. And, then Mr. Shore asked
24 another question about whether you reviewed Ms.
25 Mondre's testimony.

1 THE WITNESS: Oh, I'm sorry.

2 JUDGE JONES: I believe you're
3 answering the question that was stated by the Court
4 Reporter.

5 THE WITNESS: I am. I apologize. And
6 I have reviewed Ms. Mondre's testimony as well.

7 MR. SHORE: And I plan to follow up on
8 that.

9 JUDGE JONES: Go ahead, Mr. Shore.

10 BY MR. SHORE:

11 Q. Did you consult with Mr. White in
12 preparing your oral rejoinder testimony?

13 A. No.

14 Q. Did you consult with any of your staff,
15 the HR staff, in preparing just for your oral
16 rejoinder testimony today?

17 A. Yes, for example, the retirement
18 information that I gave earlier came from members of
19 my staff.

20 MR. SHORE: Thank you. I have no
21 further questions, Your Honor.

22 JUDGE JONES: Thank you.

23 JUDGE FORDHAM: Mr. D'Attilio, you've
24 indicated that the Board approved the amount of the
25 Incentive Compensation Plan -- Compensation Program

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1 that was instituted; is that correct?

2 THE WITNESS: In 2005, that is
3 correct.

4 JUDGE FORDHAM: Is there anyone else
5 that needed to approve that, any other entity?

6 THE WITNESS: To my knowledge, no.

7 JUDGE FORDHAM: There was some
8 question, I believe, by both Mr. Kanaski and Ms.
9 Appleby about the Gas Commission. Has the Gas
10 Commission reviewed the Compensation package and
11 either approved or not approved it for the current
12 fiscal year?

13 THE WITNESS: They have reviewed the
14 Compensation -- well, the Incentive Compensation
15 Program, or At Risk Program in the current fiscal
16 year. To my knowledge they have not approved it. I
17 don't quite understand or feel comfortable enough to
18 discuss what levels of approval is required by the
19 Gas Commission. So I would leave that discussion for
20 someone else.

21 MR. CLEARFIELD: Your Honor, I think I
22 could state it 'cause it's a legal fact. The Gas
23 Commission approves the budget. So it determines
24 whether an item can be included in the budget.

25 A separate question is whether the gas

1 -- whether PGW can continue to operate or undertake
2 an operation that's not included in the budget.

3 But as of 2007, this item was not
4 included -- was declined to be included in the budget
5 as approved by the Gas Commission.

6 But it's also -- well, we'll get into
7 redirect as to whether there's finality to that
8 issue.

9 JUDGE FORDHAM: Okay. I'll allow you
10 to do that. The other question I was going to ask
11 you, and you might not be able to answer this, and I
12 asked about other entities. Is City Council involved
13 in this at all, in terms of reviewing the budget
14 and/or the Compensation package?

15 THE WITNESS: My understanding, and I
16 could be wrong, is that City Council reviews the
17 capital budget, not the Operating Budget.

18 JUDGE FORDHAM: Anything from OTS or
19 OCA?

20 JUDGE JONES: Does counsel need time
21 for discussion before redirect?

22 MR. CLEARFIELD: Yes.

23 (Discussion off the record)

24 JUDGE FORDHAM: Mr. Clearfield,
25 redirect.

1 REDIRECT EXAMINATION

2 BY MR. CLEARFIELD:

3 Q. What's your understanding of the current
4 status of the Management Incentive Compensation Plan
5 with respect to the Gas Commission's determination of
6 the FY '07 budget?

7 A. The Gas Commission left open the
8 possibility that they would approve the Incentive
9 Compensation Program if we provided specific
10 guidelines.

11 Q. And have we made any proposal to that
12 effect?

13 A. Yes.

14 Q. Has anything like that happened? Any
15 conclusion been made at this point in any way?

16 A. To my knowledge, no.

17 Q. And we're not suggesting the Gas
18 Commission's done anything or will necessarily do
19 anything one way or the other, are we?

20 A. I have no idea what the Gas Commission may
21 do.

22 MR. CLEARFIELD: That's all we have.

23 JUDGE FORDHAM: Any recross based on
24 the redirect?

25 MS. APPLEBY: Yes, Your Honor. I just

1 have one question, I think.

2 JUDGE FORDHAM: Go ahead, Ms. Appleby.

3 RECROSS-EXAMINATION

4 BY MS. APPLEBY:

5 Q. The Gas Commission said that the Company
6 could resubmit its proposal with well-defined,
7 quantifiable goals; is that correct?

8 A. Are you reading from -- if you're reading
9 from the Order that's what it says, okay.

10 Q. And have they done so to date?

11 MR. CLEARFIELD: Your Honor, I'm going
12 to object because the Gas Commission's approval is
13 not dispositive here. This is a rate case.

14 Whether the Gas Commission approves
15 this Plan or doesn't, doesn't impact directly on
16 whether the PUC can approve it.

17 MS. APPLEBY: No, but I think, Your
18 Honors, that it is important that the Philadelphia
19 Gas Commission has said this amount cannot yet be
20 included in the Operating Budget because it has not
21 sufficiently been well-defined, quantitative goals
22 and criteria are absent. So that's important --

23 MR. CLEARFIELD: Well, he already
24 answered that question. But there's a lot of
25 expenses that the Gas Commission has approved, and,

1 you know, those have not been --

2 MS. APPLEBY: But that's not the
3 subject --

4 MR. CLEARFIELD: Excuse me. Excuse
5 me. Your Honor, I ask that counsel not interrupt me
6 in the middle of a sentence. There's a lot of
7 expenses the Gas Commission has approved. As far as
8 I know, we haven't made a determination that if the
9 Gas Commission approves an expense, that it's
10 automatically permitted for rate making purposes.

11 MS. APPLEBY: I think we have the
12 record clear here that both the Philadelphia Gas
13 Commission has stated that the Incentive Bonus
14 Compensation Program could not be included at this
15 time in the 2007 Operating Budget, but they have the
16 ability to resubmit it, and they have not yet done
17 so.

18 MR. CLEARFIELD: All right. Well, if
19 that's all --

20 MS. APPLEBY: I think that's --

21 MR. CLEARFIELD: -- been established,
22 Your Honor. So I would move -- I would object on
23 asked and answered then.

24 JUDGE FORDHAM: So what is your
25 current question?

1 MS. APPLEBY: My current question is
2 whether they have resubmitted it to date?

3 JUDGE FORDHAM: And he --

4 MR. CLEARFIELD: I'll withdraw my
5 objection.

6 JUDGE JONES: The witness will answer
7 the question.

8 THE WITNESS: No.

9 MS. APPLEBY: That's all I have, Your
10 Honor.

11 JUDGE FORDHAM: OTS.

12 MR. KANASKI: No questions, Your
13 Honor.

14 JUDGE FORDHAM: School District?

15 MR. SHORE: No questions, Your Honor.

16 MR. CLEARFIELD: Thank you, Mr.
17 D'Attilio.

18 JUDGE JONES: Actually, I get to say
19 that.

20 MR. CLEARFIELD: I apologize, Your
21 Honor. He looked at me and I had to say something.

22 JUDGE JONES: We are off the record.

23 (Witness excused)

24 (Recess)

25 JUDGE JONES: We're back on the

1 record. I'm informed by counsel for PGW and PHA that
2 there is an agreement reached in reference to Mr.
3 Gorman. Is that correct, gentlemen?

4 MR. STUNDER: Yes, Your Honors.

5 JUDGE JONES: And who will be
6 presenting that?

7 MR. STUNDER: I think I will, Your
8 Honor. And, there's also, at the same time, we have
9 a written Stipulation about Mr. Gorman's testimony
10 with the School District as well. And that is what
11 Ms. O'Dell is handing up to Your Honors.

12 But the Stipulation with the
13 Philadelphia Housing Authority, I'd like to read into
14 the record. I will have a written version of that.

15 JUDGE JONES: Okay. You may proceed,
16 Mr. Stunder.

17 MR. STUNDER: As far as Mr. Gorman's
18 testimony or testimonies go, it is PGW's Statement 8
19 and PGW's Statement 8-R, and if Mr. Gorman were here
20 to testify, he would testify that the Answers would
21 be the same as in his testimony that was prepared by
22 himself or under his supervision. And they are true
23 and correct to the best of his belief, knowledge and
24 understanding.

25 And it includes -- I don't -- I think

1 it's Exhibits 1 through 8, which are in the Cost
2 Disturbance Study, which is a separate volume.

3 Let me just check that for accuracy.
4 Your Honors, in the initial filing and his initial
5 testimony it's Exhibits 1 through 8, and with his
6 rebuttal testimony it's Exhibits 1 through 8 revised.

7 And both the School District and
8 Philadelphia Housing Authority have agreed to waive
9 cross-examination.

10 The written Stipulation with the
11 School District, as I stated, is passed up.

12 And the Stipulation with the
13 Philadelphia Housing Authority is as follows:

14 Number 1, the Cost of Service Study
15 provided in Volume 3 of PGW's initial filing in this
16 proceeding, was prepared by Mr. Howard Gorman. Mr.
17 Gorman evaluated the cost of service for test year
18 2007 in this study.

19 Number 2, Guiding principles, comma,
20 such as gradualism, comma, were applied to cost
21 allocations for customer classes on an overall basis
22 and not an individual class basis, in deriving the
23 rates for the proposed increase.

24 Number 3, the Cost of Service Study
25 did not examine the cost of service for any period

1 other than 2007.

2 And that completes the Stipulation
3 between PGW and the Philadelphia Housing Authority.

4 JUDGE JONES: You have referred to
5 PGW's Statement 8, PGW's Statement 8-R. Exhibits
6 accompanying PGW Statement 8 are 1 through 8, and
7 exhibits accompanying PGW Statement 8-R, exhibits 1
8 through 8 revised.

9 You have also referred to PGW Hearing
10 Exhibit Number 4 as the Stipulation between PGW and
11 the School District, and you have read into the
12 record an oral stipulation between PGW and the
13 Philadelphia Housing Authority.

14 Do you wish to have these documents
15 admitted into the record, sir?

16 MR. STUNDER: Yes, Your Honor.

17 JUDGE JONES: I do have a correction
18 to PGW's Statement 8-R. On page 1, line 17, it reads
19 Pennsylvania Office of Consumer Advocate, paren,
20 OSBA, paren. I believe you mean Pennsylvania Office
21 of Small Business Advocate?

22 MR. STUNDER: Yes, that would be
23 correct, because the witness is Mr. Knecht.

24 JUDGE JONES: So with that change to
25 PGW's Statement 8-R, I will admit all of the

1 testimony that I referred to, all of the exhibits
2 that I referred to as well as the PGW Hearing Exhibit
3 Number 4 and your oral Stipulation that was read into
4 the record.

5 Are there any objections?

6 JUDGE JONES: So admitted.

7 (Whereupon, the documents were marked
8 as PGW Statement 8, Statement 8-R, Exhibit No. 4, for
9 identification and were received in evidence.)

10 JUDGE JONES: Are there any other
11 housekeeping matters before we present witnesses?

12 Hearing none, very well. I believe we
13 are scheduled to have Mr. Colton testify on behalf of
14 OCA; is that correct, Ms. Appleby?

15 MS. APPLEBY: Yes, Your Honor.

16 JUDGE JONES: Thank you, Ms. Appleby.
17 Please keep your voice up. I know you can do
18 that.

19 MS. APPLEBY: I will do that. I'm
20 sorry, Your Honor.

21 ROGER D. COLTON, having been duly
22 sworn, testified as follows:

23 JUDGE FORDHAM: Would you please be
24 seated. Would you state your name and business
25 address for the record, and please spell your last

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1 name.

2 THE WITNESS: My name is Roger D.
3 Colton, C-O-L- T-O-N. My business address is Fisher,
4 Sheehan and Colton, 34 Warwick Road, Belmont,
5 Massachusetts 02478.

6 JUDGE FORDHAM: Thank you. Ms.
7 Appleby.

8 DIRECT EXAMINATION

9 BY MS. APPLEBY:

10 Q. You have before you your direct, rebuttal
11 and surrebuttal testimony on behalf of the
12 Pennsylvania Office of Consumer Advocate that are
13 dated April 6th, 2007, May 4th, 2007 and May 15,
14 2007, collectively?

15 A. I do.

16 Q. Your direct testimony consists of 27
17 pages, Appendix A, and Schedules RDC 1 through RDC 2;
18 is that correct?

19 A. That's correct.

20 Q. Your rebuttal testimony consists of 30
21 pages and Schedules RDC 1-R and RDC 2-R; is that
22 correct?

23 A. That's correct.

24 Q. Your Surrebuttal testimony consists of 15
25 pages and Schedules RDC 1-SR and RDC 2-SR; is that

1 correct?

2 A. That's correct.

3 MS. APPLEBY: Your Honor, the Office
4 of Consumer Advocate has previously distributed
5 copies of these Statements to all the parties, and
6 would like to have these exhibits marked, OCA
7 Statement 4, 4-R and 4-S, for the record.

8 I have presented to --

9 JUDGE FORDHAM: They will be so
10 marked.

11 (Whereupon, the documents were marked
12 as OCA Statement 4, Statement 4-R and Statement 4-SR
13 for identification.)

14 MS. APPLEBY: Oh, thank you, Your
15 Honor. I've presented two copies of the Statements
16 to the Court Reporter for inclusion in the official
17 record.

18 BY MS. APPLEBY:

19 Q. Mr. Colton, would you like to make any
20 corrections or clarifications to these documents?

21 A. No.

22 Q. If I were to ask you the questions
23 contained in these Statements, would your answers be
24 the same?

25 A. Yes.

1 Q. Was everything contained in your
2 Statements, 4, 4-R and 4-S prepared by you or under
3 your supervision?

4 A. Yes.

5 Q. Are these documents true and correct to
6 the best of your knowledge, belief and understanding?

7 A. Yes.

8 MS. APPLEBY: Your Honor, subject to
9 cross-examination and timely Motions, the OCA moves
10 that OCA Statement Numbers 4, 4-R and 4-S, and their
11 accompanying Schedules and appendices be admitted
12 into the record.

