



to Secretary's Bureau

CITY OF PHILADELPHIA
CITY COUNCIL
OFFICE OF THE PRESIDENT

ANNA C. VERNA
PRESIDENT
Room 494 City Hall
Philadelphia, Pennsylvania 19107
686-3412-13
Fax No. 563-3162

April 7, 2004

COUNCILWOMAN - 2nd DISTRICT

Ms. Veronica A. Smith Executive Director
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

DOCKETED
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RECEIVED
04 APR 15 AM 9:24
OFFICE OF
EXECUTIVE DIRECTOR

Re: **Resolution of The Council of The
City of Philadelphia No. 040348
Introduced and Adopted 4-01-04**

Dear Ms. Smith:

P-00042090

In support of the above-captioned Resolution of Council, a copy of which is enclosed for your information, we, The Council of The City of Philadelphia, request your support in opposing the Petition of the Philadelphia Gas Works to establish a cash receipts reconciliation clause to reconcile PGW's projected and actual cash receipts with billed revenues.

If you are in need of any further information, please contact the author of the Resolution, Councilwoman Marian Tasco, Councilwoman, 9th District, Room 577 City Hall, Philadelphia, PA 19107-3290.

We greatly appreciate your prompt attention to this most important matter.

Sincerely,

ANNA C. VERNA
President
City Council

ACV/nd
Enclosure **DOCUMENT
FOLDER**

RECEIVED

APR 19 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 040348)

RESOLUTION

Memorializing City Council's opposition to the Petition of the Philadelphia Gas Works ("PGW") to the Pennsylvania Public Utility Commission ("PUC") to establish a cash receipts reconciliation clause ("CRRC") and further authorizing the President to transmit copies of this Resolution to the PUC.

WHEREAS, The Philadelphia Gas Works ("PGW") has filed a petition with the Pennsylvania Public Utility Commission ("PUC") to establish a cash receipts reconciliation clause ("CRRC") to reconcile PGW's projected and actual cash receipts with billed revenues on an ongoing basis; and

WHEREAS, The establishment of a CRRC would create a non-bypassable charge to all firm transportation or sales customers as part of the distribution rate, which charge would not be separately stated on the customer's bill; and

WHEREAS, The effect of the proposed CRRC would be to pass the cost of uncollected revenues on to PGW's paying customers, thereby removing appropriate incentives for PGW to pursue reasonable and thorough efforts to collect its bills from customers with the ability to pay those bills; and

WHEREAS, Another effect of the proposed CRRC would be to generate funds not otherwise available from PGW's operations to enable PGW to make the annual \$18 million payment to the City of Philadelphia required by Section VII.1.b.i. of the Agreement between the City of Philadelphia and the Philadelphia Facilities Management Agreement for the Management and Operation of the Philadelphia Gas Works, provision for which is already made in PGW's approved base rates; and

WHEREAS, PGW's rates are already the highest in the Commonwealth of Pennsylvania, and the annual bill for a typical PGW residential heating customer is already projected to exceed \$1,450 for the 2003-2004 fiscal year; and

City of Philadelphia

RESOLUTION NO. 040348 *continued*

WHEREAS, The effect of the proposed CRRC would be to increase the typical residential heating customer's annual bill by approximately \$80 in the 2004-2005 fiscal year; and

WHEREAS, PGW customers are already struggling to pay for the high cost of gas; and

WHEREAS, PGW customers are already paying rates which include substantial expense in the range of \$125 million for uncollectible billings and programs which provide rate discounts to low-income and senior citizen customers; and

WHEREAS, The establishment of a CRRC would serve to exacerbate PGW's already severe cash crisis, perpetuating a downward spiral in which increasing numbers of customers are forced into the ranks of those who cannot afford to pay their gas bills; and

WHEREAS, More productive solutions to the plight of PGW's large customer base of low and moderate income households need to be found, which shift to the federal and the state government greater responsibility for providing for the basic utility and home heating needs of these households; now therefore

RESOLVED, THAT THE COUNCIL OF THE CITY OF PHILADELPHIA hereby affirms its opposition to the Philadelphia Gas Works' ("PGW") petition to the Pennsylvania Public Utility Commission ("PUC") to establish a cash receipts reconciliation clause ("CRRC"); and

RESOLVED FURTHER, That, should the PUC approve PGW's CRRC petition despite Council's opposition, Council requests the PUC to require that, in calculating the approved CRRC surcharge amount to be assessed to customers in any fiscal year, the dollar amount of the annual payment to the City by PGW be deducted from the otherwise applicable "Total Recovery Amount" under the CRRC for that fiscal year; and

FURTHER RESOLVED, That Council hereby authorizes the President to transmit copies of this Resolution to the PUC and to the parties to PGW's CRRC proceeding at the earliest possible date.

City of Philadelphia

RESOLUTION NO. 040348 continued

City of Philadelphia

RESOLUTION NO. 040348 continued

CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the first of April, 2004.

Anna C. Verna
PRESIDENT OF THE COUNCIL

Patricia Rafferty
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmembers Tasco, Krajewski, DiCicco, Rizzo, Miller and Mariano

Sponsored by: Councilmembers Tasco, Krajewski, DiCicco, Rizzo, Miller, Mariano, Council President Verna, Councilmembers Reynolds Brown, Goode, Ramos, Clarke, Kenney, Blackwell, O'Neill, Kelly and Cohen

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ORIGINAL

Daniel Clearfield
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July 22, 2004

VIA HAND DELIVERY

DOCUMENT

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor,
400 North Street P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Philadelphia Gas Works Cash Receipts Reconciliation
Clause, Docket No. ~~P-00049157~~
Petition of Philadelphia Gas Works to Establish a Cash
Receipts Reconciliation Clause, Docket No. P-00042090

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Petition for Reconsideration with regard to the above referenced matter. A copy has been served on the parties listed on the attached Certificate of Service.

Very truly yours,
Daniel Clearfield
Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosure

- cc: Terrance J. Fitzpatrick, Chairman w/enc.
- Robert K. Bloom, Vice-Chairman w/enc.
- Glen R. Thomas, Commissioner w/enc.
- Kim Pizzigrilli, Commissioner w/enc.
- Wendell F. Holland, Commissioner
- Hon. Charles H. Rainey, Jr. w/enc.
- Office of Special Assistants w/enc.
- Attached Certificate of Service w/enc.

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SECRETARY'S BUREAU

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DSH:41892.1/PH1211-217982

DOCKETED

AUG 02 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ORIGINAL

Pennsylvania Public Utility Commission,

v.

Philadelphia Gas Works

Petition of Philadelphia Gas Works to Establish a
Cash Receipts Reconciliation Clause

~~P-00042090~~

DOCUMENT

P-00042090

PETITION FOR RECONSIDERATION OF PHILADELPHIA GAS WORKS

Philadelphia Gas Works ("PGW" or "the Company") respectfully submits this Petition, pursuant to 52 Pa. Code § 5.572, requesting that the Pennsylvania Public Utility Commission ("Commission" or "PUC") reconsider its Opinion and Order in this case denying PGW any relief in its petition for an automatic mechanism to adjust collections for PGW's cash receipts shortfall (the "CRRC") and, based upon the new developments described below, either permit the CRRC to go into effect or, alternatively, order expedited consideration without ALJ recommended decision of PGW's Chapter 56 Waiver Petition.

In its Opinion and Order, entered July 8, 2004, the Commission summarily rejected any relief proposed either by PGW or the Office of Trial Staff ("OTS") apparently on the basis of what PGW believes was a misunderstanding of the financial evidence presented in the record. Additionally, recent events which were not before the Commission when it considered the CRRC show that PGW's situation has worsened and provide additional bases for concluding that the CRRC is necessary as part of a comprehensive effort to stabilize PGW's financial condition and forestall a further bond downgrade to junk status. Not before the Commission when it decided the CRRC petition is the fact that PGW has only been able to insure about \$25-50 million of its

contemplated \$150 million bond issuance, and, in fact, may not be able to insure any of it, and will have to scale back the issuance to \$125 million. Also, a new negative statement from Standard and Poor's ("S&P") on the Company's outlook further points up the potential for downgrade if the Company is not authorized to take some action to improve its collections and cash working capital in the short term. Moreover, PGW's most recent projection of its end-of-year cash shows an even more disturbing picture than that which was before the Commission when it made its CRRC ruling. Without consideration of a one-time gas storage payment deferral arrangement, PGW would end the year with negative \$6.5 million in year end liquidity.¹ Taken together, the apparent misunderstanding of the evidence and the changed circumstances compel a reconsideration and revision of the Commission's CRRC Order.

