

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[P-2009-2136508]

Application of Philadelphia Gas Works' Cash Flow Ratemaking Method

The Pennsylvania Public Utility Commission (Commission), on April 15, 2010, adopted a final policy statement which explains how the Commission intends to apply Philadelphia Gas Works' Cash Flow Ratemaking Method on a going forward basis.

Public Meeting held
April 15, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, Dissenting; Wayne E. Gardner; Robert F. Powelson

Petition of Philadelphia Gas Works for a Statement of Policy on the Application of Philadelphia Gas Works' Cash Flow Ratemaking Method; Doc. No. P-2009-2136508

Order and Final Policy Statement

By the Commission:

A. Introduction

Before the Commission for consideration is the Petition of Philadelphia Gas Works ("PGW" or the "Company") seeking the promulgation of a "Statement of Policy" explaining how the Commission intends to apply PGW's Cash Flow Ratemaking Method on a going forward basis, and the Comments and Reply Comments to the Commission's December 30, 2009, Order wherein we solicited comments to the Commission's proposed "Statement of Policy."

Upon consideration of the Comments and Reply Comments submitted in this matter, the Commission finds that, while we have applied the Cash Flow Method in accordance with the requirements of Section 2212(e) of the Gas Choice Act, as well as Chapter 13 of the Public Utility Code and applicable Pennsylvania law in prior PGW rate cases, issuance of a final policy statement, as modified herein, will provide guidance to PGW and all interested parties on the statutorily-mandated ratemaking criteria for PGW and the information that should be considered in determining just and reasonable rates for PGW. In addition, the guidance provided by issuance of a final policy statement can reduce the likelihood of future litigation on the specific elements of the Cash Flow Method used to determine PGW's rates.

B. Procedural History

On October 16, 2009, PGW filed a Petition requesting that the Commission issue a "Statement of Policy" explaining how it intends to apply PGW's Cash Flow Ratemaking Method on a going forward basis.¹ In support of its Petition, PGW contends that "inconsistencies" exist among decisions rendered by the Commission and the Commonwealth Court regarding the application of the Cash Flow Method to PGW. According to PGW, unless such guidance is provided prior to PGW's next rate filing, "PGW will only be able to guess about the nature and

types of evidence it must submit in order to justify its requested rate increase." Petition at 7.

On October 21, 2009, the Secretary issued a letter which gave notice of the Petition and invited the filing of answers and replies following publication of a notice in the *Pennsylvania Bulletin*. The notice was published in the *Pennsylvania Bulletin* on October 31, 2009. (39 Pa.B. 6341) Answers to the Petition were filed by the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS"), the Office of Small Business Advocate ("OSBA"), the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") and two Philadelphia based consumer advocacy and membership organizations, namely the Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") (collectively "TURN *et al.*"). PGW filed a Reply to the Answers filed by the OCA, OTS, OSBA and TURN *et al.*

On December 30, 2009, the Commission entered an Order ("December Order") granting in part and denying in part PGW's Petition consistent with the discussion therein. The Commission's December Order ultimately adopted a proposed "Statement of Policy." Because the Commission's proposed "Statement of Policy" included revisions and additions to the policy statement that PGW had originally submitted, the December Order provided a 30-day period for parties to file Comments to the proposed "Statement of Policy." Parties, namely PGW, the OCA, OTS and Turn *et al.*, filed Comments to the Commission's proposed "Statement of Policy" and, by leave of the Commission, the same parties filed Reply Comments.²

C. Comments to the Commission's December Order

PGW Comments

On January 28, 2010, PGW filed Comments to the Commission's December Order. In its Comments, PGW proposed several modifications to the Commission's proposed "Statement of Policy." First, with regard to the financial considerations referenced in the Commission's proposed "Statement of Policy," PGW suggests that Item 4 (concerning expense comparisons with other utility enterprises) on the list of factors set forth in § 69.2703(a) be deleted and replaced with a different factor, namely, the financial performance necessary to permit PGW's continued access to the capital markets. According to PGW, the need to access the capital markets was "apparently inadvertently deleted from the PUC's draft of the Policy Statement." PGW Comments at 2.

Second, PGW suggests that the "non-financial" considerations (Items 4, 6, 7 and 8) proposed by the Commission be deleted. According to PGW, these non-financial considerations are not within the stated scope of the Policy Statement because they do not explain the "Cash Flow methodology" as it is applied to PGW under Section 2212(e) of the Public Utility Code and the PGW Management Agreement Ordinance ("MAO"). Additionally, PGW states that the continued inclusion of these considerations could generate additional controversies in future rate proceedings. PGW Comments at 2.

