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June 8, 2009

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

Re: Rulemaking to Amend the Provisions of 52 Pa. Code Chapter 56 to Comply with the Provisions of 66 Pa. C.S. Chapter 14; General Review of Regulations,
Docket No. L-00060182

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works ("PGW") enclosed for filing please find its original Motion to Strike the Comments filed by Action Alliance of Senior Citizens of Grater Philadelphia, Tenant Union Representative Network and ACORN or in the Alternative to Permit Philadelphia Gas Works to File a Responsive Verified Statement along with the electronic filing conformation page with regard to the above-referenced matter.

Very truly yours,



Carl R. Shultz

CRS/lww
Enclosure

cc: Terrence J. Buda (via email only)
Patti Wiedt (via email only)
Cyndi Page (via email only)
Daniel Mumford (via email only)
Philip A. Bertocci, Esq.w/enc
Thu B. Tran, Esq.w/enc
Amy E. Hirsch, Esq.w/enc
Sofia Ali-Khan, Esq.w/enc
Louise Hayes, Esq. w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Rulemaking to Amend the Provisions of 52 :
Pa. Code, Chapter 56 to Comply with the : Docket No. L-00060182
Provisions of 66 C.S., Chapter 14; General :
Review of Regulations :

NOTICE TO PLEAD

To: Action Alliance of Senior Citizens of Greater Philadelphia,
Tenant Union Representative Network and ACORN

You are hereby notified to file a written response to the enclosed motion to strike within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC



Daniel Clearfield Esq.
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213 Market Street, Eighth Floor
Harrisburg, PA 17101
717.237.6000

Date: June 8, 2009

Attorneys for Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Rulemaking to Amend the Provisions of 52 :
Pa, Code, Chapter 56 to Comply with the : Docket No. L-00060182
Provisions of 66 C.S., Chapter 14; General :
Review of Regulations :

**PHILADELPHIA GAS WORKS' MOTION TO STRIKE
A PORTION OF THE COMMENTS FILED BY
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA,
TENANT UNION REPRESENTATIVE NETWORK AND ACORN
OR IN THE ALTERNATIVE
TO ALLOW A HEARING OR THE ACCEPTANCE IN THE RECORD OF
PHILADELPHIA GAS WORKS' RESPONSIVE VERIFIED STATEMENT**

Pursuant to 52 Pa. Code § 5.103, Philadelphia Gas Works (“PGW”) submits this Motion to Strike a portion of the Comments filed by Action Alliance of Senior Citizens of Greater Philadelphia, Tenant Union Representative Network and ACORN (collectively, “Action Alliance”) concerning the policies and conduct of PGW in the above-captioned rulemaking proceeding. In the alternative, PGW requests that the Commission either allow an in-person hearing on the Action Alliance allegations or accept into the record the responsive verified statement from PGW’s Vice-President for Customer Affairs, attached hereto as Exhibit “A” correcting and clarifying the commentary, opinion, assertions and allegations made by Action Alliance.

Summary

Action Alliance has included commentary, inflammatory allegations, opinion and – oftentimes – factually incorrect assertions about PGW’s policies and conduct (as well as the Bureau of Consumer Services’ policies and conduct) regarding specific complaint proceedings that have already been the subject of satisfied or informal dismissed complaint proceedings. This rulemaking is not the proper forum to litigate specific complaints and/or the propriety of

PGW-specific policies because, among other things, it denies PGW its due process opportunity to rebut and respond to the allegations.

Further, Action Alliance's case and policy specific allegations directed at PGW are procedurally defective and should be stricken because: (a) they rely on proceedings with disputed facts of record; (b) the satisfaction or settlement of a complaint does not imply wrongdoing by PGW; (c) the verified statement submitted by Action Alliance is based on hearsay; (d) a rulemaking is not the appropriate procedure to complain about specific acts or things done or omitted to be done by a utility; and (e) the comments are mischaracterizations of PGW's conduct and policies.