Alternatively, if the Commission elects not to reconsider and reverse its prior decision, PGW requests that the Commission certify the record in the Chapter 56 Waiver Petition (currently before an ALJ for recommended decision)² directly to the Commission for an expedited decision pursuant to 66 Pa. C.S. § 335(a). PGW previously sought Commission consideration of its Waiver Petition, concurrently with its CRRC request, on the basis that such prompt relief was needed to satisfy the financial community, that it had a viable means of improving its collections in the short term, and to enable PGW to implement the proposed waivers and achieve the anticipated collections results in the time period expected of it.

¹ As set forth below, the effect of this payment deferral is to delay PGW's obligation to pay for gas injected into storage. Payment will not be made during this fiscal year, but will be made during the winter period when PGW's revenue from gas sales has increased. Without such deferral, PGW's cash would be inadequate to meet expenses during the fall and early winter.

² Docketed at P-00042117.

Since PGW made that request (which the PUC declined to adopt), the financial community, through both its statements and actions, has reiterated its negative outlook for the Company and reinforced the threats of a further downgrade to junk status. Moreover, should PGW have to sell its bond without insurance, the cost to customers would increase by approximately \$2 million per year after reducing the total amount of the issuance. Should another downgrade occur, the cost to customers would be far greater, and it is much more likely that the bond sale would not occur at all. If no bond sale is possible, or if the amount of the sale is substantially reduced, there will be a further direct impact on PGW's cash flow as well as a threat to the Company's ability to carry out its capital program which is designed to address safety and reliability of the PGW system.

At present, the only avenues available to meet the expectations of the investment community are either to implement the CRRC, implement PGW's requested Chapter 56 waiver petition, or implement both proposals. As Commission action on the waiver request is not now expected until September 30, 2004, absent reconsideration of the CRRC Order, certifying the Chapter 56 waiver petition directly to the Commission for decision would at least move up the waiver decision and give the Company more opportunity to put the new collections tools in place prior to this coming winter thus directly addressing the concerns articulated by the financial community. Additionally, should the Commission deny PGW's waiver request, an earlier decision may enable the Company to institute its option of last resort, a base rate case with a request for extraordinary rate relief, in a timeframe that could possibly avoid the assured downgrade to junk status.

In further support of its Petition for Reconsideration, PGW avers as follows:

1. The fundamental conclusion of the Commission in its CRRC Order, which serves as the foundation for the remainder of the determinations in the Order, is that PGW failed to satisfy its burden of proof in showing that its financial condition was so precarious as to warrant the unique ratemaking relief requested.³ As a result, the Order reasoned that a departure from perceived Pennsylvania ratemaking law and principles was not justified.⁴

2. Given the new actions by the financial community, the apparent misunderstanding of the record in this proceeding by the Commission, and the new evidence of PGW's present financial condition, this Petition plainly satisfies the Commission's standard for reconsideration.

That standard is clear:

[P]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.⁵

The Commonwealth Court has similarly described the Commission's standard for approaching reconsideration: "[I]n deciding whether to deny reconsideration, the Commission considers whether the petitioner has presented new evidence, *changed circumstances*, or previously unconsidered law."⁶

³ Order at 8-11.

⁴ Order at 11.

⁵ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 559 (1982) (emphasis added); *Pa. PUC v. Jackson Sewer Corp.*, 2001 Pa. PUC LEXIS 44, *6 (same).

⁶ *J.A.M. Cab Company, Inc., v. Pa. PUC*, 572 A.2d 1317, 1318 (Pa. Cmwlth. 1990) (emphasis added).

3. PGW's request satisfies this standard in multiple ways. First, as explained in detail below, the Commission appears to have misunderstood record evidence in reaching its fundamental conclusion that PGW somehow failed to meet its burden of proof as to its financial condition and that its "financial outlook is not as desperate as it seemed."⁷ Second, an update of that evidence, reflecting PGW's current liquidity position, as well as recent actions by bond insurers, and one of PGW's principal bond rating agencies serve to provide compelling additional evidence of the Company's financial crisis⁸ and constitute changed circumstances justifying reconsideration.

I. PGW Met its Burden of Proof and Its Financial Condition Justifies the CRRC.

4. As noted, the Commission concluded that PGW failed to carry its burden of proving that its financial condition was sufficiently poor to warrant any special action at this time.⁹ In reaching this determination, the Commission pointed to PGW's end of year cash projections of \$31-\$36 million, achieved as result of the City of Philadelphia's waiver of the \$18 million per year City Payment and the two-year deferral of PGW's payback of the \$45 million line of credit.¹⁰ Additionally, the Commission also took special note of PGW's efforts to finalize a \$53.4 million natural gas storage payment deferral arrangement, which, at that time,

⁷ Order at 11.

⁸ Consolidated Proceeding, PGW St. CP-1R at 2; PGW M.B. at Appendix A.

⁹ Order at 11.

¹⁰ Order at 10. The Commission also curiously cited to Fitch's recognition of this aid from the City as evidence of anticipated cash flow improvement. *Id.* But, the Commission failed to quote Fitch's next sentence which found PGW wanting *despite* the City's help: "None of these positive steps were sufficient to stave off the current downgrades." PGW St. CRRC-5, Exh. TEK-2.

was anticipated to defer \$30 million in gas payments beyond August 31, 2004.¹¹ The Commission's Order clearly envisioned the \$30 million in gas storage payment deferral as an additional cash flow benefit beyond the Company's end-of-year cash projections, produced by the City's largesse which would increase PGW's end-of-year cash to some \$60 million.

5. However, the Commission appears to have made a fundamental and serious miscalculation of PGW's financial condition. The \$31 to \$36 million figure that the Commission cites is not primarily the result of the City grant-back and loan deferral. Rather, the \$31 to \$36 million end-of-year cash figure is primarily and substantially the result of PGW's already accounted-for deferral of gas storage payment obligation (\$30 million of which was then projected to affect PGW's cash flow by August 31, 2004). In other words, the Commission's understanding that PGW will have \$31 to \$36 million in liquidity (i.e., cash and available short-term borrowing) at fiscal year end plus an additional \$30 million because of the deferral is fundamentally incorrect.

6. When the gas storage deferral is properly removed from consideration, PGW's true cash position, based upon the evidence that was before the PUC when it made its decision falls to virtually zero for fiscal year end 2004. As PGW's Mr. Bogdonavage testified during the hearings, PGW needs the availability of cash in the fall and early winter period to pay operating expenses and to continue gas purchases during that period when customer billings and revenues are still low, prior to the onset of cold weather and associated higher customer gas billings and receipts.¹² Accounting for the City's grant back of the \$18 million City payment, the

¹¹ Order at 10-11.

¹² PGW St. CRRC-1 at 7.

Company's end of year liquidity had the potential to reach \$1-\$6 million.¹³ Thus, the \$30 million derived from the deferral of the gas storage payments – which must be paid in FY 2005 (which begins in a little over one month) – is necessary to achieve the \$31-\$36 million figure relied upon by the Commission in its finding regarding PGW's financial condition.

7. When considering the financial position of the Company, it is necessary to exclude the effects of the gas storage deferral arrangement because the transaction is a one-time arrangement which merely transfers PGW's payment obligation for injecting natural gas into its storage facilities from the end of FY 2004 to the winter of 2005, creating no additional cash working capital of any kind¹⁴ and there is no assurance that PGW will be able to replicate a gas payment deferral arrangement in FY 2005.¹⁵

8. Moreover, an update of those projections in the CRRC record as reflected in the verified statement of Joseph Bogdonavage (attached as Appendix "A"), shows that these figures actually overstate PGW's likely end of year cash position. Even considering the effect of the gas storage deferral, PGW projects that its end of year cash (including the City Payment waiver) will be just \$28 million.¹⁶ With the one time gas storage deferral arrangement backed out, PGW's permanent cash working capital would be a negative \$6.5 million.¹⁷

¹³ CRRC Proceeding, PGW Rejoinder Exh. 1 (JRB); Tr. 311-12.

