



June 30, 2020

Via Electronic Filing

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

Re: *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*
2020 Base Rate Case Filing / Docket No. R-2020-3017206

Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced proceeding, please find the Environmental Stakeholders' Answer in Opposition to Philadelphia Gas Works' Motion in Limine. As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Should you have any questions, please contact me at dmcdougall@earthjustice.org. Thank you.

Sincerely,

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	
	:	Docket No. R-2020-3017206
Philadelphia Gas Works	:	
	:	

**ENVIRONMENTAL STAKEHOLDERS’ ANSWER
IN OPPOSITION TO PGW’S MOTION IN LIMINE**

Pursuant to 52 Pa. Code § 5.61, Clean Air Council and Sierra Club/PA Chapter (hereinafter the “Environmental Stakeholders”), respectfully submit this Answer in Opposition to Philadelphia Gas Works’ (“PGW”) Motion in Limine (“Motion”). PGW’s Motion, filed in the above-captioned proceeding on June 24, 2020, seeks the exclusion of specified portions (the “Contested Portions”) of Dr. Ezra D. Hausman’s direct testimony (the “Direct Testimony”). For the reasons set forth below, PGW’s Motion should be denied, and Dr. Hausman’s Direct Testimony should be admitted to the record in its entirety.

I. INTRODUCTION

PGW questions this Commission’s jurisdiction to admit evidence addressing how climate change impacts could affect its rates, but this is not the first time climate change has entered into a rate case. Just a few years ago, when PGW sought a \$70 million rate increase, its witness testified that reduced demand for gas caused by warmer winter temperatures was one of the two main reasons for that increase.¹ With warming weather contributing to significant decreases in consumption, PGW claimed a rate increase was necessary to keep up with the costs of operating

¹ PGW 2017 Rate Case, Vol. II, *Direct Testimony of Gregory Stunder* at 3, No. R-2017-2586783 (Feb. 2017).

and maintaining its system.² That persistent trend of warmer weather and declining gas demand for heating also necessitated a change in how PGW calculated “normal weather” for fully projected test year purposes.³

PGW cannot have it both ways. If warming weather was within this Commission’s jurisdiction and relevant to PGW’s last rate increase request, such matters remain within the Commission’s jurisdiction and relevant to this rate increase request. PGW simply cannot be right that environmental changes justifying *increased* revenues are within this Commission’s jurisdiction, but when parties to a rate case argue those same environmental circumstances suggest that cost-minimizing planning measures may be in order, they are suddenly out of bounds.

As such, this is precisely the type of situation where Commission action is needed. There is a significant public interest in ensuring that PGW plans responsibly to minimize costs to ratepayers from climate change, rather than simply repeatedly ratcheting up its rates as weather continues to warm.

To that end, the Direct Testimony observes that climate change and related policy trends impose cost and risks to PGW’s business, including a risk of stranded assets. But PGW appears not to have assessed these costs and risks, leading Dr. Hausman to recommend that the Commission deny the rate increase as insufficiently supported. Rather than meet its burden of

² *Id.* at 3–4 (“PGW is facing declining sales, which leads to not only declining revenues but also declining cash flow and bond coverages. Warmer weather is contributing to significant decreases in consumption. Fiscal Year (FY) 2016 reflected a 20.8% warmer than normal winter and 24.5% warmer than the prior year. In fact, since 2010, the average annual usage of PGW’s residential heating customer has decreased by 15.38% from 91 Mcf (for 2010-2011) to 77 Mcf (for 2015-2016). This decreased level of degree days represents a loss of about six Bcf of normal sales or roughly \$36 million in lost margin. And this trend has been long-term.”).

³ *Id.* (“This decreased level of degree days represents a loss of about six Bcf of normal sales or roughly \$36 million in lost margin. And this trend has been long-term. As the graph below shows, the average residential heating customer using 76 Mcf/year in 2017-2018 compared to 129 Mcf/year in 1980-1981. This clear trend prompted PGW to utilize a ten year average of degree days in order to calculate normal weather for fully projected future test year purposes.”).

proof to bring forward substantial evidence answering Dr. Hausman’s testimony on the merits, PGW seeks its exclusion. Because Dr. Hausman’s testimony raises traditional ratemaking issues concerning the prudence of expenses underlying a rate hike, PGW’s Motion is without merit and should be denied.

