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March 29, 2010

Via Hand Delivery

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street – 2<sup>nd</sup> Floor  
Commonwealth Keystone Building  
Harrisburg, Pennsylvania 17120

Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works  
Docket No. R-2008-2073938  
December 19, 2008 Ordering Paragraph No. 9 – Collaborative Process

Dear Secretary McNulty:

On behalf of Direct Energy and Hess Corporation, this is a request that the Pennsylvania Public Utility Commission (“Commission”) address without further delay the status reports previously submitted in the above-referenced collaborative process.

The collaborative process commenced at the direction of the Commission, pursuant to Ordering Paragraph No. 9 of the order concluding PGW’s Petition for Emergency Rate Relief. That Ordering Paragraph stated as follows:

That Philadelphia Gas Works shall convene, no later than sixty (60) days after the entry of this Opinion and Order, a collaborative process to explore options for transitioning some or all of its customers to an alternative default service supplier. The first sixty (60) days of the collaborative shall be devoted to the development of a proposal. At the end of the first sixty (60) day period, Philadelphia Gas Works shall submit a report to the Commission detailing the progress made and identify any areas of agreement or disagreement among the stakeholders. Participating stakeholders may submit an alternative report outlining a different course of action. The process will continue until the participants agree to submit a final action report unless the Commission orders otherwise.

The required collaborative process began February 5, 2009. On October 21, 2009 and November 4, 2009, respectively, collaborative participants submitted status reports and reply comments to the Commission. The participants filing status reports were

Philadelphia Gas Works (“PGW”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Natural Gas Supplier Parties (“NGS Parties”) consisting of Interstate Gas Supply, Inc., Dominion Retail, Inc., Hess Corporation and Direct Energy. A letter indicating they are not taking a position, but will monitor the collaborative, was submitted by the Tenant Union Representative Network and Action Alliance of Senior-Citizens of Greater Philadelphia (“TURN”). Reply Comments were filed by OCA and OSBA. No action has been taken to date by the Commission on the recommendations presented by the collaborative participants.

The important issues raised in these status reports cannot reach resolution until the Commission takes action on them. Recently in an attempt to move forward resolution of some of the pending issues, the Retail Energy Supply Association (“RESA”), several of whose members were participants in the collaborative process, intervened in the currently pending PGW base rate case docketed at R-2009-2139884. Among the issues raised by RESA in that intervention were:

Issues related to the potential transition of some or all of PGW’s customers to an alternative default service provider, which is an issue that arose out of PGW’s November 2008 Petition for Extraordinary Rate Relief and is an issue that remains pending.

The Presiding Officer of the PGW rate case, *sua sponte*, challenged and ultimately barred RESA from raising any issue associated with the collaborative process in the current PGW rate proceeding even though it was PGW’s last base rate proceeding that gave rise to the Commission’s concern about PGW continuing the financial burden of providing gas supply for its customers. *See*, Attachment 1, Prehearing Transcript, pp. 7-20.

This oral ruling limiting RESA’s scope of issues in the PGW rate proceeding was confirmed in the Presiding Officer’s Prehearing Order dated March 11, 2010, wherein he stated “we will not address in the present consolidated proceeding NGS’ proposal that PGW transition customers to alternative default supply, unless the Commission directs us to do so.” *See*, Attachment 2, Prehearing Order, March 11, 2010. The Prehearing Order erroneously stated that “RESA asserted that the present proceeding should include consideration of the proposal made by Natural Gas Suppliers (“NGS”) in the proceeding on PGW’s request for extraordinary rate relief, that PGW transition customers to alternative default service supply.” *See*, Attachment 2, Prehearing Order, p. 2. A review of the transcript shows that RESA was not attempting to inject the substantive issue of the merits of the NGSs’ proposal to transition PGW customers to alternative suppliers into the PGW rate case. Counsel for RESA was clear that:

... there are certain issues that arose in the course of a working group collaborative that have a bearing on costs being incurred by PGW; for example, to study the costs and benefits of the NGS proposal in that case. And obviously, PGW has concerns about what those costs would be and whether it would retain recovery of those costs. And it would be an issue

such as the cost relating to studying costs and benefits of an alternative supply arrangement that would be relevant in RESA's view to this case. But certainly not the entire collaborative, and there's no intention on RESA's part to bring all the collaborative issues into this rate proceeding.

