

# City of Philadelphia

BILL NO. 020348 *continued*

Sec. 1.58 "Year of Credited Service" shall mean each period of 365 (or 366, if applicable) consecutive days of Credited Service beginning on the Participant's Employment Commencement Date and ending on the date upon which the Participant separates from service. A period of less than 365 (or 366, if applicable) days shall be deemed a fractional Year of Credited Service. In the event that the Participant experiences an interruption in Credited Service, any fractional Years of Credited Service shall be combined to form a complete Year of Credited Service, or fraction thereof. Accumulated Sick Leave shall be added to the Participant's days of Credited Service for the sole purpose of determining whether a participant has the requisite number of Years of Credited Service for attainment of Normal Retirement Date, Early Retirement Date, Special Early Retirement Date and Thirty and Out Retirement Date. Accumulated Sick Leave shall not be considered for determining a Year of Credited Service for any other purpose.

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## SECTION 2

### PARTICIPATION ELIGIBILITY

Sec. 2.01 Initial Eligibility. Every Eligible Class Employee shall become a Participant on his/her Employment Commencement Date.

Sec. 2.02 Procedure for and Effect of Admission. Each Eligible Class Employee who becomes eligible for admission to participation in this Plan shall complete such forms and provide such data as are reasonably required by the Plan Administrator as a pre-condition of such admission. By becoming a Participant, each Eligible Class Employee shall for all purposes be deemed conclusively to have assented to the terms and provisions of this Plan, and to all amendments hereto.

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## SECTION 3

### CALCULATION OF BENEFITS

Sec. 3.01 “Normal Form” of Benefits. All benefit accruals described herein are stated in the “Normal Form” which is an annuity for life ceasing with the periodic installment payable for the month in which the Participant’s death occurs.

Sec. 3.02 Accrued Benefit. If a Participant’s Employment Commencement Date is before March 24, 1967 and such Participant retires at his/her Normal Retirement Date, he/she shall be entitled to receive an annual normal retirement benefit, payable in the Normal Form, equal to the greater of:

(a) The sum of: (1) two percent (2%) of the Gross Compensation earned during total Credited Service; and (2) an additional monthly allowance equal to twenty-two and one-half percent (22.5%) of the first one hundred dollars (\$100) or less of the Participant’s monthly retirement income; or

(b) The sum of:

(1) one and one-quarter percent (1.25%) of that portion of his/her Final Average Compensation less than or equal to Covered Compensation multiplied by his/her Years of Credited Service (including partial Years of Credited Service), and

(2) one and three-quarters percent (1.75%) of his/her Excess Final Average Compensation multiplied by his/her Years of Credited Service (including partial Years of Credited Service).

The maximum annual normal retirement benefit calculated under this subsection (b) shall not exceed sixty percent (60%) of the Participant’s Compensation in the year in which it is highest over the last ten (10) years preceding retirement or separation from service.

If a Participant’s Employment Commencement Date is on or after March 24, 1967, his/her annual normal retirement benefit, payable in the Normal Form, is equal to the amount as calculated under Subsection (b) above.

(c) Accrued Benefit Calculation Adjustment. The periodic benefit payable to any Retired or Deferred Vested Participant, or to the Survivor of any such person, shall be the amount determined pursuant to the provisions of Section 3.02, adjusted actuarially for such factors as may be required by reason of the provisions of this Plan or operation of applicable law, regulations and/or rulings that require further adjustment of this Plan.

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## Sec. 3.03 Maximum Benefit Limitations.

(a) General Limitation. Except as otherwise provided in this section, the annual retirement benefit payable to any Participant shall not exceed \$160,000 (or such other limit as may be the maximum permissible for the applicable Plan Year pursuant to Tax Code Section 415(b)(1)(A) as adjusted pursuant to Tax Code Section 415(d)).

(b) Short Service Limitations. In the case of a Participant who has less than ten (10) Years of Credited Service, the limitations set forth in Subsection (a) of this section shall be reduced by multiplying them by a fraction, the numerator of which is the number of Years of Credited Service (or parts thereof) completed by the Participant, and the denominator of which is ten (10).

(c) Combined Plan Limitations. With respect to any Plan Year which begins on or before January 1, 2002, in no event shall a Participant's combined benefit under this Plan and any other qualified plan(s) maintained by the Sponsor exceed the limitations of Tax Code Section 415(e).

### (d) Adjustment of Limitations.

(1) To the extent the limitations set forth herein may be from time to time adjusted by statutes, regulations or other publications, such adjusted amounts shall be substituted for the amounts set forth in this section, provided that no such adjustment shall reduce a Participant's Accrued Benefit unless such adjustment is required to preserve the qualified status of this Plan. To the extent that the limitations under this section become unnecessary by amendment of law, the limitations shall be deemed inoperative under this Plan.

(2) If a benefit is to be distributed in a form other than a single or straight life annuity or Joint and Survivor Annuity (with the spouse as Survivor), the Actuarial Equivalent (using an interest rate, however, not less than the greater of (i) five percent; or (ii) the interest rate used by this Plan for such purposes) of a single life annuity of such benefit must satisfy the limitations set forth in this section. Further adjustments may be made by the Plan Administrator, as permitted by Tax Code Section 415 and the regulations promulgated thereunder, under the appropriate circumstances including receipt by this Plan of rollover contributions or assets or liabilities transferred from another plan.

(3) In the event that a Participant's benefit is to be distributed prior to Age 62, the currently effective dollar amount in Paragraph (a) of this section shall be actuarially reduced to the Actuarial Equivalent (using an interest rate, however, not less than the greater of (i) five percent; or (ii) the interest rate used by this

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Plan for such purposes) of an annual benefit equal to the dollar amount commencing at Age 62, as determined under the preceding sentence.

(4) In the event that a Participant's benefit is to be distributed after attainment of Age 65, the currently effective dollar amount in Paragraph (a) of this section shall be actuarially increased to the Actuarial Equivalent (using an interest rate, however, not greater than the lesser of: (1) five percent; or (ii) the interest rate used by this Plan for such purposes) of an annual benefit equal to such dollar amount commencing at Age 65.

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## SECTION 4

### NORMAL RETIREMENT

Sec. 4.01 Entitlement to Benefits. Each Participant retiring at his/her Normal Retirement Date shall be entitled to receive a benefit commencing as of his/her Normal Retirement Date equal to his/her Accrued Benefit in the Normal Form, as determined in accordance with Section 3.01 of this Plan.

Sec. 4.02 Form and Duration of Benefit Payments. A Participant whose benefit first becomes payable pursuant to Section 4.01 may receive payments in the Normal Form or, if elected pursuant to Section 10.02, in the form of a Joint and Survivor Annuity. Such Joint and Survivor Annuity payments shall be the Actuarial Equivalent of the Participant's Accrued Benefit in the Normal Form.

Sec. 4.03 Effect of ADRO. All benefits provided under this Section 4 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

Sec. 4.04 Impact of Accumulated Sick Leave. A Participant who attains his/her Normal Retirement Date as a result of the inclusion of Accumulated Sick Leave in the Year of Credited Service calculation shall be deemed to have retired, for purposes of Section 4.01, upon his/her separation from service.

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## SECTION 5

### EARLY RETIREMENT, SPECIAL EARLY RETIREMENT, AND THIRTY AND OUT RETIREMENT

Sec. 5.01 Entitlement to Benefits. Each Participant retiring at his/her Early Retirement Date, Special Early Retirement Date or Thirty and Out Retirement Date shall be entitled to receive a benefit commencing as of such date. Such benefit shall be based on his/her Accrued Benefit in the Normal Form, as adjusted in accordance with the provisions of this Section.

Sec. 5.02 Form and Duration of Benefit Payments. A Participant whose benefit first becomes payable pursuant to Section 5.01 may receive payments in the Normal Form or, if elected pursuant to Section 10.02, in the form of a Joint and Survivor Annuity. Such Joint and Survivor Annuity payments shall be the Actuarial Equivalent of the Participant's Accrued Benefit in the Normal Form.

Sec. 5.03 Early Retirement Benefit. A Participant may elect in writing to receive, in lieu of the benefit starting as of his/her Normal Retirement Date, a benefit starting as of the first day of any month after his/her Early Retirement Date and prior to Normal Retirement Date. The following conditions shall apply to benefit payments commencing prior to Normal Retirement Date:

(a) The form and duration of benefit payments shall be determined as provided in Section 5.02 above; and

(b) The amount of the benefit shall be a percentage of the Participant's Accrued Benefit calculated to the date of actual retirement (including months), based upon the Participant's attained Age in accordance within the following schedule:

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<u>Attained Age at Retirement</u>	<u>Percentage of Accrued Benefit</u>
64	97
63	94
62	91
61	88
60	85
59	80
58	75
57	70
56	65
55	60

Sec. 5.04 Special Early Retirement Benefit Commencement. A Participant may elect in writing to receive, in lieu of the benefit starting as of his/her Normal Retirement Date, a benefit starting as of the first day of any month after his/her Special Early Retirement Date and prior to Normal Retirement Date. The following conditions shall apply to benefit payments commencing prior to Normal Retirement Date:

(a) The form and duration of benefit payments shall be determined as provided in Section 5.02 above; and

(b) The amount of the benefit shall be a percentage of the Participant's Accrued Benefit, calculated to the date of actual retirement (including months), based upon the Participant's attained Age as of his/her date of actual retirement.

<u>Attained Age at Retirement</u>	<u>Percentage of Accrued Benefit</u>
64	100
63	100
62	100
61	97
60	94
59	89
58	84
57	79
56	74
55	69

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## Sec. 5.05 “Thirty and Out” Retirement Program.

(a) A Participant who has attained at least thirty (30) Years of Credited Service may elect, in writing, in the form and manner prescribed by the Plan Administrator, to retire under the “Thirty and Out Retirement Program”, on a date to be determined as follows:

(1) Except as provided in subsections (2) or (3) below, a Participant shall retire on the first working day following the date that is thirty (30) days after the date of application.

(2) Notwithstanding subsection (1) above, the Company and the Participant may mutually agree on a retirement date other than that determined in subsection (1) above, provided that such date is no more than 90 days after the date determined in subsection (1).

(3) Further, notwithstanding subsections (1) and (2) above, the Company may require that the Participant retire on a date set by the Company as determined in (c) below.

(b) The retirement income under the “Thirty and Out Retirement Program” shall be payable from the date of retirement, and shall be an annual amount equal to one hundred percent (100%) of the Participant’s normal retirement benefit, without, however, any reduction for age.

(c) The Company may in its discretion require that a Participant who applies and is eligible for the “Thirty and Out” Retirement Program, and who is not otherwise eligible to retire, defer retirement for a transition period of no more than six (6) months beyond the date determined in (a)(1) above and remain employed for purposes of training replacement employees and completing projects for the Company. Upon the expiration of such transition period, the Participant shall retire as provided under this “Thirty and Out” Retirement Program.

Sec. 5.06 Effect of ADRO. All benefits provided under this Section 5 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant’s Benefit Commencement Date, and are subject to diminution thereby.

Sec. 5.07 Impact of Accumulated Sick Leave. A Participant who attains his/her Early Retirement Date, Special Early Retirement Date or Thirty and Out Retirement Date as a result of the inclusion of Accumulated Sick Leave in the Year of Credited Service calculation shall be deemed to have retired, for purposes of Section 5.01, upon his/her separation from service.

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## SECTION 6

### DEFERRED RETIREMENT

Sec. 6.01 Entitlement to Benefits. Each Active Participant remaining employed beyond his/her Normal Retirement Date shall be entitled to receive a benefit commencing as of his/her Deferred Retirement Age equal to the Actuarial Equivalent of his/her Accrued Benefit in the Normal Form as of his/her Deferred Retirement Age, determined pursuant to the provisions of Section 3.02.

Sec. 6.02 Form and Duration of Benefit Payments. A Participant whose benefit first becomes payable pursuant to Section 6.01 may receive payments in the Normal Form or, if elected pursuant to Section 10.02, in the form of a Joint and Survivor Annuity. Such payments shall be the Actuarial Equivalent of the Participant's Accrued Benefit in the Normal Form.

Sec. 6.03 Effect of ADRO. All benefits provided under this Section 6 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

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## SECTION 7

### DISABILITY BENEFIT

#### Sec. 7.01 Entitlement to Benefits.

(a) A Participant who has completed at least fifteen (15) Years of Credited Service and attained Age forty-five (45) may be retired for Total Disability upon recommendation of the Medical Director or may apply to the Plan Administrator in writing to retire for Total Disability, provided that the sum of Years of Credited Service plus attained Age is equal to at least sixty-five (65).

(b) A Participant who has completed at least twenty (20) Years of Credited Service may be retired for Total Disability upon recommendation of the Medical Director or may apply to the Plan Administrator in writing to retire for Total Disability.

Sec. 7.02 Certification of Total Disability. The Medical Director must certify that such Total Disability resulted from injury or natural causes. The Plan Administrator must conclude that the disabled Participant can no longer perform his/her regular duties and that a suitable substitute occupation is not available.

Sec. 7.03 Disability Benefit Calculation. If a Participant is retired for Total Disability pursuant to Section 7.01, he/she shall be entitled to a benefit, equal to the Accrued Benefit calculated pursuant to Section 3, as of the date of such retirement.

Sec. 7.04 Disability Benefit Commencement. In the event of retirement pursuant to Section 7.01, the date of such retirement shall be the first day of the month as designated by the Plan Administrator.

Sec. 7.05 Effect of ADRO. All benefits provided under this Section 7 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

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## SECTION 8

### VESTING PROVISIONS

Sec. 8.01 Vested Interests. Any Participant who is an Active Participant on or after the Restatement Effective Date shall have a vested interest in his/her Accrued Benefit as determined from the following schedule:

<u>Participant's Years of Credited Service</u>	<u>Participant's Vested Percentage</u>
(a) Less than 5 .....	None
(b) 5 Years of Credited Service or more.....	100%

Any other Participant shall have a vested interest in his/her Accrued Benefit as determined under the terms of the Plan as in effect on the date of his/her separation from employment.

#### Sec. 8.02 Timing and Form of Benefit Payments.

(a) Benefit Commencement. The vested interest of any Deferred Vested Participant who has separated from employment prior to his/her attainment of Normal Retirement Date shall normally be payable as of the date that would have been the Participant's Normal Retirement Date.

(b) Early, Special Early, and Thirty and Out Retirement Benefits. Notwithstanding the provisions of Paragraph (a) of this section, if a Participant, at the time of his/her separation from service, is eligible for Early Retirement Benefits, Special Early Retirement Benefits, or Thirty and Out Retirement Benefits under this Plan, the distribution of his/her vested interest shall be governed under such provisions if elected by the Participant.

#### Sec. 8.03 Adjustment For Deferred Vested Pension.

(a) A Deferred Vested Participant may elect, in writing, in the form and manner prescribed by the Plan Administrator, to receive payments commencing on the first day of any month between his/her fifty-fifth (55th) and sixty-fifth (65th) birthdays and, if he/she so elects, the deferred benefit to which he/she would have been entitled on his/her Normal Retirement Date, shall be reduced to the following percentage:

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<u>Attained Age of Participant at Start of Payment of Deferred Vested Pension</u>	<u>Percentage of Normal Normal Retirement Income</u>
64	97%
63	94%
62	91%
61	88%
60	85%
59	80%
58	75%
57	70%
56	65%
55	60%

If the Deferred Vested Participant making such election has completed at least twenty-five (25) years of Credited Service before he/she separated from service, the deferred benefit to which he/she would have been entitled on his/her Normal Retirement Date shall be reduced to the following percentage:

<u>Attained Age of Participant at Start of Payment of Deferred Vested Pension</u>	<u>Percentage of Normal Retirement Income</u>
64	100%
63	100%
62	100%
61	97%
60	94%
59	89%
58	84%
57	79%
56	74%
55	69%

Sec. 8.04 Involuntary Termination Benefit. If a Participant is involuntarily separated from employment (other than a discharge for cause), because of disability, layoff, or any other reason, and the Participant has not vested pursuant to Section 8.01, he/she shall be entitled to a separation allowance equal to one-quarter (1/4) of his/her last month's pay for each Year of Credited Service.

Sec. 8.05 Effect of ADRO. All benefits provided under this Section 8 are subject to the provisions of any ADRO in effect with respect to the Participant at the Participant's Benefit Commencement Date, and are subject to diminution thereby.

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## SECTION 9

### DEATH BENEFITS

Sec. 9.01 Death Benefits. Except as described in Section 9.02, or Section 10.02, there shall be no benefit payable under this Plan by reason of the death of a Participant.

Sec. 9.02 Eligibility. If an Active Participant or a Deferred Vested Participant at the time of his/her death:

(a) has combined Years of Credited Service and attained Age of sixty-five (65) or more of which at least fifteen (15) represent Years of Credited Service and at least forty-five (45) represent attained Age; or

(b) has twenty (20) Years of Credited Service regardless of attained Age,

then there shall be paid to his/her Death Beneficiary (if any) a benefit in the form of a Preretirement Death Annuity, with the benefit commencing as if the Participant has retired due to Total Disability, pursuant to Section 7, on the day preceding the date of his/her death and selected Survivor Benefit Option 1 in Section 10.02.

Sec. 9.03 Application for Benefits. As a condition to the right to receive a Preretirement Death Annuity, the Death Beneficiary shall make application to the Plan Administrator in writing and shall furnish proof of Age and status as the Death Beneficiary satisfactory to the Plan Administrator.

Sec. 9.04 Effect of ADRO. Notwithstanding any other provision of this Section 9, the Plan Administrator and the Trustees shall give full effect to any ADRO applicable at the time of death of the Participant, even to the extent that giving effect to such ADRO defeats or diminishes the interest of any Death Beneficiary or other person hereunder.

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## SECTION 10

### METHOD AND TIMING OF BENEFIT DISTRIBUTION

Sec. 10.01 General Rules. Except as specifically provided in Section 4 (regarding normal retirement), Section 5 (regarding early, special early and thirty and out retirement), Section 6 (regarding deferred retirement), Section 7 (regarding disability retirement), Section 8 (regarding deferred vested benefits), Section 9 (regarding death benefits) and Section 10.02 (regarding survivor benefits), payment of annual retirement income under this Plan shall be made in twelve (12) equal monthly installments beginning the first month of retirement and continuing thereafter for the remainder of the Participant's life, with the last payment to be made in the month in which the Participant's death occurs.

#### Sec. 10.02 Joint and Survivor Annuity Options.

(a) General. At any time prior to his/her Retirement Date, a Participant may elect, by giving notice in writing of such election to the Plan Administrator, a Joint and Survivor Annuity Option in favor of any designated Survivor. (Reasonable proof of Age and eligibility for Survivor designation may be required in the absolute discretion of the Plan Administrator.) In such case, Participants may select from among the following Joint and Survivor Annuity Options each of which will be the Actuarial Equivalent of the Normal Form benefit set forth in Section 3.

Option 1 - A monthly benefit paid to the Participant during the joint lifetimes of the Participant and the designated Survivor. Upon the death of either, a monthly benefit payable to the surviving party (Participant or Survivor) equal to one hundred percent (100%) of the monthly benefit paid to the Participant.

Option 2 - A monthly benefit paid to the Participant during his/her lifetime. Upon the death of the Participant, a monthly benefit payable to his/her designated Survivor equal to:

- A. Seventy-five percent (75%) of the monthly benefit paid to the Participant,  
or
- B. Fifty percent (50%) of the monthly benefit paid to the Participant.

Option 3 - A monthly benefit paid to the Participant during the joint lifetimes of the Participant and the designated Survivor. Upon the death of either, a monthly benefit payable to the surviving party (Participant or Survivor) equal to:

- A. Seventy-five percent (75%) of the monthly benefit paid to the Participant,  
or
- B. Fifty percent (50%) of the monthly benefit paid to the Participant.

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(b) All adjustments to the Normal Form benefit which may result from the election of a Joint and Survivor Annuity Option shall be based on such actuarial factors as may be adopted from time to time by the Plan Administrator.

(c) Any election of a Joint and Survivor Annuity Option may be altered, amended or revoked by the Participant or former Participant prior to his actual retirement date. However, the election may not be so changed on or after the actual date of retirement.

(d) In the event a Participant has elected a Joint and Survivor Annuity Option and the designated Survivor dies prior to the Participant's date of retirement, his/her election shall not be effective and the Participant, after retiring, shall receive the retirement income otherwise payable to him in accordance with the provisions of this Plan.

(e) When a Participant who has elected a Joint and Survivor Annuity Option dies prior to his/her retirement, the only Survivor eligible for benefits shall be his/her Death Beneficiary (if any) at time of death, regardless of the named Survivor. The Death Beneficiary shall be paid benefits in accordance with Section 9 of this Plan.

Sec. 10.03 Suspension of Benefit Payment. Benefit payments that have commenced under this Section 10 shall be suspended in the event that the Participant is reemployed in a capacity in which he/she renders Credited Service. In such case, the member's Accrued Benefit shall be recalculated to include the additional Credited Service. Upon the Participant's subsequent separation from service, benefit payments shall recommence and all future payments shall be based on the Participant's recalculated Accrued Benefit.

Sec. 10.04 Approved Domestic Relations Orders.

(a) Determination of ADRO Status. Upon receipt of notification of any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments, or marital property rights of a spouse, former spouse, child, or other dependent of a Participant and which is made pursuant to a state domestic relations law (including a community property law) (herein referred to as a "domestic relations order"), the Plan Administrator shall (1) notify the Participant and any prospective Alternate Payee named in the order, of the receipt of such domestic relations order and of this Plan's procedures for determining the status of the domestic relations order as an Approved Domestic Relations Order ("ADRO"), and (2) within a reasonable period after receipt of such order, determine whether it constitutes an ADRO.

(b) Provisions Relating to Alternate Payees.

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(1) None of the payments, benefits or rights of any Alternate Payee shall be subject to any claim of any creditor, and, in particular, to the fullest extent permitted by law, all such payments, benefits and rights shall be free from attachment, garnishment, trustee's process, or any other legal or equitable process available to any creditor of such Alternate Payee. No Alternate Payee shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which he/she may expect to receive, contingently or otherwise, under this Plan.

(2) Alternate Payees shall not have any right to (i) exercise any other election, privilege, option or direction rights of the Participant under this Plan except as specifically provided in the ADRO, or (ii) receive communications with respect to this Plan except as specifically provided by law, regulation or the ADRO.

(3) Each Alternate Payee shall advise the Plan Administrator in writing of each change of his/her name, address or marital status, and of each change in the provisions of the ADRO or of any circumstance set forth therein which may be material to the Alternate Payee's entitlement to benefits thereunder or the amount thereof. Until such written notice has been received by the Plan Administrator, the Plan Administrator shall (i) have no liability whatsoever for not complying with, and in conducting the affairs of this Plan in a manner inconsistent with, the information set forth in the notice, and (ii) be required to act with respect to such notice prospectively only, and then only to the extent provided for in the ADRO. The Plan Administrator shall not be required to modify or reverse any payment, transaction or application of funds occurring before the receipt of any notice that would have affected such payment, transaction or application of funds, nor shall the Plan Administrator any other party be liable for any such payment, transaction or application of funds.

(4) Except as specifically provided for in the ADRO, an Alternate Payee shall have no right to interfere with the exercise by the Participant, or Survivor of their respective rights, privileges and obligations under this Plan.

(c) Division of Benefits. An ADRO shall divide the Participant's benefit under a "separate interest" approach or "shared payment" approach as such terms are defined in Internal Revenue Service Notice 97-11.

(1) An ADRO that creates a separate interest divides the Participant's Accrued Benefits into two separate parts: one for the Participant and one for the Alternate Payee. The ADRO may provide that the Alternate Payee can determine the form in which his/her benefits are paid and when benefits commence. The Plan Administrator reserves the right to reject any form of benefit payment which

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is inconsistent with the terms of this Plan. Benefit payments under a separate interest shall not be affected by a suspension of benefit payments under Section 10.03.

(2) An ADRO that creates a shared payment divides the benefit payments from this Plan between the Participant and the Alternate Payee. The Alternate Payee shall receive benefit payments under this approach only when the Participant receives benefit payments. Benefit payments under a shared payment shall be suspended in the event of a suspension of benefit payments under Section 10.03.

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## SECTION 11

### CONTRIBUTIONS TO PROVIDE BENEFITS

Sec. 11.01 General. The Sponsor shall annually cause to be contributed from the revenues of PGW, such amounts to the Sinking Fund as are necessary to provide for the annual retirement cost of Participants on the following basis:

(a) With respect to Retired Participants, an amount necessary to meet current benefit obligations under the retirement schedules; and

(b) With respect to Active Participants and Deferred Vested Participants, an additional amount as determined by the Director of Finance to be appropriate to fund future benefit obligations with respect to such Participants.

The Director of Finance shall take into consideration certain factors, including current payrolls, earnings assumptions, retirement schedules applicable to various classes of employees and other factors as necessary to assure adequate funding of the Sinking Fund in current and future years.

Sec. 11.02 Actuarial Soundness. The Director of Finance shall obtain competent actuarial advice and shall have available at all times a report made within the immediately preceding five (5) Plan Years by a competent actuary based on an actuarial investigation of the pertinent factors.

Sec. 11.03 Other Contributions Prohibited. The Fund shall not accept "rollover contributions" from any Participant, from any "individual retirement account" or annuity, (as defined in Tax Code Section 408) or from any other qualified or non-qualified plan of any employer.

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## SECTION 12

### APPLICATION FOR BENEFITS AND CLAIMS PROCEDURES

Sec. 12.01 Application for Benefits. Each Participant, Survivor or Alternate Payee who believes that he/she is eligible for benefits under this Plan may file an application for such, by timely completing and filing with the Plan Administrator an application for benefits on a form supplied by the Plan Administrator. Each such application must be supported by such information and data as the Plan Administrator deems relevant and appropriate. Evidence of age, marital status (and, in the appropriate instances, health, death or disability), and location and residence shall be required of all applicants for benefits. The Plan Administrator shall make its best efforts to render a determination within sixty (60) days of the date on which the application is filed.

Sec. 12.02 Appeals to the Gas Commission. A Participant, Survivor, Alternate Payee, the Union, the Sponsor and the Company shall have the right to appeal any decision or determination of the Plan Administrator to the Gas Commission. All such appeals shall be filed within thirty (30) days of the Plan Administrator's mailing of written notice of such decision or determination (or in absence of such decision or determination within thirty (30) days of the expiration of the sixty (60) day period set forth in Section 12.01). Such appeal shall be filed with the Pension Committee who will evaluate the appeal and make its recommendation to the Gas Commission which will then make a finding and decision on the appeal. The findings and decisions of the Gas Commission, and any action taken in conformance therewith as a result thereof shall be final and there shall be no further appeal on the merits, except that there may be an appeal to a court of appropriate jurisdiction by the Participant, Survivor, Alternate Payee, the Sponsor, the Company, the Plan Administrator and/or the Union on the grounds of an alleged abuse of discretion or an error of law committed by the Gas Commission.

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## SECTION 13

### PLAN ADMINISTRATION

Sec. 13.01 Administrative Interpretations of the Plan. The Plan Administrator shall administer this Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of this Plan. Subject to the provisions of Section 12, the Plan Administrator shall interpret this Plan and shall resolve all questions arising in the administration, interpretation and application of this Plan. The Plan Administrator shall make all determinations regarding claims for benefits, eligibility, vesting and other rights of Participants arising from this Plan.

Sec. 13.02 Recordkeeping. The Plan Administrator shall maintain a record of all its proceedings and acts and shall keep such books of account, records and other data as may be necessary for proper administration of this Plan.

Sec. 13.03 Right to Request Information. The Plan Administrator may require any Participant, Survivor and/or Alternate Payee to furnish such information affecting his/her rights as it may request and, on the failure to furnish such information, may withhold or suspend benefits until it is received.

Sec. 13.04 Benefit Payments. The Plan Administrator shall direct the Trustees with regard to the eligibility, timing, form and amount of benefits payable under this Plan to any Participant, Survivor or Alternate Payee hereunder.

Sec. 13.05 Engagement of Assistants and Advisers, Plan Expenses. The Plan Administrator shall have the right to hire such professional assistants and consultants as it deems necessary or advisable (subject to the advice and consent of the Director of Finance) including, but not limited to:

- (a) investment managers and/or advisers;
- (b) accountants;
- (c) actuaries;
- (d) attorneys;
- (e) consultants;
- (f) clerical and office personnel; and
- (g) medical practitioners.

# City of Philadelphia

**BILL NO. 020348** *continued*

The expenses incurred by the Plan Administrator in connection with the operation of this Plan, including, but not limited to, the expenses incurred by reason of the engagement of professional assistants and consultants, shall be expenses of this Plan and shall be payable from the Fund at the direction of the Plan Administrator.

# City of Philadelphia

BILL NO. 020348 *continued*

## SECTION 14

### PENSION COMMITTEE

Sec. 14.01 Structure of Pension Committee. The Pension Committee shall consist of five members. One member shall be designated by the Company, one member shall be designated by the Union and three members shall be designated by the Gas Commission. Each member of the Pension Committee shall serve at the pleasure of the entity which appointed him/her. Any member may resign by delivering his/her written resignation to the Gas Commission. Vacancies in the Pension Committee arising by resignation, death, removal or otherwise shall be filled by the entity authorized to designate the member whose resignation, death or removal created the vacancy in order that the composition of the Pension Committee shall remain as above set forth.

Sec. 14.02 Duties of the Pension Committee. The Pension Committee shall be authorized to evaluate the appeal of any benefit or eligibility claims determination made by the Plan Administrator and make recommendation to the Gas Commission on the merits of such appeal pursuant to Section 12.02. The Pension Committee may request any information it deems necessary to evaluate such appeal.

Sec. 14.03 Authority to Act. The Pension Committee shall act by a majority of its members at the time in office. Such action may be taken either by a vote at a meeting or by written proxy without a meeting, provided, however, all members shall be given adequate notice to consider such action. Any such action shall require approval of at least three (3) members of the Pension Committee. A member of the Pension Committee who is a Participant shall not take part in any appeal in which he/she has an interest. Any such action shall be voted or decided by a majority of the remaining members of the Pension Committee. The Pension Committee may act to authorize any one or more of its members to execute any document or documents on behalf of the Pension Committee.

Sec. 14.04 Operation of the Pension Committee. The Pension Committee shall select its own chairman and secretary and such other officers as it may determine and may adopt such rules as it deems desirable for the conduct of its affairs. Counsel for the Pension Committee are to be selected and appointed by the City Solicitor.

Sec. 14.05 Expenses of Pension Committee. The compensation to be paid to the members of the Pension Committee shall be determined by the Gas Commission. All expenses of the Pension Committee shall be paid out of the revenues of PGW. Such expenses shall include any expenses incident to the functioning of the Pension Committee, including but not limited to, fees of accountants, actuaries and other specialists. The fees and compensation of all accountants, actuaries or other persons retained or employed by the Pension Committee shall be fixed by the Pension Committee, subject to the approval of the Gas Commission.

# City of Philadelphia

**BILL NO. 020348** *continued*

Sec. 14.06 Indemnification. No member of the Pension Committee may incur any liability for any loss or damage or depreciation which may result in connection with the execution of his/her duties or the exercise of his/her discretion or from any other action or failure to act hereunder, excepting any liability for his/her own gross negligence or willful misconduct. The Sponsor shall, out of the revenues of PGW and with the approval of the Gas Commission, indemnify each member of the Pension Committee against any and all claims, loss, damages, expense and liability (including any amounts paid in settlement with the Gas Commission's approval) arising from any act or failure to act, in connection with the execution of his/her duties, except when the same is due to the gross negligence or willful misconduct of such person.

# City of Philadelphia

BILL NO. 020348 *continued*

## SECTION 15

### SINKING FUND

#### Sec. 15.01 General.

(a) The Sponsor hereby establishes and reaffirms with the Trustees a trust consisting of such sums of money or property as shall from time to time be paid to the Trustees under this Plan, and such earnings, profits, increments, additions and appreciation thereto and thereon as may accrue from time to time. All such sums of money, all investments made therewith or proceeds thereof, and all earnings, profits, increments, appreciation and additions thereto and thereon, less the payments which shall have been made by the Trustees, as authorized herein, to carry out this Plan, are referred to herein as the Sinking Fund.

(b) It shall be the duty of the Trustees hereunder:

(1) To hold, to invest, to reinvest, to manage, and to administer the Sinking Fund for the exclusive benefit of the Participants, their Survivors, Death Beneficiaries, and Alternate Payees in accordance with the provisions of this Plan.

(2) From time to time, on the written direction of the Plan Administrator, to make payments out of the Sinking Fund to such persons, in such manner, in such amounts, and for such purposes as may be specified in such written direction. The Trustees shall be under no liability for any payment made by them pursuant to such a direction.

(c) Except as may otherwise be authorized by law, neither the Sponsor, the Plan Administrator, PGW, the Company, nor any other party shall have any right, title, interest, claim or demand whatsoever in or to the Sinking Fund held by the Trustees, other than the right to a proper application thereof and accounting therefor by the Trustees as provided herein, nor shall any funds be applied for purposes other than the exclusive benefit of the Participants, their Survivors, and Alternate Payees prior to the satisfaction of the liabilities of this Plan.

(d) Neither the provisions of this Section nor any other provision of this Plan shall prohibit any of the following transactions:

(1) The return of all or any part of one or more contributions made by reason of a mistake of fact if such return is made within one (1) year after the payment of such contribution; and

# City of Philadelphia

BILL NO. 020348 *continued*

(2) The return of all or any part of one or more contributions made if all of the following conditions apply: (i) the contribution was conditioned on the qualification of this Plan under Tax Code Section 401 (or successor provisions of that or other statutes of similar intent), (ii) this Plan is found not to so qualify, and (iii) the contribution(s) is/are returned within one (1) year of the date of denial of qualification of this Plan; and

This Section 15.01 shall not be construed to permit any payment which would deprive the Sinking Fund of its tax-exempt status.

(c) Whenever payments to a Participant, Survivor, or Alternate Payee are to be made in the form of an annuity based upon one or more lives or life expectancies, the Trustees shall have the option of making the required payments directly from the Sinking Fund as and when they become due or at any time purchasing from any legal reserve insurance company a single premium or other annuity contract providing for the payment of the benefits. This provision shall not be construed as compelling the Sponsor, the Plan Administrator, the Pension Committee, Trustees or any other party to allow benefit payments in the form of an annuity.

## Sec. 15.02 Investment of the Sinking Fund.

(a) The Trustees shall continue to invest and reinvest the principal and income of the Sinking Fund and keep the same invested without distinction between principal and income. The selection and retention or disposition of any investment shall be determined by the Trustees, who shall have the exclusive authority to manage and control the assets of the Sinking Fund except to the extent that the authority to acquire, manage, retain and dispose of assets to the Sinking Fund has been delegated to an appointed investment manager.

(b) The Trustees shall have the following powers in addition to the powers customarily vested in trustees by law and in no way in derogation thereof:

(1) With any cash at any time held by them, to purchase or subscribe for any authorized investment, and to retain such Authorized Investment in the Sinking Fund.

(2) To sell for cash or on credit, convert, redeem, exchange for another Authorized Investment, or otherwise dispose of, any Authorized Investment at any time held by them.

(3) To retain uninvested all or any part of the Sinking Fund and to deposit the same in any banking or savings institution.

# City of Philadelphia

BILL NO. 020348 *continued*

(4) To exercise any option appurtenant to any Authorized Investment in which the Sinking Fund is invested for conversion thereof into another authorized investment, or to exercise any rights to subscribe for additional Authorized Investments, and to make all necessary payments therefor.

(5) To join in, consent to, dissent from, or oppose, the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporations or properties in which the Sinking Fund may be invested, or the sale, mortgage, pledge or lease of any such property or the property of any such corporation upon such terms and conditions as it may deem wise; to do any act (including the exercise of options, making of agreements or subscriptions, and payment of expenses, assessments, or subscriptions) which may be deemed necessary or advisable in connection therewith; and to accept any Authorized Investment which may be issued in or as a result of any such proceeding, and thereafter to hold the same.

(6) To vote, in person or by general or limited proxy, at any election of any corporation in which the Sinking Fund is invested, and similarly to exercise, personally or by a general or limited power of attorney, any right appurtenant to any authorized investment held in the Sinking Fund.

(7) To sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the Sinking Fund created hereunder, partition or exchange any real property which may from time to time or at any time constitute a portion of the Sinking Fund, for such prices and upon such terms as it may deem best, and to make, execute and deliver to the purchasers thereof good and sufficient deeds of conveyance therefor and all assignments, transfers and other legal instruments, either necessary or convenient for passing the title and ownership thereof to the purchaser, free and discharged of all trusts and without liability on the part of such purchasers to see to the proper application of the purchase price.

(8) To repair, alter or improve any buildings which may be on any real estate forming part of the Sinking Fund or to erect entirely new structures thereon.

(9) To renew or extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable, and to agree to a reduction in the rate of interest on any mortgage or to any other modification or change in the terms of any mortgage or of any guarantec pertaining thereto, in any manner and to any extent that may be deemed advisable for the protection of the Sinking Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantec, or to enforce any such default in such

# City of Philadelphia

BILL NO. 020348 *continued*

manner and to such extent as may be deemed advisable; to exercise and enforce any and all rights of foreclosure, to bid on property in foreclosure, to take a deed in lieu of foreclosure with or without paying a consideration therefor, and in connection therewith to release the obligation on the bond secured by such mortgage; and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.

(10) To purchase Authorized Investments at a premium or discount.

(11) To employ suitable agents, actuaries, accountants, investment advisors or managers and counsel and to pay their reasonable expenses and compensation.

(12) To borrow, raise or lend moneys, for the purposes of the Sinking Fund, in such amounts and upon such terms and conditions as the Trustees in their absolute discretion may deem advisable, and for any such moneys so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by pledging or mortgaging all or any part of the Sinking Fund. No person lending money to the Trustees shall be bound to see to the application of the money lent or to inquire into the validity, expediency or propriety of any such borrowing.

(13) To cause any investment in the Sinking Fund to be registered in, or transferred into, their names as Trustees or the name of their nominee or nominees or to retain them unregistered or in form permitting transfer by delivery, but the books and records of the Trustees shall at all times show that all such investments are part of the Sinking Fund, and the Trustees shall be fully responsible for any misappropriation or defalcation in respect of any investment held by their nominee or held in unregistered form and shall cause the indicia of ownership to be maintained within the jurisdiction of the district courts of the United States.

(14) To do all acts which they may deem necessary or proper and to exercise any and all powers of the Trustees under this Plan upon such terms and conditions which they may deem are for the best interests of the Sinking Fund.

(15) To apply for, purchase, hold, transfer, pay premiums on, surrender, and exercise all incidents of ownership of any life insurance, retirement income or annuity contract which they are directed to purchase by the Plan Administrator, provided, however, that if Trustees shall borrow against the cash surrender values of any insurance contracts for the general purposes of the Sinking Fund, they shall borrow and repay the amounts so borrowed on a pro rata basis so as to preclude discrimination.

# City of Philadelphia

BILL NO. 020348 *continued*

Sec. 15.03 Accounts to be Kept and Rendered by the Trustees. The Trustees shall keep accurate and detailed accounts of all investments, receipts and disbursements and other transactions hereunder, including such specific records as shall be required by law and such additional records as may be agreed upon in writing between the Plan Administrator and the Trustees.

Sec. 15.04 The Trustees.

(a) The members of the Sinking Fund Commission shall serve as the Trustees of the Sinking Fund.

(b) The Trustees accept and reaffirm the Sinking Fund hereby created and agree to perform the duties hereby required by them, subject, however, to the following conditions:

(1) The Trustees shall incur no liability (except in the event of gross negligence or misconduct) for any action taken pursuant to a direction, request or approval given by the Plan Administrator, Pension Committee, or by any other party to whom authority to give such directions, requests or approvals is delegated under the powers conferred upon the Plan Administrator, Pension Committee, or such other party under the Plan. Any such direction, request, or approval shall be evidenced by delivery to the Trustees of a statement in writing signed by the authorized initiator thereof.

(2) Except as otherwise provided herein, any proper expense of the Trustee for the Sinking Fund including all real and personal property taxes, income taxes, transfer taxes, and other taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Sinking Fund hereby created, or any money, property or securities forming a part thereof shall be paid out of the Sinking Fund. The Sponsor, Philadelphia Gas Works or Company shall have the option, but not the obligation, to pay any such expenses, in whole or in part, and by so doing, to relieve the Sinking Fund from the obligation of bearing such expenses. Payment of any such expenses by the Sponsor, Philadelphia Gas Works or Company on any occasion shall not bind the Sponsor, Philadelphia Gas Works or Company to thereafter pay any similar expenses.

(3) The Trustees shall have no liability whatsoever for any action taken pursuant to any direction, consent, request, or other paper or document on the belief that the same is genuine and signed by the proper person if such direction, consent, request or other paper or document relates to a matter with respect to which the purported initiator or signatory has authority under this Plan.

# City of Philadelphia

BILL NO. 020348 *continued*

(4) The Trustees shall be indemnified by the Sponsor against their prospective costs, expenses, and liability in connection with all litigation relating to this Plan, or the Sinking Fund, except where the litigation is occasioned by the fault of the Trustees or involves a question of their fault. No such indemnification shall extend or exist to the extent such costs, expenses and liability are covered by insurance or would be so covered if any policy then in force included a waiver of subrogation.

(5) Nothing in this Section 15 shall preclude the purchase by or for the Trustees of one or more policies of insurance to protect each Trustee from liability for breach of fiduciary or co-fiduciary responsibility, provided, however, that if such insurance shall be purchased by the Fund utilizing the assets thereof to pay premiums, such insurance must permit recourse by the insurer against the Trustee in the case of a breach by that Trustee of his fiduciary responsibilities.

(c) Resignation, removal and/or appointment as a member of the Sinking Fund Commission shall be deemed resignation, removal and/or appointment as a Trustee.

(d) The Trustees may conduct their meetings pursuant to the rules of the Sinking Fund Commission.

(e) Each Trustee shall be bonded to the extent required by law, and the premiums for such bonds shall be treated as expenses of this Plan.

## Sec. 15.05 Delegation of Duties and Responsibilities.

(a) The Trustees may appoint one or more consultants, managers and/or investment advisors to manage, acquire or dispose of assets of the Sinking Fund and/or process benefit payments from the Sinking Fund. Such consultants, managers and/or advisors appointed by the Trustees shall be subject to dismissal by the Trustees, and the fees charged by such person for their services shall be considered expenses of the Sinking Fund. The Trustees shall be authorized to enter into such agreements with such consultants, managers and advisors as they deem necessary or desirable, including, but not limited to, compensation agreements.

(b) The Trustees may enter into a written agreement among themselves, to allocate specific responsibilities, obligations and duties among themselves, in which event those Trustees to whom a specific responsibility, obligation or duty has not been delegated shall be free from liability for breach of the same by a co-fiduciary to the fullest extent permitted by law.

# City of Philadelphia

BILL NO. 020348 *continued*

## SECTION 16

### AMENDMENT OF PLAN

Sec. 16.01 This Plan may be amended provided that any action shall be in accordance with the terms of the Operating Agreement and the Bargaining Agreement. No amendment shall use or divert the Fund for purposes other than the exclusive benefit of Participants.

# City of Philadelphia

BILL NO. 020348 *continued*

## SECTION 17

### TERMINATION OF PLAN

Sec. 17.01 General. This Plan may be terminated by appropriate action of the Sponsor.

Sec. 17.02 Vesting Upon Termination. If this Plan is completely terminated, all surviving Participants, Survivors and Alternate Payees hereunder affected by such complete termination shall be fully vested in their Accrued Benefits as of the date of termination to the extent then funded.

Sec. 17.03 Right of Reversion. If there remain any assets in the Sinking Fund after this Plan has been terminated and all accrued benefit obligations to Participants, Survivors and Alternate Payees have been satisfied or funded by insured annuity contracts, such excess assets shall be deemed attributable to actuarial error and shall revert to the Sponsor.

# City of Philadelphia

BILL NO. 020348 *continued*

## SECTION 18

### MISCELLANEOUS PROVISIONS

Sec. 18.01 Notices. Each Participant, Survivor or Alternate Payee shall be responsible for furnishing the Plan Administrator with the current and proper address for the mailing of notices, reports and benefit payments. Any notice required or permitted to be given shall be deemed given if directed to the person to whom addressed at such address and mailed by regular United States mail, first-class and prepaid. If any check mailed to such address is returned as undeliverable to the addressee, mailing of checks will be suspended until the Participant, Survivor or Alternate Payee furnishes the proper address.

Sec. 18.02 Unclaimed Benefits. In the event that any monthly benefit payable hereunder is not claimed within two (2) years, such benefit payment shall be forfeited by the payee unless the Plan Administrator, in its absolute discretion, elects to pay same. If the Plan Administrator elects to pay the unclaimed benefit, the Plan Administrator may, in its absolute discretion, pay any or all previously forfeited monthly benefits. The payment of the unclaimed benefit, together with the previously forfeited benefits which the Plan Administrator elects to pay, shall be paid in a single sum. There shall be no interest on other earnings credit to the single sum payment made pursuant to this Section 18.02.

#### Sec. 18.03 Nonalienation of Benefits.

(a) Any benefits payable to a Participant, Survivor or Alternate Payee are non-assignable, may not be pledged, hypothecated or encumbered and shall not be subject to the debts or obligations of such payee or of any other person. Such benefits shall not be liable or to be subjected to attachment, execution, or any other process of law, equity, bankruptcy, insolvency or otherwise, to or for any debts or obligations of such payee or any other person. In case of attachment of or other legal proceedings against any benefits payable under this Plan resulting from the attempted pledge, hypothecation or encumbrance thereof, the Plan Administrator shall have the exclusive right to revoke such benefits for so long as in its discretion seems proper, or to continue the payment of such benefits, or any portion thereof, to the Participant, Survivor or Alternate Payee entitled to such benefits.

(b) Applicability of an ADRO. Compliance with the provisions and conditions of any ADRO shall not be considered a violation of this provision.

Sec. 18.04 Reliance on Data and Consents. The Company, the Trustees, Pension Committee, Plan Administrator, Sponsor and all other persons or entities associated with the operation of this Plan, the management of its assets, and the provision of benefits thereunder, may reasonably rely on the truth, accuracy and completeness of all data provided by the

# City of Philadelphia

BILL NO. 020348 *continued*

Participant, Survivor and/or Alternate Payee or beneficiaries, including, without limitation, data with respect to age, health and marital status. Furthermore, the Company, the Trustees, Plan Administrator, and Pension Committee and the Sponsor may reasonably rely on all consents, elections and designations filed with this Plan or those associated with the operation of this Plan by any Participant, Survivor and/or Alternate Payee, or the representatives of such persons without duty to inquire into the genuineness of any such consent, election or designation. None of the aforementioned persons or entities associated with the operation of this Plan, its assets and the benefits provided under this Plan shall have any duty to inquire into any such data, and all may rely on such data being current to the date of reference, it being the duty of the Participant, Survivor and/or Alternate Payee, to advise the appropriate parties of any change in such data.

Sec. 18.05 No Contract of Employment. Neither the establishment of this Plan, nor any modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving any Participant, or any person whomsoever, the right to be retained in the service of the Sponsor, PGW, Gas Commission or Company, and all Participants shall remain subject to discharge to the same extent as if this Plan had never been adopted.

Sec. 18.06 Severability of Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

Sec. 18.07 Heirs, Assigns and Personal Representatives. This Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Participant, Survivor and/or Alternate Payee.

Sec. 18.08 Funding Policy. The Director of Finance shall establish and communicate a funding policy consistent with the objectives of this Plan. Such policy shall be in writing and shall have due regard for the emerging liquidity needs of the Fund. Such funding policy shall also state the general investment objectives of the Fund and the philosophy upon which maintenance of this Plan is based.

Sec. 18.09 Title to Assets. No Participant, Survivor or Alternate Payee shall have any right to, or interest in, any assets of the Fund upon separation from employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under this Plan to such Participant or out of the assets of the Fund. All payments of benefits as provided for in this Plan shall be made from the assets of the Fund, and neither PGW, the Sponsor, the Plan Administrator or Company nor any other person shall be liable therefor in any manner.

Sec. 18.10 Payments to Minors, Etc. Any benefit payable to or for the benefit of a minor, an incompetent person or other person incapable of receipting therefor shall be deemed paid when paid to such person's guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Plan Administrator,

# City of Philadelphia

BILL NO. 020348 *continued*

Sponsor, Trustee, the Pension Committee, the Company and all other parties with respect thereto.

Sec. 18.11 Authority of Company. With regard to the administration of this Plan, the Company acts solely in its capacity as the operator and manager of the municipally-owned Philadelphia Gas Works under the provisions of the Operating Agreement between it and the City and not otherwise.

Sec. 18.12 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Plan, and shall not be employed in the construction of this Plan.

Sec. 18.13 Gender and Number. Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice versa.

Sec. 18.14 USERRA. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Tax Code Section 414(u).

Sec. 18.15 Controlling Law. This Plan shall be construed and enforced according to the laws of The City of Philadelphia and the Commonwealth of Pennsylvania except to the extent Federal law applies. Citation to any statutory provision shall include any successor provisions thereto.

SECTION 2. The foregoing provisions shall apply and supplant the provisions of the Ordinance approved July 12, 1968, and all amendments thereto, with respect to any determination made, act done, liability incurred, right accrued, benefit payable, or any suit, arbitral proceeding or prosecution pending thereunder, on or after the effective date of this Ordinance.

SECTION 3. This Ordinance shall be effective immediately.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

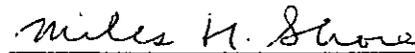
Pennsylvania Public Utility Commission, :  
 :  
 v. : Docket No. R-00061913  
 :  
 Philadelphia Gas Works :

**Stipulation between Philadelphia Gas Works and the School District of Philadelphia**

In Mr. Gorman's Rebuttal Testimony (Statement 8R, Volume II, Tab 7), Exhibit HSG-1, Page 1 of 2 (Revised as of March 30, 2007), line 22 states that the current revenue for the Municipal Non-Heat Rate Class (RC-7) exceeded the total requirements before the subject rate increase by \$281,000. With regard to the Municipal Heat Rate Class (RC-8), line 22 states that the current revenues for that class exceeded the total requirements before the rate increase requirement by \$493,000.

**DOCUMENT  
FOLDER**

  
\_\_\_\_\_  
Gregory J. Stunder, Esq.  
Philadelphia Gas Works

  
\_\_\_\_\_  
Miles Shore, Esq.  
School District of Philadelphia

Dated: May 23, 2007

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JUN 22 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works  
Docket No. R-00061931

5-23-07  
Phila  
TC

Office of Consumer Advocate  
Responses to Philadelphia Gas Works  
Interrogatories Set II

20. OCA St. 1 - Does Mr. LeLash agree that PGW needs to reduce its reliance on long-term debt to finance its construction program?

Response:

Yes.

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JUN 22 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Responsible Witness: Richard LeLash

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works  
Docket No. R-00061931

Office of Consumer Advocate  
Responses to Philadelphia Gas Works  
Interrogatories Set II

21. OCA St. 1 - Does Mr. LeLash agree that PGW's present long-term debt, as compared to total capitalization, is too high?

Response:

Yes.

Responsible Witness: Richard LeLash

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works  
Docket No. R-00061931

Office of Consumer Advocate  
Responses to Philadelphia Gas Works  
Interrogatories Set II

22. OCA St. 1 - What amount of long-term debt in its Capital structures should PGW be striving to achieve, in Mr. LeLash's opinion?

Response:

See OCA Statement No. 1, page 16, lines 20-21.

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works  
Docket No. R-00061931

Office of Consumer Advocate  
Responses to Philadelphia Gas Works  
Interrogatories Set II

23. OCA St. 1 - In Mr. LeLash's opinion, over what period should PGW be seeking to achieve the "target" debt-to-equity ratio recommended by Mr. LeLash or viewed as reasonable by Mr. LeLash?

Response:

The time period to achieve a target of 70% will be determined to a significant degree by the levels of equity capital retained by PGW and contributed by its owners. Ideally, it should achieve such a target within a 3 to 5 year period.

**DOCUMENT  
FOLDER** Pennsylvania Public Utility Commission  
v.  
Philadelphia Gas Works  
Docket No. R-00061931  
Office of Consumer Advocate  
Response to Philadelphia Gas Works  
Set III Interrogatories

1. Please indicate whether Mr. LeLash agrees or disagrees with the following statement (or provide the opinion requested). If he indicates disagreement (in whole or in part) with the statement, please explain the portion(s) of the statement with which he disagrees and provide a complete explanation of the basis for the disagreement:

(a) PGW needs a level of cash and liquidity (defined as cash and short-term borrowing capability) at FY year end such that it will have the ability to pay its obligations (including gas supply charges and debt service) when due during the next several months when revenues from operations are not sufficient to meet those obligations.

(b) Prudent utility management requires PGW to have a level of cash and liquidity, in addition to the minimum level required to meet the obligations described in (a) above, to respond to contingencies such as higher than budgeted natural gas costs.

(i) If you agree with Statement (b), above, how much of a cushion of cash and/or liquidity would be prudent, in Mr. LeLash's view for PGW to have at year end.

(c) PGW needs internally generated (i.e., non-borrowed) cash as well as the ability to borrow sufficient capital on a short-term basis in order to reduce risk and have sufficient cash working capital at reasonable cost.

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JUN 22 2007  
A PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

(i) If you agree with statement (c), above, what amount of internally generated cash would be prudent, in Mr. LeLash's view for PGW to have at year end?

(d) PGW's Bond Ordinances obligates it to have sufficient "project revenues" to pay all of its obligations when due (See, OS, 2007 Bonds, p. 39).

(e) PGW's Bond Ordinances requires it to maintain minimum debt service coverage levels with the 19998 (sic) Bond Ordinance requirements at 1.5x debt service.

(f) Prudent utility management requires that PGW have a surplus which produces coverages that exceed minimum levels in order to provide for contingencies.

(i) If Mr. LeLash agrees with statement (f), above, how much of a cushion over minimum amounts would be prudent, in Mr. LeLash's view?

(g) A downgrade of PGW's bonds to below investment grade would not be in the best interests of PGW or its customers.

(i) PGW's financial condition can affect its ability to improve its level of service or even its ability to provide adequate service.

Response:

(a) Mr. LeLash agrees and believes that his recommendation fulfills that need.

(b) Mr. LeLash agrees. However, he has not performed an analysis to determine the level of cash and liquidity to respond to contingencies.

