

COMMONWEALTH OF PENNSYLVANIA



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IRWINA. POPOWSKY
Consumer Advocate

December 13, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works,
Collaborative Process
Docket No. R-2008-2073938

Dear Secretary Chiavetta:

Enclosed please find the Answer of the Office of Consumer Advocate, in the above referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,


James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosures

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

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The Commission directed a collaborative to explore this issue, including the option of transitioning some or all of its customers to an alternative default supplier. Order at 51. The initial collaborative meeting was held on February 1, 2009, and subsequent meetings were held through September of that year. Participants in the initial collaborative included: PGW, the Commission's Office of Trial Staff (now the Bureau of Investigation and Enforcement), the OCA, the Office of Small Business Advocate (OSBA), Philadelphia Industrial and Commercial Gas Users Group, Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), the Tenant Union Representative Network, Philadelphia Housing Authority, and representatives of the natural gas suppliers, including the Settling Parties IGS, Dominion, Hess, and Direct. Although discussions were productive, a general consensus was not reached on the proposals put forward in these discussions. Those proposals revolved mainly around supplier proposals to transition some or all of PGW's customers to an alternative default service provider.

Subsequently, the Commission issued a Secretarial Letter on April 13, 2011. This letter expressed the Commission's appreciation for the efforts made by the collaborative participants, but also acknowledged that a continuation of the collaborative process to examine the supplier proposal would not be productive.¹ As a result, the Secretarial Letter stated:

Because of the concerns raised by the collaborative participants regarding the operation and benefits of the Supplier Proposal, and its compliance with the least cost procurement standard, we will refer the Supplier Proposal to the Office of Administrative Law Judge (OALJ) for an on the record proceeding in which the suppliers will bear the burden of proof.

If the suppliers wish to pursue the matter before the OALJ, the suppliers should be prepared to supplement their proposal and provide evidence to address the following concerns and policy preferences of the Commission. Specifically, the Supplier Proposal should:

¹ The supplier proposal, presented by IGS, Dominion, Hess and Direct, recommended that PGW's customers be transitioned to competitive service through a wholesale auction.

- Satisfy the least cost procurement requirements of the Public Utility Code;
- Use a balanced supply portfolio that uses existing storage assets to level purchases and reduce seasonal volatility;
- Use a customer assignment process that results in a single clearing price paid by all members of the same customer class (e.g., such as a declining block auction used in default service electric procurements);
- Include a detailed implementation plan for review by all parties;
- Include contingency plans for what happens to affected customers if an alternative supplier defaults on its obligation. For example, the affected customers could be reassigned to the remaining suppliers.

See, Pa. PUC v. Philadelphia Gas Works, Collaborative Process re: Alternative Supplier of Last Resort, PUC Secretarial Letter (Dated April 13, 2011)(footnote omitted). The letter concluded:

Finally, *the parties* are encouraged to work cooperatively, and pursue reasonable opportunities for settlement.

Id. (Emphasis Added). The Commission thus offered two alternatives: One, a referral to hearings before an ALJ on the suppliers’ proposal; or two, a resumption of discussions among “the parties.” PGW and the marketers, however, took a third course, that is, discussions between two of the parties – the Company and a group of marketers – while excluding all other members of the original collaborative.

The suppliers and PGW reached a “settlement” that requires PGW to pursue various initiatives designed to enhance retail competition. The Joint Petition however, would impose all of the costs of those initiatives on ratepayers that had no voice in their development. In addition, the Joint Petition makes no attempt to identify or compare the benefits that would accrue to ratepayers as a result of their paying these added, unknown, costs.

The OCA submits that this “settlement” does *not* reflect the joint efforts of the participants to the initial collaborative process. Instead, it is a joint proposal by PGW and a

group of marketers without any participation of other stakeholders including any of the parties who will pay for all the costs incurred under this settlement.

It is the Commission's policy to encourage settlement where all parties are provided an opportunity to participate in the outcome. The Commission's Statement of Policy concerning settlements states:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.

52 Pa. Code §69.401 (Emphasis added).² While the OCA recognizes that non-unanimous settlements are often presented for Commission consideration and often approved, that is quite different from excluding all public and ratepayer representatives from the settlement discussions altogether.

The OCA—and other public and consumer stakeholders—were not invited to discussions, but have instead been presented with an end result. The end result of this Joint Petition could impose significant costs on PGW customers. It is critical to recall that PGW's ratepayers have seen their distribution rates increase substantially over the last several years. In addition to the \$60 million increase in rates approved in 2008, PGW's ratepayers were subjected to a further \$16 million increase last year. As such, the OCA objects to the settlement reached between the Settling Parties that would impose more costs on PGW ratepayers particularly without their participation in the development of these programs.

