

CAPTION SHEET

MANAGEMENT SYSTEM

- 1. REPORT DATE: 00/00/00
- 2. BUREAU: OSA
- 3. SECTION(S):
- 5. APPROVED BY: DIRECTOR: SUPERVISOR:
- 6. PERSON IN CHARGE:
- 8. DOCKET NO: P-00032061
- 4. PUBLIC MEETING DATE: 00/00/00
- 7. DATE FILED: 10/02/03
- 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT:

RESPONDENT/APPLICANT: PHILADELPHIA GAS WORKS

COMP/APP .COUNTY: UTILITY CODE: 125042

ALLEGATION OR SUBJECT

PETITION OF PHILADELPHIA GAS WORKS. ON MARCH 31, 2001, THE COMMISSION ENTERED AN OPINION AND ORDER WHICH APPROVED PGW'S RESTRUCTURING PLAN, INCLUDING TREATMENT OF PGW'S SENIOR CITIZEN DISCOUNT PROGRAM. ON JULY 7, 2003, PGW FILED A PETITION FOR RESCISSION AND AMENDMENT WHICH SEEKS TO MODIFY THE SCD PROGRAM FOR PARTICIPANTS ENROLLING IN THAT PROGRAM ON AND AFTER SEPTEMBER 1, 2003.

DOCUMENT FOLDER

OCT 02 2003



McNees Wallace & Nurick LLC
attorneys at law

ORIGINAL

CHARIS MINCAVAGE
DIRECT DIAL: (717) 237-5437
E-MAIL ADDRESS: CMINCAVAGE@MWN.COM

October 20, 2003

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

VIA HAND DELIVERY

**Re: Petition for Rescission and Amendment of Philadelphia Gas Works;
Docket No. P-00032061**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of a Petition to Intervene of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By *Charis Mincavage*
Charis Mincavage

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Enclosures

CM/lhe

- c: Chief Administrative Law Judge Robert Christianson (via hand delivery)
- Judy Weaver, Scheduling Officer (hand delivery)
- Certificate of Service

DOCUMENT
FOLDER

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SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION FOR RESCISSION :
AND AMENDMENT OF : DOCKET NO. P-00032061
PHILADELPHIA GAS WORKS :

PETITION TO INTERVENE

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the provisions of 52 Pa. Code §§ 5.71-5.74, the Philadelphia Industrial and Commercial Gas Users Group hereby files this Petition to Intervene in the above-captioned proceeding. In support thereof, PICGUG states as follows.

1. Petitioner is the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), which for purposes of this proceeding include:

- | | |
|--|--|
| Apartment Association of Greater Philadelphia | Smurfit Stone Container Corporation |
| The Building Owners' and Managers' Association of Philadelphia | Temple University |
| Newman & Company, Inc. | Thomas Jefferson University/Jefferson Health Systems |

The composition of PICGUG is also attached hereto as Appendix A. PICGUG reserves the right to modify Appendix A throughout the course of this proceeding, as necessary.

2. The names and address of Petitioners' attorneys are:

David M. Kleppinger
Charis Mincavage
McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300

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3. On March 31, 2003, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered an Order modifying Philadelphia Gas Works ("PGW" or "Company") Restructuring Filing. As part of PGW's Restructuring Filing, the Company proposed to close its existing Senior Citizen Discount ("SCD") Program to new participants after September 1, 2003, and the PUC's March 31 Order approved this proposal. On July 7, 2003, PGW filed a Petition for Rescission and Amendment, which seeks to modify the SCD Program to allow continuation of the Company's SCD on a means-tested basis. On October 9, 2003, the Commission entered an Order referring PGW's Petition to the Office of Administrative Law Judge for purposes of an expedited hearing and the issuance of a Recommended Decision.

4. PICGUG is an ad hoc group of large volume customers receiving service from PGW under various rate schedules. PICGUG members use substantial volumes of natural gas in their businesses, and natural gas costs comprise a significant element of their respective costs of operation. Any modification to or extension of PGW's SCD may detrimentally impact PICGUG members' rates and services. As a result, PICGUG member interests may be impacted by any PUC determination regarding PGW's SCD. Accordingly, PICGUG has a significant interest in this proceeding that is not represented by any other party of record. See 52 Pa. Code § 5.72.

WHEREFORE, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Commission grant this Petition to Intervene and provide PICGUG with full party status.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Charis Mincavage
David M. Kleppinger
Charis Mincavage
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717)232-8000
Fax: (717)237-5300

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated: October 20, 2003

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Johnnie Simms, Esq.
Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

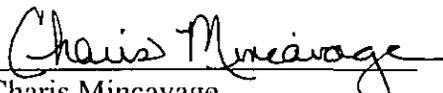
Tanya McCloskey, Esq.
Stephen Keene, Esq.
Office of Consumer Advocate
555 Walnut Street, Forum Place - 5th Fl.
Harrisburg, PA 17120

Philip A. Bertocci, Esq.
Community Legal Services, Inc.
1424 Chestnut Street, 3rd Floor
Philadelphia, PA 19102

Steven C. Gray, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Daniel Clearfield, Esq.
Mark S. Stewart, Esq.
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street
Suite 300
Harrisburg, PA 17101

Greg Stunder, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue.
Philadelphia, PA 19122


Charis Mincavage

Dated this 20th day of October, 2003, in Harrisburg, Pennsylvania.

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SECRETARY'S BUREAU



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

Carol F. Pennington
Acting Small Business Advocate

November 12, 2003

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

SECRETARY'S BUREAU

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Fax and First Class Mail

Hon. Allison K. Turner
Administrative Law Judge
Pa. Public Utility Commission
1302 Philadelphia State Office Bldg.
Broad and Spring Garden Streets
Philadelphia, PA 19130

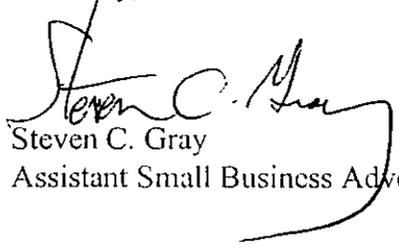
DOCUMENT
FOLDER

**Re: Pennsylvania Public Utility Commission v.
Philadelphia Gas Works
Docket No. M-00021612 and P-00032061**

Dear Judge Turner:

Enclosed please find the Prehearing Memorandum on behalf of the Office of Small Business Advocate. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

Enclosures

cc: James J. McNulty, Secretary
(w/enclosures)

Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
	:	
v.	:	DOCKET NO. M-00021612
	:	P-00032061
PHILADELPHIA GAS WORKS	:	

DOCUMENT
FOLDER

OFFICE OF SMALL BUSINESS ADVOCATE
PREHEARING MEMORANDUM

I. INTRODUCTION

The Office of Small Business Advocate (OSBA) is authorized to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 - 399.50 ("the Act"). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this proceeding. Representing the OSBA in this matter is Assistant Small Business Advocate Steven C. Gray. Please address all correspondence as follows:

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
E-mail: sgray@state.pa.us

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PA. P.U.C.
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JAN 07 2004

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II. FILING BACKGROUND

On March 31, 2003, the Commission issued an order approving Philadelphia Gas Works ("PGW") restructuring plan, including treatment of PGW's Senior Citizen Discount Program. On July 7, 2003, PGW filed a Petition for Rescission and Amendment of the Commission's March 31, 2003 Order. On October 9, 2003, the Commission issued an Order treating the Petition for Rescission and Amendment of Final Order as a Petition for Relief and referred it to the Office of Administrative Law Judge for hearing and preparation of a Recommended Decision on an expedited basis.