If the Commission does not grant this Motion to Strike, PGW requests a due process opportunity to respond to Action Alliance's allegations. One way to give PGW due process would be to conduct an in-person hearing on these allegations. Another way would be for the Commission to accept the verified statement of PGW's Vice-President of Customer Affairs, Cristina Coltro, attached hereto as Exhibit "A" addressing the factual allegations raised by Action Alliance. This verified statement explains that Action Alliance's criticisms of PGW's policy and conduct are factually incorrect and/or based on mischaracterizations.

Motion to Strike

In support of the relief requested herein, PGW states as follows:

1. The Pennsylvania Public Utility Commission (Commission) on September 25, 2008, adopted a proposed rulemaking order¹ which amends Chapter 56 to comply with 66 Pa.

¹ http://www.puc.state.pa.us/general/pdf/chapter_56_nopr_order.pdf

C.S. Chapter 14 (relating to responsible utility customers protection). *See* 39 Pa.B. 925, 821 (February 14, 2009).

2. The deadline for comments was April 20, 2009. 39 Pa.B. 925, 821 (February 14, 2009); 39 Pa.B. 1973, 2068 (April 18, 2009). No opportunity for reply comments was provided.
Id.
3. Action Alliance filed comments on April 20, 2009.
4. Some of the comments of Action Alliance go well beyond the scope of this rulemaking proceeding by launching factually inaccurate attacks at PGW's specific policies and raising issues related to settled and closed consumer complaint cases against PGW. The objectionable portions of Action Alliance's comments are:
 - (a) Section II, 3(c), pages 11-13, which makes factually inaccurate representations about a "Philadelphia utility's" current deposit policy and, based on these baseless claims, arguing against that utility's program. It is clear that Action Alliance is attacking PGW's recently implemented late payer deposit program.
 - (b) Section II, 5(e), pages 20-22, which relies on Exhibit A to criticize PGW's current termination procedures for theft and suggests that PGW's policy is improper.
 - (c) Exhibit A, the Verified Statement of Josie B. Hyman together with the attachments thereto, which include (but are not limited to) additional verified statements by Mernira Paul and Darla Irizarry and detailed credit denials for unidentified parties.
5. Action Alliance's allegations and verified statement concerning PGW's policies and conduct are procedurally defective and should be stricken because: (a) they rely on proceedings with disputed facts of record; (b) they rely on the satisfaction or settlement of proceedings as an admission by PGW, even though the satisfaction, settlement or dismissal of a complaint does not imply wrongdoing by PGW; (c) the verified statement

is based on hearsay; (d) a rulemaking is not the appropriate procedure to complain about any act or thing allegedly done or omitted to be done by a utility; and (e) the comments factually mischaracterize PGW's conduct and policies.

6. Rather than provide useful assistance to the Commission on the issues raised by the rulemaking, it appears that Action Alliance has introduced specific allegations concerning PGW in an attempt to malign and create a misimpression about PGW to the Commission and to circumvent PGW's due process rights. It also appears that Action Alliance has made these allegations in an attempt to support its claims that theft of gas should not be vigorously pursued and combated by utilities. In its commentary, and by presenting a verified statement by Josie B. Hyman, Action Alliance is seeking to introduce specific factual allegations concerning the conduct of PGW with respect to: (a) the formal complaints of Mernira Paul (C-2008-2049122), and Darla Irizarry (C-2008-2056208)² (b) the dismissed informal complaint of Kathryn Kowrak,³ and (c) PGW's practices and policies.⁴ Each of the complaint proceedings had disputed facts of record. Action Alliance's reliance on these cases presents only its view of the facts – a view that does not fairly or accurately present PGW's view or explain specific PGW practices. Without adjudicated or undisputed findings of fact, none of these proceedings (or, more

² The formal complaint of Mernira Paul (C-2008-2049122) was formally settled with each party represented by counsel and closed PGW filed a satisfaction with the Commission, and the docket was closed on September 12, 2008. The satisfaction of this complaint did not include **any** admission of wrongdoing by PGW. The formal complaint of Darla Irizarry (C-2008-2056208) was formally settled with each party represented by counsel and closed. PGW filed a satisfaction with the Commission, and the docket was closed on March 25, 2009. The satisfaction of this complaint did not include **any** admission of wrongdoing by PGW