Third, in an effort to reduce confusion over the application of the Commission's final "Statement of Policy," PGW

¹ A copy of the proposed Statement of Policy was attached to the Petition as Appendix "A."

² By way of a Secretarial Letter issued March 5, 2010, the Commission granted PGW's Motion for Leave to File Reply Comments. The Secretarial Letter also allowed other parties to file Reply Comments on or before March 15, 2010.

suggests that the Commission's Order adopting the Policy Statement clearly explain that: (a) the considerations listed in § 69.2703(a) do not constitute filing requirements for PGW; and (b) PGW is not required to affirmatively present evidence in its pending rate case on the non-financial considerations added by the Commission. PGW Comments at 3.

Finally, PGW suggests that there should be a Commission acknowledgment that the final "Statement of Policy" would continue to apply to successor municipal entities to a city natural gas operation, which may be formed by the City of Philadelphia. PGW Comments at 3.

OCA Comments

On January 29, 2010, the OCA filed Comments to the Commission's December Order. In its Comments, the OCA reiterates its position that there is no need for the Commission to issue a policy statement as to how the Cash Flow method of ratemaking applies to PGW. According to OCA, no real confusion exists as to how this ratemaking methodology is applied to PGW. Rather, OCA submits that "it is PGW's continued disagreement with how the Commission has interpreted and applied the Cash Flow method to PGW that is at the heart of this matter." OCA Comments at 2.

As to the specifics of the Commission's proposed "Statement of Policy," the OCA claims that the Commission's proposed "Statement of Policy" is contrary to recent decisions by the Commission and the Commonwealth Court and does not follow the MAO. To this end, the OCA asserts that the Commission's proposed "Statement of Policy" does not accurately reflect the holdings of recent decisions in several important areas, specifically, the references to certain phrases like "non-borrowed year-end cash" and "internally generated fund." The OCA states that these phrases, which according to OCA will not "reduce the likelihood of future litigation" but rather will likely force continued litigation on these same issues that were already finally decided by the Commonwealth Court, should be removed from the Commission's final "Statement of Policy." OCA Comments at 3.

Finally, the OCA submits that the language in the Commission's proposed "Statement of Policy" relating to PGW's future financial forecasts and assumptions and the language relating to benchmarking activities should be removed from the Commission's final "Statement of Policy." On these two points, the OCA states that using beyond the test year financial projections, even "as a check" is improper and at odds with the holding in *Phila. Gas Works v. Pa. PUC*, Docket No. 1914 C.D. 2007, Memorandum Opinion (filed February 4, 2009) (*Commonwealth Court Order*), Petition for Allocatur denied, Docket No. 259 EAL 2009, (December 2, 2009). Similarly, the OCA states that there is no support in the Public Utility Code or in PGW's prior ratemaking methodologies that suggest that the benchmarking information should, by policy, be a factor in setting rates for PGW. OCA Comments at 7 and 8.

In conclusion, the position of OCA is succinctly summarized as follows:

The Proposed Policy Statement, if issued, will create a persuasive interpretation of how the Commission intends to apply the Cash Flow method of ratemaking to PGW in the future. Such a presumption will almost certainly shift the burden of proof on those issues away from the Company and force the other parties to swim upstream on issues that have *already been decided by the Commonwealth Court*. To have

those decisions swept away by a policy statement raises significant issues of due process and simple, basic fairness.

OCA Comments at 10 (emphasis supplied).

OTS Comments

On January 29, 2010, the OTS filed Comments to the Commission's December Order. In its Comments, OTS maintains its prior position that the Commission and Commonwealth Court have provided clear and consistent guidance as to the ratemaking methodology to be applied to PGW. In addition, OTS states that the issuance of the Commission's proposed "Statement of Policy" would not override the Commonwealth Court Orders affirming the Commission's current interpretation and application of the appropriate ratemaking methodology to be applied to PGW. OTS Comments at 2.

As to the specifics of the Commission's proposed "Statement of Policy," OTS submits the Commission should modify § 69.2703(a)(1) to eliminate consideration of PGW's projected future levels of non-borrowed cash. According to OTS, the stated purpose of the Commission's proposed "Statement of Policy" is to provide guidance to the parties and reduce the likelihood of future litigation on the specific elements of the Cash Flow Method. However, contrary to the enunciated goal, OTS asserts that consideration of PGW's projected future levels of non-borrowed year-end cash introduces less reliable information into the ratemaking process and will lead to protracted litigation.³ OTS Comments at 3.