\* \* \*

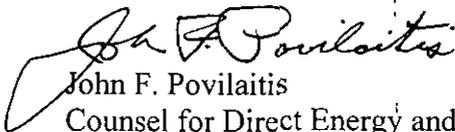
The Commission injected this collaborative issue into the last emergency rate filing which affected base rates. This is the subsequent base rate proceeding, and we think it's prudent in the case of a couple of limited issues, such as the cost the company would incur to study alternative supply situations and legal issues concerning what is doable or not doable relative to alternative supply arrangements. That [Then] this rate case [could] be a forum in which those issues could get resolved by the Commission if they are not resolved prior to that by Commission action. (Attachment 1, p. 10, line 18 - p. 11, line 5; p. 13, lines 14-24).

The Presiding Officer's ruling narrowing RESA's scope of intervention precludes any progress being made on even the limited issues affecting the collaborative that RESA attempted to raise in PGW's current rate case – *i.e.*, the costs associated with studying the feasibility of transitioning sales customers to competitive supply an issue where the parties to the collaborative process reached a stalemate in November 2009, which remains unresolved. Consequently, it is imperative that the Commission act quickly on the reports and comments filed by the participants in the collaborative process docket so that the process of determining if PGW should continue with its gas supply function can be concluded. Absent action by the Commission on the status reports, the entire collaborative process will be a nullity and the anticipated reduction in PGW's working capital requirements will have failed to be realized.

Thank you for your consideration of this request for Commission action.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER P.C.

  
John F. Povilaitis  
Counsel for Direct Energy and  
Hess Corporation

JFP:ck

Attachments

- c. Certificate of Service
  - The Honorable James H. Cawley, Chairman
  - The Honorable Tyrone J. Christy, Vice Chairman
  - The Honorable Robert F. Powelson, Commissioner
  - The Honorable Wayne E. Gardner, Commissioner

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**ATTACHMENT 1**

**PREHEARING TRANSCRIPT**

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COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

----- X	:	
Pennsylvania Public Utility Commission:	:	Docket Nos.
v. Philadelphia Gas Works.	:	R-2009-2139884
1307(d)	:	
-----	:	
Petition for Approval of Energy	:	P-2009-2097639
Conservation and Demand-Side	:	
Management Plan.	:	
	:	
Pre-Hearing Conference	:	
	:	
----- X	:	
Pages 1 through 39	:	Hearing Room No. 2
	:	Commonwealth Keystone Bldg
	:	Harrisburg, Pennsylvania

Tuesday, March 2, 2010

Met, pursuant to notice, at 10:18 a.m.

BEFORE:

CHARLES E. RAINEY, JR., Administrative Law Judge

APPEARANCES:

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 (For Retail Energy Supply Association)

LAUREN LEPKOSKI, Esquire  
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 (For Small Business Advocate)

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14 (Office of Consumer Advocate)

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21 Gas Users Group)

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26 DANIEL CLEARFIELD, Esquire  
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36 (For Tenant Union Representation Network &  
37 Action Alliance of Senior Citizens of  
38 Greater Philadelphia)

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1 APPEARANCES: (Continued.)

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7 (For Clean Air Council)

8 JILL GULDIN, Esquire  
9 Fox Rothschild LLP  
10 20th Floor  
11 2000 Market Street  
12 Philadelphia, Pennsylvania 19103  
13 (For Philadelphia Housing Authority)

14 \* \* \*

□

1

WITNESS INDEX

2

WITNESSES:

DIRECT CROSS REDIRECT RECROSS

3

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(None.)