III. IDENTIFICATION OF WITNESSES AND TENTATIVE ISSUES

Assisting in the development and presentation of the OSBA's case in this proceeding will be:

Mr. Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
(617) 354-0074
(617) 354-0463 - Fax
E-mail: rdk@indecon.com

An initial review of PGW's Filing has identified the following issues that the OSBA will pursue:

1. The proper standard for the means-testing of PGW's senior citizens;
2. The costs of PGW's proposed program as compared to the senior citizen program that is currently in place; and
3. How the proposed means-testing program operates and overlaps with PGW's other low income programs.

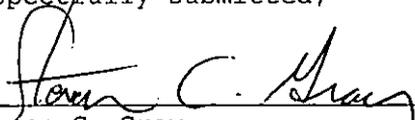
The OSBA will participate in the case to assure that the interests of small business customers of PGW are adequately represented and protected. As appropriate and necessary, the OSBA will investigate and analyze the claims and proposals of the Company and other parties through the cross-examination of witnesses appearing for those parties and through briefing.

The OSBA will particularly focus on any issue where the impact on the interests of PGW's small business consumers would be unjustifiably different than or disproportionate to the impact on another class of customers, or otherwise lacking in reasonableness or basic fairness. The OSBA reserves the right to pursue additional issues as they arise throughout the proceeding.

V. HEARING AND BRIEFING SCHEDULE

The OSBA will cooperate with the other parties to develop a procedural schedule.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: November 12, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :
 :
v. : DOCKET NO. M-00021612
 : P-00032061
PHILADELPHIA GAS WORKS :

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Prehearing Memorandum on behalf of the Office of Small Business Advocate, by FAX and first class mail upon the persons addressed below:

Hon. Allison K. Turner
Administrative Law Judge
Pa. Public Utility Commission
1302 Philadelphia State Office Bldg.
Broad and Spring Garden Streets
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(215) 560-3133 - Fax

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James Mullins, Esquire
Stephen Keene, Esquire
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Richard A. Kanaskie, Esquire
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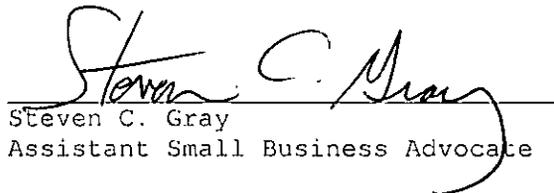
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Steven C. Gray
Assistant Small Business Advocate

Date: November 12, 2003

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Direct Fax: (717) 237-7161
E-mail: dclearfield@wolfblock.com

December 3, 2003

VIA E-MAIL & FIRST CLASS MAIL

DOCUMENT
FOLDER
DOCUMENT
FOLDER

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

Re: Philadelphia Gas Works v. PA Public Utility Commission,
Docket No. P-00032061

Dear Stephen:

On behalf of Philadelphia Gas Works, enclosed please find its responses to Office of Small Business Advocate's Interrogatories Nos. 1 - 20.

Sincerely,

Daniel Clearfield
Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosure

cc: Parties of Record w/enc.

DSH:39021.1/PHI211-156208

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

Charis Mincavage, Esquire
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E-mail: josimms@state.pa.us

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E-mail: TmcCloskey@paoca.org
Skeene@paoca.org



Daniel Clearfield, Esq.

Dated: December 3, 2003



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OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

December 4, 2003

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17102

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JAN 08 2004

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Re: Philadelphia Gas Works Petition for Rescission and Amendment
Docket Nos. M-00021612 and P-00032061

Dear Secretary McNulty:

On December 1, 2003, the Consumer's Education and Protective Association ("CEPA"), the Association of Community Organizations for Reform Now ("ACORN"), the Tenants' Action Group ("TAG") and Action Alliance of Senior Citizens of Greater Philadelphia (collectively "CEPA *et al.*") filed the Petition of CEPA *et al.* to Allow the Philadelphia Gas Works to Enroll Additional Income Eligible Senior Citizens in the Senior Citizen Discount Program (hereinafter "CEPA Petition"). In the CEPA Petition, CEPA *et al.* requests that the Commission permit the Philadelphia Gas Works ("PGW") to implement its proposed means-tested Senior Citizen Discount program immediately on an interim basis and to revise the procedural schedule in the above-referenced matter to allow the parties more time to litigate this matter.

As the OCA noted in its Answer to PGW's Petition for Rescission and Amendment docketed at the above-referenced dockets, the OCA generally supports the proposed means-tested Senior Citizen Discount. Please be advised that the OCA also supports the relief requested in the CEPA Petition.

Sincerely,

Stephen J. Keene
Senior Assistant Consumer Advocate

cc: Administrative Law Judge Allison K. Turner
Certificate of Service

*77158

49

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works
Docket No. M-00021612

PGW Petition for Rescission and Amendment
Docket No. P-00032061

I hereby certify that I have this day served a true copy of the foregoing letter upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of December, 2003.

SERVICE BY E-MAIL & INTEROFFICE MAIL

Johnnie E. Simms, Esq.
Richard Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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McNees, Wallace & Nurick
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Harrisburg, PA 17108-1166

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Office of Small Business Advocate
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Philadelphia Gas Works
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Richard A. Baudino
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Roswell, GA 30075

Anthony R. Francioso
Francioso & Francioso
2585 Nottingham Way
Hamilton, NJ 08619

Amy Hamilton
Exelon Business Services Co.
2301 Market Street S23-1
PO Box 8699
Philadelphia, PA 19101-8699

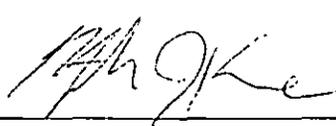
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Philadelphia, PA 19102-2505

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Houston, TX 77251-1642

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Boston, MA 02135

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1525 Locust St., 13th Fl.
Philadelphia, PA 19102


Tanya J. McCloskey
Stephen J. Keene
Senior Assistant Consumer Advocates
Lori A. Herman
Christy M. Appleby
Assistant Consumer Advocates

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SECRETARY'S BUREAU

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December 4, 2003

VIA E-MAIL & FIRST CLASS MAIL

DOCUMENT
FOLDER

Johnnie Simms, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Johnnie:

On behalf of Philadelphia Gas Works, enclosed please find its responses to Office of Trial Staff's Interrogatories Set 1, Nos. 1 - 7. The attachment to No. 4 will be sent only via e-mail to all other parties.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosure

cc: Parties of Record w/enc.

DSH:39046.1/PHI211-156208

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

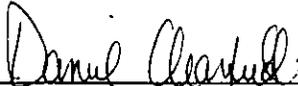
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E-mail: TmcCloskey@paoca.org
Skeene@paoca.org



Daniel Clearfield, Esq.

Dated: December 4, 2003

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E-mail: dclearfield@wolfblock.com

December 4, 2003

VIA E-MAIL & FIRST CLASS MAIL

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

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Stephen:

On behalf of Philadelphia Gas Works, enclosed please find its responses to Office of Small Business Advocate's Interrogatories Nos. 27 & 34.

Sincerely,

Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosure

cc: Parties of Record w/enc.

DSH:39021.2/PHI211-156208

CERTIFICATE OF SERVICE

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VIA E-MAIL & FIRST CLASS MAIL

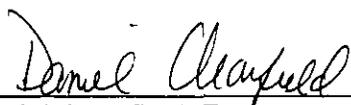
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E-mail: Cmincavage@mwn.com

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
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Daniel Clearfield, Esq.