(c) Mr. LeLash does not agree. Mr. LeLash believes that cash working capital can also be provided by the City in the form of City Equity.

(d) Mr. LeLash agrees but notes that he is not a lawyer.

(e) Mr. LeLash agrees but notes that he is not a lawyer.

(f) Mr. LeLash agrees. However, he has not performed an analysis to determine the level of surplus that would be prudent.

(g) Mr. LeLash agrees. Additionally, PGW's financial condition can affect its ability to provide adequate service.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

---

VERIFICATION

---

I, Richard LeLash, hereby state that I am the witness responsible for responding to the Philadelphia Gas Works Interrogatories Set III, number 1 and that the facts above set forth are true and correct to the best of my knowledge, information and belief in the listed interrogatory responses. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. SS 4904 (relating to unsworn falsification to authorities).

Signature: Richard W. LeLash

Consultant Address: Richard LeLash  
18 Seventy Acre Road  
Redding, CT 06896  
[lplash@snet.net](mailto:lplash@snet.net)  
(203) 438-4659

DATED: May 17, 2007

DOCUMENT

PGW Cross Exam

Exhibit No. 3

FOLDER

806 5-23-07  
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TC  
Docket#:

1 THE WITNESS: It's L-E-L-A-S-H.

2 JUDGE FORDHAM: Thank you. You may proceed, R-00061931

3 Mr. Keene.

4 MR. KEENE: Thank you, Your Honor. Your Honor,  
5 at this time I would like to have marked for identification,  
6 OCA Statement Number One, which is the direct testimony of  
7 Richard W. Lelash, on behalf of the Officer of Consumer  
8 Advocate, and attached thereto are Schedules 1 through 17, and  
9 an appendix of Mr. Lelash's regulatory testimonies from 1996 to  
10 the present.

11 I would also like to have marked for identification,  
12 OCA Statement Number 1-S, which is the surrebuttal testimony of  
13 Richard W. Lelash on behalf of the Officer of Consumer Advocate,  
14 and attached there are Schedules One and Two.

15 And pursuant to stipulation Mr. Lelash is prepared  
16 to be crossed.

17 JUDGE FORDHAM: The documents that were mentioned  
18 by Mr. Keene are so marked.

19 (Whereupon, OCA Statement marked Exhibit 1 for  
20 identification.)

21 (Whereupon, OCA Statement marked Exhibit 1-S for  
22 identification.)

23 JUDGE FORDHAM: Mr. Clearfield.

24 MR. CLEARFIELD: Thank you, Your Honor.

25 CROSS-EXAMINATION

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PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

1 BY MR. CLEARFIELD:

2 Q. Good morning, Mr. Lelash.

3 A. Good morning, Mr. Clearfield.

4 Q. Let's see if we can start off determining whether  
5 there is some common ground between the company and your  
6 recommendations. You agree, don't you, that there would be  
7 serious negative consequences if PGW were to become in technical  
8 default of its bond covenant?

9 A. Yes.

10 Q. You reviewed Ms. Bisgaier's testimony?

11 A. Yes.

12 Q. And she indicates that a technical default would result  
13 in a downgrading of PGW's bonds to below investment rate status,  
14 you don't disagree with that, do you?

15 A. Neither she nor I would know as a fact. But certainly  
16 that would be logical indication.

17 Q. And that would have serious consequences to PGW's ability  
18 to continue to issue bonds; is that fair?

19 A. PGW and for that matter the City as well.

20 Q. You also agree that the PUC should set the rates for PGW,  
21 so that PGW has a reasonable assurance of a satisfying its bond  
22 covenants?

23 A. Subject to things that were mentioned in my testimony,  
24 yes, that's correct.

25 Q. Well you want to make sure they satisfy the bond

1 covenant, correct?

2 A. Well there is an issue, Mr. Clearfield, on how those  
3 requirements are to be satisfied as far as who pays, but yes.

4 Q. The Commission should feel comfortable that the bond  
5 covenants are going to be satisfied, from whatever sources. . .

6 A. That's correct.

7 Q. I think we said that if PGW was not able to maintain its  
8 line of credit that backs up its commercial paper it would be  
9 very serious consequences for both the company and its  
10 customers, wouldn't you agree to that?

11 A. Yes.

12 Q. Similarly if PGW was not able to issue long-term debt, it  
13 would be very serious questions for both the company and the  
14 customers?

15 A. Yes.

16 Q. As a general matter, Mr. Lelash, all companies have a  
17 need for cash working capital in order to have the cash to pay  
18 other bills when they come due, don't they?

19 A. Yes.

20 Q. In fact, you testified in thousands of rate cases, on  
21 allowance for cash working capital in company's rate base is a  
22 common claim for an investor owned utility, right?

23 A. Yes.

24 Q. They would receive a return on that cash working capital  
25 on the rate?

1 A. The cost of that working capital is incorporated into the  
2 rate.

3 Q. You are not disputing that PGW has a cash working capital  
4 need, if I understand your testimony, you are disputing where  
5 the cash working capital should come from, is that a fair  
6 characterization of your testimony?

7 A. Well we seem to be disputing both the amount and where it  
8 comes from, but yes.

9 Q. Well you are not saying that they don't have a need?

10 A. No, it's clearly cash requirement for the company. The  
11 quantification is perhaps at issue as well.

12 Q. Again, I believe you agree, don't you, that at least with  
13 PGW, it has a need for liquidity or cash at the end of its  
14 fiscal year in order to have sufficient cash to pay its short  
15 term obligations, debt service, that come due in the next  
16 several months after the end of the fiscal year, leading up to  
17 the big January first debt service payment, that it has? Would  
18 that be fair?

19 A. PGW would have an ongoing need for cash working capital  
20 continuous.

21 Q. But doesn't it have a need to have a positive cash  
22 working capital, I am not asking you to agree to a particular  
23 amount, at the end of its fiscal year, in order to have enough  
24 to pay its obligations in the next several months after that  
25 fiscal year?

1 A. I think my answer I said yes, to that because it has a  
2 continuing need, which of necessity would include year end.

3 Q. That's fair. If you want to tell me how I can interpret  
4 your answer next time to get to yes, I would appreciate that.  
5 But in terms of PGW's need for cash at the end of the year, and  
6 would you agree that its need for cash working capital is  
7 affected by the level of gas costs it incurs?

8 A. Yes.

9 Q. Again, just as a general matter, you understand that PGW  
10 has access to GCR filing or 1307F mechanism that changes gas  
11 costs on an ongoing basis to reflect its actual costs, don't  
12 you?

13 A. Yes.

14 Q. That does not take away the cash working capital affect  
15 of increased gas cost on the company, does it?

16 A. Well indirectly it does, if the GCR is readjusted upward  
17 and the rates are collected for that gas, that's an improvement  
18 in the cash position. So it's a balance, the costs obviously,  
19 if gas costs go up, the company pays more in cash out. But by  
20 the same token, with some lag on the billing basis you should  
21 hopefully get it back.

22 Q. So there is a lag that they create cash working capital?

23 A. Yes.

24 Q. In fact in September, which is the period of time that  
25 PGW's GCR or 1307F begins, even if it sets a GCR at a projected

1 level for gas costs for the next year, it's not going to start  
2 collecting those increased amounts until it gets into the winter  
3 heating season when it actually starts billing customers for the  
4 majority of its usage, isn't that right?

5 A. The impacts of gas costs changes would be felt most  
6 severely during winter because of the volume of gas.

7 Q. So the gas costs have gone up, they are collecting based  
8 on MCF's during September, October, November, where usage and  
9 sales are low, correct?

10 A. Lower.

11 Q. Lower. They are making gas costs payments at these  
12 higher levels, which are not fully reflected in the GCR, so it  
13 creates a cash working capital need, doesn't it?

14 A. There is no question that the company's cash working  
15 capital requirements go up as the cost of gas goes up.

16 Q. Maybe I don't need to make this parenthetical, but some  
17 of these things while they are very familiar to you and I, they  
18 are not as familiar to the Commission. I just want to make sure  
19 they are clear on the record.

20 A. Okay.

21 Q. Now with respect to PGW's cash needs I am right, aren't  
22 I, in your original testimony you never provided a monthly cash  
23 flow statement for FY, fiscal year 2001, where you compared  
24 month by month the monthly disbursements and receipts of revenue  
25 for PGW, did you?

1 A. No, I did not.

2 ~~Q. And in your rebuttal testimony you indicated that you~~  
3 ~~did not need to because you looked at Mr. Bogdonavage's estimate~~  
4 ~~-- there was an estimate of I guess it was five months actual,~~  
5 ~~seven months projected at the time, which showed a 37 million~~  
6 ~~dollar end of year cash balance. Do you remember that testimony?~~

7 ~~A. Well there were several during that period. I think in~~  
8 ~~February the number was 37, one. Then I believe it was updated~~  
9 ~~in March, it was 34, three or four.~~

10 ~~Q. In fact, the 34, three, rounded, that's shown on JPB,~~  
11 ~~two, page one?~~

12 ~~A. I believe that's correct.~~

13 ~~Q. If you want to get it out you can. But the questions are~~  
14 ~~going to be more general.~~

15 ~~A. Do you have a specific reference?~~

16 ~~Q. JPB 2, schedule attached, page one. It's the second~~  
17 ~~column to the left. I'm sorry, that's the wrong. . .~~

18 ~~A. I figured I needed my glasses.~~

19 ~~Q. I was so sure I had the right one, then I provided the~~  
20 ~~wrong one. It has the similar number, but that's not the~~  
21 ~~correct column. I apologize. It's 5RB, page two, the third~~  
22 ~~column on the left.~~

23 ~~A. Yes, that has ending cash of 30, well depending on your~~  
24 ~~assumptions.~~

25 ~~Q. Thirty-four million?~~

The Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

Docket No. R-00061931

OTS Response to PGW, Set II

Witness: Robert Plonski

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PGW ~~Primary~~ Cross Exam  
EX. NO 4  
5-23-07  
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2. In Mr. Plonski's view, how many days of cash on hand should PGW have to have sufficient liquidity to deal with intra year and inter year cash requirements?
- a) Please provide your definition of "liquidity" and cash on hand for use in setting rates using the PGW Cash Flow method.
- b) If 100% of "cash on hand" at the end of the fiscal year is produced by issuing commercial paper utilizing PGW's short-term commercial paper program does that constitute legitimate "cash on hand" in Mr. Plonski's view? Please explain.

**Response:** In Mr. Plonski's view, it is not for him to make a determination of the liquidity needs of PGW. This is an issue that should be addressed by the management of PGW. Quantifying the number of days of cash on hand is not relevant for ratemaking purposes because this is not how the Commission regulates PGW under the cash flow methodology. The cash flow method requires PGW to have sufficient revenue to cover all expenses and debt obligations. Mr. Plonski's recommended \$25 million base rate increase satisfies this methodology because it gives the Company 34% above the debt service requirement for the future test year.

a) The definition of liquidity is the ability to turn an asset into cash. Cash and cash equivalents (items on the balance sheet that report the value of an asset that can be converted into cash immediately, i.e. money market holdings, short-term government bonds, commercial paper) are the most common liquid assets. Therefore, cash on hand refers to an asset in the form of cash or cash equivalents.

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**v.**

**Philadelphia Gas Works**

**Docket No. R-00061931**

**OTS Response to PGW, Set II**

**Witness: Robert Plonski**

- b) Under the cash flow methodology, commercial paper is one legitimate source of PGW's cash on hand. Historically, the Company has used commercial paper as its cash on hand and has not distinguished between commercial paper and cash on hand.

The Pennsylvania Public Utility Commission  
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Cross Exam

Docket No. R-00061931

PGW ~~Handwritten~~  
Exhibit No. 5  
5-23-07  
Phila  
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OTS Response to PGW, Set II

Witness: Robert Plonski

6. Does Mr. Plonski agree that PGW's level of debt in its capital structure is causing financial risk and additional costs and is therefore too high? If no, please explain why. If yes, please explain what level of debt would be prudent for PGW to seek to achieve in order to reduce risk and costs to customers to reasonable levels.

**Response:** No. For ratemaking purposes, PGW's capital structure is irrelevant because the Company is a cash flow company. As a cash flow company, PGW's capital structure is not a prominent factor in setting rates. Instead, the cash flow method requires the Company to have sufficient revenue to cover its expenses and debt service. Given that the OTS recommended rate increase of \$25 million will provide coverage well in excess of 1.30x going forward and will produce \$56 million in net income, the Company's debt service is sufficiently covered. This also indicates that, based on the recommended \$25 million increase, the Company's equity account should strengthen. While a slow rise in the equity ratio can be expected, it will not rise to the 50% level requested by the Company in the filing.

The level of debt and equity in PGW's capital structure is solely a management decision. If management finds that its current capital structure is too risky, it can retain more earnings or have an equity infusion. For example, even with low coverage ratios from 2000 to 2005, the Company managed to increase its equity account by \$11 million. Given that the recommended \$25 million base rate increase covers PGW's expenses and debt services and provides it with additional net income, the strategy of how to allocate those funds and adjust PGW's degree of risk is controlled by management.

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BEFORE THE

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Docket No. R-00061931

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DIRECT TESTIMONY OF

RICHARD W. LELASH

ON BEHALF OF THE  
OFFICE OF CONSUMER ADVOCATE

APRIL 6, 2007

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JUN 28 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

PHILADELPHIA GAS WORKS  
DOCKET NO. R-00061931  
TESTIMONY OF RICHARD W. LELASH

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1 I. STATEMENT OF QUALIFICATIONS

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

3 A. My name is Richard W. LeLash and my business address is 18 Seventy Acre Road,  
4 Redding, Connecticut.

5  
6 Q. WHAT IS YOUR CURRENT BUSINESS AFFILIATION?

7 A. I am an independent financial and regulatory consultant working on behalf of several  
8 state public utility commissions, attorneys general, and consumer advocates.

9  
10 Q. PRIOR TO YOUR WORK AS AN INDEPENDENT CONSULTANT, WHAT WAS  
11 YOUR BUSINESS AFFILIATION, AND WHAT WAS YOUR REGULATORY  
12 EXPERIENCE?

13 A. I was a principal with the Georgetown Consulting Group for twenty years. During my  
14 affiliation with Georgetown, and continuing to date, I have testified on cost of service,  
15 rate of return, and regulatory policy issues in more than 285 regulatory proceedings.  
16 These testimonies were presented before the Philadelphia Gas Commission, the Federal  
17 Energy Regulatory Commission and in the following jurisdictions: Alabama, Arizona,  
18 Colorado, Delaware, District of Columbia, Georgia, Illinois, Kansas, Maine, Maryland,  
19 Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Oklahoma,  
20 Pennsylvania, Rhode Island, U.S. Virgin Islands, and Vermont.

1 Q. MR. LELASH, WHAT IS YOUR EDUCATIONAL BACKGROUND?

2 A. I graduated in 1967 from the Wharton School with a BS in Economics and in 1969 from  
3 the Wharton Graduate School with an MBA.

4

5 Q. DURING THE COURSE OF YOUR REGULATORY WORK, WHAT HAS BEEN  
6 YOUR EXPERIENCE WITH GAS DISTRIBUTION COMPANIES?

7 A. Since 1980, I have worked extensively on gas policy and procurement issues. In my  
8 Appendix there is a listing of the recent cases in which I have sponsored testimony. In  
9 addition to these cases, I have reviewed and analyzed many other gas policy filings which  
10 were resolved through stipulation. Among other issues, my testimonies have involved  
11 gas matters including: revenue requirements, utility mergers, unbundling and  
12 restructuring, performance based regulation, gas plant remediation costs, price hedging,  
13 general gas procurement reviews, and least cost gas standards. In addressing these issues,  
14 I have analyzed gas regulatory filings involving about 30 different local distribution  
15 companies. With respect to PGW, I have testified on behalf of the OCA in all of the  
16 Company's previous rate matters before this Commission.

1 II. SCOPE AND PURPOSE OF TESTIMONY

2 Q. WOULD YOU PLEASE STATE THE SCOPE AND PURPOSE OF YOUR  
3 TESTIMONY IN THIS PROCEEDING?

4 A. I was hired by the Office of Consumer Advocate ("OCA") to review the Petition for Base  
5 Rate Relief made by the Philadelphia Gas Works ("PGW" or "Company") and evaluate it  
6 against applicable regulatory standards.

7 The purpose of my testimony is to present findings and recommendations to the  
8 Public Utility Commission ("PUC" or "Commission") concerning issues raised by the  
9 filing, the financial condition of the Company, and the Company's overall revenue  
10 requirement.

11

12 Q. IN PERFORMING YOUR REVIEW AND ANALYSIS, WHAT DATA SOURCES DID  
13 YOU UTILIZE?

14 A. My review and analysis encompassed the Company's filing, responses to discovery  
15 requests, and information from discovery meetings. I also utilized information provided  
16 in previous PGW proceedings before this Commission and before the Philadelphia Gas  
17 Commission and general data concerning the financial profiles and capital needs of gas  
18 distribution utilities.

19

20 Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR SUPERVISION?

21 A. I prepared this testimony with assistance from Michael Bleiweis, another OCA  
22 consultant. Mr. Bleiweis prepared various financial and accounting analyses that have  
23 been incorporated into my testimony.

1 III. SUMMARY OF FINDINGS AND RECOMMENDATIONS

2 Q. BASED ON YOUR INVESTIGATION, WHAT ARE YOUR FINDINGS AND  
3 RECOMMENDATIONS CONCERNING THE COMPANY'S BASE RATE RELIEF  
4 FILING?

5 A. As a result of my review and analysis, I make the following findings and  
6 recommendations:

- 7 1. The Company's rate request would provide it with \$660 million of incremental  
8 revenues over the next six years. Of this amount, only 3.4% would cover  
9 increased operating expenses, while 54.2% would go for debt reduction and  
10 36.8% would be used for capital expenditures.
- 11 2. Since 1993 the Company's long-term debt has increased by \$360 million, and this  
12 debt's percentage of total capital has increased from 75% to 82%. During the  
13 same period, capital withdrawn by the City of Philadelphia ("City") through its  
14 annual payments has totaled \$198 million. Had the City granted back these  
15 annual payments, the Company's current debt percentage would have declined to  
16 71% of total capital.
- 17 3. Prospective revenue requirements based on the future test year show that no  
18 *increase is needed to meet bond indenture coverages and provide sufficient cash*  
19 *for operations.* There is, however, a known and certain obligation to repay a \$45  
20 million loan made by the City to PGW. This repayment obligation comes due in  
21 2008 and will impact PGW's ability to meet its coverages. Therefore, I  
22 recommend that the Commission include \$22.5 million in additional revenue

1 requirement over the future test year level to amortize this loan repayment  
2 obligation.

3 4. As the Company acknowledges, it cannot continue to rely upon long-term  
4 borrowing to meet its capital requirements. Accordingly, PGW should continue  
5 to work with its owner to meet its prospective capital needs through such  
6 mechanisms as an extension of the grant back of the \$18 million City payment  
7 after FY 2010 or a further grant of some or all of the \$45 million loan.

8 5. Based on a number of considerations, ratepayers, as a source of revenue, are  
9 limited in their ability to support PGW. Estimates show that as many as 50% of  
10 PGW ratepayers may have incomes below a level of 250% of the federal poverty  
11 level ("FPL"), an income level found to be needed to meet the basic necessities of  
12 life. More than 30% have incomes at or below 150% of FPL. This situation,  
13 along with the fact that PGW's ratepayers, without including the requested \$110  
14 million rate increase, are already paying the highest rates in Pennsylvania for gas  
15 service reflect the ratepayers' economics. Couple these factors with the reality  
16 that the number of PGW's customers and their usage are declining, and it is  
17 apparent that ratepayers have a very limited ability to increase their level of  
18 payments to PGW.

19 6. In the Company's pending filing, there is also a request to retain margins from  
20 off-system sales and capacity release transactions. These capacity related margins  
21 are currently used to offset gas costs for PGW's ratepayers. The Company's  
22 proposal would allow it to retain 100% of such capacity margins and use the  
23 retained funds for construction expenditures. I recommend in this proceeding that

1 the Commission reject the Company's proposal and continue to use the off-  
2 system sales revenue and capacity release margins to lower the already high gas  
3 costs paid by PGW's ratepayers.

4 7. On the basis of these findings and conclusions, the Company's revenue  
5 requirement for fiscal year 2007 should include an annual incremental \$22.5  
6 million for the two year repayment of the City loan. This \$22.5 million amount  
7 should be included in base rates and be re-examined in the next base rate case, or  
8 be recovered in a rider that expires in two years. In no event should any further  
9 revenues be provided to PGW for repayment of this loan after this proceeding.

10 8. As shown on Mr. Bleiweis' Schedule MAB-9, these amounts, along with other  
11 adjustments discussed by Mr. Bleiweis, increase the Company's pro forma net  
12 earnings for 2006-2007 of \$8.9 million up to \$31.7 million. As further shown on  
13 Schedules MAB-10 and MAB-11, with \$31.7 million of net earnings, PGW  
14 would have \$53.4 million of year end cash and its debt service coverage would be  
15 2.45x. Additionally, its fixed charge coverage would be 1.59x. All of these  
16 measures would indicate that net earnings of \$31.7 million are adequate for  
17 PGW's operation.

18 9. When compared to the Company's pro formas for 2006-2007, the recommended  
19 OCA position can be placed in context. A year end cash balance of \$53.4 million  
20 is comparable to the Company's \$51.6 million. With regard to the more critical  
21 coverage measurements, the OCA position has debt service coverage of 2.45x vs.  
22 the Company's 2.03x and fixed charge coverage of 1.59x vs. the Company's  
23 1.34x. Accordingly, based on the 2006-2007 test year, the OCA proposed rates

1 meet all established financial requirements. Therefore, I recommend an increase  
2 of \$22.5 million rather than the \$110.0 million requested by PGW.

1 IV. INTRODUCTION

2 Q. WOULD YOU PLEASE BEGIN BY EXPLAINING THE OVERALL FRAMEWORK  
3 FOR DETERMINING PGW'S REVENUE REQUIREMENTS?

4 A. As the Commission stated at page 15 in its Opinion and Order in Docket No. R-  
5 00006042,

6 . . . the General Assembly clearly directs the Commission, in Section  
7 2212(e) of the Act, to set rates in a base rate proceeding for PGW in  
8 accordance with its previous ratemaking methodology and requirements  
9 rather than by other ratemaking methods traditionally employed in  
10 reviewing public utility rate filings. In this instance, the previous  
11 ratemaking methodology, as contained in PGW's Management Agreement  
12 and affirmed by the Pennsylvania courts, is the cash flow method.  
13

14 On this basis, Section VII of the Management Agreement between PGW and the  
15 Philadelphia Facilities Management Corporation ("PFMC") sets forth the overall  
16 framework. However, as also noted by the Commission's same Opinion and Order in  
17 Docket No. R-00006042,

18 At the same time, the adoption of this ratemaking methodology to set rates  
19 for PGW allows the Commission's other statutory directives, such as  
20 minimum debt service coverage and just and reasonable rates, to be  
21 fulfilled in accordance with Sections 1301 of the Code and 2212(c) of the  
22 Act.  
23

24 Q. WOULD YOU PLEASE DISCUSS THE DYNAMICS OF PGW'S CURRENT BASE  
25 RATE REQUEST AND SOME OF THE MAJOR ISSUES THAT HAVE  
26 CONTRIBUTED TO ITS CLAIMED REVENUE REQUIREMENT?

27 A. The Company's current request for a rate increase differs from those of the past since  
28 PGW does not appear to be at risk for an imminent downgrading or subject to any  
29 operational crisis. However, even without such factors, the Company, in the end  
30 analysis, is again asking for its ratepayers to bear the burden of yet higher rates. The

1 Company's justification for a major portion of the increase is not based on bond ratings  
2 or working capital requirements, but rather, it is based on the Company's determination  
3 that it needs additional revenues in order to reduce its excessive long-term debt balance.

4 While the Company's debt ratio, which is currently about 80%, is clearly  
5 excessive, there are several factors that have contributed to the excessive reliance on debt  
6 capital. The Company's past lack of adequate cost control, an aging operating system  
7 that requires replacements and upgrades, and an owner that has historically received  
8 dividends without making any necessary capital contributions are factors that have  
9 contributed to PGW's excessive financial leverage. Additionally, there also have been  
10 several external factors that have contributed to the problem. The escalation in natural  
11 gas commodity prices, and the need to finance higher cost inventories, as well as  
12 restructuring requirements and long delays in getting its LNG expander project  
13 completed all had a bearing on the Company's on-going financial condition.

14  
15 Q. THE COMPANY NOTED IN MR. HERSHEY'S TESTIMONY THAT PGW'S LAST  
16 BASE RATE CASE WAS IN 2002. DOES THIS TIME INTERVAL EXPLAIN THE  
17 NEED FOR A CURRENT RATE INCREASE?

18 A. In this case, the Company is primarily asking ratepayers to fund a debt reduction  
19 initiative. In effect, the Company is seeking to have ratepayers do two things: pay for all  
20 of PGW's operating expenses and, in addition, make capital contributions to the  
21 Company.

1 Q. HOW DOES THE COMPANY REDUCE DEBT UNDER THE CASH FLOW  
2 METHOD OF RATEMAKING?

3 A. By setting rates to have at least a debt service coverage of 1.50x and an adequate level of  
4 working capital, the Company is provided adequate earnings to make annual payments  
5 that reduce the level of its Revenue Bonds. As shown on Mr. Bleiweis' Schedule MAB-  
6 10, in the test period \$36.7 million of bonds will be retired. In addition, some or all of  
7 the Company's net earnings can be used for capital expenditures in lieu of the use of new  
8 incremental debt. And finally, the City, as the owner of PGW, can make capital  
9 contributions to PGW for either debt reduction or capital expenditures.

10  
11 Q. WHAT IS UNUSUAL ABOUT HAVING RATEPAYERS MAKE CAPITAL  
12 CONTRIBUTIONS TO THE COMPANY?

13 A. In regulation, ratepayers are responsible for paying the costs of capital, but they are not  
14 responsible for providing the capital itself. In effect, the revenues ratepayers provide  
15 support the Company's earnings level, and if such earnings are retained in the Company,  
16 they then provide equity capital. This traditionally is the extent of ratepayers'  
17 contribution to capital. However, in this case, ratepayers are being asked to pay rates to  
18 provide capital that is in excess of required earnings. This is unusual because PGW is not  
19 a cooperative and its ratepayers are not the owners of the utility.

20

1 Q. YOU STATE THAT PGW IS NOT A COOPERATIVE. COULD YOU EXPLAIN  
2 WHAT YOU MEAN BY THIS?

3 A. Up until 2004, PGW received all of its capital from either long-term financing or  
4 ratepayer revenues. The City during this period received its annual \$18 million payments  
5 and did not contribute any incremental equity funds. Accordingly, for all intents and  
6 purposes, the City operated PGW like a cooperative except the City, rather than the  
7 cooperative members (ratepayers), was the only entity receiving capital distributions. If  
8 ratepayers are to pay all operating expenses and supply all capital requirements as  
9 proposed by the Company, then they, rather than the City, are being forced to take on the  
10 ownership responsibility without receiving any ownership equity in the process.

11

12 Q. UNDER THE COMPANY'S CASH FLOW METHOD OF RATEMAKING, HASN'T  
13 THE COMMISSION AUTHORIZED RATE INCREASES, IN THE PAST, BASED ON  
14 WORKING CAPITAL REQUIREMENTS?

15 A. Yes, it has, but there is a difference between rates to ensure access to sources of working  
16 capital vs. the on-going investment of long-term capital. Utilities, as a general matter,  
17 recover the costs of working capital through its inclusion in their rate bases. Because of  
18 the Company's cash flow method, the Commission varied from traditional regulatory  
19 practice since the incremental revenues were required to sustain the Company's ability to  
20 raise short-term debt. In this case, ratepayers are being asked to provide capital in order  
21 to reduce PGW's excessive long term debt.

1 Q. IN ALL OTHER RESPECTS, DOES THE COMPANY'S FILING IN THIS CASE  
2 CONFORM TO THE CASH FLOW METHOD OF RATE SETTING?

3 A. No, it does not. Under normal utility ratemaking, as well as under the cash flow method,  
4 prospective revenue requirements are based on test period data. For this case, the test  
5 period for the determination of revenue requirements should reflect results for twelve  
6 months ended August 31, 2007 as shown on Mr. Bleiweis' Schedule MAB-9. However,  
7 in its filing the Company has utilized a test period that spans the fiscal years 2007  
8 through 2012 (see Exhibits JRB-1 and JRB-6). As stated by Mr. Bogdonavage at page 17  
9 of his testimony, "... only when PGW has available the full rate increase request and the  
10 off-system sale/capacity release proceeds (projected at \$10 million a year) does it have a  
11 good chance of achieving its goal of a 50/50 capital structure by FY 2012." Thus, the  
12 Company's filing is not based on a test year, but rather it is based on a debt reduction  
13 period of six years.

14  
15 Q. ARE THERE ANY OTHER ASPECTS OF THE COMPANY'S RATE REQUEST  
16 THAT ARE OUTSIDE OF ACCEPTED REGULATORY PRACTICE?

17 A. Yes, the Company is seeking to retain 100% of the margins and credits associated with  
18 off-system sales and capacity releases. These margins and credits are properly used to  
19 reduce the purchased gas costs that need to be recovered from ratepayers. The effect of  
20 such a retention would be to allow the Company to obtain additional capital from  
21 ratepayers through a non-base rate source.

1 V. POLICY CONSIDERATIONS

2 - Basis For the Company's Request

3 Q. WHAT IS THE COMPANY'S FILED REVENUE REQUEST, AND WHAT ARE THE  
4 PRINCIPAL JUSTIFICATIONS FOR THE HIGHER RATES?

5 A. The Company has requested a \$100 million base rate increase, and it seeks to retain an  
6 additional \$10 million of revenues from its capacity related margins and credits. In  
7 justifying the need for this increase, the Company cites: increased operating expenses,  
8 inadequate earnings in 2009, and its on-going need for sufficient liquidity.

9 However, a review of the Company's Exhibit SPH-1 shows a different utilization  
10 for the requested rate increase over the next six years. Of the \$660 million request, only  
11 3.4% goes for increases in expenses over the next six years, while 54.2% goes for debt  
12 reduction and presumably 36.8% is used for capital expenditures. In effect, this shows  
13 that the rate filing is not indicating a net income deficiency as much as it is an excess of  
14 financial leverage.

15

16 Q. CAN YOU PROVIDE AN OVERVIEW OF PGW'S LONG-TERM DEBT PROBLEM  
17 AND EXPLAIN ITS POTENTIAL IMPACT ON PGW'S RATEPAYERS?

18 A. PGW's long-term debt and equity amounts are shown for the period 1993 through 2006  
19 on Schedule 1. Back in 1993 the Company had \$952 million in total capital, of which  
20 \$711 million, or about 75%, was provided by long-term debt financing. By 2002, the  
21 total capital had grown by only \$128 million, but debt had increased to 82% of the total.

22 Because of the escalating level of total capital, by 2006, debt had become \$832  
23 million higher than equity. Accordingly, to now bring debt and equity into a 50%/50%

1 proportion as the Company recommends, would require a major shift in the PGW/City  
2 financing policy in order to reverse the Company's excessive reliance on long-term debt  
3 since 1993.

4  
5 Q. WOULD YOU COMMENT ON THE COMPANY'S CONTENTION THAT, "IT IS  
6 ESSENTIAL THAT THE COMMISSION AUTHORIZE A REVENUE LEVEL THAT,  
7 ON A PROJECTED BASIS, WILL PERMIT PGW TO REALIZE APPROXIMATELY  
8 A 50/50 CAPITAL STRUCTURE IN THE NEXT FIVE TO SIX YEARS"  
9 (BOGDONAVAGE, PAGE 12).

10 A. PGW's contention that a 50% debt ratio is needed and that it must be attained in the next  
11 5-6 years is unreasonable in two regards. First, the 50% debt ratio target is overly  
12 aggressive and unwarranted given the City's own assumed industry best practice level of  
13 70% debt and 30% equity (City of Philadelphia Five Year Financial Plan, February 22,  
14 2007, Appendix I, Page 14). Likewise, for PGW, which has an 83% debt ratio in its test  
15 year, a 65% to 75% debt ratio target range would be far more realistic and it would still  
16 represent a dramatic improvement from the current level. Second, it is unrealistic to  
17 assume that ratepayers should, or could, provide revenues to achieve such a 50% debt  
18 level over 5-6 years. Likewise, regulation does not set rates based on forecasted  
19 requirements over such an extended future period.

1 Q. ON SCHEDULE 1, IN COLUMNS 5 AND 6 YOU SHOW AN ALTERNATIVE DEBT  
2 RATIO FOR PGW FROM 1993 THROUGH 2006. COULD YOU PLEASE EXPLAIN  
3 HOW THAT WAS DERIVED?

4 A. Column 5 takes the actual equity amount from column 2 and adds to it the cumulative  
5 amounts of capital that the City has withdrawn from PGW through its \$18 million annual  
6 payments. As shown in column 6, had such payments been reinvested in PGW, its debt  
7 as a percentage of capital would have actually declined between 1993 and 2006.  
8

9 Q. BUT WHY WOULD THE CITY, AS OWNER, GIVE BACK DIVIDENDS IT WAS  
10 PAID?

11 A. This net withdrawal of capital (by having the City receive annual payments without  
12 making a grant back of the amount) has not assisted PGW with its financial situation. As  
13 the Company's witness Mr. Krellenstein has stated, "As a general rule . . . it is not  
14 uncommon for municipalities to reduce, defer, or grant back the payments if the utility is  
15 incurring financial distress." (Krellenstein Response to OCA-I-34). As PGW's periodic  
16 rate filings to the Philadelphia Gas Commission and recently to this Commission have  
17 shown, the Company has consistently been in financial distress throughout the last ten to  
18 fifteen years during which time (until 2004) the City received annual payments and made  
19 no grant backs.

20 While the data on Schedule 1 shows the basic sources of capital for PGW,  
21 Schedule 2 contains data on what is referred to as funds from operations. The funds from  
22 operation are comprised of PGW's annual net income plus its depreciation and  
23 amortization amounts which are non-cash charges that are added back to net income.

1 Thus, over the period from 1993 to 2006, the total funds from operations were \$656.0  
2 million. When the City payments were made between 1993 and 2003, the net funds  
3 available to PGW were reduced to \$458.0 million.

4  
5 Q. DURING THE TIME PERIOD FROM 1993 TO 2006, WHAT FACTORS LED TO  
6 THE \$360 MILLION INCREASE IN LONG-TERM DEBT?

7 A. On Schedule 3, data is provided for PGW's net capital expenditures and its net funds  
8 generated from operations. As mentioned earlier, PGW's gas system is old, and as a  
9 result, it requires a significant level of annual investment. As shown, construction  
10 expenditures for the 1993-2006 period totaled \$812 million, while total net funds were  
11 \$458 million for the same period. The cumulative shortfall, of expenditures less net  
12 funds, is therefore \$354 million which very closely matches the \$360 million long-term  
13 debt increase during the same period.

14  
15 Q. IN MS. BISGAIER'S TESTIMONY AT PAGE 15 SHE SUPPORTS PGW'S GOAL OF  
16 A 50%/50% DEBT TO EQUITY RATIO. DO YOU BELIEVE THAT SUCH A GOAL  
17 IS REALISTIC?

18 A. While a 50%/50% debt to equity ratio may be a reasonable goal for a privately owned gas  
19 utility, it seems highly unlikely that it needs to be achieved by PGW in the foreseeable  
20 future. PGW currently would do well if it were able to return its long-term debt  
21 percentage back to the 70% level it had ten years ago. Such an action would be an  
22 accomplishment that should fulfill what Ms. Bisgaier claims the rating agencies are  
23 anticipating.

1 Q. ARE THERE ANY OTHER ISSUES WITH RESPECT TO THE COMPANY'S  
2 REQUEST THAT SHOULD BE CONSIDERED?

3 A. Yes, there is an additional problem separate and apart from the debt reduction issue. That  
4 problem is that the Company's revenue requirement is not based on a test year revenue  
5 deficiency, but rather a claimed capital deficiency over a six year time horizon. To my  
6 knowledge, the Commission does not authorize rate increases based on speculative  
7 revenue requirements six years into the future.

8 As shown by the analysis in Mr. Bleiweis' testimony, under the cash flow method  
9 of rate setting and the Company's bond coverage requirements, the Company has no  
10 immediate need for a rate increase. Indeed, in the near future, the Company only requires  
11 additional revenues to fund payments to the City.

12  
13 Q. WHAT INCREMENTAL AMOUNTS, IF ANY, SHOULD BE INCLUDED IN THE  
14 REVENUE DETERMINATION?

15 A. The Company's current revenues meet its obligations except for the additional revenues  
16 needed to repay the loan from the City. PGW has an obligation to repay this \$45 million  
17 short-term loan from the City in fiscal year 2008. Therefore, I recommend that rates  
18 include \$22.5 million to allow for the repayment over two years. Once the Company has  
19 received the full \$45.0 million through rates, the Company should be required to utilize  
20 the continuing \$22.5 million of revenues solely for the retirement of its long-term debt.  
21 In the alternative, the Commission could consider the use of a rider that would recover  
22 the \$45.0 million over two years and expire once the full amount is recovered.

23

1           - Ratepayers Ability to Pay

2   Q.   HOW DOES THE COMPANY JUSTIFY ITS REQUEST FOR \$110 MILLION PER  
3       YEAR TO BE PAID EXCLUSIVELY BY RATEPAYERS?

4   A.   In Mr. Hershey's testimony at page 2, he states that "without a substantial rate increase,  
5       PGW will have inadequate earnings in 2009 to meet its debt service obligations and will  
6       fall below "investment grade" coverage levels in FY 2008." However, the Company has  
7       also determined that it has reached the point where it should not rely on additional long-  
8       term debt financing, but rather it should draw down its debt balance. Therefore, absent  
9       the ability to rely on lenders, any capital responsibility will have to fall on the City or  
10      PGW's ratepayers.

11               Over the next six years, as forecasted by the Company, the City is planned to  
12      provide \$72 million to PGW from four annual grants in fiscal years 2007 through 2010.  
13      However, during the six year period, the City will also withdraw \$45 million for the  
14      repayment of its short-term loan and \$108 million through six years of annual  
15      distributions of earnings. This means that over the Company's forecast period it will lose  
16      \$81 million through net payments to the City (\$45 million plus \$108 million less \$72  
17      million), thereby leaving ratepayers as the sole source of revenue and liquidity.

18  
19   Q.   WITH RESPECT TO PGW'S RATEPAYERS, WHAT IS THEIR ABILITY TO FUND  
20       THE COMPANY'S ENTIRE OPERATING LIQUIDITY NEEDS?

21   A.   Realistically, PGW's customers do not have the resources. In a June 2002 Peach &  
22       Associates Report ("Peach Report") it was estimated that, as of 2000, 149,730 (30%) of  
23       PGW's 499,101 customers had incomes below 150% of the Federal Poverty Level

1 ("FPL"). Additionally, based on updated data, PGW states that the percentage has  
2 increased to 31.9% for PGW customers as of 2005. In the Peach Report not only was the  
3 30% level derived, but it was noted, ". . . it is more likely that 250% of the Federal  
4 Poverty Level begins to indicate the range in which poverty is not actually experienced."  
5 Based on 250% of FPL, it is quite possible that as many as 50% of PGW's customers are  
6 below the effective poverty threshold.

7 Accordingly, based on PGW's ratepayers' financial position, the fact that these  
8 ratepayers are increasingly seeking CRP assistance, and the overall decline in customers  
9 and their usage, the Company's assumption that a \$110 million rate increase can be  
10 tolerated by ratepayers is flawed. Increasingly, the revenue requirement burden is being  
11 placed on a smaller and smaller customer base, and the presumption that requested rates  
12 are reasonable must be questioned.

13 As noted in a Full Report of PGW by Standard and Poor's:

14 The inability of PGW's customer base to absorb rate increases (whether  
15 base or GCR-effective) is reflective of the area's below-average  
16 demographics. PGW's service territory is characterized by a declining  
17 population, below-average wealth levels, and higher-than-average  
18 unemployment levels. Between 1994 and 1998, Philadelphia's population  
19 declined by approximately 1.2% per year on a compound annual basis.  
20 Median household effective buying income (EBI) has also declined by  
21 about 1.4% per year on a compound annual basis. It is currently only 74%  
22 of the national average.

23  
24 In addition, it should be noted, even before any further rate increase is authorized  
25 in this proceeding, PGW customers are already paying the highest rates in Pennsylvania.  
26 On Schedule 4 data is provided from three separate rate comparisons. In these  
27 comparisons, PGW's rate is 10% to 15% higher than the average for all of the other  
28 Pennsylvania gas utilities. As a result, seeking extraordinary capital contributions from

1 ratepayers is effectively asking for Pennsylvania's highest rates to be recovered from  
2 probably its poorest constituency.

3 As noted in the City of Philadelphia's Five Year Financial Plan (Appendix I), the  
4 annual bill for the average customer has increased by 100% between FY 2002 and FY  
5 2007. As a result, the Financial Plan notes, "Such increases have placed an almost  
6 overwhelming burden on many of PGW's customers."

7  
8 - Other Relevant Factors

9 Q. AS PART OF ANY BASE RATE REVIEW THERE IS A NEED TO DETERMINE  
10 WHETHER THE COMPANY IS PROVIDING ADEQUATE SERVICE. IS THAT  
11 THE CASE FOR PGW?

12 A. Unfortunately, the answer is yes and no. Yes, the Company is now better managed and  
13 more efficiently operated than it was several years ago. And no, the Company is not  
14 providing least cost utility service. Current management and the employees of PGW  
15 have successfully addressed billing problems, meter reading issues, customer service,  
16 collection issues, and a number of other service related areas. They have also achieved  
17 these improvements despite the obvious financial constraints associated with PGW.

18 However, these improvements have not come without costs that could have been  
19 avoided. For example, the Company has failed in recent years to maximize the value of  
20 its gas supply resources and this had forced ratepayers to pay higher than necessary rates.  
21 Specifically, the delay in its LNG expander project and the expander's less than  
22 acceptable performance were detrimental to ratepayers. Likewise, the failure to be able  
23 to fully utilize PGW's LNG storage, over the past few years has been an on-going issue.

1           The Company initially sought to fully utilize its LNG storage by purchasing an  
2 expander facility to increase its liquefaction. Ultimately, the facility was delayed three  
3 years and its capacity is only about 80% of its intended level. Subsequently, the  
4 Company has proposed a new Nitrogen Plant as a Phase 2 enhancement, but this project  
5 has also been delayed in part because of the proposed, but now defunct, LNG terminal  
6 facility that was to be established at the Richmond site. These delays prevented full use  
7 of the LNG storage and have delayed potential cost savings. While most of these  
8 problem areas were to some degree affected by external factors, it should be realized that  
9 ratepayers still have not received lowest reasonable costs for their essential gas service.  
10

11           - Capacity Margins and Credits

12 Q.    IN MR. HERSHEY'S TESTIMONY HE STATES THAT THE COMPANY WANTS  
13 TO CHANGE THE REGULATORY TREATMENT FOR OFF-SYSTEM SALES AND  
14 CAPACITY RELEASE REVENUES. WOULD YOU START BY EXPLAINING THE  
15 NATURE OF THESE REVENUES?

16 A.    The Company, in order to meet its customers' gas requirements, acquires gas supplies  
17 and the capacity to store and transport its gas on interstate pipelines. The storage and  
18 transportation capacity needs are based on maximum customer demand profiles (referred  
19 to as design requirements). Since the capacity contracts are tailored to maximum needs,  
20 during mild winter periods and during the non-winter periods the Company has some  
21 unused capacity which it can make available to third parties.

22           When such capacity is used by third parties, the Company receives either credits  
23 (for capacity release) or margins (on off-system sales) that historically have reduced the

1 Company's overall cost of gas. Such capacity cost offsets are credited to ratepayers since  
2 they pay for all of the related capacity costs within their rates.

3  
4 Q. WHAT HAS BEEN THE LEVEL OF SUCH CAPACITY MARGINS AND CREDITS  
5 OVER THE PAST FEW YEARS?

6 A. Schedule 5 provides data on both off-system margins and capacity release credits since  
7 1997. As the data shows, prior to 2006, the Company was receiving between \$1.6 and  
8 \$3.8 million for capacity sales and releases. For as yet unexplained reasons, in 2006 the  
9 capacity margins and credits increased dramatically. Based on data from the Company's  
10 most recent GCR filing, in calendar year 2006 total margins and credits were almost \$11  
11 million.

12  
13 Q. BASED ON THE FACTORS THAT YOU HAVE DISCUSSED, WHAT IS YOUR  
14 RECOMMENDATION CONCERNING THE COMPANY'S PROPOSAL?

15 A. I recommend that the Commission deny the Company's request to retain its capacity  
16 related margins. As I discussed, PGW has the highest gas cost rates in Pennsylvania and  
17 a large percentage of low income customers. Increasing the gas cost rates by removing  
18 these offsets would not be beneficial to customers.

1 Q. IN MR. HERSHEY'S TESTIMONY HE STATES THAT CREDITING ALL OF THE  
2 CAPACITY MARGINS AND CREDITS TO PGW TO FUND ITS CONSTRUCTION  
3 PROGRAM AND REDUCE ITS OUTSTANDING DEBT "IS CHEAPER TO  
4 CUSTOMERS THAN THE PRESENT VALUE OF THE STREAM OF PAYMENTS  
5 ASSOCIATED WITH ISSUING LONG TERM DEBT." IS HE CORRECT IN  
6 MAKING THIS ASSERTION?

7 A. Based upon two considerations, Mr. Hershey is not correct. First, Mr. Hershey's implicit  
8 assumption is that the alternative to having ratepayer capacity margins and credits  
9 retained by the Company will be for the Company to issue additional debt. However, in  
10 lieu of PGW floating additional debt, the City could provide additional capital to PGW.  
11 In that case, there would be no associated cost that ratepayers would pay for such capital.

12 Second, based on the Company's Response to OSBA-2-42, the Company's  
13 financial analysis appears flawed. When asked whether the discount rate used on pages 1  
14 and 4 of Exhibit JRB-4 was intended to be representative of the cost of capital of PGW's  
15 customers, the Company seems to say no. Specifically, the Company responded that,  
16 "the discounted rate used on pages 1 and 4 may or may not be the cost of capital of  
17 PGW's customers; instead, the rates on pages 1 and 4 reflect the cost of long-term debt  
18 borrowing for PGW, which is the cost reflected in rates." Based on this explanation, it  
19 does not appear that the Company's analysis supports its contention concerning the  
20 impact of the alternatives on ratepayers.

21 The central issue is whether ratepayers would be better off over time losing their  
22 margins and credits and not having to pay for alternative debt or not losing their margins  
23 and credit and having to pay for any debt. Central to this question is the opportunity cost

1 of capital for ratepayers. In my opinion, the ratepayers' cost of capital is probably well  
2 above 15% and not the 5% or 6% apparently used by the Company. Consumers'  
3 opportunity cost of capital is best reflected by credit card interest rates, and the rates of  
4 pay day lenders referenced by Mr. Hershey. Even with all of the costs associated with  
5 incremental debt, a more realistic financial analysis should indicate that ratepayers would  
6 not be better off by foregoing their capacity margins and credits.

1 VI. REVENUE REQUIREMENT DETERMINATION

2 Q. COULD YOU PROVIDE A DISCUSSION OF WHAT MAJOR REGULATORY  
3 PRINCIPLE SHOULD BE FOLLOWED IN SETTING RATES FOR A UTILITY  
4 SUCH AS PGW?

5 A. As a basic matter, the overarching principle of utility regulation is that authorized rates  
6 must be just and reasonable. This concept was applied to PGW when the Commission  
7 decided in its Opinion and Order in Docket No. R-00006042 at page 29 that, "We  
8 conclude that there is no presumption that, if PGW's rates were set pursuant to the  
9 management agreement/cash flow method, the rates would be just and reasonable as  
10 prescribed in Section 1301 of the Code."

11 In the Company's Response to OCA-1-11, Mr. Bogdonavage stated, "...the PUC  
12 acknowledged its legal obligation to utilize PGW's prior "ratemaking methodology", the  
13 Cash Flow Method in setting rates for the Company . . ." Mr. Bogdonavage goes on to  
14 conclude, "Accordingly, the Cash Flow Method, as defined and referenced by the PUC  
15 Order does specifically mandate that PGW's rates be set to cover funds for capital  
16 improvements."

17 Based on my review of the Commission's order and its discussion of its just and  
18 reasonable standard, it appears that the Management Agreement's provision that PGW's  
19 rates be set to cover all costs and expenses including debt reduction and capital additions  
20 is not controlling in isolation.

1 Q. FROM A PRACTICAL PERSPECTIVE, CAN YOU PROVIDE AN EXAMPLE TO  
2 SHOW THAT MR. BOGDONAVAGE'S POSITION IS NOT VALID?

3 A. Yes. There is an example that is directly applicable to one of the main issues in this case.  
4 PGW has determined that it needs to lower its debt ratio to 50%. Under Mr.  
5 Bogdonavage's logic, if the Company chooses to accomplish this in five or six years,  
6 then ratepayers must pay rates to accomplish such a debt reduction with no requirement  
7 that PGW's owner, the City, assist in the effort by increasing its equity funding. This  
8 interpretation negates the Commission's duty to make a determination on whether the  
9 resultant rates are just and reasonable. To make the example more compelling, what if  
10 the Company unilaterally decided to achieve a 50% debt ratio in two years? The answer  
11 is that under Mr. Bogdonavage's interpretation, the Company can seek and obtain any  
12 amount of rate increases as long as it determines it needs capital for debt reduction or  
13 capital additions.

14 However, the Commission has noted, "we must determine the reasonable level of  
15 revenues and expenses, including a reasonable amount of cash requirement, and balance  
16 the interests of consumers and PGW in this base rate proceeding to fulfill our statutory  
17 mandates under the Code." (Docket No. R-00006042, Commission Opinion and Order,  
18 October 4, 2001 at 26). Accordingly, the Company's rate request in this proceeding must  
19 take into account this Commission's prior disposition.

1 Q. HOW SHOULD THE COMMISSION DETERMINE WHAT THE CORRECT  
2 BALANCE IS BETWEEN CONSUMERS AND PGW?

3 A. As a first step, it is necessary to go back to other regulatory principles. PGW's revenue  
4 requirements in this case should not be based on projected financials over six years rather  
5 than being based on properly adjusted test year amounts. By using speculative future  
6 data concerning novel concepts of capital sufficiency, the Company's ratepayers would  
7 be put at risk. PGW, on the other hand, needs to have rates that will cover its actual  
8 operating expenses and it retains its right to file for additional rates in the future as  
9 required.

10 For the present, the Commission should look to the basic financial measures that  
11 have already been specified in order to set just and reasonable rates. As addressed in Mr.  
12 Bogdonavage's testimony, one benchmark is the Company's required 1.5x debt coverage  
13 on its 1998 Ordinance Bonds. As acknowledged by Mr. Bogdonavage, PGW's pro forma  
14 results at present rates for 2006-2007 show \$8.9 million of net earnings, debt service  
15 coverage of 2.03x, fixed charge coverage of 1.34x and an ending cash balance of \$51.6  
16 million. As shown in Mr. Bleiweis' Schedules MAB-9, 10 and 11, with the  
17 recommendations made in this testimony, along with Mr. Bleiweis' adjustments, the  
18 Company will have net earnings of \$31.7 million, debt service coverage of 2.45x, fixed  
19 charge coverage of 1.59x, and an ending cash balance of \$53.4 million. Therefore, with a  
20 \$22.5 million rate increase, PGW's financial measures are all above required levels.  
21 With grant backs from the City of the payments to be made by PGW, these levels could  
22 also be maintained.

23

1           And finally, in its consideration for setting a revenue requirement for PGW, the  
2 Commission should note two other factors. As shown on Schedule 2, PGW's net funds  
3 from operation, which had been low and erratic for many years, have during the last four  
4 years become far more robust. This turn around has occurred during a period when no  
5 incremental rate increases were obtained from ratepayers. And second, it is appropriate  
6 to note that Ms. Bisgaier and the rating agencies have all lauded the actions by the City to  
7 provide short-term financing and to grant back its \$18 million payment. However, over  
8 the past fifteen years, in total, the City has provided only about \$100 million, and it plans  
9 on getting \$45 million of this amount back in 2008. One should compare this with the  
10 additional \$110 million per year that is currently being sought from ratepayers when  
11 assessing what is just and reasonable.

12  
13 Q. MR. LELASH, DOES THAT COMPLETE YOUR DIRECT TESTIMONY IN THIS  
14 MATTER?

15 A. Yes, it does.  
16  
17  
18

VII. SUPPORTING SCHEDULES

**Philadelphia Gas Works**  
**Debt as a Percentage of Capital**  
(\$ millions)

	(1) Long-Term <u>Debt</u>	(2) <u>Equity</u>	(3) Total <u>Capital</u>	(4) <u>Debt %</u>	(5) Equity And Fee	(6) <u>Debt %</u>
1993	\$ 711	\$ 241	\$ 952	74.7%	\$259	73.3%
1994	778	242	1,020	76.2	278	73.7
1995	751	250	1,011	75.0	304	71.2
1996	739	263	1,002	73.8	335	68.8
1997	728	269	997	73.0	359	67.0
1998	818	252	1,070	76.5	360	69.4
1999	897	232	1,129	79.5	358	71.5
2000	857	211	1,068	80.2	355	70.7
2001	933	204	1,137	82.0	366	71.8
2002	891	189	1,080	82.5	369	70.7
2003	999	194	1,193	83.7	392	71.8
2004	955	211	1,166	81.9	409	70.0
2005	1,073	223	1,296	82.8	421	71.8
2006	1,071	239	1,310	81.7	437	71.0

SOURCES:

Company Response to OCA-I-2.