□

1 EXHIBIT INDEX  
2 NUMBER FOR IDENTIFICATION IN EVIDENCE  
3 (None.)

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\* \* \*

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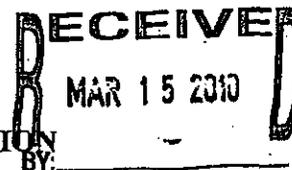
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**ATTACHMENT 2**

**PREHEARING ORDER  
MARCH 11, 2010**

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION



Pennsylvania Public Utility Commission	:	R-2009-2139884
	:	
v.	:	
	:	
Philadelphia Gas Works	:	
	:	
Philadelphia Gas Works' Revised Petition	:	
For Approval of Energy Conservation and	:	P-2009-2097639
Demand Side Management Plan	:	

**PREHEARING ORDER**

A prehearing conference was held in this consolidated proceeding on March 2, 2010. The participants appeared in hearing rooms in Philadelphia and Harrisburg and were connected by conference phone. The presiding officer was Administrative Law Judge Charles E. Rainey, Jr. Also present were Philadelphia Gas Works (PGW), Office of Trial Staff (OTS), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Philadelphia Industrial and Commercial Gas Users Group (PICGUG), Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), Clean Air Council (Council), Retail Energy Supply Association (RESA) and Philadelphia Housing Authority (PHA).

1. Prehearing Conference Memoranda

In compliance with my Prehearing Conference Order dated February 12, 2010, prehearing conference memoranda were submitted by PGW, OTS, OCA, OSBA, PICGUG, TURN, *et al.*, Council, RESA and PHA.

2. Petition to Intervene

On February 24, 2010, the Retail Energy Supply Association filed a petition to intervene in this proceeding. RESA stated that its interests include: (1) investigating whether

there are certain supply-related costs that should be removed from PGW's base rates and included in its Purchased Gas Cost rate; and (2) "pursuing issues related to the potential transition of some or all of PGW's customers to an alternative default service provider, which is an issue that arose out of PGW's November 2008 Petition for Extraordinary Rate Relief and is an issue that remains pending." RESA asserted that the present proceeding should include consideration of the proposal made by Natural Gas Suppliers (NGS) in the proceeding on PGW's request for extraordinary rate relief, that PGW transition customers to alternative default service supply. RESA referred to a "stalled collaborative effort" in regard to NGS' proposal, and PGW's request for guidance from the Commission. RESA Petition to Intervene at 3-4, ¶s 6-7, 9.

In its order approving PGW's request for extraordinary rate relief, the Commission stated:

We believe it is important that PGW explore any and all means of reducing the financial risks and costs of its utility business. PGW shall therefore convene a collaborative process, no later than sixty days after entry of this Order, to explore options for transitioning some or all of its customers to an alternative default service supplier. For the first sixty days of the process, PGW and interested parties can work to develop a proposal. At the end of such period, PGW shall submit a report to the Commission and detail the progress made and identify any areas of agreement or disagreement among the stakeholders. Any participating stakeholder shall be permitted to submit an alternative report to the Commission outlining its recommended course of action. **The process shall continue until the participants agree to submit a final action report, unless the Commission orders otherwise.**

*PUC v. PGW*, R-2008-2073938 (Order entered December 19, 2008) at 40 (emphasis supplied).

In the present consolidated proceeding, the Commission directed us to investigate PGW's existing and proposed rates, and its proposed DSM plan. *PUC v. PGW*, R-2009-2139884, P-2009-2097639 (Order entered February 11, 2010) at 1-3. The Commission did not direct us to address NGS' proposal that PGW transition customers to alternative default supply. In its order on PGW's request for extraordinary rate relief, the Commission directed PGW and interested parties to address NGS' proposal in a collaborative process. The Commission has not

subsequently ordered abandonment of the collaborative process or that the participants otherwise deviate from the course of action set forth in the order. Therefore, we will not address in the present consolidated proceeding NGS' proposal that PGW transition customers to alternative default supply, unless the Commission directs us to do so. RESA's petition to intervene is otherwise granted.

### 3. Discovery

In its prehearing conference memorandum, OCA proposed a modification to the Commission's discovery rules "in order to effectively investigate and adequately develop a record in this matter." OCA's proposed discovery rules were adopted. Effective March 2, 2010, the following discovery rules shall apply in this proceeding:

- (a) Answers to written interrogatories shall be served in-hand within 10 calendar days after service of the interrogatories.
- (b) The answering participant must make any objections orally to the participant submitting the interrogatories within 3 calendar days after service of the interrogatories.
- (c) Written objections shall be served on the parties, filed with the Commission, and submitted to the presiding officer, within 5 calendar days after service of the interrogatories.
- (d) Motions to compel answers to interrogatories shall be served on the parties, filed with the Commission, and submitted to the presiding officer within 3 calendar days after service of the written objections.
- (e) Answers to motions to compel answers to interrogatories shall be served on the parties, filed with the Commission,

and submitted to the presiding officer within 3 calendar days after service of the motion to compel.

