

JEWELL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Floriann B. Matuszak

v.

Philadelphia Gas Works

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:
:
:
:

C-20055294

PREHEARING ORDER

An Initial Hearing in this case is scheduled for Tuesday, December 13, 2005 at 9:30 a.m. in Hearing Room 2 in the Philadelphia State Office Building. Your case is one of several cases that have been scheduled at this time in Hearing Room 2. You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. You should arrive at the Hearing Room no later than 9:15 a.m. and wait in the Hearing Room until the Administrative Law Judge calls your case. Your case might not be the first one to be called and you should be prepared to stay in the hearing room all afternoon, if necessary. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.

The parties are hereby directed to comply with the following requirements:

1. A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa Code §1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record. The correct address is:

Room 1302, Philadelphia State Office Building,
1400 West Spring Garden Street,
Philadelphia, PA 19130,
Telephone: 215.560.2105
Fax: 215.560.3133

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PA.P.U.C.
SECRETARY'S BUREAU

Changes are granted only in rare situations where good cause exists.

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**DOCUMENT
FOLDER**

2. Commission policy promotes settlements. 52 Pa.Code §5.231(a). The utility is directed to contact you at least one week before the scheduled hearing to talk over a possible settlement of this case. Even if you are unable to settle this case, you may still resolve many questions or issues during your talks. If an agreement is reached, a formal hearing will not be necessary and the scheduled hearing will be cancelled.

3. If you intend to present any documents or exhibits for my consideration, you must bring four (4) copies to the hearing.

4. This hearing is a formal proceeding and will be conducted in accordance with the Commission's Rules of Practice and Procedures. 52 Pa Code, Chapters 1, 3 and 5.

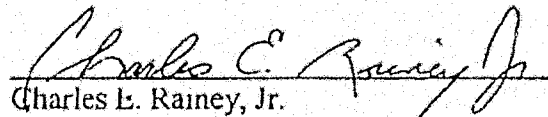
5. Pursuant to 52 Pa.Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code §1.24(b).

6. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa.Code §5.421. You must submit your written application to the Administrative Law Judge sufficiently in advance of the hearing date so that the other parties will have the required ten (10) days' notice to answer or object, and so that you will have enough time to receive the subpoena and serve it.

7. **COMPLAINANT IS RESPONSIBLE FOR PAYMENTS OF BILLS FOR USAGE INCURRED PENDING THE RESOLUTION OF THIS COMPLAINT. FAILURE TO MAINTAIN PAYMENTS MAY RESULT IN THE TERMINATION OF UTILITY SERVICE. IN ADDITION, PAYMENT OF ALL UNPAID BILLS IN ONE LUMP SUM COULD BE REQUIRED UPON RESOLUTION OF COMPLAINT.**

8. Complainants bear the burden of proving the case and should be prepared to support their claim with documentation and/or specific dates of events which could have an impact on the claims.

Date. October 24, 2005


Charles E. Rainey, Jr.
Administrative Law Judge

OALJ Hearing Report

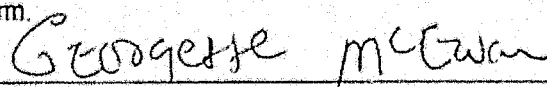
Please Check Those Blocks Which Apply

Docket No.:	C-20055294		YES	NO
		Prehearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Case Name	Floriann B. Matuszak v. Philadelphia Gas	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Works		Testimony Taken:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	DOCUMENT FOLDER	Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	Philadelphia, PA	Hearing Concluded:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Further Hearing Needed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Date:	December 13, 2005	Estimated Add'l Days:		
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	Charles E. Rainey, Jr	DATE:	1-13-06	
		Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
RECEIVED		REMARKS:	Record to remain open until January 13, 2006, for receipt of late filed exhibits and the transcript	
JAN - 8 2006				
PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU				

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
FLORIANN MATUSZAK 215-624-6663	2539 GILBERT ST PHILA PA 19149 <small>City State Zip</small>	MYSELF
Telephone:	E-mail Address:	Fax Number:
LAUREN FORNER 215-681-1932	200 W. Montgomery Phila PA 19122 <small>City State Zip</small>	PCW
Telephone:	E-mail Address:	Fax Number:
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.


 Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office of Administrative Law Judge

1302 Philadelphia State Office Building, 1400 W. Spring Garden St., Philadelphia, PA 19130
Telephone: (215) 560-2105

IN REPLY PLEASE
REFER TO OUR FILE

January 4, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P O. Box 3265
Harrisburg, PA 17105-3265

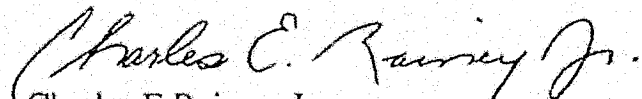
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Re: Floriann B. Matuszak v. Philadelphia Gas Works
Docket No. C-20055294

Dear Mr. McNulty:

Enclosed for inclusion in the record in the above-referenced case is PGW Late-Filed Exhibits 3-5. PGW Late-Filed Exhibits 3-5 was admitted into evidence.

Sincerely,


Charles E Rainey, Jr.
Administrative Law Judge

CERjr/mg

Enclosure

Philadelphia Gas Works



800 West Montgomery Avenue, Philadelphia, PA 19122
Laureto A. Farinas, Senior Attorney
Legal Department
Direct Dial. 215-684-6982
FAX 215-684-6798
E-mail laureto.farinas@pgworks.com

(Via Overnight Delivery)

December 20, 2005

Administrative Law Judge Charles E. Rainey, Jr.
1302 Philadelphia State Office Building
Pennsylvania Public Utility Commission
1400 Spring Garden Street
Philadelphia, PA 19130

RE: Floriann B. Matuszak v. PGW, C - 20055294

Dear Judge Rainey:

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JAN - 8 2006

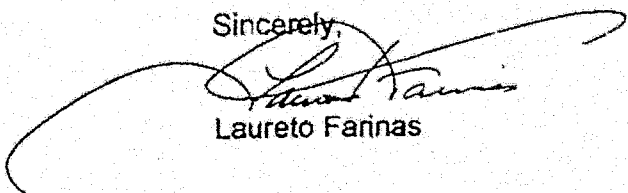
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to your instruction at the hearing in the above captioned matter held on December 13, 2005, please find enclosed responses to your requests for information concerning PGW's Senior Citizen Discount for submission into evidence. I have marked these as follows:

- PGW Exhibit - 3 When did PGW reject the Complainant's pending application for the "means-tested Senior Citizen Discount?"
- PGW Exhibit - 4 How did PGW reject the Complainant's pending application for the "means-tested Senior Citizen Discount?"
- PGW Exhibit - 5 Investigation into Financial and Collection Issues Regarding the Philadelphia Gas Works, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061, P-00042117; Order dated September 30, 2004, entered October 27, 2004

If additional information is needed about this matter, please contact me at my direct-dial number above. Thank you.

Sincerely,


Laureto Farinas

cc: Service List
Anthony Langford

PGW Exhibit – 3 When did PGW reject the Complainant's pending application for the "means-tested Senior Citizen Discount?"

Response:

PGW did not reject the Complainant's pending application for the means-tested Senior Citizen Discount. To date, PGW has not provided any notification of rejection to any of the applicants of the pending means-tested Senior Citizen Discount.

On September 30, 2004, the Commission at its public meeting could not approve the PGW proposed means-tested Senior Citizen Discount based upon the evidence. (See PGW Exhibit – 5) PGW has filed an appeal of that Commission Order to the Commonwealth Court at No. 1673 C.D. 2004. This appeal is pending.

Based upon information provided by Else Leung, Universal Services – PGW

December 20, 2005

PGW Exhibit – 4 How did PGW reject the Complainant's pending application for the "means-tested Senior Citizen Discount?"

—Response:

As stated in the response contained in PGW Exhibit – 3, PGW did not reject the Complainant's pending application for the means-tested Senior Citizen Discount. To date, PGW has not provided any notification of rejection to any of the applicants of the pending means-tested Senior Citizen Discount. PGW has reported to the customers of the Commission's decision in this matter. The attached report on the status of the means-tested Senior Citizen Discount appears on the PGW website.

Based upon information provided by Else Leung, Universal Services – PGW

December 20, 2005



Philadelphia Gas Works
169 Years of Service

Home | Cont

Customer Service

Assistance Programs

Requesting Gas Service

Gas Choice

Careers at PGW

Media



Assistance Progra

Overview

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Home > Assistance Programs > Senior Citizen Discount

Senior Citizen Discount

Under the presently approved tariff, PGW's Senior Citizen Discount Program is not open to new participants. Participants who enrolled in the Program prior to September 1, 2003 are "grandfathered" into the program and will continue to receive the discount. In 2004, PGW petitioned with the Public Utility Commission (PUC) to institute a means-tested program that would allow seniors whose yearly gross household income is below \$33,300 to participate. The PUC recently has issued a final order denying PGW's request for the means-tested program. For more information, please call PGW at (215) 235-1000.

[Customer Service](#) | [Assistance Programs](#) | [Requesting Gas Service](#)
[Gas Choice](#) | [Careers at PGW](#) | [Media Center](#)

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PGW Exhibit – 5

Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works, Docket Nos.
P-00042090, R-00049157, M-00021612, P-00032061,
P-00042117; Order dated September 30, 2004, entered
October 27, 2004

December 20, 2005

(SEE ATTACHED ORDER, pp. 5 through 10)

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held-September 30, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman, Dissenting Statement attached
Robert K. Bloom, Vice Chairman
Glen R. Thomas, Statement attached
Kim Pizzingrilli
Wendell F. Holland, Concurring & Dissenting in part

Investigation into Financial and Collections Issues
Regarding the Philadelphia Gas Works

P-00042090
R-00049157
M-00021612
P-00032061
P-00042117

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration are the Recommended Decision of Administrative Law Judge (ALJ) Charles E. Rainey, Jr., issued in this proceeding on August 13, 2004, and the Exceptions filed with respect thereto.

History of the Proceeding

On March 1, 2004, Philadelphia Gas Works (PGW) made its annual Gas Cost Rate (GCR) filing pursuant to 66 Pa. C.S. §1307(f) with the Pennsylvania Public Utility Commission (Commission or PUC). On March 1, 2004, PGW also filed a Petition to Establish a Cash Receipts Reconciliation

Clause (CRRC), pursuant to 66 Pa. C.S. §§1307(a); 2212(c) and 52 Pa. Code §5.41, to impose a surcharge to recover money due from non-paying customers. On March 1, 2004, PGW also filed a motion to consolidate its CRRC petition with its GCR filing.

By Order entered June 2, 2004, the Commission directed the ALJ to submit a recommended decision in regard to the GCR filing within the statutory deadline. In regard to the CRRC Petition, the Commission directed the ALJ to issue an order certifying the record, in time for the Commission's consideration at its July 8, 2004, public meeting.

In that Order, we also consolidated, with the GCR and CRRC proceeding, PGW's Senior Citizen Discount Petition pending at Docket Nos. M-00021612 and P-00032061; and a newly instituted investigation into PGW's collection practices and universal service costs. The Commission also consolidated, with these matters, the two issues described in its Secretarial Letter dated May 14, 2004 regarding Docket No. M-00021612. Those two issues are PGW's request that the Commission approve tariff provisions: (1) allowing PGW to collect a \$10.00 residential field visit charge; and (2) requiring applicants for service with existing civil judgments against them for unpaid PGW balances to enter into payment arrangements.

In our June 2, 2004, Order, the Commission also stated that if PGW filed within thirty (30) days of entry of the Order, a petition for waiver of certain Commission regulations, then that petition would also be consolidated with these matters. The Commission directed the ALJ assigned to these additional matters (collectively referred to herein as "Commission Investigation" or "Investigation")

to conduct hearings and issue a recommended decision for consideration at its September 30, 2004, Public Meeting.

On June 1, 2004, a "Joint Petition for Settlement of Philadelphia Gas Works' 2004-2005 GCR Proceeding" was filed. On June 29, 2004, the ALJ issued a Recommended Decision regarding the GCR filing. At Public Meeting of July 23, 2004, the Commission adopted the Recommended Decision, approving the Joint Petition for Settlement of Philadelphia Gas Works' 2004-2005 GCR Proceeding.