II. BACKGROUND

A. Legal Framework

1. The Commission Has Jurisdiction Over the Justness and Reasonableness of PGW’s Rates

As a creature of statute, the Commission’s “powers are confined to those expressly granted, or which may be necessary and proper to carry out those specifically declared.”⁴ The Commission’s powers principally include the duty to enforce and execute provisions of the Public Utility Code.⁵ Pennsylvania courts have recognized that the purpose of the Public Utility Code “is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first and at all times to serve the interests of the public.” *Colombo v. Pennsylvania Pub. Util. Comm’n*, 48 A.2d 59, 61 (Pa. Super. Ct. 1946); *accord Highway Exp. Lines, Inc. v. Pennsylvania Pub. Util. Comm’n*, 169 A.2d 798 (Pa. Super. Ct. 1961). To that end, the Commission is responsible for ensuring that all public utilities “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and “make all such repairs, changes, alterations, substitutions, extensions, and improvements” to service and facilities as needed for the accommodation and safety of its patrons and the public.⁶

⁴ *City of Pittsburgh v. Pennsylvania Pub. Util. Comm’n*, 43 A.2d 348, 348 (Pa. Super. Ct. 1945).

⁵ 66 Pa. C.S. § 501.

⁶ 66 Pa. C.S. § 1501; *see also* 66 Pa. C.S. § 2212 (providing that public utility service furnished by a city natural gas distribution operation “shall be subject to regulation and control by the commission with the same force as if the service were rendered by a public utility”).

The Commission is required to investigate all general rate increase filings.⁷ Section 1301(a) of the Public Utility Code requires that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with [the] regulations or orders of the commission.”⁸ In a rate case, the Commission has a statutory duty to consider utility performance, including efficiency, effectiveness, and adequacy of service.⁹ Specific to PGW, the Commission considers the factors codified in Title 52, Section 69.2703 of the Pennsylvania Code, including “PGW’s management quality, efficiency, and effectiveness.”¹⁰

This Commission regularly observes that “[t]here is no single way to arrive at just and reasonable rates.”¹¹ “The [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.”¹² Generally, the Commission has explained that an “objective evaluation of reasonableness is whether the record provides sufficient detail to objectively determine whether the expense is prudently incurred.”¹³ If the record shows instead that “expenses are not incurred, imprudently incurred, or abnormally overstated . . . they should be disallowed and found not recoverable through rates.”¹⁴ Throughout this exercise, it must be remembered that “[r]ate setting is a process which necessarily involves valuation of economic elements in the future tense. Because ‘rates must be fixed for the future as well as for the

⁷ *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 683 A.2d 958, 961 (Pa. Commw. Ct. 1996); 66 Pa. C.S. § 2212 (providing that public utility service furnished by a city natural gas distribution operation “shall be subject to regulation and control by the commission with the same force as if the service were rendered by a public utility”).

⁸ 66 Pa. C.S. § 1301(a).

⁹ 66 Pa. C.S. § 523; *see also* 66 Pa. C.S. § 1501.

¹⁰ 52 Pa. Code § 69.2703.

¹¹ *E.g., Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate*, No. C-2019-3011959, 2020 WL 2487415, at *3 (Pa. PUC Apr. 29, 2020).

¹² *Popowsky*, 683 A.2d at 961.

¹³ *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate*, No. C-2019-3011959, 2020 WL 2487415, at *8 (citing *Popowsky*, 674 A.2d at 1153–54).

¹⁴ *Id.*

present,’ such future ‘estimates . . . must necessarily enter into the disposition of any rate case.’”¹⁵

PGW bears the burden of proving, by substantial evidence, that its proposed rate increase is just and reasonable.¹⁶ This affirmative burden is unavoidable: “[T]he utility’s burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding.”¹⁷

2. *Evidence Relevant to the Justness and Reasonableness of PGW’s Rates is Admissible*
At Commission proceedings, “all relevant evidence of reasonably probative value may be received,”¹⁸ and evidence is relevant if it “logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact.”¹⁹ As compared to judicial proceedings, Commission proceedings operate under relaxed standards of evidence, including relevance.²⁰

Under the Commission’s regulations, presiding officers have authority “to control the receipt of evidence,” as “consistent with due process.”²¹ A presiding officer’s authority

¹⁵ *Cohen v. Pennsylvania Pub. Util. Comm’n*, 468 A.2d 1143, 1146 (Pa. Commw. Ct. 1983), *order aff’d and remanded sub nom. Barasch v. Pennsylvania Pub. Util. Comm’n*, 507 Pa. 561, 493 A.2d 653 (1985) (quoting *Peoples Natural Gas Co. v. Pennsylvania Public Utility Commission*, 141 Pa. Superior Ct. 5, 17, 14 A.2d 133, 138 (1940)).