Dated: December 4, 2003

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2003 DEC -8 AM 1:04

PA P.U.C.
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December 5, 2003

VIA E-MAIL & FIRST CLASS MAIL

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

DOCUMENT
FOLDER

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Stephen:

On behalf of Philadelphia Gas Works, enclosed please find its Supplemental Response to Office of Small Business Advocate's Interrogatories No. 27.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosure

cc: Parties of Record w/enc.

DSH:39021.J/PHI211-156208

Cherry Hill, NJ ■ Harrisburg, PA ■ New York, NY ■ Norristown, PA ■ Philadelphia, PA ■ Roseland, NJ ■ Wilmington, DE

WolfBlock Government Relations: Harrisburg, PA and Washington, DC

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

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I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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Daniel Clearfield, Esq.

Dated: December 5, 2003

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December 8, 2003

VIA E-MAIL & FIRST CLASS MAIL

DOCUMENT

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

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Stephen:

On behalf of Philadelphia Gas Works, enclosed please find its Responses to Office of Small Business Advocate's Interrogatories No. 21, 22, 23, 25 & 35.

Sincerely,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosure

cc: Parties of Record w/enc.
James McNulty, Secretary w/cert. of service only

DSH:39021.4/PH1211-156208

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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Daniel Clearfield, Esq.

Dated: December 8, 2003

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DOCUMENT
FOLDER

December 16, 2003

VIA E-MAIL & FIRST CLASS MAIL

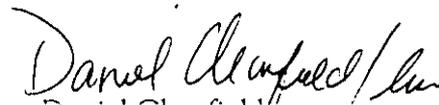
Stephen Gray
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Stephen:

On behalf of Philadelphia Gas Works, enclosed please find its Responses to Office of Small Business Advocate's Interrogatories Nos. 24 & 28.

Sincerely,


Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

Enclosure

cc: Parties of Record w/enc.
James McNulty, Secretary w/cert. of service only

DSH:39021.6/PH1211-156208

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I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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Daniel Clearfield, Esq.

Dated: December 16, 2003

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December 17, 2003

DOCKETED
FEB 11 2004

VIA HAND DELIVERY

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

DOCUMENT

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Secretary McNulty:

Due to a scheduling conflict, we have had to change the hearing date for the above.
The new hearing date is January 15th. Judge Turner has approved this revised hearing date.

Very truly yours,

Daniel Clearfield
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

cc: Parties of Record

RECEIVED
2003 DEC 17 PM 4: 03
SECRETARY'S BUREAU

DSH:39222.1/P111211-156208

09

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I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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Daniel Clearfield, Esq.

Dated: December 17, 2003

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December 17, 2003

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor,
400 North Street P.O. Box 3265
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DOCKETED
FEB 18 2004

RECEIVED
2003 DEC 17 AM 11:39
SECRETARY'S BUREAU

Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

DOCUMENT

Dear Secretary McNulty:

This is to confirm that Judge Turner has orally approved Philadelphia Gas Works' request to change the due date for surrebuttal testimony from January 2 to January 6 and the hearing date from January 5 to January 13. This change would not result in any other changes to the schedule set forth in Judge Turner's Prehearing Order No. 2. I am authorized to state that this change is acceptable to all active parties.

Very truly yours,

Daniel Clearfield
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

cc: Parties of Record

RJP

DSH:39222.1/PHI211-156208

CERTIFICATE OF SERVICE

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Daniel Clearfield, Esq.

Dated: December 17, 2003

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December 18, 2003

VIA HAND DELIVERY

James McNulty, Secretary
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FEB 12 2004

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2003 DEC 18 PM 3:19
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Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

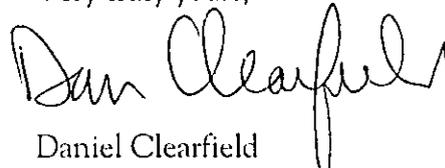
LETTER REVISING HEARING DATE

DOCUMENT

Dear Secretary McNulty:

Due to scheduling conflicts, the originally revised hearing date -- **January 13th** -- is being reinstated. Judge Turner has approved this revised hearing date. Kindly disregard any prior notices to the contrary.

Very truly yours,



Daniel Clearfield
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

cc: Parties of Record

DSH:39222.1/PHI211-156208

132

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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Daniel Clearfield, Esq.

Dated: December 18, 2003



CITY OF PHILADELPHIA

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LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1595

Hon. Nelson A. Diaz
City Solicitor

VIA OVERNIGHT MAIL
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Leslie B. Hope
Senior Attorney
Phone: (215) 683-5187
Fax: (215) 683-5175

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December 22, 2003

DEC 22 2003

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

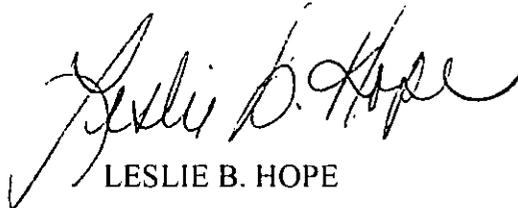
Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

Dear Secretary McNulty:

I have enclosed two copies of the letter of the City Solicitor of Philadelphia on behalf of the City Council of the City of Philadelphia for filing on this date. The enclosed has been served on the parties of record on this date. Please contact me with any comments or questions regarding the enclosed. Thank you for your time and attention.

Very truly yours,

DOCUMENT


LESLIE B. HOPE

Cc: All Parties of Record (w/encl)
Hon. Allison Turner (w/encl)
Hon. Anna C. Verna (w/encl)

Enclosures



CITY OF PHILADELPHIA

HON. NELSON A. DIAZ
CITY SOLICITOR

(215) 683-5003 (Tel)
(215) 683-5068 (Fax)

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December 19, 2003

DEC 22 2003

Hon. Allison Turner
Administrative Law Judge
PA Public Utility Commission
1400 W. Spring Garden Street
Philadelphia, PA 19130

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Petition for Rescission and Amendment of Philadelphia Gas Works,
Docket No. P-00032061 ("Petition")

DOCUMENT

Dear Judge Turner:

In your Order dated November 25, 2003, you invited the City Council of the City of Philadelphia ("City Council") to appear, through its legal counsel, in the above referenced matter. As duly authorized legal counsel to City Council, and in lieu of a separate appearance, the Law Department files this letter on City Council's behalf fully supporting and endorsing the Petition of the Philadelphia Gas Works ("PGW") in this matter.

On June 5, 2003, City Council passed Resolution No. 030451 enclosed herewith and expressly incorporated herein. Resolution No. 030451 supports the City's Petition before the Public Utility Commission for a means-based senior citizen discount program that will offer discounted rates to lower income seniors age 65 or older, who apply for the program on or after September 1, 2003.

On July 7, 2003, in accordance with the enclosed Resolution and the approval of the Mayor of the City of Philadelphia, PGW filed the instant Petition requesting the Commission's approval of the means-based senior citizen discount program supported by City Council. As set forth on page 3 of the Petition, the City Administration and City Council reached a collective determination that a means-based discount represented an important and appropriate social benefit that should be available to Philadelphia seniors. See Petition at 3.