13 JUDGE FORDHAM: We will address your
14 Motion after cross-examination.

15 JUDGE JONES: Is the witness available
16 for cross, Ms. Appleby?

17 MS. APPLEBY: Yes, the witness is
18 available for cross.

19 JUDGE JONES: Who will be conducting
20 cross for the Company?

21 MR. CLEARFIELD: I will, Your Honor.

22 JUDGE JONES: Mr. Clearfield.

23 MR. CLEARFIELD: I just have a few
24 questions.

25 CROSS-EXAMINATION

1 BY MR. CLEARFIELD:

2 Q. Good afternoon, Mr. Colton.

3 A. Good afternoon.

4 Q. I'm Dan Clearfield. I'm representing PGW.

5 Would you turn to page 26 of your direct testimony.

6 I want to ask you a few questions about your proposal

7 for mandatory budget billing for certain classes of

8 customers of PGW.

9 Now, Mr. Colton, I'm trying to
10 understand the proposal that you're making. On page
11 26, line 16 through 21, I think, you sort of set out
12 in summary fashion the concept. Would that be fair
13 to say?

14 A. Yes.

15 Q. Now, as I understand it, you're proposing
16 that for customers that are in good standing as of
17 November 1st, in each winter heating season, and,
18 then fall behind, I guess, in their bills
19 subsequently to that, those customers would be
20 automatically placed into budget billing?

21 A. Yes.

22 Q. And that would be whether they wanted to
23 or not?

24 A. Yes.

25 Q. And let me just ask you, would that

1 include customers who -- and that budget billing
2 amount would include not only a budgeted amount of
3 their current and projected charges, but also any
4 arrearage that they had at that point?

5 A. That's correct.

6 Q. And with respect to the arrearage, absent
7 this proposal, that customer would presumably have an
8 opportunity to enter into a payment agreement with
9 PGW; would that be right?

10 A. That's correct.

11 Q. Do you know whether PGW requests an
12 upfront payment of some amount in a payment agreement
13 today for a customer with whom they enter into such
14 arrangement?

15 A. They do.

16 Q. Now, would your proposal include
17 continuing to allow PGW to request an upfront payment
18 in those payment arrangements for customers that
19 would be subject to this mandatory budget billing for
20 the parts that's the arrearage, the arrearage portion
21 of this budget billing?

22 A. No, that wasn't what the proposal was.

23 Q. Now, with respect to that again, that
24 arrearage, a customer is in good standing they would
25 be eligible for this program on November 1st. Would

1 that include a customer who is paying their bills,
2 has no arrearage on their current bill -- would it
3 include a customer who has entered into a payment
4 arrangement and is current on that payment
5 arrangement?

6 A. I actually didn't think, one way or the
7 other, about that particular situation in offering
8 this proposal.

9 But a person in good standing would, I
10 believe, include somebody who was on a payment
11 arrangement and was current on that payment
12 arrangement.

13 Q. And in that case if that customer did not
14 continue to be current on the payment arrangement,
15 under your proposal they would be put into budget
16 billing and they would get another -- they would get
17 12 months now to pay both their current bill and what
18 was remaining on their payment plan?

19 A. That's correct.

20 Q. Now, under Pennsylvania law is PGW
21 required to provide more than one PUC authorized
22 payment arrangement under Act 201, if you know?

23 A. It's authorized but not required to do so.

24 Q. Under the scenario that I was just
25 discussing, wouldn't PGW be required to now provide a

1 payment arrangement to customer, a second payment
2 arrangement even if they had already provided a
3 payment arrangement to that customer?

4 A. I think that that's the legal question
5 that would need to be argued out between counsel.

6 Q. Are you talking about whether legally they
7 --

8 A. Whether --

9 Q. Let's just stick to the factual part. A
10 customer had a payment arrangement on November 1st.
11 Then, subsequently, defaulted on that payment
12 arrangement. They were put into this program. They
13 would now have to give the customer another 12 months
14 to pay not only their current amount, but whatever
15 amount was still owing on the payment arrangement.

16 Would that be factually the way it
17 would work?

18 A. Yes.

19 Q. We'll put aside whether that's legally
20 required or not.

21 But in those cases, that's different
22 than what PGW is currently doing. Would you agree
23 that that's --

24 A. That's correct.

25 Q. Now, that's going to have a cash flow --

1 potential cash flow impact on the Company. Would you
2 agree with that?

3 A. I would agree with that.

4 Q. And have you made any study of the effect
5 of cash flow?

6 A. I have not.

7 Q. And the collections effect, have you had
8 an opportunity to try to examine how this would
9 effect PGW's collections?

10 A. I have not looked at the PG -- the impact
11 on PGW collections. I know the Tennessee Regulatory
12 Authority and the Tennessee utilities found that
13 their mandatory budget billing program improved their
14 collections.

15 Again, I would have no reason to
16 believe that that would not be the case with PGW as
17 well.

18 Q. When you say, improved their collections,
19 are you talking about -- were you measuring that by
20 the number of non-payment disconnections; is that how
21 you were measuring that?

22 Or are you measuring that under terms
23 of the, you know, a comparison of bills versus
24 recovered revenues?

25 A. I'm talking about the collection

1 activities that are included in my testimony, which
2 primarily are non-payment disconnects.

3 Q. In your testimony you note that there's
4 three utilities, two of which experience a decrease
5 in non-payment disconnects, and one of which
6 experienced an increase; isn't that right?

7 A. That's correct.

8 Q. Are any of those companies regulated on a
9 cash flow method?

10 A. No.

11 Q. No?

12 A. No, they would be --

13 Q. Rate of return regulated?

14 A. -- rate of return regulated utility.

15 Q. Let me also ask you this: You're aware
16 that today PGW adjusts the budget billing amount when
17 the rate or the service that's reflected in the
18 budget bill changes.

19 Principally, in the last five years
20 it's been a change in our gas cost rate. Are you
21 aware of that?

22 A. Yes.

23 Q. Would your proposal continue to allow PGW
24 to adjust the budget billing amount to reflect
25 changes in rates, including the gas cost rate?

1 A. Yes, my proposal simply goes to how
2 someone is -- enters into the budget billing program.
3 It doesn't effect any other aspect of the budget
4 billing program.

5 Q. But would you agree that your proposal
6 would result in customers entering the budget billing
7 program in the winter months to a greater extent than
8 in other periods?

9 A. I agree with that.

10 Q. And are you also aware that -- or would
11 you accept subject to check that that is the period
12 in which PGW's cash flow needs are the greatest?

13 A. I agree with that.

14 Q. You made this proposal initially, I think,
15 in our -- in PGW's -- what we've been calling the
16 consolidated proceeding in which PGW's collection
17 activities were considered and changes to billing and
18 collection procedures were also considered. Do you
19 recall that?

20 A. I do. Yes.

21 Q. I think it was prior to restructuring. It
22 was actually -- I mean after the restructuring,
23 excuse me.

24 A. After restructuring but before Chapter 14.

25 Q. Yes. Exactly. And at that time do you

1 remember what PGW's collection rate was?

2 A. I don't remember.

3 Q. Do you know that now it's around 96
4 percent?

5 A. I know I've heard that number, yes.

6 Q. Are you aware of whether that's an
7 improvement or a reduction in the prior rate that
8 would be in effect in 2003 and 4 when we discussed it
9 previously?

10 A. That would be an improvement.

11 Q. Improvement. And yet in your testimony
12 you mentioned that the level of budget billing
13 customers had decreased over that same period of
14 time, right?

15 A. Yes.

16 Q. So if collections are still going up, why
17 would we still need this program?

18 A. Because there are any number of customers
19 that owe the company money who are not entering into
20 payment plans, and who are not taking the steps which
21 would be beneficial to keeping those customers out of
22 arrears.

23 So I believe that just as this program
24 improved collections for the Tennessee utilities,
25 that it would be an important tool for PGW, whatever

1 your current collections are, to address the folks
2 who are, A, behind, and B, are behind and not
3 contacting the Company to have that conversation with
4 you -- with the Company about whether they should
5 make a down payment and enter into a payment plan.

6 Q. Have you examined the level of bad debt
7 expense PGW's experienced over the last couple of
8 years?

9 A. I -- I followed the DCS reports which
10 record bad debt expense.

11 Q. Do you know whether it's improved or
12 decreased over that period?

13 A. I -- I don't know those numbers right
14 offhand. I have access to those numbers, but I
15 couldn't --

16 Q. Well, would you accept, subject to check,
17 that it's steadily improved every year. And when I
18 say, improved, the percentage has continued to go
19 down.

20 A. That -- that would be consistent with your
21 collectibility improvement, that your uncollectibles
22 are going down.

23 Q. Now, I guess, one other follow up. In
24 your rejoinder you mention --

25 JUDGE JONES: Rejoinder?

1 MR. CLEARFIELD: I'm sorry. The
2 rebuttal. Thank you.

3 But actually it's surrebuttal, isn't
4 it.

5 BY MR. CLEARFIELD:

6 Q. You mentioned another study on pages 5 and
7 6, dealing with -- I believe it -- here it is, on 6.
8 The Indiana Coalition to keep Indiana Warm?

9 A. Yes.

10 Q. It's 6 and 7. I apologize. Now, are any
11 of those utilities regulated on a cash flow basis, do
12 you know?

13 A. I don't know.

14 Q. Have you proposed this Mandatory Budget
15 Billing Program for any other utility in Pennsylvania
16 in the last five years?

17 A. I don't believe I have.

18 Q. And do you know if the Pennsylvania PUC
19 has ordered such a mandatory budget billing for any
20 utility in Pennsylvania?

21 A. They have not. It has not.

22 Q. Neither has.

23 MR. CLEARFIELD: That's all the
24 questions I have.

25 JUDGE JONES: Thank you, Mr.

1 Clearfield. Mr. Hinerman.

2 MR. HINERMAN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. HINERMAN:

5 Q. Mr. Colton, my name is Philip Hinerman. I
6 represent the Philadelphia Housing Authority. And I
7 wanted to ask you if you would turn to your rebuttal
8 testimony. This is your rebuttal testimony. I need
9 some clarification. If you'd turn to page 24, and
10 look at line 19. It poses the question, how is a
11 utility allowance set. I read the text after that
12 line, and I don't see discussion about how the
13 Philadelphia Housing Authority sets its utility
14 allowance.

15 Do you know how Philadelphia Housing
16 Authority sets its utility allowance?

17 A. Yes, the Philadelphia Housing Authority
18 uses what's called an engineering analysis to set its
19 natural gas utility allowance for its standard sized
20 housing.

21 The Philadelphia Housing Authority, in
22 using that engineering analysis, sites the U.S.
23 Department of Housing and Urban Development Utility
24 Allowance Guidebook and its procedural guides for
25 doing the engineering analysis.

1 I can take you through that
2 engineering analysis step by step if you want, but
3 for purposes of today, I think it would probably
4 suffice to simply say that the Housing Authority uses
5 the engineering analysis as identified in the HUD
6 Utility Allowance Guidebook, which I helped prepare,
7 in setting its natural gas utility allowance for
8 standard size public housing.

9 Q. What role does HUD have in PHA setting the
10 utility allowance?

11 A. None. The utility allowances are
12 submitted to HUD but HUD neither participates in the
13 preparation of the allowance nor approves or
14 disapproves of the allowance when set.

15 Q. On page 24 of your testimony, at line 14
16 through 16, you discuss the notion that tenants
17 receive, as you say, as part of their housing subsidy
18 provided through the U.S. Department of Housing and
19 Urban Development, a utility allowance.

20 What I'm not clear, is what you're
21 referring to when you say the tenants receive the
22 subsidy provided through HUD. Can you explain what
23 that means?

24 A. Sure. HUD utility allowances -- or
25 Housing Authority utility allowances that are

1 provided through HUD housing programs and those
2 monies come out of the HUD budget.

3 Q. So is it your testimony that money for
4 utility allowance for PHA come from HUD?

5 A. Well, tell me what you mean when you say,
6 come from HUD?

7 Q. The money gets from HUD to PHA.

8 A. HUD compensates or -- compensates PHA for
9 the utility allowances that are passed.

10 Q. How?

11 A. The PHA submits a report with an estimated
12 utility allowance budget on an annual basis, and what
13 the specifics of the money transfers are between the
14 Federal budget and the PHA are, I'm not sure.

15 Q. When was the last time you reviewed PHA's
16 submission of what you call the utility allowance to
17 HUD for compensation from HUD?

18 A. Two years ago, maybe.

19 Q. Are you familiar with the Moving to Work
20 Program?

21 A. I am aware of the Moving to Work Program.
22 To say that I'm familiar with it, probably overstates
23 it.

24 Q. You understand how the general concepts of
25 the Moving to Work Program work for PHA?

1 A. I -- again, I'm aware of the general
2 concept, yes.

3 Q. Can you explain to the Commission and to
4 the Judges what the general concept of the Moving to
5 Work Program are?

6 A. The Moving to Work Program is a program
7 where a housing authority can develop a plan to -- a
8 Moving to Work Plan, hold public hearings on that
9 Plan, have the Plan adopted by its Board of Directors
10 -- by the Housing Authority's Board of Directors,
11 and, then submit an application to HUD to have its
12 Moving to Work Program approved using HUD prescribed
13 criteria for approval or disapproval.

14 The Housing Authority is then allowed
15 to move monies within its budget between line items,
16 if you will, under its Moving to Work Program.

17 Q. You understand then that PHA can move
18 monies that, say, are in their line items, utility
19 allowances to other tenant programs?

20 A. If that was -- if the Moving to Work Plan
21 that was adopted by the Housing Authority and
22 submitted to HUD, provides for moving monies from
23 utility allowances to other uses and HUD approved
24 that Plan, then the Housing Authority would be
25 permitted to do that.

1 Q. Do you now if PHA did that?

2 A. I don't know if PHA has done that, no.

3 Q. Is it important for your opinion in your
4 surrebuttal to know whether or not the monies that
5 you're advocating be sent to PGW could also be used
6 by PHA for tenant programs?

7 A. No.

8 Q. Why not?

9 A. It's -- it's not a relevant consideration.

10 Q. It doesn't affect the bottom line of PHA,
11 allow them to have more money available?

12 A. It -- I'm not sure I understand your
13 question.

14 Q. Well, I thought I understood you to
15 testify that the Moving to Work Program allowed the
16 Housing Authority to shift line items to other
17 programs. Was that incorrect?

18 A. It can shift -- it can shift monies
19 between line items.

20 Q. So presumably it could shift monies in a
21 utility allowance to another tenant-based program,
22 couldn't it?

23 A. If -- if that was provided for in the
24 Housing Authority's Moving to Work Program, that
25 would -- and if that was approved by HUD, then that

1 would be permissible.