¹⁴ CRRC Proceeding, Tr. 311-13; 348-49; App. A, hereto.

¹⁵ Appendix "A" hereto, Bogdonavage Ver. St., ¶ 3.

¹⁶ See, App. A, Attach. 1, p. 1. The gas storage payment deferral is now projected to defer \$34.5 million in payments from end of year FY 2004 into the winter of FY 2005. App. A, ¶ 1(a).

¹⁷ App. A, Attach. 1, p. 2.

9. These figures obviously do not prove PGW's financial health. Instead, they conclusively disprove it. This, in fact, is why PGW is on the brink of being downgraded to junk status. Accordingly, the Commission, by virtue of the \$30 million error and these updated facts must reconsider its conclusion .

10. Importantly, these cash projections already take account of the improvement to historic levels in PGW's collections that the Company expects to experience in FY 2004. In the rebuttal testimony of PGW's Randall Gyory, presented in the Consolidated Proceeding, Mr. Gyory updated PGW's collections efforts, testifying that the Company will probably end the fiscal year at about its historic collections rate of 92%.¹⁸ Notwithstanding this collections level (and assuming the additional cash resulting from the City's waiver of the City Payment), as the attached cash flow analysis shows, PGW's end of year cash will still be under \$30 million and substantially negative if the effects of the gas storage deferral arrangement are removed.

II. Recent Actions by the Financial Community Further Warrant Reconsideration or Clarification.

11. Changed circumstances, prompted by the recent actions of the financial community, also demonstrate that the Company's financial condition is on the brink of a downgrade to junk bond status and, specifically, that the Commission's conclusion that PGW's financial situation would not harm its access to the financial markets for its planned issuance of \$125 to \$150 million in new bonds is erroneous.¹⁹ As Mr. Gyory related in the Consolidated

¹⁸ *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090; R-00049157; M-00021612; and P-00032061 ("Consolidated Proceeding"). The Commission is empowered to take administrative notice of these proceedings. *See Level 3 Communications v. Marianna & Scenery Hill Telephone Co.*, 2002 Pa. PUC LEXIS 50 (2003). PGW Statement CP-1R at 6.

¹⁹ Order at 9.

Proceeding, PGW believed at that time that its planned bond issuance this fall would only be insured at the AAA level to \$50 million at most.

12. Indeed, PGW's most recent information is that it will likely only be able to insure approximately \$25-50 million, well short of the \$150 million that PGW needs, and may not be able to obtain insurance for any of it.²⁰ As a result, PGW projects that, as a consequence, it will be forced to reduce the issuance to just \$125 million and to issue the remaining \$100 million in bonds at its current BBB- rating (one level above junk status).²¹ If it issues the full \$125 million, the resulting financing costs will be in the area of \$40 million higher than a totally insured issuance (over the next 20 years).²² Of course, this extra financing expense will fall squarely on the shoulders of PGW's customers.

13. Additionally, since the Commission's issuance of its CRRC Order, S&P has released a new Bulletin reemphasizing PGW's current negative financial outlook and reaffirming its warnings of further downgrades:

Standard & Poor's Ratings Services said that the Pennsylvania Public Utilities Commission's (PUC) decision yesterday to reject Philadelphia Gas Works' (PGW) request to establish a special surcharge to help defray the cost of its uncollectible billings is another unfavorable development for PGW's credit quality. The investment-grade rating on PGW's senior revenue bonds (BBB-/Negative) remains tenuous. Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW. However, it highlights the difficulty of PGW's financial situation, which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC's recent decision points to the potential for a less supportive relationship going forward. Should the regulatory environment affect the company's ability to access

²⁰ App. A, ¶ 4.

²¹ *Id.*

²² Consolidated Proceeding, PGW Statement No. CP-1R at 2.

short-term or long-term financing or lead to gas suppliers placing additional liquidity demands on PGW, the ratings could be lowered. High debt levels, slim financial margins, and weak collection rates that are exacerbated by high gas prices remain the primary drivers for the company. The outlook on PGW is negative.²³

14. These developments prove that PGW's financial crisis is severe and that the current facts are worse than judged to be the case by this Commission in its Order of July 8, 2004 and warrant the Commission's reconsideration and reversal of its decision. The bond rating agencies and insurers understand that PGW is financially strapped, and clearly the CRRC will allay their concerns and help to stabilize the Company's financial position by providing a backstop to insure minimum levels of collections and corresponding cash working capital.

III. None of the Other Stated Legal or Policy Concerns Raised By the Commission Warrant Rejection of the CRRC.

15. Nothing in Pennsylvania law or established ratemaking principles preclude the reconsideration of the Commission's decision and the implementation of the CRRC to address PGW's pressing financial concerns. The CRRC Order, itself, acknowledges that single issue ratemaking is permitted under Section 1307 of the Code.²⁴ Nor would the prohibition against retroactive ratemaking affect more than the Company's attempt to address the cash receipts shortfall from the current fiscal year in its requested "e-factor."²⁵

²³ S&P Bulletin: "Adverse Regulatory Decision For Philadelphia Gas Works Detracts From Credit Quality," July 9, 2004 (Attached as Appendix B hereto).

²⁴ Order at 13.

²⁵ PGW does not concede the correctness of the retroactive ratemaking conclusion as to the current shortfalls. While the Commission stated that uncollectible expense matters are typically considered in a base rate case (Order at 14), and that these expenses are not unanticipated because they are provided for through a specific uncollectible accounts allowance in base rates (Order at 16), both assertions miss the mark under these circumstances. The fact that uncollectible expense matters are *typically* addressed in base rate cases, or that they are *so* anticipated and ever-present that they have their own

16. The Commission also rejected PGW's petition in part on its findings that the CRRC would place the burden from non-paying gas customers on paying customers,²⁶ and that it would require customers with good payment records to bear some financial risk that PGW might mismanage collections efforts (although no mismanagement was found),²⁷ thereby resulting in rates that were not just and reasonable. But, such results are part of ratemaking. All paying utility customers (and customers of any business, for that matter) must pay a portion of the costs attributable to non-paying customers and with it bear the risk that not all utility collection efforts will be as successful as desired. There is nothing new or unusual here -- it is the very reason for the existence of uncollectible expense accounts, and the traditional allowance for utilities to recover the cost of non-payers in rates.²⁸

17. The fact that uncollectibles expenses must be recovered from paying customers totally supports, not negates, PGW's CRRC Petition. Ultimately, all customers who can pay should be required to pay, and PGW is seeking Chapter 56 waivers to enhance the efficacy of its

recognized category in base rates, proves nothing concerning the recoverable nature of these expenses as sought by PGW. Reduced to its simplest statement, the Commission's ruling is that uncollectible expenses cannot be considered "unanticipated" or "extraordinary" because they in fact exist, and are specifically allowed as a category of base rates. By this reasoning, however, no expense is ever unanticipated or extraordinary, and therefore no expense recovery above that already included in base rates ever should have been allowed by the Commission or upheld in Pennsylvania courts. Yet, Pennsylvania law often has allowed just that. PGW CRRC M.B. at 29-38. Mere foreseeability of costs, and allowance in base rate cases generally, raises no bar to recovery through other, tailored mechanisms, and to suggest otherwise requires reversal of a large and distinct body of law.

²⁶ Order at 24, 25.

²⁷ Order at 15, 19.