In conclusion, the OTS asserts that while it opposed PGW's proposed "Statement of Policy" and continues to assert that no Policy Statement is necessary to adequately and efficiently apply the Cash Flow Method of ratemaking, the Commission's proposed "Statement of Policy" conforms to established Commission precedent except for the significant departure within § 69.2703(a)(1). According to OTS, rather than settle existing law, this section, notwithstanding the stated limitation of the Commission proposed "Statement of Policy," will spur extensive litigation on an issue that was recently rejected by the Commission and the Commonwealth Court. OTS Comments at 8.

TURN et al. Comments

On January 28, 2010, TURN *et al.* filed comments to the Commission's December Order. In its Comments, TURN *et al.* note its approval of the Commission revisions to PGW's proposed "Statement of Policy." According to TURN *et al.*, the Commission revisions go in the direction of providing more specific guidance on considerations which are necessary in order to implement the Cash Flow Method. However, it is suggested that if the Commission's final "Statement of Policy" is to be more than a partial statement of PGW's ratemaking method, the Commission's final "Statement of Policy" must also incorporate specific reference to the constitutionally based "just and reasonable" standard under the 5th and 14th Amendments to the U.S. Constitution which, by extensive case law, requires a balancing of the interests of customers and of the utility. TURN *et al.* Comments at 2.

D. Reply Comments from the Parties

PGW, OCA, OTS and TURN *et al.* filed Reply Comments. In PGW's Reply Comments, PGW contends that: (1) OCA's demands that references to "non-borrowed cash"

³ OTS suggests that the calculation of the "projected future levels of non-borrowed year-end cash" would more than likely encompass substantially the same data as the "five-year forecast" proposed in PGW's 2007 base rate case.

and “internally generated funds” should be eliminated are contrary to law and would be bad policy; (2) the use of financial projections “as a check” is reasonable; (3) the use of “benchmark” standards is reasonable; (4) there is no need to add a reference to the Constitutional “just and reasonable” standard in the Commission’s final “Statement of Policy” and (5) there is a continuing need for the Policy Statement. PGW Reply Comments at 1—9.

In OCA’s Reply Comments, OCA continues to hold the position that no policy statement should be issued and that the Commission’s proposed “Statement of Policy” does not reflect the holdings of recent decisions by the Commission and by the Commonwealth. Moreover, according to OCA, the Commission’s proposed “Statement of Policy” does not follow the MAO.

As to the specifics of the Commission’s proposed “Statement of Policy,” OCA submits that it was correct for the Commission to delete PGW’s “access to the capital markets” language and that the Commission-added “non-financial” language at § 69.2703(a)(6)—(8) should, contrary to PGW’s suggestion, remain because these non-financial considerations are part and parcel of PGW ratemaking considerations as they relate to the just and reasonable standard. OCA Reply Comments at 3—6.

Finally, the OCA agrees that the Commission’s proposed “Statement of Policy” does not create filing requirements, as suggested and opposed by PGW in its Reply Comments, but disagrees that there is a need for the Commission to acknowledge in the Commission’s final “Statement of Policy” the possible creation by the City of Philadelphia of a different business entity to provide natural gas service. OCA Reply Comments at 7.

In OTS’s Reply Comments, OTS similarly states that Commission-added “non-financial” language at § 69.2703(a)(6)—(8) should, contrary to PGW’s suggestion, remain because these non-financial considerations are part and parcel of PGW ratemaking considerations as they relate to the just and reasonable standard. The OTS also states that PGW’s request in its Reply Comments to add a specific reference to “access to the capital markets” should be rejected; however, as an alternative, OTS proposes to add it to the end of § 69.2703(a)(5) so that it would now read “(5) Level of financial performance needed to maintain or improve PGW’s bond rating thereby permitting PGW to access the capital markets at the lowest reasonable cost to customers.”

Finally, the OTS asserts that the Commission’s proposed “Statement of Policy” does not create filing requirements and that PGW’s request to acknowledge the possible creation by the City of Philadelphia of a different business entity to provide natural gas service is clearly premature and outside of the scope of the proposed “Statement of Policy.” This acknowledgment language, according to OTS, was not included in PGW’s original “Statement of Policy” and the request to acknowledge entities that do not exist is clearly premature. OTS Reply Comments at 7.