2 Q. You don't know whether it was here or not?

3 A. I don't know. A, I don't know if the
4 Housing Authority has submitted a Moving to Work
5 Program for its public housing units. B, I don't
6 know if it has submitted that Moving to Work Program,
7 whether that program was approved by HUD. C, if it
8 was approved by HUD, I don't know if it's still in
9 operation.

10 Q. Well, let's assume that program had been
11 approved by HUD, the Moving to Work Program. And
12 that the program allowed transfers of line items.
13 Would that not have an impact on your contention that
14 utility allowances should all be paid to PGW rather
15 than being shifted to other tenant-based programs?

16 A. I think I answered that question already,
17 and the answer is no.

18 Q. Let me see if I understand that or not,
19 I'm really not trying to badger you. I just don't
20 understand what you're saying.

21 You talked about shifting monies from
22 one line item to another. And I'm asking you if
23 there is a surplus of money in the utility allowance
24 from what you believe was budgeted, could that
25 surplus not be shifted to other tenant-based

1 programs?

2 A. If there is a surplus of money in the
3 utility allowance budget for housing -- for the
4 Housing Authority, then I believe under the Moving to
5 Work Program, the Housing Authority can switch that
6 money to other tenant services.

7 Q. Is it your testimony though that if the
8 Moving to Work Program has been accepted, and there
9 is a surplus in utility allowances, that should go to
10 PGW?

11 Is that right? Is that your
12 testimony?

13 A. No, I don't think I've ever said that.

14 Q. Well, let's see what I think you said,
15 and, then you can correct me where I'm wrong.

16 I believe it is your opinion that PHA
17 should pay the full residential rate of a utility
18 allowance; is that right?

19 A. Yes.

20 Q. We'll take it in steps.

21 A. Yes.

22 Q. And that full residential rate should be
23 paid to PGW?

24 A. Should be directly vented to PGW, yes.

25 Q. Your testimony, I believe, also said that

1 a lot of the tenants are eligible for the CRP
2 program; is that correct?

3 A. I don't think I made that statement, but
4 let's say to the extent that public housing tenants
5 are CRP participants also.

6 Q. They should be in the CRP program and they
7 would receive utility allowance at full residential
8 rates even though those aren't the charges?

9 A. Well, there are some facts in your
10 question which I don't -- I don't agree with there.

11 Q. Can you help me?

12 A. Yes. I don't believe that you have two
13 different bills where the TRP is a limited bill and
14 that's all that's due. And the CRP, what we refer to
15 -- what legend refers to as the CPR shortfall is
16 something apart from the tenant bill.

17 So consider, for example, the fact
18 that the Commission collects the LIHEAP payment and
19 applies the LIHEAP payment received by customers
20 against that shortfall. The reason is because the
21 shortfall is still part of the tenants' bill.

22 So the tenant bill under CRP consists
23 of two components. The CRP component, which is paid
24 by the tenant, and the CRP shortfall, which is paid
25 by someone other than the tenant. But the CRP -- but

1 the bill to the CRP tenant, and where I think you and
2 I -- your question assumed a fact that I didn't agree
3 with. The bill to the CRP tenant is the sum of those
4 two parts, the CRP customer payment and the CRP
5 credit.

6 Q. But your proposal, in fact, subsidizes the
7 difference between what the residential rate would be
8 for an individual PHA tenant, and the actual CRP
9 charge; is that correct?

10 A. Can I have that question read back,
11 please.

12 (Whereupon, the Reporter read from the
13 record as requested.)

14 THE WITNESS: No.

15 BY MR. HINERMAN:

16 Q. What was wrong with the statement?

17 A. The -- again, the CRP participant receives
18 a bill from PGW. That bill consists of two different
19 components. The first component is -- the component
20 is what I refer to as the customer payment.

21 The second component is the CRP crest
22 or the CRP shortfall. That CRP shortfall, which is
23 what we're talking about, can be paid from any -- any
24 of a number of sources.

25 The first source could be the LIHEAP

1 payment. That LIHEAP payment goes to pay the CRP
2 participant's bill.

3 The second component could be other
4 PGW rate payers, through their pass through of CRP
5 credits.

6 A third source could be the HUD
7 utility allowance. The HUD utility allowance, unlike
8 the LIHEAP payment, historically has not been
9 captured as a payment toward that component of the
10 CRP's bill.

11 What I'm proposing is that that
12 component of the CRP bill be, to the extent that
13 there is a source of dollars to pay for it, other
14 than the remaining rate payers, can and should be
15 used to pay for that bill that's rendered to a CRP
16 customer.

17 Q. Let me ask you to turn to page 28, and
18 start on line 17. This is what I'm trying to focus
19 on, and the question --

20 JUDGE FORDHAM: This is still rebuttal
21 testimony?

22 MR. HINERMAN: This is all rebuttal
23 testimony. Yes, Your Honor.

24 BY MR. HINERMAN:

25 Q. This is what I understood your proposal to

1 be, that basically the tenants who participate, PHA
2 tenants, who participate in CRP, have their utility
3 bills paid by the utility allowance from PHA, and any
4 excess above that tenant's charge under the CRP
5 Program would be retained by PGW; is that correct?

6 A. Yes. Perhaps -- perhaps I understand
7 where the -- where our misunderstanding is. Our
8 misunderstanding may simply be that just because
9 there's a utility allowance doesn't mean that PGW
10 should get it. So any excess of the utility
11 allowance over the CRP payment up to the full CRP
12 bill, should be used to pay that CRP bill.

13 So if the customer payment plus the
14 CRP shortfall is \$100.00 and the utility allowance is
15 \$100.00, then \$100.00 goes to PGW.

16 If the utility allowance is \$120.00,
17 nonetheless \$100.00 goes to PGW to pay the CRP bill.

18 So perhaps --

19 Q. Then the extra \$25.00 would be retained by
20 PGW under your proposal?

21 A. No, the extra \$20.00 would not be paid. I
22 thought it implicit within my testimony was the
23 notion that the utility allowance should go to pay
24 the CRP bill. It's certainly not the CRP bill
25 consisting of the two components that I've talked to.

1 When the bill is \$100.00 and the
2 utility allowance is \$150.00, the Housing Authority
3 has no obligation to pay \$150.00 to PGW. It simply
4 has an obligation to pay the \$100.00 toward the full
5 CRP bill.

6 If there is no corresponding CRP bill,
7 then the Housing Authority has no obligation to make
8 that payment to PGW.

9 Q. Then explain what you're referring to on
10 line 19 of page 28, saying, the excess benefit should
11 be captured as a revenue source to pay the costs of
12 the CRP?

13 What excess benefit are you referring
14 to?

15 A. The excess benefit that I refer to here is
16 the fact that a CRP participant's bill consists of
17 two components, the customer payment and the CRP's
18 shortfall. Put those together and you have the full
19 CRP bill.

20 The utility allowance would first go
21 to pay the customer component of the CRP
22 participant's bill.

23 So if we -- at the risk of making this
24 overly simplistic, if we go back to that \$100.00, the
25 customer payment is \$30.00. The first \$30.00 of the

1 utility allowance goes to pay that customer payment.

2 The excess over that \$30.00, up to the
3 full CRP bill would go to PGW to complete the payment
4 of the CRP customer's full bill.

5 So the excess benefit that you're
6 focusing on here on page 19 in my example, is the
7 difference between the \$30.00 customer payment and
8 the \$100.00 the CRP -- the full CRP bill.

9 Q. So, in essence, what you're saying, and
10 correct me if I'm wrong, and I'm really trying to
11 understand it, is that the utility allowance then
12 serves to underwrite the remaining bill as though it
13 had not been discounted for CRP?

14 A. Well, again, I disagree with the way
15 you've categorized the CRP program.

16 The CRP program, you're -- when you
17 use words like underwrite and the amount that's not
18 discounted, all the CRP program does is to break the
19 CRP participant's bill into two components, the
20 customer payment and the CRP shortfall. And the CRP
21 shortfall plus the customer payment is the full bill.

22 Part of that shortfall is paid for by
23 LIHEAP, part of it can and should be paid for by the
24 other Federal dollars that are intended to pay that
25 bill, which would include the utility allowance.

1 Q. Do you agree with me that that -- now,
2 let's start, let's make sure I've got this right.

3 Customer C's bill's for \$50.00, and
4 he's on the CRP program. There's an additional
5 \$50.00 that it should have cost if he had been billed
6 at the regular rate.

7 Follow me so far?

8 A. Yes.

9 Q. So this whole bill, while it should have
10 been \$100.00 save for the fact that the resident has
11 CRP -- applies for CRP, and his bill actually is 50?

12 A. I disagree with that categorization. It's
13 not that the full bill should have been \$100.00 but
14 now it's \$50.00. The full bill is \$100.00, and that
15 bill is divided into the CRP payment and the CRP
16 shortfall.

17 So there's no such have been to it.
18 The full bill is what it is. The sources of payment,
19 CRP devised the source of payment between different
20 -- different entities, different people.

21 Q. If that bill had not been paid by utility
22 allowance to PGW, would the tenant's bill be \$50.00?

23 A. You've lost me with your --

24 Q. Let me ask you to fill in numbers. Let's
25 say for purposes of your hypothetical that the

1 utility allowance is not paid directly to PGW. The
2 tenant gets a bill. What is the tenant's bill?

3 A. The has to pay amount?

4 Q. Yes.

5 A. The has to pay amount is --

6 Q. Pick a number.

7 A. -- \$50.00.

8 Q. Had that tenant not been on CRP, let's say
9 the bill would have been \$100.00?

10 A. The has to pay amount would be \$100.00.

11 Q. Explain to me then whether or not your
12 proposal would be that the utility allowance would
13 pick up the short -- the difference between the
14 \$50.00 asked for pay and the \$100.00 as it would have
15 been if it had been a tenant who was not on this CRP
16 program?

17 A. Yes.

18 Q. Would you ask the utility allowance to pay
19 anything in addition to that?

20 A. No.

21 Q. Now, if PHA were to directly pay the asked
22 for payment, there would be an additional \$50.00,
23 correct, under our hypothetical?

24 A. There would be an additional \$50.00 of the
25 CRP participant's bill that had not yet been paid.

1 Q. If that money stayed at PHA if they yearly
2 pay the tenant's bill, what would the PHA do with
3 that extra \$50.00?

4 A. I don't -- the factors that would go into
5 that are so multitudinal that I couldn't tell you.

6 Q. You think they could use it for other
7 tenant-based programs?

8 A. If certain conditions would be met, I
9 would think they could use it for other tenant-based
10 programs.

11 Q. But it would be your judgment that PGW
12 should get the first shot at those monies instead of
13 another tenant-based program?

14 A. It's my judgment that utility allowance
15 which is intended to pay the public housing tenant's
16 utility bill should be used to pay the public housing
17 tenant's utility bill, and that PGW rate payers
18 should not be subsidizing the public housing
19 authority even if the public housing authority was to
20 use those subsidy dollars for other tenant-based
21 programs.

22 Q. And how would PGW rate payers be
23 subsidizing the Housing Authority?

24 A. Because you would --

25 Q. Are they paying any money?

1 A. Because you would be substituting rate
2 payer money that would be used to pay the CRP
3 shortfall for Federal dollars that were intended to
4 pay the full utility allowance.

5 Q. How many tenants in the scattered site
6 residences are on the CRP program?

7 A. I don't know.

8 Q. So as you're sitting here today, can you
9 tell me whether we're talking about one or 100 or
10 1,000?

11 A. I -- I don't know.

12 Q. Isn't that important to your testimony to
13 know how much money we're talking about here?

14 A. No.

15 Q. Well --

16 A. We're talking about procedure here. We're
17 not -- I didn't propose a dollar adjustment in
18 talking about a procedure for -- again, to harken
19 back to the LIHEAP, when we talked about the extent
20 to which the LIHEAP payments would be captured to pay
21 the CRP shortfall, we did not have a conversation
22 about how many LIHEAP payments -- or LIHEAP
23 participants there were or how much LIHEAP money
24 there was.

25 We establish the process for saying

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1 here is a -- here are dollars that are intended to
2 pay for low-income utility bills. They should be
3 used to pay those low-income utility bills.

4 Q. On page 28 of your testimony, your
5 surrebuttal testimony --

6 JUDGE JONES: Surrebuttal testimony?

7 MR. HINERMAN: Do I have that right?

8 Rebuttal. Thank you.

9 BY MR. HINERMAN:

10 Q. -- lines 8 and 9, you discuss allowing the
11 local Housing Authority to pocket a windfall
12 reduction in its own costs by transferring those
13 costs to the company's remaining rate payers.

14 But you don't know whether it's a
15 windfall or a minor erosion or just a little bit of a
16 gully, do you?

17 You don't know what it is?

18 A. Well, I -- whether it's \$10,000.00 or
19 \$100,000.00, I don't think would be relevant to
20 whether it is a windfall or not.

21 But if your question is, do I know the
22 dollars involved, the answer is no, I do not know.
23 As I said previously, I do not know the number of
24 public housing scattered site tenants were also CRP
25 participants. I do not know that number.

1 Q. Well, let's make it a different question
2 than the one you just expounded on.

3 When you used the word, windfall
4 reduction in your testimony, what did you mean?

5 A. I mean that there is a stream of Federal
6 dollars that are intended to pay for the utility
7 bills of tenants of public housing, and those -- that
8 stream of Federal dollars should, in fact, be used to
9 pay for utility bills of tenants of public housing,
10 and those -- the obligation to pay those utility
11 bills, given the existence of that stream of money,
12 should not be transferred to other PGW rate payers.

13 To the extent that the obligation to
14 pay those utility bills is transferred to other PGW
15 rate payers, that's a windfall to the Housing
16 Authority.

17 Q. If you turn to page 26 of your rebuttal
18 testimony, line 22 and 23 discuss the utility
19 allowance being used as an offset to the household's
20 rent.

21 Are you familiar with PHA's practice
22 of applying the utility allowance to tenant's rent?

23 A. Yes.

24 Q. And do you approve of that practice?

25 A. Applying it to the tenant's rent, meaning

1 that you reduce the rent to -- in the way that I
2 describe here.

3 Q. In other words, the tenant has, let's say,
4 a \$350.00 rental owed which is determined how, do you
5 know?

6 A. By 30 percent of income.

7 Q. So it's basically income driven, correct?

8 A. Yes.

9 Q. So let's say they have, as used, \$350.00
10 payment due PHA. They would use the utility
11 allowance to reduce that \$350.00 by the amount of
12 utility allowance, correct?