¹⁶ 66 Pa. C.S. § 315(a); *Pennsylvania Pub. Util. Comm’n Nat’l R.R. Passenger Corp. Ronald J. Serafin*, No. C-2016-2580526, 2017 WL 3872543, at *7–9 (Pa. PUC Aug. 14, 2017); *Lower Frederick Twp. Water Co. v. Pennsylvania Util. Comm’n*, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980) (“It is well-established that the evidence adduced by a utility to meet this burden [of proving the justness and reasonableness of a proposed rate hike] must be substantial”).

¹⁷ *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate*, No. C-2019-3011959, 2020 WL 2487415, at *4.

¹⁸ 2 Pa. C.S. § 505.

¹⁹ *EQT Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010, 1025 (Pa. 2019) (quoting *Commonwealth v. Johnson*, 160 A.3d 127, 146 (Pa. 2017)).

²⁰ 2 Pa. C.S. § 505; *Gibson v. W.C.A.B. (Armco Stainless & Alloy Products)*, 861 A.2d 938, 947 (Pa. 2004).

²¹ 52 Pa. Code § 5.403; *See also Borough of Bridgewater v. Pennsylvania Pub. Util. Comm’n*, 124 A.2d 165, 173 (Pa. Super. Ct. 1956) (“As an administrative body the Commission is bound by the due process provisions of constitutional law and by the principles of common fairness.”).

“includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, [and] to prevent excessive examination of witnesses[.]”²²

Under the Public Utility Code, due process requires that “[e]very party is entitled to present his case or defense by oral or documentary evidence . . . as may be required for a full and true disclosure of the facts.”²³ This requirement is also rooted in “the due process provision of the constitutional law and fundamental fairness.”²⁴ Providing parties an appropriate opportunity to present their case “ensure[s] that due process is provided to all parties and the Commission has before it all relevant evidence in order to make a fair and equitable decision[.]”²⁵

A motion in limine may be used to exclude irrelevant evidence,²⁶ but may not be used in derogation of a party’s due process right to present its case and fully develop the record.²⁷

Notably, the Commission has emphasized that a motion in limine is not to be used to exclude relevant evidence simply because a utility disagrees with the proponent of the evidence regarding available remedies to issues raised by the evidence:

PECO essentially argues that the Commission cannot grant the Complainant any conceivable remedy, and therefore, the Complainant should not receive a hearing. In our view, this analysis puts the cart before the horse. It only becomes necessary to reach a determination regarding the remedies available to the Complainant in this case if the ALJ finds, after a full evidentiary hearing, that the facts establish a violation of the Code, a Commission Order, or Regulation. Given the state of the record at this point in the proceeding, we believe it is premature to conclude that the facts and the law absolutely preclude any possible remedy . . . In any event, it is for the ALJ to determine what

²² 52 Pa. Code § 5.483.

²³ 66 Pa. C.S. § 332(c).

²⁴ *Borough of Bridgewater*, 124 A.2d at 173.

²⁵ *In Re Peco Energy Co.*, 87 Pa. P.U.C. 718 (Oct. 9, 1997).

²⁶ 52 Pa. Code § 5.403.

²⁷ *E.g.*, *Petition of Librandi Mach. Shop, Inc. for Declaratory Order Librandi Mach. Shop, Inc.*, No. P-2018-3000047, 2020 WL 869904, at *6 (Pa. PUC Feb. 11, 2020) (denying motion in limine on the grounds that the contested testimony was relevant); *In re Susan Kreider*, No. P-2015-2495064, 2016 WL 406549, at *14 (Pa. PUC Jan. 28, 2016) (denying motion in limine on the grounds that the contested evidence was relevant); *Petition of Peco Energy Company for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established for the Period June 1, 2013 Through May 31, 2016*, No. P-2012-2320334, 2012 WL 6208460 (Pa. PUC Dec. 5, 2012) (denying motion in limine on the grounds that the contested testimony was relevant).

remedy to recommend, in the event that she finds a violation after a full evidentiary hearing.²⁸

As the Commission clarifies in the passage above, the mere disagreement of parties to a litigated proceeding about what remedies are available does not suffice as grounds for a motion in limine, particularly when the evidentiary record has yet to be developed by a hearing. Indeed, the full development of the factual record can assist in reaching a determination about remedies later in the proceeding, and a motion in limine is not to be used to short-circuit such a process.