In TURN *et al.* Reply Comments, TURN *et al.* reiterates that its first preference is that the Commission deny PGW’s Petition and not issue a “Statement of Policy” at all in this proceeding. However, if the Commission determines that a “Statement of Policy” is necessary, TURN *et al.* submits that it should include the TURN *et al.* proposed amendments concerning the constitutionally based “just and reasonable” standard which requires a balancing of the interests of customers and of the utility. TURN *et al.* Comments at 2—6.

E. Discussion

As explained in our December Order, a policy statement is intended to provide guidance regarding the policy the agency intends to implement in future adjudications. And, unlike a regulation, it is not enforceable and has no binding effect on the agency, or on anyone else. The Pennsylvania Supreme Court in *Pa. Human Relations Comm’n v. Norristown Area School District*, 473 Pa. 334, 374 A.2d 671 (1977) (“Norristown”), distinguished the effect of a policy statement from a rule or regulation by adopting the “binding norm” test from Federal law:

An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedents. A general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. A general statement of policy, like a press release, presages an upcoming rulemaking or announces the course which the agency intends to follow in future adjudications. . . .

The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. . . . A properly adopted substantive rule establishes a standard of conduct which has the force of law. . . . The underlying policy embodied in the rule is not generally subject to challenge before the agency.

A general statement of policy, on the other hand, does not establish a ‘binding norm’. . . . A policy statement announces the agency’s tentative intentions for the future. *When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued.*

Norristown, 374 A.2d at 679 (quoting *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (1974) (emphasis added; footnotes and citations omitted).

Consistent with the previous discussion, the Commission is not establishing a binding norm when it issues a policy statement. Instead, and as previously stated herein, while the Commission has applied the Cash Flow Method in accordance with the requirements of Section 2212(e) of the Gas Choice Act, as well as Chapter 13 of the Public Utility Code and applicable Pennsylvania law in prior PGW rate cases, we continue to believe that the issuance of a final policy statement will provide guidance to PGW and all interested parties on the statutorily-mandated ratemaking criteria for PGW and the information that should be considered in determining just and reasonable rates.

In addition, we continue to believe that the issuance of a final policy statement will reduce the likelihood of future litigation on the specific elements of the Cash Flow Method. Despite the suggestions to the contrary, it is our opinion that the elements in the Commission’s proposed “Statement of Policy” are in fact drawn from Pennsylvania case law so that application of the policy statement in future proceedings will yield the same result as the application of established legal precedent. As such, and consistent with *Norristown*, the policy statement provides guidance as to “the course which the agency intends to follow in future adjudications.” *Id.*, 473 Pa. at 350, 374 A.2d at 679. Accordingly, a properly crafted policy state-

ment will provide improved transparency as to the elements of the Cash Flow Method and the information that the Commission will consider in evaluating and making determinations on those elements.

Specific Comments and Reply Comments

In response to the Comments and Reply Comments that summarily conclude that the Commission should not issue a final “Statement of Policy,” we first note our agreement that the Cash Flow Method of ratemaking has been applied to PGW consistently and in accordance with applicable case law. We also note our agreement that the Commonwealth Court has recently affirmed that the Commission’s application of the Cash Flow Method to PGW strikes that appropriate balance between Section 2212 of the Gas Choice Act and Section 1301 of the Public Utility Code.⁴ Notwithstanding, the Commission would be remiss if we did not acknowledge that some of the earlier PGW rate relief orders failed to articulate a comprehensive explanation of the elements and supporting information that should be examined in applying the Cash Flow Method to PGW and determining PGW’s revenue requirement. Upon consideration of the Comments and Reply Comments, we continue to believe that the issuance of a final “Statement of Policy” will be in the public interest in that it will provide appropriate guidelines to assist PGW and all stakeholders regarding the Cash Flow Method of ratemaking.

As to PGW’s assertion that the Commission “apparently inadvertently” deleted from the PUC’s proposed “Statement of Policy” the language in PGW’s proposed “Statement of Policy” concerning PGW’s need to access the capital markets at reasonable costs, we agree that this language was inadvertently deleted. Indeed, because access to capital markets at reasonable costs is essential to finance the infrastructure projects needed to maintain reliable service, to retire higher priced debt and to maintain PGW’s overall liquidity, this factor is a legitimate consideration under the Cash Flow Methodology. As an appropriate resolution, we will, as proposed by OTS, add the language to the end of § 69.2703(a)(5) so that the Commission’s final “Statement of Policy” will now read “(5) *Level of financial performance needed to maintain or improve PGW’s bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time.*”