On June 3, 2004, ALJ Rainey issued an order certifying the record in regard to the CRRC Petition. The Parties filed main and reply briefs. At Public Meeting of July 8, 2004, the Commission adopted an Order denying PGW's CRRC Petition.¹ At that Public Meeting, the Commission also adopted an Order denying PGW's Motion to Certify Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition for Cash Receipts Reconciliation Clause.

On June 10, 2004, a Prehearing Conference was held in regard to the Commission Investigation. The Parties present at the Prehearing Conference were PGW, the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Action Alliance of Community Organization for Reform Now, and the Tenants Action Group, (collectively referred to as Action Alliance, *et al.*), State Senators Vincent J. Fumo, Michael J. Stack and Anthony H. Williams, Philadelphia City Council President

¹ On July 22, 2004, PGW filed a Petition for Reconsideration of its CRRC. At its Public Meeting held on August 5, 2004, the Commission denied PGW's Petition for Reconsideration.

Anna C. Verna, Philadelphia City Council Members, James F. Kenney, Frank DiCicco, Michael A. Nutter, David Cohen, Joan L. Krajewski, and Juan Ramos and Philadelphia District Attorney Lynne Abraham (collectively referred to as the Philadelphia Public Officials), Philadelphia Housing Authority (PHA), Philadelphia Industrial and Commercial Gas Users Group (PICGUG) and PECO Energy Company (PECO).

Also on June 10, 2004, OCA filed a "Motion to Dispense with Preparation of a Recommended Decision." By Order dated June 28, 2004, the Commission denied OCA's Motion to Dispense with Preparation of a Recommended Decision. However, the Commission directed that the procedural schedule be adjusted to allow additional time for discovery and briefing.

On June 16, 2004, PGW filed a "Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations." On that day PGW also filed a "Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition for a Cash Receipts Reconciliation Clause."

On July 6, 2004, an evidentiary hearing was held in the Commission Investigation. The Parties present at the evidentiary hearing included PGW, OTS, OCA, OSBA, Action Alliance, *et al.*, Philadelphia Public Officials and PECO. During the evidentiary hearing, the written testimonies of the various parties were moved into evidence and the sponsoring witnesses were examined.

On August 13, 2004, ALJ Rainey issued his Recommended Decision. Exceptions were filed by PGW, OTS, OSBA, and Action Alliance, *et al.* The OCA informed the Commission, by letter dated September 2, 2004, that it

would not be filing Exceptions to the Recommended Decision. The Parties agreed to waive Reply Exceptions. A more detailed history of the proceeding appears at pages 1 through 7 of the Recommended Decision, which is incorporated herein by reference.

Discussion

We note that we are not required to consider expressly or at great length each and every contention raised by a Party to our proceedings. *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 86 Pa. 410, 485 A.2d 1217, 1222 (1984). Any argument which has not been specifically addressed herein shall be deemed to have been duly considered and rejected without further discussion.

I. Senior Citizen Discount

A. Position of the Parties

PGW proposes to offer a means-tested Senior Citizen Discount (SCD) program in addition to its current non-means-tested SCD program, which may not accept new applicants. Prior to its regulation by this Commission, PGW was permitted to provide a SCD program, which provided PGW customers 65 years of age or older a 20% discount on their monthly gas bills. This program was permitted to remain in place for current participants through PGW's transition to regulation by this Commission.² However, expansion of PGW's existing SCD program beyond those customers grandfathered by legislation or institution of a

² Section 2212(r)(2) of the Natural Gas Choice and Competition Act (Gas Choice Act) required continuation of the SCD program for those customers enrolled before PGW filed its first tariff with the Commission. 66 Pa. C.S. § 2212(r)(2). PGW filed its first tariff with the Commission on September 1, 2003.

new SCD program is not guaranteed and is subject to the Commission's standard approval process. 66 Pa. C.S. §2212(r)(1) and (3).

The Philadelphia City Council passed a resolution supporting institution of a new means-tested SCD in addition to the continuation of the grandfathered SCD program. The proposed means-tested SCD program would provide a 20% discount to new applicants of 65 years of age or older who have a household income (regardless of family size) that does not exceed 250% of the federal poverty level for a two person family (currently \$30,000).

PGW had reached a settlement position with the OSBA and CEPA, *et al.*³ regarding its proposed means-tested SCD program, but we remanded the matter to further develop the record. *Petition for Rescission and Amendment of Final Order*, P-00032061 (Order entered May 18, 2004) (*SCD Proceeding*). Although they did not join the Settlement, the OCA supported the Settlement and the remaining Parties did not oppose it. The OTS was not a party to the proceeding at that time, but entered its appearance to participate in the remand proceeding.

The parties are in agreement that there are no other utilities regulated by this Commission that offer discounts limited to senior citizens. PGW St. CP-2 at 4. PGW attempted to compare its proposed SCD program with Commonwealth-wide programs, such as PACE and PACENET and a Philadelphia Water Department program. PGW St. CP-2 at 4-5. The OTS points out, however, that

³ CEPA, *et al.* refers to the Consumer Education and Protective Association and other organizations that now comprise the Party, "Action Alliance, *et al.*" Although a named Party in the previous proceeding, CEPA, purportedly, has disbanded and did not participate in the Investigation proceeding below.

each of these programs is limited to incomes less than PGW proposes for its means-tested SCD program.

The OTS opposed extending a SCD program beyond that which was grandfathered, even in its means-tested form. See OTS St. No. 1. The OTS argued that, absent the "cloak of politics," PGW believes that those with incomes at and above 150% of the federal poverty level have the ability to pay and should be required to do so. (OTS M.B. at 9). The OTS argued that PGW ratepayers could not afford to fund such a program. (OTS St. No. 1).

B. The ALJ's Recommendation

While acknowledging PGW's "dire financial condition," the ALJ recommended approval of the means-tested SCD program and the Settlement PGW forged with the OSBA and the consumer organizations. (R.D. at 21). The ALJ found that because the General Assembly, through the Gas Choice Act, chose to allow PGW's SCD program to continue for new applicants if the Commission determines it to have just and reasonable rates and terms, the means-tested SCD program is in the public interest.

The ALJ found that the impact on customers' bills would be negligible: relying upon PGW's testimony that the program would have a yearly cost of \$365,000 to be paid by nearly 351,000 customers. (R.D. at 21; PGW St. CP-2 at 7 and 10-11). The ALJ further found that because this Commission rejected PGW's proposed CRRC⁴, full-paying customers would not be subject to a "double whammy." (R.D. at 21).

⁴ *Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause*, Docket No. P-00042090 (Order entered July 8, 2004).

The OTS filed four exceptions to the ALJ's recommended approval of the means-tested SCD program. Specifically, the OTS excepts to: (1) the ALJ's reliance upon non-Commission jurisdictional entities as support for the proposed SCD program; (2) the ALJ's acceptance of a yearly cost of the proposed SCD program of \$366,500-\$371,316; (3) the ALJ's acceptance that the proposed SCD program would result in 1,300 applicants enrolled each year; and (4) the ALJ's conclusion that the Commission's denial of PGW's CRRC Petition makes the proposed SCD acceptable.

C. Disposition

As laudable as PGW's proposed means-tested SCD program may be, we simply cannot justify approval under PGW's present circumstances. The Commission has reviewed a number of varying proposals proffered by PGW to improve its cash flow in light of its past and present financial condition.

Yet, despite PGW's financial situation, which it has described as "dire,"⁵ despite the threat of PGW's ratings being downgraded; despite PGW's own assertion that increasing numbers of "good paying" residential customers are having difficulty paying their bills, PGW proposes a discount that will reduce its much needed monthly cash flow.

PGW proposes to give discounts to senior citizens at 250% above poverty at the same time as denying payment arrangements after termination to non-seniors at 250% above poverty. Moreover, PGW has stated that customers who are above 150% of the federal poverty level have the ability to pay their bills.

⁵ (PGW Exc. at 3).

PGW Petition to Waive Certain Chapter 56 Regulations, Appendix A at 3-4; Tr. at 662-663.

We agree with the OTS that the estimated enrollment of 1,300 households and the estimated cost of \$365,000 per year seem exceedingly optimistic. The OTS claimed that PGW failed to account for the cumulative effect of additional senior citizens enrolling in the SCD program in subsequent years. (OTS St. 1 at 19). PGW stood by its estimate even though its witness testified that she did not disagree with the OTS calculation of cumulative costs. (Tr. at 613).

PGW provided testimony that despite a trend of increased longevity and the fact that the nation's baby boom population will begin reaching age 65 in 2011, Philadelphia's senior citizen population is not likely to escalate in 2011. (Tr. at 649; PGW St. CP-2, Exhibit SCD/CC-4 at 6). As the OTS noted, PGW based its estimated enrollment on a presumption that residents of Philadelphia will follow the trend of a population movement out of cities. (OTS Exc. at 7; Tr. at 617). PGW assumes that this expected movement out of the city will offset the increasing senior citizen population as the baby-boom generation comes of age. (OTS Exc. at 7; Tr. at 617). Even if the general population of Philadelphia follows the trend and moves to the surrounding counties, we are not convinced that lower-income senior citizens will be among the emigrants.

The OTS also presents substantial reasons to question the accuracy of PGW's estimated cost of a means-tested SCD program of \$365,000 per year. The OTS points to PGW's own exhibit showing the cost of its grandfathered SCD program and the cost for a SCD program that includes the means-tested program. (OTS Exc. at 6; PGW Exhibit - CP/CC-2). For the year 2005, inclusion of the means-tested program appears to increase the cost to provide the two SCD

programs by \$1,204,709. (PGW Exhibit – CP/CC-2 at 2, columns 4 and 5 (comparing Option 3a: Slow Phase Out with Option 4d: Means Tested New at -- Median)). Using PGW-supplied numbers, the OTS derived a yearly average cost of \$3,802,436. (OTS Exhibit 1, Schedule 1).

PGW's own numbers call into question the accuracy of its estimates regarding the impact of the proposed means-tested SCD program. Setting the eligibility threshold at 250% of the federal poverty level allows the discount to apply to senior citizens with the ability to pay full bills. Low-income senior citizens are eligible for other programs designed to assist households with lowering or meeting their utility bills.

For the reasons set forth above, the Commission is unable to approve PGW's proposed means-tested SCD program. Therefore, we reverse the ALJ on this issue. We grant the Exceptions of the OTS, consistent with this Opinion and Order.

II. Compliance Tariff Issues

A. Field Visit Charge

1. Positions of the Parties

PGW proposed a Tariff Section that would allow it to collect a \$10.00 residential field visit charge when attempting to make personal contact before terminating a customer's service. PGW argued that its charges for late payment, reconnection and residential field visits are separate and distinct and do not reimburse it for the costs of the field visits.

PGW claimed that if the Commission continues to reject its residential field collection charge, it will leave a \$600,000 deficit in its annual revenue projections. PGW posited that without the \$600,000 in annual revenues from residential field collection charges, it would have to be permitted to increase its delivery charge so it can maintain the same level of pro forma revenue authorized in its last base rate proceeding. (PGW St. CP-1 at 15-17).

The Action Alliance, *et al.*, opposed the imposition of the \$10.00 charge, specifically arguing that the proposed charge is contrary to the intent of our Chapter 56 Regulations and attempts to recover expenses that are already covered by the late payment charge. (Action Alliance, *et al.* M.B. at 44-47).

The OCA opposed the field visit charge arguing that PGW had not demonstrated which costs would be recovered by the charge. The OCA argued further that PGW has provided no cost justification for the fee. The OCA urged denial of the fee until cost justification is provided. (OCA MB at 54-56; OCA R.B. AT 16).

2. ALJ's Recommendation

The ALJ found that PGW has not provided a detailed showing of the components and calculations of its charges for residential field visits, late payment or reconnection. While recommending that PGW be permitted to collect a \$10.00 residential field visit charge, the ALJ also recommended that the Commission direct PGW to include in its next base rate case filing detailed exhibits showing the cost components of its charges for residential field visits, late payments and reconnection. The ALJ also recommended that these exhibits show how the specific dollar amounts for each charge was calculated in its next base rate filing. (R.D. at 44-45).