The OCA submits that it is not appropriate to single out PGW and its ratepayers among Pennsylvania NGDCs and impose additional costs on these ratepayers at this time. This

² The Joint Petitioners cite the Commission's Policy Statement in support of its approval. Joint Petition at ¶28(b). The Policy Statement is clear, however, that settlements are often preferable to a fully litigated proceeding where "interested parties have had an opportunity to participate," something that is clearly not the case in this instance.

is particularly the case here, where there has been no showing that the benefits of these proposals warrant the added costs required for their implementation or that charging the costs to ratepayers is justified.

II. ANSWER

A. Introduction

In its participation in the initial collaborative process, the OCA sought to ensure that any options proposed would ultimately benefit PGW's customers and lower costs and bills for these customers. The initial joint proposal presented by the gas marketers on July 23, 2009 contained many significant issues, as the Commission's Secretarial Letter recognized, and had not been shown to benefit PGW's customers. The OCA acknowledges the change in focus of the discussions, but is dismayed that none of the parties representing PGW's customers – who are being asked to pay every penny for these initiatives – were invited into these discussions to work on these important issues. It is not surprising that the resulting "Settlement" between only two stakeholder segments of a multi-stakeholder collaborative would come at the expense of PGW's customers.

As set forth below, there are numerous shortcomings contained within the Joint Petition. Most importantly, the Joint Petition provides for: 1) a surcharge which will provide for unspecified levels of rate recovery from PGW's customers for additional consumer education initiatives, 2) modifications to PGW's billing system which may prove costly and inefficient for PGW's customers and 3) several new "collaboratives" with no commitment that anyone other than the Joint Petitioners will be permitted to participate. The OCA submits that the Joint Petition should be rejected. If any efforts are to continue, PGW should be instructed to conduct a collaborative that includes all interested stakeholders.

B. The Proposed Consumer Education Charge Should Be Rejected.

The Joint Petition provides that:

PGW will provide consumer education about natural gas suppliers operating in its service territory. PGW has offered to provide this information by the following means with the details to be determined by a smaller breakout group of the Collaborative Process participants:

- a. Bill messages.
- b. PGW website.
- c. Good Gas News (PGW's bill insert) and the e-bill equivalent of Good Gas News.
- d. Bi-annual mailings to all customers and mailings to new applicants.
- e. Call center (and district office) script additions at time of application.
 - i. Ask customers if they have selected a natural gas supplier.
 - ii. Direct customers to the natural gas equivalent of papowerswitch.com.
 - iii. Inform customers that a mailing will be sent discussing natural gas suppliers and natural gas supplier offers.
- f. Add a hold recording which discusses gas choice.

Joint Petition at 5. Further, the Joint Petition provides:

In order to fund the choice consumer education program, PGW will seek recovery of these costs via a consumer education surcharge (with a potential spending ceiling) that will be included in the distribution charge. The recovery mechanism for these costs and the spending level will be determined in the Purchase of Receivables Collaborative.

Id.

The Joint Petition initiatives have the potential to burden PGW ratepayers with substantial additional costs. For instance, the proposal to include “bi-annual mailings to all customers” would add substantial costs for design, production and mailing of information that are not incurred by any other NGDC. Call center script changes can also be expensive to implement and require extensive training of call center representatives. In addition, adding discussions of retail choice to call center scripts can lengthen the contact time and result in

longer wait times for other customers. The OCA submits that it is inappropriate to single out PGW from all other NGDCs for these types of programs at this time.

This provision of the Joint Petition contemplates an on-going education campaign by PGW with no definitive end. This program provides no estimate of the costs, no evaluation of the efforts needed to make it effective, and no evaluation of the benefits. Additionally, the Joint Petition provides that the details of this education will be addressed “by a smaller breakout group of the Collaborative Process participants”. Yet, as evidenced by this “Settlement,” it is not clear whether those participants will include any representatives of the customers who will pay for these programs and be the recipients of the education effort.

The Joint Petition would charge all of the unspecified costs for these initiatives to PGW’s ratepayers. This is done despite the fact that the Company’s ratepayers have already absorbed costs related to the transition to retail choice and consumer education related to retail choice following restructuring. It is not clear what benefits will accrue to PGW customers by incurring additional costs. It is also problematic that these costs and efforts appear to exceed those in other NGDC service territories.

In considering these efforts, it is also important to acknowledge the demographics of PGW’s customer base. For example, the 2010 Bureau of Consumer Service’s Report on Universal Service Programs and Collections Performance illustrates the following with respect to PGW:

- Of the 231,520 Pennsylvania residential customers³ in debt to their utility, 94,928, or 41% of the total, are PGW customers;⁴ and
- Nearly 33% of PGW’s customers have been confirmed as low-income.