- (f) Rulings on motions to compel shall be made within 7 days of the presiding officer's receipt of the motion to compel, if practicable.
- (g) Responses to requests for document production, entry for inspection, or other purposes shall be served in-hand within 10 calendar days after service of the request.
- (h) When a written request for admissions is made, matters are deemed admitted unless the request is answered in writing within 10 calendar days or objected to in writing within 5 calendar days after the request is made.
- (i) Discovery requests and/or responses to discovery delivered on a Friday after 12:00 noon will be deemed served on the following Monday or next business day if the Monday is a holiday observed by the Commonwealth of Pennsylvania.
- (j) The parties are expected to cooperate with each other in regard to discovery.
- (k) The parties are encouraged to amicably resolve discovery disputes among themselves.

4. Schedule for Written Testimony, Evidentiary Hearings and Briefs

The following schedule for written testimony, evidentiary hearings and briefs was established:

March 26, 2010	Direct Testimony of Parties other than PGW due in-hand
April 23, 2010	Rebuttal Testimony of all Parties due in-hand
May 4, 2010	Supplemental Testimony of all Parties due in-hand
May 10-14, 2010	Evidentiary Hearings
June 3, 2010	Main Briefs due in-hand
June 11, 2010	Reply Briefs due in-hand

The evidentiary hearings will be held in an available hearing room on the 4<sup>th</sup> Floor at 801 Market Street, Philadelphia, Pennsylvania 19107. The evidentiary hearings will begin at 10:00 a.m.

Parties are to work together and present to me at least one week before the evidentiary hearings, a schedule which includes the order of witnesses each day and the topic(s) each witness will address that day.

Written testimonies and briefs are due in-hand by 4:00 p.m. on the due dates. Technical terms and concepts are to be clearly defined and explained in written testimonies and briefs.

Written testimonies must follow the form set forth at 52 Pa. Code § 5.412(e).

Briefs must follow the content and form set forth at 52 Pa. Code §5.501. Briefs shall include proposed findings of fact, conclusions of law and ordering paragraphs. Briefs shall be as concise as possible. Any unpublished opinions, decisions or policies cited in a brief, must be attached to the brief. Briefs must also follow the "Special Instructions for Briefs and Exceptions in Major General Rate Increase Proceedings" and "Standardized Brief Format for General Rate Increase Proceedings" which are attached to this order at Appendix A.

5. Public Input Hearings

Commission policy provides that "If the Commission determines that substantial public interest in a rate proceeding has been shown, at least one public input hearing will be held in the utility's service area." 52 Pa. Code § 69.321(b). OCA stated that it was aware of 32 rate protests filed in this proceeding. OCA PHC Memo at 7. I therefore find that substantial public interest in this proceeding exists, which warrants holding public input hearings.

The parties proposed, subject to availability, various places, dates and times for public input hearings. I provided alternative dates in the event that the suggested venues were not available on the dates proposed by the parties. Consistent with the discussion held at the prehearing conference, public input hearings will be held as follows:

	<b>Date</b>	<b>Place</b>	<b>Time</b>
1.	April 6, 2010	Community College of Philadelphia Conference Room C2-28 18 <sup>th</sup> & Callowhill Streets Philadelphia, PA 19130	1:00 p.m.
2.	April 6, 2010	Community College of Philadelphia Conference Room C2-28 18 <sup>th</sup> & Callowhill Streets Philadelphia, PA 19130	7:00 p.m.
3.	April 7, 2010	Community Academy of Philadelphia 1100 East Erie Avenue Philadelphia, PA	1:00 p.m.