²⁸ In fact, both OCA witness LeLash (Tr. at 441) and OSBA witness Knecht (OSBA St. 1 at 2) agreed that provision for uncollectible expense was a normal part of utility base ratemaking.

collections procedures in order to find a way to produce the material cash improvement demanded by S&P and reduce the burden on customers with good payment records. The simple fact that PGW must recover its uncollectibles expense through paying customers, though, is no evidence that resulting rates will be unjust or unreasonable, and the Commission should reconsider its conclusion on this point. Even if the Commission holds to its determination that these ratemaking principles impede the establishment of the CRRC, they all devolve from Chapter 13 of the Public Utility Code, and the Company's financial condition warrants a departure from and, if necessary, waiver of the same.²⁹

18. Finally, there should be no factual issues as to the calculation of the surcharge preventing reconsideration. The Commission raised a concern over potential ambiguity regarding the effect of the \$36 million "black box" settlement in the last rate case in that it did not specify the effect of the settlement on PGW's previously authorized \$55.7 million uncollectibles account expense.³⁰ However, this concern is easily resolved. The testimony in this proceeding made clear that the most the \$36 million could do was add another \$2.7 million to the \$55.7 million figure, raising it to \$58.4 million.³¹ The Commission certainly can factor that amount into the cash receipts reconciliation equation and fashion the appropriate relief.

IV. The OTS Proposal Should Have Been Accepted Absent the CRRC.

19. The Commission also rejects the OTS proposal for many of the same reasons it used to deny PGW's Petition.³² The Commission does not and could not reject the primary

²⁹ 66 Pa. C.S. § 2212(c).

³⁰ Order at 19.

³¹ CRRC Proceeding, Tr. at 422; PGW St. CRRC-1R at 10.

³² Order at 24.

reason underlying the OTS proposal: that the cash flow method of regulation does not adequately protect PGW from undercollections of uncollectible expense associated with high gas costs.³³ For this reason, the Commission should reconsider its decision and adopt a modified OTS proposal should it continue to refuse to adopt the CRRC.³⁴

20. The Commission has an opportunity to rectify this imbalance, and should do so on reconsideration. Should the Commission fail to rectify this situation, it would in essence be taking PGW's property in violation of due process of law.

V. **In the Alternative, The PUC Should Certify PGW's Chapter 56 Waiver Requests for Direct and Expedited Commission Decision.**

21. At the very least, the recent negative actions and statements of the financial community require certification of PGW's Waiver Petition directly to the Commission for its adjudication. As the Commission is aware, the Company initially sought a July 8, 2004, decision date for its Petition. Also, PGW did not oppose a request by the OCA to dispose of the ALJ's Recommended Decision in the Commission's Consolidated Proceeding, of which the waiver request is a part. The PUC denied both requests. The limitations placed on the Company's access to the capital markets, the new Bulletin by S&P forecasting more financial trouble for the

³³ CRRC Proceeding, OTS St. 1 at 9-13. Obviously, since the same mechanism causes both PGW's current and expected future cash undercollections, (Tr. at 418), the OTS proposal should be modified to permit recovery of current undercollections as well.

³⁴ As OTS proved, and no party disputed, PGW as a cash-flow regulated company will automatically suffer from cash undercollections when its gas cost rate ("GCR") exceeds the GCR used in the last fully litigated base rate case. This operates as a simple fact of mathematics, and through no fault on the part of PGW. PGW will always be under-compensated for uncollectibles expense in this instance, which will negatively impact its cash flow. This is a unique characteristic of a cash-flow regulated company, and calls for a flexible approach to ensure that PGW is not denied funds to which it is entitled.

Company, and the upcoming evaluation by Moody's³⁵ all warrant prompt and direct action by the Commission on PGW's requested waivers – the only remaining mechanism under consideration by the PUC for achieving material improvement in PGW's collections and cash margins in the near term as required by the rating agencies.³⁶

22. It is very important that such expedited ruling on the Chapter 56 waivers occur by mid-August for two reasons. First, Moody's will issue its report on PGW in early September. The Commission support for the waivers could be significant in averting their downgrade. Second, the earlier the waivers are adopted, the more likely will be the success of PGW's collections effort prior to winter.

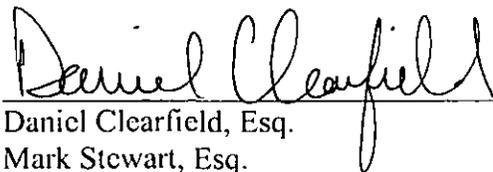
23. PGW has contacted the parties to the Consolidated Proceeding and Action Alliance et. al., and the OCA have authorized PGW to indicate that they do not oppose PGW's request that the Commission expedite the decision on PGW's Chapter 56 Waiver Petition by issuing an order bypassing the recommended decision process (as it did with the CRRC), and certifying the record, on the Chapter 56 Waiver Petition to it. These parties are expressing their non-opposition only to that portion of PGW's reconsideration petition having to do with expediting the decision on PGW's Chapter 56 Waiver petition and do not join in any other portion of PGW's Petition for Reconsideration.

³⁵ On June 8, 2004, Moody's indicated that it will review the Company's condition and ratings within 90 days. Moody's Investors Service Global Credit Research Rating Update – PGW (June 8, 2004). www.moody.com/moodys/cust/research/genoa/report/rating%20Update8062. PGW CRRC M.B. at 5. This 90 day period is set to expire on approximately September 6, 2004.

³⁶ Consolidated Proceeding, PGW M.B. at 12-21.

WHEREFORE, Philadelphia Gas Works respectfully requests that, for the reasons stated herein, this Commission should reconsider its decision in this case and approve the CRRC. *Alternatively, should it decline to reconsider its CRRC Order, the Commission should expedite the decision on PGW's Chapter 56 Waiver Petition by issuing an order bypassing the recommended decision process (as it did with the CRRC), certifying the record on the Chapter 56 Waiver to it, and issuing a favorable ruling as quickly as possible. (The remaining issues raised by the Commission in its June 2, 2004, consolidation order may still be the subject of a recommended decision).*

Respectfully submitted



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Mark Stewart, Esq.
Wolf, Block, Schorr and Solis-Cohen LLP
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(717) 237-7173

Of Counsel:
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Philadelphia Gas Works
800 West Montgomery Ave.
Philadelphia, PA 19122

Dated: July 22, 2004

APPENDIX A

APPENDIX A

VERIFIED STATEMENT OF JOSEPH BOGDONAVAGE

I, Joseph R. Bogdonavage hereby state as follows:

1. Based upon available actual data and estimates and projections for the remainder of FY 2004 (12 months ending August 31, 2004), PGW will have \$28 million in total available liquidity (cash and available short term borrowing) at year end (Attachment 1, p. 1) which already reflects the impact of the following steps taken by PGW to improve liquidity:

a) The current projected effect of the natural gas storage payment deferral transaction with one of PGW's natural gas suppliers. PGW is projecting that this transaction will defer \$34.5 million of gas purchases into FY 2005. If the natural gas storage deferral transaction had not occurred, PGW would have ended the year with negative \$6.5 million in available liquidity.

(i) The natural gas storage payment deferral transaction does not create additional cash working capital -- it merely delays PGW's payment obligation into FY 2005, thereby adding to PGW's cash working capital needs at that time.

b) The waiver by the City of the \$18 million dollar annual payment.

c) The deferral by the City of repayment of the \$45 million city loan.

2. Current projections of year-end cash available – the \$28 million cited above – show potential for a severe cash shortfall and could delay the timely payment of obligations as they become due. Such a cash shortfall could make it difficult for PGW to purchase gas to supply our customers during the cold weather period.

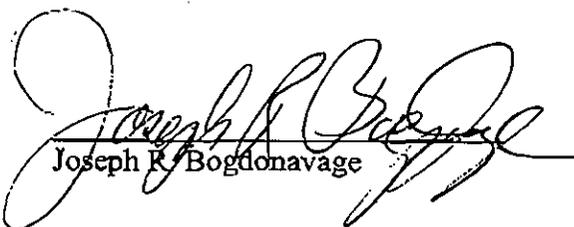
3. There is no basis for assuming that PGW will be able to successfully negotiate a natural gas storage payment deferral transaction for FY 2005 or thereafter.