³ Customers of the smaller companies, TW Phillips and UGI Central Penn Gas, Inc., are not included.

⁴ The next highest total is 29,616.

Moreover, over 82,000 PGW customers are in its Customer Responsibility Program (CRP) designed to assist payment troubled and low-income customers.⁵ Providing more education regarding customer choice for CRP customers whose bills are based on a percentage of their income may add costs and complexity to the program that must be addressed.

C. PGW's Billing System

The Joint Petition also contains a number of possible modifications to PGW's computer systems that would be recovered through the consumer education surcharge. For example, the Joint Petition states that:

- PGW will inform natural gas suppliers via an EDI transaction when a customer drops a natural gas supplier in order to switch to PGW or another supplier;
- In addition to traditional fixed and variable rates, PGW's billing system will also administer a percentage discount off of PGW's Price to Compare, flat rates and multiple per Mcf rates.

Joint Petition at 6. The OCA submits that having PGW ratepayers fund these additional costs may be unreasonable and inconsistent with the law.

Section 2205(c)(3) of the Gas Choice Act prohibits the utility from shifting billing costs associated with retail choice to ratepayers. Section 2205(c)(3) states:

Incremental costs relating to billing services designed, implemented and rendered by the natural gas distribution company, at its election, on behalf of a natural gas supplier or other entity may be recovered through fees charged by the natural gas distribution company to the natural gas supplier or other entity. Either party may request that the commission consider the appropriate level of the fee. In doing so, the commission shall consider fees charged by other natural gas distribution companies for similar services. The commission shall either permit the fee to continue as set or shall establish an alternative mechanism to permit full recovery of unrecovered just and reasonable costs from the supplier or the supplier's customers. **Nothing in this section**

⁵ According to Schedule 12 of PGW's November 30, 2011 quarterly gas cost rate filing, the Company had an "actual participation rate" of 82,023 customers in their CRP program for October 2011. Pa. PUC v. Philadelphia Gas Works December 1, 2011 First Quarterly GCR Filing, Docket No. R-2011-2224736 (Filing of November 30, 2011).

shall permit the recovery of such costs from natural gas supply service customers of the natural gas distribution company.

66 Pa. C.S. §2205(c)(3)(Emphasis added).

Moreover, the Joint Petition contains no analysis of whether these provisions are cost-effective or reasonable. PGW's billing system, and its costs, have been the subject of considerable attention in base rate proceedings before the Commission. See, Pa. PUC v. PGW, Docket No. R-00005654 (Order entered September 22, 2000)(slip op. at 28-31). The OCA submits that, prior to undertaking such initiatives, PGW should establish that its current system can support such changes and it should determine the costs. The current billing system should not be jeopardized by such initiatives, and ratepayers should not be asked to pay the costs of these changes done to support the billing preferences of the suppliers supporting the Joint Petition.

D. Collaborative Process

The Joint Petition provides for numerous collaborative efforts to be initiated in order to provide detail to some of the proposals. Specifically, there will be collaborative efforts established to address:

- consumer education initiatives;
- consumer education cost recovery (via the Purchase of Receivables Collaborative); and
- capacity and capacity-related issues.

However, based on the limited nature of the most recent "collaborative", the OCA is concerned with this approach. Any such initiatives must be open to all parties.

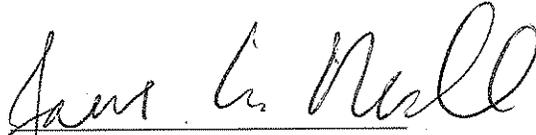
E. Conclusion

For the reasons set forth above, the OCA submits that the Joint Petition should be rejected. It does not reflect the participation of all participants and, its provisions, if enacted as proposed, may harm PGW customers.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate submits that the Joint Petition should be rejected.

Respectfully submitted,



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Dated: December 13, 2011
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CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2008-2073938
 :
 Philadelphia Gas Works, :
 Collaborative Process :

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

Dated this 13th day of December 2011.

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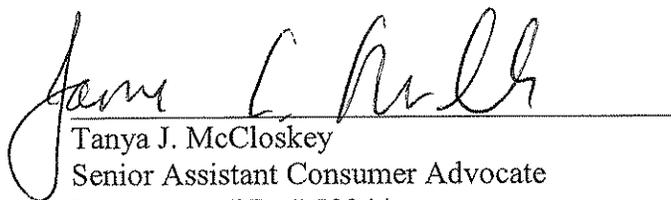
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