As to PGW’s suggestion that the “non-financial” considerations (Items 4, 6, 7 and 8) proposed by the Commission should be deleted, we disagree. Simply stated, these non-financial considerations are clearly part and parcel of PGW ratemaking considerations as they relate to the just and reasonable standard. As noted by both the OCA and TURN *et al.*, the just and reasonable standard, grounded in the United States Constitution, requires the Commission to balance the interests of the utility and its customers. While not, strictly speaking, financial inputs, these are factors that the Commission may consider, in its discretion, in balancing the interests of the utility and its customers, particularly with respect to margins above and beyond those required to meet PGW’s bond coverage obligations.

Finally, as to PGW’s concern that the Commission’s proposed “Statement of Policy” will create filing requirements for PGW, we agree with both the OCA and OTS that PGW has overemphasized the effect of a policy statement. As previously stated, a policy statement is not

a regulation. It is not enforceable and has no binding effect on the agency, or on anyone else.⁵ Accordingly, the Commission’s proposed “Statement of Policy” does not create filing requirements, nor does it require PGW to affirmatively present evidence in the pending rate case on the non-financial considerations added by the Commission.

Both the OCA and OTS assert that the references in the Commission’s proposed “Statement of Policy” to “non-borrowed year-end cash” and “internally generated funds” should be removed from the Commission’s final “Statement of Policy.” Similarly, the OCA asserts that the language in the Commission’s proposed “Statement of Policy” relating to PGW’s future financial forecasts and assumptions and the language relating to benchmarking activities should be removed from the Commission’s final “Statement of Policy.”

In response, it is the Commission’s position that in order to determine a reasonable level of working capital for PGW, the Commission must consider PGW’s non-borrowed year-end cash and other liquid investments as well as PGW’s other short term borrowing capability. To this end, we agree with PGW that:

The exact levels of cash, cash equivalents and borrowing capability are determined by the PUC in each rate proceeding on the basis of substantial evidence submitted in the record. Therefore, it is not only appropriate but legally necessary to retain references to “non-borrowed cash” in the Policy Statement. . . . It will be left to the Commission to determine the “reasonable” level of this item as well as other items that make up PGW’s cash working capital.

PGW Reply Comments at 2. Accordingly, the Commission will review the level of non-borrowed cash as well as PGW’s available short term borrowing capability.⁶

We also agree with PGW that the references in the Commission’s proposed “Statement of Policy” to “internally generated funds” (§ 69.2702(b), and § 69.2703(a)(2)) should remain in the Commission’s final “Statement of Policy.” The MAO specifically states that PGW’s rates must reflect an amount permitting the Company to finance its construction expenditures and to pre-pay previously issued long-term debt.⁷ Moreover, the Commission’s 2008 Extraordinary Rate Order observed that PGW will have to improve its cash flow position as well as its internally generated funds so that PGW’s financial position would improve.⁸ In conclusion, it is important to remember that the parties can always challenge the levels of “non-borrowed cash” and “internally generated funds” in future proceedings.

As to the specific references in the Commission’s proposed “Statement of Policy” to the use of projections “as a check” and the use of “benchmark” standards, we agree with PGW that future projections would not be the primary basis for a determination of PGW’s revenue requirements, but would only be used as a check on the future test year data used to set rates in the first instance. The future test year determinations, as adjusted

⁵ As to PGW’s request for an acknowledgment by the Commission that the final “Statement of Policy” would continue to apply to successor municipal entities to a city natural gas operation, which may be formed by the City of Philadelphia, suffice it to say that this request was not included in PGW’s proposed “Statement of Policy” and, at this point, is clearly premature.

⁶ The OCA’s argument that the “law of the case” doctrine prohibits the Commission’s consideration of non-borrowed cash in future rate proceedings is misplaced. As previously stated, the Commission’s final “Statement of Policy” will be applied prospectively.

⁷ MAO, Section VII.1 (b) (ii) (debt reduction and capital additions).

⁸ See *PUC v. PGW*, Docket No. R-2008-2073938, 2008 Pa. PUC LEXIS 32 (Order entered December 19, 2008).

⁴ *Philadelphia Gas Works, et al. v. Pennsylvania Public Utility Commission*, Docket No. 1914 C.D. 2007, Memorandum Opinion (filed February 4, 2009), *appeal denied*, 259 EAL 2009 (filed December 2, 2009).

by the utility and parties, can be checked by reference to future projections of non-borrowed year-end cost. PGW Reply Comments at 6 and 7.