In its Exceptions, the Action Alliance, *et al.*, argued that the proposed Tariff Section is inconsistent with 52 Pa. § 56.1, *et seq.*—The Action Alliance, *et al.*, argued further that the proposed Tariff Section broadens the circumstances under which a charge for field collections may be assessed because it has eliminated the limitations to situations where personal contact had previously occurred. (Action Alliance, *et al.* Exc. at 4-9). As noted previously, the OCA did not file Exceptions in this proceeding.

3. Disposition

Based upon our review of the evidentiary record, we shall reject the proposed field visit charge. We find that this part of the Recommended Decision appears to be internally inconsistent. The ALJ recommended that the Tariff Section be approved, finding that PGW's costs of making the termination visits were not recovered through later payment and reconnection charges. The ALJ then states that PGW has not provided a detailed showing of the components and calculations of its charges for residential field visits, late payment or reconnection in this proceeding.

We find that the ALJ's conclusion that the costs of the field visits are not being recovered through other charges is inconsistent with his finding that the costs were not delineated in the record here. Based upon that inconsistency, we regard the ALJ's finding that the costs of the field visits are not currently being recovered as unsupported.

Furthermore, the ALJ's finding that PGW offered no cost analysis for any related charges such as late fees or reconnection fees leads us to question those figures as well. However, PGW may raise this issue in its next base rate case

filing. Consistent with the ALJ's recommendation, PGW's filing should include detailed exhibits showing the cost components of its charges for residential field visits, late payments and reconnection, and the calculation of the specific dollar amounts.

Based upon the foregoing discussion, the Exceptions of Action Alliance, *et al.*, are granted, to the extent consistent with this Opinion and Order. Accordingly, the ALJ's Finding and Recommendation are reversed on this issue, and the proposed \$10.00 charge for residential field visits is rejected.

B. Payment Arrangements for PGW Liens and Judgments

1. Positions of the Parties

PGW sought approval of Tariff Section 2.4.C.6 which would require applicants for service with existing liens or civil judgments against them for unpaid PGW balances to enter into payment arrangements. PGW pointed out that it may employ the lien process against customers who own the property to which gas service was provided. PGW continued that the past due balances of those customers are classified as municipal claims pursuant to the Municipal Claims and Tax Liens Law. PGW explained that when it files the municipal claim with the Court's Prothonotary, then it becomes a lien against the customer's property.

PGW indicated that it has used its lien program to secure payments at the time that title to a lien property is changed and that it has used its civil judgment program to secure payment when a customer desires to clear a judgment from his or her credit history. PGW asserted that it has had success with its lien and civil judgment program. PGW stated that it has not pursued execution on liens or civil judgments because: (1) "PGW does not want to force customers from their

homes or force the loss of personal property;" and (2) "executing liens and judgments is a costly procedure." (PGW St. CP-1 at 13).

PGW posited that if the Commission approves the proposed Tariff Section, it will follow Commission precedent regarding the parameters for payment arrangements for applicants with prior arrears. For example, PGW stated that it will only insist on the payment of amounts that are four years old or less. Further, PGW's witness testified that PGW would not enforce the lien or judgment as long as the customer complied with the payment arrangement.

PGW argued that if the proposed Tariff Section is not approved, it will be forced to execute on its judgments and liens against consumers. PGW argued that, without the proposed tariff revision, it will not be able to collect on any account for which an amount has been liened or for which a judgment has been entered because it is the Court, and not the Commission, that has jurisdiction over liens and judgments and the Commission will not have the authority to hear complaints from the customer that the amount of the judgment is not really owing or that the lien should not have been entered. (PGW St. CP-1 at 13).

The Action Alliance, *et al.*, opposed PGW's proposal. The Action Alliance, *et al.*, argued that Tariff Section 2.4.C.6 should be amended to indicate explicitly that only an applicant for service may be required to pay or arrange to pay, outstanding judgments or liens only to the extent that the liens or judgments represent unpaid service within four years prior to the application date. The Action Alliance, *et al.*, argues that without this amendment, Tariff Section 2.4 C.6. is inconsistent with our Regulation at 52 Pa. Code § 56.35. (Action Alliance, *et al.* M.B. at 40-44).

The OCA opposed Tariff Section 2.4.C.6 arguing that PGW is requesting that the Commission enforce a collection of a judgment or lien, imposed by a civil court, through imposition of a payment arrangement in order to restore service. The OCA argued that utilities should keep court-ordered liens and judgments separate from utility billing. (OCA M.B. at 52-54).

2. The ALJ's Recommendation

The ALJ found that PGW's position on this issue to be contradictory. He found that PGW claimed on one hand to have success with its lien and judgment program without executing upon the liens and judgments, claiming that it collected over \$8 million in Fiscal Year 2004 through its lien program. The ALJ found that PGW nevertheless made the claim that, without the proposed Tariff Section, it will be forced to execute upon the liens and judgments. The ALJ found that PGW did not explain why it would not continue to have success collecting on liens and judgments without executing on them, without the proposed Tariff Section.

The ALJ found that pursuant to the Commission's Regulations at 52 Pa. Code, § 56.35, the Commission has jurisdiction over utility service in a situation where an applicant has an outstanding account balance with the utility that accrued within the past four years. The ALJ continued that in a case involving a lien or judgment, the Court and not the Commission has jurisdiction. Accordingly, the ALJ recommended rejection of the proposed Tariff Section reasoning that he did not wish to place the Commission in the untenable position of sanctioning a collections process over which it has no jurisdiction and possibly abridging the rights of applicants for service. (R.D. at 40-41).

In its Exceptions, PGW replies that in the past it has successfully collected on some of its outstanding liens and judgments when title to a property has changed and the outstanding lien is satisfied at the time of settlement or when a customer, desiring a clean credit record, satisfies a record judgment in order to remove the judgment from his or her credit report. However, PGW maintains that it has not been able to collect all of these outstanding amounts and, unless it is able to implement the proposed Tariff Section, it will be forced to execute upon the liens and judgments to increase its collections.

PGW argues that the statement by the ALJ that it has not shown why it would not have continued success on liens and judgments without execution misses the essential point that PGW will have some continued success in this program without execution due to title transfers, re-mortgaging and a desire to have clean credit. PGW submits that the timing of these events is absolutely unpredictable and puts off possible payment until the customer's subjective decision, thereby, negatively affecting cash flow. (PGW Exc. at 36-37).

3. Disposition

Based upon the evidence of record, we shall adopt the ALJ's recommendation to reject Tariff Section 2.4.C.6 for several reasons. First, we rejected this proposal in PGW's compliance filing in the Restructuring Proceeding, reasoning as follows:

2.4.C.6. – This section allows PGW to reject an application from a customer who fails to enter into payment agreement for an outstanding lien or judgment. This is contrary to Commission case history and policy that requires a company to keep court-ordered liens and judgments separate from the customer's utility billing. PGW should collect lien and

judgment amounts through the legal process, and thus this provision shall be deleted from the tariff.

Compliance Tariff of Philadelphia Gas Works in response to the Commission Restructuring Order as modified on reconsideration, M-00021612 (Order entered October 10, 2003) at 5.

PGW provides no argument that would cause us to reach a different result in this matter than we did in the Restructuring Proceeding. PGW has not provided a persuasive argument to support its contention that it would not have success in collecting on liens and judgments through its existing lien program. The ALJ pointed out that by PGW's own admission it collected approximately \$8 million during Fiscal Year 2004. (R.D. at 40). We also agree with the ALJ's analysis that the Commission should not be placed in the position of sanctioning a collections process over which it has no control since the court and not the Commission has jurisdiction over the collection of liens and judgments. Finally, we point out that 52 Pa. Code § 56.35 permits a utility to require, as a condition of service, that an applicant pay an outstanding balance that has accrued within the past 4 years. Thus, because PGW can terminate service for nonpayment and because PGW can require payment of an outstanding balance as a condition to restore service, PGW is not left without a remedy in collecting from this particular customer group.

Based upon the foregoing discussion, we shall deny the Exceptions of PGW on this issue. The ALJ's finding and recommendation on this issue are adopted.

III. PGW Collection Practices

A. Positions of the Parties

PGW presented extensive testimony regarding its increased efforts toward its collections practices and process. PGW anticipates collecting 93-94% of its billings this fiscal year, which would exceed PGW's historic rate of 92%. (Tr. at 345; PGW St. CRRC-5 at 10). In fiscal year 2004, PGW has improved its collections rate by 4%. (PGW St. CP-1 at 11).

PGW attributes its improvements to the implementation of a "Collection Renewal Initiative," correction of problems associated with its Billing, Collections and Customer Service system, installation of automated meter reading devices and improvements in its Call Center. (PGW St. CP-1 at 3-5). As a result, PGW has experienced increased collection employee productivity, a dramatic increase in the payment of past due bills by phone, reminders to CRP customers that their bills must be paid to remain on the program, and an increase in field collections. (PGW St. CP-1 at 8-10).

The OCA suggested requiring electronic funds transfers (EFT) as a precondition for payment arrangements for residential customers at or above 250% of the federal poverty level and placing all residential customers on levelized budget billing plans. (OCA St. FCI-1 at 10-11 and 12-13).

The Philadelphia Public Officials noted improvement in PGW's collection practices that have resulted in greater efficiencies. (Philadelphia Public Officials at 7-8).

B. The ALJ's Recommendation

The ALJ determined that record evidence demonstrates that PGW has made "significant progress" with its collection efforts. (R.D. at 51). The ALJ also found that PGW's monthly meetings with the Commission's Bureau of Consumer Services (BCS), the OCA and Philadelphia Community Legal Services have proved useful and recommended that the meetings continue. The ALJ further recommended that, in its next base rate case filing, PGW submit a progress report "on the adequacy, cost-effectiveness and management of its collection practices." (R.D. at 52).

The ALJ determined that there was insufficient evidence to institute a mandatory EFT proposal, but he recommended that PGW include in its next base rate case filing, a cost-benefit analysis of the OCA's proposed mandatory EFT proposal. (R.D. at 50). The ALJ also rejected the OCA's proposal of mandatory budget billing, finding that requiring all customers to be placed on budget billing would not be just and reasonable. (R.D. at 51). The ALJ recommended that PGW review with BCS its efforts to educate consumers about the budget billing plan, consider any BCS recommendations and submit a report with its next base rate case filing. (R.D. at 51).

There were no Exceptions filed to this portion of the ALJ's decision.

C. Disposition

We agree with the ALJ's assessment of the improvements made by PGW and his recommendations for updated reports and analyses. PGW's improved focus and execution of a collections process already has produced benefits for the Company. We urge PGW to continue its efforts and look for

additional ways to improve the efficiency and effectiveness of its collection practices. In addition, we urge PGW to examine whether its lack of curb valves has contributed to the Company's reluctance to terminate service to certain customers. See PGW Exc. at 33-34.

IV. Universal Service

A. Positions of the Parties

The main components of PGW's Universal Service program are its Customer Responsibility Program⁶ (CRP), Conservation Works Program (CWP), and Low-Income Home Energy Assistance Program (LIHEAP) outreach. PGW St. CP-2 at 12. PGW's current (non-means-tested) Senior Citizen Discount (SCD) program is also funded through the Universal Service program, although the SCD is addressed as a separate matter. Due to the demographics unique to PGW, the company requires a larger assistance program than other Natural Gas Distribution Companies (NGDCs) if it is to comply with the statutory standard to maintain appropriate Universal Service policies. 66 Pa. C.S. § 2203(8).

PGW serves only the City of Philadelphia: it serves no suburban customers and few large commercial or industrial customers. (PGW St. CP-2 at 12). The City of Philadelphia has the largest low-income population in the Commonwealth, including one-half of all Pennsylvania's welfare recipients. (PGW St. CP-2 at 12). Of the estimated 90,000 customers eligible for PGW's CRP, currently 65,000 customers are enrolled. (PGW St. CP-2 at 14). PGW has been working on reducing the administrative costs associated with the program.