13 A. Yes, as I described it here.

14 Q. Now, under your proposal does that change
15 though that now the tenant has to pay the full amount
16 of the rent, and the utility allowance then goes to
17 PGW?

18 A. Yes.

19 Q. Have you analyzed the financial impact of
20 making either the tenant pay a higher rent, or the
21 loss of the income of those rents to PHA?

22 A. No.

23 Q. Is that an important issue?

24 A. No, not for our purposes here.

25 Q. Not for the PUC. But it is for PHA, isn't

1 it?

2 A. The -- well, the tenant isn't paying a
3 higher rent. The rent is what it is --

4 Q. Well, in essence then --

5 A. -- \$350.00. It's income driven.

6 Q. In essence, then it first requires PHA to
7 collect more money, and second, to require the tenant
8 to pay more rent; isn't that correct?

9 A. No.

10 Q. What's wrong with what I said?

11 A. Because the rent is income -- is income
12 driven. The rent is what it is, 30 percent of
13 income. And how you split that up between the
14 different forces of revenue for the rent, doesn't
15 change what the rent is. The rent is 30 percent of
16 the household income.

17 Q. I understand. Let me try to reask it in a
18 different way.

19 If the utility allowance is paid
20 directly to PGW, then the Housing Authority has to go
21 after a larger tenant rent than it did before. The
22 tenant rent now does not have a reduction for the
23 utility allowance; is that correct?

24 A. If what you're asking -- let me see if I
25 can state your question back to you.

1 Q. It won't be the first time.

2 A. If what you're asking is, let's assume
3 that the rent is \$300.00. Under the existing
4 framework the Housing Authority collects a certain
5 portion of that rent from the Federal Government by
6 using the utility allowance as an offset, and
7 collects the rest of that rent from the tenant.

8 So the utility allowance is being used
9 to pay the rent to the Housing Authority.

10 What I propose is that the utility
11 allowance be used to pay the utility bill, and that
12 the rent to the tenant be collected from the tenant.

13 And to that extent, I agree with you
14 that under the Direct Vendor Payment Agreement the
15 rent to the tenant would be collected from the
16 tenant. The utility allowance would be used to pay
17 the utility bill, rather than having the utility
18 allowance be used to pay the rent of the tenant.

19 Q. First, I think we agreed that that would
20 mean tenant's rental payment would increase on the
21 books of PHA because it would no longer be offset?

22 A. The amount of money that would be
23 collected from the tenant in cash would increase.
24 The out-of-pocket money from the tenant would
25 increase.

1 Q. And, second, that tenant's bill to pay its
2 rent to PHA will increase?

3 A. The out-of-pocket dollars from the tenant
4 to the Housing Authority would increase.

5 Q. But the tenant will have a higher rent
6 payment. PHA will collect -- will have to collect
7 more money; is that correct?

8 A. No, PHA collects exactly the same amount
9 of money. It's collects the \$300.00. It collects
10 more of that money -- a higher proportion of that
11 money comes as out-of-pocket payment from the tenant,
12 but they still only collect \$300.00.

13 Q. Let me ask if you did this: Did you
14 perform a financial analysis on the impact on PHA of
15 the increased rentals it would have to collect?

16 A. Given everything that I've said today, no.

17 Q. And you don't know how many -- can you
18 tell me how many scattered site residents there are
19 in Philadelphia?

20 A. Somewhat over 4,000.

21 Q. And you were a witness in the lawsuit
22 called the McDowell lawsuit, weren't you?

23 A. I was.

24 Q. Are you aware of what the status of that
25 lawsuit is?

1 A. I am not.

2 Q. Are you aware that a Consent Order was
3 entered awhile back on -- addressing the utility
4 allowance for a number of the residents?

5 A. I am not.

6 Q. Have you reviewed the regulation or law
7 related to the Housing Authority to determine whether
8 or not it is legal to use PHA funds to provide an
9 allowance which exceeds the actual bill for the
10 tenant?

11 Do you know -- have you performed a --
12 let me ask that different. I'm even confused by my
13 own -- have you performed an analysis to determine
14 whether in all cases utility allowance can be
15 directly paid to PGW under the law and regulations
16 applicable to the Housing Authority?

17 A. There is an existing Direct Vendor Payment
18 Program between PHA and PGW.

19 Q. You're saying it's legal?

20 A. I'm saying it's legal.

21 Q. Do you have any idea of what the impact of
22 the McDowell case might have, if anything, on your
23 statement?

24 Do you know if the Court retained
25 jurisdiction of utility allowance payments?

1 MS. APPLEBY: Your Honor, I would
2 object. He is asking for a legal conclusion of the
3 witness. And my witness has already said that he's
4 not familiar with the proposed Consent Order in this
5 case.

6 JUDGE FORDHAM: Mr. Hinerman.

7 MR. HINERMAN: This directly impacts
8 his testimony and his perceived solution to the
9 situation. And I need to know whether he has
10 reviewed those things to determine whether or not it
11 really does impact what his conclusions are.

12 MS. APPLEBY: Your Honor, he's asking
13 for the witness' legal analysis of whether or not --
14 the word jurisdiction came out of his question, and
15 whether or not he has jurisdiction or legal analysis
16 is not Mr. Colton's expertise in this area.

17 MR. HINERMAN: He did not consider
18 these things in his opinion despite the fact he
19 should.

20 I want that on the record.

21 MS. APPLEBY: Your Honor --

22 JUDGE FORDHAM: Are you ask -- when I
23 heard the question I thought you also asked him for a
24 legal analysis.

25 Are you asking for the analysis that

1 he has already performed?

2 Did he review it in his analysis for
3 his testimony?

4 MR. HINERMAN: Let's try to ask the
5 question this way, and whether or not he has reviewed
6 the utility allowance situation with respect to the
7 McDowell case and whether the Federal Court would
8 have a role in his proposal.

9 MS. APPLEBY: The witness already said
10 that he was not aware of the Consent Order in the
11 McDowell case, and as such didn't know the status of
12 it. So I don't see why he would know the answer to
13 the question that the attorney's asking.

14 MR. HINERMAN: To be perfectly blunt,
15 there is jurisdiction in the Federal Court for this,
16 and he didn't review it. And it's an important part
17 of his proposed solution. You have to consider --

18 MS. APPLEBY: Then that is a legal
19 analysis and not within this procedural proposal.

20 MR. HINERMAN: It is a serious
21 deficiency in his testimony.

22 MS. APPLEBY: Well, that can be
23 addressed in your briefing, and not -- I would
24 propose that you address it in the Brief and not as
25 questions.

1 MR. HINERMAN: I think he's already
2 said he didn't review the case.

3 JUDGE FORDHAM: Yes, he has said that.
4 Thank you for withdrawing your question.

5 BY MR. HINERMAN:

6 Q. I'd like to just ask the witness to look
7 at what we'll call PHA Cross Exhibit Number 3. I
8 believe that's right.

9 (Whereupon, the document was marked as
10 PHA Cross Exhibit No. 3 for identification.)

11 JUDGE FORDHAM: Would you show it to
12 counsel first.

13 (Pause)

14 MS. APPLEBY: Your Honor, the OCA
15 requests a moment to review this.

16 (Discussion off the record)

17 MS. APPLEBY: The OCA has completed
18 reviewing it. The OCA does not know what the
19 relevance of this McDowell v. Philadelphia Housing
20 Authority is, but the OCA doesn't have anything at
21 this time.

22 BY MR. HINERMAN:

23 Q. I just want to focus on one subject, page
24 5, the bottom of the page, the last full paragraph --

25 JUDGE FORDHAM: You could ask him to

1 identify it for the record, please.

2 MR. HINERMAN: Thank you, Your Honor.

3 BY MR. HINERMAN:

4 Q. Is this the statement that you made in
5 connection with the McDowell litigation?

6 A. This is an excerpt of one of the
7 statements I made in the McDowell litigation, yes.

8 Q. Do you recognize page 5?

9 A. Yes.

10 Q. Can you look at the last sentence in the
11 last full paragraph and read it for the record?

12 A. In fact, increasing the actual gas bills
13 will exacerbate the lack of household resources and
14 be counterproductive to efforts to help move PHA
15 tenants into a job situation.

16 Q. Do you agree with that statement?

17 A. Absolutely.

18 Q. Do you believe that the Moving-to-Work
19 Program is intended to help achieve that goal?

20 A. I think I've previously testified, I don't
21 know if the Housing -- the Philadelphia Housing
22 Authority has a Moving-to-Work Program, or what the
23 contents of that program are if it does have one. So
24 the answer -- the answer is, I don't know. I don't
25 even know if there is a Moving-to Work Program for

1 public housing.

2 Q. You're familiar with the HUD Guidelines on
3 setting the utility allowance. I believe you helped
4 draft those Guidelines; is that correct?

5 A. No, I helped draft -- the Guidelines are
6 in HUD Regulations. I helped draft the HUD Utility
7 Allowance Guidebook and the HUD Occupancy Guidebook,
8 which has a section in it concerning utility
9 allowances. But the Guidelines, themselves, are
10 regs.

11 JUDGE JONES: Just a moment. Your
12 answer is, yes, you are familiar with the Guidelines,
13 but, no, you did not help draft the Guidelines; is
14 that correct, Mr. Colton?

15 THE WITNESS: Yes, I'm familiar with
16 the Guidelines, and, no, I did not help draft the
17 Guidelines, themselves.

18 JUDGE JONES: Thank you.

19 BY MR. HINERMAN:

20 Q. I apologize for the misunderstanding. But
21 I know that you were involved in the handbook.

22 And do those Guidelines define the
23 utility allowance to be a reasonable consumption
24 utilities?

25 A. Yeah, there's a bit more to it than that,

1 but yes, on a very broad sense.

2 Q. What is your understanding with respect to
3 whether or not there is a shortfall in monies
4 available to PHA to pay utility allowances?

5 A. What is my understanding of whether there
6 is a shortfall?

7 Q. No, what happens in the case of a
8 shortfall in a utility allowance?

9 A. If the utility allowance is not fully
10 compensated to the Housing Authority from the Federal
11 Government, the Housing Authority uses its other
12 available resources to pay the utility.

13 Q. When you say, other available resources,
14 what does that mean?

15 A. Whatever -- whatever resources the Housing
16 Authority has available. Just like if the operating
17 subsidy provided from the Federal Government to the
18 Housing Authority doesn't cover its operating or
19 maintenance expenses or its salary, or whatever else,
20 those -- those expenditures are paid through --
21 through Housing Authority resources.

22 Q. So something has to be taken from another
23 program to pay the utility?

24 A. Or reserves have to be used, or whatever.

25 Q. So HUD doesn't compensate dollar for

1 dollar the utility allowance?

2 A. I agree with that.

3 Q. Do you have an understanding of whether or
4 not HUD actually reduced PHA's funding request this
5 year by quite a lot of money?

6 A. I don't know that one way or the other.

7 Q. Do you have any information about the fact
8 that PHA had to layoff over 300 employees this year
9 -- within the year?

10 A. I'm not familiar one way or the other.

11 Q. Would it affect your opinion in your
12 testimony if you were aware of significant shortfalls
13 in PHA's budget?

14 A. No.

15 Q. You still believe that the utility
16 allowance should be paid over to PGW?

17 A. I still believe that the utility allowance
18 that is granted to pay a tenant's utility bill should
19 be used to pay that tenant's utility bill, yes.

20 Q. At the expense of some other program at
21 PHA?

22 A. That question has so many assumptions in
23 it that I -- the impact of using the utility
24 allowance to pay the utility bill for which it was --
25 which it was intended to pay, should -- that should

1 occur irrespective of whether the Housing Authority
2 believes that it has the need to use that utility
3 allowance for some other tenant services. Yes, I
4 believe that.

5 Q. I'd ask you to look at another exhibit
6 we'll call Number 4.

7 JUDGE FORDHAM: PHA Cross-examination
8 Exhibit 4.

9 (Whereupon, the document was marked as
10 PHA Cross Exhibit No. 4 for identification.)

11 MS. APPLEBY: Your Honors, OCA will
12 again request a moment to review the exhibit.

13 JUDGE JONES: We're off the record.

14 (Recess)

15 JUDGE JONES: Back on the record.

16 MS. APPLEBY: Your Honors, the OCA has
17 completed its review, and would like to object to
18 this letter.

19 This letter is very clearly hearsay
20 because of the fact that it is a letter written by a
21 Newon Osimex, the Deputy Assistant Secretary, Office
22 of Public Housing Program, who is not present in this
23 proceeding.

24 This was not attached to Mr. Green's
25 testimony in this proceeding. It also references

1 another letter of November 25th, 2005, which we do
2 not have.

3 I don't understand the context of this
4 letter, and I'm not sure that it's relevant to this
5 proceeding.

6 MR. HINERMAN: Your Honor, this is not
7 hearsay for a multitude of reasons. I will give you
8 a few.

9 There's a tab at the bottom that says,
10 Defendant's Exhibit 37. This is an exhibit in the
11 Federal Court public record, also available to the
12 public through FOIA request. So it's not only been
13 produced in litigation, in fact litigation that this
14 witness had a role in, but it's also a public record.

15 I can show counsel the letter of
16 November 25th asking for the \$3 million, if she would
17 like.

18 But another reason it is not hearsay
19 is I'm not offering this for purpose of showing that
20 the \$3 million was turned down. There are other
21 things in this letter that the witness can read in
22 giving testimony on.

23 I'm not trying to prove the truth of
24 the matter asserted in the letter, which would put it
25 within the hearsay rule.

1 MS. APPLEBY: The OCA would respond
2 that because of the fact that it was admitted as an
3 exhibit in a Federal lawsuit --

4 JUDGE JONES: Just a moment, Ms.
5 Appleby.

6 MS. APPLEBY: Yes.

7 JUDGE JONES: Mr. Hinerman, you're
8 saying that the purpose of this letter is not for the
9 truth of the matter asserted. What is the purpose of
10 this letter?

11 MR. HINERMAN: I want to talk to him
12 about if a situation exists in which there is a
13 shortfall -- two things, is he aware that a shortfall
14 occurred, Your Honor.

15 The letter --

16 JUDGE JONES: I think he already said
17 the shortfall --

18 MR. HINERMAN: Did a shortfall occur?
19 It's a simply yes or no answer. Second, I want to
20 ask him if he has done any studies as to where the
21 money was made up --

22 JUDGE JONES: Okay. --

23 MR. HINERMAN: -- if, in fact, a
24 shortfall occurred.

25 JUDGE JONES: Ms. Appleby, he's not

1 offering it for the truth of the matter asserted.
2 You've heard why he's offering it. Do you still have
3 an objection?