Similarly, the examination of relevant comparable statistics for other utility enterprises at § 69.2703(a)(3) (financial performance of similarly situated utility enterprises) and § 69.2703(a)(4) (comparison to similarly situated enterprises) is an appropriate consideration for the Commission in setting PGW's rates and will therefore remain in the Commission's final "Statement of Policy." We agree with PGW that the Commission will still have authority and discretion to determine whether the benchmark data should be given weight and, if so, the degree to which that evidence should be considered relevant. PGW Reply Comments at 8 and 9.

Finally, in response to the TURN *et al.* request to add a reference to the "just and reasonable" standard under the 5th and 14th Amendments to the U.S. Constitution, we conclude that there are already sufficient references to this clearly relevant standard in the Commission's proposed "Statement of Policy" and in case law, particularly the Pennsylvania Supreme Court decision in *Public Advocate v. Philadelphia Gas Commission*, 674 A.2d 1056 (Pa. 1996) ("*Public Advocate*"). Moreover, as pointed out by PGW in its Reply Comments, the Commission has previously determined that the "just and reasonable" standard in Section 1301 is applicable to PGW and coextensive with the Federal constitutional standard for determining utility rates.⁹ As such, no further reference to the constitutional standard is required for the purposes of the policy statement.

Conclusion

The purpose of this final "Statement of Policy" is to provide guidance to PGW and all interested parties as to the Commission's view on the statutorily-mandated ratemaking criteria for PGW and the information that should be considered in determining just and reasonable rates. In addition, the final "Statement of Policy" will reduce the likelihood of future litigation on the specific elements of the Cash Flow Method. The "Statement of Policy," as modified herein in Annex A, is grounded upon Pennsylvania case law and is intended to provide clear guidelines as to the specific elements and considerations that should be examined in applying the Cash Flow Method to PGW in future rate proceedings; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission at 52 Pa. Code Chapter 69 are amended by adding a statement of policy in §§ 69.2701—69.2703 to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. A copy of this order and Annex A shall be posted on the Commission's web site and served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and all parties filing comments at this docket.

⁹ PUC v. PGW, Docket, R-00006042, *et seq.*, 2001 Pa. PUC LEXIS 109 (Order entered October 4, 2001).

5. This Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.

6. Alternative formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator at (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-275. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

APPLICATION OF PGW CASH FLOW RATEMAKING METHOD—FINAL STATEMENT OF POLICY

§ 69.2701. Definitions.

The following words and terms, when used in this section and §§ 69.2702 and 69.2703, have the following meanings, unless the context clearly indicates otherwise:

Act—The Natural Gas Choice and Competition Act (66 Pa.C.S. §§ 2201—2212).

PGW—Philadelphia Gas Works.

§ 69.2702. Background and ratemaking elements.

(a) The act brought city owned natural gas operations, including PGW, under the Commission's jurisdiction. See 66 Pa.C.S. § 2212(b) (relating to Commission jurisdiction).

(b) The Commission is obligated under law to use the cash flow methodology to determine PGW's just and reasonable rates. Included in that requirement is the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses, depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements and other internally generated funds over and above its bond coverage requirements, as the Commission deems appropriate and in the public interest for purposes such as capital improvements, retirement of debt and working capital.

§ 69.2703. Ratemaking procedures and considerations.

(a) In determining just and reasonable rate levels for PGW, the Commission will consider, among other relevant factors:

(1) PGW's test year-end and (as a check) projected future levels of non-borrowed year-end cash.

(2) Available short term borrowing capacity and internal generation of funds to fund construction.

(3) Debt to equity ratios and financial performance of similarly situated utility enterprises.

(4) Level of operating and other expenses in comparison to similarly situated utility enterprises.

(5) Level of financial performance needed to maintain or improve PGW's bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time.

(6) PGW's management quality, efficiency and effectiveness.

(7) Service quality and reliability.

(8) Effect on universal service.

(b) The Commission is obligated to establish rate levels adequate to permit PGW to satisfy its bond ordinance covenants, consistent with 66 Pa.C.S. § 2212(e) (relating to securities of city natural gas distribution operations).

(c) These financial measures will be considered by the Commission in determining just and reasonable rates for PGW under 66 Pa.C.S. (relating to the Public Utility Code) and are consistent with the PGW Management Agreement Ordinance.

[Pa.B. Doc. No. 10-940. Filed for public inspection May 21, 2010, 9:00 a.m.]