³ The informal complaint of Kathryn Kowrak was submitted to the Bureau of Consumer Services on July 7, 2008. PGW provided its response disputing the allegations contained in the informal complaint. PGW records show that BCS dismissed the case on September 16, 2008 since the customer of record was deceased. The Bureau of Consumer Services indicated that Community Legal Services attorney Thu Tran was happy with a resolution provided by PGW in this matter.

⁴ See Paragraphs 2-10 of the Verified Statement of Josie B. Hyman.

specifically, Action Alliance's view of these proceedings) provide any useful insight or assistance to the Commission for this rulemaking. Thus, the status and/or resolution of these proceedings should not be injected into a rulemaking proceeding.

7. Rather, Action Alliance is using this rulemaking to re-litigate pending or satisfied complaints. The issues raised by the above-mentioned complaint proceedings were either already presented to the Commission or were amicably settled between the parties. Besides challenging the outcomes (which must be done, legally through the appeal process), there is no constructive or legitimate reason to describe these specific factual circumstances in the rulemaking, particularly when the formal complaints were settled, satisfied and closed prior to the filing of the comments and the complainants were represented by counsel in the settlement process. Satisfaction or settlement of a complaint does not imply wrongdoing by PGW,⁵ and Action Alliance should not be permitted to imply wrongdoing by PGW in a settled proceeding as part of a separate rulemaking proceeding. To do so would be contrary to the Commission's policy of encouraging settlements among parties. 52 Pa. Code 5.231.
8. Further, Action Alliance's reliance on the verified statement is misplaced and procedurally flawed. The verified statement relies on information "told" to the affiant by unspecified persons or other hearsay.⁶ It also contains hearsay within hearsay, or double

⁵ There is a long honored common rule that, on public policy grounds, offers of settlement and compromise are not generally admissible. See, e.g., *Rochester v. Machinery Corp. v. Mulach Steel*, 498 Pa. 545, 449 A.2d 1366 (1982) and *Schlosser v. Weiler*, 377 Pa. 582, 105 A.2d 331 (1954) (settlements in matters of dispute are favored by the law). See also 42 Pa. C.S. § 6141 (settlement agreements in personal injury and property damage cases are protected by statute); *Hatfield v. Continental Imports, Inc.*, 530 Pa. 551, 610 A.2d 446 (1992) (Purpose of statutory section precluding admission into evidence of settlements is to encourage settlements).

⁶ See Paragraphs 2-10 of the Verified Statement of Josie B. Hyman.

hearsay, because the primary verified statement makes use of verified statements submitted by others.⁷ In any event, the verified statements are out-of-court statements being submitted for the truth of the matters contained therein. Thus, they are pure hearsay⁸ and should not be admissible as part of this rulemaking.⁹

9. Action Alliance's comments attempt to improperly convert the rulemaking into a *de novo* appeal of already closed/settled complaint proceedings. The Commission's complaint procedure¹⁰ is the appropriate procedure to complain about case specific acts or omissions. If the litigants are dissatisfied with the outcome of the complaint process (including a settlement), then there are proper due process ways to file an appeal to the Commission that do not include raising the issues in the context of a Commission rulemaking proceeding (PGW notes that the parties were represented by counsel from Community Legal Services in each matter). The Commission's rulemaking procedures¹¹ are distinct from its complaint procedures and are intended to provide the Commission with useful information about appropriate policies based on facts and/or the relevant experience of interested stakeholders – not to re-litigate adjudicated disputes.

⁷ The verified statement submitted by Mernira Paul is fatally flawed. Paragraph 18 indicates that the document was read to Ms. Paul by an unspecified interpreter. However, there is no verification or affidavit by the interpreter that the document was accurately translated /interpreted by the interpreter. Because the interpretation of the document is fundamental to her statement, Ms. Paul's verified statement lacks indicia of reliability and credibility unless the interpreter presents evidence as to the accuracy of the translation/interpretation.