**Philadelphia Gas Works**  
**Funds From Operation**  
(\$ millions)

	<u>Net Income</u>	<u>Depreciation</u>	<u>Funds from Operation</u>	<u>City Payment</u>	<u>Net Funds</u>
1993	\$ 33.5	\$ 23.0	\$ 56.5	\$ 18.0	\$ 38.5
1994	19.7	23.8	43.5	18.0	25.5
1995	25.3	24.3	49.6	18.0	31.6
1996	31.3	33.8	65.1	18.0	47.1
1997	24.0	31.8	55.8	18.0	37.8
1998	1.0	35.4	36.4	18.0	18.4
1999	(2.3)	29.1	26.8	18.0	8.8
2000	(2.4)	30.8	28.4	18.0	10.4
2001	11.2	31.8	43.0	18.0	25.0
2002	3.0	34.2	37.2	18.0	19.2
2003	22.8	34.9	57.7	18.0	39.7
2004	17.2	38.8	56.0	-	56.0
2005	11.3	36.1	47.4	-	47.4
2006 Est.	<u>16.8</u>	<u>35.8</u>	<u>52.6</u>	<u>-</u>	<u>52.6</u>
Totals	\$212.4	\$443.6	\$656.0	\$198.0	\$458.0

SOURCE: Company Response OCA-I-1.

**Philadelphia Gas Works**  
**Expenditures and Net Funds**  
(\$ millions)

	<u>Construction Expenditures</u>	<u>Cumulative Expenditures</u>	<u>Net Funds</u>	<u>Cumulative Funds</u>	<u>Cumulative Shortfall</u>
1993	\$ 51	\$ 51	\$ 39	\$ 39	\$ 12
1994	53	104	26	65	39
1995	53	157	32	97	60
1996	45	202	47	144	58
1997	53	255	38	182	73
1998	70	325	18	200	125
1999	68	393	9	209	184
2000	48	441	10	219	222
2001	57	498	25	244	254
2002	57	555	19	263	292
2003	61	616	40	303	313
2004	61	677	56	359	318
2005	67	744	47	406	338
2006	68	812	53	458	354

SOURCES: Schedule 2 and Historical PGW Data Exhibit A-2 (Bleiweis).

**Philadelphia Gas Works**  
**Comparative Pennsylvania Prices**  
**(\$ per Mcf as noted)**

<u>Utility</u>	<u>PGW 12/06</u>	<u>OTS 1Q/07</u>	<u>PUC 4/06</u> (2 Mcf)
Columbia Gas	\$ 8.67	\$ 8.67	\$44.57
Dominion Peoples	8.67	8.83	46.05
Equitable Gas	9.98	10.75	46.33
National Fuel	9.69	9.69	46.03
PECO	9.66	10.59	40.11
PPL Gas (Dth)	-	10.51	48.71
TW Phillips	-	8.74	40.27
UGI Penn Natural	9.07	9.07	40.39
UGI Utilities	10.89	10.89	42.89
Average	\$ 9.52	\$ 9.74	\$43.93
Philadelphia Gas Works	\$10.91	\$10.91	\$48.41
PGW % of Average	115%	112%	110%

SOURCES: PUC Rate Comparison Report, April 15, 2006, Company Response OCA-I-23  
 In Docket No. R-00072110, and OTS 2006-2007 Purchase Gas Cost Rates.

**Philadelphia Gas Works**  
**Capacity Margins and Credits**  
 (\$000's)

<u>Fiscal Year</u>	<u>Off-System</u>	<u>Releases</u>	<u>Total</u>
1997	\$2,078	\$ 504	\$2,582
1998	355	2,230	2,585
1999	19	3,798	3,817
2000	282	2,310	2,592
2001	1,580	2,030	3,610
2002	19	3,346	3,365
2003	570	2,710	3,280
2004	-0-	1,592	1,592
2005	460	2,235	2,695
2006	68	8,898	8,966
2006-Calendar	107	10,797	10,904

SOURCES: Company Responses to OTS-RS-1, OTS-RS-3, Item 53.64(c)(7) from Docket No. R-00072110, and Schedules 1, 4, 6 and 13 from Docket No. R-00049157.

VIII. APPENDIX: PRIOR R.W. LELASH TESTIMONIES

**R. W. LELASH'S REGULATORY TESTIMONIES**  
**(2002 to Present)**

244. Rhode Island, New England Gas Company (Docket No. 3401) Earnings Sharing and Gas Policy Testimony for the Rhode Island Division of Public Utilities (March, 2002).
245. Pennsylvania, Philadelphia Gas Works (Docket No. R00017034F002) Extraordinary Rate Relief Testimony for the Pennsylvania Office of Consumer Advocate (March, 2002).
246. New Jersey, Public Service Electric & Gas Company (Docket No. GR01110773) Remediation Adjustment Clause Testimony for the New Jersey Division of the Ratepayer Advocate (April, 2002).
247. Rhode Island, New England Gas Company (Docket No. 3401) Earnings Sharing and Gas Policy Surrebuttal Testimony for the Rhode Island Division of Public Utilities (April, 2002).
248. Pennsylvania, Philadelphia Gas Works (Docket No. R-00027133) Gas Cost Rate Testimony for the Pennsylvania Office of Consumer Advocate (April, 2002).
249. Pennsylvania, Philadelphia Gas Works (Docket No. R-00017034) Base Rate Testimony for the Pennsylvania Office of Consumer Advocate (May, 2002).
250. Georgia, Atlanta Gas Light Company (Docket No. 15527-U) Lost and Unaccounted For Gas Testimony for the Georgia Public Service Commission (July, 2002).
251. Pennsylvania, PECO Energy Company (Docket No. R-00027391) Gas Procurement and Policy Testimony for the Pennsylvania Office of Consumer Advocate (July, 2002).
252. Georgia, Atlanta Gas Light Company (Docket No. 15527-U) Lost and Unaccounted For Gas Rebuttal Testimony for the Georgia Public Service Commission (August, 2002).
253. Pennsylvania, Philadelphia Gas Works (Docket No. M-00021612) Gas Restructuring Testimony for the Pennsylvania Office of Consumer Advocate (September, 2002).
254. Georgia, EDC Generic Rulemaking (Docket No. 15295-U) Service Quality Standards Testimony for the Georgia Public Service Commission (October, 2002).
255. Georgia, Marketer Generic Rulemaking (Docket No. 15296-U) Service Quality Standards Testimony for the Georgia Public Service Commission (October, 2002).
256. Pennsylvania, Philadelphia Gas Works (Docket No. M-00021612) Gas Restructuring Rebuttal Testimony for the Pennsylvania Office of Consumer Advocate (October, 2002).
257. Pennsylvania, Philadelphia Gas Works (Docket No. M-00021612) Gas Restructuring Surrebuttal Testimony for the Pennsylvania Office of Consumer Advocate (November, 2002).

258. Georgia, EDC Generic Rulemaking (Docket No. 15295-U) Service Quality Standards Rebuttal Testimony for the Georgia Public Service Commission (November, 2002).
259. Georgia, Marketer Generic Rulemaking (Docket No. 15296-U) Service Quality Standards Rebuttal Testimony for the Georgia Public Service Commission (November, 2002).
260. Rhode Island, New England Gas Company (Docket No. 3476) Service Quality Testimony for the Division of Public Utilities (November, 2002).
261. New Jersey, Jersey Central Power and Light Company (Docket No. ER02030173) Recovery of Deferred Remediation Cost Testimony for the New Jersey Division of the Ratepayer Advocate (December, 2002).
262. Rhode Island, New England Gas Company (Docket No. 3476) Service Quality Surrebuttal Testimony for the Division of Public Utilities (February, 2003).
263. Pennsylvania, Philadelphia Gas Works (Docket No. R-00038173) Gas Procurement and Policy Testimony for the Pennsylvania Office of Consumer Advocate (April, 2003).
264. New Jersey, Elizabethtown Gas Company (Docket No. GA02020099) Comments Concerning Affiliate Audit for the New Jersey Division of the Ratepayer Advocate (June, 2003).
265. Maine, Northern Utilities (Docket No. 2002-140) Management Audit and Service Quality Report for the Maine Public Utilities Commission (June, 2003).
266. New Jersey, Public Service Electric & Gas Company (Docket No. GR03050400) Pipeline Refund Allocation Testimony for the New Jersey Division of the Ratepayer Advocate (August, 2003).
267. Ohio, Vectren Energy Delivery of Ohio (Case No. 02-220-GA-GCR) Gas Procurement and Policy Testimony for the Ohio Consumers' Counsel (November, 2003).
268. Delaware, Delmarva Power & Light Company (Docket No. 03-378F) Evaluation of Gas Procurement and Price Hedging Testimony for the Delaware Public Service Commission (February, 2004).
269. Pennsylvania, Philadelphia Gas Works (Docket Nos. R-00049157 and P-00042090) Purchased Gas Cost Testimony for the Pennsylvania Office of Consumer Advocate (May, 2004)
270. Pennsylvania, Philadelphia Gas Works (Docket Nos. R-00049157 and P-00042090) Purchased Gas Cost Rebuttal Testimony for the Pennsylvania Office of Consumer Advocate (May, 2004)
271. Delaware, Chesapeake Utilities Corporation (Docket No. 02-287F) Gas Supply Plan Review for Chesapeake Utilities and the Delaware Public Service Commission (July, 2004).
272. Georgia, Atmos Energy Corporation (Docket No. 18509-U) Procurement and Capacity Plan Testimony for the Georgia Public Service Commission (August, 2004).

273. Georgia, Atlanta Gas Light Company (Docket Nos. 18437-U and 8516-U) Procurement and Capacity Plan Testimony for the Georgia Public Service Commission (August, 2004).
274. New Jersey, NUI Utilities and AGL Resources ( Docket No. GM04070721) Terms and Conditions of Merger Testimony for the New Jersey Ratepayer Advocate (September, 2004).
275. Georgia, Atlanta Gas Light Company (Docket No. 18638-U) Business Risk Testimony for the Georgia Public Service Commission (February, 2005).
276. Pennsylvania, Philadelphia Gas Works (Docket No. R-00050264) Purchase Gas Cost Testimony for the Pennsylvania Office of Consumer Advocate (April, 2005).
277. Federal Energy Regulatory Commission, Exelon and Public Service Enterprise Group (Docket No. EC05-43-000) Market Power Testimony by Affidavits for the New Jersey Division of the Ratepayer Advocate (April and May, 2005).
278. Pennsylvania, PECO Energy Company (Docket No. R-00050537) Gas Procurement and Policy Testimony for the Pennsylvania Office of Consumer Advocate (July, 2005).
279. Georgia, Atmos Energy Corporation (Docket No. 20528-U) Gas Supply Plan Testimony for the Georgia Public Service Commission (August, 2005).
280. New Jersey, Public Service Electric & Gas/Exelon (Docket No. EM05020106) Gas Related Merger Testimony for the New Jersey Ratepayer Advocate (November, 2005).
281. New Jersey, Public Service Electric & Gas/Exelon (Docket No. EM05020106) Gas Related Merger Surrebuttal Testimony for the New Jersey Ratepayer Advocate (December, 2005).
282. New Jersey, Pivotal Utilities Holdings (Docket No. GR05040371) Pipeline Replacement Cost Recovery Testimony for the New Jersey Ratepayer Advocate (February, 2006).
283. New Jersey, Public Service Electric & Gas Company (Docket No. GR05050470) Gas Supply Requirements Testimony for the New Jersey Ratepayer Advocate (May, 2006).
284. New Jersey, Public Service Electric & Gas Company (Docket No. GR05100845) Base Rate Gas Policy Testimony for the New Jersey Ratepayer Advocate (June, 2006).
285. Vermont, Vermont Gas Systems (Docket No. 7109/7160) Report on Gas Price Hedging for Vermont Gas Systems (December, 2006).
286. Delaware, Chesapeake Utilities Corporation (Docket No. 06-287F) Report on Gas Price Hedging for Chesapeake Utilities Corporation (March 2007).
287. Delaware, Chesapeake Utilities Corporation (Docket No. 06-287F) Gas Procurement and Policy Testimony for the Delaware Public Service Commission (March, 2007).

OCA STATEMENT NO. 1-R

5-23-07  
Phila  
TC

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

:  
:  
:  
:  
:

Docket No. R-00061931

REBUTTAL TESTIMONY OF

RICHARD W. LELASH

ON BEHALF OF THE  
OFFICE OF CONSUMER ADVOCATE

DOCUMENT  
FOLDER

MAY 4, 2007

RECEIVED

JUN 28 2007

PUBLIC UTILITY COMMISSION  
REGISTRY BUREAU

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

2 A. My name is Richard W. LeLash and my business address is 18 Seventy Acre Road,  
3 Redding, Connecticut.

4  
5 Q. MR. LELASH, HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS  
6 MATTER?

7 A. Yes, I previously have filed direct testimony which has been designated as OCA  
8 Statement No. 1.

9  
10 Q. WHAT IS THE NATURE OF YOUR REBUTTAL TESTIMONY IN THIS MATTER?

11 A. My rebuttal testimony will address the direct testimonies of the following witnesses:

- 12 – Vincent Parisi on behalf of Interstate Gas Supply (IGS Statement No. 1)
- 13 – Lewis Cohen on behalf of PICGUG et. al. (PICGUG Statement No. 1)
- 14 – Randy Magnani on behalf of Hess Corporation (Hess Statement No. 1)

15  
16 Q. WOULD YOU BEGIN BY DISCUSSING THE DIRECT TESTIMONY OF MR.  
17 PARISI?

18 A. Mr. Parisi's testimony states on page 1 that PGW's filing, "does not consider the lack of  
19 residential competition on its system, nor does it propose concrete steps to promote  
20 competition." He goes on to "propose some programs by which PGW might be able to  
21 bring about the benefits of competition to customers on its system." (Parisi, page 2). In  
22 support of his positions, he discusses several factors that he appears to believe are

1 significant obstacles for Natural Gas Suppliers (“NGS”) that are seeking to serve PGW’s  
2 current customers. The factors that he discusses include:

- 3
- 4 – PGW’s LNG capacity is not assigned to NGS providers;
- 5 – PGW’s billing system is not designed for PGW to bill for suppliers; and
- 6 – PGW’s Supplier Tariff needs to be more NGS-friendly.
- 7

8 Q. DOES MR. PARISI IDENTIFY ANY BENEFITS THAT WILL BE OBTAINED IF  
9 PGW UNDERTAKES HIS VARIOUS NGS-FRIENDLY INITIATIVES?

10 A. Yes, Mr. Parisi states that a competitive market offers many attractive alternatives to  
11 utility based pricing which will tend to reduce PGW exposure “through the reduction of  
12 up front costs associated with being in the gas sales business.”

13           Unfortunately, Mr. Parisi’s required changes would actually add to PGW’s up-  
14 front costs. System changes to allow PGW to bill for suppliers, resources to handle  
15 suppliers’ over or under-deliveries, and the potential for incremental pipeline capacity to  
16 replace assigned LNG would all add to PGW’s costs without any associated revenues  
17 being generated. Additionally, it is unclear even with his changes, whether natural gas  
18 suppliers will actually enter the PGW residential market. As a general matter, non-utility  
19 suppliers have been very slow to enter the residential business, and there is little evidence  
20 that many attractive alternatives have been offered to residential customers.

1 Q. DOES MR. PARISI OFFER ANY OTHER OPTIONS IN ORDER TO STIMULATE  
2 COMPETITION?

3 A. Yes. Mr. Parisi would have PGW overcharge its customers by eliminating gas cost off-  
4 sets derived from off-system sales and capacity releases. While he acknowledges that  
5 PGW customers pay for all capacity related costs, he considers their receiving capacity  
6 related margins as being anti-competitive. In addition, he would have PGW provide  
7 suppliers with any capacity they need (Parisi, page 2), do their customer billings (Parisi,  
8 pages 3-4) and allow suppliers to not follow tariff requirements associated with their  
9 provision of gas supplies (Parisi, page 3). In addition, GCR customers would be  
10 overcharged for their utility supplied gas so that Choice customers (and their suppliers)  
11 would not be required to incur certain costs.

12  
13 Q. ARE THERE ANY OTHER SUGGESTIONS MADE BY MR. PARISI TO MAKE  
14 PGW'S MARKET COMPETITIVE?

15 A. Yes. If Mr. Parisi's other proposed actions fail to provide suppliers with at least 30% of  
16 PGW's customers, then he proposes to have customers randomly assigned to willing  
17 suppliers. Thus, if enough customers do not choose NGS service, Mr. Parisi would have  
18 them assigned to suppliers in order to further customer "choice."

19 In Mr. Parisi's testimony he also suggests that the Dominion East Ohio ("DEO")  
20 model be considered for PGW. As he states, the DEO model involves having the  
21 obligation to provide default service gas supply being auctioned off to suppliers (Parisi,  
22 page 7). While he doesn't provide any specifics concerning this model, I believe that he

1 is discussing Dominion's Standard Service Offer ("SSO") pilot program under which  
2 non-Energy Choice customers receive gas supplies obtained by auction and priced at the  
3 monthly NYMEX settle prices plus a Retail Price Adjustment of \$1.44 per Mcf.  
4

5 Q. DO YOU HAVE ANY CONCERNS WITH THE TWO PROGRAMS THAT MR.  
6 PARISI DISCUSSES?

7 Yes. Neither of the recommended programs is described in sufficient detail to evaluate  
8 the proposals in full. Both programs, however, can present unique issues and risks to  
9 residential customers, or could be inconsistent with Pennsylvania law. By way of  
10 example, under a program such as the Dominion East Ohio program, the non-Energy  
11 choice customers do not appear to benefit from any storage or gas price hedging  
12 activities. Rather, they are billed the monthly NYMEX closing price plus a markup. As  
13 a result, non-Energy choice customers do not appear to be receiving least cost gas  
14 supplies as required by Pennsylvania law, and I do not recommend the adoption of such a  
15 scheme for PGW regardless of any achieved level of "meaningful" competition.

16 Mr. Parisi's recommended market share proposal could also present numerous  
17 consumer protection issues, such as the method of assigning customers to suppliers,  
18 whether customers must opt-in or opt-out of the program, the method of including CRP  
19 or other discount customers, and ensuring that no customer is harmed by paying rates  
20 higher than PGW's rates.  
21

1 Q. WHAT IS YOUR RECOMMENDATION CONCERNING MR. PARISI'S VARIOUS  
2 PROPOSALS?

3 A. If the Commission finds the matters raised by suppliers to be valid, then provisions can  
4 be made for a separate supplier tariff review. The issues raised by Mr. Parisi and other  
5 supplier witnesses such as the assignment of LNG capacity, modifications to nomination  
6 and balancing provisions, changes to billing and customer related data exchange, and  
7 changes to transportation rates are complex in nature, and insufficient information has  
8 been developed on the impact, costs, and benefits to resolve these issues in this  
9 proceeding.

10  
11 Q. TURNING TO MR. COHEN'S TESTIMONY, WOULD YOU SUMMARIZE HIS  
12 MAJOR RECOMMENDATIONS?

13 A. In order to address his clients' situation, Mr. Cohen wants PGW's interruptible  
14 transportation ("IT") rates to be "cost-based." However, as Mr. Cohen acknowledges, the  
15 Commission authorized margin-based rather than cost-based rates in PGW's restructuring  
16 proceeding. If cost-based IT rates were to be adopted as Mr. Cohen proposes, either  
17 PGW's margins would be reduced or costs would be shifted to other customers.

18 Mr. Cohen further acknowledges that his client and PGW negotiated multi-year  
19 IT rates which have allowed the successful implementation of an economic transportation  
20 program by his client. Accordingly, it is unclear why such negotiated rates cannot be  
21 utilized prospectively and why they will not result in rates that are reasonable for PGW as  
22 well as for Mr. Cohen's clients.

1 Q. DID YOU ALSO REVIEW THE TESTIMONY OF ROGER MAGNANI ON BEHALF  
2 OF HESS CORPORATION, AND DO YOU HAVE ANY COMMENTS  
3 CONCERNING HIS RECOMMENDATIONS?

4 A. Based on my review of Mr. Magnani's testimony, he addresses two factors that he  
5 believes are hindering the development of a competitive retail gas market in PGW's  
6 service territory. The first factor involves PGW's operational rules for Natural Gas  
7 Suppliers such as Hess and the second relates to PGW's electronic data transfer  
8 capabilities.

9  
10 Q. WHAT TYPES OF OPERATIONAL RULES DOES MR. MAGNANI BELIEVE ARE  
11 AT ISSUE?

12 A. He cites PGW's nomination procedures, its balancing and cash out requirements and  
13 what he refers to as mitigation tools. For nominations, Mr. Magnani would like to extend  
14 PGW's 12:00 p.m. deadline to at least 2:00 p.m. and have PGW accept retroactive  
15 nominations.

16  
17 Q. HAS PGW RESPONDED TO THESE TWO PROPOSED NOMINATION CHANGES?

18 A. Yes, in its responses to Data Requests Hess I-7 and I-10, the Company has stated the  
19 following:

- 20  
21 - PGW adheres to the NAESB nomination cycles. Nomination changes made  
22 during these cycle times will be accepted by PGW as long as it does not affect the  
23 integrity of the system.

1           –       In general, PGW does not accept retroactive nominations but will consider such  
2                    nominations on a case-by-case basis.

3  
4                    While it is understandable that NGSs want as much flexibility in their  
5                    nominations as possible, it is also reasonable for PGW to enforce operational  
6                    requirements subject to limited exceptions.

7  
8   Q.    WHAT ARE MR. MAGNANI'S CONCERNS WITH PGW'S BALANCING  
9            PROCEDURES AND ASSOCIATED CASH OUT RULES?

10  A.    Mr. Magnani wants to eliminate daily balancing, have cash out charges market based, and  
11           be allowed to trade imbalances with other suppliers. While such changes would provide  
12           suppliers with greater flexibility, they would limit PGW's ability to "police" its system  
13           and avoid costs associated with supplier non-compliance. In effect, while PGW must  
14           meet customers' demand requirements, Mr. Magnani wants to allow suppliers to have  
15           delivery latitude. Unfortunately, such latitude comes with a price, and that price would  
16           have to be paid by incumbent ratepayers. For example, if suppliers over or under-deliver  
17           their customer requirements, PGW must change its system's gas use in order to properly  
18           match supply and demand. Such changes may force PGW to utilize LNG that was to be  
19           retained in storage, or they may cause PGW itself to incur pipeline imposed penalties.

1 Q. DID PGW ADDRESS ISSUES CONCERNING SUPPLIERS' ABILITY TO TRADE  
2 IMBALANCES TO AVOID PENALTIES AND CASH OUTS?

3 A. The Company, in its Response to Hess-I-9, stated that in its initial restructuring filing it  
4 had decided to not allow imbalance trading due to the additional level of complexity  
5 involved.

6  
7 Q. SHOULD PGW BE REQUIRED TO FACILITATE SUCH IMBALANCE TRADING?

8 A. Third party suppliers frequently propose such trading based on a "no harm no foul"  
9 concept. As stated by Mr. Magnani, "permitting imbalance trading will have no net  
10 impact on PGW's systems . . ." (Magnani, page 7). However, while reasonable in theory,  
11 such imbalance trades often can result in administrative problems. Over-deliveries may  
12 not be properly matched with under-deliveries and there can be disputes between  
13 suppliers concerning trading status. If PGW accommodates imbalance trading, it also  
14 must be given the right to terminate such trading if suppliers fail to properly coordinate  
15 and document such offsets.

16  
17 Q. COULD YOU NOW DISCUSS MR. MAGNANI'S ISSUES CONCERNING  
18 ELECTRONIC DATA EXCHANGES?

19 A. Mr. Magnani states that the primary problem relates to how suppliers obtain customer  
20 information and process customer enrollments. This contention is based on his position  
21 that PGW does not have an automated Electronic Data Interchange ("EDI") system.

1 In its response to Hess-I-11, PGW has stated that it, “uses a hybrid version of the  
2 Electronic Data Interchange (EDI) platform and Extensible Markup Language to handle  
3 enrollments, drops, changes, etc.” PGW goes on to state that the Commission, in a final  
4 Secretarial Letter in Docket No. M-00991249, specified that “Electronic data interchange  
5 (EDI) need not be used to transmit data between the natural gas distribution company  
6 (NGDC) and the natural gas supplier (NGS).” Accordingly, it is unclear whether or not  
7 PGW has an EDI system, and it does not appear that such a system is required. On this  
8 basis, the only reasonable recommendation is for the Commission to require PGW and  
9 interested suppliers to try to work out an acceptable and economical process to try to  
10 address suppliers’ concerns. However, it must be remembered that system changes will  
11 increase either PGW’s or other ratepayers’ cost and therefore should not be pursued  
12 without demonstrated net benefits.

13  
14 Q. AT THE END OF MR. MAGNANI’S TESTIMONY HE ADDRESSES WHAT HE  
15 REFERS TO AS POLICY JUSTIFICATIONS. WOULD YOU COMMENT ON THAT  
16 TESTIMONY?

17 A. Mr. Magnani states that competition fostered by suppliers will help both customers and  
18 PGW. Customers “will have greater opportunities to pursue savings in their gas supply  
19 needs” and “PGW’s obligations with regards to commodity procurement and supply are  
20 relieved . . .” (Magnani, page 9)

21 As a general matter, there is an assumption that customers desire choice and that  
22 their gas costs will be lower with the availability of third party suppliers. While this has

1        been true for certain commercial and industrial customers, it does not appear to be the  
2        case for residential customers.  Additionally, incumbent natural gas utilities retain  
3        Supplier of Last Resort (“SOLR”) requirements and are typically burdened with  
4        additional costs that effectively subsidize supplier operations.

5                In the testimonies that I have addressed here, both direct and indirect subsidies  
6        have been requested by suppliers.  However, there have been no commitments  
7        concerning service to residential customers despite the fact that they will end up paying  
8        for such subsidies.  It is doubtful that suppliers will serve CRP, Senior Citizen, or  
9        customers with poor payment histories.  However, it is certain that such customers will be  
10       impacted by the loss of margin credits and the costs associated with imbalances, systems  
11       changes, reductions in transportation rates, and billing for suppliers.

12               Commission rules and PGW’s practices appear to allow suppliers to provide gas  
13       supply in PGW’s territory since they have already entered the market.  At this point, their  
14       successful operation should be predicated on their operating efficiency and skill and not  
15       on artificial subsidies extracted from customers who already are burdened with current  
16       gas costs.

17               To some degree, the very fact that suppliers are seeking to enter the PGW market,  
18       rather than numerous other markets where Choice is not yet available for residential  
19       customers, highlights an apparent dichotomy.  Other jurisdictions have offered substantial  
20       incentives to suppliers but have not seen numerous suppliers entering the residential  
21       market.  While here in PGW’s service area, with a high percentage of low income  
22       customers, suppliers are pursuing entry.  Perhaps this situation is the result of PGW’s

1 high rates which reflect various social costs which makes suppliers' profit potential  
2 higher in PGW's market than in other markets. Unfortunately, this is an improper  
3 foundation on which to build a competitive market, particularly if such entry will only be  
4 achieved by adding yet more costs to PGW's service rates.

5

6 Q. MR. LELASH, DOES THAT COMPLETE YOUR REBUTTAL TESTIMONY?

7 A. Yes, it does.

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5-23-07  
Phila  
TC

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :

v. :

Philadelphia Gas Works :

Docket No. R-00061931

SURREBUTTAL TESTIMONY OF

RICHARD W. LELASH

ON BEHALF OF THE  
OFFICE OF CONSUMER ADVOCATE

DOCUMENT  
FOLDER

MAY 15, 2007

RECEIVED

JUN 22 2007

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE  
2 RECORD.

3 A. My name is Richard W. LeLash, and my business address is 18 Seventy Acre  
4 Road, Redding, Connecticut.

5  
6 Q. MR. LELASH, HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS  
7 MATTER?

8 A. Yes. I previously have filed direct and rebuttal testimony which has been  
9 designated as OCA Statements No. 1 and 1R.

10  
11 Q. WHAT IS THE NATURE OF YOUR SURREBUTTAL TESTIMONY IN THIS  
12 MATTER?

13 A. My surrebuttal testimony will address the rebuttal testimonies of the following  
14 PGW witnesses: Joyce Wilkerson (Statement 9); Rob Dubow (Statement 10);  
15 Craig White (Statement 5R); Barbara Bisgaier (Statement 3R); and Steve Hershey  
16 (Statement 1R).

17  
18 Q. WOULD YOU BEGIN BY DISCUSSING THE REBUTTAL TESTIMONY OF  
19 MS. WILKERSON?

20 A. Ms. Wilkerson states in her testimony that she has been employed by the City for  
21 15 years (page 1); the City has no ability to provide the resources needed by PGW

1 without eroding the provision of fundamental City services (page 4); and with  
2 respect to the impact of the rate increase on PGW's low-income customers, the  
3 first obligation is to ensure that PGW remains financially viable (page 7).

4 Ms. Wilkerson places her primary emphasis on the City's rather than PGW  
5 ratepayers' economics. However, in evaluating PGW's rates, the Commission  
6 must balance the interests of both PGW and its ratepayers. Ms. Wilkerson cites  
7 the fact that the City has contributed \$72 million to PGW to date and "can not  
8 afford to continue to make such extensive contributions to this one City asset"  
9 (page 6). Her testimony, however, is silent on the impact on ratepayers of the  
10 \$660 million that PGW is seeking over the next six years.

11  
12 Q. ON PAGE 4 OF MS. WILKERSON'S TESTIMONY SHE STATES THAT SHE  
13 IS RESPONDING TO "THOSE PARTIES THAT ADVOCATE THAT THE  
14 CITY PROVIDE THE RESOURCES TO MEET PGW'S NEEDS RATHER  
15 THAN THROUGH THE PROPOSED RATE INCREASE." DO YOU HAVE  
16 ANY COMMENT ON HER STATEMENT?

17 A. Yes. Her comment appears to mischaracterize my testimony. No party, to my  
18 knowledge, has advocated that the City alone must meet all of PGW's needs.  
19 What is suggested is that the City grant back PGW's repayment of the City loan.  
20 Since the City loan is currently outstanding, such an investment of equity in PGW

1 would not place any additional financial burden on the City and would provide  
2 additional working capital for PGW.

3  
4 Q. WHAT REASONS WOULD JUSTIFY HAVING THE CITY EFFECTIVELY  
5 GRANT BACK PGW'S REPAYMENT OF THE CITY LOAN?

6 A. While the City was given credit for addressing capital requirements with the loan  
7 it made in 2000, it seems paradoxical that, in the face of continued working capital  
8 concerns, it is now withdrawing \$45 million from PGW. It also seems illogical for  
9 Ms. Wilkerson to claim that the City's provision of capital to PGW would erode  
10 the City's ability to provide fundamental services. To PGW's customers,  
11 affordable natural gas service for winter heating is also a fundamental and  
12 essential service.

13  
14 Q. ON PAGE 7 OF HER TESTIMONY, MS. WILKERSON STATES, "WE  
15 CANNOT AFFORD TO USE THE INCREASED BURDEN OF THE RATE  
16 INCREASE AS AN EXCUSE THAT PREVENTS US FROM FIXING PGW."  
17 IS THAT YOUR POSITION?

18 A. No, it is not. The City may seek to have ratepayers finance all of PGW's capital  
19 requirements, but the Commission has to consider its mandate to determine just  
20 and reasonable rates. For PGW and the City to believe that ratepayers can be  
21 required to pay for any capital deficiency regardless of the relative level of such

1 rates and their adverse effect on customers goes against the just and reasonable  
2 standard and other regulatory practices. For example, in a case before the  
3 Washington Metropolitan Area Transit Commission, it was determined that a  
4 requested fare increase by the D.C. Transit system was unjust and unreasonable.  
5 As a result, the Transit Commission required new capital for debt repayment as a  
6 condition precedent to any increase in rates. The Transit Commission also stated  
7 on reconsideration "that additional funds, not increased fares alone, were required  
8 to remedy this situation." D.C. Transit System, Inc. v. Washington Metropolitan  
9 Transit Commission, 466 F. 2d 394, 402-403 (D.C. Cir. 1972).

10  
11 Q. ON PAGE 8 OF MS. WILKERSON'S TESTIMONY SHE MADE AN  
12 ADDITIONAL COMMENT CONCERNING RATE SETTING FOR PGW. DO  
13 YOU BELIEVE THAT HER COMMENT IS VALID?

14 A. Ms. Wilkerson states City budget and spending authority is a very important City  
15 function and should be performed without interference from parties or bodies that  
16 have no expertise or broad responsibility for protecting the public interest of the  
17 City and its citizens. However, my testimony does not suggest that the  
18 Commission mandate any specific actions by the City. Rather, it is recommended  
19 that the requested rate increase be limited and that the City consider possible  
20 actions that it might take to assist in addressing PGW's financial condition. This

1 is an appropriate recommendation given the fact that the City's citizens and  
2 PGW's ratepayers are one in the same.

3  
4 Q. WOULD YOU NOW DISCUSS THE REBUTTAL TESTIMONY OF ROB  
5 DUBOW?

6 A. Mr. Dubow is the Executive Director of the Pennsylvania Intergovernment  
7 Cooperation Authority ("PICA"). He states that PICA has identified PGW "as one  
8 of the most significant risks to the City budget." (Page 3) He goes on to state, in  
9 effect, that the City does not have the financial resources to fund PGW, it still  
10 must make further cuts to almost every City department for FY 2008, and there are  
11 already complaints about public safety and the City's health centers.

12 In my testimony, I have recommended a rate increase that would allow  
13 PGW to repay its loan from the City in two years as the City has required. I also  
14 do not require any current actions concerning the City's \$18 million payment  
15 which Mr. Dubow acknowledges are not included in the City's five year plan in  
16 any event.

17  
18 Q. TURNING TO MR. WHITE'S REBUTTAL TESTIMONY, WHAT ISSUES  
19 DOES HE RAISE CONCERNING YOUR TESTIMONY?

20 A. There only appears to be one issue in contention. Mr. White states that I "unfairly  
21 characterized PGW's actions as imprudent . . ." (Page 29). In point of fact, my

1 direct testimony does not state directly or indirectly that PGW's actions were  
2 imprudent. Additionally, my discovery response to PGW-II-27 stated, "No  
3 judgment was made concerning whether the Company's management of its gas  
4 supply resources was imprudent." I did, however, detail the delays in the LNG  
5 expander project, its ultimately lower than planned capacity, and the delay in  
6 initiating its Phase 2 liquefaction project, all of which were confirmed by Mr.  
7 White. My ultimate conclusion concerning these issues was that, "while most of  
8 these problem areas were to some degree affected by external factors, it should be  
9 realized that ratepayers still have not received lowest reasonable costs for their  
10 essential gas service." (OCA Statement 1, page 21)

11  
12 Q. IN MS. BISGAIER'S REBUTTAL TESTIMONY SHE POSITS A NUMBER OF  
13 DIRE RESULTS IF YOUR RATE INCREASE RECOMMENDATION IS  
14 ACCEPTED BY THE COMMISSION. ARE HER OBSERVATIONS AND  
15 CONCLUSIONS REASONABLE?

16 A. By her own admission, Ms. Bisgaier is not familiar with the details of the  
17 regulatory evaluation of rates (page 12). Nonetheless, she raises a number of  
18 issues that she believes should be factored into PGW's rates. There is the on-  
19 going threat of PGW's bonds being downgraded to below investment grade (page  
20 3), the potential for a devastating hurricane (page 6), international energy trends  
21 (page 10), and the inevitable financial disaster (page 16).

1           Based upon such considerations, she claims OTS and OCA have taken two  
2 positions. The first was that no increase is warranted if the Company will meet  
3 minimum coverage requirements. This is clearly incorrect because rate increases  
4 are proposed by both OTS and OCA. The second was that PGW's debt ratio is not  
5 an issue because it is outside the test year or should be resolved by contributions  
6 from the City. Again, this is a mis-statement of the testimony. I believe that PGW  
7 does have excessive debt and that it should be addressed over time by debt  
8 reduction and by additional equity contributions by the City. However, it is a  
9 problem that cannot be realistically solved in five or six years, and it should not be  
10 resolved solely through increased rates. Given the lack of equity capital, the City  
11 should retain earnings in PGW as equity, and it should consider converting its  
12 short-term loan into a permanent equity contribution. It should be understood that  
13 the payback of the City loan and the resumption of the City payments of \$18  
14 million would be detrimental to a long-term debt initiative. In the end analysis,  
15 given PGW's long-term financial difficulties, ratepayers cannot be asked to  
16 provide incremental earnings and cash flow if such funds are only going to be  
17 removed from PGW by the City.

18  
19 Q. MS. BISGAIER, ON PAGE 3 OF HER TESTIMONY, GOES ON TO ADDRESS  
20 ERRORS THAT SHE BELIEVES THE PARTIES HAVE MADE. WOULD  
21 YOU COMMENT ON THIS PART OF HER TESTIMONY?

1 A. The first error she identifies appears to be a claim that the parties failed to analyze  
2 PGW's cash and liquidity needs. I would first point out that Mr. Bleiweis  
3 developed an analysis of year-end cash under the OCA rate recommendation and  
4 determined that PGW would have \$50 million, a level that is higher than PGW has  
5 maintained in the past. Second, Ms. Bisgaier makes numerous references to the  
6 lack of internal generation of cash. On Schedule 2 of my direct testimony I show  
7 funds from operations that are determined by adding depreciation to PGW's net  
8 income by year. As shown on this schedule, while the levels were low between  
9 1998 and 2002, they have improved during the past four years. On average, the  
10 funds from operations have been about \$53 million per year.

11  
12 Q. DOESN'T MS. BISGAIER, AT PAGE 8 OF HER TESTIMONY,  
13 CHARACTERIZE DEPRECIATION AS PAPER FUNDS FROM AN  
14 ACCOUNTING CONVENTION THAT CANNOT BE USED BY A CASH  
15 FLOW UTILITY TO PAY OPENING EXPENSES?

16 A. Yes, she does, but this is incorrect. The "paper funds" from depreciation are  
17 fungible cash that can be used to reduce long-term debt, and in the past, to make  
18 the City payment. At the current time, such funds, that are provided by ratepayers,  
19 can go to reduce about \$37 million of long-term debt each year. So, in addition to  
20 providing revenues, such funds can be used to make required payments to lower  
21 the outstanding level of long-term debt. It also should be noted that over the next

1 two or three years cash working capital will be adequate but lower than it could  
2 be. This, however, would be directly traceable to the City's decision to call its  
3 short-term loan in 2008. Were the City to delay the repayment of the loan or to  
4 grant back the repayment as an equity contribution to PGW, there would be a  
5 substantial improvement in working capital levels.

6  
7 Q. ON PAGE 5 AND 6 MS. BISGAIER DISCUSSES THE IMPORTANCE OF  
8 CASH AND SAYS, "ALTHOUGH PGW APPEARS TO HAVE BEEN ABLE  
9 TO MEET THIS BASIC STANDARD IN ITS PRESENTATION OF THE  
10 NUMBERS, THE FACT OF THE MATTER IS THAT IT HAS DONE SO NOT  
11 BY RAISING CASH FROM OPERATIONS, BUT RATHER BY BORROWING  
12 BOTH FROM ITS OWNER, THE CITY OF PHILADELPHIA, AND  
13 THROUGH THE USE OF ITS TAX-EXEMPT COMMERCIAL PAPER  
14 PROGRAM." IS THIS TRUE?

15 A. While it has been true in the past, it certainly is not true in 2008. Rather than  
16 borrowing from the City, PGW, as mentioned before, will be required to repay its  
17 City loan. Accordingly, the data shown on the top of page 7 of Ms. Bisgaier's  
18 testimony is misleading. In 2008, PGW is forecasted to have \$50 million of cash  
19 with \$145 million outstanding on its commercial paper. However, if the City loan  
20 repayment is eliminated or deferred, the commercial paper balance would be at  
21 \$100 million. Therefore, in 2008, PGW is being required to repay \$45 million and

1 the cash crisis claimed by Ms. Bisgaier is being exacerbated by the City itself.  
2 With the \$45 million in hand, PGW would be able to respond to unforeseen  
3 working capital requirements.  
4

5 Q. ON PAGE 8, MS. BISGAIER APPEARS TO CONTEND THAT YOU  
6 CHALLENGED HER LIQUIDITY STANDARD. DO YOU HAVE ANY  
7 COMMENT?

8 A. Yes. While I did not challenge her standard in my direct testimony, I will  
9 comment on it now. Her standard of at least 200 days of cash expenses is  
10 certainly questionable. The sample of utilities shown in her Exhibit BB-3 is not  
11 comparable to PGW and the numbers are suspect. While a year's worth of  
12 liquidity may be necessary for some utilities, data indicating between 1,000 and  
13 100,000 days of liquidity should raise some red flags when one uses such data to  
14 derive a standard. This is particularly true given the universal standard used in  
15 utility regulation of a 45 day allowance for cash working capital.  
16

17 Q. ON PAGE 10, MS. BISGAIER STATES THAT "WITH ONLY \$25 MILLION  
18 OF BASE RATE RELIEF, THE RATING AGENCIES, BOND ANALYSTS  
19 AND INSURERS HAVE INDICATED TO ME THAT THEY WILL  
20 IMMEDIATELY RE-EVALUATE PGW'S CREDIT. THEY ARE WAITING  
21 FOR THIS DECISION." DO YOU AGREE?

1 A. It is obviously hard to assess what is being told to Ms. Bisgaier, but apparently the  
2 lenders are not waiting for the decision in this case given the incremental \$200  
3 million plus long-term debt being obtained by PGW currently.

4  
5 Q. MS. BISGAIER DISCUSSES DISINVESTMENT IN PGW'S CAPITAL PLANT  
6 (PAGE 11), SUBSIDIES OF UTILITY RATES (PAGE 14), AND  
7 MANAGEMENT DYSFUNCTION (PAGE 15). CAN YOU TIE THESE  
8 ISSUES TOGETHER?

9 A. I will try. Before PGW enters a "downward spiral of disinvestment in its capital  
10 plant", it is anticipated that PGW can and will file for additional rate relief. A  
11 future filing in about two or three years was implicitly assumed in the  
12 development of my recommended rate level since such filings are how rates are  
13 adjusted rather than being based on speculative future assumptions and forecasts.  
14 PGW's financial difficulties did not arise overnight and they should be addressed  
15 over time through a series of filings.

16 As to the City's subsidizing of PGW's rates, this is an inaccurate  
17 characterization of the relationship between PGW and the City. For the majority  
18 of past years, PGW has made the \$18 million annual payments to the City  
19 regardless of PGW's financial condition at the time. It is my belief that most  
20 financial people would be incredulous to hear that PGW's owner was routinely

1 taking dividends from PGW in periods when PGW's financial condition was  
2 deteriorating.

3 In response to this latter point, Ms. Bisgaier, at page 14 of her testimony,  
4 states, ". . . while it is easy to make the suggestion that PGW's retention of \$198  
5 million would have materially improved its financial position, the suggestion is  
6 uninformed because it totally ignores the realities of the relative financial position  
7 of the City and PGW during this time period."

8 However, as Ms. Bisgaier notes on page 15, this was a period of  
9 management dysfunction and the flawed implementation of a billing and  
10 collection system. Problems that were the responsibility of the City ended up  
11 being paid for by ratepayers. In the end analysis, it is the financial condition of  
12 PGW and its ratepayers, their ability to pay, and what constitutes just and  
13 reasonable rates that should control.

14  
15 Q. TURNING NOW TO MR. HERSHEY'S REBUTTAL TESTIMONY, WOULD  
16 YOU COMMENT ON HIS BELIEF THAT THE PARTIES HAVE FAILED TO  
17 UNDERSTAND THE FRAGILITY OF PGW'S SITUATION?

18 A. Mr. Hershey begins by stating that there has been broad public understanding of  
19 PGW's lack of cash flow/internal generation for years. He fails to note that there  
20 is also broad public understanding that PGW's prior management problems  
21 contributed directly to the "permanently financial troubled status" of the

1 Company. The blame for the past mismanagement clearly does not rest with  
2 PGW's ratepayers.

3 At this time, PGW wants to solve its accumulated financial deficiencies  
4 within five to six years with ratepayers to be charged an incremental \$660 million  
5 through rates. The Company's premise that many years of financial and  
6 management deficiencies should be remedied in such a short time frame is  
7 unreasonable. A target of achieving a 50% debt ratio in this same time frame is  
8 equally unreasonable. As stated by the Commission in its Opinion and Order in  
9 Docket No. R-00006042,

10  
11 . . . we urge the City of Philadelphia, as owner of PGW, to  
12 continue to take measures to insure the financial health of  
13 PGW. It is the expectation of this Commission that the City  
14 of Philadelphia, as owner of PGW, continue to assist PGW in  
15 its cash flow requirements so that a financial crisis does not  
16 take place. (Opinion and Order, page 34)

17  
18  
19 As noted in my direct testimony, even Mr. Krellenstein, the Company's  
20 financial policy witness, acknowledged that, "As a general rule . . . it is not  
21 uncommon for municipalities to reduce, defer, or grant back the payments if the  
22 utility is incurring financial distress." (Krellenstein Response to OCA-I-34). Thus,  
23 while the Commission is foreclosed from requiring grant backs of either loan  
24 repayments or the \$18 million City payments, one would at least expect PGW to  
25 acknowledge that such grant backs are an option that should be considered.

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Q. MR. HERSHEY ALSO CLAIMS THAT YOU ASSUME THAT "AFFORDABILITY IS THE ONLY FACTOR OR THE MOST IMPORTANT FACTOR IN DETERMINING WHETHER OR NOT TO GRANT A RATE INCREASE." IS THIS CORRECT?

A. I do not believe that I have ever said that affordability was the only or most important factor. It is my opinion, however, that under the Commission's just and reasonable determination affordability is one of the determinants. Unfortunately, this is a factor that the Company fails to meaningfully address in its filing.

Q. MR. HERSHEY TAKES EXCEPTION TO LIMITING THE RATE SETTING PROCESS TO TEST YEAR DATA RATHER THAN FACTORING IN PGW'S FIVE YEAR FORECAST. WHAT IS YOUR RESPONSE TO HIS POSITION?

A. It is my understanding that the established regulatory practice in Pennsylvania has been to make rate determinations based on test year data. Once one departs from such a standard, there are serious issues as to what is or is not known and measurable. Requiring ratepayers to pay higher rates now for revenue requirements that might be justified in two or three years is not an accepted rate setting procedure, nor is it prudent. As stated previously, the Company has the ability to file another rate request anytime in the future when events and changes become known and measurable.

1           As to my recognition of the revenue requirements associated with the 2008  
2 repayment of the City loan, PGW itself has validated the certainty of this  
3 requirement and the Commission has no authority to affect the repayment timing.  
4 As to Mr. Bogdonavage's forecasts, his rate setting data is not known and  
5 measurable as stated by Mr. Hershey. The parties cannot agree on such material  
6 factors as PGW's collection rate, the future costs of gas, and a host of rate setting  
7 factors that are controlled by exogenous events. No one is taking the position that  
8 financial problems should be ignored as Mr. Hershey states, but rather they should  
9 be addressed when adequate quantification is possible. While most parties do not  
10 want to see frequent rate filings, under circumstances such as those forecasted by  
11 the Company, they most likely will be necessary.

12  
13 Q. IN MR. HERSHEY'S REBUTTAL TESTIMONY AT PAGES 10-13 HE  
14 DISCUSSES YOUR OPPOSITION TO PGW'S RETENTION OF CAPACITY  
15 RELATED MARGINS. DO YOU HAVE ANY COMMENTS CONCERNING  
16 THIS MATTER?

17 A. Yes. First, Mr. Hershey asserts that least cost fuel procurement policy is unrelated  
18 to the ratemaking treatment of any savings. In my opinion, OTS witness Mr.  
19 Yocca is correct that the diversion of capacity related credits from a determination  
20 of the Company's GCR does violate the least cost fuel procurement standard. It is  
21 also appropriate to note that there is a material difference between the practice of

1 providing a utility a small percentage of margins as an incentive and the outright  
2 reclassification of such credits as non-GCR related.

3  
4 Q. MR. HERSHEY ALSO TAKES ISSUE WITH YOUR STATEMENT THAT  
5 PGW HAS THE HIGHEST GAS RATES IN THE STATE. WHAT IS YOUR  
6 ASSESSMENT OF HIS EXHIBIT SPH-2 DATA?

7 A. Mr. Hershey's comments and exhibit concerning the GCR rate are mis-directed.  
8 When I stated in my direct testimony that PGW's rates were the highest in  
9 Pennsylvania, I was referring to its overall rates and not just the GCR component.

10  
11 Q. MR. HERSHEY ALSO CHARACTERIZES YOUR ASSESSMENT OF  
12 WHETHER IT IS CHEAPER FOR RATEPAYERS TO FOREGO MARGIN  
13 CREDITS RATHER THAN PAY FOR INCREASED DEBT AS BEING  
14 FLAWED. IS HE CORRECT?

15 A. Rather than relying on Mr. Hershey's Exhibit SPH-3, which is not adequately  
16 described or explained, my conclusions are based on empirical evidence. When  
17 faced with financing decisions, utilities and other privately owned companies seek  
18 to use debt financing because it is cheaper than equity. Indeed, the very rationale  
19 for financial leverage is predicated on this fact. If Mr. Hershey was correct,  
20 utilities would eliminate all of their debt and replace it with cheaper equity capital.  
21 However, the reality is that equity supplied by a utility has a higher cost than debt

1 in economic terms. Furthermore, in an analysis where utility equity with a cost of  
2 about 10% is replaced with ratepayer equity at a cost above 15%, the cost  
3 differential between debt and equity is even greater. Accordingly, until the  
4 financial community changes its capitalization strategy, I recommend that Mr.  
5 Hershey's conclusions on this point be given limited weight.

6  
7 Q. MR. LELASH, DOES THIS CONCLUDE YOUR SURREBUTTAL  
8 TESTIMONY IN THIS PROCEEDING?

9 A. Yes, it does.

10  
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5-23-07

Phila  
TC

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

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:  
:  
:  
:

Docket No. R-00061931

DIRECT TESTIMONY OF

ROGER D COLTON

DOCUMENT  
FOLDER

ON BEHALF OF  
OFFICE OF CONSUMER ADVOCATE

APRIL 6, 2007

RECEIVED

JUN 23 2007

UTILITY COMMISSION  
SECRETARY'S BUREAU

1 Q. PLEASE STATE YOUR NAME AND ADDRESS.

2 A. My name is Roger Colton. My address is 34 Warwick Road, Belmont, MA 02478.

3

4 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

5 A. I am a principal in the firm of Fisher Sheehan & Colton, Public Finance and General  
6 Economics of Belmont, Massachusetts. In that capacity, I provide technical assistance to a  
7 variety of federal and state agencies, consumer organizations and public utilities on rate and  
8 customer service issues involving telephone, water/sewer, natural gas and electric utilities.

9

10 Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?

11 A. I am testifying on behalf of the Pennsylvania Office of Consumer Advocate (OCA).

12

13 Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.

14 A. I work primarily on low-income utility issues. This involves regulatory work on rate and  
15 customer service issues, as well as research into low-income usage, payment patterns, and  
16 programs. At present, I am working on various projects in the states of New Jersey,  
17 Pennsylvania, Maryland, Indiana, Michigan, Iowa, Arkansas, New Mexico, and Oregon.  
18 My clients include state agencies (e.g., Pennsylvania Office of Consumer Advocate, Iowa  
19 Department of Human Rights), federal agencies (e.g., the U.S. Department of Health and  
20 Human Services), community-based organizations (e.g., Community Action of New  
21 Mexico, Coalition to Keep Indiana Warm), and private utilities (e.g., Entergy Services,  
22 Detroit Water and Sewer Department, NIPSCO, Citizens Gas and Coke Utility, Vectren  
23 Energy). In addition to state- and utility-specific work, I engage in national work in the

1 United States and Canada as well. I am working on a national study of the responses of  
2 water utilities to the payment troubles of residential customers for the American Water  
3 Works Association Research Foundation. I am also part of a team that is performing a multi-  
4 sponsor national study of low-income energy assistance programs.

5  
6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

7 A. After receiving my undergraduate degree from Iowa State University (1975), I obtained  
8 further training in both law and economics. I received my law degree from the University of  
9 Florida in 1981. I received my Masters Degree (economics) from the McGregor School  
10 (Antioch University) in 1993.

11  
12 **Q. HAVE YOU EVER PUBLISHED ON PUBLIC UTILITY REGULATORY  
13 ISSUES?**

14 A. Yes. I have published more than 80 articles in scholarly and trade journals, primarily on  
15 low-income utility and housing issues. I have published an equal number of technical  
16 reports for various clients on energy, water, telecommunications and other associated low-  
17 income utility issues.

18  
19 **Q. HAVE YOU EVER TESTIFIED BEFORE THIS OR OTHER UTILITY  
20 COMMISSIONS?**

21 A. Yes. I have previously testified before the Pennsylvania Public Utility Commission (PUC)  
22 on numerous occasions regarding low-income energy, water and telecommunications  
23 program and cost recovery issues. I have also testified in regulatory proceedings in more

1 than 30 states and various Canadian provinces on a wide range of low-income utility issues.

2 A copy of my curriculum vitae is attached as Appendix A.

3  
4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

5 A. The purpose of my testimony today is to assess the Philadelphia Gas Works (PGW or  
6 Company) Customer Responsibility Program (CRP) to determine whether the CRP cost  
7 recovery requested by PGW is appropriate. I examine two issues in this respect. First, I  
8 examine whether PGW is capturing only the incremental costs of CRP. Second, I  
9 examine whether PGW is accurately projecting costs on a going-forward basis.

10 In addition to these CRP issues, my testimony examines whether there are other  
11 initiatives the Company can take to further reduce the costs of nonpayment.

12 **Part 1. Universal Service Surcharge.**

13 **Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?**

14 A. In this section of my testimony, I assess whether PGW should be required to include  
15 additional information as part of its reconciliation of CRP costs through its universal  
16 service surcharge in its Section 1307(f) proceedings. While I recommend no dollar  
17 adjustments in CRP recovery in this base rate case, I recommend that the Company be  
18 required to include specified additional information as part of its universal service  
19 surcharge reconciliation in the Section 1307(f) proceedings to ensure that PGW recovers  
20 only incremental CRP costs as well as to ensure that the Company's cost projections are  
21 as accurate as possible.

1 **Q. PLEASE EXPLAIN THE UNIVERSAL SERVICE SURCHARGE?**

2 A. PGW collects its universal service costs through a reconcilable surcharge. The Company  
3 projects its universal service costs based on historic participation rates in the various  
4 programs. On a monthly basis, however, it determines its actual universal service costs.  
5 For CRP, those actual costs include the CRP credits granted for current bills along with  
6 the arrearage forgiveness credits granted. The actual CRP costs are reconciled to the past  
7 collections and the surcharge is adjusted up or down for under- or over-collections  
8 respectively at the time of its Section 1307(f) proceedings.

