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**Philadelphia Gas Works**

Gregory J. Stunder  
Senior Attorney



800 W. Montgomery Avenue, Philadelphia, PA 19122  
Telephone: (215) 684-6878 – Fax (215) 684-6798  
Email: greg.stunder@pgworks.com

June 3, 2009

**VIA EXPRESS MAIL**

James J. McNulty - Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

RECEIVED  
2009 JUN 10 PM 2:04  
PHILADELPHIA  
PUBLIC UTILITY  
COMMISSION

Re: **Philadelphia Gas Works' Comments to the December 8, 2008 Proposed Rulemaking Order; Docket No. L-2008-2069115**

Dear Secretary McNulty:

Enclosed for filing are an original and fifteen (15) copies of Philadelphia Gas Works' Comments to the December 8, 2008 Proposed Rulemaking Order.

If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory J. Stunder", is written over the typed name.

Gregory J. Stunder

Enclosure

cc: Patricia Krise Burket (via e-mail)  
Annunciata Marino (via e-mail)  
Cyndi Page (via e-mail)

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA. 17105-3265**

**Licensing Requirements For Natural Gas  
Suppliers; *SEARCH Final Order and Action*    Docket No. L-2008-2069115  
*Plan: Natural Gas Supplier Issues***

**COMMENTS OF PHILADELPHIA GAS WORKS  
TO THE DECEMBER 8, 2008 PROPOSED RULEMAKING ORDER**

**I. INTRODUCTION**

In its September 11, 2008 Final Order and Action Plan regarding the Commission's *Investigation into the Natural Gas Supply Market: Report on Stakeholder's Working Group*<sup>1</sup> (*SEARCH Order*), Docket No. I-00040103F0002 (*SEARCH Order*), the Commission determined that one way to increase effective competition in the retail natural gas market was to revise the natural gas supplier licensing regulations<sup>2</sup> in regard to the level of security needed and the forms of security that could be used to satisfy the statutory security requirement for licensing. Accordingly, the proposed rulemaking order sets forth revisions to the Commission's natural gas supplier licensing regulations on these matters.

On December 8, 2008, the Pennsylvania Public Utility Commission (the "Commission") issued a Proposed Rulemaking Order (the "December 8 Order") setting forth the proposed revisions to the Licensing Requirements for Natural Gas Suppliers specifically relating to Bonds

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<sup>1</sup> The Stakeholders had been convened based on the Commission finding that "effective competition" did not exist in the retail natural gas market in accordance with 66 Pa.C.S. § 2204(g) (relating to investigation and report to General Assembly). See *Investigation into the Natural Gas Supply Market: Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market*, Order entered at Docket No. I-00040103.

<sup>2</sup> Natural gas supplier licensing regulations may be found at 52 Pa. Code §§62.101-62.114.

or Other Security at 52 Pa. Code §§ 62.111. The December 8 Order and attached regulations (Appendix A) were published in the *Pennsylvania Bulletin* on April 4, 2009 (39 Pa.B. 1657) and interested parties were given sixty days, or until June 3, 2009 to file written comments.

Philadelphia Gas Works (“PGW” or the “Company”) provides natural gas distribution services and natural gas supply to approximately 500,000 customers in the City and County of Philadelphia. Currently, three (3) Natural Gas Suppliers (“NGS” or “licensee” or “supplier”) are licensed to provide natural gas supply to PGW’s transportation customers.

PGW has reviewed the December 8 Order and supports many aspects of the proposed rulemaking. At the same time, PGW believes that the proposed regulations can be further clarified and strengthened in a number of important respects. The following comments are submitted with these objectives in mind.