⁸ Pa. R.E. 801, *et seq.*

⁹ Properly objected to hearsay is inadmissible and must be excluded from the record. *See, e.g., Anderson v. Department of Public Welfare*, 79 Pa. Cmwlth. Ct. 182, 468 A.2d 1167 (1983).

¹⁰ *See* 66 Pa. C.S. §§ 701 and 52 Pa. Code §§ 3.111, *et seq.* (informal complaints) and 5.21, *et seq.* (formal complaints)

¹¹ *See* 66 Pa. C.S. §§ 501, 504, 505, 506, 1301, and 1501, and the Commonwealth Documents Law, 45 P. S. 1201, *et seq.*, and the regulations promulgated thereunder.

10. Action Alliance's allegations are based on mischaracterizations of PGW's current policies and conduct. The only way to correct these mischaracterizations is to strike them. No opportunity for PGW to correct the record currently exists in this rulemaking because the deadline for comment has expired. Because the rulemaking does not call for reply comments, there is no existing opportunity for PGW to respond and defend itself within the procedural context of this rulemaking.

11. If Action Alliance's comments concerning PGW's current policies and conduct are not stricken, PGW's due process rights will be violated. Potential remedies for this violation include allowing an in-person hearing on these allegations so as to develop a full record on which the Commission may make factual findings (including the opportunity to move to strike legally inadmissible evidence). This would be a burdensome and time-consuming procedure, but it would be the only step that would permit PGW to fully protect its due process rights. But, at a minimum, if the Commission determines it will not strike the Action Alliance allegations, the Commission should accept a verified statement or affidavit from PGW concerning the factual allegations raised by Action Alliance.

The attached verified statement by PGW's Vice-President for Customer Affairs, Cristina Coltro, explains that, contrary to the commentary, opinion, assertions and allegations made by Action Alliance, (a) each affected customer is given individualized notice that they will be responsible for a late payer deposit; (b) late payer deposits are only required in certain circumstances (*i.e.*, 2 consecutive or three or more late payments within the preceding 12 months); (c) each affected customer is informed of the basis for termination and how they can challenge the termination; and, (d) Action Alliance's reliance on the

satisfied, settled and closed proceedings is not appropriate because these proceedings do not contain any admission of wrongdoing by PGW.

Conclusion

For the reasons set forth herein, PGW respectfully requests that the Commission strike Action Alliance's comments concerning PGW at (a) Section II, 3(c), pages 11-13; (b) Section II, 5(e), pages 20-22; *and* (c) Exhibit A, the Verified Statement of Josie B. Hyman together with the attachments thereto.

If the above-described comments and Exhibit by Action Alliance are not stricken, then the Commission should either allow an in-person hearing on the Action Alliance allegations or accept the verified statement of PGW attached hereto as Exhibit "A".

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT, LLC



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Date: June 8, 2009

Attorneys for Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Re: Rulemaking to Amend the Provisions of 52 :
Pa, Code, Chapter 56 to Comply with the : Docket No. L-00060182
Provisions of 66 C.S., Chapter 14; General :
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**VERIFIED STATEMENT OF
CRISTINA COLTRO
FOR PHILADELPHIA GAS WORKS**

1. My name is Cristina Coltro. I am the Vice President Customer Affairs for Philadelphia Gas Works (“PGW”).
2. My principal responsibilities include the directing five departments: (a) Call Center Operations which handles both inbound and outbound calls; (b) Credit & Collections which handles timely collections of gas revenues; (c) Labor, Administration, and Account Management which is responsible for the printing and mailing of bills, remittance processing, customer account management, walk-in customer service centers, labor administration, attendance and payroll reporting, and budget preparation; (d) Regulatory Compliance which is responsible for Universal Services Programs, Dispute Resolution, Customer Review Unit, Training, and Program Management Office; and (e) Commercial Resource Center which is responsible for all collections activities related to commercial, industrial, and municipal gas accounts.
3. This statement is submitted to respond to allegations made by Action Alliance of Senior Citizens of Greater Philadelphia, Tenant Union Representative Network and ACORN (collectively, “Action Alliance”) against PGW in the Commission’s rulemaking to amend Chapter 56 to be consistent with Chapter 14, at Docket No. L-00060182.