9  
10 **Q. WHAT CRP COST RECOVERY IS PGW SEEKING IN THIS PROCEEDING?**

11 A. The cost recovery that I address involves its requested recovery of the "CRP shortfall."  
12 PGW presents the CRP shortfall as the difference between the CRP usage billed at the  
13 General Service (GS) Rate and the revenue billed under the terms of the CRP. Under the  
14 CRP, low-income customers are billed at 8% of income (for customers with income at or  
15 below 50% of the Federal Poverty Level); 9% of income (for customers with income at  
16 between 50% and 100% of Poverty Level); or 10% of income (for customers with income  
17 between 100% and 150% of the Federal Poverty Level). There is a minimum payment of  
18 \$18 per month irrespective of the percentage of income that the minimum payment  
19 represents. Customers making the minimum \$18 payment are generally presented as a  
20 fourth tier of CRP participant, even though they tend to fall into the below-50% of  
21 Federal Poverty Level income level.

22

1 **Q. HOW DOES PGW DEVELOP COST PROJECTIONS FOR THE CRP?**

2 A. PGW has developed what it refers to as a "Statement of CRP Revenue: Full Tariff vs.  
3 Program Rates for Fiscal 2006 – 2007." It provided one version of that "Statement" to  
4 the OCA in response to OCA-VI-1. It provided another (and different, though titled the  
5 same) version of that "Statement" to the Office of Trial Staff (OTS) in response to OTS-  
6 RE-64. I have attached the "Statement" from OCA-VI-1 to my testimony as Schedule  
7 RDC-1. I have attached the Statement from OTS-RE-64 to my testimony as Schedule  
8 RDC-2.

9

10 **Q. HOW DOES PGW DEVELOP THE ACTUAL COSTS USED IN THE**  
11 **RECONCILABLE SURCHARGE?**

12 A. PGW aggregates the difference between individual bills rendered at GS rates and  
13 individual bills rendered at CRP rates. The dollar difference between those two sets of  
14 bills is called the CRP shortfall. Those shortfall amounts are aggregated monthly. The  
15 difference between the projected amount and the actual amount is what is reconciled on a  
16 quarterly basis.

17

**A. Incremental Costs.**

18 **Q. AS CURRENTLY CALCULATED, IS IT POSSIBLE THAT PGW MIGHT**  
19 **OVERCOLLECT THE CRP SHORTFALL THAT THE COMPANY WILL**  
20 **EXPERIENCE?**

21 A. Yes. PGW should only be allowed to recover the incremental costs imposed on the  
22 Company as a result of a customer's participation in CRP. Some costs, particularly  
23 uncollectibles, are already reflected in base rates. To the extent that the costs associated

1 with customers that become CRP customers are already included in base rates, they  
2 should not be included again as a separate CRP expense. Dollars of CRP shortfall that are  
3 already included in PGW's uncollectible expenses are not incremental costs to the  
4 Company and should not be recovered again through the universal service surcharge.

5  
6 **Q. CAN YOU ILLUSTRATE HOW THE INCREASING PARTICIPATION IN CRP**  
7 **COULD RESULT IN A DOUBLE RECOVERY OF UNCOLLECTIBLE COSTS?**

8 A. The most recent universal service report published by BCS reports that in 2005, PGW  
9 had \$93,852,735 of residential gross write-offs (page 20), of which \$34,236,419 was  
10 associated with "confirmed low-income customers." (page 21). BCS reports that the low-  
11 income gross write-off was on a revenue base of \$61,771,552 (page 63) for a write-off  
12 rate of 55.42% (page 23). BCS makes a specific point of noting, however, that neither the  
13 gross write-off figure for residential customers as a whole, nor the gross write-off figure  
14 for confirmed low-income customers, includes either CAP (CRP) credits or CAP (CRP)  
15 arrearage forgiveness credits.

16 As can be seen, a PGW customer must be in one of two mutually exclusive  
17 groups of customers. Either a customer is a CRP participant, in which case the CRP  
18 credits are collected through the universal service surcharge as described above. Or, a  
19 customer is not a CRP participant, in which case unpaid bills are collected from  
20 ratepayers as an uncollectible expense.

1 **Q. WHERE DOES THE PROBLEM ARISE?**

2 A. The problem arises when a customer moves from one of those two mutually exclusive  
3 groups to the other. When a customer becomes a CRP participant, the dollars  
4 representing that new participant's CRP credits will be included in rates through the  
5 universal service surcharge as "new" CRP credits. Since the surcharge is reconcilable, a  
6 net increase in CRP participation will result in an increase in the universal service  
7 surcharge to reflect these "new" credits. In fact, however, not all of these CRP credits are  
8 "new" expenses. Some portion of these dollars of billing that will not be collected from  
9 the customer have simply been moved from the non-CRP participant population to the  
10 CRP participant population. Those dollars are non-incremental CRP costs.

11

12 **Q. PLEASE EXPLAIN HOW INCREASING PARTICIPATION IN CRP AFFECTS**  
13 **THE PGW WRITE-OFF FIGURES.**

14 A. Low-income customers that are not participating in CRP are included in the gross write-  
15 off figures I cite above. When those low-income customers move into CRP, the CRP  
16 credits shortfall associated with their account will now be collected through the universal  
17 service program. Previously, this shortfall represented a portion of the account that was  
18 not collectible. As CRP participation increases, the Company continues to collect its  
19 entire uncollectible expense as though no net addition of CRP participants had occurred.  
20 Since the universal service surcharge is reconcilable, however, as CRP participation  
21 increases, the Company collects the increased CRP shortfall associated with this  
22 increased participation as though that additional shortfall is a "new" expense. Even  
23 though, as I explain above, CRP participants and non-CRP participants are mutually

1 exclusive groups of customers, in other words, for ratemaking purposes, the costs of the  
2 new CRP participant are included both in base rates and in the universal service  
3 surcharge.

4  
5 **Q. IS IT NOT POSSIBLE THAT THERE WILL BE CUSTOMERS LEAVING CRP**  
6 **THAT WILL FALL INTO ARREARS AGAIN AND CONTRIBUTE TO**  
7 **RESIDENTIAL UNCOLLECTIBLES?**

8 A. Yes. To the extent that there is a churn in the Company's program, with no net increase  
9 in the CRP participation rate, there is no issue with respect to the double-recovery of non-  
10 incremental costs. The issue arises only when there is a net increase in the participation  
11 in CRP. In circumstances involving a net increase in CRP participation, the CRP credits  
12 associated with the net increase may need to be reduced in order to prevent the double-  
13 collection of costs, once through residential uncollectibles and again through the CRP  
14 credits.

15  
16 **Q. IS THE ISSUE YOU RAISE RELATED TO AN ABSOLUTE DECREASE IN**  
17 **UNCOLLECTIBLES ATTRIBUTABLE TO CRP?**

18 A. No. The enrollment of customers in CRP should result in improved collections and a  
19 decrease in the Company's uncollectible expense. The Company has already made an  
20 adjustment for that impact of CRP. This is not that issue. My discussion above instead  
21 relates only to preventing a double-recovery of non-incremental costs. It does not  
22 address whether CRP will help the Company to reduce its uncollectible expenses.

23

1 Q. HAVE YOU ESTIMATED THE POSSIBLE MAGNITUDE OF THIS  
2 POTENTIAL DOUBLE-RECOVERY?

3 A. Yes. For example, given an average per-participant CRP credit of \$1,040, a net increase  
4 in CRP enrollment of 7,000 participants as reported by Ms. Coltro (Coltro Direct, at 4)  
5 will result in a net increase in the CRP shortfall of \$7,280,000 ( $7,000 \times \$1,040 = \$7.280$   
6 million). Given a gross write-off rate for the revenue of confirmed low-income customers  
7 of 55.42%, I calculate that there would be \$4,034,885 ( $\$7,280,000 \times 0.5542 =$   
8  $\$4,034,885$ ) in CRP credits that would be included in the universal service surcharge by  
9 PGW that may already be included in the base rates claimed in this proceeding. This  
10 double recovery involves the extent to which the CRP credits are non-incremental  
11 expenses.

12 This dollar figure is not based on any assertion that these credits will not be  
13 granted. Instead, this figure is based on the observation that these dollars have already  
14 been included in rates and thus do not represent incremental expenses to the Company.

15  
16 Q. IF THERE IS A SMALLER NET INCREASE IN CRP PARTICIPATION RATES,  
17 WOULD THE DOUBLE RECOVERY BE SMALLER?

18 A. Yes. If there were fewer net additions to the CRP participant population, the double  
19 recovery would be smaller. For example, a net addition of 6,000 CRP participants, along  
20 with a per-participant CRP credit of \$1,040, would lead to a potential double-recovery of  
21 only \$3,458,473. Similarly, if the average CRP credit were smaller, the double recovery  
22 would be smaller as well.

1 **Q. HOW SHOULD PGW BE REQUIRED TO ADDRESS THIS ISSUE OF NON-**  
2 **INCREMENTAL COST RECOVERY?**

3 A. As can be seen above, the magnitude of the double recovery of dollars of CRP shortfall is  
4 a function of two factors: (1) the net increase to CRP participation; and (2) the average  
5 CRP shortfall per participant. Again, the “shortfall” is the CRP credit, the difference  
6 between bills at GS rates and bills at CRP rates. Rather than setting these figures in a  
7 base rate case, it is more appropriate to establish these two figures at the time of each  
8 quarterly reconciliation of CRP costs. Accordingly, I recommend that the Commission  
9 direct PGW to include, beginning in its first quarterly reconciliation of CRP costs  
10 subsequent to the final decision in this base rate case, a mechanism to identify and adjust  
11 for those CRP credits associated with net changes to the number of CRP participants,  
12 which adjustment will prevent the double recovery of CRP credits.

13 **B. Projected Costs.**

14 **Q. DO YOU RECOMMEND ANY ADDITIONAL REPORTING REQUIREMENTS**  
15 **FOR PGW TO INCLUDE IN ITS UNIVERSAL SERVICE CHARGE**  
16 **RECONCILIATION?**

17 A. Yes. Based on concerns about the reliability of the projections used to establish the  
18 universal service surcharge, I recommend that PGW be required to include the following  
19 reporting elements along with each quarterly universal surcharge reconciliation it  
20 submits:

- 21 ➤ The monthly number of CRP participants by payment tier; and
- 22 ➤ The monthly average income of CRP participants by payment tier.

1 Q. PLEASE EXPLAIN WHY YOU HAVE CONCERNS ABOUT THE FACTUAL  
2 ADEQUACY OF THE COMPANY'S CRP COST PROJECTIONS?

3 A. The OCA requested certain information through discovery that I would have used as the  
4 basis to review the accuracy of PGW's CRP cost projections. The Company, however,  
5 repeatedly indicated that it lacked the monthly data that would be necessary to engage in  
6 such a review. Moreover, the Company could not provide data which, if such data were  
7 used in the reconciliation process for the universal service surcharge, would have been  
8 available. For example, PGW could not provide data on the monthly income of CRP  
9 participants by payment tier (OCA-X-3), even though this data is a direct input into its  
10 CRP cost projections. (See, Schedule RDC-1 and Schedule RDC-2). PGW could not  
11 provide monthly data on the number of new CRP enrollees by payment tier (OCA-X-4),  
12 even though the mix of CRP participants by payment tier is a direct input into the  
13 Company's CRP cost projections. PGW has not provided the basic information needed  
14 to develop accurate projections. This same basic information also seems to be needed to  
15 accurately reconcile actual experience to the CRP cost projections. I have included  
16 PGW's response to the OCA's request for information (OCA-VI-1) in Schedule RDC-1,  
17 page 2 of 5.

18  
19 Q. WON'T ANY POSSIBLE OVER- OR UNDER-PROJECTIONS IN THE BASE  
20 RATE CASE GET WORKED OUT IN THE RECONCILIATION PROCESS?

21 A. It is true that over- or under-projections should be worked out in the reconciliation  
22 process should the data necessary for the reconciliation to accurately occur be available.

1 As I describe immediately above, however, much of the data that would seem to be  
2 necessary to ensure accurate reconciliation does not appear to be available.

3 Moreover, even if over- or under-projections could be completely "worked out" in  
4 the reconciliation process, having large swings in over- and under-collections is not the  
5 ideal way to operate the CRP. While CRP participants are exempt from paying the  
6 universal service surcharge, not all confirmed low-income customers are exempt. While  
7 PGW has roughly 75,000 CRP participants, it has more than 155,000 confirmed low-  
8 income customers (BCS Universal Service Report, at 7). The interest paid on over-  
9 collections does not adequately compensate these confirmed low-income customers for  
10 the use of their money between the time the projected cost is paid in rates and the time  
11 any over-collection is reconciled. In addition, given the frequent mobility of low-income  
12 customers, even if all under- or over-collections were exactly captured in the  
13 reconciliation process, it is likely that different customers will be paying the under-  
14 collection (or receiving the payment back of over-collections). Accepting wide swings in  
15 over- and under-collections institutionalizes a mismatch between those customers  
16 actually paying the universal service costs and those customers that should be paying  
17 those costs.

18  
19 **Q. DO YOU RECOMMEND A DOLLAR ADJUSTMENT IN THIS PROCEEDING?**

20 A. No. I have concerns about the accuracy of the projected mix of CRP participants by  
21 income level, as well as about the average income for CRP participants. Actual monthly  
22 figures from each month should be available for both of these sets of data at the time of  
23 each universal service surcharge reconciliation. At the time of the reconciliation, actual

1 data on participation by payment tier, and on average CRP incomes by payment tier,  
2 should be reported so that all parties can assure themselves of their accuracy.

3 **1. CRP Participant Mix by Payment Tier.**

4 **Q. WHAT IS YOUR FIRST CONCERN WITH RESPECT TO THE CRP COST**  
5 **PROJECTIONS?**

6 A. I have a concern that the mix of CRP participants by payment tier is erroneously stated in  
7 the CRP cost projections. The mix of CRP participants will have a substantive impact on  
8 the CRP shortfall that is charged to all ratepayers. To the extent that a higher proportion  
9 of CRP participants fall in the 10% payment tier, and a lower proportion fall into the 8%  
10 tier, the total CRP shortfall to be collected from remaining ratepayers will be less. This  
11 occurs because the 10% payment tier participants pay a higher proportion of their GS bill,  
12 leaving less to be passed through as a CRP shortfall.

13 I recommend that PGW report actual participation rates by payment tier as part of  
14 its reconciliation because the participation mix the Company includes in its cost  
15 projections for this case do not appear to match its actual experience. PGW provided the  
16 actual participation figures by month in response to OCA discovery (OCA-X-1). The  
17 actual participation mix reported by PGW does not match the mix assumptions used in  
18 the Company's cost projections. In its response to OCA-X-1, PGW reported the actual  
19 mix of CRP participants by payment tier by month. According to that data, the CRP mix  
20 was as follows using the actual data for the three most recent months:

- 21 ➤ \$18 minimum payment: 3.6%
- 22 ➤ 8%: 21.7%
- 23 ➤ 9%: 53.0%



1 underlying percentage of income and the number of CRP participants, however, one can  
2 derive the CRP participant income that PGW uses in its cost projections. That  
3 calculation reveals the following incomes for each percentage of income tier:

4 ➤ 8% of income: \$6,450

5 ➤ 9% of income: \$10,000

6 ➤ 10% of income: \$15,000

7 When I perform the same calculation using actual figures reported by PGW, however, the  
8 calculation reveals the following incomes for each percentage of income tier:

9 ➤ 8% of income: \$6,200

10 ➤ 9% of income: \$11,300

11 ➤ 10% of income: \$19,300

12 As with the mix of CRP participants, while the differences in the average incomes may  
13 seem small on a per participant basis, the aggregate dollar differences are tremendous.  
14 This is particularly true when the understatement of income appears to occur primarily in  
15 the 10% payment tier.

16 **Part 2. Cost-Minimizing Program Initiatives.**

17 **Q. PLEASE EXPLAIN THE PURPOSE OF THIS SECTION OF YOUR**  
18 **TESTIMONY.**

19 A. In this section of my testimony, I review specific credit and collection initiatives that are  
20 available to PGW to assess whether their implementation might have either a short- or  
21 long-term effect on minimizing the costs of nonpayment. More specifically, I will  
22 address the following initiatives:

- 1           ➤ An Electronic Funds Transfer (EFT) program for customers entering into deferred
- 2           payment plans; and
- 3           ➤ Increased Budget Billing for payment-troubled customers.

4                                   **A. EFT Payments for Deferred Payment Plans.**

5 **Q. PLEASE EXPLAIN YOUR RECOMMENDATION IN THIS SECTION OF YOUR**

6 **TESTIMONY.**

7 A. In this part of my testimony, I recommend that PGW require residential customers with

8 income at or above 250% of the Federal Poverty Level to enter into Electronic Funds

9 Transfer (EFT) agreements when they enter into deferred payment arrangements for

10 arrears. Through an EFT agreement, the Company automatically draws an agreed upon

11 pre-set amount of funds from the bank account of the customer on a monthly basis. This

12 draw upon funds is sometimes known as an Automatic Clearinghouse (ACH) transfer. It

13 is a type of e-commerce transaction. I will refer to these transactions as EFT payments in

14 my testimony below.

15

16 **Q. PLEASE EXPLAIN THE CONTEXT OF YOUR PROPOSAL REGARDING EFT**

17 **PAYMENTS FOR DEFERRED PAYMENT PLANS.**

18 A. The Pennsylvania PUC has previously directed PGW to provide a cost-benefit analysis of

19 requiring customers with incomes above 250% of the federal poverty level to agree to

20 EFT as a precondition to entering into a payment arrangement. The OCA had proposed

21 such an approach to payment plans as a means to improve PGW's performance with

22 respect to payment plans.

1 Q. HAS PGW PROVIDED SUCH A COST-BENEFIT ANALYSIS IN THIS  
2 PROCEEDING?

3 A. No. The totality of the "cost-benefit analysis" submitted by PGW witness Randall Gyory  
4 reads as follows:

5 . . .there is only a very small number of customers on payment arrangements  
6 who are at or above 250% of the federal poverty level. In FY 2006, only  
7 10.1% of the customers entering into payment arrangements were above  
8 250% of the federal poverty level. Third, in our judgment, a mandatory EFT  
9 program for payment arrangement customers will result in PGW incurring  
10 significant costs to administer the accounts with little or no net benefit.  
11 While our experience with the voluntary program has been reasonably good,  
12 we believe that if customers were forced to enroll in such a program, there  
13 would be far more instances of problems, such as non-existent or closed  
14 checking accounts, failed EFT attempts due to insufficient funds in the  
15 account and the like. Thus, in our judgment, a mandatory EFT program  
16 would be cost prohibitive.  
17

18 (Gyory Direct, at 10). The paragraph of testimony is not a cost-benefit analysis such as  
19 directed by the Commission. Consider that:

- 20 ➤ PGW did not *identify* any costs associated with a mandatory EFT program.  
21 Rather, it posited that there would be unsubstantiated, unidentified,  
22 undocumented costs to administer the accounts "in our judgment."  
23  
24 ➤ PGW did not assess or identify any benefits associated with a mandatory EFT  
25 program. Rather, Mr. Gyory merely postulated, without discussion,  
26 documentation or analysis, that there would be "little or no net benefit."  
27  
28 ➤ PGW did not identify, let alone document, any costs of a mandatory EFT  
29 program. Instead, Mr. Gyory merely asserted, "in our judgment, a mandatory  
30 EFT program would be cost prohibitive." (emphasis added).  
31

32 It is important to note that the Commission did not recommend, or suggest, or "think it  
33 might be a good idea" for PGW to prepare a cost-benefit analysis. It ordered such an  
34 analysis to be completed. PGW did not comply with that Commission order.  
35

1 Q. DO YOU HAVE REASON TO BELIEVE THAT EFT TRANSACTIONS WOULD  
2 BENEFIT THE COMPANY FOR THE SUGGESTED CUSTOMER SEGMENT?

3 A. Yes. In August 2005, PGW prepared its "final analysis and recommendations" for its  
4 "customer segmentation analysis." That PGW analysis identified four different customer  
5 segments for payment-troubled customers: perpetually challenged payers; chronic  
6 delinquent payers; on-time/occasional late payers; and chronic late payers. I set aside the  
7 perpetually-challenged payers and chronic delinquent payers as being primarily low-  
8 income (below 250% of Poverty Level), a conclusion that the Company's own analysis  
9 agrees with. I further set aside the occasional late payer as being a class of customer that  
10 largely self-remedies their non-payment.

11  
12 Q. WHAT DID THE PGW CUSTOMER SEGMENTATION ANALYSIS  
13 CONCLUDE WITH RESPECT TO THE CHRONIC LATE PAYERS?

14 A. PGW's own analysis concluded: "while all segments are sensitive to seasonality, Chronic  
15 Late Payers are most sensitive and would benefit from budget billing and automatic  
16 payments." (Segmentation Analysis, at 8). The Segmentation Analysis finds that the  
17 "chronic late payers" generally have the financial capacity to avoid the disconnection of  
18 service. The analysis reported that only Perpetually Challenged and Chronic Delinquent  
19 customers are ultimately shutoff. The Segmentation Analysis reports that while  
20 "collection actions influence payment," the challenged and chronic delinquent payers are  
21 "less responsive." In contrast, the analysis reports that "the majority of Chronic Late  
22 Payers receive a 3-day call but are never shutoff." (Segmentation Analysis, at 15). The  
23 PGW analysis reports that more than 80% of these Chronic Late Payers have more than

1 four (4) late payments. (Segmentation Analysis, at 28). The PGW analysis reported that  
2 most of these customers own their homes, most are in a "good" credit group, and yet  
3 more than 40% pay less than their full bill. (Segmentation Analysis, at 37). They are not,  
4 in other words, customers who pose the risk of insufficient fund checks or closed  
5 accounts postulated by Mr. Gyory.

6  
7 **Q. WHAT DID THE COMPANY'S SEGMENTATION ANALYSIS RECOMMEND**  
8 **FOR THESE CHRONICALLY LATE PAYERS?**

9 A. The PGW analysis made three recommendations as to "payment strategies" for this  
10 segment of nonpayers that is "chronically late" (but not low-income). Included within  
11 these recommendations were proposals for electronic billing and for "recurring bill  
12 payment."

13  
14 **Q. WOULD AN EFT PROGRAM HELP IMPROVE PAYMENT PATTERNS?**

15 A. Yes. The PGW analysis reported that participation in payment arrangements standing  
16 alone "does not appear to improve payment behavior in any segment." Nonetheless,  
17 payment arrangements combined with other billing options appear to help. For example,  
18 PGW offers a budget billing program which it refers to as "Easy-Way." Easy-Way  
19 improved payment performance for the On-time/Occasional Late Payers. (Only one  
20 chronic late payer participated in the Easy-Way program, so no conclusions could be  
21 reached; the Segmentation Analysis referred to this as an "insignificant sample size.")  
22 The PGW analysis found that while Easy-Way payments resulted in 0.4 late payments  
23 per year, customers simply on payment arrangements had 4.5 late payments per year.

1 While customers on Easy-Way payments paid 87% of their asked-to-pay (ATP) amount,  
2 customers on payment arrangements alone paid only 34% of their ATP. Within the  
3 Occasional Late Payer segment, while customers on Easy-Way made 0.1 late payments a  
4 year, customers on payment arrangements made 0.3 late payments. While customers on  
5 Easy-Way paid 89% of their ATP amount, customers only on payment arrangements paid  
6 only 69%. (Segmentation Analysis, at 38).

7  
8 **Q. IS MR. GYORY'S STATED CONCERNS ABOUT BOUNCED CHECKS DUE TO**  
9 **CLOSED ACCOUNTS AND INSUFFICIENT FUNDS WELL-FOUNDED?**

10 A. No. While 15% of late payers on payment arrangements alone resulted in bounced  
11 checks, according to the Company's own analysis, only 5% of customers on Easy-Way  
12 arrangements resulted in such transactions.

13  
14 **Q. WHAT FINAL RECOMMENDATIONS DID THE COMPANY'S**  
15 **SEGMENTATION ANALYSIS PROVIDE?**

16 A. The Company's Segmentation Analysis included "tailored credit and collection impacts"  
17 for residential late payers. It identified the recurring bill payment program and electronic  
18 billing as "high impact" strategies for chronic late payers. (Segmentation Analysis, at 44).

19  
20 **Q. IS THERE INDUSTRY SUPPORT FOR MOVING CUSTOMERS TO EFT**  
21 **PAYMENTS WHERE POSSIBLE?**

22 A. The Institute of Management and Administration (IOMA) identified promoting EFT  
23 payments as a "best practice" in its 2006 catalogue of "best practices" for credit.

1 receivables and collection in 2006. According to IOMA, a company would be well-  
2 served to recruit customers for EFT “after collection calls (especially if the customer  
3 claims it is going to pay immediately)”; including an EFT payment process “when  
4 negotiating contracts”; and “offering an electronic payment option to accounts that you  
5 are getting ready to put on credit hold.”

6 Contrary to Mr. Gyory’s unquantified and undocumented “judgment,” the EFT  
7 program previously recommended by OCA is even more important and justified today  
8 than it was when first recommended in 2004.

9 **B. Increased Budget Billing for Payment-Troubled Customers.**

10 **Q. PLEASE EXPLAIN YOUR RECOMMENDATION IN THIS SECTION OF YOUR**  
11 **TESTIMONY.**

12 A. In this part of my testimony, I recommend that PGW move certain payment-troubled  
13 non-CRP customers onto levelized Budget Billing arrangements on a mandatory basis in  
14 order to facilitate their prompt and timely payment of bills in the short- and long-term.  
15 The practice I recommend is that which has been adopted by the Tennessee Regulatory  
16 Authority, at the request of Tennessee’s natural gas utilities, for all natural gas utilities in  
17 that state beginning with the 2005/2006 winter heating season.

18 **Q. PLEASE EXPLAIN THE CONTEXT OF YOUR PROPOSAL.**

19 A. The Pennsylvania PUC has previously directed PGW to prepare a report “with findings  
20 and recommendations regarding a program to educate the public about the benefits of  
21 PGW’s budget billing plan.” (Gyory Direct, at 11).

1 Q. **DID PGW PROVIDE SUCH A REPORT IN THIS PROCEEDING?**

2 A. According to Company witness Randall Gyory, the Company is doing an adequate job in  
3 promoting levelized Budget Billing for PGW's residential customers. According to  
4 Gyory's testimony, ". . .PGW has taken all reasonable steps, in light of its financial  
5 constraints, to publicize and encourage customers to take advantage of budget billing."  
6 (Gyory Direct, at 12). He advanced only two "findings" in support of that conclusion.  
7 First, he argued that, on average, 48,000 residential customers are using Budget Billing.  
8 Second, he argued that 81% of all payment arrangement customers have enrolled in  
9 Budget Billing as part of any agreed upon payment agreement.

10  
11 Q. **IS THE CURRENT AVERAGE NUMBER OF RESIDENTIAL CUSTOMERS ON  
12 BUDGET BILLING INDICATIVE OF THE ADEQUACY OF PGW'S EFFORTS  
13 TO ENROLL BUDGET BILLING CUSTOMERS?**

14 A. No. PGW's residential enrollment in Budget Billing plans is at a three year low. The  
15 January 2007 enrollment of 44,855 customers was nearly 15% lower than the January  
16 2006 enrollment of 52,060 and less than the January 2005 enrollment of 45,942. The  
17 data for the last four months for which data exists (October 2006 through January 2007)  
18 shows that enrollment in Budget Billing is lower in each month than it was in the  
19 corresponding month for either of the immediately two preceding years. In fact, the low  
20 levels of enrollment in September through November 2006 had not been experienced in  
21 any month since October 2004, the first month for which data was requested.

1 Nor is Mr. Gyory's statement that 81% of all residential customers on payment plans are  
2 using levelized Budget Billing particularly meaningful. According to the Company  
3 (OCA-IV-7), the Company had only:

- 4 ➤ 15,585 residential customers on deferred payment plans as of December 31,  
5 2006, out of 103,347 delinquent residential accounts.
- 6 ➤ 18,483 residential deferred payment plans as of December 31, 2005, out of  
7 102,248 delinquent residential accounts; and
- 8 ➤ 34,105 residential deferred payment plans as of December 31, 2004, out of  
9 86,047 delinquent accounts.

10 As can be seen, even if Mr. Gyory's 81% figure is accurate, both the absolute number of  
11 residential customers on payment plans, as well as the proportion of residential  
12 delinquent accounts that are on payment plans, has been decreasing in recent years.

13 Even if one posits that customers two months or more in arrears would benefit  
14 from a payment plan, it is clear that as of December 31, 2006, only one-in-four (27%)  
15 customers in two-plus months of arrears (15,585 of 58,624) had entered into agreements.  
16 (OCA-IV-7): The 81% figure to which Mr. Gyory refers is of the 15,585 residential  
17 customers in arrears on payment plans. Moreover, the Company is losing ground in this  
18 regard. While the average monthly number of residential customers in long-term arrears  
19 was nearly the same from 2005 to 2006 (37,047 in 2005 compared to 36,901 in 2006), the  
20 number of residential customers on levelized Budget Billing had decreased during that  
21 same time period.  
22

1 **Q. HAS PGW CONCLUDED INTERNALLY THAT THERE IS NO FURTHER**  
2 **BENEFIT TO BE DERIVED FROM BUDGET BILLING FOR RESIDENTIAL**  
3 **CUSTOMERS?**

4 A. No. In the August 2005 Customer Segmentation Study that I discussed above, PGW  
5 concluded that Chronic Late Payers are “most sensitive” to the “seasonality” of payments  
6 and would benefit from Budget Billing. (Segmentation Analysis, at 8). The purpose of  
7 moving these customers to Budget Billing is not to reduce the collection activity directed  
8 toward these accounts. The Company’s Customer Segmentation analysis found that the  
9 Chronic Late Payers represent a relatively small proportion of pre-shutoff notices (3-day  
10 calls, 48-hour notice, final notice) and of ultimate nonpayment disconnects. The purpose  
11 of moving these customers to Budget Billing is instead to minimize the “shift” of  
12 payments to off-season months.

13  
14 **Q. WHAT DID TENNESSEE’S NATURAL GAS UTILITIES PROPOSE WITH**  
15 **RESPECT TO BUDGET BILLING?**

16 A. In the autumn of 2005, Tennessee’s three natural gas utilities proposed an automatic  
17 budget-billing program for that state’s payment-troubled customers. The proposal by the  
18 Tennessee utilities with respect to budget billing consisted of the following:

19       ➤ For customers who are in good standing as of November 1, 2005, and who fall  
20 behind or who are unable to make full payment of amounts due for natural gas  
21 service rendered on or after November 1, 2005, the billing methodology shall be  
22 automatically adjusted to an equal payment plan methodology (“good standing”  
23 means that the customer is either current on his or her account or is in compliance  
24 with an existing payment arrangement entered into by the customer and serving  
25 natural gas utility);  
26

- 1           ➤ For customers who are in good standing as of November 1, 2005 and who elect to  
2 convert to an equal payment plan on or after November 1, 2005, the equal  
3 payment plan methodology shall apply;  
4  
5           ➤ The calculation of monthly amounts due under such equal payment plan  
6 methodology shall include any past due balance and shall be calculated in  
7 conformance with the serving natural gas utility's existing equal payment plan  
8 provisions;  
9  
10          ➤ Notice to the customer of this change in billing methodology shall be provided by  
11 bill insert or bill notice in the customer's next monthly bill or by separate written  
12 notice;  
13  
14          ➤ *This billing methodology shall continue in effect until October 1, 2006, subject to*  
15 *the customer's ability to opt out of the methodology at any time provided that the*  
16 *customer pays all amounts due for service previously rendered by the serving*  
17 *utility as of that date (or otherwise enters into an arrangement for payment of such*  
18 *amounts acceptable to the serving utility);*  
19  
20          ➤ So long as customers pay the charge due under the equal payment plan  
21 methodology, service to such customers will remain in effect and shall not be  
22 terminated; and  
23  
24          ➤ To the extent that a customer defaults on a payment under the equal payment  
25 plan, any unpaid gas cost amounts shall be collected consistent with the  
26 methodology established [by other TRA regulation].  
27

28           The Tennessee gas utilities also agreed to report specified monthly data on nonpayment  
29 disconnections and on the enrollment in levelized budget billing.  
30

31   **Q.   WHAT WAS THE IMPACT OF THE TENNESSEE BUDGET BILLING**  
32   **PROCESS?**

33   A.   Enrollment in budget billing sharply increased amongst the customers of the three  
34 Tennessee natural gas utilities. Enrollment in levelized budget billing plans amongst  
35 Tennessee's three natural gas utilities increased by more than 35% from the 2004-2005  
36 winter heating season (22,881) to the 2005/2006 winter heating season (31,096). At the  
37 same time, the number of nonpayment disconnections decreased for two of the three gas

1 utilities, with Chattanooga Gas Company decreasing from 1,733 to 1,196 and Nashville  
2 Gas Company decreasing from 3,549 to 1,899. Only Atmos Energy Corp. experienced  
3 an increase in nonpayment disconnects (from 1,957 to 2,233) between the 2004/2005 and  
4 the 2005/2006 winter heating seasons. Overall, the number of nonpayment  
5 disconnections decreased by more than 26% (from 7,239 to 5,328) from 2004/2005 to  
6 2005/2006.

7 This decrease in the number of disconnections occurred despite the fact that, as  
8 with the rest of the country, Tennessee experienced a substantial fly-up in natural gas  
9 prices from the 2004/2005 to the 2005/2006 winter heating season. Tennessee natural  
10 gas prices increased from \$13.64 per MCF in October 2004 to \$21.65/MCF in October  
11 2005. Prices increased from \$13.64 per MCF in November 2004 to \$18.95/MCF in  
12 November 2005; they increased from \$11.27 per MCF in December 2004 to \$17.16/MCF  
13 in December 2005.

14  
15 **Q. WHAT DO YOU PROPOSE FOR PGW?**

16 A. I propose a payment process for PGW that mirrors the payment process adopted by the  
17 Tennessee Regulatory Authority for that state's three natural gas utilities. For customers  
18 in good standing as of November 1 of each winter heating season who fall behind in the  
19 winter months, the billing methodology should be adjusted to a levelized monthly budget  
20 billing plan. That plan should include both the arrears and the bill for current usage. The  
21 budget billing methodology will continue until October 1 of the next heating season. A  
22 customer may opt out of the billing methodology by bringing his or her account current.

1 To the extent that the customer defaults on any payments, normal collection processes  
2 will apply.

3 The process I propose is consistent with the Company's own Customer  
4 Segmentation Analysis. Moreover, based on the Tennessee experience, I would expect  
5 PGW to experience a decrease in both its collection activities and in its level of accounts  
6 and dollars in arrears.

7

8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes, it does.

10

11 00093460

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

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Docket No. R-00061931

APPENDIX A TO THE  
DIRECT TESTIMONY OF  
ROGER D COLTON

ON BEHALF OF  
OFFICE OF CONSUMER ADVOCATE

APRIL 6, 2007

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**ROGER D. COLTON**

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**EDUCATION:**

J.D. (Order of the Coif), University of Florida, 1981

M.A. (Economics), McGregor School, Antioch University (1993)

B.A., Iowa State University (1975)

**PROFESSIONAL EXPERIENCE:**

**Fisher, Sheehan and Colton, Public Finance and General Economics:** 1985 - present.

As a co-founder of this economics consulting partnership, Colton provides services in a variety of areas, including: regulatory economics, poverty law and economics, public benefits, fair housing, community development, energy efficiency, utility law and economics (energy, telecommunications, water/sewer), government budgeting, and planning and zoning.

Colton has testified in state and federal courts in the United States and Canada, as well as before regulatory and legislative bodies in more than three dozen states. He is particularly noted for creative program design and implementation within tight budget constraints.

**National Consumer Law Center (NCLC):** 1986 - 1994

As a staff attorney with NCLC, Colton worked on low-income energy and utility issues. He pioneered cost-justifications for low-income affordable energy rates, as well as developing models to quantify the non-energy benefits (*e.g.*, reduced credit and collection costs, reduced working capital) of low-income energy efficiency. He designed and implemented low-income affordable rate and fuel assistance programs across the country. Colton was charged with developing new practical and theoretical underpinnings for solutions to low-income energy problems.

**Community Action Research Group (CARG): 1981 - 1985**

As staff attorney for this non-profit research and consulting organization, Colton worked primarily on energy and utility issues. He provided legal representation to low-income persons on public utility issues; provided legal and technical assistance to consumer and labor organizations; and provided legal and technical assistance to a variety of state and local governments nationwide on natural gas, electric, and telecommunications issues. He routinely appeared as an expert witness before regulatory agencies and legislative committees regarding energy and telecommunications issues.

**PROFESSIONAL AFFILIATIONS:**

- Chair: Board of Directors, Belmont Housing Trust
- Member: Advisory Board: Fair Housing Center of Greater Boston.
- Past Member: Aggregation Advisory committee, New York State Energy Research and Development Authority.
- Past Member: Board of Directors, Vermont Energy Investment Corporation.
- Past Member: Board of Directors, National Fuel Funds Network
- Past Member: National Advisory Committee, U.S. Department of Health and Human Services, Administration for Children and Families, Performance Goals for Low-Income Home Energy Assistance.
- Past Member: Advisory Board: Low-Income Aggregation, New York State Energy Research and Development Authority.
- Past Member: Editorial Advisory Board, International Library, *Public Utility Law Anthology*.
- Past Member: ASHRAE Guidelines Committee, GPC-8, *Energy Cost Allocation of Comfort HVAC Systems for Multiple Occupancy Buildings*
- Past Member: National Advisory Committee, U.S. Department of Housing and Urban Development, Calculation of Utility Allowances for Public Housing.
- Past Member: National Advisory Board: Energy Financing Alternatives for Subsidized Housing, New York State Energy Research and Development Authority.

**PROFESSIONAL ASSOCIATIONS:**

- National Association of Housing and Redevelopment Officials (NAHRO)
- Association for Enterprise Opportunity
- Iowa State Bar Association
- Association for Institutional Thought
- Association for Evolutionary Economics
- Society for the Study of Social Problems
- International Society for Policy Studies
- Association for Social Economics

**AWARDS**

- William F. Willier Award (distinguished service) (1991). National Consumer Law Center, Boston (MA).
- NLIEC Career Achievement Award (1998). National Low-Income Energy Consortium, New Orleans (LA).
- Sister Pat Kelley Award (distinguished service) (2001). National Fuel Funds Network, Cincinnati (OH).
- Governor's Volunteer Award (Iowa) (2001).

**BOOKS**

Colton. (1996). *Funding Fuel Assistance: State and Local Strategies to Help Pay Low-Income Home Energy Bills*, Fisher, Sheehan and Colton, Public Finance and General Economics: Belmont, MA (1996).

Colton and Sheehan. (1995). *The Other Part of the Year: Low-Income Households and Their Need for Cooling: A State-by-State Look at Low-Income Summer Electric Bills*, Flying Pencil Publications: Portland, OR.

Colton. (1995). *Energy Efficiency and the Low-Income Consumer: Planning, Designing and Financing*, Flying Pencil Publications: Portland, OR.

Colton and Sheehan. (1994). *On the Brink of Disaster: A State-by-State Look at Low-Income Winter Natural Gas Heating Bills*, Flying Pencil Publications: Portland, OR.

Colton, *et al.*, *Access to Utility Service*, National Consumer Law Center: Boston (2d ed. 2001).

Colton, *et al.*, *Tenants' Rights to Utility Service*, National Consumer Law Center: Boston (1994).

Colton, *The Regulation of Rural Electric Cooperatives*, National Consumer Law Center: Boston (1992).

**JOURNAL PUBLICATIONS**

Colton (November 2003). "Winter Weather Payments: The Impact of Iowa's Winter Utility Shutoff Moratorium on Utility Bill Payments by Low-Income Customers." 16(9) *Electricity Journal* 59.

Colton (March 2002). "Energy Consumption and Expenditures by Low-Income Households," 15(3) *Electricity Journal* 70.

Colton, Roger and Stephen Colton (Spring 2002). "An Alternative to Regulation in the Control of Occupational Exposure to Tuberculosis in Homeless Shelters." *New Solutions: Journal of Environmental and Occupational Health Policy*.

Colton (2001). "The Lawfulness of Utility Actions Seeking to Impose as a Condition of Service Liability for a Roommate's Debt Incurred at a Prior Address," *Clearinghouse Review*.

Colton (2001). "Limiting The "Family Necessaries" Doctrine as a Means of Imposing Third Party Liability for Utility Bills," *Clearinghouse Review*.

Colton (2001). "Prepayment Utility Meters and the Low-Income Consumer." *Journal of Housing and Community Development Law* (American Bar Association).

Colton, Brown and Ackermann (June 2000). "Mergers and the Public Interest: Saving the Savings for the Poorest Customers." *Public Utilities Fortnightly*.

Colton. (2000). "Aggregation and the Low-Income Consumer." *LEAP Newsletter*.

Colton. (1999). "Challenging Entrance and Transfer Fees in Mobile Home Park Lot Rentals." *Clearinghouse Review*.

Colton and Adams (1999). "Y2K and Communities of Color," *Media Alert: The Quarterly Publication of the National Black Media Coalition*.

Colton and Sheehan (1999). "The Problem of Mass Evictions in Mobile Home Parks Subject to Conversion." *Journal of Housing and Community Development Law* (American Bar Association).

Colton (1999). "Utility Rate Classifications and Group Homes as "Residential" Customers," *Clearinghouse Review*.

Colton (1998). "Provider of Last Resort: Lessons from the Insurance Industry." *The Electricity Journal*.

Colton and Adams (1998). "Fingerprints for Check Cashing: Where Lies the Real Fraud," *Media Alert: The Quarterly Publication of the National Black Media Coalition*.

Colton. (1998). "Universal Service: A Performance-Based Measure for a Competitive Industry," *Public Utilities Fortnightly*.

Colton, Roger and Stephen Colton (1998). "Evaluating Hospital Mergers," 17 *Health Affairs* 5:260.

Colton. (1998). "Supportive Housing Facilities as "Low-Income Residential" Customers for Energy Efficiency Purposes," 7 *Journal of Housing and Community Development Law* 406 (American Bar Association).

Colton, Frisof and King. (1998). "Lessons for the Health Care Industry from America's Experience with Public Utilities." 18 *Journal of Public Health Policy* 389.

Colton (1997). "Fair Housing and Affordable Housing: Availability, Distribution and Quality." 1997 *Colloqui: Cornell Journal of Planning and Urban Issues* 9.

Colton. (1997). "Competition Comes to Electricity: Industry Gains, People and the Environment Lose," *Dollars and Sense*.

Colton (1996). "The Road Not Taken: Unaffordable Home Energy Bills, Forced Mobility And Childhood Education in Missouri." 2 *Journal on Children and Poverty* 23.

Colton and Sheehan. (1995). "Utility Franchise Charges and the Rental of City Property." 72 *New Jersey Municipalities* 9:10.

Colton. (1995). "Arguing Against Utilities' Claims of Federal Preemption of Customer-Service Regulations." 29 *Clearinghouse Review* 772.

Colton and Labella. (1995). "Landlord Failure to Resolve Shared Meter Problems Breaches Tenant's Right to Quiet Enjoyment." 29 *Clearinghouse Review* 536.

Colton and Morrissey. (1995). "Tenants' Rights to Pretermination Notice in Cases of Landlords' Nonpayment of Utilities". 29 *Clearinghouse Review* 277.

Colton. (1995). "The Perverse Incentives of Fair Market Rents." 52 *Journal of Housing and Community Development* 6.

Colton (1994). "Energy Efficiency and Low-Income Housing: Energy Policy Hurts the Poor." XVI *ShelterForce: The Journal of Affordable Housing Strategies* 9.

Colton (1994). "The Use of Consumer Credit Reports in Establishing Creditworthiness for Utility Deposits." *Clearinghouse Review*.

Colton (1994). "Institutional and Regulatory Issues Affecting Bank Product Diversification Into the Sale of Insurance." *Journal of the American Society of CLU and ChFC*.

Colton. (1993). "The Use of State Utility Regulations to Control the 'Unregulated' Utility." 27 *Clearinghouse Review* 443.

Colton and Smith. (1993). "The Duty of a Public Utility to Mitigate 'Damages' from Nonpayment through the Offer of Conservation Programs." 3 *Boston University Public Interest Law Journal* 239.

Colton and Sheehan. (1993). "Cash for Clunkers Program Can Hurt the Poor." 19 *State Legislatures: National Conference of State Legislatures* 5:33.

Colton. (1993). "Consumer Information and Workable Competition in the Telecommunications Industry." XXVII *Journal of Economic Issues* 775.

Colton and Sheehan. (1992). "Mobile Home Rent Control: Protecting Local Regulation," *Land Use Law and Zoning Digest*.

Colton and Smith. (1992 - 1993). "Co-op Membership and Utility Shutoffs: Service Protections that Arise as an Incident of REC Membership." 29 *Idaho Law Review* 1, reprinted, XV *Public Utilities Law Anthology* 451.

Colton and Smith. (1992). "Protections for the Low-Income Customer of Unregulated Utilities: Federal Fuel Assistance as More than Cash Grants." 13 *Hamline University Journal of Public Law and Policy* 263.

Colton (1992). "CHAS: The Energy Connection," 49 *The Journal of Housing* 35, reprinted, 19 *Current Municipal Problems* 173.

Colton (March 1991). "A Cost-Based Response to Low-Income Energy Problems." *Public Utilities Fortnightly*.

Colton. (1991). "Protecting Against the Harms of the Mistaken Utility Undercharge." 39 *Washington University Journal of Urban and Contemporary Law* 99, reprinted, XIV *Public Utilities Anthology* 787.

Colton. (1990). "Customer Consumption Patterns within an Income-Based Energy Assistance Program." 24 *Journal of Economic Issues* 1079

- Colton (1990). "Heightening the Burden of Proof in Utility Shutoff Cases Involving Allegations of Fraud." 33 *Howard L. Review* 137.
- Colton (1990). "When the Phone Company is not the Phone Company: Credit Reporting in the Post-Divestiture Era." 24 *Clearinghouse Review* 98.
- Colton (1990). "Discrimination as a Sword: Use of an 'Effects Test' in Utility Litigation." 37 *Washington University Journal of Urban and Contemporary Law* 97, reprinted, XIII *Public Utilities Anthology* 813.
- Colton (1989). "Statutes of Limitations: Barring the Delinquent Disconnection of Utility Service." 23 *Clearinghouse Review* 2.
- Colton & Sheehan. (1989). "Raising Local Revenue through Utility Franchise Fees: When the Fee Fits, Foot It." 21 *The Urban Lawyer* 55, reprinted, XII *Public Utilities Anthology* 653, reprinted, Freilich and Bushek (1995). *Exactions, Impacts Fees and Dedications: Shaping Land Use Development and Funding Infrastructure in the Dolan Era*. American Bar Association: Chicago.
- Colton (1989). "Unlawful Utility Disconnections as a Tort: Gaining Compensation for the Harms of Unlawful Shutoffs." 22 *Clearinghouse Review* 609.
- Colton, Sheehan & Uehling. (1987). "Seven cum Eleven: Rolling the Toxic Dice in the U.S. Supreme Court," 14 *Boston College Environmental L. Rev.* 345.
- Colton & Sheehan. (1987). "A New Basis for Conservation Programs for the Poor: Expanding the Concept of Avoided Costs," 21 *Clearinghouse Review* 135.
- Colton & Fisher. (1987). "Public Inducement of Local Economic Development: Legal Constraints on Government Equity Funding Programs." 31 *Washington University J. of Urban and Contemporary Law* 45.
- Colton & Sheehan. (1986). "The Illinois Review of Natural Gas Procurement Practices: Permissible Regulation or Federally Preempted Activity?" 35 *DePaul Law Review* 317, reprinted, IX *Public Utilities Anthology* 221.
- Colton (1986). "Utility Involvement in Energy Management: The Role of a State Power Plant Certification Statute." 16 *Environmental Law* 175, reprinted, IX *Public Utilities Anthology* 381.
- Colton (1986). "Utility Service for Tenants of Delinquent Landlords," 20 *Clearinghouse Review* 554.
- Colton (1985). "Municipal Utility Financing of Energy Conservation: Can Loans only be Made through an IOU?." 64 *Nebraska Law Review* 189.
- Colton (1985). "Excess Capacity: A Case Study in Ratemaking Theory and Application." 20 *Tulsa Law Journal* 402, reprinted, VIII *Public Utilities Anthology* 739.
- Colton (1985). "Conservation, Cost-Containment and Full Energy Service Corporations: Iowa's New Definition of 'Reasonably Adequate Utility Service.'" 34 *Drake Law Journal* 1.
- Colton (1984). "Prudence, Planning and Principled Ratemaking." 35 *Hastings Law Journal* 721.
- Colton (1983). "Excess Capacity: Who Gets the Charge from the Power Plant?" 33 *Hastings Law Journal* 1133.

Colton (1983). "Old McDonald (Inc.) Has a Farm. . . Maybe, or Nebraska's Corporate Farm Ban; Is it Constitutional?" 6 *University of Arkansas at Little Rock Law Review* 247.

Colton (1982). "Mandatory Utility Financing of Conservation and Solar Measures." 3 *Solar Law Reporter* 167.

Colton (1982). "The Use of Canons of Statutory Construction: A Case Study from Iowa, or When Does 'GHOTT' Spell 'Fish'?" 5 *Seton Hall Legislative Journal* 149.

Colton (1977). "The Case for a Broad Construction of 'Use' in Section 4(f) of the Department of Transportation Act." 21 *St. Louis Law Journal* 113.

### OTHER PUBLICATIONS

Colton (2007). *The Law and Economics of Determining Hot Water Energy Use in Calculating Utility Allowances for Public and Assisted Housing*.

Colton (2006). *Indiana Billing and Collection Reporting: Natural Gas and Electric Utilities: 2006*, prepared for Coalition to Keep Indiana Warm.

Colton (2006). *Home Energy Affordability in Maryland: Necessary Regulatory and Legislative Actions*, prepared for the Maryland Office of Peoples Counsel.

Colton (2006). *A Ratepayer Funded Home Energy Affordability Program for Low-Income Households: A Universal Service Program for Ontario's Energy Utilities*, prepared for the Low-Income Energy Network (Toronto).

Colton (2006). *Georgia REACH Project Energize: Final Program Evaluation*, prepared for the Georgia Department of Human Resources.

Colton (2006). *Experimental Low-Income Program (ELIP): Empire District Electric Company, Final Program Evaluation*, prepared for Empire District Electric Company.

Colton (2006). *Municipal Aggregation for Retail Natural Gas and Electric Service: Potentials, Pitfalls and Policy Implications*, prepared for Maryland Office of Peoples Counsel.

Colton (2005). *Indiana Billing and Collection Reporting: Natural Gas and Electric Utilities: 2005*, prepared for Coalition to Keep Indiana Warm.

Colton (2005). *Impact Evaluation of NIPSCO Winter Warmth Program*, prepared for Northern Indiana Public Service Company.

Colton (2005). *A Water Affordability Program for the Detroit Water and Sewer Department*, prepared for Michigan Poverty Law Center.

Colton (2004). *Paid but Unaffordable: The Consequences of Energy Poverty in Missouri*, prepared for the National Low-Income Home Energy Consortium.

Sheehan and Colton (2004). *Fair Housing Plan: An Analysis of Impediments and Strategies on How to Address The: Washington County/Beaverton (OR)*, prepared for Washington County Department of Community Development.

Colton (2004). *Controlling Tuberculosis in Fulton County (GA) Homeless Shelters: A Needs Assessment*, prepared for the Georgia Department of Human Resources, Division of Public Health.

Colton (2003). *The Impact of Missouri Gas Energy's Experimental Low-Income Rate (ELIR) On Utility Bill Payments by Low-Income Customers: Preliminary Assessment*, prepared for Missouri Gas Energy.

Colton (2003). *The Economic Development Impacts of Home Energy Assistance: The Entergy States*, prepared for Entergy Services, Inc.

Colton (2003). *Energy Efficiency as an Affordable Housing Tool in Colorado*, prepared for Colorado Energy Assistance Foundation.

Colton (2003). *The Economic Development Impacts of Home Energy Assistance in Colorado*, Colorado Energy Assistance Foundation.

Colton (2003). *Measuring the Outcomes of Home Energy Assistance through a Home Energy Insecurity Scale*, prepared for the U.S. Department of Health and Human Services, Administration for Children and Families.

Colton (2002). *Winter Weather Payments: The Impact of Iowa's Winter Utility Shutoff Moratorium On Utility Bill Payments by Low-Income Customer*, prepared for Iowa Department of Human Rights.

Colton (2002). *A Fragile Income: Deferred Payment Plans and the Ability-to-Pay of Working Poor Utility Customers*, prepared for National Fuel Funds Network.

Colton (2002). *Credit where Credit is Due: Public Utilities and the Earned Income Tax Credit for Working Poor Utility Customers*, prepared for National Fuel Funds Network.

Colton (2001). *Integrating Government-Funded and Ratepayer-Funded Low-Income Energy Assistance Programs*, prepared for U.S. Department of Health and Human Services (HHS) and Oak Ridge National Laboratory.

Colton (2001). *In Harm's Way: Home Heating, Fire Hazards, and Low-Income Households*, prepared for National Fuel Funds Network.

Colton (2001). *Reducing Energy Distress: "Seeing RED" Project Evaluation* (evaluation of Iowa REACH project), prepared for Iowa Department of Human Rights.

Colton (2001). *Group Buying of Propane and Fuel Oil in New York State: A Feasibility Study*, prepared for New York State Community Action Association.

Colton (2000). *Establishing Telecommunications Lifeline Eligibility: The Use of Public Benefit Programs and its Impact on Lawful Immigrants*, prepared for Dayton (OH) Legal Aide.

Colton (2000). *Outreach Strategies for Iowa's LIHEAP Program Innovation in Improved Targeting*, prepared for Iowa Department of Human Rights.

Colton (1999). *Integration of LIHEAP with Energy Assistance Programs Created through Electric and/or Natural Gas Restructuring*, prepared for U.S. Department of Health and Human Services, Administration for Children and Families (Nov. 1999).

Colton (1999). *Fair Housing in the Suburbs: The Role of a Merged Fleet Boston in The Diversification of the Suburbs Report to the Federal Reserve Board Concerning the Merger of BankBoston Corp. and Fleet Financial Group*, prepared for Belmont Fair Housing Committee/Belmont Housing Partnership.