4. PGW's most recent information is that it will be able to insure only approximately \$25-50 million of its contemplated bond issuance this fall, well short of the \$150 million that PGW had originally planned, and it may not be able to obtain insurance for any of the issuance. PGW projects that, as a consequence, it will be forced to reduce the issuance to just \$125 million and to issue the non-insured bonds at its current BBB- rating (one level above junk status). If it issues the full \$125 million, the resulting financing costs will be in the area of \$40 million higher than a totally insured issuance (over the next 20 years).

VERIFICATION

I, Joseph R. Bogdonavage, hereby verify that I am Senior Vice President of Finance for the Philadelphia Gas Works and that I am authorized to make this verification on behalf of the Philadelphia Gas Works, and that the information contained in the foregoing Verified Statement is true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties relating to unsworn falsification to authorities as prescribed by 18 Pa. C.S. § 4904.

Dated: July 22, 2004


Joseph R. Bogdonavage

APPENDIX B



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BULLETIN: Adverse Regulatory Decision for Philadelphia Gas Works Detracts From Credit Quality

Jeanny Silva, New York (1) 212-438-1776

NEW YORK (Standard & Poor's) July 9, 2004--Standard & Poor's Ratings Services said that the Pennsylvania Public Utilities Commission's (PUC) decision yesterday to reject Philadelphia Gas Works' (PGW) request to establish a special surcharge to help defray the cost of its uncollectible billings is another unfavorable development for PGW's credit quality. The investment-grade rating on PGW's senior revenue bonds (BBB-/Negative) remains tenuous. Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW. However, it highlights the difficulty of PGW's financial situation, which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC's recent

decision points to the potential for a less supportive relationship going forward. Should the regulatory environment affect the company's ability to access short-term or long-term financing or lead to gas suppliers placing additional liquidity demands on PGW, the ratings could be lowered. High debt levels, slim financial margins, and weak collection rates that are exacerbated by high gas prices remain the primary drivers for the company. The outlook on PGW is negative.

For a complete list of ratings, please click the hyperlink provided here

<http://www2.standardandpoors.com/NASApp/cs/ContentServer?pagename=sp/Page/FixedIncomeRatingAJGionsPg>

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CERTIFICATE OF SERVICE

I hereby certify that I have on July 21, 2004, served a true copy of the foregoing document of Philadelphia Gas Works' upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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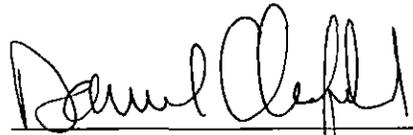
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Daniel Clearfield, Esq.

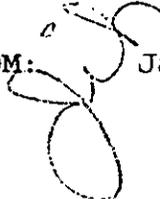
Dated: July 22, 2004

DATE: July 29, 2004

SUBJECT: P-00042090

DOCUMENT

TO: Law Bureau

FROM:  James J. McNulty, Secretary

DOCKETED
AUG 02 2004

Philadelphia Gas Works

Attached is a copy of a Petition for Reconsideration, filed by Philadelphia Gas Works, in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS

jih

August 2, 2004

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor, 7 North
400 North Street
Harrisburg, PA 17120

Filed by Federal Express

DOCUMENT

Re: Pennsylvania Public Utility Commission v. PGW
Petition of Philadelphia Gas Works to Establish Cash Receipts Reconciliation Clause
Docket Nos. ~~R-00049157~~, P-00042090

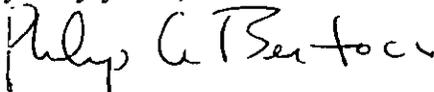
Dear Secretary McNulty:

Community Legal Services, Inc. represents Action Alliance of Senior Citizens of Greater Philadelphia, the Association of Community Organizations for Reform Now (ACORN), and the Tenants' Action Group (TAG) (collectively "Action Alliance, et al.") in the above-captioned matter.

Enclosed please find for filing an original and three (3) copies of the Answer of Action Alliance, et al. to Petition for Reconsideration of Philadelphia Gas Works.

This Answer is timely filed pursuant to 52 Pa.Code §1.11(a)(2) providing for filing by overnight express package delivery. As evidenced by the attached Certificate of Service, all active parties to the proceeding are being served with copies of this Answer by e-mail and/or by First Class U.S. Mail.

Very truly yours,



PHILIP A. BERTOCCHI

Attorney for Action Alliance, et al.

cc: Certificate of Service
Charles E. Rainey, Jr., ALJ

Enclosures

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PA PUBLIC UTILITY COMMISSION
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148

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility : Docket No. R-~~00049157~~
Commission : Docket No. P-00042090

v. :

Philadelphia Gas Works :

Petition of Philadelphia Gas Works to Establish :
a Cash Receipts Reconciliation Clause :

DOCUMENT

DOCKETED

SEP 23 2004

**ANSWER OF ACTION ALLIANCE, ET AL. TO PETITION FOR
RECONSIDERATION OF PHILADELPHIA GAS WORKS**

Action Alliance of Senior Citizens of Greater Philadelphia, Association of
Community Organizations for Reform Now (ACORN) and Tenants' Action Group
(TAG) (collectively "Action Alliance, et al.") answer the Petition for Reconsideration of
Philadelphia Gas Works as follows:

Introduction.

In its July 8, 2004 Opinion and Order (hereinafter "CRRC Order") denying the
Petition of Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause

(hereinafter “CRRC Petition”), the Commission properly considered and assessed the significance of the steps PGW and the City had taken to improve PGW’s projected FY2004 year end cash situation, including waiver of the \$18 million City payment for five years,¹ deferral of the due date for the \$45 million City Advance,² a \$53.4 million natural gas payment deferral arrangement,³ the improvement in its collections ratio from the low FY2003 levels to the 90.5-93% range,⁴ and the resulting projections of a year end cash balance between \$31 and \$36 million.⁵ The Commission correctly concluded that PGW’s “financial outlook was not as desperate as it seemed at the time the Petition was filed.”⁶ In the Commission’s analysis, there was no “\$30 million error” and no “misunderstanding of the financial evidence presented in the record.” Furthermore, as the Commission made clear in its Opinion, the CRRC was not in any event a proper response to the alleged cash flow problems, because it was illegal – violating the constitutionally based (and non-waivable) “just and reasonable” standard, not authorized by Section 1307 of the Public Utility Code, and violative of such regulatory prohibitions as retroactive

¹ CRRC Order, at 9 and 10.

² CRRC Order, at 9 and 10.

³ CRRC Order, at 10-11.

⁴ CRRC Order, at 9 and 28.

⁵ CRRC Order, at 10.

⁶ CRRC Order, at 11.

ratemaking and single issue ratemaking.⁷

The Commission should therefore deny PGW's Petition for Reconsideration on those grounds alone. PGW offers non-record evidence concerning the July 9, 2004 Standard & Poor's Bulletin, its current cash flow projections for FY2004 and allegations concerning the relative availability of bond insurance as it attempts to make a bond issuance in the \$100-150 million range. Taken at face value, the cash projections are not materially different from the updated cash projections which PGW offered during the CRRC hearings and which were the primary basis for its claim that a CRRC was appropriate. As for the claims that a CRRC is dictated by the rating agencies if a downgrade is to be avoided, the new non-record evidence is no more convincing than what has been previously submitted and does not exhibit changed circumstances. The basic theme of the rating agencies is not that a CRRC is required if PGW is to avoid a downgrade, but rather continues to be the more generalized demand that PGW must improve its collections ratio above the 87% FY2003 levels to at least its historical 92% level, with further improvement over time.

Response to numbered allegations.

1. No response is required. The Commission's CRRC Order speaks for itself.

⁷ CRRC Order, at 11-19.

2-3. Action Alliance, et al. is without sufficient knowledge or information to form a belief about the truth of PGW's allegations concerning the new actions of the financial community and the new evidence of PGW's present financial condition, which are therefore denied. As set forth above, it is further denied that the Commission's CRRC Order reflects any misunderstanding. No response is required to the conclusions of law contained in these averments.

4-5. Denied. Action Alliance, et al. submit that PGW misunderstands the Commission's CRRC Order on these points.

6-7. Denied. To the contrary, when considering whether PGW will have a cash crisis at the end of FY2004, it is quite proper to take into account the effects of the gas storage deferral arrangement on available cash as of the end of FY2004.