4. In the rulemaking, Action Alliance has made factually inaccurate statements about PGW's current late-payer deposit policy. Specifically, Action Alliance claims that a customer is not provided with personal notification that he/she will be held responsible for a late payer deposit. On the contrary PGW's late-payer deposit policy has been designed to provide each affected customer with individualized notice. By the time PGW imposes a late payer deposit, the customer will have received a bill notification - after the first late payment charge - warning of the deposit (the notice indicates that the deposit is not required at that time). This notification is followed by a letter - after the second late payment charge - again warning about the deposit and explaining ways to avoid it. The customer is provided with contact information for PGW to register a question or complaint. The Bureau of Consumer Services approved the language of the bill message and letter. The process followed by PGW is similar to that of other utilities.
5. Action Alliance mischaracterizes the late-payer deposit policy as requiring a deposit from every delinquent non-CAP ratepayer under an excessively broad reading of 52 Pa. Code § 56.41(1) and does not recognize the relevant time frame. This is incorrect. PGW only requires a deposit if a customer has 2 consecutive or three or more late payments within the preceding 12 months. PGW's late payer deposit program is currently on hold. Of course, PGW will reevaluate the late payer deposit program to determine if changes are needed to be consistent with the final regulations adopted by the Commission in this rulemaking.
6. Action Alliance has also raised unjustified criticisms of PGW's current termination procedures and handling of instances where meter tampering and theft of gas is

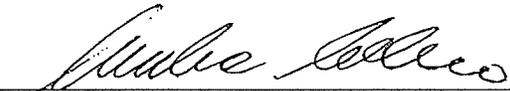
discovered. To support these criticisms, Action Alliance has relied on the following closed or satisfied complaints.

- (a) The formal complaint of Mernira Paul (C-2008-2049122) which was satisfied and closed. PGW and the Complainant (who was represented by attorney Thu Tran of Community Legal Services) settled the formal complaint. PGW filed a satisfaction with the Commission, and the docket was closed on September 12, 2008. The satisfaction of this complaint did not explicitly include any admission of wrongdoing by PGW.
- (b) The formal complaint of Darla Irizarry (C-2008-2056208) was satisfied and closed. PGW and the Complainant (who was represented by attorneys Thu Tran and Phillip Bertocci of Community Legal Services) settled the formal complaint. PGW filed a satisfaction with the Commission, and the docket was closed on March 25, 2009. The satisfaction of this complaint did not explicitly include any admission of wrongdoing by PGW
- (c) The informal complaint of Kathryn Kowrak was closed by the Bureau of Consumer Services on September 16, 2008 since the complainant was deceased and BCS indicated complainant's attorney Thu Tran was happy with a resolution provided by PGW. PGW disputed the allegations contained in the informal complaint.

7. The criticisms of PGW's termination policy and conduct are factually incorrect and/or based on mischaracterizations. For example, Action Alliance asserts that customers are not given a reasonable opportunity to refute allegations of unauthorized use. This is not correct. Customers are informed of the basis for termination. They are also informed of how they can challenge the termination. Further, prevention of theft and protection of the safety of the residents of Philadelphia is a paramount concern for PGW and Action Alliance's attempt to wedge unreasonable and unsupportable limitations on PGW's right to terminate immediately for theft into this Chapter 56 rulemaking proceeding is inappropriate.

I, Cristina Coltro, hereby state that I am the Vice President Customer Affairs for the Philadelphia Gas Works, and am authorized to make this verification on its behalf, and that the facts above set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: June 5, 2009


Cristina Coltro