⁶ PGW defines the CRP as "a percentage of income plan open to all residential customers with a household income of 150% or less than the federal poverty standard." PGW St. CP-2 at 13.

The OSBA would solve PGW's demographics dilemma by limiting the number of participants to 60,000 households. The OSBA also proposed to limit the funding of Universal Service programs, which primarily benefit residential customers, to the residential classes.

The OTS presented testimony that PGW's CRP generally is consistent with the Commission's Policy Statement on Customer Assistance Programs (CAPs) at 52 Pa. Code §§ 69.261-267. (OTS St. No. 3 at 16-17). The OTS also acknowledged that PGW's cost for its CRP is not comparable to the cost of other CAPs because of the demographics of Philadelphia. (OTS St. No. 3 at 6-9).

B. The ALJ's Recommendation

The ALJ recommended that PGW consult with BCS and then contract with an independent third-party to conduct an impact evaluation of PGW's Universal Service and energy conservation programs and to provide a report of its findings and recommendations to PGW and to the Commission by March 1, 2005. (R.D. at 32). The ALJ further recommended allowing PGW to file a companion report on its CRP program by March 1, 2005 and a report on its CWP by April, 2005. (R.D. at 32 and 38). The ALJ recommended further collaboration with BCS regarding the design and performance of a cost-benefit analysis of PGW's CWP and that the CWP report be included in the review of PGW's next GCR filing.

PGW excepts to the ALJ's proposal that PGW submit an impact evaluation of the Company's Universal Service Programs by March 1, 2005. (PGW Exc. at 34-35). PGW states that it does not disagree that such a report

should be prepared and submitted, but questions whether a meaningful study can be conducted and a resulting report can be prepared and submitted by March 1, 2005.

The OSBA filed two exceptions regarding Universal Service: (1) that the ALJ incorrectly concludes that CRP participants should not be limited to 60,000; and (2) that the ALJ incorrectly concludes that Universal Service programs should be paid for by all customer classes.

C. Disposition

PGW argues that, considering the scope and the number of questions to be addressed, the evaluation and report reasonably could require four to six months to complete. (PGW Exc. at 35). PGW suggests that an appropriate timeframe would allow filing of the required reports by December 31, 2005. (PGW Exc. at 35). PGW also suggests that rather than requiring PGW to file the independent report in its next GCR proceeding, the Commission should allow parties to the GCR proceeding to introduce the report as they wish. (PGW Exc. at 35, n. 123).

Given the magnitude of the recommended reports, we agree with PGW that requiring submission of the report by March 1, 2005, would not allow sufficient time to conduct an adequate evaluation or prepare a meaningful report. In addition, because the evaluation of the Universal Service and energy conservation programs are to be conducted by an independent third-party, there will be additional time needed to collaborate with BCS and select the third-party evaluator. For these reasons, we grant PGW's exception to the timeframe for submission of the independent report and PGW's response or companion report thereto.

The ALJ rejected the OSBA's recommendation of limiting the number of CRP participants to 60,000, reasoning that the Public Utility Code (Code) requires Universal Service programs to be made available to assist low-income customers, without limitation (other than income level). (R.D. at 32). Although the OSBA supports expanding a SCD program for senior citizens making 250% of the federal poverty level, it recommends reducing the rolls of PGW's CRP available for households making only 150% of the federal poverty level. Thus, the OSBA proposes to remove 5,000 customers from the CRP.

In the instant Investigation, we directed the ALJ to examine PGW's level of Universal Service costs and the cost-effectiveness and management of its Universal Service program. PGW's Universal Service costs are significant, but, given the demographics of its service territory, we expect the costs to be higher than those of other Pennsylvania utilities. We are satisfied that PGW is attempting to control those costs by streamlining and automating its recertification process and its CRP collections process. Further, we encourage PGW to continue working with the Department of Public Welfare to further refine its recertification process.

The OSBA objects to the ALJ's decision not to reallocate PGW's Universal Service costs. The OSBA recognizes that, in our June 2, 2004 Order, this Commission had previously determined to defer the issue of Universal Service cost allocation until PGW's next base rate case. (OSBA Exc. at 7, n.10). Still, OSBA questions whether cost allocation is properly decided within this Investigation, given the Commission's statement that we "must ensure there is some balance between the interests of the beneficiaries and contributors to these programs." June 2, 2004, Order at 6.

We did not intend to address cost allocation within this Investigation. Cost allocation is an issue best left to a base rate proceeding. At PGW's next base rate proceeding, the OSBA will have sufficient opportunity to raise the issue of the proper size of PGW's CRP and argue its position regarding the proper cost allocation for Universal Service programs. Accordingly, we shall deny the OSBA's Exceptions.

V. Waiver or Modification of Certain Chapter 56 Provisions

PGW has requested nine waivers of eight Regulations under Chapter 56. Each request will be addressed separately. However, it is apparent to the Commission that PGW is unique in two ways: its demographics and the fact that it is a municipally-owned utility. The Commission must balance the financial integrity of PGW with consumer protection rights. While the Commission appreciates PGW's position regarding its large collection problem, it must be stressed that there is some culpability on the part of PGW. This problem did not occur overnight. In fact, when PGW became subject to our jurisdiction, it already had a significant collection problem and a tenuous financial picture. The argument that Chapter 56 Regulations are the reason for the bleak financial picture is not accurate.

It is with that background that the Commission must evaluate the waiver request. There are customers who have the financial ability to pay who choose not to pay. That practice must stop. PGW must take steps to ensure that those who have the financial ability to pay meet their payment obligations.

The Commission will grant some of the waivers, as set forth below, as a two year pilot. Semi-annually, PGW shall provide to the Commission a status report for each waiver. The report shall include the customers impacted and the

dollars saved. The report shall be served on BCS as well as parties to this proceeding. The Commission will monitor this report and will not hesitate to reconsider the waivers as warranted.

A. Authority to Waive Chapter 56 Provisions

1. Positions of the Parties

PGW sought waiver of certain provisions of the Commission's Regulations at Chapter 56. 52 Pa. Code §§ 56.1-231. While all the Parties agreed that the Commission has the authority to waive any of its Chapter 56 provisions, the Exceptions reveal some disagreement as to where this authority arises.

2. The ALJ's Recommendation

The ALJ determined that the Commission may waive its Regulations under authority provided by Section 2212(c) of the Public Utility Code (Code). (R.D. at 56); 66 Pa. C.S. § 2212(c). Section 2212(c) provides, in pertinent part:

[T]he commission may suspend or waive the application to a city natural gas distribution operation of any provision of this title, including any provision of this chapter other than this section.

66 Pa. C.S. § 2212(c).

The OSBA excepts to the ALJ's reliance upon Section 2212(c) of the Code, arguing that, although Section 2212(c) authorizes the Commission to suspend or waive any provision of the Code, it does not provide the standards for permitting a waiver or suspension. OSBA Exc. at 10-12. The OSBA reasons that, without providing for the standards for the exercise of that authority, Section 2212(c) would come in conflict with the Constitution. OSBA Exc. at 11.

3. Disposition

All Parties agree that this Commission has authority to waive or suspend its own Regulations. While Section 2212(c) of the Code provides this Commission with authority to waive or to suspend any or all other sections of the Code with respect to PGW, it does not specifically address Commission Regulations.

It may be legally justifiable to conclude that any statute that provides authority to suspend or to waive other statutes also confers authority to waive or suspend any regulation based upon those statutes. However, we need not explore the legal ramifications or the constitutionality of Section 2212(c) of the Code because our authority to waive or to suspend our Regulations lies elsewhere.

When the Commission promulgated its Chapter 56 Regulations, we included a provision specifically allowing modification or suspension of the Chapter 56 provisions. Section 56.222(a) provides:

If unreasonable hardship to a person or to a utility results from compliance with a section in this chapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements. The adoption of this chapter by the Commission will in no way preclude it from altering or amending it under the applicable statutory procedures, nor will the adoption of this chapter preclude the Commission from granting temporary exemptions in exceptional cases.

52 Pa. Code § 56.222(a).

In order to utilize a more direct source of authority to waive or to suspend Chapter 56 Regulations, we shall grant the Exception of the OSBA insofar as it argues that Section 56.222(a) provides authority to modify or exempt Chapter 56 Regulations. We deny as moot the OSBA's Exception insofar as it argues that the ALJ's use of 66 Pa. C.S. § 2212(c) is unconstitutional.

B. Waiver of 52 Pa. Code § 56.32 (Credit standards)

1. Positions of the Parties

PGW proposes to modify 52 Pa. Code § 56.32 to require all new applicants for service and all customers seeking to have service restored to pay a flat rate security deposit as a condition of service. Specifically, PGW proposes a deposit of \$100.00 for residential non-heating customers, unless the customer is restoring service after the winter moratorium period, then a \$200.00 deposit would be required. For residential heating customers, PGW proposes a deposit of \$250.00, unless the customer is restoring service after the winter moratorium period, then a \$500.00 deposit would be required. PGW noted that CRP customers would be exempt from the deposit requirement. (Waiver Petition at B-2).

PGW calculated that it would receive payment of \$7.6 million if the proposed modification is approved. PGW continued that the collection would provide security and offset the impact of non-payment. PGW argued that this change will not unduly burden customers. PGW pointed out that customers who pay on time for one year will have the amount of the deposit applied to their accounts. (Waiver Petition App. A at 7-9)

The OTS opposed the proposal on the basis that it is contrary to the Commission's Policy Statement at 52 Pa. Code § 56.31. According to the OTS,

that Policy Statement requires utilities to base deposit policies on the credit worthiness of the customer and not the locality in which the customer lives. (OTS St. No. 4 at 7). The Action Alliance, *et al.*, and the OCA oppose the proposal on similar grounds.

2. The ALJ's recommendation

The ALJ recommended that the Commission reject PGW's proposed modification of the Commission's rule on deposits. The ALJ concluded that PGW has not shown that its proposed rule modification adequately balances consumer protection rights with PGW's financial integrity.

The ALJ found further that the Commission's Regulations at 52 Pa. Code § 56.41 already provide that a utility may require a deposit as a condition to reconnection of service following a termination. Thus, the ALJ found that under existing Commission regulations PGW may propose for Commission approval a tariff that would allow it to collect a deposit from customers as a condition of restoration of service. (R.D. at 73-74).

The ALJ made the following recommendation on this issue:

I note that OCA witness Colton stated that other Pennsylvania utilities are implementing a credit scoring tool known as Energy Risk Assessment Model (ERAM) on an experimental basis. OCA St. No. FCI-1 at 34-35. According to Mr. Colton, those utilities are applying this credit scoring model to applicants for service who are not exempt from posting a deposit because of a favorable prior payment history. *Id.* He also noted that applicants certified as low income are also not required to post a deposit. *Id.* PGW stated that it does not presently use a credit scoring model such as ERAM. Waiver Petition, App. A. at 8. 1

recommend that PGW be required to file a cost-benefit analysis with its next base rate case filing that shows whether the acquisition and implementation by PGW of credit scoring model such as ERAM would be cost effective.

(R.D. at 73-74).

In its Exceptions, PGW argues that it has a massive number of customers who start service but who do not pay their bills or do not pay on time. PGW continues that, since the beginning of the fiscal year, it had some 68,000 customers initiate service (excluding those who were enrolled in CRP), who immediately entered into some kind of payment arrangement or had some other issue with respect to their account. PGW concluded that using its existing manual deposit procedures and Chapter 56 procedures, it was able to secure only 1,500 deposits. (PGW Exc. at 21).

3. Disposition

PGW's request for waiver of this provision is granted, in part, and denied, in part. The purpose of a security deposit is to protect utilities from providing service to a customer who does not pay for those services. It is not meant to be a revenue source. Moreover, security deposit policies are to be based on credit worthiness of the customer and not the locality in which the customer lives. Section 56.31 of our Regulations requires deposit policies to be based upon the credit risk of the individual applicant or ratepayer rather than the credit history of the affected premises or the collective credit reputation or experience in the area in which he lives. 52 Pa. Code § 56.31.