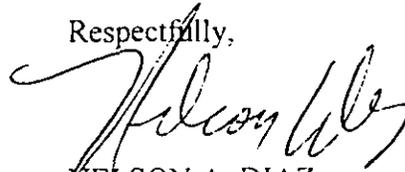
DOCKETED

MAR 10 2004

During legislative hearings on this matter, City Council found that eighty percent 80% of Philadelphia's senior households are PGW customers; the vast majority of these seniors have difficulty affording the basic necessities of life; nearly 30% are at or below 150% of the federal poverty level; 97,000 have disabilities which place them at greater risk of harm from insufficient heat; and current statistics indicate the discount that preceded and survives restructuring is perceived as needs-based by Philadelphia seniors. *See Philadelphia City Council Bill Nos. 030123 and 030138 (which became law April 24, 2003) and Petition at 5.* The proposed discount will continue this benefit in accordance with the expectations of PGW's stakeholders.

As elected officials representing PGW stakeholders, City Council believes the requested program is a reasonable accommodation of the interests of the citizen owners of PGW. Accordingly, as set forth in the attached Resolution, City Council supports the instant Petition filed by PGW and expressly requests that the PUC "approve a senior citizen discount program, under which all senior households with incomes at or below 250% of the federal poverty level would qualify for the discount (in addition to those households receiving the discount on a non-means-tested basis as of September 1, 2003, who would continue to receive the discount)". *See Enclosure.* Thank you for your time and attention.

Respectfully,



NELSON A. DIAZ
City Solicitor

cc: Hon. Anna C. Verna

Enclosure



RESOLUTION NO. 030451

Introduced June 5, 2003

Councilmember Blackwell for Councilmember Council President Verna

RESOLUTION

Memorializing the intent of the Council of the City of Philadelphia not to seek enforcement of Bill Nos. 030123 and 030138 (relating to the PGW senior citizen discount) if the City, by July 7, 2003, requests the Pennsylvania Public Utility Commission ("PUC") to approve a senior citizen discount program under which all senior households with incomes at or below 250% of the federal poverty level would qualify for the discount, and if the City undertakes a comprehensive outreach program to notify potentially eligible households of the discount and the procedure that needs to be followed to receive the discount; and authorizing the President of City Council to retain counsel to institute appropriate litigation before the PUC and/or any Court of appropriate jurisdiction to implement and enforce Bill Nos. 030123 and 030138 if the City fails to file such request by July 7, 2003.

WHEREAS, On April 10, 2003, City Council passed Bill Nos. 030123 and 030138, reaffirming its commitment to continue the existing PGW senior citizen discount, and requiring that whenever a proposed rate filing is made to the Public Utility Commission ("PUC") on behalf of PGW, such proposed rate filing must include a proposal to continue the discount afforded to senior citizens under the same terms that the senior citizen discount was last approved by the Philadelphia Gas Commission; and

WHEREAS, The Mayor returned Bill Nos. 030123 and 030138 to Council without his signature, allowing them to become law; and

WHEREAS, The Administration now proposes that by July 7, 2003, PGW will request the PUC to approve a senior citizen discount with a means test that is not as strict as the means test originally proposed by the Administration and submitted to the PUC for approval; in particular, under this proposal, any senior household with an income at or below 250% of the federal poverty level would qualify for the senior discount; and

City of Philadelphia

RESOLUTION NO. 030451 continued

WHEREAS, Council believes that the important interests Council sought to protect by its enactment of Bill Nos. 030123 and 030138 will be served in large measure by the Administration's proposal; in particular, approximately three-fourths of all senior households would be eligible for the discount; and

WHEREAS, The sense of Council is that this proposal is preferable to the cost, delay and uncertainty that would result if Council were required to commence litigation to enforce Bill Nos. 030123 and 030138; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the Council of the City of Philadelphia hereby memorializes its intent not to seek enforcement of Bill Nos. 030123 and 030138 (and to amend or repeal those ordinances) if the City, by July 7, 2003, requests the PUC to approve a senior citizen discount program under which all senior households with incomes at or below 250% of the federal poverty level would qualify for the discount (in addition to those households receiving the discount on a non-means-tested basis as of September 1, 2003, who would continue to receive the discount), and if the City, assuming the PUC approves such proposal, undertakes a comprehensive outreach program to notify potentially eligible households of the discount and the procedure that needs to be followed to receive the discount.

FURTHER RESOLVED, That if the City fails to file such a request with the PUC by July 7, 2003, the Council hereby authorizes the President of City Council to retain counsel to institute appropriate litigation before the PUC and/or any Court of appropriate jurisdiction to implement and enforce Bill Nos. 030123 and 030138, and to ensure that the Senior Citizen Discount as it now exists continues to be made available to all residents of Philadelphia who reach age sixty-five.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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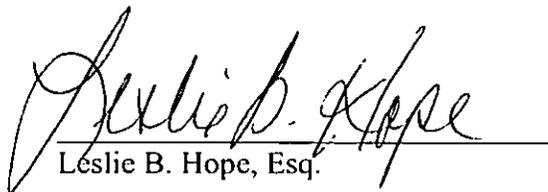
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Dated: December 22, 2003


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ORIGINAL

January 19, 2004

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor,
400 North Street P.O. Box 3265
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RECEIVED
2004 JAN 20 AM 10:14
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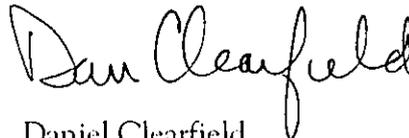
Re: Petition for Rescission and Amendment of Philadelphia
Gas Works, Docket No. P-00032061

DOCUMENT

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing please find an original and three copies of its Public Statement in Support of Stipulation and Settlement with regard to the above referenced matter. A copy has been served on parties of record.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosure

cc: Hon. Allison K. Turner w/enc.
Parties of Record w/enc.

DSH:39489.1/PHI211-156208

CERTIFICATE OF SERVICE

ORIGINAL

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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DOCUMENT


Daniel Clearfield, Esq.

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Dated: January 19, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission :
v. : Docket M-00021612
Philadelphia Gas Works :
Petition for Rescission and Amendment : Docket P-00032061
of Philadelphia Gas Works :

**PUBLIC INTEREST STATEMENT OF PHILADELPHIA GAS WORKS IN SUPPORT
OF STIPULATION AND SETTLEMENT**

Philadelphia Gas Works ("PGW"), hereby submits this Statement presenting the reasons why it believes that the Stipulation and Settlement entered into in the above-captioned proceeding among PGW, the Office of Small Business Advocate ("OSBA") and CEPA, et al.,¹ and supported by the Pennsylvania Office of Consumer Advocate ("OCA"),² is in the public interest. The Stipulation resolves issues concerning PGW's Petition to implement a means-tested Senior Citizen Discount ("SCD") for all new SCD applicants, beginning September 1, 2003.

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Background

The Stipulation, entered on January 8, 2004, and filed the next day, comprehensively resolves all issues raised by the parties participating in the proceeding concerning PGW's proposed means tested Senior Citizen Discount proposal. As set forth in PGW's Petition for

¹ Consumers Education and Protective Association, Association of Community Organizations for Reform Now, Tenants' Action Group and Action Alliance of Senior Citizens of Greater Philadelphia (collectively "CEPA, et al.")

² The other active party, the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") has indicated that it does not oppose the Stipulation and Settlement.

Rescission and Amendment of Final Order, submitted on July 7, 2003, the Company is asking that the Commission amend its Order and approve a means-tested SCD pursuant to the PUC's authority under Section 2212(r)(1) of the Gas Choice Act. Under the Company's means-tested plan, a 20% SCD would be available for newly applying seniors³ 65 years of age or older, whose household income (regardless of family size) does not exceed 250% of the federal poverty level for a two person family (currently approximately \$30,300 per year).