4 MS. APPLEBY: Yes, I do. I do not
5 believe that the Federal litigation is relevant to
6 this proceeding.

7 And, additionally, Mr. Colton has
8 responded multiple times that he has not done a
9 financial analysis of this -- of the impact to PHA,
10 and so I don't see the point of asking that question
11 yet again.

12 JUDGE JONES: Agreed, as far as the
13 shortfall. Whether he's aware the shortfall
14 occurred, however, I don't believe that has been
15 asked. Has it?

16 MS. APPLEBY: No, I don't believe that
17 it --

18 JUDGE JONES: Are you objecting to
19 that question, Ms. Appleby?

20 MS. APPLEBY: I object to the McDowell
21 case being brought into this, but I don' see any harm
22 in asking the question.

23 MR. HINERMAN: If that's the only
24 objection --

25 JUDGE JONES: Just a moment.

1 MS. APPLEBY: The OCA does not believe
2 that he needs this letter as an exhibit in order to
3 be able to ask that question.

4 JUDGE JONES: So the OCA is saying
5 this is irrelevant to the question?

6 MS. APPLEBY: Yes.

7 JUDGE JONES: Mr. Hinerman.

8 MR. HINERMAN: It's extremely
9 relevant. It's extremely relevant for the reason
10 that this witness has proposed a solution to the
11 financial woes of PGW that just have to be set within
12 the structure of the realities of the woes.

13 I need to let the PUC know, I need to
14 let this witness know --

15 MS. APPLEBY: Your Honor --

16 JUDGE JONES: Hold on. Hold on. Hold
17 on. Hold on.

18 Are you going to ask a question and,
19 then ask to have this be admitted into the record?

20 MR. HINERMAN: Yes.

21 JUDGE JONES: And you're going to
22 object to this being admitted?

23 MS. APPLEBY: Yes. And the OCA would
24 like to have on the record --

25 JUDGE JONES: Then just ask the

1 question.

2 MS. APPLEBY: May I object to the
3 characterization that Mr. Colton's testimony is
4 designed to resolve the financial woes of PGW. That
5 is not his --

6 JUDGE JONES: That will be sustained.

7 MR. HINERMAN: I should have said, not
8 all of them.

9 MS. APPLEBY: I would move to strike,
10 Your Honor.

11 JUDGE JONES: Stricken. Ask your
12 question about the shortfall, Mr. Hinerman.

13 BY MR. HINERMAN:

14 Q. Have you seen this letter before?

15 JUDGE JONES: No, that's not your
16 question.

17 BY MR. HINERMAN:

18 Q. Are you aware that a shortfall of \$3
19 million occurred in 2005 in utility allowances?

20 A. I'm not aware one way or the other, no.

21 Q. Do you have any opinion if a shortfall did
22 occur where the monies would come from?

23 A. No.

24 Q. Are you aware of whether the utility
25 allowance as calculated by the PHA includes costs

1 other than gas costs?

2 A. Can I have that question read back?

3 (Whereupon, the Reporter read from the
4 record as requested.)

5 THE WITNESS: I'm aware that there are
6 different utility allowances calculated for different
7 fuels, yes.

8 So there is a natural gas utility
9 allowance. There is an electric utility allowance.
10 There is a water and waste water utility allowance.
11 Yes.

12 BY MR. HINERMAN:

13 Q. Do you know if, in fact, the Housing
14 Authority provides one calculation for all utility,
15 or does it provide different calculations?

16 A. It provides different utility allowances
17 for different fuels.

18 Q. By that do you mean residents who have
19 electric receive -- do not receive a gas utility
20 allowance; is that what you're saying?

21 A. I'm saying that there is a natural gas
22 utility allowance. There is an electric utility
23 allowance. There is a water and waste water utility
24 allowance.

25 Q. Are you aware of whether or not PHA

1 provides one payment for all of the allowances?

2 A. Whether the PHA would aggregate those
3 different utility allowances into a single payment?

4 Q. Yes.

5 A. I don't know whether the utility
6 allowances for natural gas, electric, water and waste
7 water are aggregated into a single payment.

8 I would think they would be because
9 they're used as a rental offset, but I don't know
10 that from personal knowledge.

11 Q. Does your testimony address whether you
12 believe the entire aggregated payment should be made
13 to PGW or not?

14 A. No, the natural gas utility allowance --
15 there is a utility allowance for natural gas. There
16 is a utility allowance for electricity. The natural
17 gas utility allowance should be used to pay the
18 natural gas.

19 Q. You don't state that in your opinion, but
20 that's what you are saying. You're not saying --
21 arguing that all utility allowances should be used?

22 A. Clearly not. I'm not suggesting that the
23 electric utility allowance be used to pay PGW bills.

24 MR. HINERMAN: Thank you. I have no
25 further questions.

1 MR. STUNDER: Your Honor, if I may
2 have permission to cross on Mr. Hinerman's cross?

3 I only have a couple questions.

4 THE WITNESS: I've heard that before.

5 JUDGE FORDHAM: We would be interested
6 in redirect before we have --

7 MR. STUNDER: Okay. Whatever order --
8 I didn't know. I'm going to ask permission now in
9 case it was more appropriate now as opposed to later.
10 I didn't want the opportunity to be foreclosed
11 because I wasn't timely.

12 Thank you.

13 JUDGE JONES: Mr. Hinerman, are you
14 planning to admit your exhibits?

15 MR. HINERMAN: I'd like that Exhibits
16 3 and 4 be admitted.

17 JUDGE JONES: OCA.

18 MS. APPLEBY: The OCA objects to PHA's
19 Cross Exhibit Number 4.

20 JUDGE JONES: No objection to 3?

21 MS. APPLEBY: Could I have one moment.

22 JUDGE JONES: Yes.

23 MS. APPLEBY: Thank you.

24 (Discussion off the record)

25 MS. APPLEBY: Concerning Exhibit 3,

1 Mr. Colton read into the record the relevant
2 statement that Mr. Hinerman asked him. So that
3 information is already in the record.

4 This is only a portion of it, and I
5 see no reason that this portion of the statement,
6 totally out of the context of this legal proceeding,
7 be admitted into this record.

8 JUDGE JONES: Both objections are
9 sustained. PHA Cross Exhibit Number 3 and 4 are not
10 admitted.

11 MR. HINERMAN: Your Honor, may I make
12 my record as to why they are admissible or did we
13 pass that point.

14 JUDGE JONES: We've passed that point.
15 I've ruled, sir.

16 Do we have any redirect for Mr.
17 Colton?

18 MS. APPLEBY: Yes, the OCA will have
19 redirect. Could we just have a moment or two, Judge.

20 JUDGE JONES: Yes.

21 (Discussion off the record)

22 JUDGE JONES: We're back on the
23 record.

24 JUDGE FORDHAM: Could we have your
25 attention, please. We're back on the record.

1 JUDGE JONES: You may proceed, Ms.
2 Appleby.

3 REDIRECT EXAMINATION

4 BY MS. APPLEBY:

5 Q. The OCA just has one question for you.
6 Mr. Hinerman asked a number of questions regarding
7 what would happen to tenant rental payments if the
8 utility allowance is direct vendored to PGW. And you
9 agreed that the rental payment would increase under
10 the PHA's approach.

11 Would you further explain your answer?

12 A. Yes, if I may take you through just a few
13 numbers and explain my answer.

14 Let's assume two different numbers
15 here. First, let's assume that a tenant has a rent
16 of \$300.00. Second, let's assume that a tenant has a
17 utility bill of \$150.00. So those are the two
18 numbers that we're going to work with.

19 The way the process works now is that
20 the tenant's rent of \$300.00 is reduced by the
21 \$150.00 because the utility allowance is applied
22 against the rent.

23 The theory is that, of course, by
24 reducing the rent by \$150.00, you free up that
25 \$150.00 so the tenant would still have the \$150.00 to

1 pay PGW for a utility bill.

2 But the \$150.00 utility allowance is
3 applied -- is just basically paid to the landlord.
4 It's paid as a reduction to the rent.

5 What I'm proposing is that the utility
6 allowance, the \$150.00 utility allowance be applied
7 against the \$150.00 utility bill, and, therefore, the
8 tenant rent would remain at \$300.00.

9 So by applying -- what I'm saying with
10 this is the opposite. By applying the utility
11 allowance against the utility bill, that would free
12 up the \$150.00 in resources for the tenant to pay the
13 entire \$300.00 rent; that the rent, while the
14 out-of-pocket expense to the tenant increases to --
15 the out-of-pocket rental expense increases to
16 \$300.00, the total expenditure to the tenant doesn't
17 increase because the total expenditure of the tenant
18 is still \$300.00.

19 It's simply that that \$300.00 comes in
20 isolating the entire rent as rent.

21 Does that explain it or help to
22 further confuse us?

23 MS. APPLEBY: That's all the OCA has,
24 Your Honor.

25 JUDGE JONES: There is recross from

1 PGW, Mr. Stunder?

2 MR. STUNDER: Yes. Thank you.

3 RECROSS-EXAMINATION

4 BY MR. STUNDER:

5 Q. Mr. Colton, referring to LIHEAP grants, is
6 it correct that in your example of a LIHEAP Grant
7 it's the CRP customer who applies for the grant and
8 gives it to PGW?

9 Well, let me ask two questions. Is it
10 the CRP customer who applies for the Grant?

11 A. That's right.

12 Q. And, then the grant goes to PGW?

13 A. Yes.

14 Q. Now, CRP shortfalls, who pays for CPR
15 shortfalls?

16 A. The CRP shortfall is passed through to
17 non-CRP resident -- residential customers who are
18 non-CRP participants.

19 Q. Basically PGW rate payers?

20 A. Correct. PGW rate payers, yes.

21 Q. Now, among those PGW rate payers would
22 that include low income customers who are not in CRP?

23 A. It would include all customers who are not
24 in CRP including low income customers. Absolutely,
25 yes.

1 MR. STUNDER: Thank you. No more
2 questions.

3 JUDGE JONES: Thank you. Any
4 questions in reference -- OCA, any questions in
5 reference to the recross?

6 MS. APPLEBY: We just have one.

7 JUDGE JONES: Go ahead.

8 FURTHER REDIRECT EXAMINATION

9 BY MS. APPLEBY:

10 Q. You had mentioned that the CRP shortfall
11 is paid by residential customers --

12 A. Yes. No, I was wrong.

13 Q. And what would be your correction?

14 A. PGW CRP credits are not simply paid by
15 residential customers. They are paid by PGW rate
16 payers.

17 Q. And that would include all classes of
18 customers?

19 A. Yes.

20 MS. APPLEBY: That would be all.

21 JUDGE JONES: Any questions based on
22 those questions?

23 Thank you, Mr. Colton, you are
24 excused, sir.

25 (Witness excused)

1 JUDGE FORDHAM: There was a Motion to
2 move the testimony of Mr. Colton with the
3 accompanying Schedules.

4 MS. APPLEBY: Yes, Your Honor.

5 JUDGE FORDHAM: Were there any
6 objections?

7 Hearing none, the direct, rebuttal and
8 surrebuttal testimony of Mr. Colton and the
9 accompanying Schedules are admitted.

10 (Whereupon, the documents marked as
11 OCA Statement 4, Statement 4-R and Statement 4-SR
12 were received in evidence.)

13 JUDGE JONES: I believe Mr. Lelash,
14 OCA, is the next witness.

15 MS. McCLOSKEY: Yes, Mr. Lelash has
16 arrived. I don't know if we're ready for a break.
17 If we could just have a 5- or 10-minute break to --

18 JUDGE FORDHAM: That's fine. Ten
19 minutes.

20 MS. McCLOSKEY: Thank you, Your Honor.

21 MR. LAWRENCE: Thank you, Your Honor.

22 (Recess)

23 JUDGE FORDHAM: The next witness is
24 Mr. Lelash.

25 RICHARD LELASH, having been duly

COMMONWEALTH REPORTING COMPANY, INC.

(800) 334-1063

1 sworn, testified as follows:

2 JUDGE FORDHAM: Would you state your
3 name and business address for the record, and please
4 spell your last name.

5 THE WITNESS: Yes, my name is Richard
6 W. Lelash, L-E-L-A-S-H, and my business address is
7 18, and then is spelled out, Seventy, S-E-V-E-N-T-Y
8 Acre Road, and that's in Reading, Connecticut.

9 JUDGE FORDHAM: Thank you.

10 JUDGE JONES: Mr. Clearfield.

11 MR. CLEARFIELD: Yes, ma'am -- oh, no,
12 Your Honor.

13 JUDGE JONES: Oh, I'm sorry. Mr.
14 Lawrence.

15 MR. LAWRENCE: Thank you, Your Honor.
16 I would like to have marked for identification
17 the direct, rebuttal and surrebuttal testimony of Mr.
18 Lelash as OCA Statement Number 1, 1-R and 1-S,
19 respectively.

20 JUDGE FORDHAM: They shall be so
21 marked.

22 MR. LAWRENCE: Thank you.

23 (Whereupon, the documents were marked
24 as Statement 1, Statement 1-R and Statement 1-S for
25 identification.)

1 DIRECT EXAMINATION

2 BY MR. LAWRENCE:

3 Q. Mr. Lelash, do you have before you a copy
4 of your prepared prefiled direct testimony in this
5 case consisting of 28 pages of testimony, Schedules 1
6 through 5, each consisting of one page, and an
7 Appendix consisting of three pages?

8 A. Yes.

9 Q. Do you also have a copy of your rebuttal
10 testimony in this case consisting of 11 pages of
11 testimony?

12 A. Yes.

13 Q. Mr. Lelash, do you also have a copy of
14 your surrebuttal testimony in this case consisting of
15 17 pages of testimony?

16 A. That's correct.

17 Q. Mr. Lelash, was each piece of testimony,
18 including the Schedules and Appendix prepared by you
19 or under your direct supervision?

20 A. They were prepared by me.

21 Q. Thank you. Do you have any additions,
22 corrections or modifications that you would like to
23 make to testimony, Schedules or Appendix at this
24 time?

25 A. Yes, I do. I have one correction in my

1 rebuttal testimony. If I could reference to page 6,
2 line 1.

3 And there I incorrectly identified the
4 witness as being Roger rather Randy, and I would like
5 to have the record modified to make that correction.

6 Q. Subject to that one correction, is your
7 testimony, your Schedules and your Appendix true and
8 correct to the best of your knowledge, information
9 and belief?