8.-10. Action Alliance, et al. is without sufficient knowledge or information to form a belief about the truth of PGW's allegations concerning current projections and inferences to be drawn therefrom, which are therefore denied. By way of further answer, \$28 million in year end cash is a vastly greater amount than PGW has had in recent years.⁸

11-12. Action Alliance, et al. are without sufficient knowledge or information to form a belief about the truth of PGW's allegations concerning the conditions under which PGW will make its next bond issuance, which are therefore denied.

⁸ Action Alliance Cross -Examination Exhibit 1; Transcript at 334-336.

13-14. Denied. It is specifically denied that the S&P Bulletin supports PGW's claim that the CRRC is necessary in order to avert a downgrade; to the contrary, as the S&P Bulletin itself states, the PUC's denial of the CRRC Petition "does not have an immediate impact on the ratings of PGW." By way of further answer, Standard and Poor's indicates no specific manner in which PGW collections are to be improved, but has maintained that there must be material improvement at least to the historical 92% level at the present time, and further improvement over time. Action Alliance, et al. submit that such improvement may be accomplished within the current Chapter 56 framework, without either a CRRC or Chapter 56 Waivers. Reconsideration of the CRRC Order is not warranted.

15-20. It is denied that PGW's discussion of the legal and/or policy issues discussed in the Commission's Order states grounds for reconsideration; to the contrary, PGW merely reargues issues that were briefed to the point of exhaustion by PGW and other parties prior to the CRRC Order.⁹

21-23. Action Alliance, et al. do not oppose PGW's request that the Commission expedite the decision on PGW's Chapter 56 Waiver Petition by issuing an order bypassing the recommended decision process and certifying the record on that Petition directly to the Commission. It is within the Commission's discretion concerning whether such expedited treatment is appropriate, especially given the fact that the Commission in

⁹ See, e.g., PGW Main Brief, at 29-51; Action Alliance, et al. Main Brief, at 24-34; OCA Main Brief, at 15-26.

its June 2, 2004 Order exhibited an intention that the issues raised by the CRRC and PGW collections generally be addressed expeditiously.¹⁰

Action Alliance, et al. deny that the S&P Bulletin or other recent actions of the financial community alleged by PGW “require” such certification; to the contrary, the financial community only requires that PGW maintain its collections at the 92% historical level in the present, a material improvement over its FY2003 record, and continue to take appropriate actions for to improve further. It is denied that granting any of the requested Chapter 56 waivers is necessary to improve PGW’s collections; to the contrary, as already demonstrated, PGW has the ability to improve its collections within the existing Chapter 56 framework.

WHEREFORE, Action Alliance, et al. respectfully request that PGW’s Petition for Reconsideration be denied.



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LAURA MOSKOWITZ, ESQUIRE

Attorneys for Action Alliance, et al.

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August 2, 2004

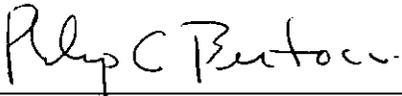
Tel. (215) 981-3702

¹⁰ Investigation Into Financial and Collections Issues Regarding the Philadelphia Gas Works, Docket Nos. P-00042090, R-00049157, M - 00021612, P-00032061 (Order entered June 2, 2004).

VERIFICATION

I, Philip A. Bertocci, Esquire, attorney for Action Alliance, et al., hereby state that the facts contained in the foregoing Answer true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the Statements herein are made subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Date: August 2, 2004



PHILIP A. BERTOCCI

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this Answer upon the following parties in the manner described below:

Dated: August 2, 2004

BY E-MAIL AND FIRST CLASS U.S. MAIL, POSTAGE PREPAID.

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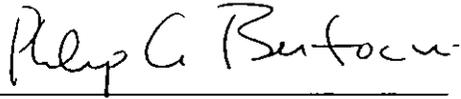
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August 4, 2004

VIA HAND DELIVERY

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Harrisburg, PA 17105-3265

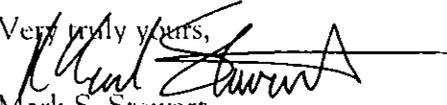
Re: Philadelphia Gas Works Cash Receipts Reconciliation
Clause, Docket No. ~~P-00049157~~
Petition of Philadelphia Gas Works to Establish a Cash
Receipts Reconciliation Clause, Docket No. P-00042090

DOCUMENT

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Answer to the *Defacto* Motion to Strike of the Office of Consumer Advocate or, In the Alternative, Motion to Reopen the Record, with regard to the above referenced matter. A copy has been served on the parties listed on the attached Certificate of Service.

Very truly yours,


Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jls

Enclosure

cc: Terrance J. Fitzpatrick, Chairman w/enc.
Robert K. Bloom, Vice-Chairman w/enc.
Glen R. Thomas, Commissioner w/enc.
Kim Pizzingrilli, Commissioner w/enc.
Wendell F. Holland, Commissioner
Hon. Charles H. Rainey, Jr. w/enc
Robert Young, Esq., Law Bureau
Office of Special Assistants w/enc.
Attached Certificate of Service w/enc.

52

DSH:45349.1/PHI211-217982

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WolfBlock Government Relations: Harrisburg, PA and Washington, DC

Wolf, Block, Schorr and Solis-Cohen LLP, a Pennsylvania Limited Liability Partnership

The OCA's motion is fundamentally flawed for two reasons. First, the motion fails to recognize PGW's right to present new evidence and arguments, as well as changed circumstances, justifying its Petition. Indeed, the Commission's standard for reconsideration demands that the Company do just that.¹ Second, the OCA's motion elevates form far above substance, advocating, in essence, that the Commission procedurally fiddle while Rome burns. The new facts, arising after the hearings and July 8 Order, compellingly demonstrate that PGW's financial condition has become even worse (and continues to worsen),² and that its likelihood of being downgraded to junk bond status has arguably increased, in the intervening time period. In fact, as recently as August 3, Standard & Poor's has again publicly assessed PGW's negative outlook, strained cash and liquidity position, and its potential for further downgrade absent material improvement in collections and cash receipts beyond the expected 90-92% levels.³ Suggesting that the Commission strike and ignore these new facts due to an alleged procedural nicety is unreasonable and unjust.

¹ *Slatcoff v. GTE North, Inc.*, 1995 Pa. PUC LEXIS 127, **8-9 (quoting *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 559 (1982)) ("Petition for Reconsideration is properly the Commission where it pleads newly discovered evidence ... or a change in circumstances").

² PGW's financial situation has become even more dire. At the time of its Petition for Reconsideration, PGW anticipated being able to insure \$25-\$50 million of its \$125 million bond issuance (already reduced by \$25 million due to the insurance difficulties). Petition at ¶¶ 11-12. PGW has now learned that no insurers are willing to underwrite any of its planned bond issuance due to its poor financial condition. This new fact means that, if the Company proceeds with a reduced \$100 million bond issuance, it will face a new total of \$50 million in additional interest costs over the life of the bonds. *All of those costs will fall on customers.*

³ Standard & Poor's *Ratings Direct*, PGW Summary (August 3, 2004), attached hereto as Appendix A. See www.ratingsdirect.com/Apps/BD/controller/Article?id=388388&tvoe=&outputTvp.

Alternatively, if such action is deemed necessary by the Commission, PGW moves that the record in the above-captioned matter be reopened for the limited purpose of admitting Appendices A and B to PGW's Petition for Reconsideration. Finally, even if the Commission were to not consider the new data in relation to the CRRC issue, the new facts still strongly support the Company's alternative relief of dispensing with the ALJ's Recommended Decision on its proposed Chapter 56 Waiver Petition and certifying it for direct Commission action as soon as possible. Significantly, the OCA did not oppose PGW's request in this regard.⁴

In further answer to OCA's *de facto* motion and in support of its alternative Motion to Reopen, PGW avers as follows:

1. The OCA, in its Answer to PGW's Petition for Reconsideration, asks the Commission to discard or strike the new facts set forth in Appendices A and B to PGW's Petition. The new data, in the form of a Verified Statement by its Senior Vice President of Finance and a public bulletin by Standard & Poor's ("S&P"), included: an update to PGW's financial projections showing its end of year cash being as much as \$8 million worse than anticipated, or a negative \$6.5 million if the one-time gas storage deferral monies are excluded from the calculation;⁵ information concerning PGW's inability to insure its August 2004 bond issuance beyond \$25-\$50 million and, consequently, its need to reduce that issuance by at least

⁴ In addition, OSBA supports the alternative relief requested in the Petition.