Colton (1999). *Measuring LIHEAP's Results: Responding to Home Energy Unaffordability*, prepared for Iowa Department of Human Resources.

Colton (1999). *Monitoring the Impact of Electric Restructuring on Low-Income Consumers: The What, How and Why of Data Collection*, prepared for U.S. Department of Health and Human Services, Administration for Children and Families.

Colton (1999). *Developing Consumer Education Programs in a Restructured Electric Industry*, prepared for Central Missouri Counties Community Development Corporation.

Colton (1999). *Electric Restructuring and the Low-Income Consumer: Legislative Implications for Colorado*, prepared for Colorado General Assembly.

Colton (1998). *Low-Income Electric Rate Affordability in Virginia: Funding Low-Income Assistance*, prepared for Virginia Council Against Poverty.

Colton and Alexander (1998). *The Implications of an Increased Federal Role in the Regulation of Electricity on State Regulation of Consumer Protection and Universal Service Programs*.

R.Colton and S.Colton (1998). *The Occupational Control of Tuberculosis in Homeless Shelters*, prepared for the U.S. Occupational Safety and Health Administration.

Colton (1998). *The Connection Between Affordable Housing and Educational Excellence in Belmont*, prepared for Belmont Fair Housing Committee.

Colton (1998). *Serving the Affordable Housing Needs of Belmont's Older Residents*, prepared for Belmont Fair Housing Committee.

Colton (1998). *The Costs of a Universal Service Fund in Minnesota: Electric and Natural Gas*, prepared for the Energy Cents Coalition.

Colton (1998). *Controlling the Occupational Exposure to Tuberculosis in Homeless Shelters: Applying Federal OSHA Standards to Volunteers*, prepared for the U.S. Occupational Safety and Health Administration.

Colton (1997). *Public Housing Utility Allowances for the Metro Dade Housing Agency, prepared for Legal Services Corporation of Greater Miami*.

Colton (1997). *Low-Income Energy Needs in Maryland: An Overview*, prepared for Maryland Office of Peoples Counsel.

Colton (1997). *Structuring a Public Purpose Distribution Fee for Missouri*, prepared for Missouri Department of Natural Resources.

Colton (1997). *The Low-Income Interest in Utility Mergers and Acquisitions*.

Colton (1997). *The Obligation to Serve and a Restructured Electric Industry*, prepared for U.S. Department of Energy, Oak Ridge National Laboratory.

Colton (1997). *Structuring and Evaluating a Direct Vendor Payment Shadow Billing Program for Publicly Assisted Housing in Houston*, prepared under contract to Gulf Coast Legal Foundation (with funding by Houston Lighting Company).

Colton (1997). *The For-Profit Conversion of the New England Education Loan Marketing Corporation: Lessons from Non-Profit Hospital Conversions.*

Colton (1997). *Rental Housing Affordability in Burlington, Vermont: A Report to the Burlington City Council.*

Colton (1997). *Structuring a "Wires Charge" for New Hampshire: A Framework for Administration and Operation.* prepared under contract to the New Hampshire Community Action Association.

Colton (1996). *Setting Income Eligibility for Fuel Assistance and Energy Efficiency Programs in a Competitive Electric Industry: The Marginal Impacts of Increasing Household Income.*

Colton (1996). *Fair Housing and Affordable Housing in Belmont, Massachusetts: Data on Availability, Distribution and Quality.*

Colton and Sheehan (1996). *Fair Housing Analysis of Impediments Study for Washington County (Oregon).*

Colton (1996). *Structuring a Low-Income "Wires Charge" for New Jersey,* prepared for Citizens Against Rate Escalation (CARE).

Colton (1996). *Structuring a Low-Income "Wires Charge" for Kentucky,* prepared for Louisville Legal Aide Association.

Colton (1996). *Structuring a Low-Income "Wires Charge" for Iowa,* prepared for Iowa Bureau of Human Resources, Office of Weatherization.

Colton (1996). *Structuring a Low-Income "Wires Charge" for Montana,* prepared for Energy Share of Montana.

Colton (1996). *Structuring a Low-Income "Wires Charge" for Oklahoma,* prepared for Oklahoma State Association of Community Action Agencies.

Colton (1996). *Structuring a Low-Income "Wires Charge" for Ohio,* prepared for Ohio Legal Services Corporation.

Colton (1996). *Structuring a Low-Income "Wires Charge" for Indiana,* prepared for Indiana Citizen Action Campaign.

Colton (1996). *Shawmut Bank and Community Reinvestment in Boston: Community Credit Needs and Affordable Housing.*

Colton (1995). *Understanding "Redlining" in a Competitive Electric Utility Industry).*

Colton (1995). *Energy Efficiency as a Credit Enhancement: Public Utilities and the Affordability of First-Time Homeownership.*

Colton (1995). *Competition in the Electric Industry: Assessing the Impacts on Residential, Commercial and Low-Income Customers,* prepared under contract to the National Association of Regulatory Utility Commissioners.

Colton (1995). *Performance-Based Evaluation of Customer Collections in a Competitive Electric Utility Industry.*

Colton (1995). *Poverty Law and Economics: Calculating the Household Budget,* prepared for presentation to National Legal Aid and Defender Association, Substantive Law Training.

- Colton (1995). *The Need for Regulation in a Competitive Electric Utility Industry*.
- Colton (1995). *Rewriting the Social Compact: A Competitive Electric Industry and its Core Customer*.
- Colton (1995). *The Road Oft Taken: Unaffordable Home Energy Bills, Forced Mobility, and Childhood Education in Missouri*, prepared for the Missouri Association of Head Start Directors.
- Colton (revised 1995). *Models of Low-Income Utility Rates*, prepared under contract to Washington Gas Company.
- Colton (1995). *Beyond Social Welfare: Promoting the Earned Income Tax Credit (EITC) as an Economic Development Strategy by Public Utilities*.
- Colton (1995). *Should Regulation of Electricity Depend on the Absence of Competition?*.
- Colton (1995). *Comprehensive Credit and Collection Strategies in a Competitive Electric Utility Industry*, prepared under contract to Hydro-Quebec.
- Colton (1995). *Economically Stranded Investment in a Competitive Electric Industry: A Primer for Cities, Consumers and Small Business Advocates*.
- Colton (1995). *Competitive Solicitation as an Integrated Resource Planning Model: Its Competitive Impacts on Small Businesses Serving Low-Income Households*, prepared under contract to the Arkansas State Weatherization
- Colton (1995). *Reviewing Utility Low-Income DSM Programs: A Suggested Framework for Analysis*.
- Colton (1995). *Least-Cost Integrated Resource Planning in Arkansas: The Role of Low-Income Energy Efficiency* prepared under contract to the Arkansas State Weatherization Assistance Program.
- Colton (1994). *Addressing Low-Income Inability-to-Pay Utility Bills During the Winter Months On Tribal Lands Served By Electric Co-ops: A Model Tribal Winter Utility Shutoff Regulation* .
- Colton (1994). *An Earned Income Tax Credit Utility Intervention Kit* .
- Colton (1994). *Telecommunications Credit and Collections and Controlling SNET Uncollectibles*, prepared under contract to the Connecticut Office of Consumer Counsel.
- Colton (1994). *Customer Deposit Demands by U.S. West: Reasonable Rationales and the Proper Assessment of Risk*, prepared on behalf of the Staff of the Washington Utilities and Transportation Commission.
- Colton (1994). *Credit and Collection Fees and Low-Income Households: Ensuring Effectiveness and Cost-Effectiveness*, prepared on behalf of the Missouri Office of Public Counsel.
- Colton (1994). *Weatherization Assistance Program Evaluations: Assessing the Impact on Low-Income Ability-to-Pay*.
- Colton (1994). *DSM Planning in a Restrictive Environment*.
- Part 1: *Why Ramping Down DSM Expenditures Can Be "Pro" DSM*
  - Part 2: *Low-Income Opposition to DSM: Ill-Defined and Misguided*
  - Part 3: *Low-Income DSM Expenditures as a Non-Resource Acquisition Strategy: The Potential for Niche Marketing*

Colton (1994). *Loan Guarantees as a Utility Investment in Energy Efficiency for Low-Income Housing.*

Colton and Sheehan.(1994). *"Linked Deposits" as a Utility Investment in Energy Efficiency for Low-Income Housing.*

Colton (1994). *Securitizing Utility Avoided Costs: Creating an Energy Efficiency "Product" for Private Investment in WAP.*

Colton and Sheehan (1994). *Economic Development Utility Rates: Targeting, Justifying, Enforcing,* prepared under contract to Texas ROSE.

Colton and Sheehan (1993). *Affordable Housing and Section 8 Utility Allowances: An Evaluation and a Proposal for Action:*

Part I: *Adequacy of Annual Allowances.*

Part II: *Adequacy of Monthly Allowances.*

Colton and Sheehan (1993). *Identifying Savings Arising From Low-Income Programs.*

Colton (1993). *Low-Income Programs And Their Impact on Reducing Utility Working Capital Allowances.*

Colton, et al. (1995). *An Assessment of Low-Income Energy Needs in Washington State.* Prepared under contract to the Washington state Department of Community Development.

Colton, et al. (1993). *Funding Social Services Through Voluntary Contribution Programs: A Proposal for SNET Participation in Funding INFOLINE's Information and Referral Services in Connecticut.* Prepared under contract with United Way of Connecticut.

Colton. (1993). *Public Utility Credit and Collection Activities: Establishing Standards and Applying them to Low-Income Utility Programs.* Prepared under contract to the national office of the American Association of Retired Persons.

Colton (1992). *Filling the Gaps: Financing Low-Income Energy Assistance in Connecticut.* Prepared under contract to the Connecticut State Department of Human Resources.

Colton and Quinn. (1992). *The Impact on Low-Income People of the Increased Cost for Basic Telephone Service: A Study of Low-income Massachusetts Resident's Telephone Usage Patterns and Their Perceptions of Telephone Service Quality.* Prepared under contract to the Massachusetts Office of the Attorney General.

Colton and Quinn. (1991). *The ABC's of Arrearage Forgiveness.* Prepared with a grant from the Mary Reynolds Babcock Foundation.

Colton and Sable (1991). *A California Advocate's Guide to Telephone Customer Service Issues.* Prepared with funding from the California Telecommunications Education Trust Fund.

Colton and Levinson. (1991). *Energy and Poverty in North Carolina: Combining Public and Private Resources to Solve a Public and Private Problem.* Prepared under contract to the North Carolina General Assembly.

Colton. (1991). *The Percentage of Income Payment Plan in Jefferson County, Kentucky: One Alternative to Distributing LIHEAP Benefits.* Prepared with funds provided by the City of Louisville, Kentucky and the Louisville Community Foundation.

Colton. (1991). *The Energy Assurance Program for Ohio: A Cost-Based Response to Low-Income Energy Problems*. Prepared for Cincinnati Legal Aid Society, Dayton Legal Society, and Cleveland Legal Aid Society.

Colton. (1991). *Utility-Financed Low-Income DSM: Winning for Everybody*. Prepared with funds provided by the Public Welfare Foundation and the Mary Reynolds Babcock Foundation.

Colton (1991). *Percentage of Income Payment Plans as an Alternative Distribution of LIHEAP Benefits: Good Business, Good Government, Good Social Policy*. Prepared under contract to the New England Electric System (NEES).

Colton (1991). *The Forced Mobility of Low-Income Customers: The Indirect Impacts of Shutoffs on Utilities and their Customers*.

Colton (1990). *Controlling Uncollectible Accounts in Pennsylvania: A Blueprint for Action*. Prepared under contract to the Pennsylvania Office of Consumer Advocate.

Colton (1990). *Nonparticipation in Public Benefit Programs: Lessons for Fuel Assistance*.

Colton (1990). *Why Customers Don't Pay: The Need for Flexible Collection Techniques*. Prepared under contract to the Philadelphia Public Advocate.

Colton (1990). *A Regulatory Response to Low-income Energy Needs in Colorado: A Proposal*. Prepared for the Legal Aid Society of Metro Denver.

Colton (1990). *Determining the Cost-Effectiveness of Utility Credit and Collection Techniques*. Prepared with funds provided by the Mary Reynolds Babcock Foundation.

Colton (1990). *Energy Use and the Poor: The Association of Consumption with Income*.

Colton (1989). *Identifying Consumer Characteristics Which are Important to Determining the Existence of Workable Competition in the Interexchange Telecommunications Industry*. Prepared under contract to the Office of Public Counsel of the Florida Legislature.

Colton (1989). *The Interexchange Telecommunications Industry: Should Regulation Depend on the Absence of Competition*. Prepared under contract to the Office of Public Counsel of the Florida Legislature.

Colton (1989). *Fuel Assistance Alternatives for Utah*. Prepared under contract to the Utah State Energy Office.

Colton (1989). *Losing the Fight in Utah: High Energy Bills and Low-Income Consumers*. Prepared under contract with the Utah State Energy Office.

Colton (1989). *The Denial of Local Telephone Service for Nonpayment of Toll Bills: A Review and Assessment of Regulatory Litigation* (2d ed.).

Colton (1988). *Customer Service Regulations for Residential Telephone Customers in the Post-Divestiture Era: A Study of Michigan Bell Telephone Company*. Prepared under contract to the Michigan Divestiture Research Fund.

Colton (1988). *Low-Income Utility Protections in Maine*. (3 volumes). Prepared under contract to the Maine Public Utilities Commission.

- a. Volume 1: *An Evaluation of Low-Income Utility Protections in Maine: Winter Requests for Disconnect Permission.*
- b. Volume 2: *An Evaluation of Low-Income Utility Protections in Maine: Payment Arrangements for Maine's Electric Utilities.*
- c. Volume 3: *An Evaluation of Low-Income Utility Protections in Maine: Fuel Assistance and Family Crisis Benefits.*

Colton (1988). *The Recapture of Interest on LIHEAP Payments to Unregulated Fuel Vendors: An Evaluation of the 1987 Maine Program.* Prepared with a grant from the Jessie B. Cox Charitable Trust.

Colton (1988). *An Evaluation of the Warwick (Rhode Island) Percentage of Income Payment Plan.* Prepared under contract to the Rhode Island Governor's Office of Energy Assistance.

Colton, Hill & Fox (1986). *The Crisis Continues: Addressing the Energy Plight of Low-Income Pennsylvanians Through Percentage of Income Plans.* Prepared under contract to the Pennsylvania Utility Law Project.

Fisher, Sheehan and Colton (1986). *Public/Private Enterprise as an Economic Development Strategy for States and Cities.* Prepared under contract to the United States Department of Commerce, Economic Development Administration.

Colton (1985). *Creative Financing for Local Energy Projects: A Manual for City and County Government in Iowa.* Prepared under contract to the Iowa Energy Policy Council.

Colton (1985). *The Great Rate Debate: Rate Design for the Omaha Public Power District.* Prepared under contract to the Omaha Public Power District.

Grenier and Colton (1984). *Utility Conservation Financing Programs for Nebraska's Publicly Owned Utilities: Legal Issues and Considerations.* Prepared under contract to the Nebraska Energy Office.

Colton (1984). *The Financial Implications to the Utility Industry of Pursuing Energy Management Strategies.* Prepared under contract to the Nebraska Energy Office.

COLTON TESTIMONY EXPERIENCE

1988 - PRESENT

CASE NAME	ROLE	CLIENT NAME	TOPIC	JURIS.	DATE
I/M/O Philadelphia Gas Works	Witness	Office of Consumer Advocate	Low-income and residential collections	Pennsylvania	07
I/M/O Equitable Gas Company	Witness	Office of Consumer Advocate	Low-income program	Pennsylvania	07
I/M/O Section 11 Proceeding, Energy Restructuring	Witness	Office of Peoples Counsel	Low-income energy needs and responses	Maryland	06
I/M/O Public Service Company of New Mexico	Witness	Community Action of New Mexico	Low-income programs	New Mexico	06
I/M/O Petition of Citizens Gas/NIPSCO/Vectren for Universal Service Programs	Witness	Citizens Gas & Coke Utility/Northern Indiana Public Service/Vectren Energy Delivery	Low-income program design	Indiana	06
I/M/O Public Service Co. of North Carolina	Witness	North Carolina Attorney General/Dept. of Justice	Low-income energy usage	North Carolina	06
I/M/O Electric Assistance Program	Witness	New Hampshire Legal Assistance	Electric low-income program design	Vermont	06
I/M/O Verizon Petition for Alternative Regulation	Witness	New Hampshire Legal Assistance	Basic local telephone service	Vermont	06
I/M/O Pennsylvania Electric Co/Metropolitan Edison Co.	Witness	Office of Consumer Advocate	Universal service cost recovery	Pennsylvania	06
I/M/O Duquesne Light Company	Witness	Office of Consumer Advocates	Universal service cost recovery	Pennsylvania	06
I/M/O Natural Gas DSM Planning	Witness	Low-income Energy Network	Low-income DSM program	Ontario	06
I/M/O Union Gas Co.	Witness	Action Centre for Tenants Ontario (ACTO)	Low-income program design	Ontario	06
I/M/O Public Service of New Mexico merchant plant	Witness	Community Action New Mexico	Low-income energy usage	New Mexico	06
I/M/O Customer Assistance Program design and cost recovery	Witness	Office of Consumer Advocate	Low-income program design	Pennsylvania	06
I/M/O NIPSCO Proposal to Extend Winter Warmth Program	Witness	Northern Indiana Public Service Company	Low-income energy program evaluation	Indiana	05
I/M/O Piedmont Natural Gas	Witness	North Carolina Attorney General/Dept. of Justice	Low-income energy usage	North Carolina	05
I/M/O PSEG merger with Exelon Corp.	Witness	Division of Ratepayer Advocate	Low-income issues	New Jersey	05
Re. Philadelphia Water Department	Witness	Public Advocate	Water collection factors	Philadelphia	05
I/M/O statewide natural gas universal service program	Witness	New Hampshire Legal Assistance	Universal service	New Hampshire	05
I/M/O Sub-metering requirements for residential rental properties	Witness	Tenants Advocacy Centre of Ontario	Sub-metering consumer protections	Ontario	05
I/M/O National Fuel Gas Distribution Corp.	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	05

CASE NAME	ROLE	CLIENT NAME	TOPIC	JURIS.	DATE
I/M/O Nova Scotia Power, Inc.	Witness	Dalhousie Legal Aid Service	Universal service	Nova Scotia	04
I/M/O Lifeline Telephone Service	Witness	National Ass'n State Consumer Advocates (NASUCA)	Lifeline rate eligibility	FCC	04
Mackay v. Verizon North	Witness	Office of Consumer Advocate	Lifeline rates—vertical services	Pennsylvania	04
I/M/O Philadelphia Gas Works	Witness	Office of Consumer Advocate	Credit and collections	Pennsylvania	04
I/M/O Citizens Gas & Coke/Vectren	Witness	Citizens Action Coalition of Indiana	Universal service	Indiana	04
I/M/O PPL Electric Corporation	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	04
I/M/O Consumers New Jersey Water Company	Witness	Division of Ratepayer Advocate	Low-income water rate	New Jersey	04
I/M/O Washington Gas Light Company	Witness	Office of Peoples Counsel	Low-income gas rate	Maryland	04
I/M/O Washington Gas Light Company	Witness	Office of Peoples Counsel	Low-income gas rate	Maryland	03
Golden v. City of Columbus	Witness	Helen Golden	ECOA disparate impacts	Ohio	02
Huegel v. City of Easton	Witness	Phyllis Huegel	Credit and collection	Pennsylvania	02
I/M/O Universal Service Fund	Witness	Public Utility Commission staff	Universal service funding	New Hampshire	02
I/M/O Philadelphia Gas Works	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	02
I/M/O Washington Gas Light Company	Witness	Office of Peoples Counsel	Rate design	Maryland	02
I/M/O Consumers Illinois Water Company	Witness	Illinois Citizens Utility Board	Credit and collection	Illinois	02
I/M/O Public Service Electric & Gas Rates	Witness	Division of Ratepayer Advocate	Universal service	New Jersey	01
I/M/O Pennsylvania-American Water Company	Witness	Office of Consumer Advocate	Low-income rates and water conservation	Pennsylvania	01
I/M/O Louisville Gas & Electric Prepayment Meters	Witness	Kentucky Community Action Association	Low-income energy	Kentucky	01
I/M/O NICOR Budget Billing Plan Interest Charge	Witness	Cook County State's Attorney	Rate Design	Illinois	01
I/M/O Rules Re. Payment Plans for High Natural Gas Prices	Witness	Cook County State's Attorney	Budget Billing Plans	Illinois	01
I/M/O Philadelphia Water Department	Witness	Office of Public Advocate	Credit and collections	Philadelphia	01
I/M/O Missouri Gas Energy	Witness	Office of Peoples Counsel	Low-income rate relief	Missouri	01
I/M/O Bell Atlantic—New Jersey Alternative Regulation	Witness	Division of Ratepayer Advocate	Telecommunications universal service	New Jersey	01

CASE NAME	ROLE	CLIENT NAME	TOPIC	JURIS.	DATE
IM/O T.W. Phillips Gas and Oil Co.	Witness	Office of Consumer Advocate	Ratemaking of universal service costs.	Pennsylvania	00
IM/O Peoples Natural Gas Company	Witness	Office of Consumer Advocate	Ratemaking of universal service costs.	Pennsylvania	00
IM/O UGI Gas Company	Witness	Office of Consumer Advocate	Ratemaking of universal service costs.	Pennsylvania	00
IM/O PFG Gas Company	Witness	Office of Consumer Advocate	Ratemaking of universal service costs.	Pennsylvania	00
Armstrong v. Gallia Metropolitan Housing Authority	Witness	Equal Justice Foundation	Public housing utility allowances	Ohio	00
IM/O Bell Atlantic--New Jersey Alternative Regulation	Witness	Division of Ratepayer Advocate	Telecommunications universal service	New Jersey	00
IM/O Universal Service Fund for Gas and Electric Utilities	Witness	Division of Ratepayer Advocate	Design and funding of low-income programs	New Jersey	00
IM/O Consolidated Edison Merger with Northeast Utilities	Witness	Save Our Homes Organization	Merger impacts on low-income	New Hampshire	00
IM/O UtiliCorp Merger with St. Joseph Light & Power	Witness	Missouri Dept. of Natural Resources	Merger impacts on low-income	Missouri	00
IM/O UtiliCorp Merger with Empire District Electric	Witness	Missouri Dept. of Natural Resources	Merger impacts on low-income	Missouri	00
IM/O PacifiCorp	Witness	The Opportunity Council	Low-income energy affordability	Washington	00
IM/O Public Service Co. of Colorado	Witness	Colorado Energy Assistance Foundation	Natural gas rate design	Colorado	00
IM/O Avista Energy Corp.	Witness	Spokane Neighborhood Action Program	Low-income energy affordability	Washington	00
IM/O TW Phillips Energy Co.	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	00
IM/O PECO Energy Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	00
IM/O National Fuel Gas Distribution Corp.	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	00
IM/O PFG Gas Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	00
IM/O UGI Energy Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	00
Re. PSCO/NSP Merger	Witness	Colorado Energy Assistance Foundation	Merger impacts on low-income	Colorado	99 - 00
IM/O Peoples Gas Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	99
IM/O Columbia Gas Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	99
IM/O PG Energy Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	99
IM/O Equitable Gas Company	Witness	Office of Consumer Advocate	Universal service	Pennsylvania	99
Allerruzzo v. Klarehek	Witness	Barlow Allerruzzo	Mobile home fees and sales	Illinois	99
IM/O Restructuring New Jersey's Natural Gas Industry	Witness	Division of Ratepayer Advocate	Universal service	Pennsylvania	99

CASE NAME	ROLE	CLIENT NAME	TOPIC	JURIS.	DATE
I/M/O Bell Atlantic Local Competition	Witness	Public Utility Law Project	Lifeline telecommunications rates	New Jersey	99
I/M/O Merger Application for SBC and Ameritech Ohio	Witness	Edgemont Neighborhood Association	Merger impacts on low-income consumers	Ohio	98 - 99
Davis v. American General Finnee	Witness	Thomas Davis	Damages in "loan flipping" case	Ohio	98 - 99
Griffin v. Associates Financial Service Corp.	Witness	Earlie Griffin	Damages in "loan flipping" case	Ohio	98 - 99
I/M/O Baltimore Gas and Electric Restructuring Plan	Witness	Maryland Office of Peoples Counsel	Consumer protection/basic generation service	Maryland	98 - 99
I/M/O Delmarva Power and Light Restructuring Plan	Witness	Maryland Office of Peoples Counsel	Consumer protection/basic generation service	Maryland	98 - 99
I/M/O Potomac Electric Power Co. Restructuring Plan	Witness	Maryland Office of Peoples Counsel	Consumer protection/basic generation service	Maryland	98 - 99
I/M/O Potomac Edison Restructuring Plan	Witness	Maryland Office of Peoples Counsel	Consumer protection/basic generation service	Maryland	98 - 99
VMHOA v. LaPierre	Witness	Vermont Mobile Home Owners Association	Mobile home tying	Vermont	98
Re. Restructuring Plan of Virginia Electric Power	Witness	VMH Energy Services, Inc.	Consumer protection/basic generation service	Virginia	98
Mackey v. Spring Lake Mobile Home Estates	Witness	Timothy Mackey	Mobile home fees	State ct. Illinois	98
Re. Restructuring Plan of Atlantic City Electric	Witness	New Jersey Division of Ratepayer Advocate	Low-income issues	New Jersey	97-98
Re. Restructuring Plan of Jersey Central Power & Light	Witness	New Jersey Division of Ratepayer Advocate	Low-income issues	New Jersey	97-98
Re. Restructuring Plan of Public Service Electric & Gas	Witness	New Jersey Division of Ratepayer Advocate	Low-income issues	New Jersey	97-98
Re. Restructuring Plan of Rockland Electric	Witness	New Jersey Division of Ratepayer Advocate	Low-income issues	New Jersey	97-98
Appleby v. Metropolitan Dade County Housing Agency	Witness	Legal Services of Greater Miami	HUD utility allowances	Fed. court: So. Florida	97 - 98
Re. Restructuring Plan of PECO Energy Company	Witness	Energy Coordinating Agency of Philadelphia	Universal service	Pennsylvania	97
Re. Atlantic City Electric Merger	Witness	New Jersey Division of Ratepayer Advocate	Low-income issues	New Jersey	97
Re. IES Industries Merger	Witness	Iowa Community Action Association	Low-income issues	Iowa	97
Re. New Hampshire Electric Restructuring	Witness	NH Comm. Action Ass'n	Wires charge	New Hampshire	97
Re. Natural Gas Competition in Wisconsin	Witness	Wisconsin Community Action Association	Universal service	Wisconsin	96
Re. Baltimore Gas and Electric Merger	Witness	Maryland Office of Peoples Counsel	Low-income issues	Maryland	96
Re. Northern States Power Merger	Witness	Energy Cents Coalition	Low-income issues	Minnesota	96
Re. Public Service Co. of Colorado Merger	Witness	Colorado Energy Assistance Foundation	Low-income issues	Colorado	96
Re. Massachusetts Restructuring Regulations	Witness	Fisher, Sheehan & Colton	Low-income issues/energy efficiency	Massachusetts	96

CASE NAME	ROLE	CLIENT NAME	TOPIC	JURIS.	DATE
Re. FERC Merger Guidelines	Witness	National Coalition of Low-Income Groups	Low-income interests in mergers	Washington D.C.	96
Re. Joseph Keliikuli III	Witness	Joseph Keliikuli III	Damages from lack of homestead	Honolulu	96
Re. Theresa Mahaulu	Witness	Theresa Mahaulu	Damages from lack of homestead	Honolulu	95
Re. Joseph Ching, Sr.	Witness	Re. Joseph Ching, Sr.	Damages from lack of homestead	Honolulu	95
Joseph Keaulana, Jr.	Witness	Joseph Keaulana, Jr.	Damages from lack of homestead	Honolulu	95
Re. Utility Allowances for Section 8 Housing	Witness	National Coalition of Low-Income Groups	Fair Market Rent Setting	Washington D.C.	95
Re. PGW Customer Service Tariff Revisions	Witness	Philadelphia Public Advocate	Credit and collection	Philadelphia	95
Re. Customer Responsibility Program	Witness	Philadelphia Public Advocate	Low-income rates	Philadelphia	95
Re. Houston Lighting and Power Co.	Witness	Gulf Coast Legal Services	Low-income Rates	Texas	95
Re. Request for Modification of Winter Moratorium	Witness	Philadelphia Public Advocate	Credit and collection	Philadelphia	95
Re. Dept of Hawaii Homelands Trust Homestead Production	Witness	Native Hawaiian Legal Corporation	Prudence of trust management	Honolulu	94
Re. SNET Request for Modified Shutoff Procedures	Witness	Office of Consumer Counsel	Credit and collection	Connecticut	94
Re. Central Light and Power Co.	Witness	United Farm Workers	Low-income rates/DSM	Texas	94
Blackwell v. Philadelphia Electric Co.	Witness	Gloria Blackwell	Role of shutoff regulations	Penn. courts	94
U.S. West Request for Waiver of Rules	Witness	Wash. Util. & Transp. Comm'n Staff	Telecommunications regulation	Washington	94
Re. U.S. West Request for Full Toll Denial	Witness	Colorado Office of Consumer Counsel	Telecommunications regulation	Colorado	94
Washington Gas Light Company	Witness	Community Family Life Services	Low-income rates & energy efficiency	Washington D.C.	94
Clark v. Peterborough Electric Utility	Witness	Peterborough Community Legal Centre	Discrimination of tenant deposits	Ontario, Canada	94
Dorsey v. Housing Auth. of Baltimore	Witness	Baltimore Legal Aide	Public housing utility allowances	Federal district court	93
Penn Bell Telephone Co.	Witness	Penn. Utility Law Project	Low-income phone rates	Pennsylvania	93
Philadelphia Gas Works	Witness	Philadelphia Public Advocate	Low-income rates	Philadelphia	93
Central Maine Power Co.	Witness	Maine Assn Ind. Neighborhoods	Low-income rates	Maine	92
New England Telephone Company	Witness	Mass Attorney General	Low-income phone rates	Massachusetts	92
Philadelphia Gas Co.	Witness	Philadelphia Public Advocate	Low-income DSM	Philadelphia	92
Philadelphia Water Dept.	Witness	Philadelphia Public Advocate	Low-income rates	Philadelphia	92

CASE NAME	ROLE	CLIENT NAME	TOPIC	JURIS.	DATE
Public Service Co. of Colorado	Witness	Land and Water Fund	Low-income DSM	Colorado	92
Sierra Pacific Power Co.	Witness	Washoe Legal Services	Low-income DSM	Nevada	92
Consumers Power Co.	Witness	Michigan Legal Services	Low-income rates	Michigan	92
Columbia Gas	Witness	Penn. State Office of Consumer Advocate (OCA)	Energy Assurance Program	Pennsylvania	91
Mass. Elec. Co.	Witness	Mass Elec Co.	Percentage of Income Plan	Massachusetts	91
AT&T	Witness	TURN	Inter-LATA competition	California	91
Generic Investigation into Uncollectibles	Witness	Penn OCA	Controlling uncollectibles	Pennsylvania	91
Union Heat Light & Power	Witness	Kentucky Legal Services (KLS)	Energy Assurance Program	Kentucky	90
Philadelphia Water	Witness	Philadelphia Public Advocate (PPA)	Controlling accounts receivable	Philadelphia	90
Philadelphia Gas Works	Witness	PPA	Controlling accounts receivable	Philadelphia	90
Mississippi Power Co.	Witness	Southeast Mississippi Legal Services Corp.	Formula ratemaking	Mississippi	90
Kentucky Power & Light	Witness	KLS	Energy Assurance Program	Kentucky	90
Philadelphia Electric Co.	Witness	PPA	Low-income rate program	Philadelphia	90
Montana Power Co.	Witness	Montana Ass'n of Human Res. Council Directors	Low-income rate proposals	Montana	90
Columbia Gas Co.	Witness	Penn. OCA	Energy Assurance Program	Pennsylvania	90
Philadelphia Gas Works	Witness	PPA	Energy Assurance Program	Philadelphia	89
Southwestern Bell Telephone Co.	Witness	SEMLSC	Formula ratemaking	Mississippi	90
Generic Investigation into Low-income Programs	Witness	Vermont State Department of Public Service	Low-income rate proposals	Vermont	89
Generic Investigation into Demand Side Management Measures	Consultant	Vermont DPS	Low-income conservation programs	Vermont	89
National Fuel Gas	Witness	Penn OCA	Low-income fuel funds	Pennsylvania	89
Montana Power Co.	Witness	Human Resource Develop. Council District XI	Low-income conservation	Montana	88
Washington Water Power Co.	Witness	Idaho Legal Service Corp.	Rate base, rate design, cost-allocations	Idaho	88

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

SCHEDULES TO THE  
DIRECT TESTIMONY OF  
ROGER D COLTON

ON BEHALF OF  
OFFICE OF CONSUMER ADVOCATE

APRIL 6, 2007

**RESPONSE TO OFFICE OF CONSUMER ADVOCATE DATA REQUEST**  
**REGARDING PGW'S BASE RATE FILING**

**DOCKET NO. R-00061931**

**Question OCA-Set VI-1:** Please complete the attached tables. Cells that are marked in yellow need data provided by PGW.

**Response Provided By:** Cristina Coltro, Director Regulatory Compliance

**Response:** PGW does not have the requested information available. Please see table below for explanation. PGW maintains the following reports:

- **Statement of CRP Revenue:** CRP participation level; Revenue @ CRP Rate (Total GS Bill – CRP Net Discount); CRP @ GS Rate (Total GS Bill); Potential Discount (Revenue @ GS Rate – Revenue @ CRP Rate); LIHEAP cash grants applied to the CRP accounts; Earned Discount (the net of Potential Discount and LIHEAP cash grants); Accounting's Actual Figure (the actual discount that is reported in the Oracle financial system); and the CRP forgiveness. The gap between the Earned Discount and the Accounting's Figures is due to adjustments that are made on accounts such as cancel/rebill and prorates. Attached are two schedules: the actual data for FY06 and the test year forecast for FY07.
- **Universal Services Reporting Requirements:** PUC required CRP data is provided each year. PGW has submitted this data for 2004 and 2005. The 2006 data will be submitted in April 2007. The PUC publishes the data yearly and makes the booklet available via its website at:  
[http://www.puc.state.pa.us/general/publications\\_reports/publications\\_reports\\_yearly.aspx](http://www.puc.state.pa.us/general/publications_reports/publications_reports_yearly.aspx)
- **CRP Monthly Participation** (see attached) level by active and defaulted status: Active status means the customer is current with payments; Defaulted status means the customer is at least one CRP payment behind.

Requested Data	PGW's Report
<b>Current CRP customers</b>	See Attached CRP Revenue Schedules for onthly participation.
Month-beginning CRP enrollment	Not readily available.
Customer charge	Not readily available. Please see Revenue @ GS Rate.
Commodity Charge:	Not readily available. Please see Revenue @ GS Rate.
Base rate	Not readily available. Please see Revenue @ GS Rate.
Gas supply rate	Not readily available. Please see Revenue @ GS Rate.
Other monthly charges	Not readily available.
Total commodity rate per Mcf	Not readily available.
Average monthly CRP consumption	Not readily available.
<b>CAP Participants Removed During Month</b>	Not readily available.
Number of CAP customers removed	Not readily available.
<b>CAP Participants Added During Month</b>	Not readily available.
Number of CAP customers removed	Not readily available.
Current CRP customers	Not readily available.
Month-beginning CRP enrollment	Not readily available.
Average CRP monthly payments	Not readily available. Can be derived by dividing Revenue @ CRP Rate by the Number of Customers.
Number of Energy Assistance Payments received	See Universal Services Reports.
Average Energy Assistance grant per payment	Can be derived by dividing the total funds received by the number of grants. See Uniersal Services Reports.
Total Energy Assistance payments received	See Universal Services Reports.
<b>CRP Participants Added During the Month</b>	Not readily available.
Projected CRP participant additions in month	Not readily available. See CRP Revenue Schedule for FY 07 forecast.
Average CRP monthly payments	Not readily available.
Number of Energy Assistance Payments received	Not readily available.
Average Energy Assistance grant per payment	Not readily available.
Total Energy Assistance payments received	Not readily available.
<b>CRP Participants Removed During the Month</b>	Not readily available.
Projected CRP participant removals in month	Not readily available.
Average CRP monthly payments	Not readily available.
Number of Energy Assistance Payments received	Not readily available.
Average Energy Assistance grant per payment	Not readily available.
Total Energy Assistance payments received	Not readily available.

**Statement of CRP Revenue: Full Tariff vs. Program Rates for Fiscal 2006-07**

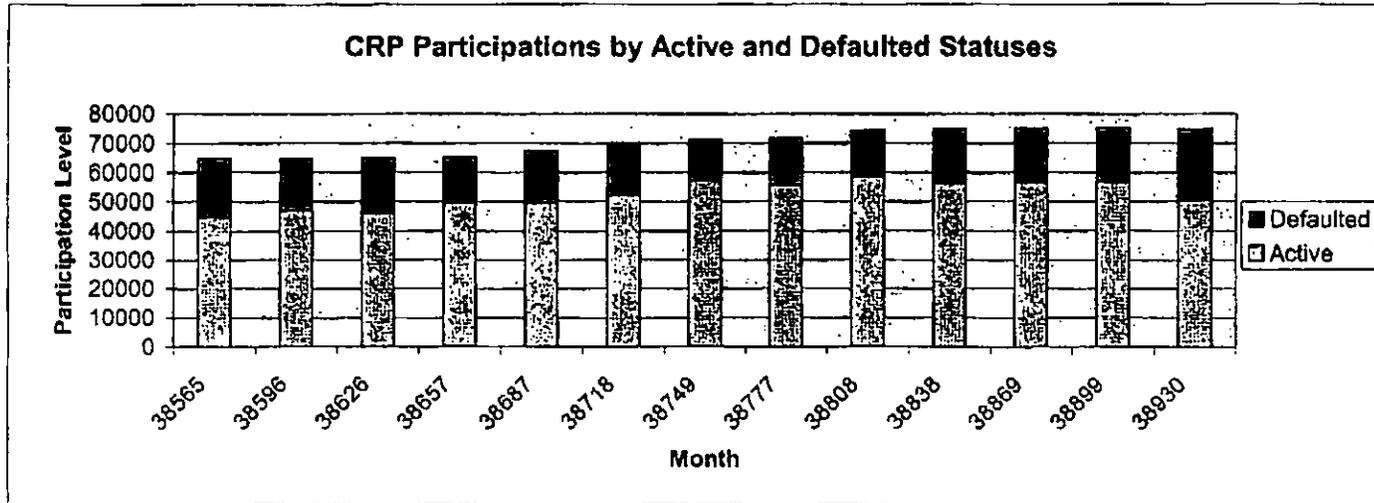
	September	October	November	December	January	February	March	April	May	June	July	August	Total 2006-07	
<b>Number of Customers</b>	74,500	75,000	76,500	78,000	78,000	78,500	77,000	77,500	78,000	77,500	77,900	77,000		
\$18 Min	4%	2,950	2,969	2,989	2,989	3,009	3,029	3,049	3,068	3,068	3,068	3,049	36,325	
8% Income	**	17,173	17,288	17,404	17,404	17,519	17,634	17,749	17,865	17,865	17,865	17,749	211,495	
9% Income	**	39,949	40,218	40,486	40,486	40,754	41,022	41,290	41,558	41,558	41,558	41,290	491,995	
10% Income	**	14,428	14,525	14,622	14,622	14,718	14,815	14,912	15,009	15,009	15,009	14,912	177,687	
<b>Total - Billed</b>	**	74,500	75,000	75,501	75,501	76,000	76,500	77,000	77,500	78,000	77,500	77,000	917,502	
		74,800	149,500	223,001	300,502	376,502	453,002	530,002	607,502	685,502	763,002	840,502	917,502	
<b>Revenue @ CRP Rates</b>														
\$18 Min	**	61,950	62,349	62,769	62,769	63,189	63,609	64,029	64,428	64,848	64,428	64,029	762,825	
8% Income	**	738,439	743,384	748,372	748,372	753,317	758,262	763,207	768,195	773,140	768,195	763,207	9,094,285	
9% Income	**	2,996,175	3,016,350	3,036,450	3,036,450	3,056,550	3,076,650	3,096,750	3,116,850	3,116,850	3,116,850	3,096,750	36,899,625	
10% Income	**	1,803,500	1,815,625	1,827,750	1,827,750	1,839,750	1,851,875	1,864,000	1,876,125	1,888,250	1,876,125	1,864,000	22,210,875	
<b>Total All Classes</b>	\$	\$ 5,600,064	\$ 5,617,708	\$ 5,675,341	\$ 5,675,341	\$ 5,712,806	\$ 5,750,396	\$ 5,787,986	\$ 5,825,598	\$ 5,863,188	\$ 5,825,598	\$ 5,787,986	68,967,610	
	\$	5,600,064	5,112,377	5,169,113	5,225,849	5,282,585	5,339,321	5,396,057	5,452,793	5,509,529	5,566,265	5,623,001	575,171	
<b>Revenue @ GS Rates</b>														
\$18 Min	**	\$121,466	\$183,783	\$431,681	\$751,186	\$1,210,715	\$1,102,794	\$855,910	\$600,072	\$284,393	\$168,092	\$141,079	\$135,652	5,986,823
8% Income	**	\$774,457	\$1,171,787	\$2,752,369	\$4,789,515	\$7,719,443	\$7,031,347	\$5,457,228	\$3,826,023	\$1,813,270	\$1,071,744	\$899,509	\$864,907	38,171,599
9% Income	**	\$1,816,102	\$2,747,841	\$6,454,309	\$11,231,419	\$18,102,103	\$16,488,517	\$12,797,206	\$8,972,029	\$4,252,120	\$2,513,241	\$2,109,351	\$2,028,208	89,512,448
10% Income	**	\$704,772	\$1,066,350	\$2,504,713	\$4,358,559	\$7,024,853	\$6,398,673	\$4,966,191	\$3,481,761	\$1,650,113	\$975,309	\$818,372	\$787,084	34,736,952
<b>Total All Classes</b>	**	\$ 3,416,797	\$ 5,169,761	\$ 12,143,072	\$ 21,130,679	\$ 34,057,118	\$ 31,021,331	\$ 24,076,535	\$ 16,879,885	\$ 9,999,896	\$ 4,728,386	\$ 3,968,511	\$ 3,815,851	168,407,822
	\$	3,416,797	8,586,558	20,729,630	41,860,309	75,917,427	106,938,758	131,015,293	147,695,178	155,895,074	160,623,460	164,591,971	168,407,822	818,551
<b>Potential Discounts/Premiums - Gross</b>														
\$18 Min	**	59,516	121,434	368,912	688,417	1,147,526	1,039,185	791,881	535,644	219,545	103,664	76,651	71,623	5,233,998
8% Income	**	36,018	428,403	2,003,997	4,041,143	6,966,126	6,273,085	4,694,021	3,057,828	1,040,130	303,549	131,314	101,700	29,077,314
9% Income	**	(1,180,073)	(268,509)	3,417,859	8,194,969	15,045,555	13,411,867	9,700,456	5,855,179	1,115,170	(603,609)	(1,007,499)	(1,068,542)	52,612,823
10% Income	**	(1,098,728)	(749,275)	676,963	2,530,809	5,185,105	4,546,798	3,102,191	1,605,636	(238,137)	(900,816)	(1,057,553)	(1,076,916)	12,536,077
<b>Total All Classes - mo</b>	**	(\$2,183,267)	(\$467,947)	\$6,467,731	\$15,455,338	\$28,344,312	\$25,270,935	\$18,288,549	\$11,054,287	\$2,136,708	(\$1,097,212)	(\$1,857,087)	(\$1,972,135)	99,440,212
	**	(2,183,267)	(2,851,214)	3,816,517	19,271,865	47,816,107	72,887,102	91,175,851	102,220,938	104,398,646	103,266,434	101,412,347	99,440,212	108,381,466
<b>LDFAP Grants</b>														
2006-07	**	(100)	(450,000)	(2,000,000)	(2,000,000)	(1,500,000)	(1,300,000)	(1,100,000)	(800,000)	(400,000)	(50,000)	0	0	(9,400,100)
<b>Earned Discounts - Accountant's Actual Figures</b>	**	(\$2,183,367)	(\$917,947)	\$4,467,731	\$13,453,138	\$26,844,312	\$23,970,935	\$17,188,549	\$10,454,287	\$1,736,708	(\$1,147,212)	(\$1,857,087)	(\$1,972,135)	590,040,112
<b>CRP Pay/Issues</b>	\$	\$ 828,760	\$ 936,000	\$ 942,840	\$ 942,240	\$ 948,480	\$ 954,720	\$ 960,960	\$ 967,200	\$ 973,440	\$ 979,680	\$ 985,920	\$ 992,160	\$11,450,400

**Statement of CRP Revenue: Full Tariff vs. Program Rates for Fiscal 2005-06**

	September	October	November	December	January	February	March	April	May	June	July	August	Total 2005-06
<b>Number of Customers</b>													
\$18 Mn	2,590	2,601	2,579	2,640	2,665	2,752	2,644	2,802	2,797	2,834	2,856	2,836	32,596
8% Income	15,094	15,121	15,108	15,310	15,546	15,709	15,587	16,282	16,352	16,418	16,416	16,414	189,357
9% Income	34,644	34,573	34,800	35,744	36,693	37,902	38,140	39,492	39,712	39,792	39,879	39,729	451,100
10% Income	12,422	12,516	12,656	13,426	14,044	14,791	15,119	15,647	15,874	15,993	16,004	15,904	174,396
<b>Total - Billed</b>	<b>64,750</b>	<b>64,811</b>	<b>65,143</b>	<b>67,120</b>	<b>68,948</b>	<b>71,154</b>	<b>71,490</b>	<b>74,223</b>	<b>74,735</b>	<b>75,037</b>	<b>75,153</b>	<b>74,883</b>	<b>847,449</b>
	64,750	129,881	194,704	261,824	330,772	401,926	473,416	547,630	622,374	697,411	772,566	847,449	
<b>Revenue @ CRP Rates</b>													
\$18 Mn	46,958	47,155	47,400	47,628	48,238	50,417	47,828	50,752	50,587	51,515	51,383	51,345	591,306
8% Income	610,958	615,378	615,996	623,557	635,667	648,708	637,500	673,296	674,612	674,272	676,166	674,732	7,759,131
9% Income	2,523,689	2,513,361	2,538,701	2,604,631	2,680,478	2,788,672	2,825,293	2,935,566	2,961,445	2,984,579	2,998,662	2,989,080	33,345,158
10% Income	1,531,172	1,548,094	1,561,010	1,664,683	1,748,750	1,851,873	1,908,184	1,984,416	2,014,547	2,052,376	2,056,762	2,040,194	21,958,842
<b>Total All Classes</b>	<b>\$ 4,712,777</b>	<b>\$ 4,723,988</b>	<b>\$ 4,763,108</b>	<b>\$ 4,940,499</b>	<b>\$ 5,113,424</b>	<b>\$ 5,338,469</b>	<b>\$ 5,415,883</b>	<b>\$ 5,644,030</b>	<b>\$ 5,701,192</b>	<b>\$ 5,762,741</b>	<b>\$ 5,782,973</b>	<b>\$ 5,755,352</b>	<b>63,654,437</b>
	\$ 4,712,777	\$9,438,784	\$14,199,872	\$19,140,371	\$24,253,795	\$29,392,264	\$35,008,147	\$40,652,177	\$46,385,349	\$52,116,110	\$57,899,045	\$63,654,437	\$76.11
<b>Revenue @ GS Rates</b>													
\$18 Mn	\$112,764	\$166,539	\$397,003	\$833,194	\$1,008,291	\$969,626	\$891,596	\$567,801	\$278,227	\$176,923	\$146,901	\$124,491	5,673,358
8% Income	\$759,290	\$966,628	\$2,552,140	\$5,171,286	\$6,376,312	\$5,997,907	\$5,612,216	\$3,670,135	\$1,856,551	\$1,237,982	\$944,928	\$832,124	35,977,500
9% Income	\$1,563,545	\$2,033,682	\$5,828,612	\$12,283,870	\$15,017,269	\$14,426,926	\$13,528,460	\$8,647,100	\$4,302,592	\$2,754,348	\$2,115,073	\$1,854,217	84,355,694
10% Income	\$556,413	\$768,957	\$2,354,747	\$5,058,087	\$6,271,593	\$6,178,745	\$5,799,388	\$3,648,045	\$1,755,253	\$1,101,332	\$840,990	\$753,124	35,886,674
<b>Total All Classes</b>	<b>\$ 2,992,012</b>	<b>\$ 3,935,806</b>	<b>\$ 11,132,503</b>	<b>\$ 23,346,437</b>	<b>\$ 28,673,465</b>	<b>\$ 27,573,205</b>	<b>\$ 25,831,660</b>	<b>\$ 16,533,081</b>	<b>\$ 8,192,623</b>	<b>\$ 5,270,286</b>	<b>\$ 4,047,892</b>	<b>\$ 3,563,957</b>	<b>161,093,225</b>
	\$ 2,992,012	\$ 6,927,818	\$ 18,060,311	\$ 41,406,758	\$ 70,080,222	\$ 97,653,437	\$ 123,485,087	\$ 140,018,168	\$ 148,210,790	\$ 153,481,377	\$ 157,529,268	\$ 161,093,225	\$190.09
<b>Potential Discounts/Premiums - Gross</b>													
\$18 Mn	65,807	119,384	349,604	785,567	960,053	919,209	843,670	517,049	227,539	125,408	95,516	73,146	5,082,052
8% Income	148,332	351,251	1,936,144	4,547,729	5,740,355	5,351,199	4,974,716	2,996,839	1,181,939	563,711	268,763	157,393	28,218,369
9% Income	(960,144)	(479,679)	3,289,911	9,679,238	12,336,790	11,637,254	10,703,167	5,711,534	1,341,147	(230,230)	(883,589)	(1,134,863)	51,010,536
10% Income	(974,760)	(779,137)	793,737	3,393,404	4,522,843	4,327,073	3,894,224	1,663,629	(259,294)	(951,044)	(1,215,773)	(1,287,070)	13,127,832
<b>Total All Classes - mo</b>	<b>(\$1,720,765)</b>	<b>(\$788,181)</b>	<b>\$6,369,396</b>	<b>\$18,403,937</b>	<b>\$23,560,041</b>	<b>\$22,234,735</b>	<b>\$20,415,777</b>	<b>\$10,889,051</b>	<b>\$2,491,431</b>	<b>(\$492,155)</b>	<b>(\$1,735,083)</b>	<b>(\$2,191,395)</b>	<b>97,438,789</b>
	(1,720,765)	(2,508,948)	3,860,448	22,286,387	45,828,428	68,081,183	88,478,940	98,365,990	101,657,422	101,965,288	89,830,183	87,438,788	
<b>LINEAR Grants</b>													
	(2,217)	147	(3,272,831)	(1,516,433)	(1,378,687)	(867,847)	(788,215)	(713,658)	(658,302)	(110,042)	(60,843)	(833)	(9,458,720)
<b>Earned Discounts -</b>	<b>(\$1,722,982)</b>	<b>(\$788,035)</b>	<b>\$3,096,564</b>	<b>\$16,889,504</b>	<b>\$22,181,354</b>	<b>\$21,266,889</b>	<b>\$19,647,562</b>	<b>\$10,175,394</b>	<b>\$1,835,069</b>	<b>(\$612,097)</b>	<b>(\$1,794,926)</b>	<b>(\$2,192,227)</b>	<b>\$87,982,069</b>
<b>Accounting's Actual Figures</b>	<b>(\$1,725,443)</b>	<b>(\$784,969)</b>	<b>\$3,112,253</b>	<b>\$16,918,289</b>	<b>\$22,222,890</b>	<b>\$21,339,644</b>	<b>\$19,801,410</b>	<b>\$10,166,988</b>	<b>\$1,837,613</b>	<b>(\$594,467)</b>	<b>(\$1,775,745)</b>	<b>(\$655,048)</b>	<b>\$88,071,523</b>
<b>Earned Discounts - for GCR Cash</b>	<b>\$ (1,725,443)</b>	<b>\$ (784,969)</b>	<b>\$ 3,112,253</b>	<b>\$ 16,918,289</b>	<b>\$ 22,222,890</b>	<b>\$ 21,339,644</b>	<b>\$ 19,801,410</b>	<b>\$ 10,166,988</b>	<b>\$ 1,837,613</b>	<b>\$ (594,467)</b>	<b>\$ (1,775,745)</b>	<b>\$ (655,048)</b>	<b>\$9,971,523</b>
<b>Total - Discounts Classes</b>	<b>\$ (1,725,443)</b>	<b>\$ (2,520,412)</b>	<b>\$ 591,841</b>	<b>\$ 17,508,140</b>	<b>\$ 30,731,130</b>	<b>\$ 61,070,774</b>	<b>\$ 60,072,184</b>	<b>\$ 91,159,170</b>	<b>\$ 82,066,783</b>	<b>\$ 87,402,318</b>	<b>\$ 90,628,571</b>	<b>\$ 86,971,523</b>	
<b>CRP Forgiveness</b>	<b>\$ 750,856</b>	<b>\$ 778,782</b>	<b>\$ 770,198</b>	<b>\$ 760,110</b>	<b>\$ 783,578</b>	<b>\$ 790,555</b>	<b>\$ 1,000,625</b>	<b>\$ 820,055</b>	<b>\$ 957,065</b>	<b>\$ 931,321</b>	<b>\$ 823,833</b>	<b>\$ 689,066</b>	<b>\$ 10,118,848</b>

	Aug-05	Sep-05	Oct-05	Nov-05	Dec-05	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06	Jul-06	Aug-06
Active	44,807	47,245	46,015	49,783	49,617	52,373	57,154	55,765	58,432	56,431	56,322	56,804	50,520
Defaulted	20,130	17,474	18,795	15,372	17,523	16,575	14,000	15,728	15,792	18,305	18,718	18,352	24,364
Total	64,937	64,719	64,810	65,135	67,140	68,948	71,154	71,493	74,224	74,736	75,038	75,156	74,884
Active (%)	0.69	0.73	0.71	0.76	0.74	0.76	0.80	0.78	0.79	0.76	0.75	0.76	0.67
Defaulted (%)	0.31	0.27	0.29	0.24	0.26	0.24	0.20	0.22	0.21	0.24	0.25	0.24	0.33

Active: Less than one full CRP bill behind  
 Defaulted: More than one full CRP bill behind



**RESPONSE TO OFFICE OF TRIAL STAFF DATA REQUEST**  
**REGARDING PGW'S BASE RATE FILING**  
**DOCKET NO. R-00061931**

**Question OTS-RE-64:** Reference Volume 2, Part 1 of 2, Exhibit JRB-2, B-1-1, and B-2.

- A. Why are there no recorded CRP Residential Sales for 2004-05?
- B. Provide a similar table updated for actual 2005-06.
- C. How have the budgeted 2006-07 numbers been determined for CRP Residential and CRP Shortfall? Provide supporting calculations.