B. Procedural Context

On February 28, 2020, PGW filed a proposed rate increase seeking, *inter alia*, a \$70 million increase to its annual distribution revenues, a 10.5% increase, and a 40% increase in the fixed monthly residential charge.²⁹ As proposed, PGW's new rates would increase a typical PGW residential heating bill by \$11.16, from \$99.52 to \$110.68 per month. PGW explains that these increases are necessary, in part, due to increased efficiency, which reduces usage and lowers customer bills, and progressively warmer temperatures in PGW's service territory. PGW further explains the need for a substantial rate increase in order to accelerate capital investments in pipeline replacements and extensions and to provide safe and adequate service.³⁰ In particular, with the requested \$70 million rate increase, PGW projects that it could accelerate replacement of all cast iron main inventory in 34.6 years (reduced from 40.1 years), by 2055.³¹

On May 22, 2020, the Environmental Stakeholders filed a Petition to Intervene to help develop the record and ensure that environmental and energy efficiency issues of significant

²⁸ *Susan Kreider*, No. P-2015-2495064, 2016 WL 406549, at *14.

²⁹ PGW 2020 Rate Filing, Vol. I, Part 1 of 3, Statement of Reasons at 1, Docket No. R-2020-3017206 (Feb. 28, 2020).

³⁰ PGW 2020 Rate Filing, Vol. II, *Direct Testimony of Gregory Stunder* at 4, Docket No. R-2020-3017206 (Feb. 28, 2020).

³¹ *Id.* at 5 (assuming 34.6 years cited by witness begins with current year).

public interest are adequately considered.³² The Petition to Intervene made clear that the Environmental Stakeholders intended to address these issues through “the traditional and core rate case questions about whether the utility has adequately justified its proposed rate increases.”³³ Notwithstanding PGW’s opposition,³⁴ the Administrative Law Judges granted intervention, finding that “the issues raised by [Environmental Stakeholders] do not appear to significantly broaden the matter beyond issues of Operation and Maintenance, Environmental Remediation or the lawfulness, justness, and reasonableness of the rates, rules, and regulations currently raised by the parties in this matter.”³⁵

On June 15, 2020, Environmental Stakeholders submitted the Direct Testimony of Dr. Ezra Hausman. Dr. Hausman is a well-qualified energy and climate expert,³⁶ and PGW does not attempt to question his expertise. Dr. Hausman’s testimony focuses on the impacts of climate change on Philadelphia and PGW’s business operations and how those impacts impose costs and risks that should be accounted for in determining whether or not PGW’s proposed investments are prudent, just, and reasonable.³⁷ Dr. Hausman’s testimony also identifies numerous ways that PGW’s infrastructure planning could be improved in order to minimize the costs of climate change impacts for ratepayers.³⁸ PGW’s Motion seeks to exclude essentially all portions of the

³² Environmental Stakeholders’ Petition to Intervene, Docket No. R-2020-3017206, ¶¶ 7–8 (May 22, 2020) (“Pet. To Intervene”).

³³ *Id.* ¶ 14.

³⁴ PGW’s Answer in Opposition to the Petition to Intervene of the Environmental Stakeholders, Docket No. R-2020-3017206, (May 29, 2020).

³⁵ Order Granting Petition to Intervene of Environmental Stakeholders, Docket No. R-2020-3017206, at 2 (June 1, 2020).

³⁶ Direct Testimony at 1–2; Direct Testimony, Exhibit EDH-1. After earning an SM in Applied Physics and a PhD in Atmospheric Chemistry from Harvard University, Dr. Hausman spent decades performing a variety of electricity market and economic analyses, including asset valuation studies, market transition cost/benefit analyses, long-term resource planning, greenhouse gas regulation and mitigation, and energy efficiency programs, among other topics germane to utility regulation. He has provided expert testimony before public utility commissions or legislative committees in twenty-five states, as well as before several independent system operators and the Federal Energy Regulatory Commission.