The request to require all new customers to pay a security deposit is denied. PGW's proposal to require a deposit of new customers is premised upon

the perception of the economic character of the city of Philadelphia, PGW's exclusive service area. 52 Pa. Code § 56.31 unequivocally states that deposit policies are to be based upon the credit risk of the individual and not upon the collective credit reputation or experience in the area in which an applicant lives.

The Commission encourages PGW to implement a credit scoring tool. For example, the Commission has approved the Energy Risk Assessment Model (ERAM) for PPL Utilities, Inc., Columbia Gas Company, Equitable Gas Corporation and Dominion Gas Corporation.⁷ PGW is further directed to file a cost-benefit analysis with its next base rate case filing that shows whether the acquisition and implementation by PGW of a credit scoring model, such as ERAM, would be cost effective.

PGW's request to require a flat security deposit from its customers whose service is restored, however, is consistent with 52 Pa. Code § 56.51(b) and is granted. We find the level of the proposed flat rates to be acceptable. By granting this waiver, the Commission is permitting PGW to use a flat amount rather than basing the deposit on that consumer's billing history. A deposit is particularly relevant after the winter termination period. Permitting a flat rate deposit rather than a formulaic method will ease the application of security deposits. PGW is reminded that a security deposit is appropriate and may be required if a customer is late paying two consecutive bills or three or more bills within the preceding 12 months. See 52 Pa. Code § 56.41(1). Requiring a security deposit at this early stage will prevent a large arrearage from accumulating.

⁷ PPL Order entered February 8, 2001 Docket No. P-00001808; Columbia Order February 8, 2001 Docket No. P-00001807; Equitable November 15, 2001 Docket No. P-00011915; Dominion Order September 13, 2002 Docket No. P-00021972.

C. Waiver of 52 Pa. Code § 56.35 (Payment of outstanding balance)

1. Positions of the Parties

PGW proposed to modify 52 Pa. Code § 56.35 to require applicants for service who resided at the address for which service is being requested during the period when an outstanding arrearage accrued, to pay the outstanding arrearage as a condition of receiving service.

PGW asserted that its proposed rule modification is intended to prevent the current, widespread practice commonly known as the "name game" in which PGW terminates service to a customer for non-payment and then receives an application for service at the same address from another person in the household who takes no responsibility for the unpaid bill even when the applicant resided in the household at the time that the unpaid bill accumulated. PGW estimated that it would be able to collect \$1.8 million if this proposal is adopted. (Waiver Petition A at 9-11).

The OTS opposed the proposed modification. The OTS argued that provisions similar to the ones PGW proposes here, were included in a rulemaking – "1998 Rulemaking to Rescind Obsolete Regulations Regarding Telephone and Residential Telephone Standards." The OTS contended that, those provisions were removed by the Commission from the final rulemaking in response to concerns raised by commentators regarding: (1) privacy; (2) a failure to define the term "household"; (3) giving utilities the unprecedented advantage of "independently" determining that one party is responsible for a debt that accrued under an account in another party's name; (4) allowing utilities to dictate living arrangements by restraint of service; and (5) the potential volume of complaints

that would be filed at the Commission regarding liability for payment of an outstanding bill. (OTS St. No. 4 at 11-12).

The Action Alliance, *et al.*, also opposed the proposed modification arguing that under existing law, the mere fact that a person co-habits with a utility customer does not in itself make that person liable for utility service consumed but not paid for by the utility customer. (Action Alliance, *et al.* M.B. at 27).

The OCA also opposed the proposed modification. The OCA argued that the proposal violates a host of legal tenets regarding family law, regulatory law, contract law and consumer credit law. (OCA St. No. FCI-1 at 36).

2. The ALJ's Recommendation

The ALJ found as follows:

I agree with OTS, Action Alliance, *et al.*, and OCA that the Commission should reject this proposed rule modification by PGW. PGW does not have the authority under law to make determinations regarding whether an applicant for service should be held liable for the outstanding account balance of a person with whom he or she has resided. Under law, that authority rests with a court, district justice or administrative agency.

(R.D. at 77).

In its Exceptions, PGW states that it proposes to require applicants for service who resided at the address for which service is being requested during the period when an outstanding arrearage accrued, to pay the outstanding arrearage as a condition of receiving service. (PGW Exc. at 24). The customer will be informed of his right to dispute this determination with the Company, and then

with the PUC, if necessary. PGW argues that the Commission has the authority to approve this presumptive approach by applying a standard legal concept – unjust enrichment– to create presumptive responsibility. (PGW Exc. at 24).

PGW concedes that Chapter 56 already has a provision which permits such an application when the Commission determines that the applicant is legally obligated to pay for the service. PGW continues that BCS already interprets 52 Pa. Code § 56.35 to permit it to assign a prior arrearage to a new applicant whenever the facts show that the new applicant benefited from the utility service and should be responsible for the past charges as was illustrated by the results of one informal complaint brought by PGW against a name game player.

PGW maintains that that in Fiscal Year 2003 alone, 4,800 terminated accounts at a particular location were reinstated shortly after termination under a new name. PGW contends that if 10-20% of the total potential number of cases actually constituted such fraud attempts, it would be forced to try to bring before the Commission as many as 1,000 cases a year. PGW opines that while the present Chapter 56 rule would apparently permit PGW to seek a ruling from the PUC that each of these 1,000 applicants should be responsible for a prior arrearage as it did in the informal complaint that was placed on the record in this proceeding, the sheer volume of cases means that addressing them in this way would make this approach completely unworkable. (PGW Exc. at 24-25).

3. Disposition

The request of PGW is denied. PGW does not have the legal authority to unilaterally determine that an applicant for service is liable for the outstanding account balance of another person. That authority rests with a court *or this Commission*.

This issue was addressed in *John Kutas v. Bell Atlantic-PA, Inc.*, Docket No. F-00252231 (August 26, 1996), wherein the Commission stated:

A determination by this Commission to assign financial responsibility for [utility] service to a beneficiary of that service who is not the ratepayer of record requires the Commission to find a sufficient nexus between the beneficiary and the utility that warrants the finding that the beneficiary is an indispensable party responsible for the contracting customer's arrearage. This determination, which requires express Commission action, must be made on a case by case, fact-specific basis. Relevant factors to consider include, but are not limited to, the following: (1) was the non-ratepayer beneficiary an active beneficiary of the utility service, evidenced by contacting the utility about service and were such contacts regular and/or frequent; (2) did the non-ratepayer beneficiary receive an extensive amount of utility service; (3) has the non-ratepayer beneficiary become voluntarily involved, either in writing or in person, with informal or formal complaint proceedings encompassing the present service; (4) when the named ratepayer and non-ratepayer beneficiary share the same residence, has there been previous service in the non-ratepayer beneficiary's name the included involvement by the present named ratepayer; (5) has the utility specifically filed a motion to have the non-ratepayer beneficiary joined as an indispensable party." (Order at p. 18-19)

Kutas at 18-19.

There is no reason to revise the Commission's well-established standard. PGW is encouraged to seek Commission determination in all such circumstances that it deems warranted.

Finally, PGW may not require or allow a non-ratepayer to seek a payment arrangement for the account of another individual. A non-ratepayer must agree to be added as a named customer of record to request such relief from PGW or the Commission.

D. Waiver of 52 Pa. Code § 56.82 (Days termination of service is prohibited)

1. Positions of the Parties.

Our Regulation at 52 Pa. Code § 56.82(1) states that, except in emergencies which include unauthorized use of utility services, service for non-payment of charges shall not be terminated on Friday, Saturday or Sunday. PGW proposes to modify §56.82(1) to permit service to be terminated for non payment of charges on Friday. PGW calculated that it would collect an estimated \$2.5 million if it were permitted to implement its proposed rule modification.

PGW stated that the Commission's rule prohibiting shut-offs on Friday was established during a time when banks were not open on weekends and there were no Automated Teller Machines (ATMs). PGW argues that those services are now available to customers on the weekends. PGW promised that if the Commission permits its rule modification, it will provide customer service representatives and field service representatives to ensure that customers will be able to make payment arrangements and restore service on Saturday. (Waiver Petition at B-3 and B-4).

Action Alliance, *et al.*, opposes the proposed modification. Action Alliance, *et al.*, challenged PGW's contention that all necessary services were available on the weekend. According to Action Alliance, *et al.*, the BCS would not be available to assist customers, the customers' physicians may not be available on the weekend to certify a customer's claim that he or she requires gas service due to a medical condition, and, finally, social service agencies and legal service offices generally are unavailable on the weekend. (Action Alliance, *et al.* St. No. 1 at 30-31)

The OCA responded that PGW should be required to provide documentary evidence of the services available to customers on the weekend before its proposed rule modification is approved. The OCA continued that if PGW produced such documentation, then its proposed rule modification should be implemented on an experimental basis. (OCA St. No. FCI-1 at 42).

2. The ALJ's Recommendation

The ALJ recommended that the proposed modification be rejected. The ALJ found that that PGW has not produced sufficient evidence in this investigation to show that customer rights would be adequately protected if PGW were allowed to terminate customers on a Friday for nonpayment. Specifically, the ALJ found that PGW has not shown that agencies, organizations and services are available on the weekends to represent customers, handle customer disputes, handle customer needs for financial assistance, or certify medical emergencies. The ALJ also recommended that PGW be required to meet in a collaborative with BCS, OCA, Action Alliance, *et al.*, and other interested parties for the purpose of determining whether there are sufficient resources available to customers on the weekend in the event of a Friday service termination. (R.D. at 86-87).

In its Exceptions, PGW argues that no such "Friday Prohibition" rule exists in any other context. PGW offers as an example that neither oil nor propane dealers are prohibited from refusing to deliver their product to non-payers effectively terminating service on any day of the week; nor is there a prohibition against eviction for non-payment from a rental home or apartment on any particular day. PGW asserts that in all of these instances, customers must bear the consequences of waiting until after the fact to take action to respond to a non-payment problem.

PGW submits that there is no evidence that many of the typical ways in which customers respond to termination are not actually available on Saturdays. PGW adds that many physicians are indeed available on Saturdays; and that all hospital emergency rooms are. According to PGW, community organizations that deal with energy assistance certainly have reason to be available on the weekend, since Friday denials of service are not barred for non-PUC regulated entities. PGW adds that some banks and financial companies are now open seven (7) days a week; all ATMs and on-line banking options are so available.

PGW asserts that a customer is only terminated for non-payment some three weeks after the customer first receives a bill showing an overdue amount. PGW continues that customers have over three weeks to respond to an overdue bill prior to the time that shutoff actually occurs.

PGW adds that all customers also receive a 10-day termination notice. At a minimum, therefore, customers should be able to respond to the termination notice when given 10-12 days (counting the 48 hour notice) to do so. PGW contends that the ALJ's recommendation is patently unreasonable when one considers that this one change offers the ability to collect an additional \$2.5

million at a time when PGW desperately needs additional cash flow and is having to look to remaining responsible customers to make up these differences. (PGW Exc. at 31-33).

3. Disposition

Upon our consideration of the evidentiary record, we shall reject PGW's request to permit a Friday terminations. While we agree with PGW's rationale for waiving Friday shut-offs, we are constrained by law. We recognize that the rationale for prohibiting Friday shut-offs stems from a period when there were no ATMs and banks did not have weekend hours. Nevertheless, the prohibition against Friday shut-offs is statutory.

Pursuant to Section 1503 of the Code, the Commission shall not authorize a public utility to discontinue, except upon request of the customer, for non-payment of charges or for any other reason, the rendering of service on Friday, Saturday or Sunday, except when required to prevent or alleviate an emergency as defined by the Commission. 66 Pa. C.S. § 1503(a) (1). Given that the prohibition of terminations on Fridays, Saturdays or Sundays is statutory in nature, we will deny PGW's request to modify our Regulations at 52 Pa. Code § 56.82.

We choose not to exercise any authority pursuant to 66 Pa. C.S. § 2212(c) in order to waive the provisions of 66 Pa. Code 1503(a)(1). We find that PGW's argument does not rise to the level that would cause us to consider waiving Section 1503(a)(1) of the Code.