**Response Provided By:** Joseph R. Bogdonavage, Senior Vice President – Finance and Cristina Coltro, Director, Regulatory Affairs

**Response:** A. Estimates and budgets – CRP residential sales only appear as a separate line item in estimates and budgets. Actual data – PGW's gas sales and revenues report does not provide actual CRP usage or revenues as a distinct line item. Only the CRP discount is separately identified. The residential categories include CRP related usage and revenues.

B. Please see the attached exhibits B-1-1 and B-2.

C. See attached for supporting calculations.

Exhibit B-1-1

PHILADELPHIA GAS WORKS  
GAS REVENUES  
(Dollars in Thousands)

Line		Actual	Actual	Budget
No.	<u>NON HEATING</u>	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>
1.	Residential	\$37,132	\$35,981	\$30,764
2.	CRP Residential	-	0	3,148
3.	CRP Shortfall	(1,595)	(1,799)	(1,483)
4.	Commercial	26,980	32,148	31,665
5.	Industrial	5,036	5,929	6,315
6.	Municipal	3,862	4,604	4,454
7.	Housing Authority	-	3	-
8.	Total Firm Non-Heating	<u>\$71,415</u>	<u>\$76,866</u>	<u>\$74,863</u>
9.	BPS - Small	\$2,705	\$2,281	\$2,597
10.	BPS - Large	29,289	22,268	26,317
11.	BPS - A/C	-	-	1,111
12.	BPS - H Indirect	-	-	-
13.	LBS-L Direct	765	157	220
14.	LBS-L Indirect	3,165	1,837	4,089
15.	LBS-S Indirect	6,502	4,549	6,051
16.	LBS-XL Direct	83	70	30
17.	LBS-XL Indirect	512	1,888	599
18.	Co-Generation - Indirect	371	199	172
19.	GTS - Sales	<u>1,285</u>	<u>260</u>	<u>6</u>
20.	Total Interruptibles	<u>44,677</u>	<u>33,509</u>	<u>41,192</u>
21.	Total Non Heating	<u>\$116,092</u>	<u>\$110,375</u>	<u>\$116,055</u>
	<u>HEATING</u>			
22.	Residential	\$626,071	\$670,102	\$547,532
23.	CRP Residential	0	0	163,777
24.	CRP Shortfall	(59,493)	(86,645)	(77,172)
25.	Commercial	129,073	147,635	155,817
26.	Industrial	11,048	12,020	13,472
27.	Municipal	12,041	15,608	16,903
28.	Housing Authority	8,583	10,214	15,281
29.	WNA	<u>(1,365)</u>	<u>13,406</u>	<u>-</u>
30.	Total Heating	<u>725,958</u>	<u>782,340</u>	<u>835,610</u>
31.	Net Billed Revenues	842,050	892,715	951,665
32.	GTS Revenues	<u>4,679</u>	<u>6,459</u>	<u>7,256</u>
33.	Total Billed Revenues	<u>\$846,729</u>	<u>\$899,174</u>	<u>\$958,921</u>
34.	Degree Days	4,327	3,819	4,525

**SCHEDULE RDC-2**

Exhibit B-2

**PHILADELPHIA GAS WORKS  
GAS SALES  
(MCF's)**

Line No.		Actual <u>2004-05</u>	Actual <u>2005-06</u>	Budget <u>2006-07</u>
<u>NON HEATING</u>				
1.	Residential	1,955	1,521	1,346
2.	CRP Residential	-	-	160
3.	Commercial	1,755	1,665	1,705
4.	Industrial	327	305	345
5.	Municipal	278	255	263
6.	Housing Authority	-	-	-
7.	Total Firm Non-Heating	<u>4,315</u>	<u>3,746</u>	<u>3,819</u>
8.	BPS - Small	205	139	163
9.	BPS - Large	2,795	1,527	1,931
10.	BPS - A/C	-	-	109
11.	LBS - L Direct	97	13	21
12.	LBS - L Indirect	391	148	375
13.	LBS - S Indirect	787	375	528
14.	LBS - XL Direct	10	5	2
15.	LBS - XL Indirect	62	189	54
16.	Co-Generation - Indirect	47	17	16
17.	GTS - Sales	116	13	-
18.	Total Interruptibles	<u>4,510</u>	<u>2,426</u>	<u>3,199</u>
19.	Total Non Heating	<u>8,825</u>	<u>6,172</u>	<u>7,018</u>
<u>HEATING</u>				
20.	Residential	39,033	32,980	28,887
21.	CRP Residential	-	-	8,676
22.	Commercial	8,363	7,525	8,498
23.	Industrial	711	610	735
24.	Municipal	826	857	1,006
25.	Housing Authority	560	526	830
26.	Total Heating	<u>49,493</u>	<u>42,498</u>	<u>48,632</u>
27.	Net Billed Sales	58,318	48,670	55,650
28.	GTS Volumes	<u>11,624</u>	<u>10,727</u>	<u>13,323</u>
29.	Total Billed Sales	<u>69,942</u>	<u>59,397</u>	<u>68,973</u>
30.	Firm Sales	53,808	46,244	52,451
31.	Residential Sales	40,988	34,501	39,069

**Statement of CRP Revenue: Full Tariff vs. Program Rates for Fiscal 2006-07**

	September	October	November	December	January	February	March	April	May	June	July	August	Total 2006-07
<b>Number of Customers</b>	69,600	69,600	70,000	71,000	71,000	72,000	72,000	72,000	71,000	70,000	69,500	69,500	847,000
\$18 Min	2,752	2,752	2,771	2,811	2,811	2,851	2,851	2,851	2,811	2,771	2,752	2,752	33,536
8% Income	16,020	16,020	16,136	16,366	16,366	16,597	16,597	16,597	16,366	16,136	16,020	16,020	195,241
9% Income	37,268	37,268	37,536	38,073	38,073	38,609	38,609	38,609	38,071	37,536	37,268	37,268	454,190
10% Income	13,460	13,460	13,556	13,750	13,750	13,944	13,944	13,944	13,750	13,556	13,460	13,460	164,034
<b>Total - Billed</b>	69,500	69,500	69,999	71,000	71,000	72,001	72,001	72,001	71,000	69,999	69,500	69,500	847,001
	69,500	139,000	208,999	279,999	350,999	423,000	495,001	567,002	638,002	708,001	777,501	847,001	70,883
<b>Revenue @ CRP Rates</b>													
\$18 Min	58,250	58,527	58,807	59,807	59,715	60,220	60,769	60,932	59,410	58,850	57,943	57,943	711,173
8% Income	692,871	697,688	698,660	710,854	720,200	724,424	723,216	710,934	713,971	707,076	693,953	693,953	8,487,800
9% Income	2,788,546	2,790,495	2,817,989	2,868,452	2,865,637	2,915,746	2,916,389	2,920,752	2,838,649	2,852,539	2,797,359	2,797,359	34,219,912
10% Income	1,688,254	1,689,406	1,700,917	1,725,558	1,730,792	1,764,903	1,753,925	1,766,481	1,740,130	1,713,899	1,694,070	1,694,070	20,662,405
<b>Total All Classes</b>	\$5,227,921	\$5,236,116	\$5,276,373	\$5,364,671	\$5,376,344	\$5,465,293	\$5,454,299	\$5,459,099	\$5,402,160	\$5,332,364	\$5,243,325	\$5,243,325	64,081,290
	\$5,227,921	\$10,484,037	\$15,740,410	\$21,105,081	\$26,481,425	\$31,946,718	\$37,401,017	\$42,860,116	\$48,262,276	\$53,594,640	\$58,837,965	\$64,081,290	675.66
													908
<b>Revenue @ GS Rates</b>	\$3,214,385	\$4,642,958	\$10,868,705	\$19,159,238	\$30,857,036	\$28,135,577	\$21,702,604	\$15,127,326	\$7,041,620	\$4,142,957	\$3,457,374	\$3,346,968	161,496,749
\$18 Min	\$114,270	\$185,055	\$388,377	\$681,102	\$1,089,844	\$1,000,207	\$771,518	\$537,789	\$250,326	\$147,280	\$122,908	\$118,983	6,388,835
8% Income	\$728,578	\$1,052,381	\$2,463,519	\$4,342,665	\$6,948,775	\$6,377,257	\$4,919,148	\$3,428,785	\$1,596,065	\$939,050	\$781,654	\$758,629	34,338,806
9% Income	\$1,708,516	\$2,467,834	\$5,776,955	\$10,183,556	\$16,294,887	\$14,954,676	\$11,515,410	\$8,040,506	\$3,742,775	\$2,202,073	\$1,837,670	\$1,778,987	80,823,848
10% Income	\$663,021	\$957,688	\$2,241,854	\$3,951,916	\$6,323,531	\$5,803,437	\$4,476,528	\$3,120,266	\$1,452,453	\$854,555	\$713,142	\$690,369	31,248,760
<b>Total All Classes</b>	\$3,214,385	\$4,642,958	\$10,868,705	\$19,159,239	\$30,857,037	\$28,135,577	\$21,702,604	\$15,127,326	\$7,041,619	\$4,142,958	\$3,457,374	\$3,346,968	151,496,750
	\$3,214,385	\$7,857,343	\$18,726,048	\$37,885,287	\$68,542,324	\$96,677,901	\$118,380,505	\$133,507,831	\$140,549,450	\$144,692,408	\$148,149,782	\$151,496,750	5178.86
													2146.360477
<b>Potential Discounts/(Premiums) - Gross</b>													
\$18 Min	56,020	106,528	327,570	621,295	1,030,129	939,987	710,749	476,837	190,916	88,430	64,965	61,040	4,474,466
8% Income	35,707	354,693	1,764,859	3,631,811	6,228,575	5,652,833	4,195,932	2,717,851	882,094	231,974	89,701	64,676	25,850,706
9% Income	(1,080,030)	(322,661)	2,958,966	7,315,104	13,429,250	12,038,930	8,619,021	5,119,754	854,126	(650,466)	(959,689)	(1,018,372)	46,303,933
10% Income	(1,025,233)	(731,718)	540,937	2,226,358	4,592,739	4,038,534	2,722,603	1,353,785	(287,677)	(859,344)	(980,928)	(1,003,701)	10,586,355
<b>Total All Classes - m</b>	(\$2,013,536)	(\$593,158)	\$5,592,332	\$13,794,568	\$25,280,693	\$22,670,284	\$16,248,305	\$9,668,227	\$1,639,459	(\$1,189,406)	(\$1,785,951)	(\$1,896,357)	87,415,460
	(2,013,536)	(2,606,694)	2,985,636	18,780,206	42,060,899	64,731,183	80,979,488	90,647,715	92,287,174	91,097,768	89,311,817	87,415,460	1103.21
<b>L.I.I.E.A.P Grants</b>													
2005 Grants	(100)	(450,000)	(2,000,000)	(2,000,000)	(1,500,000)	(1,200,000)	(700,000)	(500,000)	(400,000)	(10,000)	0	0	(8,740,100)
<b>Earned Discounts - for GCR Calculation</b>													
<b>Total - Discounts Clo</b>	(\$7,013,616)	(\$1,043,158)	\$3,592,332	\$11,794,568	\$23,780,693	\$21,470,284	\$15,548,305	\$9,168,227	\$1,239,450	(\$1,199,406)	(\$1,785,951)	(\$1,896,357)	\$78,655,360
	(2,013,636)	(3,058,794)	535,538	12,330,108	38,110,799	57,581,083	73,128,388	82,297,615	83,537,074	82,337,668	80,551,717	78,655,360	
<b>CRP Discount per Customer</b>	(\$29)	(\$15)	\$51	\$168	\$335	\$298	\$216	\$127	\$17	(\$17)	(\$26)	(\$27)	\$1,097
<b>CRP Arrearage Forgiveness</b>	\$800,000	\$900,000	\$800,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$950,000	\$900,000	\$900,000	\$11,460,000

5-23-07  
Phila  
TC

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

:  
:  
:  
:  
:

Docket No. R-00061931

REBUTTAL TESTIMONY OF

ROGER D COLTON

DOCUMENT  
FOLDER

ON BEHALF OF  
OFFICE OF CONSUMER ADVOCATE

May 4, 2007

RECEIVED

JUN 28 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is Roger Colton. My address is 34 Warwick Road, Belmont, MA 02478.

3

4 **Q. ARE YOU THE SAME ROGER COLTON WHO PREVIOUSLY FILED DIRECT**  
5 **TESTIMONY IN THIS PROCEEDING?**

6 A. Yes.

7

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**  
9 **PROCEEDING?**

10 A. My rebuttal testimony responds to the testimony of three witnesses. First, I will respond to  
11 the testimony of the Office of Small Business Advocate (OSBA) regarding the allocation of  
12 *universal service costs*. *Second, I will respond to the testimony of Carl Green and Judith*  
13 *Mondre on behalf of the Philadelphia Housing Authority regarding the interaction between*  
14 *the Customer Responsibility Program (CRP) and the "utility allowance" program of the U.S.*  
15 *Department of Housing and Urban Development (HUD).*

16

17 **Part 1. Office of Small Business Advocate.**

18 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR**  
19 **TESTIMONY.**

20 A. In this section of my testimony, I respond to the testimony of Mr. Robert Knecht on  
21 behalf of the Office of Small Business Advocate (OSBA). In his testimony, Mr. Knecht  
22 proposes that PGW change the way in which the Company has historically allocated its

1 universal service costs between customer classes. Mr. Knecht opposes the allocation of  
2 universal service costs to any customer class other than the residential class.

3  
4 **A. Statutory Framework.**

5 **Q. WHAT IS THE GENERAL STATUTORY FRAMEWORK FOR ALLOCATING**  
6 **UNIVERSAL SERVICE COSTS?**

7 A. Section 2203(6) of the Act provides that universal service program costs are to be  
8 recovered through an “appropriate nonbypassable competitively neutral” charge in the  
9 distribution gas company’s rates. The common understanding of the bypass problem is  
10 that some customers will either leave the distribution system entirely (and leave their  
11 share of system costs behind) or that those customers will negotiate a discount off their  
12 distribution charges by raising the threat that they will leave the system entirely. Use of  
13 the term “nonbypassable,” therefore, incorporates the concept that all customers should  
14 help pay for universal service costs. It is not, however, residential customers that will  
15 engage in the bypass of the natural gas system. Instead, it is large industrial and  
16 commercial customers who can avoid the full rates charged by the local gas distribution  
17 utility. For the statutory term “nonbypassable” to have meaning, therefore, there must be  
18 costs that would be assigned to commercial and industrial customers for whom bypass  
19 would be an issue in the first instance. To limit cost allocations to the residential class  
20 only would render the term “nonbypassable” meaningless in the statute.

21  
22 **Q. IS THERE A SECOND ASPECT OF THE STATUTE THAT RELATES TO THE**  
23 **ALLOCATION OF UNIVERSAL SERVICE COSTS FOR PGW?**

1 A. Yes. The Pennsylvania legislature has declared universal service programs to be a “public  
2 good” when it stated in Section 2802(17) that the public purpose is to be promoted by  
3 continuing universal service and energy conservation policies, protections and service; and  
4 full recovery of such costs is to be permitted through a non-bypassable rate mechanism. As  
5 I discuss below, this “public purpose” determination has clear cost allocation implications.  
6

7 **B. Benefits to Each Customer Class.**

8 **Q. MR. KNECHT ARGUES THAT ONLY THE RESIDENTIAL CLASS SHOULD**  
9 **PAY FOR UNIVERSAL SERVICE COSTS SINCE THE BENEFITS ACCRUE**  
10 **ONLY TO RESIDENTIAL CUSTOMERS. DO YOU AGREE?**

11 A. No. One well-accepted tenet of utility ratemaking is that certain expenses incurred by a  
12 public utility are for “public goods.” Due to the nature of public goods, all customers receive  
13 benefits from public goods and, accordingly, the costs of such goods are spread over all  
14 customer classes. Each end user makes a financial contribution to the utility’s delivery of  
15 public goods. The “public goods” doctrine is applied in a variety of settings as a  
16 justification to spread designated utility costs over all customer classes. Fire hydrants and  
17 streetlights, for example, have been found to be public goods. The basic telecommunications  
18 network has been found to be a “public good” as a justification for spreading network costs  
19 over all customer classes.  
20

21 **Q. CAN COMMERCIAL AND INDUSTRIAL CUSTOMERS DERIVE BENEFITS**  
22 **FROM THESE PUBLIC GOODS EVEN THOUGH THEY ARE NOT**  
23 **INDIVIDUAL PERSONS?**

1 A. Yes. A product can represent a “public good” even though the direct service is provided  
2 to an individual. For example, businesses do not go to school, individuals do. Businesses  
3 do not go to doctors, individuals do. Businesses do not place their children in day care,  
4 individuals do. Despite this, in each of these instances, the direct benefits to business  
5 from the affordable provision of these “public goods” have been documented. Affordable  
6 health care and child care are all akin to affordable home energy in their nature as public  
7 goods which provide direct and substantial benefits to businesses as well as individuals.  
8 Accordingly, businesses, as well as individuals, should be responsible for helping to pay  
9 for these public goods.

11 **Q. HOW DO YOU DEFINE A “PUBLIC GOOD”?**

12 A. The Pennsylvania PUC should adopt the definition of “public good” articulated by the  
13 National Regulatory Research Institute (NRRI) at Ohio State University. NRRI states:

14 A public good can be defined as “any publicly induced or provided collective  
15 good” that “arise[s] whenever some segment of the public collectively wants  
16 and is prepared to pay for a different bundle of goods and services than the  
17 unhampered market will produce.” (note omitted). In sharp contrast to the  
18 private-good model. . . , the emphasis of the public-good model is on the *total*  
19 *societal benefits—both direct and indirect—associated with network*  
20 *modernization. As applied to the telecommunications network, the public-good*  
21 *model is based upon the premise that the costs of achieving and supporting a*  
22 *modern, state-of-the-art network infrastructure are ultimately borne by the*  
23 *general body of ratepayers as opposed to limited subsets of customers who*  
24 *exhibit a high demand for specific new services. The public-good model is*  
25 *conducive to establishing social policies which provide for a “supply driven*  
26 *definition” of infrastructure.*

28 \* \* \*

29  
30  
31 Under the public-good model, infrastructure investment[s] that are in the  
32 “public interest” are mandated by regulatory commissions, which act as  
33 surrogates for marketplace forces for the very reason that those forces break

1 down either because of the enormous risks involved because of uncertainty with  
2 respect to costs and demand or both, or because of the intangible or  
3 unmeasurable society benefits which are not valued by the marketplace.  
4 (emphasis in original).<sup>1</sup>  
5

6 **Q. HOW DOES THIS DISCUSSION OF PUBLIC GOODS ASSIST IN THE**  
7 **DETERMINATION OF HOW PGW'S UNIVERSAL SERVICE COSTS SHOULD**  
8 **BE ALLOCATED BETWEEN CUSTOMER CLASSES?**

9 A. This NRRI discussion helps guide the PUC's consideration of universal service cost  
10 allocations in several ways.

- 11 ➤ First, universal service is a "publicly induced or provided collective good" as  
12 described by the NRRI.
- 13
- 14 ➤ Second, it is clear from prior Pennsylvania proceedings, that NRRI was correct  
15 in referring to such a "collective good" as one that not all ratepayers would  
16 choose to pay for. Indeed, the fact that the Pennsylvania General Assembly  
17 mandated that a universal service charge be "nonbypassable" indicates that the  
18 General Assembly understood this aspect of a "public good" and that it  
19 affirmatively decided that all ratepayers should help pay for this collective good.  
20
- 21 ➤ Third, the Pennsylvania universal service programs are consistent with NRRI's  
22 statement that the emphasis is on "the *total* societal benefits." Indeed, these  
23 benefits include not simply the benefits to participating customers, but also, in  
24 the words of NRRI, the benefits "both direct and indirect." Pennsylvania's CAP  
25 programs, as a public good, clearly fit this notion of generating not only direct  
26 social benefits, but also a wide range of indirect social benefits to all customer  
27 classes.  
28
- 29 ➤ Fourth, the finding that universal service is a "public good" has cost allocation  
30 implications to it. As NRRI points out, "the costs of achieving and supporting a  
31 modern, state-of-the-art network infrastructure are ultimately borne by the  
32 general body of ratepayers." While some ratepayer groups would limit the  
33 allocation of costs only to those customers who "use" the service of a universal  
34 service program, that approach is at fundamental odds with universal service  
35 being determined to be a "public good." As NRRI points out, having the costs  
36 of universal service be "borne by the general body of ratepayers" is "opposed to  
37 limited subsets of customers who exhibit a high demand for specific new  
38 services."

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<sup>1</sup> National Regulatory Research Institute (October 1991). The Public Good/Private Good Framework for Identifying POTS Objectives for the Public Switched Network. NRRI: Columbus (OH).

1  
2           ➤ Finally, the very fact that the public benefits of Pennsylvania’s universal service  
3 programs such as CAP are hard to quantify is one of the reasons that universal  
4 service should be found to be a public good with costs allocated to all ratepayers.  
5 As NRRI points out, the public good approach applies “for the very reason that  
6 those [market] forces break down. . .because of . . .the intangible or  
7 unmeasurable society benefits which are not valued by the marketplace.”  
8

9   **Q.    HAVE ORGANIZATIONS OTHER THAN STATE UTILITY REGULATORY**  
10   **COMMISSIONS RECOGNIZED UNIVERSAL SERVICE AS A PUBLIC GOOD?**

11   A.    Yes. It is not merely utility regulators that recognize universal service as a “public  
12 good.” In addition to the NRRI discussion cited above, the National Association of  
13 Attorneys General (NAAG) has reached this same conclusion. “At its spring 1998  
14 meeting, the National Association of Attorneys General (NAAG) adopted a resolution  
15 addressing competition issues in electric utility transactions. . .NAAG endorsed the  
16 following principles: . . .(11) Any system benefit charges which are imposed to support  
17 public goods such as . . .universal service, and low-income assistance, should be applied in a  
18 competitively-neutral and non-avoidable manner.”<sup>2</sup>

19  
20   **Q.    HOW DO PHILADELPHIA BUSINESSES, INCLUDING SMALL BUSINESSES,**  
21   **BENEFIT FROM THESE PUBLIC GOODS?**

22   A.    Affordable home energy can be analogized to other public goods. For example, child care  
23 is an important analogy to affordable energy because of the direct benefits child care has  
24 been found to provide to business. The Committee on Economic Development<sup>3</sup> has

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<sup>2</sup> Ilene Gotts and Gregory Racz, “Post-Script Regarding Electric Utilities Mergers.” Practising Law Institute. Corporate Law and Practice Course Handbook Series, at 433, 434 (July 1998).

<sup>3</sup> CED is a national business-academic partnership. One objective of CED is “to unite business judgment and experience with scholarship in analyzing the issues and develop recommendations to resolve the economic problems that constantly arise in a dynamic and democratic society.” *Objectives of the Committee for Economic*

1 quantified the beneficial impacts to business from reducing the causes of employee  
2 absenteeism and employee turnover associated with unaffordable child care. According  
3 to the Committee:

4 Many businesses also find that helping parents meet their child care needs  
5 can potentially reduce absenteeism and employee turnover. The 1990  
6 *National Child Care Survey* (NCCS) found that 15 percent of the mothers in  
7 its sample who worked outside the home reported losing some time from  
8 work (including arriving late, leaving early, or having to take a full day off)  
9 during the previous month because of a failure in their regular child care  
10 arrangement. Studies have found that employee turnover produces disruption  
11 and inefficiency in the work environment and that the cost of replacing  
12 employees is high. For example, Merck & Co., Inc. found that it costs . . .  
13 about 75 percent of salary to replace a clerical or technical employee. It also  
14 found that it may take considerable time to fill a vacant position and an  
15 average of 12.5 months for a new employee to become adjusted to the job.<sup>4</sup>  
16

17 **Q. HOW DOES THIS RELATE TO PGW'S CRP PROGRAM?**

18 A. Any increase in natural gas rates imposed on business customers as a result of paying  
19 their share of universal service programs would be offset in large part by increases in  
20 employee productivity. One professor at Johns Hopkins University considered the extent  
21 to which increased low-income status results in increased overall costs to business. She  
22 found a variety of offsets, reporting:

23 Poverty . . . produces ill-prepared workers whose lives are easily disrupted by  
24 small catastrophes. If the car breaks down, if the kid gets sick, it suddenly  
25 becomes impossible to be a reliable worker. Poverty also generates poor  
26 health among workers, making them less reliable still and raising the cost of  
27 employing them.<sup>5</sup>  
28

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*Development.* The Research and Policy Committee of the CED is directed under the organization's bylaws to "initiate studies into the principles of business policy and of public policy which will foster the full contribution by industry and commerce to the attainment and maintenance" of the objectives of the organization.

<sup>4</sup> Research and Policy Committee (1993). *Why Child Care Matters: Preparing Young Children for a More Productive America, A Statement by the Research and Policy Committee of the Committee for Economic Development*, at 1. Committee for Economic Development: New York.

<sup>5</sup> Erica Schoenberger (1999). *The Living Wage in Baltimore: Impacts and Reflections*. John Hopkins University Department of Geography and Environmental Engineering: Baltimore (MD).

1 The nexus between unaffordable home energy and employee health problems can hardly  
2 be seriously questioned any more. The unaffordability of natural gas service represents a  
3 distinct public health threat, particularly to low-income households with children.

4 According to a Congressionally-funded 2005 survey by the National Energy Assistance  
5 Directors Association (NEADA), the loss (and threatened loss) of home heating service  
6 has significant health consequences to low-income households with children. NEADA  
7 found that survey respondents reported becoming ill because their homes were too cold in  
8 the winter heating months. Nearly 1-in-6 of all energy assistance recipients reported that  
9 someone in the home became sick because the home was too cold in the past five years.  
10 These illnesses were frequently severe enough to require medical treatment. In both 2003  
11 and 2005, 11% of the surveyed energy assistance recipients reported that someone in the  
12 home had become ill enough to require going to a doctor or hospital because the home  
13 was too cold in the past five years.

14  
15 A variety of reasons contribute to the overall rate of illness, as well as to the rate at which  
16 illnesses required medical treatment within the low-income energy assistance recipient  
17 population. The primary contributing factor to the adverse health outcomes involves the  
18 tendency of low-income households to keep their homes at unsafe or unhealthy  
19 temperatures with which to begin, given the unaffordability of home energy to the  
20 household. Of the households with children under age 18, between 20% and 25% kept  
21 their homes at "unsafe or unhealthy temperatures" because they did not have enough  
22 money to pay their home heating bills. This impact is felt disproportionately at the  
23 lowest income levels. Between roughly 30% and 40% of energy assistance recipients

1 with incomes at or below 50% of the Federal Poverty Level reported to NEADA that they  
2 kept their homes at “unsafe or unhealthy temperatures” because they could not afford to  
3 pay their home heating bills.

4  
5 These health consequences, which CED and Johns Hopkins University both found to  
6 impose substantial costs on business, are directly attributable to unaffordable home  
7 energy. Affordability programs such as CRP help remedy these problems and, as a result,  
8 deliver real dollars of benefit to the business community.

9  
10 **Q. HAVE THE BUSINESS BENEFITS OF SUCH LOW-INCOME PROGRAMS**  
11 **BEEN RECOGNIZED IN ANY OTHER SETTING?**

12 A. Yes. The business benefits generated by programs such as CRP have been confirmed by  
13 researchers that consider the impacts of programs such as home energy affordability  
14 subsidies on private employers. One comprehensive study published in 2004 concluded:

15 Why the under-use of public benefits is a problem. When most people hear about  
16 the idea of marketing public benefits through employers, their initial reaction is “why  
17 would a company want to get involved with a social service program?”

18  
19 In fact, employers have good reason to be concerned that large numbers of working  
20 people with low family incomes do not take advantage of the public benefits  
21 intended to help them and their families achieve economic sufficiency--benefits that  
22 also help employers by contributing to the economic stability of their workforces.  
23 These public benefits bolster ability of low-income workers to meet their basic  
24 needs, in effect providing a wage supplement to employers.<sup>6</sup>

25  
26 This joint study, performed in collaboration with the Center for Workforce Preparation of  
27 the U.S. Chamber of Commerce and the Center for Workforce Success of the National

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<sup>6</sup> Geri Scott (2004). “Private Employers and Public Benefits.” Workforce Innovation Networks (WINS): Boston (MA) and Washington D.C. WINS is a collaboration of Jobs for the Future, the Center for Workforce Preparation

1 Association of Manufacturers, continues on to report that many low wage workers fail to  
2 access public benefits.

3 This not only hurts the workers who miss out on income and benefits; it also  
4 hurts their employers through higher turnover and increased absenteeism.  
5 Unreliable transportation, inadequate child care, and poor health are leading  
6 contributors to absenteeism, tardiness, and turnover among low-income  
7 workers. An evaluation of [households leaving the TANF program] in New  
8 Jersey by Mathematica Policy Research reported that 52 percent had been  
9 fired as a result of frequent tardiness or absenteeism related to child care or  
10 health problems. In the words of a call center manager who has hired many  
11 entry-level workers through the Annie E. Casey Foundation's Jobs Initiative,  
12 "these peoples' lives are in chaos. They have so many problems they cannot  
13 pay attention to work."

14  
15 An unpublished survey conducted by ASE in Detroit, Michigan, highlights  
16 workplace problems that employers can experience when employees' non-  
17 work needs are not addressed. ASE asked entry-level workers and their  
18 supervisors in five companies about barriers to employee advancement. After  
19 "caring for a dependent," "money problems" were reported more frequently  
20 than 19 other potential problems ranging from "understanding work  
21 assignments" to "getting along with colleagues." "Financial worry about  
22 making ends meet" appears to contribute to absenteeism, distraction on the  
23 job, strained relations with supervisors and co-workers, and a number of  
24 other factors that reduce productivity.  
25

26 **Q. WHAT DO YOU CONCLUDE FROM THIS INFORMATION?**

27 A. The conclusion from this multitude of research is that all PGW customer classes will  
28 benefit from the CRP. Commercial and industrial customers, as well as small businesses,  
29 will gain direct benefits from the CRP. Accordingly, this discussion has a direct  
30 relationship to the question of whether universal service costs should be allocated to all  
31 customer classes. There is a direct relationship between the offer of CRP and economic  
32 benefits to local commercial and industrial customers. For example:

- 33 ➤ Turnover costs business money. We know that unaffordable home energy bills  
34 lead to the frequent mobility of households.

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of the U.S. Chamber of Commerce, and the Center for Workforce Success. The Manufacturing Institute of the  
National Association of Manufacturers.

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- Time missed due to family care provision costs business money. We know that unaffordable home energy leads to more frequent childhood illnesses.
  
- Time missed due to lack of employee productivity and employee illness costs business money. We know that the inability to stay warm due to unaffordable home energy bills leads to increased illnesses, including pneumonia, influenza, and other infectious diseases.

In sum, increasing employee productivity directly contributes to the increased profitability of firms. With low-wage employees, in particular, unaffordable home energy directly contributes to lowered productivity. Increased personal illness, increased employee turnover, and increased family care responsibilities are but three of the factors contributing to lower employee productivity. The provision of affordable energy through universal service programs such as CRP positively affects each of these productivity factors.

**Q. DO PROGRAMS SUCH AS CRP HELP SUPPORT THE ECONOMY OF A CITY SUCH AS PHILADELPHIA?**

A. Yes. Programs such as CRP have been documented to have a substantial economic development impact in the jurisdictions in which they operate. As a significant contributor to economic development, low-income rate affordability programs provide substantive benefits to all customer classes. Because programs such as CRP contribute to additional disposable income within the low-income population, it helps drive additional job creation, income generation, and economic activity for local businesses.

1 Q. UPON WHAT DO YOU BASE THIS CONCLUSION?

2 A. A study I prepared for Entergy Services Corporation, a major electric utility serving the  
3 Middle South, found that a low-income rate affordability program would be a significant  
4 generator of jobs, economic activity, and income throughout the region. The report  
5 found:<sup>7</sup>

6 The distribution of energy assistance first creates economic activity for the  
7 Entergy states through the direct delivery of benefit dollars. In addition to  
8 the dollars of cash benefits, however, the delivery of energy assistance will  
9 also free up household dollars that would have been devoted to the costs  
10 arising from the payment and behavior consequences of energy bill  
11 unaffordability. These dollars, too, can then instead be spent (and circulated)  
12 in the local economy.

13  
14 \* \* \*

15 While the discussion of the economic impacts of energy assistance looks at  
16 economic benefits on a statewide basis, in fact, the economic impacts provide  
17 particular advantage to low-income communities. Existing research indicates  
18 that low-income households tend to shop at local retail establishments. For  
19 food in particular, low-income households tend to shop at small, local food  
20 stores. Moreover, not only are low-income *households* more likely to shop  
21 locally, but the *businesses* serving low-income households are more likely to  
22 shop locally as well. It is clear, therefore, that not only will the provision of  
23 energy assistance provide income and employment to low-income  
24 households, but the earnings and employment that are delivered to such  
25 households will likely be spent, retained and recirculated within the low-  
26 income community as well.

27  
28 In sum, I found that the delivery of energy assistance in the four Entergy states  
29 accomplishes far more for those states than simply helping low-income residents avoid  
30 arrears on home energy bills and preventing the potential loss of home energy service due  
31 to nonpayment. The delivery of home energy assistance also serves as a substantial  
32 economic stimulant for the economies of the Entergy states.

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<sup>7</sup> Roger Colton (August 2003). *The Economic Impacts of Home Energy Assistance: The Entergy States*. Entergy Services Corp: Little Rock (AR).

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**Q. WHAT DO YOU CONCLUDE FROM THIS DISCUSSION?**

A. The conclusion that I draw from this data is that the assertion advanced by Mr. Knecht that only residential customers benefit from the PGW universal service program is simply not correct. Commercial and industrial customers in Philadelphia, both small and large, gain direct and substantial benefits from the PGW CRP program.

**Q. FOR A MUNICIPAL GAS COMPANY SUCH AS PGW IN PARTICULAR, ARE THERE OTHER FINANCIAL BENEFITS TO COMMERCIAL AND INDUSTRIAL CUSTOMERS ARISING FROM A UNIVERSAL SERVICE PROGRAM SUCH AS CRP?**

A. Yes. PGW's offer of universal service programs helps to control the need to provide local government services, the cost of which is largely borne by non-residential taxpayers. The connection between the loss of home energy service and housing abandonment has been documented in Pennsylvania. In addition, there is a documented connection between utility shutoffs and an increase in homelessness, with one of the primary studies being performed in Philadelphia. There is a direct connection between unaffordable home energy bills and the costs of providing public health and nutrition services. There is a documented connection between unaffordable home energy bills and public safety costs. Particularly in a city such as Philadelphia, with a large low-income population, the costs of providing these city services can be tremendous. Conversely, the benefits of mitigating the need to provide these city services will redound to the benefit of all taxpayers, including commercial and industrial entities.

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**Q. SETTING ASIDE THE EMPIRICAL QUESTION OF WHETHER BUSINESS BENEFITS FROM UNIVERSAL SERVICE PROGRAMS, IS THERE ANY CONCEPTUAL FLAW IN THE ARGUMENT THAT UNIVERSAL SERVICE COSTS SHOULD BE ALLOCATED TO RESIDENTIAL CUSTOMERS BECAUSE ONLY RESIDENTIAL CUSTOMERS BENEFIT?**

A. Yes. The assertion that all universal service costs should be assigned to residential customers because *only residential customers (that is low-income customers) benefit from the program* proves too much (even accepting solely for purposes of analysis the premise that *only low-income customers benefit*). If we assume that *only low-income customers benefit*, and we follow the rule that costs in this case should be allocated only to those who directly benefit, we are brought to the conclusion that universal service costs should be directly assigned pro rata to customers who participate in the universal service programs (such as CRP). Clearly this would be an absurd result, and one that could not logically have been intended by the legislature. In addition, there is no more reason to allocate costs to non-low-income residential customers under this reasoning than there is to allocate them to non-residential customers. Non-low-income residential customers benefit, as they do, exactly and only in the ways and to the extent that non-residential customers benefit.

1 **C. Cost Causation.**

2 **Q. MR. KNECHT ARGUES THAT ONLY THE RESIDENTIAL CLASS SHOULD**  
3 **PAY FOR UNIVERSAL SERVICE COSTS SINCE IT IS RESIDENTIAL**  
4 **CUSTOMERS THAT "CAUSE" THOSE COSTS TO BE INCURRED. DO YOU**  
5 **AGREE?**

6 A. No. The original reasoning of the Bureau of Consumer Services (BCS) in recommending  
7 recovery from all classes is instructive on the question of cost causation. When BCS  
8 submitted its report on the PUC's investigation into the control of uncollectible balances,  
9 it found that "the problem of the inability of some low income customers to pay their  
10 entire home energy bills is caused primarily by societal economic conditions that are  
11 unrelated to any one rate class." (emphasis added).<sup>8</sup> BCS continued to find:

12  
13 The Bureau does not find any logic to the argument that because the larger  
14 societal economic conditions are negatively affecting the ability of some low  
15 income residential customers to pay their bills, that the problem is somehow  
16 caused by the residential class and should therefore be paid for by that class.  
17 If the Commission, as a regulatory authority, decides that it is in the public  
18 interest to provide home energy services for necessities of life to  
19 disadvantaged ratepayers without full payment, then the costs should be  
20 borne by all ratepayers who benefit from the companies operating as public  
21 utilities.<sup>9</sup>  
22

23 BCS was correct in its observation that the issues addressed by PGW's universal service  
24 program are caused by "larger societal economic conditions" that are not related to any  
25 one particular customer class.  
26

27 **Q. UPON WHAT DO YOU BASE THIS CONCLUSION?**

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<sup>8</sup> Bureau of Consumer Services, Final Report on the Investigation of Uncollectible Balances, at 157. Docket I-900002 (February 1992).

1 A. Low wage employers are often small businesses. As elsewhere, small business fills a  
2 unique role in the Philadelphia economy. Small business disproportionately offers  
3 employment opportunities to Philadelphia residents who have limited employment skills.  
4 Small firms disproportionately pay wages that do not allow a household to economically  
5 exist without public assistance. Indeed, workers in small firms earn, on average, 81.4% of  
6 the wages made by workers in comparable jobs in large firms.

7  
8 As can thus be seen, there is a reciprocal relationship between small businesses in  
9 Philadelphia and low-wage employees. On the one hand, without small business offering  
10 low-wage employment, many of the persons who are employed in such establishments  
11 would not find job opportunities. On the other hand, without the low wage employee,  
12 many of the small businesses that produce goods and services within Philadelphia would  
13 not be able to economically survive. These small business establishments providing low  
14 wage employment would not be able to survive if they were required to pay higher  
15 wages.

16  
17 **Q. CAN YOU CHARACTERIZE SMALL BUSINESS EMPLOYMENT AND WAGE**  
18 **LEVELS?**

19 A. Yes. Overall, small establishments account for the overwhelming majority of  
20 employment in construction and in retail trade. This is significant because three times as  
21 many working poor families (as compared to non-poor families) are in service  
22 occupations (20.1% vs. 7.4%), while nearly one-and-a-half as many working poor  
23 (compared to non-poor) families have workers who are in the wholesale/retail trade

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<sup>9</sup> Bureau of Consumer Services, at 157 - 158.

1 occupations (19.2% vs. 12.3%). Overall, the median hourly wage of primary earners in  
2 working poor families (\$7.55) is less than half the median wage of primary earners in  
3 families with incomes above 200% of poverty (\$16.67).

4  
5 **Q. HAVE YOU CONSIDERED THE EMPLOYMENT PRACTICES IN**  
6 **PHILADELPHIA IN PARTICULAR?**

7 A. Yes. The number of small businesses in Philadelphia paying low wages is substantial.  
8 Consider retail establishments as one example. As Schedule RDC-2R shows, nearly  
9 5,700 Philadelphia workers in general merchandise stores earned only \$19,108 in 2005;  
10 more than 11,000 workers in grocery stores earned only \$20,333 in 2005. The 39,282  
11 workers in food service and drinking establishments earned \$17,351, in 2005, while the  
12 2,498 workers in residential care services earned only \$18,017. In contrast, 150% of the  
13 Federal Poverty Level for a 3-person household in 2005 was \$24,135 while 150% of  
14 Poverty Level for a 4-person household was \$29,025. Schedule RDC-2R presents data  
15 obtained from the U.S. Department of Labor's Bureau of Labor Statistics.

16  
17 **Q. HOW IS THIS OBSERVATION RELEVANT TO AN INQUIRY INTO THE**  
18 **EXTENT TO WHICH CRP BENEFITS SMALL BUSINESSSS?**

19 A. The observation is directly relevant. The reason small businesses can offer low wage  
20 employment to so many of their employees is because of the external programs that are  
21 available to help fill the wage gap. One analysis reports, for example, that businesses  
22 paying low wages:

23 . . .are effectively being subsidized by taxpayers through government assistance  
24 programs (e.g., food stamps, Earned Income Tax Credit) which help many low-

1 wage employees survive. . . [B]usinesses that pay poverty wages indirectly rely  
2 on government assistance programs to make up the difference between these  
3 wages and what it costs their employees to live.<sup>10</sup>  
4

5 The same analysis applies to PGW. The small businesses that pay low wages indirectly rely  
6 on PGW's willingness to make up the difference between those wages and what it costs the  
7 employees to live. Requiring all customer classes to help pay for the PGW universal service  
8 programs which respond to the inability-to-pay resulting from the payment of low wages is  
9 simply one mechanism to have the customer classes which contribute to the need for the  
10 universal service program pay some part of the cost of that program.  
11

12 **Q. ARE YOU SUGGETING THAT PHILADELPHIA'S SMALL BUSINESS**  
13 **COMMUNITY IS SOMEHOW RESPONSIBLE FOR CAUSING THE NEED FOR**  
14 **CRP?**

15 A. Not at all. However, in originally proposing universal service programs such as CAP, the  
16 Bureau of Consumer Services observed that there is no "logic to the argument that  
17 because the larger societal economic conditions are negatively affecting the ability of  
18 some low income residential customers to pay their bills, that the problem is somehow  
19 caused by the residential class and should therefore be paid for by that class." I conclude  
20 that this BCS observation has a sound empirical basis in fact. No causal connection can  
21 be drawn from PGW's universal service costs to any particular customer class.

22 Accordingly, the costs should be borne by all customer classes.  
23

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<sup>10</sup> Karen Kraut, Scott Klinger and Chuck Collins (2000). *Choosing the High Road: Businesses that Pay a Living Wage and Prosper*, at 14, 16. Responsible Wealth: Boston (MA).

1 **D. Prior Commission Policy Statements.**

2 **Q. IS MR. KNECHT CORRECT TO ASSERT THAT TO ALLOCATE UNIVERSAL**  
3 **SERVICE COSTS AMONG ALL CUSTOMER CLASSES IS CONTRARY TO**  
4 **PENNSYLVANIA PUBLIC POLICY?**

5 A. No. The decisions cited by Mr. Knecht do not reflect the policy that would be applicable  
6 to PGW. The PUC articulated its policy on rate recovery in its July 11, 1997 decision  
7 regarding electric universal service programs. In that decision, the PUC stated:

8 *The cost of an EDC's universal service and energy conservation programs*  
9 *should be allocated among the classes of the distribution company's ratepayers*  
10 *consistent with sound rate design principles and in accordance with the Act's*  
11 *prohibitions against the interclass and intraclass cost transfer and the Act's rate*  
12 *cap. The allocation of universal service program costs will be performed*  
13 *during each utility's restructuring proceeding.*

14  
15 The Commission explicitly stated:

16  
17 *All customer classes should share in providing funding of universal service*  
18 *consistent with sound rate design principles and in accordance with the Act's*  
19 *prohibitions against the interclass and intraclass cost transfer and the Act's rate*  
20 *cap.*

21  
22 *Re Guidelines for Universal Service and Energy Conservation Programs, Docket No.*  
23 *M-00960890, Pennsylvania Public Utility Commission, July 11, 1997.*

24  
25 **Q. HASN'T THIS POLICY BEEN SUPERSEDED BY THE COMMISSION'S**  
26 **RECENT DECISION IN ITS CAP DESIGN PROCEEDING?**

27 A. No. The PUC did not reach a determination about the cost allocation issue for PGW in its  
28 recent CAP design decision. In discussing the CAP cost allocation issue, the PUC  
29 recognized that there were "a few exceptions" relative to allocating CAP costs exclusively  
30 to the residential class. In a footnote, the PUC specifically identified PGW as one of those

1 exceptions, noting that “PGW’s cost allocation was determined prior to the Commission’s  
2 oversight of the Company.” (Docket No. M-00051923, at note 16).

3  
4 **Q. WHY WOULD IT BE INEQUITABLE TO CHANGE THE PGW COST**  
5 **ALLOCATION DECISION AT THIS POINT?**

6 A. The allocation of universal service costs to all customer classes was but one part of  
7 PGW’s move to a retail choice natural gas industry in Philadelphia. Unlike the cases that  
8 Mr. Knecht cites, therefore, continuing the allocation of universal service costs to all  
9 customer classes would not represent inter-class cost-shifting. Since PGW has  
10 historically allocated these costs to all customer classes, maintaining this allocation  
11 would be the consistent approach.

12  
13 Moreover, the PGW restructuring process involved making a decision on how to allocate  
14 the total costs of moving to a retail choice industry. PGW’s natural gas restructuring  
15 costs have been allocated to all customer classes, including residential customers. As  
16 Schedule RDC-1R demonstrates, however, residential customers derive few, if any, direct  
17 benefits from the move to a retail choice industry. Schedule RDC-1R presents natural gas  
18 shopping statistics for eastern Pennsylvania. As can be seen, PGW and UGI Penn have  
19 had no residential customers engaged in switching to a natural gas retail provider. PECO  
20 has less than one-quarter of one percent (0.24% in January 2007 and 0.22% in April  
21 2007) of its residential customer base that has switched.

1 What has happened is that different customer classes derive different benefits from the  
2 restructuring statute. The non-residential customer classes derive the benefits of being  
3 able to tap the retail choice market. The residential customer class derives the benefit of  
4 being able to tap into universal service programs. In exchange for each class deriving its  
5 respective benefits from restructuring, all classes pay for the actions that enabled these  
6 benefits to arise. Having received the benefits of the move to retail choice, in other  
7 words, the commercial and industrial classes should not now be allowed to avoid their  
8 responsibilities under the package of benefits and responsibilities that was agreed to.

9  
10 **Q. AS A MUNICIPAL UTILITY, WOULD IT BE PARTICULARLY INEQUITABLE**  
11 **FOR UNIVERSAL SERVICE CHARGES TO BE ALLOCATED ONLY TO THE**  
12 **RESIDENTIAL CUSTOMER CLASS?**

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

20  
21 As a municipal utility, PGW was granted two sets of public perquisites on behalf of all of its  
22 customers: (1) the right to exercise eminent domain, and (2) the right to use the public's  
23 streets, alleys and public ways as transportation corridors. The "bargain" that was made in

1 consideration of these two public perquisites is continuing. In accepting and exercising the  
2 power of eminent domain, and the right to use public streets and ways, an exchange has  
3 occurred. PGW's customers have received the two perquisites and, as compensation for  
4 those benefits, have agreed to "pay" through the support of universal service.

5  
6 **Q. HOW DOES THIS RELATE TO THE ALLOCATION OF PGW UNIVERSAL  
7 SERVICE COSTS?**

8 A. This discussion supports the conclusion that all customer classes should help fund universal  
9 service programs. The public perquisites that have been provided to all PGW customers  
10 have a substantial value. If PGW could *not* use eminent domain, in other words, or if it  
11 could not use the streets and public ways as transportation corridors for its lines or pipelines,  
12 the increased costs associated with acquiring its distribution system would be borne by all  
13 ratepayers. Providing PGW's customers these public perquisites, therefore, conveys  
14 substantial financial benefits to all customers.

15  
16 Having received the financial benefits of the bargain, all PGW customers should thus pay  
17 the financial compensation to the public for having provided those benefits in the first place.  
18 With all end users having taken their share of the benefits of the bargain, all end users  
19 should also be required to pay their fair share of the responsibility part of the bargain. To  
20 allow otherwise would be to grant the benefit while forgiving the costs.

21  
22 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ABOVE.**

23 A. My testimony demonstrates that Mr. Knecht's proposal to change PGW's historical  
24 allocation of universal service costs should be rejected. Instead, PGW should be allowed to

1 continue to allocate its universal service costs in the way it has allocated such costs in the  
2 past. That allocation process is consistent with Pennsylvania statutes, allocates the costs to  
3 all customer classes deriving benefits from the universal service programs, follows cost-  
4 causation principles, and is consistent with sound regulatory policy.

5  
6 **Part 2. Philadelphia Housing Authority.**

7 **Q. PLEASE EXPLAIN THE PURPOSE OF THIS PART OF YOUR TESTIMONY.**

8 A. In this section of my testimony, I respond to the testimony of Judith Mondre filed on  
9 behalf of the Philadelphia Housing Authority (PHA). More specifically, Ms. Mondre  
10 asserts that “through its utility allowance program, PHA has paid PGW more than \$4  
11 million per year in excess of what it would pay under CRP. In short, PGW derives more  
12 income from the PHA tenants’ utility allowances than if the residents were enrolled in the  
13 CAP program.” (Mondre, at 9).

14  
15 **Q. IS MS. MONDRE’S ASSERTION CORRECT?**

16 A. No. The participation by a tenant of public or assisted housing administered by the  
17 Philadelphia Housing Authority should have no impact on the utility allowance paid to  
18 that tenant (or paid to PGW on the tenant’s behalf). Indeed, PGW should take steps to  
19 capture utility allowances provided to residents of public and assisted housing as a  
20 revenue source for the Company.

21  
22 **Q. WHAT DOES MS. MONDRE RECOMMEND?**

1 A. Ms. Mondre does not make her recommendation explicit in her testimony. However, her  
2 recommendation is implicit in her statement that “through its utility allowance program,  
3 PHA has paid PGW more than \$4 million per year in excess of what it would pay under  
4 CRP.” (Mondre Direct, at 9). Implicit within that testimony is the assertion that PGW  
5 pockets the difference between a customer’s CRP payment and the utility allowance paid  
6 by PHA and that, accordingly, the utility allowance should be reduced for CRP  
7 customers. That assertion is based on a misunderstanding of PGW’s universal service  
8 costs and how those costs are recovered.

9  
10 **Q. PLEASE EXPLAIN WHAT A PHILADELPHIA HOUSING AUTHORITY  
11 “UTILITY ALLOWANCE” IS?**

12 A. Tenants of public and assisted housing –“assisted housing” generally involves private  
13 rental housing subsidized through the federal Section 8 program, while “public housing”  
14 represents housing owned by local housing authorities— receive, as part of their housing  
15 subsidy provided through the U.S. Department of Housing and Urban Development  
16 (HUD), a “utility allowance.” That utility allowance is by law designed to pay for the  
17 household’s home utility service (energy along with water/sewer).

18  
19 **Q. HOW IS A UTILITY ALLOWANCE SET?**

20 A. A local housing authority’s utility allowance is, by federal law, established based on a  
21 household’s energy consumption and existing utility rates. Housing authorities are  
22 directed by law to provide utility allowances sufficient to pay for the consumption of  
23 energy conservative households of modest means. HUD regulations articulate a series of

1 nine "mandatory factors" that the local housing authority is to take into account in setting  
2 a utility allowance. These mandatory factors include: (1) the equipment and functions  
3 intended to be covered by the allowances for which the utility will be used; (2) the climatic  
4 location of the housing projects; (3) the size of the dwelling units and the number of  
5 occupants per dwelling unit; (4) the type of construction and design of the housing project;  
6 (5) the energy efficiency of PHA-supplied appliances and equipment; (6) the utility  
7 consumption requirements of appliances and equipment whose reasonable consumption is  
8 intended to be covered by the total resident payment; (7) the physical condition, including  
9 insulation and weatherization of the housing project; (8) the temperature levels intended to  
10 be maintained in the unit during the day and at night, and in cold and warm weather; and (9)  
11 the temperature of domestic hot water.

12  
13 **Q. ARE UTILITY ALLOWANCES GREATER THAN CRP PAYMENTS?**

14 A. Utility allowances will be greater than CRP payments for public and assisted housing  
15 tenants who participate in CRP. Utility allowances are based on full residential rates. As  
16 with any other low-income PGW customer, a tenant of public or assisted housing will  
17 participate in CRP only if the customer's percentage of income-based bill is lower than  
18 the bill at full residential rates.

19  
20 **Q. WHY SHOULD PGW TAKE AN INTEREST IN PHA'S UTILITY  
21 ALLOWANCES AS PART OF THE COMPANY'S CRP?**

22 A. PGW should take an interest in HUD utility allowances for the same reasons that PGW  
23 has taken an interest in the federal LIHEAP program. They are a subsidy for low-income

1 utility bills. Unlike LIHEAP payments, however, HUD utility allowances are not  
2 seasonal benefits; they are paid year-round. Moreover, HUD utility allowances are not  
3 designed to pay merely a portion of a customer's bill; they are designed to pay the  
4 customer's entire bill (as contrasted to LIHEAP's programmatic objective of paying  
5 home heating/cooling costs). HUD utility allowances are paid for both electric and  
6 natural gas service. While the number of customers who are tenants of public or assisted  
7 housing is probably lower than the number of LIHEAP recipients, the dollars of benefit  
8 at stake could be far greater for HUD utility allowances than for LIHEAP.

9  
10 **Q. DO PUBLIC AND ASSISTED TENANTS HAVE TO "APPLY" TO RECEIVE**  
11 **THE UTILITY ALLOWANCE?**

12 A. No. Tenants of public and assisted housing automatically receive a utility allowance as  
13 part of the federal housing programs to the extent they have tenant-paid utility bills.  
14 Unlike LIHEAP, no application is necessary. While there may be periodic administrative  
15 requirements for the tenant to remain in his or her public or assisted housing unit (*e.g.*,  
16 periodic reverification of income eligibility), so long as the tenant is in the public or  
17 assisted housing unit, he or she will receive a utility allowance.