³⁷ Direct Testimony at 3–4.

³⁸ *Id.*

Direct Testimony that reference climate change. Given the breadth of the material that PGW seeks to exclude, the Environmental Stakeholders have prepared a chart, attached hereto as Figure 1, describing the Contested Portions and explaining why they are jurisdictional and relevant.

As argued in full below, the Contested Portions offer relevant evidence on issues that go to the heart of this Commission’s jurisdiction to set just and reasonable rates. PGW has expressed disagreement with some of the recommendations proposed in the Direct Testimony and questioned their legality,³⁹ but this ordinary disagreement among parties to a litigated proceeding about appropriate remedies does not rise to the level of a jurisdictional defect entitling PGW to totally exclude this material from the proceeding.⁴⁰

III. ARGUMENT

A. Since the Contested Portions Offer Facts and Expert Opinions Concerning the Justness and Reasonableness of PGW’s Proposed Rates, the Commission Has Jurisdiction to Admit Them Into Evidence

The Company’s Motion contends that the Contested Portions should be excluded because “the Commission lacks jurisdiction over the environmental issues and recommendations that are the subject of the testimony.”⁴¹ The Company’s argument rests on the premise that if a particular cost or risk identified by a party to a rate case is driven by environmental factors, it is *ipso facto* out of the Commission’s jurisdiction because it is an “environmental issue” and therefore may not even be considered. Not even the Company takes this extreme argument seriously, however, as the Company is perfectly willing to invoke costs driven by environmental factors when it wishes to seek a rate increase.⁴² All the Environmental Stakeholders ask for is simple fairness

³⁹ Motion at 6.

⁴⁰ *Susan Kreider*, No. P-2015-2495064, 2016 WL 406549, at *14.

⁴¹ Motion at 6.

⁴² PGW 2017 Rate Case, Vol. II, *Direct Testimony of Gregory Stunder* at 3, No. R-2017-2586783 (Feb. 2017) (justifying rate increase on basis of long-term trend of warming weather—a quintessential climate change impact).

and consistency – that the Commission affirm its jurisdiction to consider recommendations that the Company responsibly minimize costs that arise from environmental factors as well as its jurisdiction to authorize rate increases based on environmental factors.

A review of the relevant authorities makes it clear that there is no “donut hole” carved out of Commission jurisdiction such that the Commission loses its jurisdiction over a rate issue if the causative factor of some cost or operational challenge is environmental in nature. The Commission’s powers include the duty to enforce and execute the Public Utility Code.⁴³ One of the Commission’s primary obligations is to ensure that monopoly utilities, including PGW, provide efficient, effective and adequate service at just and reasonable rates.⁴⁴ In this rate case investigation, the Commission must consider whether PGW’s proposed rate increase is just and reasonable. The Commission enjoys broad discretion in making that judgment, including discretion to decide which factors it will consider in evaluating PGW’s rates.⁴⁵ Generally, those factors must include evidence sufficient to determine whether proposed expenses are prudently incurred.⁴⁶ Imprudently incurred expenses should be disallowed.⁴⁷

As these authorities indicate, matters impacting the prudence of any expenditure included in rates is squarely within this Commission’s ratemaking jurisdiction. This includes consideration of environmental costs, such as those associated with pollution and remediation issues.⁴⁸ More broadly, this is why, for example, the Commission must consider evidence on the

⁴³ 66 Pa. C.S. § 501.

⁴⁴ 66 Pa. C.S. § 523.

⁴⁵ *Popowsky*, 683 A.2d at 961; *see also Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate*, No. C-2019-3011959, 2020 WL 2487415, at *3 (“There is no single way to arrive at just and reasonable rates.”); 52 Pa. Code § 69.2703.

⁴⁶ *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate*, No. C-2019-3011959, 2020 WL 2487415, at *8 (Pa. PUC Apr. 29, 2020) (citing *Popowsky*, 674 A.2d at 1153–54).