E. Waiver of 52 Pa. Code § 56.95 (Deferred termination when no prior contact).

1. Positions of the Parties.

PGW requested a waiver of our Regulation at 52 Pa. Code § 56.95. Specifically, PGW requested to be exempt from the requirement to post a termination notice at the residence of the ratepayer at least 48 hours before the termination date, if prior contact has not been made with a responsible individual either at the affected dwelling or the residence of the ratepayer, pursuant to our Regulation at 52 Pa. Code § 56.94.

PGW argued that the Commission's existing termination procedures are "relatively long and costly." PGW asserted that it could save an estimated \$1 million on an annual basis if it were not required to provide customers with the 48-hour termination notice.

PGW opined that its proposal would eliminate just one of several notices and contacts that a customer receives and, therefore, consumers will continue to have adequate notice of the potential for termination. PGW argued that in light of the potential savings to the Company, this change is justified. (Waiver Petition A at 13-14).

The OTS, the Action Alliance, *et al.*, and the OCA, opposed the proposed modification to 52 Pa. Code § 56.95. Each party raised the issue that the 48-hour notice was a critical part of consumer protection. The Action Alliance, *et al.* proffered the following testimony:

Chapter 56 premise is that termination of service for non-payment should not occur unless there has been a face to face contact with the customer or a responsible

adult at the account premises at the time of termination. This policy objective recognizes the seriousness of service termination, and the need to do what is humanly possible to avoid it. Face to face contact provides an opportunity for exchange of information that just can not be replaced by mass produced written notices. However, Chapter 56 also recognizes that there are physical and financial limits to the number of times that a utility may be required to visit a property to effectuate shut-off. For this reason, if there is no face to face on the day when the utility first arrives to terminate service, the utility must leave a 48 hour notice, informing the customer that service will be terminated after 48 hours if the customer does not take necessary steps to avoid the need to terminate service.

Action Alliance, *et al.* St. No. 1 at 28-29.

2. The ALJ's recommendation

The ALJ found as follows:

I believe that a letter (10 day notice), phone call (3 day notice) and attempt at face-to-face contact and the posting of a notice (48 hour notice) are not too much to ask of a utility before it terminates a customer's service. The present termination process provides three different means of contacting the customer. A customer who for whatever reason does not avail herself to a letter may avail herself to a phone call or face-to-face visit or posted notice or vice versa. The existing procedural rules represent reasonable steps and means of contacting the customer and giving her a reasonable opportunity to resolve the problem and retain service.

(R.D. at 90).

The ALJ further recommended that a collaborative be formed of interested parties to examine: (1) the best practices of Pennsylvania utilities in implementing the Commission's existing termination procedural rules; (2) the best termination procedural rules of other state commissions; and (3) how the Commission's existing termination procedural rules may be modified or revised to be more cost effective for utilities while protecting consumer rights by December 31, 2004. (R.D. at 90).

In its Exceptions, PGW argues that its proposal is specifically justified by its immediate need to expedite its collections and reduce costs by an estimated \$1million. PGW argues that the 48-hour notice requirement is an unnecessary and costly burden on PGW because, in most cases, it requires two field visits, one of the most costly activities that PGW can undertake to effectuate a termination.

PGW maintains that since the present rules do not require that the Company actually make physical contact with the customer, the notice is simply another hurdle over which the utility must jump before it can actually terminate service and stop providing free gas service to customers who may have no intention of ever paying. PGW opines that the savings to the Company and; ultimately, the customer justifies the potential additional burden on customers of a slightly shorter period in which to respond to non-payment. PGW concludes that customers would still have 20 days in which to take action and avoid termination from receipt of the first overdue notice. (PGW Exc. at 30-31).

3. Disposition

In our disposition of each of PGW's requests for modifications of Chapter 56, one of the determining factors is whether the proposed modification

balanced the protection rights of the customer, and the financial integrity of PGW. In our consideration of PGW's request to eliminate the requirement to post a 48-hour notice, we have concluded that because delinquent customers are provided sufficient notice, the elimination of the posting of a 48-hour notice would not compromise customer rights.

Current Regulations require three notices be provided before terminating service: (1) written notice at least 10 days prior to the proposed termination (52 Pa Code § 56.91); (2) attempt personal contact at least three days prior to termination (52 Pa Code § 56.93); and (3) post a notice at the residence of the ratepayer and the affected dwelling not less than 48 hours prior to termination if personal contact is not made with the ratepayer or a responsible adult (52 Pa Code § 56.95).

Accordingly, PGW's proposal is granted as modified. However, this waiver shall not be permitted during the winter termination period (December 1 to March 31). The 48-hour notice is just one of several notices and contacts that a customer receives. Therefore, customers will continue to have adequate notice of the potential for termination and a reasonable opportunity to resolve the situation and retain service. In approving PGW's request to waive this Regulation, we are persuaded that this 48-hour notice could hamper PGW's collection efforts. Nonetheless, PGW is reminded that the posting of notices on the doors of delinquent accounts can motivate a customer to take action to avoid termination.

F. Waiver of 52 Pa. Code, § 56.97 (Procedures upon ratepayer or occupant contact prior to termination)

i. Positions of the Parties

PGW proposed to modify our Regulations at 52 Pa. Code § 56.97 to permit PGW to limit each customer to only one payment arrangement, unless the customer's income level drops into a lower income level group as delineated by the BCS income guidelines. PGW argued that the modification is necessary because 91% of its payment arrangements are broken. PGW claimed that if the proposed modification were approved, it would collect an estimated \$7.25 million.

PGW also argued that the Commission's Order in *Frayne v. PECO Energy Company*, Docket No. C-20029005, (Order entered September 10, 2003), (*Frayne*), contains a definition of "changed circumstances" which is too broad to be workable. Specifically, PGW indicated that its proposed rule modification would improve its collections on payment agreements because it provides a clear limitation on what constitutes a change of circumstances. PGW inferred that without its narrow definition of "changed circumstances" it is unable to collect effectively due to "a pattern of breaking an agreement and then establishing another." (Waiver Petition, App. A. at 11-12).

The OTS and Action Alliance, *et al.*, both opposed the proposed modification on similar grounds. Specifically, both parties argued that within each BCS delineated income level, there is a wide range of incomes. Thus, those parties asserted that a customer may experience a change in circumstance without ever leaving a particular BCS delineated income level.

Household Size

	Gross Monthly Income	1	2	3	4	5	6	7	8	For each additional person, add
LEVEL 3* 151% (200%)	Minimum Income	\$1,165	\$1,562	\$1,960	\$2,357	\$2,755	\$3,152	\$3,550	\$3,947	\$399
	Maximum Income	\$1,552	\$2,082	\$2,612	\$3,142	\$3,672	\$4,202	\$4,732	\$5,262	\$530
300%	Maximum Income	\$2,328	\$3,123	\$3,918	\$4,713	\$5,508	\$6,303	\$7,098	\$7,893	\$795
LEVEL 4* 301%	Minimum Income	\$2,329	\$3,124	\$3,919	\$4,714	\$5,509	\$6,304	\$7,099	\$7,894	\$796

*Based on federal poverty guidelines
(revised 2/13/04)

The OCA opposed the proposed modification by arguing that it is a fallacy to assume that because a customer's income is within a particular BCS delineation, the particular customer has the means to pay his or her gas bill. The OCA continued that some members of the "working poor" may have an inability to pay due to unstable incomes or a "life crisis" such as family illness.

The OCA proposed an alternative to the PGW proposal. The OCA presented the testimony of its witness, Mr. Colton, as follows:

On the front-end, PGW should build check-points into the payment plans of working poor households with substantial arrears. Through such a process, PGW would break-up arrears above certain threshold amounts into multiple component parts. A payment arrangement for a [sic] \$400 arrears, for example, might be made subject to a payment plan for the first \$200 over a 3-month period. Upon successful completion of that plan, PGW would develop a payment plan for the next increment of arrears.

Subsequent to entering into a payment plan, PGW should provide a revision to the payment plan should customer circumstances change. With working poor households, in particular, as I discuss in detail above, this ability to revisit payment plan terms is important.

(OCA St. No. FCI-1 at 41-42).

2. The ALJ's Recommendation

The ALJ recommended rejection of the proposed modification to 52 Pa. Code § 56.97. The ALJ found that PGW has not shown an adequate balance between customer protection rights and its financial integrity in proposing this modification. The ALJ proffered the following comments:

PGW's rule proposal indicates that it would like to make as few judgment calls as possible when it comes to payment arrangements. It would establish the minimum amount that a customer could pay according to income group and it would limit a customer to one payment arrangement unless the customer dropped down into a lower income group. However, as OTS witness Mumford indicated, the Commission's Chapter 56 rules were designed "to provide functional alternatives to termination or refusal to provide that service." See, 52 Pa. Code §56.1. PGW's rule proposal would unduly limit the alternatives to service termination. As the opposing witnesses testified, there is a wide disparity of incomes represented within the income level groups. It would be fair and wise for PGW to look at each case on an individual basis and determine what reasonable payment arrangement may be offered to the customer. PGW is given enough leeway by the Commission's regulations and its decision in Frayne to make the appropriate determination in each case. While PGW may believe it more efficient to operate like a widget manufacturer

with a one size fits all mold, PGW is a public service entity that is required to recognize and respect the rights of individual customers to a reasonable opportunity to obtain and retain gas service.

(R.D. at 84).

The ALJ recommended further that PGW work in a collaborative group with BCS and other interested parties to establish an appropriate range of minimum monthly payments toward arrears for each income level group, and that PGW collaborate with BCS, OCA and other interested parties to determine whether PGW may efficiently and effectively implement the OCA's multiple component payment arrangement approach in the appropriate circumstances. The ALJ also recommended that a collaborative group of interested parties be formed to discuss this and other related matters with the first meeting to take place before December 31, 2004. (R.D. at 84-85).

In its Exceptions PGW estimates that of over 54,000 payment arrangements that PGW will enter into this year, only 8% to 9% will actually be honored to completion. PGW argues that it is losing money due to customers who take public utility service, fail to pay for it and then, when given a second chance to meet their obligation, fail to honor that second obligation. PGW submits that its presumptive rules would establish bright lines which would limit the number of payment arrangements and allow PGW to process the tens of thousands of broken arrangements with which it is faced in a timely manner. PGW opines that adoption of its proposal assures that it will either receive payment for the service that has been provided or have the ability to terminate the customer in a timely manner. (PGW Exc. at 25-28).

3. Disposition

Upon our review of the evidentiary record, we are persuaded to reject PGW's proposal to modify 52 Pa. Code § 56.97. We begin our discussion of this issue by noting that in *Frayne*, we articulated a policy relative to granting multiple payment arrangements to payment-troubled customers. The Commission's ruling in *Frayne* stated:

A utility certainly has the discretion to give more than one arrangement, but it is not required to do so unless there is a change in circumstances. A utility should not exercise its discretion to offer multiple payment arrangements, unless there is a change in circumstances. By way of example and not limitation, changes in circumstances could include a showing that there has been a change of income level or other relevant matters. By this comment, we expressly do not approve of the practice of permitting additional payment arrangement requests based only upon the passage of time.

Frayne at 6 (emphasis added).

PGW asserts that there is no definition of what constitutes a change in circumstance. While a change in circumstance could include a number of events (loss of job, death of spouse, change in number in household), the end result or impact on the person's income level may be dispositive.

When a customer's income level is reduced so as to drop to the lower income level, a second payment arrangement is required. PGW fails to take into consideration that there are legitimate life circumstances, other than a decrease in income, that cause even those consumers with the best of intentions to be unable to meet a prior commitment in the form of a payment arrangement. The impact of a serious medical problem or an increase in family size are examples of legitimate

changes in circumstances that should be considered when a consumer requests to enter into a new payment arrangement.

In instances where the consumer has not maintained the terms of a payment arrangement, it is appropriate that PGW request the customer to pay the amount of the missed payments, referred to as a "lump sum payment," on that prior payment arrangement.