18  
19 **Q. HOW ARE UTILITY ALLOWANCES PAID TO TENANTS OF PUBLIC AND**  
20 **SUBSIDIZED HOUSING?**

21 A. There is a typical, though not mandatory, way of paying HUD utility allowances to  
22 tenants of public and subsidized housing. Typically, the utility allowance is used as an  
23 offset to the household's rent. Hence, for example, if a household has a monthly rent of

1 \$350 and a monthly utility allowance of \$150, the rent is reduced to \$200 (thus freeing up  
2 the \$150 in household income to use for its utility bills). In those unusual circumstances  
3 where the utility allowance exceeds the rent, the rent is reduced to \$0 and the household  
4 receives a check for the difference. If the household has a monthly rent of \$175, and a  
5 monthly utility allowance of \$200, the rent is set equal to \$0 and the household receives a  
6 monthly check for \$25. (Though not important for CRP purposes, the reason this can be  
7 done is because the property owner receives a HUD rent subsidy for the difference  
8 between the tenant's rent and the Fair Market Rent as determined by HUD. Distributing  
9 utility allowances in this manner is for administrative ease as much as anything.)  
10

11 **Q. DOES A UTILITY ALLOWANCE HAVE TO BE DISTRIBUTED AS AN**  
12 **OFFSET TO RENT?**

13 A. No. As with LIHEAP, it is permissible for a utility allowance to be distributed as a  
14 direct-vendor payment to the utility. Indeed, PHA already directly vendors some of its  
15 utility allowances to PGW under current practice. If all utility allowances were  
16 distributed in this fashion to public/assisted housing tenants who were also CRP  
17 participants, the utility would first apply the utility allowance against the customer's CRP  
18 payment obligation. Any excess over the customer's CRP payment obligation should  
19 then be used as a revenue source to reduce the CRP shortfall just as LIHEAP payments  
20 are now used. PGW, of course, should not retain any utility allowance paid in excess of a  
21 customer's full residential bill.  
22

1 **Q. SHOULD THE PHILADELPHIA HOUSING AUTHORITY BE ALLOWED**  
2 **SIMPLY TO REDUCE THE UTILITY ALLOWANCE SO THAT IT WILL NOT**  
3 **EXCEED THE TENANT'S PERCENTAGE OF INCOME-BASED CRP**  
4 **PAYMENT?**

5 A. The HUD utility allowance is intended to pay the household's utility bill. For CRP  
6 participants, that utility bill is divided into two components. The first component is the  
7 customer's percentage of income-based CRP payment. The second component is the  
8 CRP shortfall, which is paid by other ratepayers. There is no reason in law or policy to  
9 allow the local housing authority to pocket a windfall reduction in its own costs by  
10 transferring those costs to the Company's remaining ratepayers to pay the CRP shortfall.  
11 The part of the customer's utility bill that exceeds the percentage of income-based  
12 payment doesn't "go away." It is simply paid from another source of funds.

13  
14 **Q. WHAT IS THE PROPER RATEMAKING TREATMENT OF UTILITY**  
15 **ALLOWANCES PAID TO TENANTS OF PUBLIC AND ASSISTED HOUSING**  
16 **WHO ALSO PARTICIPATE IN CRP?**

17 A. For tenants of public or assisted housing that also participate in CRP, to the extent that  
18 the tenant's utility allowance exceeds the CRP participant's percentage of income-based  
19 bill, the excess benefit should be captured as a revenue source to pay the costs of the  
20 CRP. The issue arises because the percentage of income-based payment of a CRP  
21 participant will always be less than the customer's bill at full residential rates. To the  
22 extent this is not true, the tenant/customer would choose not to participate in CRP.

23

1 **Q. HOW MIGHT CAPTURING THE HUD UTILITY ALLOWANCE DIFFER**  
2 **FROM CAPTURING LIHEAP PAYMENTS AS A REVENUE SOURCE TO**  
3 **HELP REDUCE THE CRP SHORTFALL?**

4 A. Capturing the HUD utility allowance should be more easily accomplished than capturing  
5 LIHEAP payments. There is, for example, no need for a tenant to apply for the HUD  
6 utility allowance and assign that utility allowance to the utility. Instead, there can be a  
7 direct vendor payment from the housing authority to the Company for all CRP  
8 participants who are also tenants of public or assisted housing.

9  
10 **Q. HOW WOULD SUCH A DIRECT VENDOR PAYMENT PROGRAM BENEFIT**  
11 **THE VARIOUS STAKEHOLDERS?**

12 A. The direct vendor payment program I propose above would benefit all four stakeholders  
13 affected by utility allowances paid to tenants of PHA public and assisted housing:

14 ➤ It would benefit PHA tenants, since their utility bills would be automatically  
15 paid with PHA utility allowances, as intended by the HUD utility allowance  
16 program.

17 ➤ *It would benefit PGW, since PGW would directly receive payment for bills*  
18 *rendered to PHA tenants. PGW should not only reduce, but completely*  
19 *eliminate, any collection problems associated with PHA tenants that also are*  
20 *CRP participants. It should also receive cash flow benefits by the pre-*  
21 *scheduled, automatic, electronic monthly payment of bills by PHA.*

- 1           ➤ It would benefit PHA, since PHA would pay up to, but not to exceed, the full  
2           residential bill rendered to CRP participants. No utility allowance would be  
3           paid in excess of the annual full residential bills rendered to PHA tenants.
- 4           ➤ It would benefit PGW ratepayers, since the utility allowance amount which  
5           exceeds a PHA tenant's CRP payment would be captured as a revenue source  
6           to offset the costs of CRP (and, accordingly, reduce overall universal service  
7           costs to be paid by remaining ratepayers).

8

9   **Q.    PLEASE SUMMARIZE YOUR RECOMMENDATION.**

10  **A.**    My recommendation has three components to it.

- 11           ➤ First, for CRP participants who are also tenants of public or assisted housing,  
12           the PUC should articulate the policy that the difference between a CRP  
13           participant's percentage of income-based payment and the utility allowance  
14           based on full residential rates, like LIHEAP payments, is to be captured and  
15           used as a revenue source to offset the CRP shortfall.
- 16
- 17           ➤ Second, the Company should be directed to develop a mechanism for  
18           expanding its existing direct vendor payment program for utility allowances  
19           from the Philadelphia Housing Authority so that all public/assisted housing  
20           tenants who also participate in CRP are served through that program. In this  
21           way, the utility allowance is fully-captured for CRP participants who are also  
22           tenants of public and assisted housing.
- 23
- 24           ➤ Third, PGW should be encouraged to devote resources to track and review the  
25           utility allowances paid by local housing authorities. Every dollar of utility  
26           allowance underpayment to a CRP participant is a dollar of CRP shortfall that  
27           the housing authority has moved from its budget to the CRP program budget  
28           (and thus to non-participating customers). PGW should take specific steps to  
29           *minimize (if not entirely prevent) that from happening.*
- 30

31  **Q.    DOES THIS CONCLUDE YOUR TESTIMONY?**

32  **A.**    Yes, it does.

33

Total Number of Residential Customers and Residential Customers Served by Alternative Gas Suppliers Eastern Pennsylvania (Pennsylvania Office of Consumer Advocate)					
Company	January 2007			April 2007	
	# Switched	% Switched		# Switched	% Switched
PGW	0	0%		0	0%
PECO	1,054	0.24%		946	0.22%
UGI Penn	0	0%		0	0%

SOURCE: Office of Consumer Advocate. Pennsylvania Natural Gas Shopping Statistics (January 1, 2007 and April 1, 2007).

Schedule RDC-2

<b>Typical Low Wage Jobs: Number of Employees, Number of Establishments, Average Annual Income (2005)</b> (Philadelphia County, PA)					
	General Merchandise Store (NAIC 452)	Grocery Stores (NAIC 4451)	Clothing Stores (NAIC 4481)	Food Service and Drinking Establishments (NAIC 722)	Personal Care Services (NAIC 8121)
Number establishments	232	575	494	3,115	515
Number employees	5,693	10,121	5,665	39,282	2,498
Average annual pay	\$19,108	\$20,333	\$19,608	\$17,351	\$18,017
SOURCE: State and County Employment and Wages, U.S. Department of Labor, Bureau of Labor Statistics, <a href="http://www.bls.gov/data/home.htm">http://www.bls.gov/data/home.htm</a> .					

OCA STATEMENT NO. 4-SR

5-23-07  
Phila  
TC

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

:  
:  
:  
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:

Docket No. R-00061931

DOCUMENT  
FOLDER

SURREBUTTAL TESTIMONY OF  
ROGER D. COLTON

ON BEHALF OF THE  
OFFICE OF CONSUMER ADVOCATE

MAY 15, 2007

RECEIVED

JUN 22 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is Roger Colton. My address is Fisher, Sheehan & Colton, Public Finance and  
3 General Economics, 34 Warwick Road, Belmont, MA 02478.

4  
5 **Q. ARE YOU THE SAME ROGER COLTON WHO PREVIOUSLY FILED DIRECT  
6 AND REBUTTAL TESTIMONY FOR THE OFFICE OF CONSUMER  
7 ADVOCATE (OCA) IN THIS PROCEEDING?**

8 A. Yes, I am.

9  
10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

11 A. My surrebuttal testimony today will respond to the testimony of two witnesses. First, I  
12 will respond to the rebuttal testimony of Joseph Bogdonavage with respect to the  
13 potential double recovery of bad debt in the absence of an adjustment to Customer  
14 Responsibility Program (CRP) credits. Second, I will respond to the testimony of  
15 Randall Gyory with respect to the Electronic Funds Transfer (EFT) and budget billing  
16 proposals of the OCA.

17

18 **Part 1. The Double Recovery of Bad Debt.**

19 **Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR  
20 TESTIMONY.**

21 A. In this part of my testimony, I respond to the assertion by Mr. Bogdonavage that  
22 including 100% of CRP credits will not double-recover bad debt expenses for the  
23 Company. The term "CRP credits" refers to the difference between the customer's CRP

1 percentage of income payment and the bill at full residential rates. It is the CRP credit  
2 that is the portion of the CRP participant's current bill that is passed through the universal  
3 service rider.  
4

5 **Q. IS MR. BOGDONAVAGE CORRECT IN SAYING THAT PGW BASE RATES**  
6 **COULD NOT HAVE INCLUDED ANY DOLLARS TO ACCOUNT FOR THE**  
7 **POTENTIAL UNCOLLECTIBLES FROM INCREMENTAL ADDITIONS TO**  
8 **CRP?**

9 A. No. PGW residential customers must be in one of two mutually exclusive groups. Either  
10 a customer (1) is a CRP participant; or (2) is not a CRP participant. A customer cannot be  
11 in both of these groups at the same time. Everyone agrees that the current month bills of  
12 CRP participants are collected from one of two sources. CRP current bills are paid  
13 through a combination of customer payments and CRP credits. Everyone agrees that  
14 CRP credits are not included in write-offs. Over the course of time, PGW projects that its  
15 CRP participant base is going to expand. When this happens, the customer brings his or  
16 her bills to CRP, which will be collected entirely through a combination of customer  
17 payments and CRP credits. That customer, however, leaves behind in base rates that  
18 portion of his or her bill that PGW is reserving against for uncollectibles.  
19

20 **Q. DOES THE COMPANY ASSOCIATE ITS EXPECTED UNCOLLECTIBLES**  
21 **WITH SPECIFIC INDIVIDUAL CUSTOMERS?**

22 A. No.  
23

1 **Q. DOES THE COMPANY OBTAIN RATE RECOVERY FOR ACTUAL**  
2 **UNCOLLECTIBLES OF SPECIFIC INDIVIDUALS AFTER-THE-FACT?**

3 A. No. As with any ratemaking, the Company uses its past history as the basis for making  
4 reasonable projections of what the future will look like. My testimony is that to the  
5 extent there is a net increase of CRP participants, the bills of those participants will be  
6 collected through customer payments and CRP credits collected through the universal  
7 service rider. A portion of the bills for those net additional CRP participants will also  
8 still be embedded in base rates, however, unless an adjustment is made to prevent the  
9 double recovery.

10  
11 **Q. IS MR. BOGDONAVAGE CORRECT IN TESTIFYING THAT YOUR**  
12 **TESTIMONY IS THAT "MORE THAN HALF OF THE CREDITS INCLUDED**  
13 **IN THE COMPANY'S UNIVERSAL SERVICE CHARGE MAY HAVE**  
14 **ALREADY BEEN INCLUDED IN THE COMPANY'S BAD DEBT EXPENSE**  
15 **ALLOWANCE AND INCLUDED IN THE COMPANY'S BASE RATES"?**

16 A. No. My testimony is limited to any change in CRP participation levels subsequent to a  
17 base rate case. The Company's bad debt expenses will be established at the time of a  
18 base rate case based on the CRP participation at the time of the rate case. The adjustment  
19 I propose is required in order to account for the change in CRP participation on a going-  
20 forward basis. Mr. Bogdonavage substantially overstates the adjustment that I  
21 recommend the Company make on a going-forward basis by saying that "more than half  
22 of the credits included in the Company's universal service charge may have already been  
23 included in the Company's bad debt expense allowance." (Bogdonavage Rebuttal, at 28).

1 Q. CAN YOU ILLUSTRATE?

2 A. Yes. Let me assume a hypothetical utility system with 100 customers. In our  
3 hypothetical, 60 customers are non-low-income and 40 are confirmed low-income. None  
4 are members of CRP. All customers have an average annual bill of \$800. The non-low-  
5 income customers have a bad debt rate of 20%. The confirmed low-income customers  
6 have a bad debt rate of 50%. These bad debt rates are roughly equal to PGW's numbers.  
7 Given this hypothetical, the Company experiences \$9,600 in bad debt from the non-low-  
8 income customers (60 customers x \$800 bill x 20% bad debt = \$48,000 x 0.20 = \$9,600)  
9 and \$16,000 in bad debt from its confirmed low-income customers (40 customers x \$800  
10 bill x 50% bad debt = \$32,000 x 0.50 = \$16,000). The Company collects a total of  
11 \$25,600 in bad debt from its customers.

12  
13 My testimony talks about this bad debt already embedded in rates for the low-income  
14 customers that will be double-recovered if there is an incremental increase in the CRP  
15 participation. Let me change my hypothetical, therefore, to move the 40 confirmed low-  
16 income customers to CRP. Let me assume that the CRP customers make a \$500  
17 customer payment, with the remaining \$300 passed through to remaining ratepayers  
18 through the universal service surcharge. The revenue passed through to other ratepayers  
19 via the surcharge is thus \$12,000 (40 CRP participants x \$300 CRP credit = \$12,000).  
20 Spread over the 60 non-low-income customers, this surcharge will be \$200 per customer  
21 (\$12,000 / 60 non-participant customers = \$200 per non-participant). As a result, the  
22 Company will experience the following bad debt. It will experience the same \$9,600 in  
23 bad debt on the basic non-low-income bills (60 customers x \$800 bill x 20% uncollectible

1 rate = \$9,600). It will experience a bad debt of \$2,400 on the universal service surcharge  
2 (\$200 surcharge per non-participant x 60 non-participants x 20% = \$2,400). It will  
3 experience a bad debt of \$10,000 on the CRP participant customer payments (40 CRP  
4 participants x \$500 customer payment x 50% = \$20,000 x 0.50 = \$10,000). As can be  
5 seen, under CRP, the Company is collecting \$25,600 in bad debt expense while  
6 experiencing a bad debt expense of only \$22,000. The reason is that the Company is  
7 double-collecting part of the bad debt associated with the incremental increase in CRP  
8 participation. As can be seen in the hypothetical above, the double-collection reaches  
9 \$3,600. The calculation I describe above is set forth in Schedule RDC-1SR.  
10

11 **Q. ARE YOU SUGGESTING THAT PGW WILL REDUCE ITS UNCOLLECTIBLE**  
12 **EXPENSES BECAUSE OF CRP?**

13 A. Whether or not PGW reduces its uncollectible expense through CAP is a *different* issue  
14 than that which I identify above. In my hypothetical above, I use an uncollectible rate of  
15 50% for the confirmed low-income customers. I continue to use that same uncollectible  
16 rate of 50% on the CAP customer payments. There is reasonable expectation, however,  
17 that when PGW makes the bills to its confirmed low-income customers more affordable,  
18 that uncollectible rate will be reduced to something less than 50%. If the uncollectible  
19 rate can be reduced from 50% to 20% because of the affordability of the CRP bills, in  
20 other words, the Company will experience real dollar savings. The Company has made  
21 an adjustment for that reduction and OCA has not challenged that adjustment in this  
22 proceeding. That is an entirely different issue.  
23

1 **Part 2. Budget Billing.**

2 **Q. PLEASE RESPOND TO MR. GYORY'S OBJECTION TO AN AUTOMATIC**  
3 **BUDGET BILLING PROGRAM.**

4 A. Mr. Gyory testifies that I provided no analysis showing that automatic budget billing  
5 results in more consistent bill payment by payment-troubled customers. On the contrary,  
6 the Tennessee automatic budget billing program I discussed in my Direct Testimony  
7 yielded substantial bill payment improvement even during a time period when spiraling  
8 natural gas prices were resulting in increased arrears, disconnections, and uncollectibles  
9 in other natural gas utility service territories.

10  
11 Moreover, as I discussed in detail in my Direct Testimony, PGW's own customer  
12 segmentation study (OCA-V-10) identifies budget billing as a way to reduce arrears.  
13 PGW's own customer segmentation study concludes that budget billing is an effective  
14 billing intervention to help reduce residential arrears.

15  
16 **Q. HAVE YOU PERSONALLY UNDERTAKEN ANY RESEARCH THAT**  
17 **CONFIRMS THE BENEFITS OF BUDGET BILLING AS AN ARREARS**  
18 **REDUCTION INTERVENTION?**

19 A. Yes. I perform an annual study of billing and collections for the Coalition to Keep  
20 Indiana Warm. The Coalition is a statewide consortium of community-based  
21 organizations, the state's six major utilities, and state agencies (including the Indiana  
22 Utility Regulatory Commission--IURC). The format of the study, and the data used to  
23 prepare the study, were negotiated in detail between IURC staff, the state association of

1 Community Action Agencies (CAAs), and the six utilities. In the most recent report I  
2 prepared for Indiana, I documented how budget billing would improve the bill payment  
3 patterns of both low-income customers and residential customers generally. As I reported  
4 in my Indiana analysis:

5 The benefits of Budget Billing can be demonstrated by more than reference to actual  
6 monthly bills (and the seasonable variation in those bills). The benefits can be  
7 ascertained by reference to the "bills behind" statistic as well. Within the residential  
8 population as a whole, those accounts in arrears maintain a reasonably consistent  
9 number of "bills behind" over the entire year. So, while the *dollars* of arrears  
10 certainly increase during the winter months, the number of payments missed varies  
11 in a reasonably narrow band around 1.25 "bills behind." There is a slight uptick in  
12 January (to 1.33).

13  
14 What the data shows is that roughly the same number of bills are unpaid in any given  
15 month throughout the year. Higher dollar levels of arrears occur in the winter  
16 months, however, simply because each unpaid bill in the winter months is worth  
17 more dollars. As can be seen, therefore, if some portion of those winter bills could be  
18 moved forward to a month with a lower "bills behind" statistic, even if the "bills  
19 behind" statistic could not be lowered, the overall revenue in arrears would be less  
20 since each "bill behind" would relate to a *smaller* bill.

21  
22 The same phenomenon is true for low-income accounts. There is a moderate  
23 increase in the number of "bills behind" during the winter months (from 1.41 in  
24 January to 1.79 in March). As with residential accounts, even if Budget Billing could  
25 not reduce the number of "bills behind," each bill would be smaller and the total  
26 revenue in arrears should decrease. In fact, it would be reasonable to expect that  
27 Budget Billing would reduce the total number of "bills behind" as well.  
28 Accordingly, two favorable results would arise: (1) fewer bills would be outstanding;  
29 and (2) each outstanding bill would be smaller, with total revenue in arrears  
30 declining as a result.<sup>1</sup>  
31

32 **Q. PLEASE RESPOND TO MR. GYORY'S TESTIMONY THAT HE LACKS A**  
33 **SUFFICIENT IN-DEPTH ANALYSIS OF BILL SIZE, BILL PAYMENT, AND**  
34 **DEMOGRAPHICS TO SUPPORT THE AUTOMATIC BUDGET BILLING**  
35 **PROPOSAL.**

---

<sup>1</sup> Roger Colton (November 2006). *Indiana Billing and Collection Reporting: Natural Gas and Electric Utilities 2006*, at 60 – 61, Coalition to Keep Indiana Warm: Indianapolis (IN). (internal citations and notes omitted).

1 A. If the lack of in-depth analysis precluded PGW from taking action on credit and  
2 collection activity, the Company would do little, if anything, on credit and collections.  
3 OCA asked PGW to provide any information that it had that discusses “the reasons why  
4 residential customers do or do not choose to enter into levelized budget billing plans for  
5 their home energy bills . . . whether or not such information was developed using PGW  
6 data.” The Company responded that “PGW does not have a study, report, or any other  
7 document that examines, analyzes, or discusses reasons why customers do not choose to  
8 participate in the budget billing program.” (OCA-V-8).

9  
10 In addition, in the absence of the same information that Mr. Gyory insists he needs with  
11 respect to budget billing, the Company would *also* not do a multitude of other collection  
12 activities as well. OCA asked the Company to provide all information it has, whether or  
13 not prepared by PGW, that explicitly assesses the extent to which certain collection  
14 actions *reduce residential bad debt*. The actions included imposing cash security  
15 deposits, negotiating deferred payment agreements, effectuating disconnections for  
16 nonpayment, engaging in field collections, entering into levelized budget billing plans,  
17 and imposing late payment charges, among other things. The Company responded that  
18 “there are no studies in PGW’s possession that explicitly assess the extent to which any  
19 of the above activities reduce residential bad debt. All of the above activities are part of a  
20 comprehensive collection strategy for the reduction of bad debt.” (OCA-IV-11).

21  
22 Moreover, OCA asked the same question seeking all information, whether or not  
23 prepared by the Company, that assesses “the extent to which the following individual

1 activities reduce residential arrears.” Given the same caveat about each of the activities  
2 being part of a “comprehensive collection strategy,” the Company responded that “there  
3 are no studies in PGW’s possession that explicitly assess the extent to which any of the  
4 above activities reduce residential arrears.” (OC-IV-12).

5  
6 It seems inconsistent of Mr. Gyory to reject the OCA’s proposed budget billing program  
7 due to what he calls the lack of an “in-depth analysis” of usage, payment patterns and  
8 demographics when the Company can provide no information whatsoever in support of  
9 any of its current collection activities such as imposing cash security deposits, engaging  
10 in service terminations, entering into deferred payment plans, imposing late payment  
11 charges, or seeking payments from the Low-Income Home Energy Assistance Program  
12 (LIHEAP). Moreover, Mr. Gyory errs in saying that I presented no empirical analysis  
13 showing the benefit to PGW of the budget billing proposal. I provided an analysis of the  
14 benefits in my Direct Testimony as well as above.

15  
16 **Q. WHAT DO YOU CONCLUDE?**

17 A. Contrary to Mr. Gyory’s rebuttal testimony, the automatic budget billing proposal I set  
18 forth in my direct testimony has a sound empirical basis in both PGW data and data from  
19 other jurisdictions. In addition, as I explain in detail in my Direct Testimony, the  
20 automatic budget billing proposal I set forth has a demonstrated track record of success in  
21 helping to redress residential arrears for Tennessee’s natural gas utilities.

22  
23 **Part 3. Electronic Funds Transfer (EFT) Payments.**

1 **Q. PLEASE RESPOND TO MR. GYORY'S OBJECTIONS TO THE OCA'S**  
2 **PROPOSED MANDATORY EFT PROGRAM FOR DEFERRED PAYMENT**  
3 **PLANS FOR HIGHER INCOME CUSTOMERS.**

4 A. Mr. Gyory offers a host of objections to the mandatory EFT payment plan program  
5 offered by the OCA. His objections, however, are entirely speculative and they are  
6 contrary to available information. Mr. Gyory objects that customers may close their bank  
7 account or maintain an inadequate balance, even though PGW's own customer  
8 segmentation study found this to so infrequently happen that it was statistically  
9 insignificant. (OCA-V-10). Mr. Gyory objects that "most of our customers are  
10 accustomed to the normal time delay associated with check presentment" which would  
11 not be present with EFT, thus leading to possible "bounced payment fees." Again,  
12 however, he does not address the fact that the Company's own customer segmentation  
13 study found that such problems virtually never happened. (OCA-V-10). Nor does Mr.  
14 Gyory document that insufficient funds transactions would occur more frequently  
15 through EFT than through the historic practice of paying by check.

16  
17 **Q. DOES MR. GYORY HAVE ANY EMPIRICAL BASIS UPON WHICH TO BASE**  
18 **HIS OBJECTIONS?**

19 A. No. OCA asked PGW to provide any written documents that consider the factors that can  
20 be used to predict the success of individual residential deferred payment plans. The  
21 Company responded that "PGW does not have any written documents that evaluate,  
22 assess, or consider in any fashion the factors used by PGW staff to predict the success of  
23 individual residential deferred payment plans." (OCA-V-33). OCA further asked PGW

1 to provide information that considers the barriers that prevent or impede either the  
2 enrollment by residential customers in arrears in a deferred payment plan, or the barriers  
3 that prevent or impede the success in completing a deferred payment plan. The Company  
4 responded that "PGW does not have any written documents that evaluate, assess or  
5 consider in any fashion: (a) the barriers that prevent or impede the enrollment by  
6 residential customers in arrears in a deferred payment plan; [or] (b) the barriers that  
7 prevent or impede the success by residential customers in arrears in completing a  
8 deferred payment plan." (OCA-V-34). Mr. Gyory has no empirical basis for reaching the  
9 conclusions that underlie his objections to the OCA EFT proposal.  
10

11 **Q. IS THERE ANY EMPIRICAL BASIS INDICATING THAT MR. GYORY'S**  
12 **OBJECTIONS TO THE PROPOSED EFT PROGRAM ARE WITHOUT MERIT?**

13 **Q.** Yes. Mr. Gyory's objections to the EFT program do not take into account that OCA's  
14 proposal for required EFT payments are directed toward higher income customers. The  
15 OCA proposal was limited to customers with income at or above 250% of the Federal  
16 Poverty Level. Customers with this level of income will not likely exhibit the problems  
17 that Mr. Gyory posits. The U.S. Federal Reserve Board (FRB) engages in a tri-annual  
18 "Survey of Consumer Finances." The most recent survey is from 2004 (the 2007 Survey  
19 has just recently begun). The 2004 Survey of Consumer Finances reported the existence  
20 of "transaction accounts" by percentile of income. A "transaction account" is either a  
21 checking or savings account.  
22

23 **Q. CAN YOU PLEASE EXPLAIN WHAT A "PERCENTILE" OF INCOME IS?**

1 A. A "decile of income" looks at the range of income within which one-tenth of the  
2 population falls. Households in the lowest "decile" of income include those households  
3 in the bottom tenth of income (90% of households have higher incomes). Households in  
4 the "second decile" of income fall in the second tenth of income (10% of households  
5 have lower income while 80% of households have higher incomes). A "percentile" is the  
6 same measurement, but in units of one percent rather than ten percent. A household in  
7 the 58<sup>th</sup> percentile of income, for example, would have 57% of the population with lower  
8 income and 42% of the population with higher income.

9  
10 **Q. HOW DO INCOME PERCENTILES RELATE TO THE FEDERAL POVERTY**  
11 **LEVEL?**

12 A. Unlike the Federal Poverty Level, percentiles of income do not take into account  
13 household size.<sup>2</sup> Nonetheless, it is possible to relate income percentiles to the Federal  
14 Poverty Level. I examine a household at 250% of the Federal Poverty Level since the  
15 proposal in my Direct Testimony was to implement an EFT program for customers with  
16 income above 250% of the Federal Poverty Level.

17  
18 For a 1-person household, since the 2007 Federal Poverty Level is \$10,210, 250% of the  
19 Federal Poverty Level equals an income of \$25,525 in 2007 ( $\$10,210 \times 2.5 = \$25,525$ ).

20 For a 2-person household, since the 2007 Federal Poverty Level is \$13,690, 250% of the  
21 Federal Poverty Level equals an income of \$34,225. For a 3-person household, since the

---

<sup>2</sup> Federal Poverty Level examines income taking into account household size. A 3-person household with \$10,000 in income, in other words, is "poorer" than a 2-person household with \$10,000 in income.

1 2007 Federal Poverty Level is \$17,170, 250% of the Federal Poverty Level equals an  
2 income of \$42,925.

3  
4 **Q. HOW DOES THAT RELATE TO INCOME PERCENTILES IN**  
5 **PHILADELPHIA?**

6 A. An income of \$25,000 places a household at the 42<sup>nd</sup> percentile of income in  
7 Philadelphia. An income of \$43,000 places a household at roughly the 65<sup>th</sup> percentile of  
8 income. Remember, in addition, however, that the OCA proposal is not for households at  
9 250% of the Federal Poverty Level, but for households or above 250% of the Federal  
10 Poverty Level.

11  
12 **Q. HOW DOES THIS RELATE TO MR. GYORY'S REBUTTAL TESTIMONY?**

13 A. The lack of banking accounts, as well as the insufficient funds problems, speculated to  
14 exist by Mr. Gyory simply have no empirical basis. One-person households at 250% of  
15 Poverty Level will be above the 40<sup>th</sup> income percentile. More than 95% of these  
16 households have transaction accounts. A 3-person household at 250% of Poverty Level  
17 will be at the 65<sup>th</sup> percentile of income. More than 98% of these households have  
18 transaction accounts. As income increases above 250% of Poverty Level, the penetration  
19 of transaction accounts will increase as well. The penetration of transaction accounts by  
20 percentile of income is set forth in Schedule RDC-2SR.

1 Q. **WHAT DOES THIS FEDERAL RESERVE BOARD DATA TELL YOU?**

2 A. The problem of the “unbanked” customer that Mr. Gyory raises is certainly a problem  
3 facing low-income households. The EFT proposal included in my Direct Testimony,  
4 however, was very consciously *not* directed at the low-income. This Federal Reserve  
5 Board data tells me that, for the population that would be covered by the EFT proposal,  
6 the problems speculated on by Mr. Gyory will not be as extensive as he posits, if they  
7 would exist at all.

8  
9 Q. **GIVEN THAT MR. GYORY SAYS THAT “THE IDEA APPEARS ON ITS FACE  
10 TO HAVE SOME MERIT,” IS THERE A POTENTIAL MIDDLE GROUND?**

11 A. Yes. Mr. Gyory also asserts that the EFT program offered by OCA “does not provide  
12 any incentive for delinquent customers to enter such a program.” (Gyory Rebuttal, at 15).  
13 I read that testimony to say that having an EFT program for customers on deferred  
14 payment plans has little impact if the customer refuses to enter into a deferred payment  
15 plan with which to begin. A program one-step short of what OCA recommends would  
16 offer significant incentives to delinquent customers not only to enter into payment plans,  
17 but also to enter into payment plans through which EFT payments are made.

18  
19 PGW imposes substantial cash security deposits on delinquent customers. In response to  
20 Mr. Gyory’s observation, it may be beneficial, short of implementing a mandatory EFT  
21 program, for PGW to offer to waive customer deposits (including a refund of existing  
22 deposits) for customers who enter into EFT agreements through which to pay their  
23 monthly PGW bills. *If a customer closes his or her account after entering into an EFT*

1 plan, and after having his or her deposit returned, or if the customer routinely has  
2 insufficient funds at the time of the EFT payment, the Company could again impose a  
3 cash security deposit.

4  
5 **Q. WHY DO YOU IDENTIFY THIS “POTENTIAL MIDDLE GROUND”?**

6 A. The purpose of the OCA’s proposal is not simply to promote EFT payments. The  
7 underlying objective is obviously to improve the use of deferred payment plans to  
8 successfully retire arrears. Accomplishing this would improve the Company’s cash flow.  
9 It would benefit the Company, the Company’s ratepayers who do not have arrears, and  
10 the Company’s ratepayers that do have arrears. This “middle ground” seems to satisfy all  
11 of Mr. Gyory’s objections. Moreover, while it does not make EFT payments mandatory  
12 for higher income customers, the offer to waive (or refund if a deposit had already been  
13 collected) cash security deposits in return for EFT payments *does* create a substantial  
14 financial incentive for customers in arrears to enter into payment plans, to agree to EFT  
15 payments for those payment plans, and to successfully complete those payment plans  
16 through the EFT process. In short, the Company accepts the automatic nature of the EFT  
17 process as its “security” against nonpayment. The customer could make his or her choice  
18 about whether to accept the value of the cash security deposit (either waived or refunded)  
19 as adequate “compensation” for agreeing to enter into (and maintain) the EFT payment  
20 process.

21  
22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 A. Yes, it does.

**Hypothetical Illustration of Double-Collection of Bad Debt Expenses Under CRP with Adjustment**

<i>Without CRP</i>	<i>Non-Low-Income</i>	<i>Non-low-income surcharge</i>	<i>Confirmed Low-Income</i>	<i>Total</i>
Number of customers	60	60	40	100
Average annual bill per customer	\$800	\$0	\$800	
Aggregate annual bills	\$48,000	\$0	\$32,000	\$80,000
Uncollectible rate	20%	20%	50%	
Collectability factor (1 – uncollectible rate)	80%	80%	50%	
Collected dollars	\$38,400	\$0	\$16,000	\$54,400
Uncollectible dollars	\$9,600	\$0	\$16,000	\$25,600
<i>With CRP</i>	<i>Non-Low-Income Bills</i>	<i>Non-low-income surcharge</i>	<i>CAP Customer Payments</i>	<i>Total</i>
Number of customers	60	60	40	
Average annual bill per customer	\$800	\$200 /a/	\$500	
Aggregate annual bills	\$48,000	\$12,000	\$20,000	\$80,000
Uncollectible rate	20%	20%	50%	
Collectability factor (1 – uncollectible rate)	80%	80%	50%	
Collected dollars	\$38,400	\$9,600	\$10,000	\$58,000
Uncollectible dollars	\$9,600	\$2,400	\$10,000	\$22,000

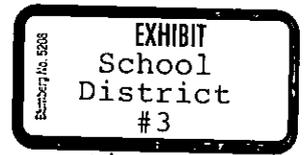
NOTES:

/a/ The \$200 surcharge is calculated by multiplying the difference between the residential bill and the CAP customer payment times the number of CAP participants and then spreading that CRP credit over the number of non-participants. The calculation is thus:  $(\$800 - \$500) \times 40 = \$12,000 / 60 = \$200$ .

## Schedule RDC-2SR

Penetration of Transaction Accounts by Percentile of Income (2004 Survey of Consumer Finances)	
Percentile of Income	Percent with Transaction Account
Less than 20	75.6%
20 - 39.9	87.5%
40 - 59.9	95.6%
60 - 79.9	98.5%
80 - 89.9	99.1%
90 - 100	100.0%
SOURCE: 2004 Survey of Consumer Finances, Table 5-04.	

93976.doc



*Statement*

*Hearing  
5-23-07  
Phila  
TC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

v. :

Philadelphia Gas Works :

Docket No. R-00061931

**DOCUMENT  
FOLDER**

**DIRECT TESTIMONY OF  
JUDITH L. MONDRE**

**ON BEHALF OF  
THE SCHOOL DISTRICT OF PHILADELPHIA  
INTERVENOR**

**MAY 21, 2007**

**RECEIVED**

**JUN 22 2007**

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

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

v.

PHILADELPHIA GAS WORKS

:  
:  
:  
:  
:  
:  
:

Docket No. R-0006193

**DIRECT TESTIMONY OF JUDITH L. MONDRE ON BEHALF OF  
THE SCHOOL DISTRICT OF PHILADELPHIA, INTERVENOR**

The School District of Philadelphia, Intervenor ("the School District") submits the following Direct Testimony of Judith L. Mondre, President of Mondre Energy, Inc., pursuant to 52 Pa. Code §5.412:

1           **Q.    PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**  
2           **ADDRESS.**

3           A.    My name is Judith Mondre. I am President of Mondre Energy, Inc.  
4           ("MEI"). My business address is 1880 John F. Kennedy Blvd., Suite 1705,  
5           Philadelphia, PA 19103.

6           **Q.    PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND**  
7           **AND PROFESSIONAL EXPERIENCE.**

8           A.    My background and experience are detailed in my curriculum vitae,  
9           attached hereto as Exhibit A. I received a B.A. with honors in political  
10          science from the State University of New York at Stony Brook. I have  
11          undertaken master's level work at Villanova University and Temple  
12          University in psychology.

13                    I have 15 years' experience in the energy field, beginning in 1992.  
14                    I was appointed inaugural Executive Director of the City of Philadelphia's  
15                    first-ever Municipal Energy Office by then-Mayor Edward G. Rendell in  
16                    1993. During my tenure, the Energy Office became a nationally  
17                    recognized leader in controlling energy costs and improving the City's  
18                    energy efficiency, achieving more than \$58 million in energy savings  
19                    through a variety of programs.

20                    I founded Mondre Energy, Inc. ("MEI"), a privately held energy  
21                    consulting firm, in 1998. MEI represents government agencies,  
22                    corporations and institutional clients as they manage and reduce energy  
23                    costs through supply- and demand-side initiatives, including, but not

1 limited to, monitoring market conditions for energy commodities to allow  
2 our clients to take prompt advantage of favorable opportunities:  
3 negotiating, preparing contract documentation for and managing energy  
4 commodity procurements for natural gas, electricity, fuel oil and steam;  
5 negotiating off-tariff rate agreements and managing the timing of expiring  
6 agreements to create revenue for clients in the form of refunds, buyouts  
7 and other adjustments; conducting energy audits for large, multi-facility  
8 public and private buildings, airports, athletic complexes and school  
9 districts, identifying savings opportunities through energy conservation  
10 measures, and working with the clients and outside contractors to  
11 implement them; strategic plan development to help clients in several  
12 states position themselves optimally to control their costs in the wake of  
13 electricity and gas deregulation; recommending energy conservation  
14 measures, tracking client consumption and billing data through the use of  
15 proprietary software tools, undertaking regulatory and public policy  
16 analyses, and supporting clients and their counsel in litigation and  
17 regulatory proceedings.

18 **Q. PLEASE DESCRIBE THE SCOPE OF YOUR ENGAGEMENT**  
19 **AND THE PURPOSE OF YOUR TESTIMONY.**

20 A. MEI was engaged by the School District of Philadelphia (the "School  
21 District") to undertake an analysis of the petition of Philadelphia Gas  
22 Works ("PGW") for an increase in rates, which petition is the subject of  
23 this proceeding. MEI was tasked to assess the potential effects of the

1 PGW's rate increase upon the School District's operations; to determine  
2 whether the data we reviewed supports PGW's contention that the rate  
3 increase is necessary; to determine whether the School District's accounts  
4 are being treated equitably; and to provide expert testimony setting forth  
5 our findings and recommendations.

6 **Q. HAVE YOU PREVIOUSLY PROVIDED EXPERT TESTIMONY**  
7 **BEFORE THE PUC ON BEHALF OF THE SCHOOL DISTRICT?**

8 A. No, I have not.

9  
10 **Q. WHAT WAS THE SOURCE OF THE INFORMATION THAT YOU**  
11 **RELIED UPON IN PREPARING THIS TESTIMONY?**

12 A. I and my staff working under my supervision have examined PGW's  
13 petition and supporting documentation, the pleadings, discovery requests  
14 and responses thereto of other participants, and the data provided by PGW  
15 to various other participants in response to their respective discovery  
16 requests, and various documents in the custody of the School District. I  
17 also gathered information from School District staff. See Exhibit B  
18 hereto.

19 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

20 A. My testimony concentrates upon the question of whether the increase to  
21 the MS rate is justified, and whether the School District's accounts are  
22 being administered by PGW in accordance with the tariff.

23 **Section I – The School District's Rate Classifications**

1           **Q.     PLEASE DESCRIBE THE SCHOOL DISTRICT'S VARIOUS**  
2                   **FACILITIES AND PROPERTIES USING NATURAL GAS**  
3                   **SUPPLIED BY PGW.**

4           **A.**     The School District is the eighth-largest public school district in the  
5                   United States, with a current student population of more than 174,000 in  
6                   276 public schools, and an additional 29,000 students in 55 charter  
7                   schools. The School District uses natural gas purchased from PGW as fuel  
8                   for heat, hot water and other appliances and operations at approximately  
9                   280 of the above schools and support facilities.

10          **Q.     PLEASE DESIGNATE THE PGW RATE CLASSES UNDER**  
11                   **WHICH THE SCHOOL DISTRICT PURCHASES NATURAL GAS.**

12          **A.**     The School District purchases natural gas from PGW in three rate classes:  
13                   BPS-L, BPS-S, and MS. The amounts of gas the School District purchases  
14                   in each rate class are in the spreadsheet attached hereto as Exhibit B.  
15                   Additionally, the School District uses PGW's system to transport and  
16                   deliver gas purchased from a third-party vendor at Fixed and Interruptible  
17                   Transmission rates. PGW is not requesting an increase in the base rate for  
18                   the BPS-S, BPS-L or transportation classes, therefore, I am discussing  
19                   firm rate service primarily as a component of the School District's overall  
20                   costs.

21          **Q.     PLEASE DESCRIBE THE PERTINENT PROVISIONS OF THE MS**  
22                   **RATE.**

1 A. The Proposed Tariff, 15<sup>th</sup> Revised page 87, states, in pertinent part: “MS  
2 service is available to properties owned or occupied by the City of  
3 Philadelphia or the Board of Education, or any of their respective agencies  
4 or instrumentalities...provided, however, that the rate shall not be  
5 available to Commercial tenants of any such property.”

6 **Q. WHAT WERE THE SCHOOL DISTRICT’S OVERALL  
7 CONSUMPTION LEVELS AND EXPENDITURES ON NATURAL  
8 GAS IN FISCAL YEAR 2006?**

9 A. The School District consumed a total of approximately 8,194,286 ccf of  
10 natural gas during Fiscal Year 2006 in MS and BPS rate classes, at a total  
11 cost of approximately \$13,977,859.

12 **Q. DOES THE SCHOOL DISTRICT PAY PGW DIRECTLY FOR GAS  
13 USED IN ITS PROPERTIES?**

14 A. Yes, it does.

15 **Section II – The Effects of the Proposed Increases Upon The School**

16 **District**

17 **Q. WHAT FINANCIAL IMPACT WOULD THE PROPOSED  
18 INCREASE IN THE MS RATE CLASS HAVE ON THE SCHOOL  
19 DISTRICT?**

20 A. The proposed rates would have a material impact on the School District.  
21 The proposed rate increase would raise the MS rate from the current level  
22 paid by the School District of \$1.63263 per ccf to \$1.84584. When  
23 applied to the School District’s 2006 MS consumption levels, the increase

1 would generate an additional expense to the School District of  
2 approximately \$1,119,162, an increase of 11.7 percent.

3 **Q. DOES THE SCHOOL DISTRICT'S BUDGET CONTAIN**  
4 **SUFFICIENT ALLOCATIONS TO ABSORB THE PROPOSED**  
5 **RATE INCREASE?**

6 A. No, it does not. As set forth in the testimony of and Paul Vallas, CEO of  
7 the School District, and James Lewis, Director of General Services for the  
8 School District, because of the School District's financial difficulties, it  
9 cannot divert funds from other operations to fund the increase without  
10 causing significant damage to other equally vital programs and services.

11 **Q. WHAT HAS THE SCHOOL DISTRICT'S PAYMENT HISTORY**  
12 **BEEN WITH PGW?**

13 A. Despite the considerable budget pressures the School District has faced  
14 and continues to face, it has paid its PGW bills in full and in a timely  
15 manner, even in the midst of billing disputes.

16 **Q. WHAT, IF ANYTHING, DID YOUR REVIEW OF PGW'S COST**  
17 **OF SERVICE STUDY CAUSE YOU TO CONCLUDE WITH**  
18 **RESPECT TO WHETHER THE SCHOOL DISTRICT'S**  
19 **PAYMENTS TO PGW COVER PGW'S OPERATING COSTS?**

20 A. My review of the Cost of Service Study ("COSS") undertaken on PGW's  
21 behalf and annexed as Tab 8 to its testimony leads me to conclude that  
22 the revenue PGW derives from MS accounts already covers PGW's  
23 operating costs to provide gas and delivery. HSC-1, Page 1 of 2, Line

1 12 (heat and non-heat), discloses that the net revenues obtained by PGW  
2 for 2006 for MS accounts (RC-7 and RC-8) are \$21,460,000, of which  
3 more than \$10 million were paid by the School District. According to the  
4 explanatory notes to the COSS Study (page 30, Line 18), PGW  
5 allocates (subtracts from revenues) operating expenses of \$19,470,000,  
6 plus interest and resulting surplus of \$1,230,000 (Line 21). Based on the  
7 above analysis, PGW's MS revenues, including the School Districts,  
8 exceed net revenue requirements at current rates.

9 It is also noteworthy that the School District provides a revenue  
10 stream of approximately \$450,000 annually to PGW in the form of  
11 transportation charges on its third-party firm and interruptible purchases.  
12 This additional revenue increases the existing surplus.

13 **Section III - Evaluation of PGW's Justifications for MS Rate Increases**  
14

15 **Q. BASED UPON YOUR REVIEW OF PGW'S PETITION AND**  
16 **SUPPORTING MATERIALS, DO YOU HAVE AN OPINION AS**  
17 **TO WHETHER THERE IS AN ADEQUATE BASIS FOR PGW'S**  
18 **REQUESTED MS RATE INCREASE?**

19 **A.** I have formed an opinion, which is that there is not an adequate basis for  
20 PGW's requested rate increase. My opinion is based on the following  
21 considerations.

22 First, COSS Exhibit HSG-1, Page 1 of 2, states that \$98,295,000  
23 of PGW's \$100,000,000 claimed deficit is attributed to losses and costs  
24 in the residential rate class. The School District is not a part of that rate

1 class. Its payment history is sound. It covers the costs of service  
2 attributable to it. It is apparent that PGW intends to apply funds from the  
3 MS rate class to pay for residential deficits, which acts to penalize the  
4 School District for PGW's operational inefficiencies and its residential  
5 customers' poor delinquent payments.

6 Second, PGW is seeking to include in its cost of service a number  
7 of items that cannot be considered reasonable expenses. For example,  
8 PGW includes in its personnel costs lifetime continuation of health  
9 benefits for retirees. This is far more generous than the benefits the School  
10 District, the City of Philadelphia and other public agencies grant their  
11 retirees.

12 Third, PGW does not appear to be taking an aggressive stance with  
13 respect to soliciting third-party suppliers other than the current two, Hess  
14 and Gasmark. By contrast, PECO Energy has twice as many active third  
15 party suppliers for its customers in the Delaware Valley. PGW has no  
16 policy in place with regard to soliciting such suppliers. It last conducted  
17 an open house for suppliers in June 2004. Although it sends out letters  
18 of solicitation to suppliers from time to time (See PGW response to  
19 Philadelphia Housing Authority ("PHA") Data Request Set 1-25, 27,  
20 28, this sporadic activity is consistent with a company already at  
21 financial risk with regard to generation costs.

22 PGW also has made substantial expenditures with regard to its  
23 real estate that do not appear to be exclusively relevant to its core

1 business. Nevertheless, PGW purchased a \$900,000 tract of land  
2 adjacent to its Passyunk Plant “to enhance plant security.” See  
3 Response to PHA Request for Data I-38. This assertion is not entirely  
4 consistent with PGW’s recent solicitation of requests for proposals  
5 (“RFP”) to develop this tract, which included the redevelopment of 35  
6 acres on the site by a third party. See RFP, a copy of which is  
7 attached hereto as Exhibit C. The scope of the intended use described in  
8 the RFP seems in part prudent, but also in part speculative.

9 By seeking such substantial rate increases, PGW is shifting the  
10 burden to its customers to identify expenses to cut in order to bear  
11 increased energy costs. Yet PGW itself is unwilling to exercise the same  
12 discipline.

13 **Section IV – Evaluation of PGW’s Compliance with the Tariff**

14 **Q. IS THE SCHOOL DISTRICT ENTITLED TO RECEIVE ANY**  
15 **CREDITS FROM PGW FOR THE INSTALLATION OF NEW**  
16 **MAINS AND SERVICE DELIVERY PIPES AND HAS IT**  
17 **RECEIVED SUCH CREDITS?**

18 **A.** The School District pays PGW 100% of the gas main and service costs  
19 at its new facilities. Section 10 of the Tariff, entitled “Extensions  
20 and Rights-of-Way” and informally referred to as “Rule 10,” provides  
21 that the School District is entitled to receive credit for net additional  
22 revenue to PGW accumulated during a service agreement. PGW has not  
23 been complying with this requirement

1                   Specifically, Section 10.1.B provides that PGW will furnish and  
2                   install pipes and mains for commercial and industrial gas service  
3                   customers at no charge up to certain financial limits (\$10,000 for non-  
4                   residential facilities such as the School District's), and  
5                   will then pro-rate and recover the cost of such enlargements and  
6                   expansions based on a percentage of projected revenue derived from the  
7                   new gas service. That section and Section 10.6 provide a  
8                   mechanism whereby PGW will refund/credit a portion of the  
9                   customer's contribution on a pro rata basis. The School District's records  
10                  do not reflect any credits or payments from PGW.

11                  As a practical example, the tariff states that if PGW installs new  
12                  mains and piping for the School District at a cost of \$25,000, PGW  
13                  should assess a fee based on the amount by which PGW believes the costs  
14                  of installation will exceed potential revenues, not the net costs of the  
15                  project.

16                  Nothing in the tariff leads us to believe that PGW can demand that  
17                  the School District pay the entire project cost "up front," but PGW  
18                  engages in that practice with the School District, despite repeated but  
19                  unsuccessful discussions between the School District and PGW.

20                  This pre-payment requirement damages the School District in one  
21                  of two ways. If the School District pays the entire cost up front, then it  
22                  should receive reimbursements for Rule 10 credits accumulated during the  
23                  course of the agreement. If, however, the School District pays only for

1 the capital cost in excess of the Rule 10 allotment, then the Rule 10  
2 allotment is effectively credited during the course of the agreement  
3 in the form of gas consumption. PGW has neither remitted any Rule 10  
4 credits to the School District, nor has it allowed the School District to  
5 make payment only on the excess capital cost. In either case, the District  
6 pays more than the tariff requires it to, and has received none of the  
7 required payments.

8 **Q. DO YOU HAVE AN OPINION AS TO WHETHER PGW IS**  
9 **COMPLYING WITH ITS OWN CURRENT SERVICE AND**  
10 **TARIFF REQUIREMENTS IN ITS TREATMENT OF THE**  
11 **SCHOOL DISTRICT?**

12 A. I have formed an opinion on the PGW's compliance with its own current  
13 service and tariff requirements with respect to the School District. My  
14 opinion is that PGW is not equitably applying its own service and tariff  
15 requirements in accordance with the tariff. Section 9.10 A-C of the  
16 existing and proposed tariffs provides that PGW contemplates treating a  
17 "single customer unit" as a single premises with one delivery and metering  
18 point for purposes of assessing meter charges. Even though the School  
19 District maintains one central point for billing and account administration  
20 to which PGW already submits its bills, the School District is being  
21 treated as a series of single unit premises and not the large end-user that it  
22 is. Section 9.10C gives PGW the discretion to amend its meter charging  
23 methodology for interruptible customers if it so chooses. Discussions with

1 PGW representatives on this topic have not resulted in the discounts that  
2 would apply if the School District were treated as a large end-user who  
3 minimized PGW's administrative costs. PGW requires the School District  
4 to pay "up front" for new meters for interruptible service. The "pay up  
5 front" requirements and metering charge practices are particularly  
6 distressing to the School District. The School District consistently pays its  
7 bills in full and in a timely manner. It has improved its accounts payable  
8 procedure to reduce the time of payment. Additionally, the School  
9 District's existing agreements with PGW provide PGW with ample  
10 recourse in the event of an uncured delinquency. I have observed through  
11 my experience on behalf of other clients who are PGW customers that this  
12 is inconsistent with PGW's practices with regard to its other customers  
13 and causes an additional drain on the School District's current resources.

14  
15 **Section V - Conclusion**

16 **Q. BASED UPON ALL THE FOREGOING, DO YOU HAVE AN**  
17 **OPINION AS TO WHETHER THE PROPOSED MS RATE**  
18 **INCREASE IS JUSTIFIED WITH REGARD TO THE SCHOOL**  
19 **DISTRICT?**

20 **A.** Yes. My opinion is that the proposed MS rate increase is not justified as  
21 to the School District. The vast majority of PGW's reported shortfall is  
22 attributable to residential customers, which the School District most  
23 certainly is not. In effect, PGW is asking the School District, as well as

1 other institutional customers, to help it pay for its operational  
2 inefficiencies and collection problems with regard to residential service.

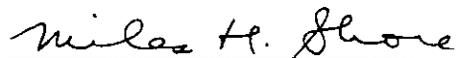
3 The requested increase would cause the School District serious  
4 financial hardship at a time when its funding problems are already  
5 overwhelming. It would place the School District in the position of  
6 making cuts in educational programs and services, and thus does a huge  
7 disservice to the more than 203,000 children, the people who teach them  
8 and the community that relies on the School District to educate its  
9 children.

10 Finally, PGW has not been complying with the current tariff with  
11 regard to the District, and has shifted its need for additional revenues onto  
12 the School District. Unfortunately, the School District cannot afford to  
13 bear additional costs.

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes, it does.

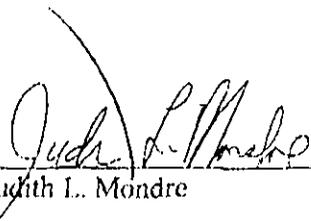
Respectfully Submitted,



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

VERIFICATION

I, Judith L. Mondre, President of Mondre Energy, Inc., verify that the facts and opinions set forth in my Direct Testimony are true and correct to the best of my knowledge, information and belief, and that this verification is made subject to the penalties of 18 Pa. C.S.A., §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Judith L. Mondre

**Exhibit A**  
**Judith Mondre Resume**

JUDITH L. MONDRE

**PROFESSIONAL EXPERIENCE**

**1998 to Present      President, Mondre Energy, Inc.**

Specialized energy consulting company focusing on energy cost consumption reduction, energy software applications, and regulatory and efficiency programs for a national client base. Over \$100 million in savings to clients through supply and demand initiatives, expert witness in regulatory matters, recovered several million in client disputes with utilities, third party suppliers, proprietary software for load analysis, market projections, procurements and bill reconciliation. Strategic energy planning, co-generation, owner's representative for on-site generation, and peak shaving projects. Negotiated multi-million dollar off-tariff agreements, supply agreements and energy contract buyouts.