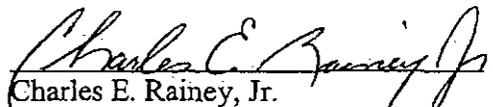
- |    |               |   |           |
|----|---------------|---|-----------|
| 4. | April 7, 2010 | George Washington High School<br>Auditorium<br>10175 Bustleton Avenue<br>Philadelphia, PA 19116   | 7:00 p.m. |
| 5. | April 8, 2010 | Dorothy Emanuel Recreation Center<br>Gymnasium<br>8501 Provident Avenue<br>Philadelphia, PA 19150 | 6:00 p.m. |

PGW is to advertise the public input hearings in a timely fashion. PGW is to work with any interested parties in regard to the wording of the public input hearing announcements, and where and how the public input hearing announcements are to be published and/or broadcast. At each public input hearing, PGW is to introduce an exhibit that provides the wording of the public input hearing announcement, where it appeared and on what dates.

6. Document Submission

Written testimonies and briefs may be delivered to me via electronic mail on the date due as long as a hard copy is delivered to me by the following business day via overnight mail or hand delivery. The parties may enter into an agreement in regard to the manner in which they will serve documents on each other. The parties are otherwise required to serve documents on each other consistent with the Commission's rules at Title 52 of the Pennsylvania Code.

Date: March 11, 2010

  
Charles E. Rainey, Jr.  
Administrative Law Judge

**APPENDIX A**

Special Instructions for Briefs and Exceptions  
in Major General Rate Increase Proceedings

1. Each brief shall follow the general organization shown in the attached standardized format.
2. Each brief shall contain a table of contents with page references to a summary of argument and to each topic addressed in the argument.
3. Adjustments contained in each brief shall:
  - a. be based on a specific test year, to be selected before the close of the record;
  - b. be complete and self contained, include accurate reference to the appropriate record sources, be on a before-income-tax basis (never on a net income or revenue requirement basis) and be on a consistent jurisdictional basis (if record support cannot be located, the adjustment may/will be rejected);
  - c. be detailed to demonstrate the step-by-step calculation of that adjustment together with appropriate accurate record references (once again, if the record support cannot be located for the necessary steps, the adjustment may/will be rejected);
  - d. include concomitant rate base, revenue, expense, depreciation expense, and tax (i.e., taxes other, State Income, and Federal Income) adjustments set forth, together with the details of their calculation;
  - e. include within the brief calculations which are the basis for proposed adjustments, but which are incomplete in the record.
4. Tables showing all proposed rate base and income adjustments, organized as shown in the attached Table I and Table II, shall be submitted with each brief which includes such adjustments.

- a. The starting point of Table I "Income Summary" shall be the utility's final *pro forma* showing at present rates. The ALJ shall specify the starting point to be the most recent update admitted into evidence. The update, admission, and ALJ ruling shall be cited on the table.
  - b. The effect of deferred or accrued taxes on the various tax adjustments presented in Table II "Summary of Adjustments" shall be indicated by a footnote.
5. The following schedules shall be submitted with each brief:
- a. A schedule showing the precise derivation of any adjustment to proposed cash working capital allowance.
    - i. The schedule describing an adjustment to a Utility's claim for Cash Working Capital shall separately list (1) adjustments originating from Table II "Summary of Adjustments" and (2) adjustments resulting from the proposed revenue increase. Any effect on deferred and/or accrued taxes shall be shown in a separate column or footnote.
    - ii. Net Revenue and Expense Lag Days for all Cash Working Capital Adjustments shall be calculated to at least one decimal place.
  - b. A schedule showing all tax and jurisdictional allocation factors utilized (any deviations from standard or obvious factors should be explained on the schedule or in the brief);
  - c. A schedule listing, for the party or parties filing the brief, each exhibit or other document admitted into the record, along with the date the document was identified and the date the document was admitted.
6. Rate structure proposals shall be reasonably specific and explicit, shall, as appropriate, refer accurately to record support and shall be summarized at the end of the "Rate Structure" topic heading of each brief.