## II. SECTION-BY-SECTION COMMENTS

**62.111(c)(1)(ii) – This section sets forth criteria required to adjust the level of security.**

**62.111(c)(1)(ii)(A).** Subsection (A) provides that the amount of security may be adjusted if there are “significant changes in a licensee’s recent operating history on the NGDC’s system that have materially affected NGDC system operation or reliability.” This subsection only permits a NGDC to consider the licensee’s recent operating history on the NGDC’s own system and not the systems of other NGDCs. PGW recommends the expansion of these criteria to include a licensee’s recent operating history on other NGDC systems. When a licensee is beginning to have financial difficulty, the initial impact will most likely begin with one NGDC system and spread to other systems over some period of time. If a licensee’s recent operating history has impacted the operations or system reliability of another NGDC, PGW and its

customers need the ability to increase the amount of security if the changes affecting the other system are significant and the impact is material. PGW is concerned that if it must wait until a NGS negatively impacts PGW's operations and reliability, it will be too late to acquire adequate security. Without such adequate security, it is the PGW ratepayers who will be harmed.

In order to permit this additional consideration, PGW recommends the following addition to Section 62.111(c)(1)(ii):

(F) Significant changes in a licensee's recent operating history on any NGDC's system that has materially affected the NGDC system operation or reliability or provides evidence of financial problems that could affect future ability to comply with financial obligations.

*Section 62.111(c)(1)(ii)(C).* Although subsection (C) permits the amount of security to be adjusted if there is "an increase of 25% in the number of customers", a significant change in volume unrelated to a significant increase in the number of customers will also increase PGW's financial exposure. For example, if the volumes used by a current commercial or industrial transportation customer significantly increase, the financial exposure of PGW and its customers increases without a related increase in the number of customers. Another example is the migration of one high volume commercial or industrial customer from firm to transportation service which would increase the financial exposure of PGW and its customers without hitting the 25% customer increase mark. In order to properly protect NGDCs and their customers from financial exposure, PGW recommends the following addition to Section 62.111(c)(1)(ii):

(G) A significant change in the volume provided by the licensee. An increase of 10% in volume would represent a significant change that would justify an NGDC directing that additional security be provided.

**Section 62.111(c)(2) – This section sets forth the legal instruments, financial instruments and property that shall be acceptable as security.**

*Section 62.111(c)(2)(v).* Subsection (v) provides that accounts receivable pledged to the NGDC shall be acceptable as security. Pledged accounts receivable are not favored by PGW (and likely not favored by other NGDCs) as security from a supplier due to the increased risk of such security and the increased cost to the NGDC to try to minimize that risk. Receiving a pledge of accounts receivable is not as simple as receiving a bond, a letter of credit or being the beneficiary of money deposited into escrow. Accepting a pledged accounts receivable as security requires the NGDC to take additional steps to obtain and perfect such security (i.e. to stay "first in line" for the security given through the pledge). This is because, unlike the bond, letter of credit or escrow, the accounts receivable may be pledged to multiple creditors. In order to perfect a security interest in a pledge of accounts receivable, the NGDC must file UCC-1 financing statements and properly document the pledge. This perfection of security interests is not a simple matter and likely beyond the expertise of the typical NGDC. As a result, NGDCs must hire outside counsel to review, prepare, file and monitor the UCC statements required to perfect the security interest. Absent proper perfection of the security interest, the pledge of the accounts receivable is potentially worthless (as the same accounts receivable may be pledged to other creditors). This additional risk and cost -- and the chance that the same collateral may be

pledged to other creditors in addition to the NGDC -- are not present in the usage of a bond, letter of credit or escrow deposit.

Subsection (v) also provides that accounts receivable sold by a supplier participating in a NGDC purchase of receivables program shall be acceptable as security **but** an asset that is sold and no longer owned by the supplier cannot be validly pledged as security. In other words, it is simply not possible for a supplier to provide a security interest in accounts receivable that it does not own. For the aforementioned reasons, PGW recommends removal of Section 62.111(c)(2)(v) in its entirety.

**Section 62.111(c)(5) – This section sets forth the information that must be provided in an annual report.**

*Section 62.111(c)(5)(iv).* Section (c)(5) sets forth in subsections (i) to (v) a list of information that must be provided in an **annual** report. Contrarily, subsection (c)(5)(iv) sets forth a reporting requirement for one quarter only. More specifically, subsection (c)(5)(iv) requires the “number of times in the last **quarter** that the NGDC determined that a change in the level of security was needed for a supplier to maintain its license.” PGW suggests the following revision to subsection (c)(5)(iv):

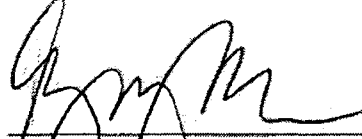
(iv) The number of times in the last [quarter] year that the NGDC determined that a change in the level of security was needed for a supplier to maintain its license.