Mondre Energy is certified as a Woman-owned/Disadvantaged Business Enterprise ("WBE/DBE") by the City of Philadelphia, the Commonwealth of Pennsylvania, Southeastern Pennsylvania Transportation Authority, The State of New Jersey, New Jersey Transit, New Jersey Department of Transportation, the State of Maryland, and the Pennsylvania and New Jersey Uniform Certification Programs for Disadvantage Business Enterprises. MEI also is certified as a Woman-Owned Business Enterprise by the Maryland Department of Transportation and the City of Orlando, Florida. Received "Best 50 Women in Business in Pennsylvania" award in 2001.

**1993 to 1998      Executive Director, Municipal Energy Office, City of Philadelphia**

Generated \$58 million savings in electric, gas and steam costs by year 2002.  
Awarded Vice President's Hammer Award for Reinventing Government.  
Awarded 1996 EPA Government Partner of the Year for Green Lights achievements.  
Awarded 1995 Technology Achievement Award for Energy from Public Technology, Inc.  
Appointed Chair of Greater Philadelphia Clean Cities Program.  
Appointed 1996 Chair of the Urban Consortium Energy Task Force.  
Featured Panelist at conferences by Infocast, Light Fair, AEE, PUC, National League of Cities and others.  
Featured in articles in *Energy User News*, *Philadelphia Business Journal*, *Philadelphia Inquirer*, *Philadelphia Daily News*, and *PTI Prism*.

**1990 to 1993      Executive Assistant to Commissioner, Public Property, City of Philadelphia**

Developed administrative strategies, operating and capital programs for charter City-wide implementation.

**1982 to 1990      Senior Analyst, Police Department, City of Philadelphia**

Developed and implemented operating and capital programs.  
Authored annual report.  
Administrative policy development

**1979 to 1982**            **Analyst, Office Employment and Training, City of Philadelphia**  
Strategic planning and grants management for Federal CETA monies

**Pre-1979**                **Teacher: High School Psychology and Social Studies**

#### **AFFILIATIONS AND MEMBERSHIPS**

National Commissioner, Anti-Defamation League  
Chair Emeritus, Anti-Defamation League, Philadelphia Region  
Board Member, *Energy User News*  
Board Member, *Philadelphia Chamber of Commerce*

#### **ACADEMIC BACKGROUND**

B.A., History/Political Science, SUNY Stony Brook, 1974

**Exhibit B**

**Gas Consumption and Cost**

## School District Gas Usage Summary

FY	MS Accounts		
	Usage	Cost	Unit Cost
2002	4,913,349	\$4,634,221.23	\$0.94
2003	7,840,390	\$7,804,715.41	\$1.00
2004	5,841,917	\$7,199,465.29	\$1.28
2005	6,463,625	\$9,082,508.54	\$1.41
2006	5,610,252	\$10,262,873.70	\$1.83

FY	INTERRUPTIBLE	
	Usage	Cost
2003	3,344,349	\$2,611,065.96
2004	1,514,497	\$1,420,750.00
2005	4,324,645	\$4,695,131.94
2006	2,584,034	\$3,714,985.30

1  
2  
3

**Exhibit C**  
**PGW Request for Proposals**

**PHILADELPHIA GAS WORKS  
REQUEST FOR PROPOSALS  
FOR DEVELOPMENT OF  
PGW'S PASSYUNK PLANT SITE**

Dated: March 22, 2007

RFP NO.: 14948

Philadelphia Gas Works – Request For Proposals For Development of PGW's  
Passyunk Plant Site

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Philadelphia Gas Works – Request For Proposals For Development of PGW's Passyunk Plant Site

1 The Solicitation - Notice to Proposers

Notice is hereby given that Philadelphia Gas Works ("PGW") will receive sealed proposals on or before April 13, 2007, 2:00 p.m. Eastern Standard Time, at the PGW Procurement Department, 800 W. Montgomery Avenue, Philadelphia, Pennsylvania 19122, for a highest and best use development of PGW's Passyunk Plant Site.

This document outlines PGW's objectives, describes the general characteristics of the services to be provided, and (without being exhaustive) outlines the principal obligations of PGW and the selected Proposer.

Questions concerning this Request for Proposals shall be directed in writing to Mr. Kenneth Williams, Director Procurement & MBE, PGW Procurement Department, Fax: (215) 684-6163, E-mail: Kenneth.Williams@pgworks.com, or PGW Procurement Department, 800 W. Montgomery Avenue, Philadelphia, Pennsylvania 19122.

1.1 Schedule of Events

The projected schedule of events for this Request for Proposals is as follows:

- Issue Date of the RFP..... March 22, 2007
- Deadline For Proposers to Deliver Executed Confidentiality Agreement ..... March 29, 2007
- Optional Passyunk Site Visits..... March 29-April 6, 2007
- Date by which questions and requests for clarification or information must be received, in writing, at the office of the person listed above..... March 29, 2007
- Proposal Submission Due Date..... April 13, 2007
- Notification Date..... May 15, 2007
- Anticipated Contract Start Date..... Promptly upon completion of contract

These dates are estimates only and PGW reserves the right to alter this schedule as it deems necessary or appropriate. Page 4 of 43

## 1.2 Proposal Requirements

Proposals shall be accepted only from proposers ("Proposers") who have:  
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1.2.1 Obtained from PGW a complete set of Proposal Documents and any addenda thereto issued by PGW.

1.2.2 Submitted a Proposal pursuant to the instructions in this RFP as set forth in Section 3.

PGW will host the Optional Site Visits between March 29, 2007 and April 6, 2007. Site visits will be scheduled by Mr. Williams. During the site visits, the Proposers will have an opportunity to ask questions of PGW regarding the RFP. PGW will ensure that appropriate PGW personnel are available to answer Proposers' questions.

In evaluating the proposals, PGW will consider the demonstrated experience and ability of the Proposer to deliver the proposed services, the scope and value of the proposed services, and the financial proposal of each Proposer as described in this RFP.

PGW hereby solicits proposals in accordance with these Proposal Documents.

## Page 5 of 43 1.3 The Proposal Documents

The Proposal Documents (sometimes referred to herein as the "RFP") consist of five (5) sections and five (5) attachments.

Sections:

- 1 The Solicitation - Notice to Proposers
- 2 Project Definition and Requirements
- 3 Instructions to Proposers
- 4 Proposer Information
- 5 Proposal Evaluation, Negotiation and Contract Award

Attachments:

A Map of PGW's Service Area (indicating the location of the Passyunk and Richmond Plant sites)

B Passyunk Site Map (indicating the location of facilities and infrastructure which will continue to be housed at the Passyunk Site)

C. Confidentiality Agreement

D Demographic Survey

E Required 17-1400 Disclosure

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NOTE: If the Proposer believes that it will respond in the positive to any question posed under Attachment E, it should immediately so inform Mr. Kenneth Williams, Director Procurement & MBE, PGW Procurement Department for further instructions.

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## 2 Project Definition and Requirements

Page 7 of 43 2.1 Philadelphia Gas Works; the Passyunk Plant Site; PGW's Market and Services

### PGW

*PGW is the largest municipally-owned gas utility in the United States, maintaining a distribution system of 6,000 miles of gas lines and services, and supplying gas service to approximately half a million residential and commercial customers within the city of Philadelphia. A map of PGW's service area, indicating the location of the Passyunk and Richmond Plants, is attached as Attachment A.*

PGW is wholly-owned by the City of Philadelphia ("City") and has been in operation since 1835. The Philadelphia Facilities Management Corporation ("PFMC"), PGW's operator and manager, was created in 1972 as a non-profit corporation providing governance of PGW. PFMC will execute all agreements for PGW. The Mayor, the Honorable John F. Street, appoints PFMC's board members.

PGW contemplates contracting with the successful Proposer, through the City and/or through an existing or newly-created authority ("Authority") as an intermediary in order to facilitate the transactions contemplated by this RFP. The Authority would be organized pursuant to the Pennsylvania Economic Development Financing Law, as amended, the Pennsylvania Municipalities Authorities Act, as amended, or other suitable enabling legislation.

PGW is subject to the oversight of the Philadelphia Gas Commission and, as of July 2000, to the regulation by the Pennsylvania Public Utility Commission ("PUC"). PGW's core business is not regulated by the FERC.

The Passyunk Plant Site

PGW operates a 72 acre plant site in South Philadelphia (the "Passyunk Site") known as the Passyunk Plant. The Passyunk Site is owned by the City of Philadelphia and is bounded by Passyunk Avenue (to the south), Dover Street, PGW's Porter Station, and 28th Avenue (to the east), Sunoco (to the north), Sunoco and the Schuylkill River (to the west).

The Passyunk Site currently houses and will continue to house a PGW liquefied natural gas (LNG) storage tank with associated vaporization infrastructure, an administrative/training facility with associated parking, natural gas distribution system infrastructure, pipelines connecting it to the interstate pipeline system, maintenance shops, warehouses and storage, and certain other buildings and infrastructure associated with Passyunk Site security and fire protection.

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In addition, the Passyunk Site also currently houses facilities and related infrastructure which will be demolished or sold and removed within the next several months. These include a synthetic natural gas plant, gas holder, propane storage, vaporization and air mixing facility. Removal of these facilities will make a minimum of 35 acres at the Passyunk Site available for re-development. (Although it is not prerequisite of this RFP, PGW will carefully consider Proposals that assist in the efficient and economic removal of these facilities.) In connection with new development, PGW is also willing to consider the re-location of certain facilities and infrastructure which will continue to be housed at the Passyunk Site in order to improve efficient and effective Passyunk Site utilization. A map indicating the location of facilities and infrastructure which will continue to be housed at the Passyunk Site is Attachment B.

The natural gas infrastructure at the Passyunk Site is essential for the operation of PGW's natural gas distribution system in the City, in conjunction with PGW's Port Richmond LNG facility. Among other things, the Passyunk and Richmond plants work in conjunction with one another not only to ensure adequate supply but also to provide sufficient pressure throughout the gas distribution system to deliver natural gas in a reliable manner to PGW's customers.

The Passyunk Site has had continuous industrial uses since 1854, has some environmental contamination and is the subject of a current remediation plan. Additional information about environmental conditions at the Passyunk Site will be provided to the Proposers upon delivery of an executed Confidentiality Agreement as provided herein.

#### PGW's Market and Services

PGW's gas distribution system is connected through pipeline laterals to the interstate natural gas pipeline systems of Williams Gas Pipelines - Transco and Spectra Corporation's Texas Eastern pipelines. There are constraints on these laterals which limit the amount of supply PGW can obtain from (or

conversely, displace) into the interstate pipeline system. More information on the constraints will be provided to the Proposers upon request after delivery of an executed Confidentiality Agreement as provided herein.

PGW takes supply from the interstate systems through nine metering and regulating (M&R) Stations. A map of the greater Philadelphia area indicating the location of the Transco and Texas Eastern pipelines, the pipeline laterals connecting to PGW's gas distribution system, and the M&R stations will be provided upon request after delivery of an executed Confidentiality Agreement as provided herein.

The Passyunk Site is adjacent to the Sunoco refinery. Other refineries along the Delaware River include Valero and Conoco Phillips. PGW is interested in Proposals that capitalize on or otherwise integrate Passyunk Site operations with Philadelphia's and the region's industrial companies.

The Passyunk Site is close to the Schuylkill River which proximity could enhance the value of a Proposal either as a means to import feedstocks and raw materials or export product. PGW has not undertaken a navigation study of the River to determine the depths of the channel or other pertinent information. An investment in pier facilities would be required to

#### Philadelphia Gas Works – Request For Proposals For Development of PGW's Passyunk Plant Site

support Passyunk Site related River traffic. Additional information on PGW's access rights to the Schuylkill River will be provided upon request after delivery of an executed Confidentiality Agreement as provided herein.

The Passyunk Site is proximate to potentially underserved markets for natural gas as well as electricity, steam and other by-products of proposed Passyunk Site development within PGW's market territory, specifically in West Philadelphia and at the former Philadelphia Naval Yard. There may also be new markets outside the City for natural gas and the byproducts resulting from proposed Passyunk Site development. PGW invites the Proposer to include its assessment of the market opportunities in its Proposal.

PGW contracts for firm transportation and storage capacity on the interstate pipeline system to support its natural gas distribution system requirements ("Upstream Assets"). This RFP does not seek an asset manager for PGW's Upstream Assets. However, contingent upon a meritorious base proposal to maximize the value of the Passyunk Site's facilities, infrastructure and location, PGW will consider a Proposer's management of certain of these Upstream Assets if such management in conjunction with the base Passyunk Site proposal would yield additional, significant value. More detailed information regarding PGW's Upstream Assets will be provided to the Proposers upon request after delivery of an executed Confidentiality Agreement as provided herein.

Over the years, PGW has considered various potential uses of the Passyunk Site. PGW has been asked from time to time to consider the possibility of a peak or base load electric generation facility at the Passyunk Site. Current

industry focus upon renewable energy solutions along with the governmental incentives supporting such investments (under the Energy Policy Act of 2005, Pennsylvania's Energy Independence initiatives, and otherwise) have led to associated expressions of interest. The concentration of industrial development along the Schuylkill and Delaware Rivers, including the regional oil refineries and specialty chemical terminals, has stimulated discussions about new business opportunities in which PGW would play a role. Companies have commented upon the viability of the market for new, competitively priced energy in the Philadelphia region, the relative ease of access to certain feedstocks and raw materials, and the Passyunk Site's proximity to a web of highway, rail and River transportation alternatives which could be capitalized upon by the right developer.

Page 9 of 43 2.2 Project Description; Proposal.

PGW believes that the infrastructure and location of the Passyunk Site present synergistic development opportunities. Accordingly, PGW seeks to maximize the value of the Passyunk Site by pursuing one or more of these opportunities with a private developer. Specifically, PGW is interested in proposals which will maximize the value of the Passyunk Site and produce new revenue streams for PGW:

-by leveraging the value of current Passyunk Site facilities and infrastructure (such as the interconnects to the interstate pipeline and PGW's gas distribution systems, and an established industrial, commercial and residential customer base in the City) and;

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-by capitalizing on the advantages of the Passyunk Site's location (including its access to the Schuylkill and Delaware Rivers, the regional rail and interstate highway systems, as well as its proximity to other energy infrastructure, such as the regional oil refineries and electricity grid).

Among other functions, the Proposer's responsibilities would include:

- performing all engineering and design studies;
- arranging and making all necessary capital investments; and
- securing all regulatory approvals and local permits with PGW's cooperation.

The Proposers are encouraged to propose development of the Passyunk Site which combines the Proposer's particular mix of experience, expertise and assets with the value of the Passyunk Site's facilities, infrastructure and location to produce the maximum return for PGW. PGW will carefully consider a Proposer's qualifications, experience, financial qualifications, proposed scope of services, and development schedule when evaluating each Proposal. PGW is willing to consider various transaction structures. The most

likely structure would be a long-term lease of property and natural gas infrastructure.

PGW will give preference to a single Proposal which brings significant new value to PGW by leveraging all or most of the Passyunk Site's facilities and infrastructure and capitalizes on the advantages of its location. However, as more fully set forth below, PGW may at its discretion also decide to pursue more than one Proposal (either together or in sequence) in order to realize its objectives, or to reject Proposals that are mutually exclusive of others.

In its Proposal, each Proposer must, at a minimum:

- identify those PGW assets that the Proposer will utilize for its development project;
- propose a transaction structure for its relationship with PGW and the use of PGW's assets;
- describe its unique strengths and capabilities and provide evidence of its ability to accomplish the proposed development plan, including obtaining the necessary feed stocks and raw materials, building and operating the proposed facilities (independently or in conjunction with PGW's existing facilities), marketing the proposed development's byproducts, and, if required, obtaining the necessary regulatory approvals;
- submit financial information indicating its ability to make the necessary investments for the development proposed at the Passyunk Site, to obtain feed stocks and raw materials, to market proposed development byproducts, to obtain the necessary regulatory approvals and otherwise to realize the objectives specified in its Proposal;
- identify with specificity which Upstream Assets the Proposer would manage if the Proposer is interested in such assets in conjunction with site development;

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- include a development schedule for new facility construction at the Passyunk Site as well as the in-service date proposed for such new facilities;
- specify the source(s) for fuel stocks or hazardous raw materials to be utilized or stored at the Passyunk Site facilities as well as the market(s) where facility by-products will be sold;
- to the extent the Delaware or Schuylkill Rivers, rail or interstate highway will be utilized in the proposed development, specify the frequency of use for each mode of transit;
- address the impact of its Proposal on the security of natural gas supplies needed by PGW to serve its market. Information about PGW's market demand requirements will be provided to the Proposers upon request

after delivery of an executed Confidentiality Agreement as provided herein;

- address any safety, security and environmental concerns which are reasonably likely to be raised in connection with implementation of its Proposal;
- Indicate its interest in PGW's providing O&M services, and how such services would be rendered under the selected transaction structure(s). PGW will work cooperatively with a Proposer to implement a coordinated plan for operations and maintenance of as well as security for all Passyunk Site facilities. Approaches for consideration include delineating PGW, Proposer and joint O&M responsibilities or, alternatively, PGW's providing contract O&M services to a Proposer which assumes O&M responsibilities for PGW's existing facilities as well as the new proposed facilities at the Passyunk Site; and
- indicate how it will utilize PGW's work force to operate and maintain PGW's existing facilities under the organizational structures proposed. PGW is committed to the continued use of its highly skilled and experienced workforce at the Passyunk Site.

The Proposal should be organized and submitted as described in Section 3.

### 2.3 Term/Deadlines

PGW intends for the project to proceed as soon as practicable after final execution and governmental/regulatory approval of the contract(s).

### Page 11 of 43 2.4 Financial/Value Proposals

PGW has not predetermined a financial structure for this project and will consider all proposals. Proposers are encouraged to present proposals including at least one or more of the following:

2.4.1 Firm, fixed payment proposal.

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2.4.2 A schedule payment with the critical events/deliverables.

The Proposer is required to present a consolidated summary of estimated compensation offered to PGW. A Proposal which contains indexed or otherwise variable compensation components will be considered, but these components must be thoroughly explained so that the financial risks can be assessed or mitigated.

Further, the Proposer is solely responsible for fully explaining any and all aspects of its Proposal so that PGW can make a determination on the merits

of that Proposal. PGW will not consider value propositions that have not been clearly identified in the Proposals.

## 2.5 Licensing

Upon contract execution, the selected Proposer must be authorized to do business in the Commonwealth of Pennsylvania and comply with all pertinent state and federal requirements, codes and regulations.

If the Proposer is a "business" as defined in The Philadelphia Code, Section 19-2601, the Proposer must have a valid business privilege license, issued by the City of Philadelphia's Department of Licenses and Inspections, to do business in the City of Philadelphia, prior to entering into any contract with PGW.

## 2.6 Confidentiality

The Proposer must agree to keep confidential any and all information concerning the plans, operations or activities of PGW which may be divulged by PGW or ascertained by the Proposer in the course of performing services under any contract with PGW. A proposed form of Confidentiality Agreement is attached hereto as Attachment C and must be signed and returned to PGW in order for the Proposer to receive additional RFP updates, be permitted to participate in subsequent informational calls, and make site and data room visits.

## Page 12 of 43 2.7 Disadvantaged Business Enterprise Policies

PGW has established an anti-discrimination policy relating to the participation of Minority, Women, and Disabled businesses and persons (collectively, "DBEs") in contracts. The purpose of PGW's DBE policy is to provide equal opportunity for all businesses and persons and to assure that PGW funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices.

Within a reasonable time after the Proposer is notified that its Proposal has been selected by PGW for further consideration, the Proposer will be required to submit a DBE participation plan and demographic survey (the form of which is Attachment D) for PGW's review and approval. PGW will provide the Proposer with information regarding required

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DBE participation ranges on the Notification Date. Only DBE firms certified by the City's Minority Business Enterprise Council will be credited toward the participation ranges

## 2.8 Insurance

If awarded a contract, the Proposer shall carry, at its own expense, insurance in amounts and types to be determined by PGW's Risk Manager with companies carrying a Best Rating of not less than A- and approved by PGW.

## 2.9 Indemnification

With regard to other potential liabilities, the selected Proposer will be required in the contract to protect, defend, indemnify and hold harmless PGW, PFMC, the Authority and the City, and their respective officers, directors, boards, commissions, commissioners, agents, contractors, employees and/or their invitees from and against all claims, demands, fines, penalties, and causes of action of every kind and character without limit and without regard to the cause or causes therefore, including the negligence (active or passive) of any party or parties, including the sole, joint or concurrent negligence of the Proposer (but excepting the gross negligence of PGW, PFMC, the Authority, or the City), any theory of strict liability or defect of premises, arising in connection herewith in favor of third party, or employee of PGW, PGW, PFMC, the City or the Proposer's employees, its subcontractors or their employees, or the Proposer's invitees on account of bodily injury, death or damage to property.

## Page 13 of 43 2.10 Certificate of Non-Indebtedness

The Proposer will be required to certify and represent that the Proposer and any and all entities controlling the Proposer, under common control with the Proposer or controlled by the Proposer are not indebted (at the time of signing of the contract) to the City of Philadelphia, PGW or PFMC (collectively the "City"), and will not at any time during the term of the contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to PGW at law or in equity, the Proposer acknowledges that upon any breach or failure to conform to such certification PGW shall have the right to, and may, at the option of PGW, withhold payments otherwise due to the Proposer, and, if such breach or failure is not resolved to PGW's satisfaction within a reasonable time frame as specified by PGW in writing, this will offset any such indebtedness against said payments and/or terminate any operative agreements for default (in which case the Proposer shall be liable for all excess costs and other damages including reasonable attorney's fees resulting from the termination).

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## 2.11 Non-Discrimination

The Proposer shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, sex or sexual orientation. In the event of such discrimination, PGW may, in addition to any other rights or remedies available under the contract, at law or in equity, terminate any contract with Proposer forthwith.

The Proposer shall comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. §200d et seq.), §504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. §794), The Age Discrimination Act of 1975, (42 U.S.C. §6101 et seq.), Title IX of the Education Amendments of 1972, (20 U.S.C. §1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

The Proposer understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in any Proposer contract with PGW or from activities or services provided under such contract. As a condition of accepting and executing such contract, Proposer shall comply with all provisions of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to the Proposer, (b) to the benefits, services, activities, facilities and programs provided in connection with this Agreement, (c) to PGW, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of PGW or of the Commonwealth.

Without limiting the generality of the preceding sentence, the Proposer shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of "The Americans with Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by PGW through contracts with outsider contractors.

## Page 14 of 43 2.12 MacBride Principles

The Proposer certifies and represents that, to the best of its knowledge, (i) the Proposer (including any affiliates under its direct control) does not have, and will not have at anytime during the term of any contract with PGW (including any extension or renewal thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided under any contract with PGW will originate in Northern Ireland, unless the Proposer has implemented the fair employment principles embodied in the MacBride Principles.

In the performance of any contract with PGW, the Proposer covenants that it will not utilize any suppliers, subcontractors at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or affiliates have) any investments, licenses, franchises, management agreements or operations in Northern

Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. The Proposer further covenants to include the provisions of this paragraph, with appropriate adjustments for the identity of the parties,

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in all subcontracts and supply agreements which are entered into in connection with the performance of any contract with PGW. The Proposer covenants that it will cooperate with PGW and City's Director of Finance in any manner which PGW and the said Director deem reasonable and necessary to carry out PGW's and the Director's responsibilities under Section 17-104 of the Philadelphia Code which embodies the requirements set forth in this section. The Proposer understands and agrees that any false certification or representation in connection with this section and any failure to comply with the provisions of this section shall constitute a material breach of any contract with PGW entitling PGW to all rights and remedies provided therein or otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or equity. In addition, the Proposer understands that false certification or representation in connection with this section is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

#### 2.13 Governing Laws

Any project contract shall be executed in and shall be governed by the laws of the Commonwealth of Pennsylvania.

#### 2.14 Security

The selected Proposer must provide PGW with adequate assurance in form and amount acceptable to PGW (e.g., bond, letter of credit, collateral assignment, and/or guaranty) that the Proposer can fulfill its contractual obligations.

#### 2.15 Certain Required Disclosures

In accordance with the City of Philadelphia's contract reform legislation, codified as The Philadelphia Code Title 17 Chapter 17-1400, persons and entities who wish to provide goods and services to PGW must provide certain information, including information about contributions they have made to elected City officials or candidates for office in the Commonwealth of Pennsylvania. All Proposers must therefore complete Attachment E and include such completed Attachment with their proposal. Please note that the

selected Proposer will be required to comply with Chapter 17-1400 during the term of its agreement with PGW and for one year thereafter.

#### Page 15 of 43 2.16 Drug and Alcohol Screening

The Proposer must establish an effective drug and alcohol screening program for its employees, on or before the contract effective date. Any such program shall be reviewed and approved by PGW prior to its implementation.

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#### 2.17 PGW Revenues

It is understood and agreed that in entering into and performing any agreement or transaction, PFMC acts solely in its capacity as operator and manager of the City-owned Philadelphia Gas Works pursuant to an agreement with the City of Philadelphia, dated December 29, 1972, as amended, and not otherwise; and further that any and all payments required to be made by PFMC shall be made solely from the revenues of the Philadelphia Gas Works.

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### 3 Instructions to Proposers

#### 3.1 Proposal Preparation Requirements

3.1.1 Proposals must be prepared in English on 8 ½ x 11 inch paper with tabbed indexes separating the following six (6) completed sections in the following order:

3.1.1.1 Tab 1: Transmittal letter.

3.1.1.2 Tab 2: Detailed project description and timeline as described in Section 2.2.

3.1.1.3 Tab 3: Financial Proposal as described in Section 2.4.

3.1.1.4 Tab 4: Completed Section 4 of this RFP. Proposal shall be signed by individual with Authority to bind the Proposer, with the title and address of such individual being specified.

3.1.1.5 Tab 5: Qualifications, Experience and Expertise of the Proposer. The Proposer shall provide a detailed statement evidencing its proven ability to: accomplish the proposed development plan, obtain the necessary feed stocks and raw materials, build and operate the proposed facilities (independently or in conjunction with PGW's

existing facilities), market the proposed development's byproducts, and obtain the necessary regulatory approvals.

3.1.1.6 Tab 6: Completed Attachments C and E, and any other attachments required to be completed under the RFP. NOTE: If the Proposer believes that it will respond in the positive to any question posed under Attachment E, it should immediately so inform Mr. Kenneth Williams, Director Procurement & MBE, PGW Procurement Department for further instructions.

3.1.2 One (1) original Proposal, and six (6) copies, must be submitted in a sealed envelope or envelopes addressed to PGW Procurement Department, Philadelphia Gas Works, 800 W. Montgomery Avenue, Philadelphia, Pennsylvania 19122. The name and address of the Proposer must also appear on the face of the envelope.

3.1.3 Failure to answer all questions completely and furnish all information required in these Proposal Documents may result in disqualification of the Proposer. PGW reserves the right to thoroughly investigate the financial status and experience of the Proposer.

Page 17 of 43 3.1.4 It shall be the responsibility of the Proposer to deliver the Proposal and all other required items to the location specified in Section 1 of these Proposal Documents on or before the due date and time set forth in Section 1.1.

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3.1.5 Oral communications from PGW personnel or other persons shall not be binding on PGW and shall in no way modify the provisions of the Proposal Documents. Official responses of PGW to inquiries regarding these Proposal Documents shall be issued by PGW in writing as addenda, and only such written responses shall be binding on PGW as modifications to these Proposal Documents.

#### 3.2 Duration of Proposal

In consideration of the PGW's evaluation of the submitted Proposals, each Proposer agrees that its Proposal shall be a firm offer to PGW, and shall remain open for acceptance by PGW for a period of at least two hundred and seventy (270) days beginning with the submission due date set forth in Section 1 of these Proposal Documents, as may be revised by addenda.

#### Page 18 of 43 3.3 Proposer's Responsibility

The Proposer shall carefully examine the terms of the Proposal Documents and shall judge for itself all of the circumstances and conditions affecting its Proposal. PGW will endeavor to present accurate information, but Proposers are advised to independently verify the accuracy of any information received.

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4 Proposer Information

4.1 Proposer

Submitted by:

[Please type or print]

Name:

Address:

Telephone:

Facsimile:

The undersigned Proposer hereby submits to PGW this Proposal as described herein and in the attached documents.

4.2 Qualifications Statement

The Proposer represents and covenants that the Proposer is fully qualified to provide the requested services to PGW. The undersigned further swears and affirms that the information contained in this response is true, accurate and complete.

4.3 Business Experience

Page 19 of 43 4.3.1 The following describes other points of service by the Proposer and the companies for whom the services were provided.

The Proposer should include a reference contact at the described companies, and this contact should have direct, specific

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responsibility for the oversight of the program. In particular, the Proposer should describe all experience with projects similar to this project.

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- 4.3.2 The Proposer has operated under its current name since \_\_\_\_\_, a period of \_\_\_\_\_ years, and the Proposer (if such be the case) formerly operated under the name:

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- 4.3.3 The Proposer must attach the resume of the person who it anticipates will be the key project contact.
- 4.3.4 The Proposer has not had an agreement canceled or terminated due, in whole or in part, to the fault of the Proposer, or a default or breach of contract on the part of the Proposer. (If a contract or agreement has been canceled, please explain.)

#### 4.4 Financial Information

- 4.4.1 If the Proposer requests that PGW receive and maintain any of the following financial information in confidence, the Proposer understands that such information may not be exempt from disclosure under the Philadelphia Home Rule Charter and/or the Commonwealth Right to Know Act. The Proposer agrees to indemnify and hold harmless PGW, its officers, agents, and employees from any and all claims, costs, liabilities or damages, including attorney's fees and court costs resulting from PGW's or Proposer's acts or omissions pursuant to this Paragraph.
- 4.4.2 The Proposer has  has never  [check one] had a bond or surety canceled or forfeited. (If the Proposer has had a bond or surety canceled, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.)
- 4.4.3 The Proposer has  has never  [check one] been adjudged bankrupt (Chapter 7), or petitioned the court for relief under the Bankruptcy Code or Act for either business reorganization (Chapter 11) or the Wage Earner's Plan (Chapter 13). If the response is in the affirmative, provide the following information:
- 4.4.3.1 Date petition filed
- 4.4.3.2 Case No. and jurisdiction
- 4.4.3.3 Amount of liabilities and debts
- 4.4.4 Date of discharge or successful completion of reorganization or wage earner's plan
- 4.4.5 The undersigned hereby affirms that the Proposer is authorized to conduct business in the Commonwealth of Pennsylvania, and City of

Philadelphia, or will obtain proper authorization to do so before executing an agreement and furnishing the required bond or letter of credit.

Page 21 of 43 4.5 General Litigation Disclosure

Proposer must describe any pending, contemplated or ongoing administrative or judicial proceedings material to Proposer's business, finances or products including, but not limited

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to, any litigation, consent orders, debarment or contracts with any local, state or federal regulatory agency issued to Proposer or to any parent or subsidiary of Proposer.

4.6 Business Organization Statement

4.6.1 General Information

Name of Firm [Exactly as it would appear on an agreement; if operating under a fictitious name, so indicate.]

Principal Office Address:

Telephone Number:

Form of Business Entity [check one]

- Corporation
- Partnership
- Individual
- Joint Venture
- Limited Liability Company / Limited Liability Partnership

4.6.2 Corporation Statement

If a corporation, answer the following:

Date of incorporation:

Location of incorporation:

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Is the corporation authorized to do business in Pennsylvania? Yes ( ) No ( )

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If so, as of what date?

The corporation is held: Publicly ( ) Privately ( )

Furnish the name, title, and address of each director and officer of the corporation.

DIRECTORS

Name	Address	Principal Business Affiliation Other than Proposer's Directorship
------	---------	---

1.

2.

3.

4.

5.

6.

7.

8.

SHAREHOLDERS

Name	Address	Number of Shares Owned	Page 23 of 43
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1.

2.

3.

4.

5.

6.

7.

8.

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OFFICERS

Name Position

1.

2.

3.

4.

4.6.3 Partnership Statement

If a partnership, answer the following:

Date of organization:

General Partnership ( ) Limited Partnership ( )

Has the partnership done business in Pennsylvania? Yes ( ) No ( )

When?

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Name, address, and ownership share of each general partner:

Name	Address	% of Ownership
------	---------	----------------

1.		%
----	--	---

2.		%
----	--	---

3.		%
----	--	---

4.		%
----	--	---

5.		%
----	--	---

6.		%
----	--	---

4.6.4 Joint Venture Statement

If a Joint Venture, answer the following:

Date of organization:

Joint Venture Agreement recorded? Yes ( ) No ( )

Date Book Page County State

Has the Joint Venture done business in Pennsylvania? Yes ( ) No ( )

When?

Name, address of each Joint Venturer and percent of ownership of each:  
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Name	Address	% of Ownership
------	---------	----------------

1.		%
----	--	---

2.		%
----	--	---

3.		%
----	--	---

4.		%
----	--	---

5.		%
----	--	---

#### 4.7 Warranties by Proposer

4.7.1 The Proposer's Proposal has been completed to the best of the Proposer's ability, and the Proposer swears that all information contained herein is true, correct and complete to the best of the Proposer's knowledge, information and belief.

4.7.2 By submission of this Proposal, the Proposer acknowledges that PGW has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the Proposal, and Proposer authorizes the release to PGW of any and all information sought in such inquiry or investigation.

Page 27 of 43 4.7.3 The Proposer declares by the submission of this Proposal that the Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded or agreed with any Proposer or anyone else to put in a sham Proposal or to refrain from proposing; that the Proposer has not directly or indirectly sought by agreement or communication to secure any advantage against PGW; anyone interested in the Proposal as principal are named within the Proposal; that all statements contained in the Proposal are true; that the Proposer has not directly or indirectly divulged information or data

relative to the Proposer's Proposal to any other person, partnership, corporation, or association, except to such person or persons as have a direct financial interest in the Proposer's general business. By submitting a response to this RFP, the Proposer, on behalf of itself, its officers, directors, employees, agents, consultants, contractors and subcontractors, remises and releases and forever discharges PGW, the Authority (see below), the Philadelphia Facilities Management Corporation, the City, and any of their officers,

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directors, employees, agents, consultants, contractors and subcontractors from any and all claims arising out of participation in this RFP process, including, but not limited to, any claims for misrepresentation, breach of contract, recovery of costs for responding to the RFP or claims arising out of the award of the contract to another Proposer.

The foregoing Proposal is hereby submitted by the entity signing below in accordance with all terms and conditions as set forth in the Request for Proposals issued by PGW.

PROPOSER:

DATE: \_\_\_\_\_

Name of Proposer

By: \_\_\_\_\_

(signature)

Name:

Title:

Attest: \_\_\_\_\_ (signature)

Name:

Title:

[Add signature lines as necessary below.]

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5 Proposal Evaluation, Negotiation and Contract Award

5.1 Disqualification of Proposers

5.1.1 If more than one Proposal is received from any individual, firm, partnership, corporation, or association, under the same or different names, said Proposals may not be considered. Reasonable grounds for believing that any Proposer has an interest in more than one Proposal may cause the rejection of all Proposals in which such Proposer is interested. If there is reason to believe that collusion exists among the Proposers, none of the participants in such collusion

will be considered. Similarly, unsolicited proposals may not be considered.

- 5.1.2 No Proposal shall be received from, or contract awarded to, any PGW or City employee or official who may have any direct or indirect interest in such submitted Proposal or contract.

## 5.2 Qualification of Proposers

- 5.2.1 PGW will carefully consider the information required for submission by Section 4, above, as well as proposed financial consideration, financial responsibility for proposed scope of services, and timeline in evaluating each Proposal. In PGW's evaluation, the Proposal as a whole may bear more weight than the individual parts of the Proposal.
- 5.2.2 Following PGW's review of the submitted proposals, PGW may select one or more Proposers with which to negotiate. PGW shall notify the Proposer(s) of selection for negotiations. The date that the Proposer's receipt of the notification is confirmed by PGW, is referred to herein as the "Notification Date."
- 5.2.3 Respondents to this RFP are subject to Philadelphia Code (Chapter 20-600) and the Pennsylvania Ethics Act (65 P.S. Section 401 et. seq.) All proposers are required to disclose any potential conflict caused by PGW or City employees having a financial interest in the entity entering into a contract or agreement with PGW.

## 5.3 General Reservation of Rights

Page 29 of 43 5.3.1 This RFP and the process it describes are proprietary to PGW and are for the sole and exclusive benefit of PGW. No other party, including any Proposer to this RFP or future Proposer to any RFP which may be issued by PGW, is intended to be granted any rights hereunder. Any response to this RFP, including written documents and verbal communication, may be subject to public disclosure by PGW, or any authorized agent of PGW and any materials submitted or ideas elicited in response to this RFP shall be the sole and absolute property of PGW with PGW having title thereto and unrestricted use thereof.

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- 5.3.2 PGW reserves the right to reject as informal or non-responsive any Proposal that, in PGW's sole judgment, is incomplete, is not in conformity with applicable law, is not responsive to this RFP, or contains ambiguities or services not called for by this RFP.
- 5.3.3 Without limiting the generality of any other provision of this RFP, PGW reserves the right, at any time prior to execution of an agreement with

the successful Proposer, to exercise all or any of the following rights and options, which rights and options PGW may exercise to the extent that PGW, in its sole discretion, deems to be in its best interests:

- 5.3.3.1 To request additional or supplemental information (including but not limited to information inadvertently omitted by any Proposer in response to this RFP) from any or all Proposers;
- 5.3.3.2 To accept or reject, at any time prior to its execution of an agreement, any or all Proposals or any part thereof submitted in connection with this RFP;
- 5.3.3.3 To accept or reject any or all of the items in any Proposal and award the contract in whole or in part if it is deemed in PGW's best interest to do so;
- 5.3.3.4 To waive any informality, defect, non-responsiveness, or derivation from this RFP that is not, in PGW's sole judgment, material to the Proposal;
- 5.3.3.5 To negotiate unacceptable provisions incorporated within an otherwise acceptable Proposal submitted in response to this RFP;
- 5.3.3.6 To reject without evaluation any Proposal that is incomplete, unclear, conditional, or which contains irregularities of any kind;
- 5.3.3.7 To reject any Proposal that in the sole discretion of PGW is not in the best interest of PGW;
- 5.3.3.8 To re-issue this RFP without change or modification;
- 5.3.3.9 To issue a subsequent RFP for this project with terms and conditions that are substantially different from the terms and conditions set forth in this RFP;
- 5.3.3.10 To cancel this RFP with or without issuing another RFP;
- Page 30 of 43 5.3.3.11 To supplement, amend, substitute, or otherwise modify this RFP at any time prior to execution of a final agreement with a Proposer;

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- 5.3.3.12 To reject the Proposal of a Proposer that, in PGW's sole judgment, has been delinquent or unfaithful in the performance of any contract with PGW, or is financially or technically incapable of performing the services required in this RFP, or is otherwise not a responsible Proposer;

- 5.3.3.13 To permit or reject, at PGW's sole discretion, amendments (including information inadvertently omitted), modifications, alterations and/or corrections of Proposals by some or all of the Proposers following Proposal submission;
- 5.3.3.14 To request that some or all of the Proposers modify Proposals or provide additional information following evaluation by PGW;
- 5.3.3.15 To conduct such investigations as PGW considers appropriate with respect to the qualifications of any Proposer and/or any information contained in any Proposal;
- 5.3.3.16 To request clarifications of any unclear Proposal;
- 5.3.3.17 To negotiate simultaneously, or otherwise, with one or more Proposers;
- 5.3.3.18 To discontinue and resume negotiations with one or more Proposers;
- 5.3.3.19 To rescind its rejection of any Proposal(s) and negotiate (or resume negotiations) with a previously rejected Proposer;
- 5.3.3.20 To not proceed with the process described in this RFP, or to change any time schedules set forth herein;

Page 31 of 43 5.3.3.21 To not enter into an agreement pursuant to this RFP.

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- 5.3.4 PGW intends to enter into contract negotiations with the selected Proposer. However, PGW reserves the right to terminate any negotiations at any time or conduct simultaneous, competitive negotiations with multiple Proposers. PGW reserves the right to negotiate acceptable terms in an otherwise unacceptable Proposal. Such negotiations may result in changes to material terms of this RFP; in such event, PGW shall not be obligated to inform other Proposers of the changes, or permit them to revise their Proposals accordingly, unless PGW, in its sole discretion, determines that doing so and permitting such is in PGW's best interest. Should negotiations not prove satisfactory with the recommended Proposer(s), PGW reserves the right to discontinue negotiations with the recommended Proposer(s) and additional firms may be asked to enter into negotiations or PGW may solicit new Proposals or issue a new Request for Proposals.

5.4 Award

Page 32 of 43 5.4.1 PGW intends to award the contract to the Proposer, if any, whose Proposal best satisfies the scope of services described in Section 2 and is otherwise in the best interest of PGW. The determination of award shall be made by PGW, in its sole discretion, which decision shall be final. PGW may employ such analysis techniques and professional consultants for Proposal evaluation as it deems necessary. PGW may request submission of additional information to assist it in evaluating a Proposal, and the Proposer shall cooperate fully with such request. The contract resulting from this RFP will be awarded to the qualified Proposer whose Proposal PGW believes will be the most advantageous to PGW. PGW may condition an award on the successful Proposer's agreement to such terms and conditions as required by PGW including, but not limited to, PGW's indemnification.

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ATTACHMENT A- PGW's Service Area

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ATTACHMENT B- Passyunk Site Map

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ATTACHMENT C – Form of Confidentiality Agreement

CONFIDENTIALITY AND  
PROPRIETARY MATERIALS AGREEMENT

THIS AGREEMENT made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between PHILADELPHIA GAS WORKS by PHILADELPHIA FACILITIES MANAGEMENT CORPORATION ("PFMC"), solely in its capacity as operator and manager of the City owned PHILADELPHIA GAS WORKS, under and pursuant to an Agreement with the City of Philadelphia dated December 29, 1972, as amended (collectively "PGW"), and \_\_\_\_\_ ("Company"), a \_\_\_\_\_.

WITNESSETH

WHEREAS, PGW and Company (collectively, the "Parties") are parties with businesses involving extremely confidential information relating to business and product development activities; and,

WHEREAS, the Parties mutually desire to enter into discussions regarding certain related data, work product, and other confidential or proprietary information ("Confidential Information," as further defined below) in the course of contemplating doing business with each other; and,

WHEREAS, each of the Parties recognizes that serious and possibly irreparable harm could be suffered by the other as a result of any breach or violation of the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the Parties' disclosure of said Confidential Information to each other, the receipt and sufficiency of which is

hereby acknowledged, and intending to be legally bound hereby, the parties agree, as follows:

1. Confidentiality.

(a) "Confidential Information" as used in this Agreement shall mean all information shared by the Parties in their discussions with one another that are confidential and/or proprietary to each party and/or which have been designated as Confidential Information by such party, whether or not owned or developed by such party.

(b) Confidential Information shall not include:

(i) Information that is now or later becomes known to the industry (other than as a result of a breach of this Agreement);

(ii) Information which is independently developed by the receiving party; Page 35 of 43

(iii) Information which the receiving party lawfully obtains from a third party who has lawfully obtained such information; or, Philadelphia Gas Works – Request For Proposals For Development of PGW's Passyunk Plant Site

(iv) Information which is later published or generally disclosed to the public;

(v) Information required to be filed with the Philadelphia Gas Commission, the Pennsylvania Public Utility Commission and/or the Philadelphia City Council, or any court or regulatory body of competent jurisdiction or by other applicable law, order, rule, regulation or any securities exchange.

The receiving party shall bear the burden of showing that any of the foregoing exclusions apply to any information or materials.

2. Non-Disclosure.

Each of the Parties agrees to hold in confidence and not to disclose or reveal to any person or entity who is not a party to this Agreement the Confidential Information, or any part thereof, received hereunder without the prior written consent of the disclosing party. Each of the Parties agrees that the receiving party may disclose Confidential Information to those of its and its affiliates, officers, directors, employees, consultants, and advisors who need to know the Confidential Information for the evaluation of the projects described below in this Paragraph 2, provided such individuals are informed of the confidential nature of the Confidential Information and that it is not to be used for any purpose other than the evaluation of the project, and further provided that each of the Parties shall remain responsible for any unauthorized disclosure of the Confidential Information by such affiliates, officers, directors, employees, consultants, and advisors to whom Confidential Information has been disclosed.

Each of the Parties agrees that it shall not use the Confidential Information for any purpose other than the specific project pursuant to which this Agreement has been executed. The specific project is: development of PGW's Passyunk Plant Site.

3. Possession of Confidential Materials

All Confidential Information provided by the disclosing party shall remain the sole property of the disclosing party and nothing herein shall be deemed to

grant any license or transfer any right, title or interest in or to any of the Confidential Information to the receiving party. The receiving party's use of such the Confidential Information shall be limited to use in accordance with the express terms hereof.

4. Injunctive Relief and Other Remedies For Breach. Page 36 of 43

Each of the Parties further agrees that any breach of this Agreement will be deemed to have caused the disclosing party immediate and irreparable injury and/or damages, which may be difficult or impossible to calculate. Consequently, each of the Parties agrees that, in the event of any breach or threatened breach of this Agreement by the receiving party, the disclosing party shall be entitled to obtain, from any court of competent jurisdiction, the entry of equitable relief, including, without limitation, the entry of temporary restraining orders, preliminary and/or permanent injunctions, decrees of specific performance, and damages. Such relief shall be in addition to, and not in limitation of, any other relief to which the disclosing party may be entitled under law or the terms of this Agreement.

Neither party nor any of its Philadelphia Gas Works – Request For Proposals For Development of PGW's Passyunk Plant Site

subsidiaries or affiliates shall have any liability to any other party or its subsidiaries or affiliates for any special, indirect, incidental or consequential loss or damage whatsoever, including, without limitation, lost profits or lost investment opportunity, even if such party has been advised in advance that such damages could occur.

5. General Provisions.

(a) The obligations set forth in this Agreement shall continue with respect to any and all of said Confidential Information for a period of two (2) years from the date hereof.

(b) If any provision contained in this Agreement is held to be invalid or unenforceable by a court of law or equity, this Agreement shall be construed as if such provisions did not exist, and the unenforceability or invalidity of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable or invalid and, in any event, all other provisions of this Agreement shall remain valid and enforceable as if the invalid or unenforceable provision or provisions had never been made a part hereof.

(c) This Agreement shall be binding upon the successors, assigns, and representatives of both parties, and shall be interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania, without reference to its rules governing choice or conflicts of law. Due to the nature of this Agreement, neither party may assign this Agreement under any circumstances whatsoever without the written consent of the other party.

(d) Any notice or other communication required or permitted hereunder shall be given in writing to the other party at the address below, or at such other address as shall be given by either party in writing. Notice shall be deemed to have been given or made when delivered personally, including overnight courier or electronic transmission, or, if mailed, by certified mail, return receipt requested:

PGW: Philadelphia Gas Works

Attn: David Griesing 800 W. Montgomery Avenue Philadelphia, PA 19122  
Phone: (215) 684-6040 Fax: (215) 684-6564  
With a copy to: Philadelphia Gas Works  
Attn: Abby L. Pozefsky, Esquire  
Senior Vice President and General Counsel  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
Phone: (215) 684-6957  
Fax: (215) 684-6798

Company: \_\_\_\_\_

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\_\_\_\_\_ Phone:  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Phone:  
\_\_\_\_\_ Fax: \_\_\_\_\_

(e) Neither the failure nor any delay on the part of either party to exercise any right, remedy, power or privilege ("Right") under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any Right preclude any other or further exercise of the same or of any other Right, nor shall any waiver of any Right with respect to any occurrence be construed as a waiver of such Right with respect to any occurrence. No waiver shall be effective unless given in writing by the party asserted to have granted such waiver.

(f) This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing signed by all of the parties.

(g) The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(h) It is understood and agreed that in entering into and performing this Agreement, PFMC acts solely in its capacity as operator and manager of the City-owned Philadelphia Gas Works pursuant to an agreement with the City of Philadelphia, dated December 29, 1972, as amended, and not otherwise; and further that any and all payments required to be made in connection with this agreement shall be made solely from the revenues of the Philadelphia Gas Works.

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IN WITNESS WHEREOF, the parties have signed this Agreement in duplicate on the day and year first written above.

PHILADELPHIA GAS WORKS by  
PHILADELPHIA FACILITIES  
Attest: MANAGEMENT CORPORATION

By: \_\_\_\_\_ By: \_\_\_\_\_

Abby L. Pozefsky Name:

Assistant Secretary Title:  
COMPANY

By: \_\_\_\_\_

Name: Page 39 of 43

Title:

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ATTACHMENT D – Demographic Survey

A key tenet of PGW's practice of good corporate citizenship is its commitment to the use, non-discrimination against and development of qualified minority, disabled and women vendors and to non-discrimination in employment.

In an effort to ensure the full inclusion of all segments of the American population, PGW is requesting that the following information be returned with your proposal:

- A. Does your organization have a written program which addresses the utilization of minority business enterprises (MBE), disabled business enterprises (DBE) and women enterprises (WBE) in the manufacturing, distribution or servicing of your product(s)? If so, please furnish a copy of your program. Please provide statistics of MBE, DBE and WBE in (1) manufacturing, (2) distribution, and (3) service for the past two years. YES NO

COMMENTS:

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- B. Does your organization foster economic growth and development by providing procurement opportunities to MBE/DBE/WBE firms as material suppliers, contractors, sub-contractors, etc? If so, please furnish a copy of your company policy or directive. YES NO

COMMENTS:

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C. Does your organization have an Affirmative Action YES NO  
Equal Employment Opportunity Policy? If so,    
please furnish a copy of this policy.

COMMENTS:

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D. Please furnish data depicting the composition of your work force by ethnic group

gender and their appropriate titles/job classifications.

# OF EMPLOYEES	TITLE CLASS	ETHNIC GROUP	GENDER
----------------	-------------	--------------	--------

This information is for PGW use only and will be held in the strictest confidence. As a socially responsible corporation, PGW seeks to insure that its business partners are committed and dedicated to the practice of including all segments of the American population in their business practices. Accordingly, the information requested above must be provided or your proposal may be rejected as non-responsive.

If the information was provided to PGW within the past twelve months, please check here:

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

(Please Print)

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ATTACHMENT E - Required 17-1400 Disclosure

In accordance with the City of Philadelphia’s contract reform legislation, codified as The Philadelphia Code Title 17 Chapter 17-1400, persons and entities who wish to provide goods and services to PGW must provide certain information, including information about contributions they have made to elected City officials or candidates for office in the Commonwealth of Pennsylvania. Please note that, if selected, you will be required to update such

disclosure during the term of your agreement with PGW and for one year thereafter.

Therefore, the following information must be provided to PGW:

1. Did you use any consultant with respect to this RFP YES NO  
or the contract at issue within the prior one year LI FI  
period? If so, you are required to list (in an  
attachment hereto) the following information for  
each such consultant: (i) name, (ii) business  
address, (iii) business phone number and (iv)  
amount paid or to be paid.

As used herein, the term "consultant" means any person or entity used to assist you in obtaining a contract through direct or indirect communication with the City, PGW, any City Agency or any officer or employee of any of them, if such communication is undertaken by the person or entity for payment.

2. Have you or any consultant disclosed above made YES NO  
any contributions of money or in-kind assistance LI FI  
within the prior two year period to (i) any candidate  
for nomination or election to any public office in  
Pennsylvania, (ii) any individual who holds any  
such office, (iii) any political committee or state  
party in Pennsylvania or (iv) any group, committee  
or association organized in support of any such  
candidate, office holder, political committee or state  
party in Pennsylvania? If so, you are required to list  
(in an attachment hereto) the date, amount and  
recipient of each such contribution.

For purposes hereof, (i) contributions made by a person's immediate family shall be deemed contributions made by that person and (ii) contributions made by an entity's affiliate or an officer, director, controlling shareholder or partner of an entity's or such entity's affiliate shall be deemed contributions made by that entity.

3. Do you intend to use any subcontractors on this YES NO  
contract? If so, you are required to list (in an LI FI  
attachment hereto) the following information for  
each such subcontractor: (i) name, (ii) business  
address, (iii) business phone number and (iv)  
amount or percentage to be paid.

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4. Within the prior two year period, has any City or PGW officer or employee asked (i) you, (ii) any of your officers, directors or management employees or (iii) any person or entity representing you, to give money, services, or any other thing of value to any person or entity? If so, you are required to list (in an attachment hereto) the following information for each such officer or employee: (i) name, (ii) title, (iii) date of request, (iv) amount requested and (iv) amount of any payment made in response to request (other than contributions listed under (2) above). YES NO
5. Within the prior two year period, has any City or PGW officer or employee directly or indirectly advised (i) you, (ii) any of your officers, directors or management employees or (iii) any person or entity representing you, that a particular person or entity could be used by you to satisfy any goals in this RFP or contract for the participation of minority, women, disabled or disadvantaged business enterprises? If so, you are required to list (in an attachment hereto) the following information for each such officer or employee: (i) name, (ii) title, (iii) date of advice and (iv) name of person or entity they advised could be used to satisfy such goals. YES NO

NOTE: The attribution provisions of Philadelphia City Code Chapter 17-1405 are applicable with respect to the foregoing. The Proposer may familiarize itself with these provisions at:

[http://municipalcodes.lexisnexis.com/codes/philadelphia/\\_DATA/TITLE17/CHAPTER\\_17\\_1400\\_NON\\_COMPETITIV/17\\_1405\\_Attribution\\_Rules\\_.html](http://municipalcodes.lexisnexis.com/codes/philadelphia/_DATA/TITLE17/CHAPTER_17_1400_NON_COMPETITIV/17_1405_Attribution_Rules_.html)

The undersigned hereby certifies that the information provided herein is true and correct as of the date set forth below.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Entity: \_\_\_\_\_

Date: \_\_\_\_\_

(Please Print) Page 43 of 43

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