The Stipulation and Settlement also responds to the PUC's October 9, 2003, Opinion and Order directing that PGW's Petition be referred to the Office of Administrative Law Judge ("ALJ") for the development of a record on an expedited basis. The Stipulation expressly stipulates into the record the prepared direct testimony of PGW and CEPA, et. al. which testimony, together with the additional testimony presented on the record during the hearing on January 13, 2004, fully support PGW's proposal as just, reasonable and in the public interest.

Reasons Why Stipulation is in the Public Interest

Several terms of the Stipulation enhance and add to the reasonableness of PGW's SCD proposal. The key provisions are as follows:

1. PGW has affirmed its intention to initiate an ongoing audit program to ensure that all SCD recipients who are receiving the Discount are eligible to do so. If the SCD is to be continued, it becomes especially important to ensure that it is being provided only to eligible customers.

2. PGW has agreed to conduct an evaluation of the efficacy of the means-tested SCD after the Company has approximately two years of experience with the new program. The agreed upon study will help to determine whether the SCD is effectively assisting senior customers to maintain their natural gas service.

³ For clarity, no change is being proposed in the SCD provided to existing customers, i.e., customers who entered the program before September 1, 2003.

3. PGW has agreed to cooperate with the OSBA in discussing and exploring shopping opportunities for small business customers in PGW's service territory. This effort could assist small commercial and industrial customers to mitigate the rate effects of the means tested SCD by finding lower priced natural gas supply services.⁴

4. PGW has affirmed that any customer who may be determined to be ineligible for the SCD will be given notice of his/her change in status and will be able to dispute that finding if he/she disagree with it. This ensures the fairness of any actions taken by PGW as a result of the audit process.

5. PGW affirmed that any LIHEAP cash grants which are received by an SCD customer and which are assigned to PGW shall be used as an offset to the SCD discounts that the Company is authorized to recover from remaining firm customers through its Universal Service Charge (USC). PGW witness Coltro projected that PGW may receive as much as \$45,000 annually in such grants, which will reduce the modest projected annual cost of the SCD from \$366,000 (approximately \$.72/year per customer and \$.63/year per residential heating customer)⁵ to around \$320,000 or around \$.63/yr. per customer and just \$.53/year for the average residential heating customer.⁶ This shows that the cost to remaining customers of continuing the SCD is likely to be extremely small.

⁴ While the record in this proceeding supports the conclusion that the SCD, by helping seniors maintain self-sufficiency and home ownership, provides benefits to the entire community, including commercial and industrial customers who contribute to paying the charge through the USC (See, Jan. 13, 2004 Hearing testimony of C. Coltro), this provision in the Stipulation provides an additional basis for concluding that the SCD is reasonable on an overall basis. Moreover, and as indicated below, the annual cost per customer of supplying this benefit is so low as to be immaterial.

⁵ \$366,000 divided by total firm sales (60 million Mcf) = \$.006/per Mcf, multiplied by average annual residential heating customer usage (102 Mcf) = \$.63/per year.

⁶ \$320,000 divided by total firm sales (60 million Mcf) = \$.005/per Mcf, multiplied by average annual residential heating customer usage (102 Mcf) = \$.53/yr.

6. The Stipulation affirmed that PGW will not, as a condition of being accepted into the SCD program, require customers to apply for or assign a LIHEAP cash grant to the Company. Any such assignment shall be voluntary on the part of the participant/applicant.

These various provisions clearly add to the justness and reasonableness of the proposed means tested SCD. In addition, the Stipulation is in the public interest because it permits expedited PUC consideration of the Company's petition and supporting record which will enable deserving seniors to benefit from the program as soon as possible.

WHEREFORE, Philadelphia Gas Works respectfully requests that: a) the Stipulation and Settlement be declared in the public interest; and b) that based upon this Stipulation and the record evidence presented in the proceeding, find that PGW's means tested SCD proposal is just, reasonable and in the public interest, permit the implementation of the means tested SCD as soon as possible.

Respectfully submitted,



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(717) 237-7173

Of Counsel:
Abby Pozefsky, Esq.
Gregory Stunder Esq.
Philadelphia Gas Works
800 West Montgomery Ave
Philadelphia, PA 19122

Dated: January 19, 2004



1424 Chestnut Street, Philadelphia, PA 19102-2505
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Web Address: www.clsphila.org

January 19, 2004

RECEIVED
JAN 21 2004
PUBLIC UTILITIES COMMISSION
SECTION 1001

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

Re: Philadelphia Gas Works Senior Citizen Discount
Docket Nos. M - 00021612; P - 00032061

DOCUMENT

Dear Secretary McNulty:

I represent the Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), the Tenants' Action Group (TAG) and Action Alliance of Senior Citizens of Greater Philadelphia, (collectively CEPA et al.) in the above-captioned matter.

Enclosed please find for filing an original and three (3) copies of the Statement of CEPA et al. in Support of Unopposed Stipulation and Settlement Regarding the Philadelphia Gas Works' Petition for Rescission and Amendment Seeking Approval of a Means -Tested Senior Citizen Discount Program in the above-captioned matter.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of this Statement of Support by First Class U.S. Mail.

Very truly yours,


PHILIP A. BERTOCCI

Attorney for CEPA et al.

cc: Certificate of Service w/enclosure
Administrative Law Judge Allison K. Turner (by fax) w/enclosure

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RECEIVED
JAN 10 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re: Petition for Rescission : Docket M – 00021612
and Amendment of : Docket P – 00032061
Philadelphia Gas Works :

Statement of CEPA et al. in Support of Unopposed Stipulation and Settlement
Regarding the Philadelphia Gas Works' Petition for Rescission and Amendment
Seeking Approval of a Means -Tested Senior Citizen Discount Program

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The Consumers Education and Protective Association (CEPA), the Association of Community Organizations for Reform Now (ACORN), Tenants' Action Group (TAG) and Action Alliance of Senior Citizens of Greater Philadelphia (hereinafter collectively "CEPA et al.") are signatory parties to the Stipulation and Settlement (hereinafter "Settlement") filed January 9, 2004. That Settlement provides for implementation of a means-tested Senior Citizen Discount (SCD) for senior citizen Philadelphia Gas Works (PGW) customers who had not previously enrolled in the program or who became eligible to apply for the discount after September 1, 2003. In the Settlement, the parties have resolved all issues raised by the Philadelphia Gas Works' Petition for Rescission and Amendment of Final Order (hereinafter "SCD Petition"), which was filed on July 7, 2003. As set forth below, and as explained in the testimony of Pedro Rodriguez, Executive Director of Action Alliance of Senior Citizens of Greater Philadelphia, CEPA et al.

submit that the modified SCD set forth in the Settlement is “just and reasonable” and should be approved by the Commission as in the public interest.

I. BACKGROUND

The Philadelphia Gas Works is the only municipally owned gas utility regulated by the Pennsylvania Public Utility Commission (PUC). PGW came under PUC jurisdiction with the passage of the Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201 *et seq.*, which required that as of July 1, 2000, jurisdiction over PGW’s rates and tariff would pass from the Philadelphia Gas Commission to the PUC. For thirty years, PGW has provided, on application, a 20% non-means tested Senior Citizen Discount to customers over 65 years of age. As the Commission ruled in its March 31, 2003 Final Order in PGW’s Restructuring Proceeding (M - 00021612), the Gas Choice Act grandfathered that historical Senior Citizen Discount as of September 1, 2003. Customers age 65 who at that time were not receiving the discount, or customers reaching age 65 on or after September 1, 2003 (like Complainants Mr. and Mrs. Edward Morrison) would be ineligible to receive the Senior Citizen Discount.