7. Parties shall, as feasible and appropriate, discuss alternative rate design proposals for overall rate increases at and below the requested increase.
8. The Commission requires, in all electric utility rate proceedings, subsequent to its Order at Docket No. I-900005, entered December 1, 1993, that issues of demand-side management and integrated resource planning be addressed.
9. Regarding the filing of exceptions, the following instructions are provided:
  - a. Each exception shall be separately identified and, as necessary, discussed.
  - b. Each exception shall include, before any discussion is provided, the following elements (see examples attached):
    - i. a reference to the relevant part of the Recommended Decision, at least to the relevant pages;
    - ii. a reference to related discussions in the excepting party's brief and, as appropriate, to other briefs; and
    - iii. a concise statement of the exception.
  - c. The exceptions shall follow the order of presentation provided in the table of contents to the Recommended Decision.
  - d. If a party takes exception concerning a topic not included within the Recommended Decision or the table of contents thereto, the appropriate exception shall be included at the end of the appropriate major topic heading (such as "Rate Base" or "Expenses").
  - e. If a party seeks to correct computations associated with the Recommended Decision, replacement computations, with source references to briefs or the record, shall be provided.

Standardized Brief Format for  
General Rate Increase Proceedings

- I. Introduction
- II. Summary of Argument
- III. Rate Base
  - A. Fair Value
  - B. Plant in Service
  - C. Depreciation Reserve
  - D. Additions to Rate Base
  - E. Deductions from Rate Base
  - F. Conclusion
- IV. Revenues
- V. Expenses
- VI. Taxes
- VII. Rate of Return
- VIII. Miscellaneous Issues
- IX. Rate Structure
  - A. Cost of Service
  - B. Revenue Allocation.
  - C. Tariff Structure
  - D. Summary and Alternatives
- X. Conclusion

Note: Appropriate modifications may be made. For instance, a party might add "Affiliated Interest Expenses" as a major topic heading or might brief only rate structure and not use other topic headings. A summary and alternatives should be provided under "Rate Structure" but the "Rate Base" and "Rate Structure" formats shown may be modified, as appropriate. Additional subheadings should be used, as appropriate.

TABLE I  
INCOME SUMMARY  
(\$000)

	<u>Pro Forma</u> <u>Present</u> <u>Rates</u> \$	<u>Recommended</u> <u>Adjustments</u> \$	<u>Adjusted</u> <u>Present</u> <u>Rates</u> \$	<u>Revenue</u> <u>Adjustment</u> \$	<u>Total</u> <u>Allowable</u> <u>Revenues</u> \$
Operating Revenues	_____	_____	_____	_____	_____
Deductions: O&M Expenses Depreciation Taxes: State Federal Other	_____	_____	_____	_____	_____
Total Deductions	_____	_____	_____	_____	_____
Net Income Available for Return	=====	=====	=====	=====	=====
Rate Base					=====
Recommended Rate of Return					=====



### Examples of Specific Exceptions

1. Staff excepts to the ALJ's rejection of the Staff (and OCA.) rate case expense adjustment. See R.D., pp. 31-2; Staff brief, pp. 54-5; OCA brief, pp. 98-9. The \$128,000 adjustment, based on a filing once every four years and on disallowance of certain expenses, should be accepted.

2. The Company excepts to the adoption of the OCA revenue adjustment. See R.D., pp. 28-30; Company brief, pp. 56-9; Company reply brief, p. 12. This adjustment was based on unreasonable projections of industrial consumption (see OCA brief, p. 84). The Company projection, as modified at Company St. 14, pp. 11-12, should be used.

3. OCA excepts to the ALJ's failure to address, and accept, its weather adjustment to revenues. See OCA brief, pp. 21-4; OCA reply brief, p. 12.

4. Corrections to calculations underlying salary increases (R.D., p. 41), force reductions (R.D., pp. 48-9) and tax normalization (R.D., pp. 61-2) are offered and explained at Appendix B.

Pennsylvania Public Utility Commission v. Philadelphia Gas Works  
Docket No. R-2009-2139884, P-2009-2097639

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :  
 :  
 v. : R-2008-2073938  
 :  
 Philadelphia Gas Works :

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing letter and its attachments in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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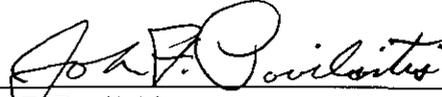
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