10 A. They are.

11 Q. And subject to that one correction, Mr.
12 Lelash, if I were to ask you these same questions
13 today under oath as are contained in your testimony,
14 would your answers be the same?

15 A. Yes, they would.

16 MR. LAWRENCE: The OCA previously
17 distributed copies of the direct, rebuttal and
18 surrebuttal testimony of Mr. Lelash to the other
19 parties. And I have handed two copies of each piece
20 of testimony to the Court Reporter.

21 Your Honor, I would make a Motion at
22 the end of the cross-examination, as I understand, to
23 admit these into the record.

24 And at this time Mr. Lelash is now
25 available for cross-examination.

1 JUDGE FORDHAM: Thank you. Mr.
2 Clearfield.

3 MR. CLEARFIELD: Thank you, Your
4 Honor. Your Honor, we've determined that in lieu of
5 cross-examination we would ask that two packages of
6 Answers to Interrogatories be marked and moved into
7 the record.

8 And, in addition, several pages of
9 transcript from the 2001 case in which Mr. Lelash and
10 I engaged in a colloquy, and you were the Judge at
11 that time.

12 At least with respect to Mr. Lelash
13 and I, we were both younger and had a lot more
14 energy.

15 And with that, I believe we've
16 discussed that with Ms. McCloskey, and she's in
17 agreement with that.

18 JUDGE FORDHAM: How are you going to
19 mark this?

20 MR. CLEARFIELD: We can -- why don't
21 we just for order's sake mark the Set 2 Answers as
22 PGW Cross-Examination Exhibit 1, our first
23 cross-examination exhibit.

24 JUDGE FORDHAM: It shall be so marked.

25 MR. CLEARFIELD: Thank you. And, then

1 the Answers to PGW's Set 3 we'd mark as
2 Cross-Examination Exhibit 2.

3 JUDGE FORDHAM: They'll be so marked.

4 MR. CLEARFIELD: And, then the
5 excerpts from the transcript from the 2001 base rate
6 proceeding with the pages 806 through the first line
7 on page 812, that would be marked as PGW
8 Cross-Examination Exhibit 3.

9 JUDGE FORDHAM: They'll be so marked.

10 MR. CLEARFIELD: And if they're
11 admitted into the record, we will waive further
12 cross-examination.

13 JUDGE FORDHAM: Is there any
14 objection?

15 MR. LAWRENCE: No, Your Honor.

16 JUDGE FORDHAM: PGW Cross-Examination
17 Exhibits 1, 2 and 3 are admitted without objection.

18 (Whereupon, the documents were marked
19 as PGW Cross-Examination Exhibits Nos. 1, 2 and 3 for
20 identification, and were received in evidence.)

21 JUDGE FORDHAM: Mr. Stewart.

22 MR. STEWART: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. STEWART:

25 Q. Good afternoon, Mr. Lelash. My name is

COMMONWEALTH REPORTING COMPANY, INC.

(800) 334-1063

1 Todd Stewart, and I represent Interstate Gas in these
2 proceedings.

3 A. Good afternoon.

4 Q. Would you please turn to page 22 of your
5 direct testimony.

6 A. I'm there.

7 Q. On line 1, in referring to the treatment
8 of the margins earned by PGW from capacities released
9 in off system sales, you state that such capacity
10 costs are offsets are credited to rate payers since
11 they pay for all the related capacity costs within
12 their rates.

13 Do you see that?

14 A. Yes.

15 Q. I take it that you would agree with me
16 that the general principle that customers that pay
17 for assets should be entitled to earn some of the
18 margin earned on those assets?

19 A. As a general matter.

20 Q. And you think that -- well, that's fine.
21 Is it your understanding that the cost of storage at
22 PGW service territory are paid for by -- all the
23 costs of storage are paid for by customers as part of
24 the GCR mechanism?

25 A. Could you just repeat that again, please.

1 Q. Is it your understanding that all of the
2 costs of storage in the PGW service area are paid for
3 by customers as part of the GCR mechanism?

4 A. No. No, there are certain costs that are
5 not included.

6 Q. And where are those costs recovered?

7 A. There are some LNG related costs that are
8 recovered through the general rates.

9 Q. Would you agree with me that if a customer
10 were to buy gas from a competitive supplier like my
11 client, IGS, for example, under PGW's current rate
12 structure that the customer would continue to pay PGW
13 for a portion of those storage assets through base
14 rates even if they chose a competitive supplier?

15 A. There would be an element within their
16 distribution rate that would have, and as I said, a
17 relatively small amount of LNG related costs.

18 Q. Do you think it's fair to have a customer
19 pay for the storage and not have any use of that
20 storage?

21 A. I disagree with your question. Customers
22 have use of that storage.

23 Q. Do they have full use of that storage when
24 they go -- when they become a customer of another
25 supplier?

1 A. Yes.

2 Q. If PGW continues to deliver the same
3 amount of gas through its system, and that is it will
4 have no decline in distribution revenue, but it would
5 purchase 50 percent less gas, because there was
6 competition on its system, and the competition would
7 have 50 percent of the load, would there be any
8 savings to PGW as a result of not having to buy that
9 50 percent of the gas?

10 A. We're in a hypothetical now?

11 Q. Yes. Hypothetically?

12 A. Yes, obviously it would relieve them of
13 certain gas cost responsibilities, notwithstanding
14 how the costs are recovered.

15 Q. Assuming that's neutral?

16 A. Yes. Yes, it would be an increment. It
17 would decrease some of the associated costs.

18 Q. Now, I would like to turn to your rebuttal
19 testimony. On page 3 in particular -- I'll wait till
20 you get there.

21 A. I'm there.

22 Q. Beginning with line 5, you characterize
23 Mr. Parisi's testimony as suggesting that it is
24 anti-competitive for customers to receive capacity
25 related margins. Do you see that?

1 A. Yes.

2 Q. Can you tell me where Mr. Parisi says that
3 in his testimony? Do you have a copy of his --

4 A. Well, I'm not sure he specifically said
5 that, but he certainly, in recommending that that
6 change be made, implied that it was appropriate that
7 that change would be made, and it would better stay
8 gas costs.

9 And I consider that to be -- well, I
10 feel that what he's saying is -- is, you know, it's
11 in error. Put it that way.

12 Q. You're telling me that he didn't actually
13 say that directly in his testimony?

14 A. Well, he did. He stated that gas costs
15 would be correctly calculated by not having a
16 capacity credit as an offset to gas costs.

17 Q. Do you recall other places in his
18 testimony, in that section of his testimony where he
19 said that the only reason he's suggesting that gas
20 costs be credited that way is because of the fact
21 that right now some of the costs of stored assets are
22 being recovered in base rates, and that this would
23 alleviate that problem?

24 A. No, I don't. Will you show me where he
25 says that?

1 Q. Sure.

2 MR. STEWART: I'm showing the witness
3 a copy of Mr. Parisi's testimony.

4 THE WITNESS: I have his testimony.

5 MR. STEWART: Page 6.

6 JUDGE FORDHAM: Mr. Stewart is
7 referring to IGS Statement Number 1, page 6.

8 THE WITNESS: And your question is?

9 BY MR. STEWART:

10 Q. Well, I asked you if you're saying that
11 Mr. Parisi, in this section -- I'm assuming in this
12 section, is suggesting -- let me rephrase that.

13 You referred to this section of his
14 testimony as suggesting that Mr. Parisi said that
15 it's anti-competitive for customers to -- not to
16 receive capacities-related margins.

17 My question to you is, in this section
18 of testimony didn't he limit that conclusion based
19 upon the fact that PGW currently charges a portion of
20 storage costs in its base rates that would be paid
21 for by customers that choose alternative suppliers,
22 and that that would be a way of alleviating that
23 situation.

24 A. Well, I'm not clear really what he's
25 saying here, and I don't try to speak for what he has

1 written.

2 But you're saying customers are not
3 asked to pay for an asset which they do not derive
4 full benefits. And presumably you're telling me that
5 he is talking about storage assets in general.

6 And I would refer you to Mr. Parisi's
7 testimony at page 2 where he acknowledges that when
8 deliverability from the LNG storage is involved with
9 providing balancing services, and he says assets not
10 made available to choice.

11 Well, if they're getting balancing
12 services, they are getting use of the LNG assets.

13 Q. It's not then that they're getting full
14 use of those assets that a non- --

15 A. Well, what is full use? I mean, they're
16 storage assets. They're used for balancing. They
17 are principally used for balancing under PGW's system
18 as a general matter. You know, is there balancing
19 and balancing?

20 Well, they're either used for
21 balancing or not, and they are used for some gas
22 suppliers that were beyond the system. That's where
23 --

24 MR. STEWART: Your Honor, I haven't
25 asked a question, and I'm just trying to figure out

1 what question Mr. Lelash is answering at this point.
2 So I would ask to have everything he said stricken
3 because I'm not able to -- he's arguing with me and I
4 haven't asked him a question.

5 THE WITNESS: Well, I'm just telling
6 you that where you cited to his testimony for me to
7 read, his own testimony does not support that.

8 I'm sorry if that has you confused,
9 but that's what I said.

10 MR. STEWART: That's all right. I
11 just ask that you answer the question. But that's
12 okay. We'll try to limit it if we can.

13 BY MR. STEWART:

14 Q. On page 3 of your rebuttal you claim that
15 Mr. Parisi would have PGW provide any capacity costs
16 they need. You showed incapacities that the
17 suppliers need.

18 Can you show me where he said that?

19 A. At the beginning he said that, PGW does
20 not provide the capacity to suppliers on the same
21 basis it does to its regular customers.

22 Q. And you think that they shouldn't have to
23 provide capacity to suppliers on the same basis that
24 they did other customers?

25 A. For all capacity, no. There's no

1 obligation in my knowledge that they have to provide
2 that. Very few utilities do. In fact I know of none
3 that --

4 Q. I --

5 A. It's relevant to my answer. I'm just
6 telling you that no one else in the business
7 allocates storage assets to gas suppliers.

8 Q. And that's your testimony?

9 A. I'm unaware of any that do.

10 Q. Okay. That's fine. And is it your
11 testimony -- oh, can you show me on page -- where Mr.
12 Parisi says that he didn't want to have the suppliers
13 follow up the tariff requirements?

14 A. He is suggesting that changes be made to
15 the procedures -- I think to both the tariffs and to
16 the limits or the requirements that the tariffs have.
17 That was my general impression.

18 I cite a page, and I think it's at
19 page 3, and I think he does say that.

20 I think he's -- you know, his
21 testimony speaks for itself if you think I'm
22 mischaracterizing him. He talks about -- I mean
23 there is a substantial amount of discussion. I
24 thought that's why he had it in there, but maybe it
25 was there for a different reason.

1 Q. Can you explain to me how GCR customers
2 would be overcharged for utility supplying gas so
3 that suppliers would not incur certain costs as
4 stated on page 3 of your rebuttal testimony?

5 A. Oh, billing changes as an example.
6 Billing changes would certainly affect the cost to
7 the imbedded customers. Losing their credits from
8 capacity would certainly adversely affect them.

9 Those are two examples.

10 Q. Would you agree that having the choice of
11 gas suppliers provides benefits for customers?

12 A. It depends on what the choices are.

13 Q. So as a general matter you don't agree
14 that choices could benefit the customers?

15 A. I think in certain frameworks choice can
16 be a benefit to customers. I think in others it may
17 not be.

18 Q. And two points of clarification. I'm just
19 a little confused. On page 4 of your rebuttal
20 testimony, in describing the Ohio problem, on line 2
21 you use the word, action, and I think you may have
22 meant to say auction. It was just a little confusing
23 to me.

24 A. That's very possible. On line --

25 Q. Line 2 on page 4.

1 A. Yes, I appreciate the correction. I would
2 have meant that as state auction.

3 Q. Otherwise it really didn't make a lot of
4 sense. On page 4 of your rebuttal you state that
5 neither of the two programs presented by Mr. Parisi
6 is described in sufficient detail to allow for expert
7 evaluation.

8 What kind of detail do you think is
9 missing?

10 A. Well, he did supply an Interrogatory
11 Response that fleshed out his proposal in greater
12 detail. But even that, in his Response, and I -- let
13 me give you what his Response -- specifically, I
14 guess Number 1. It has a number 1 here.

15 Even within that response there were
16 several things where he said that he had not yet
17 figured out how to do it, or the details of the
18 program.

19 Q. So nothing specific comes to mind at this
20 point as far as what details you would like to see?

21 A. Well, I mean, you know, I would disagree
22 with his recommendation on a program that forces the
23 assignment of customers to the suppliers, for
24 example.

25 Q. Are you familiar with the Dominion East

1 Ohio pilot program?

2 A. I've looked up on the website for Ohio and
3 read a little bit about it, but, generally, I'm not
4 intimately involved in it.

5 Q. Well, I'm going to ask you a couple of
6 questions. If you don't know, I'm sure you've done
7 this long enough you'll know to say, you don't know
8 or you aren't aware.

9 A. Oh, I'll try to answer you.

10 Q. Is it your understanding that suppliers on
11 this Dominion East Ohio -- or who participate in this
12 Dominion East Ohio program do not employ hedging or
13 use storage assets?

14 A. I would not -- I do not believe they --
15 the supply is not going to be affected by either
16 storage or hedging transactions since it is being
17 provided at an index plus a mark up.

18 So whether it's hedged or not hedged
19 doesn't matter. They're using a flat monthly Index
20 and they're putting an adder on it.

21 So the answer is, it's not affected.

22 Q. Are you aware that there's a \$4.00
23 summer/winter difference in the rates of East Ohio?

24 A. I have not looked at the rates.

25 Q. Have you performed any analysis of the

1 prices produced by the Dominion East Ohio options?

2 A. The East Ohio option would be index plus
3 \$1.44.

4 Q. Have you done any comparison of that index
5 price to what their rates would have been if they
6 would have stayed with the traditional GCR mechanism?

7 A. No. I have in other jurisdictions, but I
8 have not for this particular program.

9 Q. And are you aware that the Ohio Office of
10 Consumer Counsel provided testimony to the Ohio
11 Public Utility Commission supporting that auction
12 process when it was included at the auction of --
13 price produced by the auction of the 990 plus price
14 was lower than the projections of the GCR price by a
15 significant amount?