Subsequent to the Commission’s Final Order, the City of Philadelphia governing body (Philadelphia City Council and the City Administration), through the City’s legislative processes, including the passage of two ordinances, agreed upon a City Council Resolution which provides that PGW would petition the Commission for

approval of a modified SCD applicable to senior citizens who had not been grandfathered, and contains terms of eligibility based on means-tested targeting of those senior citizen customers most in need.¹

Under PGW's modified SCD, a 20% discount would be available for newly applying seniors 65 years of age or older whose household income (regardless of family size) does not exceed 250% of the federal poverty level for a two-person family (currently \$30,300 per year).

On October 9, 2003, the Commission directed that PGW's SCD Petition be referred to the Office of Administrative Law Judge for development of a record on an expedited basis. The case was assigned to Administrative Law Judge Allison K. Turner. The Office Of Trial Staff (OTS), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), CEPA et al., and the Philadelphia Industrial and Commercial Users Group (PICGUG) have all intervened in this matter.²

At the first prehearing conference on November 12, 2003, the parties discussed, inter alia, setting an expedited schedule for reviewing this matter. On November 25, 2003, ALJ Turner issued the first of a series of Pre-Hearing Orders which, after subsequent adjustment, scheduled an evidentiary hearing in this matter for January 13,

¹ The Resolution is attached to the SCD Petition as Attachment C.

² On December 15, 2003, OTS withdrew from the proceeding and is not a party to the Stipulation and Settlement.

2004.³

On December 1, 2003, CEPA filed a Petition to Allow PGW to Enroll Additional Income Eligible Senior Citizens in the SCD Program, requesting the creation of an interim means-tested SCD in order to provide immediate relief to senior citizen customers during the pendency of this proceeding. On December 3, 2003, PGW filed a concurring Answer to the CEPA et al. Petition in which it supported the relief requested with certain qualifications. On December 12, 2003, the ALJ issued her Second Prehearing Order, granting CEPA's Petition and authorizing PGW to file tariff pages implementing an interim means-tested SCD on one day's notice. On December 19, 2003, PGW filed Supplement No. 2 to its Tariff, Pa PUC No. 2, which became effective on one day's notice, putting the means-tested SCD in effect on an interim basis, pending final decision by the Commission. By Secretarial Letter dated January 7, 2004, the PUC directed PGW not to make effective Supplement No. 2.

As part of this SCD Petition proceeding, the parties participated in a discovery process with OTS and OSBA submitting to PGW numerous interrogatories to which PGW responded. The parties have also drawn on record evidence contained in PGW's Restructuring Proceeding (Docket No. 00021612) which contains substantial U.S. Census

³ See Prehearing Orders dated November 25, 2003, December 12, 2003, and December 23, 2003.

data pertaining to the economic and social circumstances of Philadelphia senior citizens.⁴ In addition, PGW on November 25, 2003 supplemented the record with additional Direct Testimony of Cristina Coltro, PGW's Manager of Universal Service Programs, and the Direct Testimony of Hugh Gilbert Peach, Ph.D., who supplemented Direct Testimony concerning the Senior Citizen Discount which he had presented in the Restructuring Proceeding.⁵ On December 29, 2003, CEPA et al. filed the Direct Testimony of Pedro Rodriguez supplementing and amplifying the evidence supporting the SCD Petition which had already been filed and/or which was already part of the record.⁶

On December 19, 2003, Philadelphia City Solicitor Nelson A. Diaz sent a letter to ALJ Turner on behalf of Philadelphia City Council in unqualified support of the SCD Petition and reaffirming that the June City Council Resolution represented the "collective determination" of the City Administration and City Council that PGW's "means-tested discount represented an appropriate and important social benefit that should be available to all Philadelphia seniors."

⁴ See Table DP-1. "Profile of General Demographic Characteristics: 2000. Geographic area: Philadelphia city, Pennsylvania" (SEIU Exhibit 9), Docket No. M - 00021612; Summary File 3, Table PCT50, "Age by Ratio of Income in 1999 to Poverty Level. Universe: Population for whom poverty status is determined. Philadelphia, Pennsylvania" (SEIU Exhibit 16), Docket No. M - 00021612.

⁵ See PGW St. No. 1 (Cristina Coltro), PGW St. No. 2 (Hugh Gilbert Peach). See also PGW's Restructuring Filing – Supporting Documentation Prepared Direct Testimony, Vol. I(B), Exhibit CC-4 (H. Gilbert Peach, Ph.D. et al., "Philadelphia Gas Works Universal Service Programs: The Senior Citizen Discount," 29pp.). Docket No. M - 00021612.

⁶ CEPA et al. Statement No. 1; CEPA et al. Statement No. 1 (Revised page 12).

In addition to developing information and testimony to supplement the record, the parties conducted settlement discussions and negotiations. These discussions resulted in the resolution of all matters as set forth in the Settlement.⁷

II. THE MODIFIED SCD IS “JUST AND REASONABLE”

A. The “Just and Reasonable” Standard Requires the Commission to Balance Both Quantitative and Qualitative Factors

Under Gas Choice Act Section 2212(r)(1), 66 Pa.C.S. § 2212(r)(1), the Commission may approve a modified SCD if it is “just and reasonable.” In requiring that the Commission measure a modified SCD against the “just and reasonable” standard, the General Assembly selected the broadest standard applicable to utility rates. The “just and reasonable” standard is at bottom a balancing standard, in which a regulatory authority must balance the interests of the utility against the interests of customers. Duquesne Light Co. v. Barasch, 488 U.S. 299, 102 S.Ct. 609, 620 (1989)(“The Constitution within broad limits leaves the States free to decide what rate setting methodology best meets their needs in balancing the interest of the utility and the public.”); accord Public Advocate v. Philadelphia Gas Com’n, ___ Pa. ___, 674 A.2d 1056, 1061

⁷ PGW, OSBA and CEPA et al. are signatories to the Stipulation and Settlement. OCA has submitted a letter dated January 12, 2004 supporting the Stipulation and Settlement, finding that the modified SCD is “just and reasonable” and stating that the “means test will serve to allocate assistance resources to those who are most in need.” At the evidentiary hearing, PICGUG’s counsel stated on behalf of Philadelphia large industrial and commercial customers that PICGUG did not oppose the Settlement.

(1996).

In specifying the “just and reasonable” standard, the General Assembly also signaled that a senior citizen discount program maintained by a municipally owned gas utility is permissible and certainly not *per se* illegal. Whether such a discount is legal depends upon the balancing of interests required by application of the “just and reasonable” standard.⁸ In acknowledging that a municipally owned utility may choose to treat senior citizen residential customers in a manner different from non-senior residential customers, the Legislature further recognized that this balancing of interests could not be reduced merely to cost of service terms. To the contrary, while the rate implications of the modified SCD for other customers are not irrelevant, the test requires a qualitative assessment of the financial and social needs and social circumstances of PGW’s senior citizen customer population, relative to those of other residential customers.