G. Waiver of 52 Pa. Code § 56.100 (Winter termination procedures)

1. Positions of the Parties

PGW proposes to modify 52 Pa. Code § 56.100 to permit it to terminate Income Level 3 and 4⁸ Customers for non-payment during the winter termination period from December 1 through March 31 without having to file a written request with the Commission. PGW's proposed modification provides an exemption for customers 60 years of age and older. PGW argued that adoption of this modification would allow it to collect an additional \$1 million.

PGW argued that Level 3 and 4 customers can afford to pay their bills and they should not be provided free gas during the winter months when consumption peaks. PGW argued that it needs the money during the winter months and payment agreements with customers after the winter months do not provide the money when it is needed. (Waiver Petition App. A. at 6-7).

⁸ Income Level 3 and Level 4 refer to income levels delineated by BCS. A chart showing the income levels appears *supra* and will not be repeated here.

The OCA opposed the modification arguing that there is no increase in the non-payment of bills during the winter period. The OCA argued that the proposal could present a grave risk to the health and safety of customers. (OCA St. No. FCI-1 at 26-28).

The OTS opposed the proposal as well. The OTS cited health and safety concerns. Additionally, the OTS pointed out that the proposal exempted customers over 60 years of age but did not exempt households with children. (OTS St. No. 4 at 27).

2. ALJ's Recommendation

The ALJ recommended rejection of the proposed modification, finding that PGW did not meet its burden of finding that the proposed modification adequately balances consumer protection rights with PGW's financial integrity. Specifically, the ALJ noted that 52 Pa. Code § 56.100, provides that a utility may submit a written request to terminate a customer during the winter moratorium period. The ALJ continued that while claiming the process was cumbersome, PGW's witness admitted on cross-examination that PGW never availed itself of this provision of the rule. (R.D. at 68).

In its Exceptions, PGW reiterates that 91% of its customers, who are granted payment arrangements, default on those arrangements within 12 months. PGW continues that last winter it had over 15,000 customers (all non-CRP), representing \$5.3 million of accounts receivable, who were on the system from December 1, 2003, through at least March 31, 2004. PGW adds that the aforementioned customers paid nothing toward their bills during the December 31, 2003, to March 31, 2004, time period. (PGW Exc. at 18-20).

3. Disposition

PGW requests permission to terminate Income Levels 3 and 4 customers for non-payment during the winter termination period (December 1 through March 31) without having to file a written request on a case-by-case basis.

PGW's request to terminate Income Level 4 is granted. The Commission has opined that Level 4 customers, in most cases, have the ability to pay their bill but choose not to pay.⁹ In effect, by not terminating those customers who have the financial ability to pay, but are not paying, PGW is providing free gas during the winter months when consumption peaks. This also places an unfair burden on customers of all Income Levels who do pay their bill.

H. Waiver of 52 Pa. Code §§ 56.115 and 56.191 (Restoration of service and General rule)

1. Positions of the Parties

PGW proposed that our Regulations at 52 Pa. Code §§ 56.115 and 191 be modified. Specifically, PGW proposed to extend the time period for it to restore service to customers after receipt of a medical certification from the current requirement to restore service the next working day pursuant to 52 Pa. Code § 56.115. PGW also proposed to modify the requirement of our Regulations at 52 Pa. Code § 56.191 to restore service by the end of the first full working day after receiving either: (1) payment of outstanding charges plus a reconnection fee; (2) payment of amounts due under a settlement or payment agreement plus a reconnection fee; or (3) adequate assurances that any unauthorized use or practice

⁹ See *Saul Segan v. PECO Energy Company*, Docket No. C-00967954 (April 28, 1997); *Rev. John W. Gay, Jr. v. Pennsylvania Power & Light*, Docket No. Z-00302293 (September 10, 1996); *Calvin D. Hughey v. Equitable Gas Company*, Docket No. Z-00275463 (March 1, 1996).

will cease, plus payment of a reconnection fee. PGW sought to modify both Sections 56.115 and 56.191 to be permitted to restore service within seven days from April 1 to November 30. (Waiver Petition at B-7, B-8)..

PGW argued that the 24-hour rule for restoration of service is expensive and virtually impossible to accomplish. PGW argues further that many of its restorations involve home visits and digging up service lines.

The OTS opposed the proposal on health and safety concerns. The OTS pointed out that even though the period of time is not the critical winter period, the months of October, November and April may be cold as well. (OTS St. No. 4 at 28-29). The Action Alliance, *et al.*, opposed the proposal on similar grounds. (Action Alliance, *et al.* St. No. 1 at 31).

2. The ALJ's Recommendation

The ALJ recommended that the proposal be rejected. The ALJ found that the proposal did not balance the customers' consumer protection rights with PGW's fiscal integrity. The ALJ reasoned that when customers pay the amount owed, they should be rewarded with prompt service. The ALJ adopted the position of the OTS and Action Alliance, *et al.*, that gas service is a necessity of life and customers who have paid for it should not have to wait up to seven days to have it restored. (R.D. at 95).

In its Exceptions, PGW argues that many terminated customers wait until fall and the approach of cold weather before they seek to reinstate service. According to PGW, this means that it must reinstate service for a huge number of customers in a very short period of time.

PGW repeats that it has a large number of service lines that are not equipped with curb valves, meaning that to restore service, some form of dig-up must occur. According to PGW, to restore service to a dig-up customer costs about \$2,500 and takes much longer to accomplish than to restore service to a customer with a curb valve. PGW alleges, due to the massive numbers of terminations, that it simply cannot physically complete all the restorations in the standard mandated by Chapter 56. (PGW Exc. at 33-34).

3. Disposition

PGW's proposal is denied due to the potential health and safety issues that could arise if service is not promptly restored to a location where a doctor has certified that the absence of service will aggravate a medical problem. PGW is reminded that a medical certificate is intended to provide the ratepayer with enough time to resolve the payment issue or to make alternative arrangements for the person with the medical problem. Medical certificates are not intended to shield the consumer from meeting their ultimate obligation to pay for the service they receive. PGW is encouraged to monitor accounts with medical certificates to ensure that the ratepayer is meeting their obligation. Further if PGW believes that the consumer is using the medical provisions of our Regulations to avoid payment then PGW should consider filing a petition to have the medical certificate rules waived for that location. See 52 Pa. Code § 56.118.

Additionally, we will not permit PGW to cause customers who have either paid or arranged to pay a balance due to wait up to seven days to have their service restored. When customers pay the amount necessary to restore service, they should be rewarded with prompt service. PGW's argument is not persuasive given its representation regarding Friday turn-offs.

Based upon the foregoing discussion, we deny the Exceptions of PGW. We adopt the findings and recommendation of the ALJ on this issue.

I. Waiver of 52 Pa. Code § 56.191 (General rule)

1. Positions of the Parties

PGW proposed to modify 52 Pa. Code §56.191 to permit it to require customers that are considered as having income levels at Level 3 or Level 4 according to BCS guidelines and who have been shut off for non-payment to pay their full balance and related charges as a condition for restoration of service.

PGW argued that 91% of the payment arrangements entered into by customers during 2003 were broken within twelve months. PGW stated that the purpose of the proposal is to ensure that it is protected when customers do not pay during the winter months. PGW pointed out that its proposed regulation would not apply to customers at or near 150% of the Federal Poverty Level. PGW estimated that it would collect approximately \$4.2 million if this modification was implemented. (Waiver Petition App. A at 4-5).

The OCA opposed the PGW proposal arguing that a Level 3 income may not represent a livable wage. The OCA continued that even though Level 3 income is above the poverty standard, many Level 3 customers live paycheck to paycheck and may not be able to pay their outstanding balance in order to have service restored. (OCA St. No. FCI-1 at 22).

Action Alliance, *et al.*, opposed the PGW proposal arguing that a number of social welfare programs recognize households above 150% as eligible for assistance. Action Alliance, *et al.*, offered as examples, the Federal Low

Income Home Energy Assistance Program (LIHEAP), the Utility Emergency Services Fund, (UESF), the National School Lunch Program, as examples of programs that recognize levels above Level 3 as being eligible for assistance. (Action Alliance, *et al.* St. No. 1 at 9-11).

2. The ALJ's Recommendation

The ALJ recommended rejection of the proposal, finding that PGW did not meet its burden of proving that the proposed modification adequately balanced consumer protection rights with its financial integrity. The ALJ opined that it would be unreasonable to deny all Level 3 and 4 customers the possibility of entering in to a reasonable payment arrangement.

The ALJ opined that the root of the problem may be in the size of the arrearage that PGW allows customers to accumulate before action was taken to terminate service. The ALJ found that many Level 3 or 4 customers are not able to make large, lump sum payments to restore service. (R.D. at 62-64).

The ALJ made the following comments regarding PGW's proposal:

It [52 Pa. Code §56.191] gives the utility a significant degree of discretion and flexibility in determining whether under the particular circumstances, a customer is deserving of an installment payment agreement, and if so, on what terms. The Commission's regulation provides some factors for the utility to take into account in its determination of whether to allow a customer to enter into an installment payment agreement on an outstanding balance as a condition of service restoration.

(R.D. at 63).

In its Exceptions, PGW argues first that the Recommended Decision uniformly failed to take account of its unique demographics and status as a municipal utility. PGW continues that as a municipal utility, it has no shareholders and, in each instance in which PGW is prevented from enacting a practice that enhances the chances of receiving payment from non-payers, the burden of paying for the service transfers not to stockholders but to its remaining customers.

PGW argues that the ALJ failed to give any consideration to PGW's relatively large volume of non-paying customers with which the Company must deal. PGW contends that 250,000 customers of PGW's total customer base of 510,000 customers are payment troubled on a regular basis. PGW points out that 150,000 customers are now in arrears, up from 133,000 in April.

PGW concludes by urging rejection of the argument that many customers in the Level 3 and Level 4 subgroup have low incomes and are considered "working poor." PGW argues that the only standard that properly may be used to designate customers with an inability to pay is the standard used to determine income eligibility for the PUC's low income assistance program referred to as "CRP" by PGW - which sets the standard at 150% of the Federal Poverty Level or below. (PGW Exc. at 14-18).

3. Disposition

Our Regulations permit outstanding charges and the reconnection fee to be amortized over a reasonable period of time.

We find that it would be unreasonable to deprive all PGW customers with income above 150% of the Federal Poverty Level, regardless of

circumstances, the possibility of entering into a payment arrangement. 52 Pa. Code § 56.191 recognizes that each customer situation is different and the Commission's Regulation allows the utility a significant degree of discretion and flexibility in determining whether, under the particular circumstances, a customer is deserving of an installment payment agreement and, if so, on what terms. The Commission's Regulation provides some factors for the utility to take into account in its determination of whether to allow a customer to enter into an installment payment agreement on an outstanding balance as a condition of service restoration. 52 Pa. Code § 56.191(1).

For this reason, we shall reject PGW's request for Income Level 3 customers. As stated above, however, Level 4 customers are presumed to have the ability to pay their utility bills. This group of customers has the ability to pay but chooses not to pay. It is not appropriate that other income level customers carry the costs associated with these customers. Accordingly, we shall grant PGW's request for waiver for Income Level 4 customers.

J. Time Limit to Terminate Service

1. Positions of the Parties

According to PGW, under current BCS guidelines, a utility is encouraged to terminate service to a residence within 30 days of the date of the 10-day notice. PGW submits that it does not have the resources to make all of its shut-offs within 30 days. PGW argued in its Waiver Petition as follows:

Current data shows that PGW has mailed to customers 126,780 10-day letters since the end of March. Of that group, 34,708 will require a second complete cycle of notices and contacts because, as of today, there has been no shut-off and no other resolution for those

customers. The number of customers eligible for shut-off at the end of the winter season in Philadelphia so far exceeds PGW's resources to process within the 30 day window suggested in the guidelines that it is imperative that the process be made more flexible. The 30 day requirement serves to create an additional receivable of as much as \$20 million as those customers continue to receive service without paying. A substantial portion of that additional receivable is likely to be uncollectible and cannot be justified in light of PGW's serious cash flow needs and the high cost of engaging in the termination process for PGW.

Waiver Petition at 14-15 (emphasis in original).