16 A. I just have no knowledge to say one way or
17 the other.

18 MR. STEWART: That's all I have, Your
19 Honor.

20 JUDGE JONES: Thank you, Mr. Stewart.
21 Any redirect?

22 MR. LAWRENCE: Yes, Your Honor, we
23 would.

24 JUDGE JONES: And you need time to
25 confer.

1 MR. LAWRENCE: Could we have a few
2 moments, please.

3 JUDGE JONES: Yes, you may.

4 MR. LAWRENCE: Thank you.

5 (Discussion off the record)

6 MR. LAWRENCE: Your Honor, thank you
7 for allowing us that time to confer, but after our
8 conference, the OCA has no redirect.

9 JUDGE JONES: Thank you. Mr. Lelash,
10 you are excused then. Thank you for coming.

11 (Witness excused)

12 JUDGE FORDHAM: Then we have the OCA
13 Statement 1, which is the direct testimony, OCA
14 Statement Number 1-R, the rebuttal, and OCA Statement
15 1-S which is the surrebuttal.

16 There has been a correction made to
17 the OCA Statement 1-R for the record.

18 And, then we have the Schedules and
19 Appendix attached to the direct testimony.

20 Is there any objection? Hearing none,
21 they are admitted. Thank you.

22 MR. LAWRENCE: Thank you, Your Honor.

23 (Whereupon, the documents marked as
24 OCA Statement 1, 1-R and 1-S are received in
25 evidence.)

1 JUDGE JONES: At this point I believe
2 we are to hear from Ms. Mondre in reference to PHA.

3 MR. HINERMAN: Can I ask two things
4 first of all. I have copies of transcripts -- or I'm
5 sorry, Exhibit testimony that are numbered. The
6 numbered versions which were not signed are here if
7 you want copies for ease of reference.

8 I'm going to be presenting the Board
9 two sets. One is the original with the signatures,
10 and another set with numbers so you can --

11 JUDGE JONES: When you say, Board, you
12 mean the Commission?

13 MR. HINERMAN: I'm sorry. Yes, the
14 Commission. Sorry.

15 JUDGE JONES: And when you say,
16 numbered, you mean line numbers.

17 MR. HINERMAN: We had versions this
18 morning line numbered for the ease of testimony.
19 Those versions are not signed. We can do that
20 tomorrow if you'd like, or today --

21 JUDGE JONES: We don't need signed.

22 MR. HINERMAN: So maybe give me five
23 minutes --

24 JUDGE JONES: We're off the record

25 (Recess)

1 JUDGE JONES: Mr. Hinerman, we're
2 ready for the presentation of your witness.

3 MR. STUNDER: Your Honor, just to --
4 PGW actually evaluated its need to cross Ms. Mondre.
5 I see that she's here. We will waive cross on Ms.
6 Mondre.

7 JUDGE FORDHAM: Very well. Thank you,
8 Mr. Stunder.

9 We're still waiting for the
10 presentation of your witness, Mr. Hinerman.

11 MR. HINERMAN: I have some short
12 rejoinder --

13 MR. STUNDER: Your Honor, rejoinder
14 isn't permitted by the Rules. If I could direct you
15 to 5.242, Part A which says, in a proceeding the
16 Complainant, Petitioner or other participating party,
17 the Party having the burden of proof shall open and
18 close unless otherwise directed.

19 And it's not permitted by the Rules.
20 It's not -- plus, in our Procedural Schedule it is
21 live rejoinder, not surrejoinder. This would be
22 surrejoinder. So it's not permitted by the Rules.
23 It's not permitted by the Schedule.

24 JUDGE JONES: Thank you, Mr. Stunder.

25 MR. HINERMAN: Your Honor, issues have

1 been raised and Mr. White's testimony yesterday, and
2 Mr. Colton's testimony today that would be of
3 assistance to the Commission in consideration, and we
4 would like to present his rejoinder. There is no
5 prohibition to prevent it.

6 JUDGE FORDHAM: Can you please keep
7 your voice up, Mr. Hinerman.

8 MR. HINERMAN: Sorry.

9 MS. APPLEBY: The OCA would object to
10 rejoinder to Mr. Colton's testimony. We have gone
11 through a full round of direct and rebuttal and
12 surrebuttal testimony, and had extensive cross here
13 today. So any issues that needed to be evaluated
14 should have already been addressed.

15 JUDGE JONES: Anyone else want to
16 weigh in on this before we rule?

17 Mr. Hinerman, whatever oral questions
18 and answers you wish to add to the testimony that has
19 already been prefiled, is prohibited by the Rules.

20 Mr. Stunder is correct as to PGW is
21 the party that is -- is the Company that is being
22 examined here. They have the burden of proof. And
23 they do also have the last word.

24 So that will be prohibited, sir. I am
25 still waiting for the presentation of your witness,

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1 however.

2 MR. HINERMAN: We have previously
3 distributed to the Court and all the parties what has
4 been filed as the testimony of Judith Mondre dated
5 April 9, 2007, and premarked as testimony as PHA
6 Exhibit Number 2.

7 We've also distributed to Your Honors
8 what is titled the Supplemental Testimony of Judith
9 Mondre dated May 3rd, 2007, and have premarked this
10 as 2-S.

11 We also have distributed to Your
12 Honors and all parties the surrebuttal testimony of
13 Judith Mondre, which we have premarked as 2-SUR.

14 Ms. Mondre, you have in front of you,
15 PHA Exhibits 2, 2-S and 2-SUR?

16 MS. MONDRE: Yes, I do.

17 JUDGE FORDHAM: Wait a minute. She
18 was not sworn in.

19 JUDITH MONDRE, having been duly sworn,
20 testified as follows:

21 JUDGE FORDHAM: You may be seated.

22 THE WITNESS: Thank you.

23 JUDGE FORDHAM: Would you state your
24 name, and please spell your last name, and your
25 business address for the record, please.

1 THE WITNESS: Judith Mondre,
2 M-O-N-D-R-E, Mondre Energy at 1880 JFK Boulevard,
3 Suite 1705, Philadelphia, Pennsylvania.

4 JUDGE FORDHAM: Thank you. You may
5 proceed, Mr. Hinerman.

6 DIRECT EXAMINATION

7 BY MR. HINERMAN:

8 Q. Ms. Mondre, do you have in front of you
9 what has been marked as PHA Exhibits 2, 2-S and
10 2-SUR?

11 A. Yes, I do.

12 Q. Are these your prepared direct, supplement
13 and surrebuttal testimony?

14 A. Yes, they are.

15 Q. Were they prepared by you or under your
16 direct supervision?

17 A. Yes.

18 Q. Is this testimony true and correct to the
19 best of your knowledge and information?

20 A. Yes.

21 Q. If I were to ask you these questions
22 contained in the testimony while you're sitting here
23 today, would your answers be the same?

24 A. Yes.

25 Q. Do you have any changes and/or additions

1 that you would like to make to your prepared
2 testimony?

3 A. No, I do not.

4 MR. HINERMAN: Your Honor, we now
5 would ask that the Court accept and admit into the
6 record Exhibit 2, 2-S and 2-SUR.

7 JUDGE FORDHAM: After cross.

8 MR. HINERMAN: After the conclusion of
9 cross.

10 JUDGE FORDHAM: Yes. You may proceed,
11 Ms. Appleby.

12 MS. APPLEBY: Thank you.

13 CROSS-EXAMINATION

14 BY MS. APPLEBY:

15 Q. I'd like to look at -- oh, I'm sorry.
16 Good afternoon. My name is Christy Appleby. I'm
17 with the Office of Consumer Advocate. I'd to look at
18 your direct testimony marked PHA Exhibit 2,
19 specifically looking at the questions and answers
20 that go from the bottom of page 8 to the top of page
21 9, where you are accepting PGW's CRP or CAP program?

22 A. Uh-huh.

23 Q. Do you see there that PHA residents are
24 low income, and that would qualify them to enroll in
25 the CAP?

1 Do you see that?

2 A. Yes, I do.

3 Q. Are you familiar with the Pennsylvania
4 Public Service Commission Orders and Regulations
5 regarding the CAP program?

6 A. Yes, I am.

7 Q. And are you aware that under the
8 Commission's CAP policy statement, the CAP is to be
9 targeted to low income payment trouble customers?

10 A. Yes, I am.

11 Q. And are you also aware that in the
12 Commission Regulations payment trouble is defined as
13 a household that has failed to maintain one or more
14 payment arrangements in a one-year period?

15 A. Yes, I am.

16 MS. APPLEBY: That's all I have, Your
17 Honor.

18 JUDGE JONES: Any redirect based on
19 the cross of OCA, Mr. Hinerman?

20 MR. HINERMAN: No, Your Honor.

21 JUDGE FORDHAM: Is there any objection
22 to the direct, supplemental or surrebuttal testimony
23 at this point?

24 Hearing none, PHA Statement 2, 2-S and
25 2-SUR are admitted into evidence.

1 (Whereupon, the documents marked as PHA
2 Statements Nos. 2, 2-S and 2-SUR for identification,
3 and were received in evidence.)

4 JUDGE JONES: We're off the record.

5 (Recess)

6 JUDGE JONES: Back on the record. I
7 understand that the next witness to be presented is
8 Ms. Mondre on behalf of the School District.

9 JUDGE FORDHAM: I need to swear you in
10 again.

11 JUDITH MONDRE, having been duly sworn,
12 testified as follows:

13 JUDGE JONES: Would you state your
14 name and address again for the record.

15 THE WITNESS: Yes. Judith Mondre,
16 M-O-N-D-R-E, 1880 JFK Boulevard, Philadelphia,
17 Pennsylvania, Suite 1705.

18 JUDGE JONES: Thank you. You may
19 proceed, Mr. Shore.

20 MR. SHORE: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. SHORE:

23 Q. Good afternoon, Ms. Mondre. Do you have
24 in front of you your direct testimony and your
25 surrebuttal testimony?

1 A. I really don't. I wasn't ready --

2 MR. SHORE: Your Honor, the School
3 District has previously distributed to the Judges and
4 all parties the filed direct testimony of Judith
5 Mondre, which I premarked as School District Exhibit
6 Number 3, and the surrebuttal testimony of Judith
7 Mondre which I premarked as School District Exhibit
8 Number 4.

9 JUDGE FORDHAM: Statement.

10 MR. SHORE: Pardon me.

11 JUDGE FORDHAM: Statement.

12 MR. SHORE: Well, I didn't call them
13 statements, but I will.

14 School District Statements Number 3
15 and Number 4.

16 JUDGE FORDHAM: Thank you.

17 MR. SHORE: And I'd like to have them
18 so marked.

19 JUDGE FORDHAM: They shall be so
20 marked.

21 (Whereupon, the documents were marked
22 as School District Statements Nos. 3 and 4 for
23 identification.)

24 BY MR. SHORE:

25 Q. Ms. Mondre, you have the direct testimony

1 and the surrebuttal testimony in front of you?

2 A. I do.

3 Q. And did you prepare the direct testimony
4 and the surrebuttal testimony or have it prepared
5 under your direct supervision?

6 A. Yes.

7 Q. And all the facts and opinions in your
8 direct testimony and surrebuttal testimony are true
9 and correct to the best of your knowledge and
10 information and belief?

11 A. Yes, sir.

12 Q. And if you were to testify at this hearing
13 today in response to the questions would your answers
14 be the same?

15 A. Yes.

16 Q. Are there any corrections or additions
17 you'd like to make to your direct testimony?

18 A. Yes, I'm looking for the error page.
19 There was a correction on --

20 Q. I believe that was in the surrebuttal
21 testimony?

22 A. The surrebuttal testimony.

23 Q. Do you have that in front of you?

24 A. Right.

25 MR. SHORE: Your Honor, if I may state

1 for the record also that I previously advised the
2 Judges and counsel that there was a question and
3 answer that was included in the surrebuttal
4 testimony, Statement Number 4, that was by mistake,
5 and that should be deleted. And that was the
6 question and answer on page 10 beginning at line 15
7 through 21. That should have been deleted.

8 And, then also, in response to the
9 Motion to Strike that was granted in part by the
10 Judges, I prepared another version of the testimony
11 in which I put strike throughs through that
12 testimony, and I have copies for -- well, actually
13 I'd like to give to the Court Reporter the two copies
14 of each.

15 JUDGE FORDHAM: Thank you very much.

16 MR. SHORE: And I have two copies of
17 the corrected version for the Judges.

18 JUDGE JONES: Thank you, Mr. Shore.

19 MR. SHORE: I have -- sorry, I don't
20 have enough copies of the corrected version with the
21 strike throughs for all counsel, but I'd be glad to
22 bring them tomorrow morning if any counsel would like
23 them.

24 But based on the Court's Order they're
25 entered into the record.

1 BY MR. SHORE:

2 Q. Ms. Mondre, could you -- were there any
3 other typographical or corrections that you wanted to
4 make to the surrebuttal testimony?

5 A. There was a T missing and I missing. My
6 concern is that the copy that I have may not be
7 exactly the copy that you're sharing with the rest of
8 the -- that one here.

9 Q. I'd turn your attention to page 14 of the
10 surrebuttal testimony.

11 A. Yes.

12 Q. Is there a typographical error on line 16
13 you wanted to correct?

14 JUDGE JONES: Page 14.

15 BY MR. SHORE:

16 Q. Page 14 of the surrebuttal testimony? No,
17 there's one on line 16 also. Do you see the word --

18 A. Yes, line 16, there's a T missing before
19 -- it says --

20 Q. And on line 18 was there --

21 A. Yes, there is an I that's missing on line
22 18.

23 Q. And on page 15, line 4, was there a
24 typographical mistake you'd like to correct?

25 A. Yes, there is a -- there's supposed to be

1 -- it's not pleural, just suggest.

2 MR. SHORE: I forgot to mention, Your
3 Honors, that Statement Number 3, the direct testimony
4 has three exhibits, Exhibits A, B and C. And
5 Statement Number 4, the surrebuttal testimony has two
6 exhibits, A and B.

7 JUDGE FORDHAM: I'm sorry. Where was
8 the pleural not supposed to be?

9 THE WITNESS: That would be page 15 --

10 JUDGE FORDHAM: Line 4?

11 THE WITNESS: Yes.

12 MR. SHORE: It was corrected on the
13 corrected version, Your Honor.

14 JUDGE FORDHAM: And also on line 4
15 there are two Cs, should that be --

16 THE WITNESS: I only have -- that is
17 correct. There should only be one. That is in the
18 quote. That is correct.

19 JUDGE FORDHAM: The one in the quote
20 should remain?

21 THE WITNESS: That is correct.

22 MR. SHORE: The witness is available
23 for cross-examination. If it's waived, then I would
24 move that the School District's Statements 3 and 4,
25 the direct testimony and surrebuttal testimony of Ms.