### **III. CONCLUSION**

PGW appreciates the opportunity to provide comments to the proposed rulemaking and the Company looks forward to continue working with the Commission and other stakeholders on

these critical issues. We respectfully request that the Commission incorporate our suggestions into the proposed regulations.

Respectfully Submitted,



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Gregory J. Stunder, Esquire  
Philadelphia Gas Works  
800 West Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6878

Attorney for Philadelphia Gas Works

Date: June 3, 2009

*Annex A*

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**

**Subchapter D. LICENSING REQUIREMENTS FOR NATURAL GAS SUPPLIERS**

**§ 62.111. Bonds or other security.**

\* \* \* \* \*

*(c) The amount and the form of the security, if not mutually agreed upon by the NGDC and the licensee, shall be based on the criteria established in this section. The criteria shall be applied in a nondiscriminatory manner. The Commission will periodically review the established criteria upon petition by any party.*

*(1) The amount of the security should be reasonably related to the financial exposure imposed on the NGDC or supplier of last resort resulting from the default or bankruptcy of the licensee. At a minimum, the amount of security should materially reflect the difference between the cost of gas incurred and the supplier's charges, if any, incurred by the NGDC or supplier of last resort during one billing cycle.*

\* \* \* \* \*

*(ii) The amount of the security may be adjusted, but not more often than every 6 months. The adjustments [shall] must be reasonable and based on one or more of the following criteria:*

*(A) [Change] Significant changes in a licensee's recent operating history on the NGDC's system that have materially affected NGDC system operation or reliability.*

*(B) [Changes] A change in a licensee's credit reports that materially affects a licensee's creditworthiness.*

*(C) [Changes] A significant change in the number of customers or a change in the class of customers being served by the licensee. An increase of 25% in the number of customers would represent a significant change that would justify an NGDC directing that additional security be provided.*



**(D) [Changes] A change in circumstances that materially [affect] affects a licensee's creditworthiness.**

**(E) [The] A change in the licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs that materially affects NGDC system operation or reliability.**

**(2) The following legal and financial instruments and property shall be acceptable as security:**

\* \* \* \* \*

**(iv) Escrow account.**

**(v) Accounts receivable pledged to the NGDC or sold by a supplier participating in a NGDC purchase of receivables program that is consistent with Commission orders, guidelines and regulations governing the programs.**

**(vi) Calls on capacity or other operational offsets as may be mutually agreed upon by the NGDC and the NGS.**

\* \* \* \* \*

**(4) When practicable, the NGDC shall use applicable North American Energy Standards Board forms or language for financial and legal instruments that are used as security.**

**(5) The NGDC shall file an annual report with the Secretary no later than April 30 of each year. The report must contain the following information for the prior calendar year:**

**(i) The criteria that is being used to establish the amount of security that a supplier must provide to be granted a license.**

**(ii) The criteria that is being used to determine the amount of security that a supplier must provide to maintain a license.**

**(iii) The criteria that is being used to determine that a change in the amount of security is needed for the supplier to maintain a license.**

**(iv) The number of times in the last quarter that the NGDC determined that a change in the level of security was needed for a supplier to maintain its license.**

**(v) The types of legal and financial instruments and property, real and personal, that the NGDC accepted as security for licensing purposes.**

***(6) When there is a dispute relating to the form or amount of security, the NGS may:***

***(i) Submit the dispute to the Secretary for assignment to the appropriate bureau for informal mediation and resolution.***

***(ii) File a formal complaint with the Commission and request alternative dispute resolution by the Office of Administrative Law Judge.***

***(iii) File a formal complaint with the Commission and proceed with the litigation of the complaint.***

***(iv) File a petition with the Commission and request review of the criteria used by the NGDC.***