⁵ The OCA's considerable discussion of the "normalization" of the gas storage deferral reflects its misunderstanding of the significance of the end of year cash balance and its persistence in attempting to treat PGW as an investor owned, as opposed to cash flow regulated, company. The end of the year cash balance is significant for PGW, as it is not for other jurisdictional companies, because it indicates the cash available to pay obligations, including a major debt service payment, before winter bills are paid. When the cash balance is as low as it has been, it indicates that PGW may not have the ability to meet its obligations with a potential cascading impact on ability to purchase natural gas and to access capital markets.

\$25 million; and a public statement by S&P explaining that PGW's outlook had grown even more negative, as the Commission's CRRC rejection suggested "the potential for a less supportive relationship [with the PUC] going forward,"⁶ and that a downgrade to junk status remained a serious threat.

2. None of the data contained in the appendices existed at the time of the May 2004 CRRC hearings or the closing of the record in this proceeding (to the extent it ever was formally closed given the Commission's incorporation of the matter into an overarching and ongoing investigation and its certification of the issue for direct action). With the exception of the facts regarding the inability to obtain sufficient bond insurance (which were testified to in the July 6 hearing in the Commission's investigation/Chapter 56 waiver proceeding and therefore are not extra-record), all of the new data arose after the Commission's decision on the CRRC.

3. Nonetheless, the OCA attacks these new facts and changed circumstances and asks that the Commission not consider them in rendering its decision on reconsideration. The OCA makes this argument despite acknowledging that new facts or arguments or changed circumstances are a prerequisite for reconsideration.⁷ Moreover, the OCA contends that – somehow – the Company should have presented this data from July in proceedings held in May.⁸ The OCA's request is flawed and must be denied.

⁶ Petition at Appendix B.

⁷ OCA Answer at 3-4. Paradoxically, the OCA opposes PGW's Petition because it allegedly fails to raise new facts or arguments warranting relief, while at the same time it objects to, and asks the Commission to strike, the Company's evidence of the new and changed facts proffered in the appendices. The OCA's contradiction exposes the flaws in its motion, and the Commission should reject the same.

⁸ OCA Answer at 7. Amazingly, the OCA criticizes PGW for not presenting the S&P Bulletin – a statement issued on July 9 – during the May CRRC hearings or as a late-filed exhibit. *Id.* Given that the hearings took place roughly two months before the document

4. Nothing in the Commission's standard for reconsideration requires that such requests be based upon record evidence. The standard is set forth in the Company's Petition:

A Petition for Reconsideration, under the provisions of 66 Pa.C.S. 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where **it pleads** newly discovered evidence, alleges errors of law, or a change in circumstances.⁹

The Commonwealth Court has similarly described the Commission's standard for approaching reconsideration: "[I]n deciding whether to deny reconsideration, the Commission considers whether the petitioner has presented new evidence, changed circumstances, or previously unconsidered law."¹⁰

5. As indicated, the Commission expressly requires parties requesting reconsideration to "plead" new evidence and changed circumstances. PGW did exactly that by pleading the facts in Appendices A and B. Moreover, it is axiomatic that new evidence and changed circumstances will include facts and evidence not in the record at the time the Commission made its initial decision. Otherwise, such data could never be new, nor could the circumstances be changed, and it would be nearly impossible for a party to show the requisites

existed and that the CRRC Order was also entered before its release, the OCA's suggestion truly would have been an incredible feat!

⁹ *Slatcoff*, 1995 Pa. PUC LEXIS 127, **8-9 (quoting *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553, 559 (1982)) (emphasis added); *Pa. PUC v. Jackson Sewer Corp.*, 2001 Pa. PUC LEXIS 44, *6 (same).

¹⁰ *J.A.M. Cab Company, Inc., v. Pa. PUC*, 572 A.2d 1317, 1318 (Pa. Cmwlth. 1990) (emphasis added).

demanded by the standard.¹¹ Thus, PGW has a right and duty under this standard to present the new evidence and changed circumstances justifying reconsideration, which it properly did in Appendices A and B to its Petition.

6. Moreover, the Commission expressly states that, in seeking reconsideration, a party “may properly raise any matters designed to convince” the PUC to reconsider its order. The Commission did not say a party may raise “any matters previously placed on the record” that may convince it to change its mind. “Any matters” must logically include non-record data given the presumption that the Commission would have already considered matters contained in the record when rendering the decision under reconsideration.

7. Ultimately, all of this procedural jousting misses the mark. The substance of the new data cannot be disputed. S&P in fact made the public statements and continued threats of a downgrade contained in its bulletin. The bond insurers in fact refused to insure at least two-thirds of the proposed bond issuance, and the Company’s end of year cash position has in fact deteriorated further. Indeed, PGW’s financial condition has worsened even since its Petition for Reconsideration. On August 3, 2004, S&P again issued a public bulletin detailing PGW’s negative outlook and potential for further downgrades. Significantly, the newest bulletin recognizes the anticipated collections rate for FY 2004 of 90-92%, but still repeats the demand for material improvement above and beyond that level in the near term.¹² Also, S&P notes that PGW’s cash-basis coverage of its fixed charges excluding the City payment dropped to 0.92x in

¹¹ Alternatively, the granting of a motion to reopen the record would be a prerequisite to filing a petition for reconsideration – a requirement that the Commission has never imposed.

¹² Appendix A hereto at 2.

2003, and is expected to remain at or below 1x.¹³ Additionally, there are now no bond insurers willing to insure any of its proposed \$125 million August issuance. Consequently, the Company will again be forced to lower the amount of the issuance, losing funds needed for important capital improvements, and the interest costs of the issuance will be even greater; some \$50 million over the life of the bonds. Such new factors cannot be deemed insignificant by any rational party, and have even justified extraordinary relief by this Commission on previous occasions.¹⁴

8. All of this new data goes to the heart of the fundamental presumption underlying the Commission's rejection of the CRRC: that the Company's financial condition was not so bad as to warrant the departures from the ratemaking principles and the policy sacrifices necessitated, in the PUC's judgment, by the CRRC. With this presumption no longer valid, the foundation of the CRRC denial is breached and the Commission should reconsider its decision. The OCA's suggestion that the Commission should ignore such significant new evidence due to some alleged procedural glitch is unreasonable and irresponsible.¹⁵

¹³ *Id.*

¹⁴ *Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002, Opinion and Order (April 12, 2002).

¹⁵ The OCA claims that the Commission's consideration of the S&P bulletin and very real threat to downgrade the Company to junk status in making its decision on the CRRC would somehow constitute a ceding of its regulatory responsibility to the rating agency. Answer at 7. This argument is clearly erroneous. Under the OCA's warped approach, giving weight to any evidence in rendering a decision is the same as allowing that evidence to "dictate" the relief awarded by the Commission and amounts to a cessation of the PUC's oversight role. This is nonsense, and no different than PGW attempting to assert that the Commission allowed those customers who threatened to stop paying their bills if the CRRC was approved to dictate the denial of the clause and assume the responsibility of regulating PGW and setting its rates.

9. Further, the OCA suggests that discovery and full hearings are required to consider this new evidence.¹⁶ However, such a requirement would seriously hamstring the Commission and prevent it from both assisting a persistently financially troubled utility when needed and easing such measures as the need subsides.