Such qualitative assessments which factor social policy concerns into the balancing process have long been recognized as part of the “just and reasonable” determination, so long as there is an adequate record basis for them. U.S. Steel Corp. v. Pa. Public Utility Com’n, 390 A.2d 865, 871 (Pa.Cmwlth. 1978)(general rate increase

⁸ Significantly, the General Assembly did not alter the rights of the approximately 80,000 senior citizen customers of PGW receiving the discount as of September 2003, but rather provided for the grandfathering of this customer population. In so doing, the General Assembly recognized that at least in the context of a municipal utility with an unusually large number of senior citizen residential customers at lower income levels, a discount provided on the basis of age could be just and reasonable.

providing for no increase in residential rates for first 500 kWh monthly justified on grounds that "there is no reason why in times of stringency the utility might not propose, and the Commission might not approve, rates for residential users less than the rates which an allocation of large increases in necessary revenues by a strict application of cost of service studies would suggest"). In the same vein, the Supreme Court of Hawaii stressed the relevance of such assessments in an opinion rejecting a proposed declining block rate, when it stated:

In addition to conservation of energy and optimization of the efficient use of facilities and resources, a public utility's rate structure should encourage equitable rates to all its consumers including the poor and the elderly. Reactions to demands that the increasing energy burden borne by the poor and the elderly be alleviated range from sympathy to scorn for "social rate making." Our laws, however, recognize that the poor and the elderly are deserving of special protection. See, e.g., HRS § 346-52 (aged and needy eligible for public assistance); § 346-71 (general assistance available to needy persons); §359-51 et seq. (housing for elderly persons); § 431-522 to 431-529 (extended health insurance for elderly).

There has always been a great measure of public policy that enters into the designing of rates.

In re Hawaii Electric Light Co., 60 Haw. 625, 647, 594 P.2d 612, 626 (1979) (emphases added).⁹ In applying the "just and reasonable" standard to the SCD, the Commission should draw on examples in other jurisdictions, which have performed this type of

⁹ Some Pennsylvania state laws providing discounts to seniors are: Pharmaceutical Assistance Contract for the Elderly (PACE), 72 P.S. §§ 3761-501 et seq. (prescription medicine); Senior Citizens Rebate and Assistance Act, 72 P.S. §§ 4751-1 et seq. (rent and property tax rebates); 7 P.S. § 6020-134 (free cashing of government checks by financial institutions); Pennsylvania Rural and Intercity Transportation Assistance Act, 72 P.S. §§ 3761-901 et seq. (transportation services).

balancing in the senior citizen discount context.¹⁰

Moreover, in applying the “just and reasonable” standard in this matter, which involves a municipally owned utility, the Commission should give greater weight to qualitative policy factors than might be appropriate in the context of an investor owned utility. Such policy considerations go to the mission of the utility. For the municipally owned PGW, the provision of public utility service in such a manner as to maximize the health, safety and public welfare is a paramount goal, relatively more important than eliminating any intra-class or interclass rate disparities, or the other competing financial or policy objectives. Gas Choice Act Section 2212(s), 66 Pa.C.S. § 2212(s), expressly acknowledged that PGW’s mission might be defined somewhat differently from that of an investor owned utility and specifically provides some allowance for such differences.¹¹ No other provision of the Public Utility Code protects the right of an investor owned public utility to determine its own mission. As City Solicitor Nelson A. Diaz states in his

¹⁰ In other states, public utility commissions have recognized that in determining whether a senior citizen discount is permissible, a commission may consider “age and income of the members of the class and the importance of the service to them.” American Hoechst Corp. v. Dep’t of Public Utilities, 379 Mass. 408, 413, 399 N.E.2d 1, 4 (1980); accord Consumers Power Co., 25 PUR 4th 167 (Mich. PSC 1978). See subsequent cases upholding the justness and reasonableness of senior citizen discounts against continuing challenges, e.g., Consumers Power Co., 151 PUR 4th 374 (Mich. PSC 1994); Consumers Power Co., 167 PUR 4th 124 (Mich. PSC 1996).

¹¹ Gas Choice Act Section 2212(s) states in pertinent part: “Nothing contained in this title shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation” 66 Pa.C.S. §2212(s)(emphasis added).

December 19, 2003 letter to the ALJ, the proposed modified SCD represents a “collective determination that a means-based discount represented an important and appropriate social benefit that should be available to Philadelphia seniors.” In other words, the provision of this type of social benefit to seniors has been and continues to be part of the mission that the City has chosen for PGW.

B. In Creating the Modified SCD, the City’s Governing Body Weighed the Legally Relevant Interests and Factors and Struck an Appropriate Balance Consistent with PGW’s Mission

1. The Record Demonstrates that Lower Income Philadelphia Seniors Need the Modified SCD

Like the governing body of the City, the Commission should give special attention and weight to the sheer human need demonstrated by the evidence of record. That demographic and social circumstance evidence establishes the daunting scale of the financial and social need of lower income senior citizen PGW customers for assistance in affording natural gas service. The record shows that Philadelphia has an unusually high number of senior citizens, more than half of whom have income at or below 250% FPL.¹² Persons with household incomes at or below 250% FPL are in the zone of poverty, meaning that they have difficulty paying their bills as they come due, whenever there are

¹² CEPA et al. St. No.1, at 6.

unanticipated expenses.¹³ Such households have incomes that are below the Philadelphia median household income of \$30,746.¹⁴ Moreover, in terms of their physical health and circumstances, they are less able to cope with financial or physical circumstances which are out of the ordinary.¹⁵ Almost one half are disabled in one way or another.¹⁶ As City Council recognized, “even those senior citizens who are not disabled are more vulnerable than most other adult customers to hypothermia and other physical harms caused by insufficient heat or lack of heat caused by natural gas service terminations.”¹⁷ Almost one half live alone, with the isolation that such circumstances often entail.¹⁸

The record also establishes that other available low income programs do not adequately meet the needs of many of PGW’s senior citizen customers. PGW’s low income Customer Assistance Program, the Customer Responsibility Program (CRP) is structured in such a way that it provides no assistance to typical two- person low income senior households with income above 119% Federal Poverty Level (FPL), and would only

¹³ CEPA et al. St. No.1, at 4; PGW St. 2, at 5.

¹⁴ PGW St. 2, at 7.

¹⁵ CEPA et al. St. No.1, at 7-9.

¹⁶ CEPA et al. St. No.1, at 8.

¹⁷ Bill No. 030138 Section 19-2001(4); Bill No. 030123 Section 1(d). PGW’s SCD Petition, Attachment A.

¹⁸ CEPA et al. St. No. 1, at 8; PGW St 1, at 9.

provide a 20% discount to such households with income at or below 99% FPL.¹⁹ As for typical one person senior households, the CRP program would not provide such households with a 20% discount unless the household income was below 129% FPL.²⁰ If CRP were the only recourse for PGW senior citizens, seniors who are indisputably in acute need of energy assistance would receive no ongoing discount from PGW. The City Council Resolution implicitly recognizes that CRP is not an adequate substitute for non-grandfathered seniors when it states that the PUC “should approve a senior citizen discount which is not as strict as the means test originally proposed by the Administration and submitted to the PUC for approval....”²¹ PGW confirms this judgment when it recognizes that despite the existence of CRP, there remains a “sizeable senior population that, while still needing financial assistance, do not meet the strict financial eligibility criteria for CRP benefits.”²²

Yet additional evidence of PGW’s (and its municipal owner’s) understanding of the obvious and pressing need for a modified SCD is manifest in PGW’s support for CEPA et al.’s December 1, 2003 Petition to Allow PGW to Enroll Additional Income Eligible Senior Citizens in the SCD Program on an interim basis pending Commission

¹⁹ CEPA et al. St. No. 1, at 12-13.