1 Mondre be admitted into the evidence.

2 JUDGE JONES: In fact, I do have a
3 question for Ms. Mondre.

4 MR. SHORE: Sorry, Your Honor.

5 JUDGE JONES: That's okay. It's
6 probably more in the line of a clarification. In
7 reference to School District Statement Number 4, page
8 14, line 1, what is MEI?

9 THE WITNESS: Mondre Energy,
10 Incorporated.

11 JUDGE JONES: That is the extent of my
12 questions.

13 MR. SHORE: Thank you, Your Honor.
14 And with that clarification I would move that School
15 District Statements 3 and 4 with the exhibits be
16 admitted into evidence.

17 JUDGE FORDHAM: Is there any
18 objection? Hearing none, the direct and surrebuttal
19 testimony of Ms. Mondre, with the accompanying
20 exhibits, are admitted.

21 MR. SHORE: Thank you, Your Honors.

22 JUDGE FORDHAM: Thank you very much.

23 (Whereupon, the documents marked as
24 School District Statements Nos. 3 and 4 were received
25 in evidence.)

1 JUDGE FORDHAM: We're off the record.

2 (Recess)

3 JUDGE JONES: It is our understanding
4 that Mr. Plonski is available for presentation today.
5 At this time we will request OTS to present him as a
6 witness.

7 MS. KASTER: Yes, Your Honor. The
8 Office of Trial Staff will present him.

9 ROBERT PLONSKI, having been duly
10 sworn, testified as follows:

11 JUDGE FORDHAM: You may be seated.
12 Would you state your name and business address for
13 the record and please spell your last name.

14 THE WITNESS: My name is Robert
15 Plonski, P-L-O-N-S-K-I. My business address is P.O.
16 Box 3265, Harrisburg, Pennsylvania 17105.

17 JUDGE FORDHAM: Thank you. You may
18 proceed, Ms. Kaster.

19 MS. KASTER: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. KASTER:

22 Q. Mr. Plonski, can you please state your
23 name and position for the record, please.

24 A. My name is Robert Plonski. I'm a
25 Financial Analyst with the Office of Trial Staff with

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1 the Public Utility Commission of the Commonwealth of
2 Pennsylvania.

3 Q. Mr. Plonski, have you prepared written
4 testimony in exhibit form for this proceeding?

5 A. Yes, I have.

6 MS. KASTER: Your Honor, I have
7 previously distributed to the parties, the Court
8 Reporter and to you documents that have preliminarily
9 been identified as OTS Statement Number 1, the direct
10 testimony of Robert Plonski, OTS Exhibit Number 1,
11 the exhibits to accompany Mr. Plonski's direct
12 testimony, OTS Statement Number 1-SR, the surrebuttal
13 testimony of Mr. Plonski, and I ask that they be
14 marked for identification at this time.

15 JUDGE FORDHAM: They'll be so marked.

16 MS. KASTER: Thank you.

17 (Whereupon, the documents were marked
18 as OTS Statement 1, Exhibit No. 1 and Statement 1-SR
19 for identification.)

20 BY MS. KASTER:

21 Q. Mr. Plonski, do you have the documents
22 that I requested be marked for identification in
23 front of you?

24 A. Yes, I do.

25 Q. And do these documents contain your direct

1 testimony, your accompanying exhibits, and your
2 surrebuttal testimony?

3 A. Yes, they do.

4 Q. Were these documents prepared by you or
5 under your supervision?

6 A. Yes, they were.

7 Q. Do you have any changes or corrections to
8 any of these documents?

9 A. To the best of my knowledge, no.

10 Q. Mr. Plonski, can I direct your attention
11 to your surrebuttal testimony, page 14.

12 A. Oh, okay. Line -- page 14 of my
13 surrebuttal testimony, line 11. It reads, 00071.
14 That should be 00017.

15 And I believe there's another -- oh,
16 yes, that should be -- on line 19 it should be
17 Exhibits JRB-1, page -- dash page 2.

18 MS. KASTER: Your Honors, I would note
19 for the record that the Court Reporter copies have
20 been updated with these changes.

21 JUDGE FORDHAM: Thank you.

22 JUDGE JONES: Thank you.

23 BY MS. KASTER:

24 Q. Mr. Plonski, with these changes, if I were
25 to ask you the questions contained in your testimony

1 again today, would your answers be the same?

2 A. Yes.

3 Q. And would those answers be true and
4 correct to the best of your knowledge?

5 A. Yes.

6 MS. KASTER: Your Honor, at the
7 conclusion of cross-examination, the Office of Trial
8 Staff requests that the documents marked for
9 identification be admitted into the record.

10 And Mr. Plonski is available for
11 cross- examination.

12 JUDGE JONES: Thank you, Ms. Kaster.
13 Who will be conducting the cross?

14 MR. CLEARFIELD: I will, Your Honor.

15 JUDGE JONES: You may proceed, Mr.
16 Clearfield.

17 CROSS-EXAMINATION

18 BY MR. CLEARFIELD:

19 Q. Good afternoon, Mr. Plonski.

20 A. Good afternoon.

21 Q. I wanted to start by asking you a couple
22 questions about Answers to Interrogatories that we
23 proposed to you. And to do that I'd like to have
24 marked for identification the Answer you provided to
25 PGW Interrogatory to OTS Set 2, Number 6.

1 I'll give you a copy of that.

2 MR. CLEARFIELD: I think we're up to
3 OCA Cross-examination Exhibit 4.

4 JUDGE JONES: It shall be so marked.

5 (Whereupon, the document was marked as
6 PGW Cross-Examination Exhibit No. 4 for
7 identification.)

8 BY MR. CLEARFIELD:

9 Q. Do you have the Answer to Question Number
10 6 in Set 2 just marked as Cross-examination Number 4?

11 A. Yes, I do.

12 Q. And you prepared this Answer, I take it?

13 A. Yes, I did.

14 Q. Now, the question we asked you was whether
15 you agree that PGW's level of debt and capital
16 structure would cause a financial risk and additional
17 costs and, therefore, was too high.

18 And you said that, no, for rate making
19 purposes PGW's capital structure is irrelevant
20 because the Company is a cash flow company.

21 A. Yes.

22 Q. As a capital flow company PGW's capital
23 structure is not a prominent factor in setting rates.
24 Do you see that?

25 A. Yes.

1 Q. Now, have you examined the Management
2 Agreement that sets forth the elements that are
3 included in the cash flow method of rate making for
4 PGW?

5 A. No, I haven't.

6 Q. Do you have a copy of that?

7 A. No, I do not.

8 Q. Well, let me approach, if you will, with
9 PGW Rejoinder Exhibit 1, which contains the Section 7
10 of the Management Agreement which sets forth the rate
11 making formula.

12 Let me just show you that. And that's
13 what Mr. Bogdonavage provided yesterday.

14 A. Okay.

15 Q. And you see on page 19, paragraph -- the
16 little I in the -- two IIs in the hole. And I just
17 want to read it to you over your shoulder. I
18 apologize.

19 It says, rates should be set to
20 provide -- to produce revenues -- that's the
21 beginning part -- to provide appropriations to the
22 extent not otherwise provided for pre-payment of debt
23 and for capital additions which have been interpreted
24 by the Gas Commission to be reasonable, and which
25 have been approved by City Council.

1 Do you see that?

2 A. Yes.

3 Q. Wouldn't that indicate that the cash flow
4 method as dictated by the Management Agreement does
5 provide for a provision in rates to finance capital
6 additions?

7 A. According to the Management Agreement,
8 yes, I would say that.

9 Q. What about for pre-payment or pay down of
10 debt?

11 A. According to the Management Agreement,
12 yes.

13 Q. Now, let me ask you this question:
14 Putting aside the Management Agreement, does PGW need
15 to reduce its reliance on long-term debt to finance
16 its construction program in your opinion?

17 A. In my opinion that question is irrelevant.
18 In my opinion --

19 Q. Well, do you have an opinion --

20 A. In my -- excuse me -- in my confines of
21 the Public Utility Commission and the rate -- and the
22 cash flow methodology of rate making, PGW is, under
23 my personal -- under my professional opinion --

24 Q. But see --

25 A. -- is --

1 JUDGE JONES: Allow him to answer your
2 question, Mr. Clearfield.

3 THE WITNESS: -- is entitled to debt
4 service coverage and coverage of O and M expenses
5 prudently --

6 BY MR. CLEARFIELD:

7 Q. Incurred?

8 A. -- incurred. I'm sorry.

9 Q. And that's the formula you think you is
10 proper?

11 A. That's the formula that is correct.

12 Q. Let's go on to another -- the Answer to
13 another Interrogatory I'd like to have marked for
14 identification as PGW Cross-examination Exhibit 5,
15 the Number 2 of PGW Set 2.

16 JUDGE JONES: It shall be so marked.

17 (Whereupon, the document was marked as
18 PGW Cross-Examination Exhibit No. 5 for
19 identification.)

20 BY MR. CLEARFIELD:

21 Q. Do you have that before you, Mr. Plonski?

22 A. Yes, I do.

23 Q. I want to focus in, and I'm not sure -- I
24 want to focus in on Part A of your Answer there in
25 response.

1 And I would note, I don't think we
2 bolded that. I think that was bolded at the time we
3 received it, but we can check that.

4 But you see where there you indicate
5 that the definition of liquidity is the ability to
6 turn an asset into cash. And, then you say, cash and
7 cash equivalents, and in parentheses, items on the
8 balance sheet that reported the value of an asset
9 that can be converted into cash immediately, i.e.,
10 money market holdings, short-term Government bonds,
11 commercial paper.

12 Do you see that?

13 A. Yes.

14 Q. Now, there you're talking about if PGW
15 were to purchase someone else's commercial paper; is
16 that right?

17 A. No, I -- I'm saying that commercial paper
18 is a liquid asset. That's what I'm saying.

19 Q. Are you saying it's part of working
20 capital?

21 A. It has -- according to past reviews of the
22 Company -- past reviews of the Company's financial
23 statements, they have used commercial paper as a
24 liquid asset.

25 Q. But as working capital?

1 A. Yes.

2 Q. Well, let me -- in your testimony you
3 talked about working capital being defined as current
4 assets less --

5 A. Yes.

6 Q. -- current liabilities; isn't that right?

7 A. Yes.

8 Q. Now, when PGW issues commercial paper, it
9 issues the debt, right?

10 A. Yes.

11 Q. And it gets dollars back from an investor;
12 isn't that right?

13 A. Yes.

14 Q. And you're actually -- you have a degree
15 or a background in accounting?

16 A. Yes.

17 Q. And, in fact, I think you taught
18 accounting?

19 A. Yes.

20 Q. So when PGW does that, it records -- makes
21 two entries, right?

22 A. Yes.

23 Q. One is a current asset --

24 A. Yes.

25 Q. -- for cash received. What else does it

1 do?

2 A. Current liabilities.

3 Q. And how much net additional current
4 working capital, if the definition is current assets
5 versus current liabilities, does it get when it
6 issues commercial paper?

7 Wouldn't the entry be zero?

8 A. In the context of that transaction, yes.

9 MR. CLEARFIELD: Thank you. That's
10 all I have. Oh, actually I'm not finished.

11 BY MR. CLEARFIELD:

12 Q. I just want to go back, back to Number 2
13 though. I apologize.

14 I'm just confused because you're
15 talking about items that can be converted to cash,
16 and you say here, i.e., money market holdings,
17 short-term Government bonds.

18 When you talk about money market
19 holdings, you're talking about if PGW took cash and
20 put it into a money market, aren't you?

21 A. Yes.

22 Q. And if we talked about short-term
23 Government bonds, you're talking about if PGW took
24 some of its cash and bought a short-term Government
25 bond, right?

1 A. Yes.

2 Q. And when you talk about commercial paper,
3 just in that context, you're talking about if PGW
4 took some of its cash and bought someone else's --
5 purchased someone else's commercial paper?

6 A. Yes.

7 MR. CLEARFIELD: That's all I have.
8 Thank you. May I move into evidence PGW
9 Cross-examinations Exhibits 4 and 5.

10 JUDGE FORDHAM: Are there any
11 objections to the Cross-examination Exhibits of PGW
12 Number 4 and 5?

13 MS. KASTER: No, Your Honor.

14 JUDGE FORDHAM: They are admitted.

15 MR. CLEARFIELD: Thank you.

16 (Whereupon, the documents marked as
17 PGW Cross-Examination Exhibits Nos. 4 and 5, were
18 received in evidence.)

19 JUDGE FORDHAM: OTS, do you need time
20 to confer with your witness for redirect?

21 MS. KASTER: Yes.

22 JUDGE FORDHAM: We're off the record.

23 (Discussion off the record)

24 JUDGE JONES: Ms. Kaster.

25 MS. KASTER: Your Honor, at this time

1 OTS does not have any redirect.

2 JUDGE FORDHAM: Thank you. We have
3 the direct testimony of Mr. Plonski which has been
4 marked OTS Statement 1, and the accompanying exhibit,
5 OTS Exhibit 1, and the surrebuttal testimony, OTS
6 Statement Number 1-SR.

7 Are there any objections? Hearing
8 none, they're admitted without objection.

9 (Whereupon, the documents marked as
10 OTS Statement 1, Exhibit No. 1 and Statement 1-SR are
11 received in evidence.)

12 JUDGE JONES: Thank you, Mr. Plonski.

13 THE WITNESS: Thank you, Your Honor.

14 (Witness excused)

15 JUDGE JONES: We are off the record.

16 (Whereupon, at 3:38 p.m., the hearing
17 was adjourned, to reconvene at 9:00
18 a.m., on Thursday, May 24, 2007, in
19 Philadelphia, Pennsylvania.)

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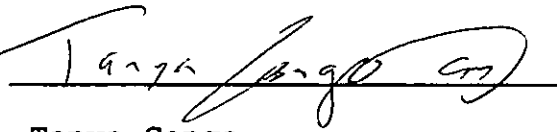
1 C E R T I F I C A T E

2 I hereby certify, as the stenographic
3 reporter, that the foregoing proceedings were taken
4 stenographically by me, and thereafter reduced to
5 typewriting by me or under my direction; and that
6 this transcript is a true and accurate record to the
7 best of my ability.

8 COMMONWEALTH REPORTING COMPANY, INC.

9

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BY: 

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Tanya Congo

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