10. In the alternative, if the Commission determines that only record evidence can serve as a basis for reconsideration, then PGW moves that the Commission reopen the record in this matter to admit Mr. Bogdonavage's Verified Statement (Appendix A) and the S&P bulletin (Appendix B). Such relief is warranted given the material nature and compelling weight of this new evidence and the fact that, as newly arising evidence, PGW could not have introduced the data during the May 2004 CRRC hearings or otherwise. The Company's Petition for Reconsideration was also timely under Section 703(f)'s requirements for rehearing.¹⁷

11. Finally, the OCA's *de facto* motion to strike the appendices to PGW's Petition is only in relation to the Company's request for reconsideration of the CRRC denial. OCA does not oppose PGW's alternative request that the Commission expedite its decision on the Chapter 56 waivers, nor does it suggest that the materials in the appendices do not support such expedited action. Accordingly, the new evidence of PGW's pressing and – as indicated herein regarding the complete failure to obtain bond insurance – rapidly worsening financial condition lends strong support to the Commission certifying the Waiver Petition for direct action at the August 19, 2004 Public Meeting.

¹⁶ OCA Answer at 6-7.

¹⁷ 66 Pa. C.S. § 703(f). Nor is PGW's request dissimilar from the PUC-accepted practice of utilities updating future test year estimates for known actual changes after hearings or toward the end of a proceeding. *See, e.g., Pa. PUC v. Duquesne Light Company*, 59 Pa. PUC 67 (1985), 1985 Pa. PUC LEXIS 68, **6-11.

WHEREFORE, PGW respectfully requests that the Commission deny the OCA's request to discard Appendices A and B to its Petition for Reconsideration. In the alternative, the Company requests that the Commission reopen the record in this matter and admit the appendices into evidence.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Daniel Clearfield", is written over a horizontal line.

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Dated: August 4, 2004

EXHIBIT A

Research:**Summary: Philadelphia, PA; Utility, Gas**

Publication date: 03-Aug-2004

Credit Analyst: Jeanny Silva, New York (1) 212-438-1776; Aneesh Prabhu, New York (1) 212-438-1285

Credit Profile**AFFIRMED**

\$160.660 mil. Philadelphia gas wks rev bnds (1998 Gen Ordinance) ser A dtd 06/01/1998 due 07/01/1999-2014 2018 2026

AAA/BBB-(SPUR)

BBB-

\$355.825 mil. Philadelphia gas wks

\$103.550 mil. Philadelphia gas wks rev bnds (1998 Gen Ordinance) ser B dtd 06/01/1998 due 07/01/2014 2018 2028

AAA/BBB-(SPUR)

\$20.010 mil. Philadelphia gas wks rev bnds (Sub 1998 Gen Ordinance) ser C dtd 06/01/1998 due 07/01/1999-2014

AAA/BB+(SPUR)

\$61.960 mil. Philadelphia gas wks rev bnds 16th ser dtd 05/07/1999 due 07/01/2000-2009 2013-2015

AAA/BBB-(SPUR)

\$112.245 mil. Philadelphia gas wks rev bnds 2nd ser dtd 05/07/1999 due 07/01/2000-2029

AAA/BBB-(SPUR)

\$120.225 mil. Philadelphia gas works rev bnds (1998 Gen Ordinance) third ser dtd 06/01/2001 due 08/01/2003-2019 2021 2031

AAA/BBB-(SPUR)

\$186.705 mil. Philadelphia gas works rev bnds seventeenth series (1975 Gen Ordinance) due 07/01/2005-2022 2026

AAA/BBB-(SPUR)

\$125.000 mil. Philadelphia gasworks rev bnds fourth series (1998 Gen Ordinance) due 08/01/2004-2022 2032

AAA/BBB-(SPUR)

OUTLOOK:

NEGATIVE

Rationale

The ratings on Philadelphia Gas Works' (PGW) senior revenue bonds (BBB-/Negative) and subordinate revenue bonds (BB+/Negative) reflect the weak demographics of the utility's service area, below-average collection rates, high debt levels, thin margins, and a strained liquidity position. These weaknesses are partially offset by a lack of competitors and modest levels of support from the city of Philadelphia, Pa.

PGW is the nation's largest municipally owned gas utility and the only local gas distributor serving Philadelphia. The utility serves 498,000 customers and has about \$1 billion in total debt outstanding.

The utility's weak service territory and its low collection rates pressure its liquidity. Demographics in the service territory are weak with a declining population and below-average wealth levels. During fiscal 2003, collection rates at PGW fell to 87% of billed gas revenues from a historical average of 92%. Low collection rates reduce the efficacy of the utility's gas cost recovery mechanism and expose PGW to fuel price risk.

Management's efforts to address these low collection rates have included a recent campaign to notify 130,000 delinquent customers of service termination in the event payment arrangements are not made and increasing eligible customer participation in federal home energy assistance programs such as the U.S. Department of Health and Human Services' Low Income Home Energy Assistance Program. The initiatives appear to be having a moderate affect on collection rates. For the first eight months of fiscal

2004, collection rates were up by 4% as compared with the same period in fiscal year 2003. Despite this positive trend, Standard & Poor's does not anticipate PGW's collection rate to exceed 90%-92% for the year.

PGW's debt per customer is currently about \$2,000, which is high when compared with other municipal utilities. Moreover, the utility's debt is expected to increase. PGW does not currently fund any of its capital expenditures with internal funds. PGW's collection problems contribute to thin cash margins. During 2003, cash flow from operations plus certain nonoperating revenues over fixed charges declined to 0.92x from 1.23x in 2002. Going forward, Standard & Poor's projects that, because of its collection problems, PGW's cash-basis coverage of fixed charges (excluding its annual payment to the city) will remain at or below 1x. As such, the utility's liquidity position is likely to remain challenged.

Historically, PGW has depended on a variety of one-time financial transactions to meet coverage of fixed charges, which, until recently, included a mandatory \$18 million payment to the city of Philadelphia. Other one-time financial transactions have included obtaining a \$45 million loan from the city and monetizing guaranteed investment contracts connected with a portion of PGW's sinking fund reserves.

PGW's competitive pressures are quite limited, which reduces the gas utility's business risk. Although PGW's customers have had retail choice since September 2003, the absence of alternate providers has effectively secured the utility's position as a regulated monopoly in Philadelphia. The utility's relationship to the City of Philadelphia also helps to reduce financial risk. Standard & Poor's assumes that the city will provide modest levels of operational support to PGW going forward. This support includes a suspension of PGW's annual payment to the city for the next five years and a deferral of PGW's \$45 million city loan-related bullet maturity until 2008.

Liquidity.

As of June 2004, PGW's unrestricted cash reserves were \$13.3 million, representing less than 10 days cash. Cash flow from operations is generally insufficient to cover the utility's fixed charges in high gas price years. PGW's liquidity position is challenged but currently adequate. Annual transfer-payment forgiveness from the City of Philadelphia, in the amount of \$18 million per year, has helped improve PGW's immediate liquidity position. Alternative sources of liquidity include an \$80 million commercial paper program, temporary access to capital improvement program funds, and the ability to enter into gas storage deferral contracts. PGW's commercial paper program, which is backed by a letter of credit from JP Morgan Chase Bank, is often fully drawn throughout the year. Currently, the utility has about \$20 million in commercial paper outstanding. This amount is expected to increase to nearly \$50 million by August 2004.

To meet its ongoing liquidity needs, PGW also regularly draws on funds from its capital improvement program. Timely access to the capital markets to fund this program is central to PGW's ability to maintain adequate liquidity. Although gas storage deferral contracts also add to PGW's liquidity by delaying cash outlays in liquidity-tight summer months, Standard & Poor's believes that these contracts increase PGW's cost structure, which, because of poor collection, ultimately reduce the utility's cash margins.

Outlook

The outlook on PGW is negative. Ratings will be lowered if PGW's financial profile weakens over the near term and collection rates and cash margins do not improve materially. Furthermore, any of the following events could have negative ratings implications: if access to short-term borrowing is restricted, suppliers place additional liquidity demands on PGW, or specified support from the city is not forthcoming. The current ratings are predicated on the city providing annual payment forgiveness to PGW for at least the next four year, and on the city allowing PGW to defer its \$45 million loan payable until 2008. In the absence of such support, the ratings will be lowered.

CERTIFICATE OF SERVICE

I hereby certify that I have on August 4, 2004, served a true copy of the foregoing document of Philadelphia Gas Works' upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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Dated: August 4, 2004