²⁰ CEPA et al. St. No. 1, at 13-14.

²¹ City Council Resolution (third “Whereas clause”). See SCD Petition, Attachment C.

²² PGW St. 1, at 12.

decision in this proceeding. In that Answer, PGW stressed that it was desirable to “assure that needy seniors receive immediate relief [afforded by the modified SCD] from this Winter’s high gas bills....”²³

2. The Record Supports the Balance of Interests and Factors Struck by the City’s Governing Body in Designing a Modified Means-Tested SCD

Against this obvious and pressing need on the part of Philadelphia seniors, the “just and reasonable” test requires that the Commission balance PGW’s interest in maintaining general competitiveness with alternative fuels, and in providing reasonably affordable rates for its non-senior residential customers and large and small businesses customers. It is this balancing that the governing body of the City performed in the process of developing PGW’s proposed means-tested SCD. Because it is composed of democratically elected representatives of the Philadelphia population, this governing body may be deemed to have specialized knowledge of how this balance should be struck, and at what point a Senior Citizen Discount may become unreasonably burdensome on other customers, causing unreasonable discrimination in rates, and negatively impacting the financial viability of the utility.²⁴

²³ Answer of Philadelphia Gas Works to Consumers Education and Protective Association’s Petition to Permit Interim Implementation of Senior Discount, Paragraph 2.

²⁴ In striking the balance represented by the proposed SCD, the relative costs were not ignored. As PGW testified, combined with attrition of the non-means tested grandfathered Senior Citizen Discount participants, the costs of the modified SCD will over time significantly reduce the overall amount of the discounts provided to PGW senior citizens. Accordingly, non-senior citizen customers over time will pay significantly less to subsidize senior discount

While recognizing that the Gas Choice Act designates the Commission, not the City's governing body, as the ultimate judge, CEPA *et al.* submit that the fact that the City's governing body through its legislative process formulated the proposed modified SCD is itself strong evidence that the modified SCD is "just and reasonable." In addressing this issue, the City's governing body was exercising powers to modify the SCD specifically recognized by the General Assembly in Section 2212(r) of the Gas Choice Act, subject to review by the Commission.²⁵ It also acted with full knowledge that its proposed modified SCD should represent a determination weighing all the interests both on the side of the utility and on the side of customers in determining a "just and reasonable" design for the SCD.²⁶

recipients. PGW St. 1, at 7. Moreover, over time, most residential customers benefit from the SCD. As reflected in the testimony of Mrs. Edward Morrison at the evidentiary hearing, non-senior residential Philadelphia customers have for years paid a small amount more in current rates, as insurance for the time when they reach age 65, when they too will benefit from the discount.

²⁵ Bill No. 030138 Section 19-2001(12) contains a legislative finding that the "Natural Gas Choice and Competition Act, at Section 2212(r) recognized City Council's power to create a Senior Citizen Discount Program, subject to review by the Pennsylvania Public Utility Commission"; Bill No. 030123 in the third "Whereas clause" contains a similar acknowledgment of the Commission's statutory authority to review the City's proposed SCD modifications. See PGW's SCD Petition, Attachment A.

²⁶ For instance, Bill No. 030138 Section 19-2001(11) contains a legislative finding that "Senior Citizen Discounts are common for public utilities that are publicly owned by municipalities or other such public authorities, and have been recognized by courts to be just and reasonable..." (emphases added); Bill No. 030123 Section 1(k) contains the identical Legislative Finding. In addition, the third "Whereas clause" contains express recognition that the applicable standard in this case is the "just and reasonable" standard. See PGW's SCD Petition, Attachment A.

The record of this case is replete with evidence concerning the high and searching quality of inquiry exercised by the City's governing body in determining how this balance should be struck. In recognizing the applicability of the "just and reasonable" standard, the City government recognized its duty, on behalf of the citizens of the City of Philadelphia, to balance the interests of the utility against the interests of PGW customers in the formulation of a modified SCD.

As reflected in City Council's Ordinances requiring continuation of the full, non-means-tested SCD, many believed that the continuation of the non-means tested historical Senior Citizen Discount was itself just and reasonable.²⁷ In contrast, as reflected in PGW's initial Restructuring Filing, others believed that maintenance of the historical Senior Citizen Discount for grandfathered senior customers was just and reasonable, but that it would not be just and reasonable to continue the discount to new applicants under contemporary conditions. Others took the position, as reflected in the Settlement, that a means-tested program for new senior applicants which targeted those seniors most in need struck the appropriate balance.²⁸ All these views received extensive consideration, as reflected in the extent of public input hearings encompassing all viewpoints which occurred during the municipal legislative process.²⁹

²⁷ In the Restructuring Proceeding, the Service Employees International Union, Local 686 (SEIU), which represents PGW employees, forcefully argued for this position. See Main Brief of Service Employees International Union, Local 686 (December 11, 2002), Docket No. M - 00021612.

²⁸ As PGW notes, the modified SCD is consistent with City policy of providing a means-tested senior citizen discount to municipally owned utilities. The municipally owned Philadelphia Water Department provides a means-tested Senior Citizen Discount. PGW St. No. 1, at 10-11; see also Philadelphia City Code §§ 19-1901 et seq.

²⁹ CEPA St. No. 1, at 5.

The modified SCD reflects a consensus achieved among representatives of all Philadelphians, with representatives of customers and of PGW and its municipal owner all involved in the process. That consensus, which is opposed by no party representing actual Philadelphia customers or the utilities' ownership, is also reflected in the Settlement.

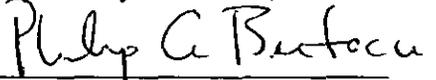
In reviewing this record, the Commission should also be mindful that it is the owner of the utility, not the Commission or an advocacy group, which has requested the Commission to approve the modified SCD. This is not a case in which the Commission is called to impose a SCD upon an unwilling utility, either municipally or investor owned. In other jurisdictions, there is precedent that a utility proposing a senior citizen discount should be afforded some latitude in determining the eligibility standards. American Hoechst Corp. v. Department of Public Utilities et al., 379 Mass. 408, 399 N.E. 2d 1 (1980); Rhode Island Consumers' Council v. Smith, 111 R.I. 271, 302 A.2d 757 (1973). Because PGW and its owner the City of Philadelphia are proposing this modified SCD, and because the proposal reflects a democratic legislative process, the Commission should afford greater deference to their judgment than might be appropriate in other circumstances.

III. CONCLUSION

In sum, in designing the modified SCD, the democratically elected representatives of all Philadelphians conducted a well considered and well informed balancing of precisely those factors which must be weighed under the "just and reasonable" standard in designing a public utility rate. The Gas Choice Act charges the Commission with the duty to review that work under the "just and reasonable" standard. For the foregoing reasons, CEPA et al. respectfully

submit that the City's governing body performed its duties effectively, that the Settlement sets forth a "just and reasonable" modified SCD, that it is in the public interest and the interest of PGW's ratepayers, and that it should be approved without delay.

Respectfully submitted,



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January 19, 2004

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the Statement of CEPA et al. in Support of Unopposed Stipulation and Settlement Regarding the Philadelphia Gas Works' Petition for Rescission and Amendment Seeking Approval of a Means -Tested Senior Citizen Discount Program on the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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