PGW proposed that it be allowed to complete the termination process in 60 days instead of 30 days. PGW estimated that it would save an estimated \$1 million if its proposal is adopted. PGW opined that customers' rights would be protected under its proposal because customers would only be required to pay the amount stated in the 10-day notice in order to retain service.

The OTS opposed the proposal arguing that the 30-day timeframe was calculated by BCS on the basis of the timeline for notices found under the Commission's termination procedural rules, at 52 Pa. Code §§56.91-56.95. The OTS and the Action Alliance, *et al.*, contended that if PGW's proposal were adopted, customers may not take PGW termination notices seriously because of the length of time it would take PGW to terminate a customer's service. The OTS conceded that the BCS guideline does not appear in the Commission's Regulations at Chapter 56 of Title 52 of the Pennsylvania Code, and therefore, PGW is not bound to follow this guideline. (OTS St. No. 4 at 34).

2. The ALJ's Recommendation

The ALJ was persuaded by the arguments proffered by the OTS and the Action Alliance, *et al.*, that, if the shut-off time were to be extended from 30 to 60 days, customers may not take the threat of termination seriously. The ALJ commented that in some cases the longer it takes for PGW to terminate service, the longer it is providing free service – something PGW states throughout its Waiver Petition that it is desperately trying to avoid doing. The ALJ recommended that that BCS, PGW and other interested parties meet to discuss and determine what would constitute a reasonable period of time for PGW to effectuate service terminations, taking into account both customer rights and PGW's financial integrity. (R.D. at 93).

In its Exceptions, PGW argued that of the more than 150,000 termination notices that have been sent out since April 1, almost one-third – 47,000 – had to be redone because it did not have the resources to permit it to complete them within the BCS's mandated 30 day period. PGW continues that rather than simply ignore the current BCS guidance, it repeated these terminations and gave customers additional time before they were terminated or had to pay their bill and, in the process, provided additional gas service to customers, to the extent that any gas service was being used. PGW alleges that this practice costs several hundred thousand dollars in additional termination costs and several million in additional natural gas costs for service that had to be supplied to defaulted customers while the termination process was redone. (PGW Exc. at 31-33).

3. Disposition

Upon review of the positions of the Parties and the ALJ's recommended resolution of the issue, we shall grant the proposal of PGW to extend the termination period from 30 to 60 days. There is no controversy that the

30-day termination period is not codified in Chapter 56. Therefore, PGW is not legally bound by the guideline.

Next, we found PGW's argument that it did not have the resources to effect the termination within the 30-day timeframe to be credible. We are of the opinion that this argument is more persuasive than the argument that an extended timeframe might not be taken seriously by customers with termination notices. In fact, we find the argument that an extended timeframe might not be taken seriously by customers with termination notices to be highly speculative. We note that in its Exceptions, PGW stated that 47,000 termination proceedings had to be redone because PGW did not have the resources to complete them within the BCS's mandated 30 day period. This, we find, does more to erode the credibility of the termination threat than an extended termination timeframe.

We shall adopt the ALJ's recommendation that BCS, PGW and other interested parties meet to discuss and determine what would constitute a reasonable period of time for PGW to effectuate service terminations, taking into account both customer rights and PGW's financial integrity.

Based upon the foregoing discussion, we grant the Exceptions of PGW to the extent they are consistent with this Opinion and Order. The Finding and Recommendation of the ALJ is adopted only insofar as his recommendation for a meeting of the parties regarding the time limit to effect service terminations, and is otherwise reversed.

Conclusion

Now that PGW is under Commission regulation, the Company must operate within the Commission's Regulations, despite its unique nature. PGW has

begun the process of re-examining its business practices and moving toward more effective and efficient operations. PGW still has work to do to bring the Company into regulatory-compliance and operational efficiency. In pursuing that goal, however, PGW must be mindful of the needs of all its customers, not only senior citizens or those with low incomes. We anticipate that PGW will continue in its efforts to work with the various agencies and bureaus that can assist the Company with these objectives. **THEREFORE:**

IT IS ORDERED:

1. That the Exceptions filed by Philadelphia Gas Works on September 2, 2004, to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Exceptions filed by the Office of Trial Staff on September 2, 2004, to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. are granted, consistent with this Opinion and Order.
3. That the Exceptions filed by the Office of Small Business Advocate on September 2, 2004, to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. are granted, in part, and denied, in part, consistent with this Opinion and Order.
4. That the Exception filed by Action Alliance, *et al.*, on September 2, 2004, to the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. is granted, consistent with this Opinion and Order.

5. That Philadelphia Gas Works' Petition to institute a means-tested Senior Citizen Discount program and the associated Stipulation and Settlement at Docket Nos. M-00021612 and P-00032061 are denied.

6. That Philadelphia Gas Works' Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations is granted, in part, and denied, in part, consistent with this Opinion and Order.

7. That the waivers or modifications of Commission Regulations granted herein are granted for a period of two years as a pilot program.

8. That Philadelphia Gas Works shall provide to the Commission, on a semi-annual basis, commencing on July 1, 2005 and continuing each January 1 and July 1 thereafter until January 1, 2008, a status report that includes the customers affected and the dollars saved for each waiver and shall serve a copy of each report on the Bureau of Consumer Services and all Parties to this proceeding.

9. That Philadelphia Gas Works' proposed Tariff Section that would allow it to collect a \$10.00 charge for residential field visits that are a part of the termination process is denied.

10. That Philadelphia Gas Works' proposed Tariff Section 2.4.C.6. that would require applicants for service who have Philadelphia Gas Works liens or judgments to enter into payment agreements as a condition of service is denied.

11. That Philadelphia Gas Works' shall include the following in its next base rate case filing:

- (a) an updated progress report on the adequacy, cost-effectiveness and management of its collection practices;
- (b) detailed exhibits showing the cost components and calculations of its charges for residential field visits, late payment and reconnection;
- (c) a cost-benefit analysis regarding the implementation of a credit scoring model such as the Energy Risk Assessment Model (ERAM);
- (d) a cost-benefit analysis of the implementation of a mandatory electronic fund transfer (EFT) program for customers with incomes above 250% of the federal poverty level who have delinquent gas account balances and want to enter into payment agreements; and
- (e) a report with findings and recommendations regarding a program to educate the public about the benefits of Philadelphia Gas Works' budget billing plan.

12. That pursuant to 52 Pa. Code §62.6, Philadelphia Gas Works, after consulting with the Commission's Bureau of Consumer Services, shall contract with an independent third-party to conduct an impact evaluation of PGW's Universal Service and energy conservation programs and provide a report with findings and recommendations to the Commission by December 31, 2005, and shall include the report in Philadelphia Gas Works' subsequent annual Gas Cost Rate filing in March, 2006.

13. That the questions to be answered by the study referenced in ordering paragraph 10 shall include, but not be limited to: (1) "How can Philadelphia Gas Works' Universal Service program be more cost-effective and efficient?"; and (2) "How can Philadelphia Gas Works' Customer Responsibility Program be redesigned so that it is more cost-effective and efficient while still preserving consumer protection rights?"

14. That in reference to ordering paragraphs 10 and 11, Philadelphia Gas Works may file pursuant to 52 Pa. Code §62.6(c) a companion report to the independent evaluator's report, also to be filed no later than December 31, 2005 and to be included in its March 1, 2006 Gas Cost Rate filing.

15. That Philadelphia Gas Works, after consulting with the Commission's Bureau of Consumer Services, shall prepare a Report on its Conservation Works Program (CWP) that it will file with the Commission in April 2005, and that will include a cost-benefit analysis of Philadelphia Gas Works' present CWP, as well as cost-benefit analysis of CWPs that incorporate more of the usage reduction measures referenced in the Commission's LIURP regulations and that also include more eligible customers.

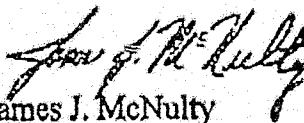
16. That in reference to ordering paragraph 13, the April 2005 CWP Report shall be included in the review of the annual Gas Cost Rate filing Philadelphia Gas Works will make in March 2005.

17. That Philadelphia Gas Works shall continue to meet on a monthly basis with the Bureau of Consumer Services, the Office of Consumer Advocate and Philadelphia Community Legal Services for the purpose of providing progress reports and other data and answering questions about its collection practices.

18. That the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr. is adopted, in part, and reversed, in part, consistent with this Opinion and Order.

19. That the records at Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061 and P-00042117 be marked closed.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 30, 2004

ORDER ENTERED: October 27, 2004

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

Investigation Into Financial and
Collection Issues regarding the
Philadelphia Gas Works.

PUBLIC MEETING September 30, 2004
SEP-2004-OSA-0248*
Docket No. P-00042090, et al

**DISSENTING STATEMENT OF
CHAIRMAN TERRANCE J. FITZPATRICK**

This matter involves the investigation into financial and collection issues regarding the Philadelphia Gas Works ("PGW"). The Commission today adopts the Motion of Vice Chairman Bloom that disposes of the numerous issues in this proceeding. I agree with some aspects of the Motion, however, my disagreement with other aspects of the decision requires me to respectfully dissent. This Statement sets forth my position on some of the important issues in this proceeding.

First, I agree with the rejection of the proposed means-tested senior citizen discount ("SCD"). If this Commission were to approve yet another costly social program for PGW, it would be contributing to the very problem that this proceeding is designed to solve. The means-tested SCD would, over time, impose a costly burden on PGW's paying customers, and must be rejected.

Second, I would grant in substantial part the Exceptions of the Office of Small Business Advocate to the extent they call for a cap on the number of participants in PGW's customer responsibility program ("CRP").¹ I believe that a temporary cap is warranted on these spiraling costs, pending the outcome of the study of the CRP. While I understand the point raised by staff and others that the CRP costs are high because of the large number of low-income customers in Philadelphia, I do not believe we are giving sufficient consideration to the fact that a large number of PGW's customers have modest incomes, and they struggle to pay their own bills, let alone the bills of others.

Finally, with respect to the waivers of Chapter 58 regulations requested by PGW, I would grant these waivers in full – as a three-year pilot – except for the request to limit the "change in circumstances" that warrant a new payment arrangement to a decrease in income. Everyone agrees that there is a balance that must be achieved here between solving the financial problems of PGW and protecting customers. There are no easy solutions to PGW's financial difficulties, and I believe the Commission's best option would be to grant in substantial part the waivers requested by PGW. Moreover, I am persuaded that a system that leads to 90% of the payment arrangements being broken within twelve months requires major, not minor, revisions.

In conclusion, I agree with some aspects of the Commission's decision, but disagree with others; accordingly, I respectfully dissent.

DATE: September 30, 2004

Terrance J. Fitzpatrick
TERRANCE J. FITZPATRICK
CHAIRMAN

¹ Rather than cap the number of participants at 60,000, I would cap the program at current enrollment levels.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105


Investigation Into Financial and
Collection Issues Regarding the
Philadelphia Gas Works

PUBLIC MEETING: September 30, 2004
SEP-2004-OSA-248*
Docket No.: P-00042090

STATEMENT OF COMMISSIONER GLEN R. THOMAS

While I support the Vice Chairman's Motion, I remain concerned that the granting of the waiver of the forty-eight hour termination notice could result in terminations that otherwise would have been avoided. While it may be burdensome on PGW to require this notice prior to all terminations, I wholeheartedly encourage PGW to continue the practice of posting notices on residences forty-eight hours prior to termination, especially when circumstances suggest that such a notice would avoid termination.

9/30/04
DATE


GLEN R. THOMAS, COMMISSIONER

CERTIFICATE OF SERVICE

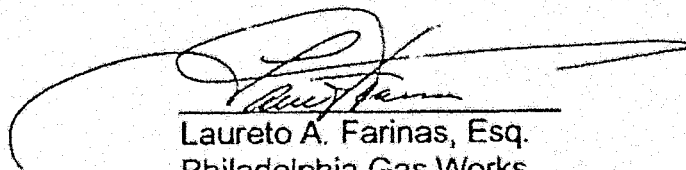
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT BY OVERNIGHT DELIVERY UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Ms. Floriann B. Matuszak
2839 Gilham Street
Philadelphia, PA 19149

December 20, 2005



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122