⁴⁷ *Id.*

⁴⁸ *See e.g., Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm’n*, 613 A.2d 74 (Pa. Commw. Ct. 1992), *aff’d*, 636 A.2d 627 (1994) (addressing cost recovery related to migration of pollution from utility-owned

reasonableness of PGW’s salaries, benefits, and bonuses despite the fact the Commission has no power to regulate labor markets, health insurance, or pension plans.⁴⁹

Similarly, the Commission must consider evidence on how climate change and associated regulatory initiatives towards reducing greenhouse gas emissions may impact the prudence of PGW’s proposed capital investments despite the fact that the Commission does not itself regulate air pollution. Simply put, if some fact or circumstance has potential to affect the prudence of expenses—whether related to labor, operations and maintenance, municipal debt markets, or the environment—it is within the Commission’s ratemaking jurisdiction to consider that evidence.

As explained in detail in Figure 1, all of the Contested Portions are within the Commission’s jurisdiction because all of them contain expert opinion and facts relevant to evaluating whether PGW’s proposed infrastructure investments are prudent, just and reasonable. PGW’s Motion provides no authority for its proposed carveout from the Commission’s ratemaking jurisdiction of all costs or risks that are environmental in origin, which should be rejected. PGW’s Motion emphasizes that the Pennsylvania Department of Environmental Protection has jurisdiction over setting air pollution standards, but PGW does not explain why

property); Joint Application of Nui Corp., *C&T Enterprises, Inc. & Valley Energy, Inc.*, No. A-125100, 2002 WL 34560229 (PUC 2002) (approving settlement that assured utility’s right to seek recovery through rates of remediation costs, if approved by the Commission); *see also* Order Granting Petition to Intervene of Environmental Stakeholders, Docket No. R-2020-3017206, at 2 (June 1, 2020) (stating that “Environmental Remediation” is within the scope of this rate case).

⁴⁹ *See, e.g., Pennsylvania Pub. Util. Comm’n v. Valley Utils Co.*, 72 Pa. P.U.C. 310 (Mar. 22, 1990) (rejecting as unreasonable and unsupported by evidence utility’s request to increase executive salary); *Pennsylvania Pub. Util. Comm’n v. Philadelphia Suburban Water Co.*, 71 Pa. P.U.C. 593 (Dec. 28, 1989) (approving as reasonable utility’s proposed above-inflation increase to employee benefits and health care costs); *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate Matthew Josefowicz Barbara Mcdade*, No. C-2018-2646178, 2018 WL 5620905 (Oct. 25, 2018) (approving as reasonable and supported by the evidence utility’s proposed management bonus scheme).

this means the Commission lacks jurisdiction to consider costs associated with environmental impacts on PGW's operations.⁵⁰

Indeed, as noted above, PGW itself affirms that the Commission has jurisdiction to consider environmental impacts such as warming winters when it comes time for PGW to justify a rate increase:

PGW is facing declining sales, which leads to not only declining revenues but also declining cash flow and bond coverages. Warmer weather is contributing to significant decreases in consumption. Fiscal Year (FY) 2016 reflected a 20.8% warmer than normal winter and 24.5% warmer than the prior year. In fact, since 2010, the average annual usage of PGW's residential heating customer has decreased by 15.38% from 91 Mcf (for 2010-2011) to 77 Mcf (for 2015-2016). This decreased level of degree days represents a loss of about six Bcf of normal sales or roughly \$36 million in lost margin. And this trend has been long-term.⁵¹

This passage makes clear that PGW has no problem with the Commission's jurisdiction to consider climate impacts for the purpose of raising rates. As such, it appears that PGW's primary problem with the Direct Testimony is that it requests that the Commission consider environmental impacts for the purpose of requiring PGW to plan responsibly to control costs to the public. This objection, which PGW attempts to style as a jurisdictional argument, is in substance nothing more than self-interest. PGW's "heads, I win / tails, the public loses" approach to climate change and environmental impacts should not be allowed to continue.⁵²

PGW similarly fails to justify its contention that the Commission lacks jurisdiction over "electrification and non-pipeline related [sic] alternatives."⁵³ The Direct Testimony recommends that PGW, prior to committing tens of millions of ratepayer dollars annually to a thirty-year

⁵⁰ Motion at 8.

⁵¹ PGW 2017 Rate Case, Vol. II, *Direct Testimony of Gregory Stunder* at 3–4, No. R-2017-2586783 (Feb. 2017).

⁵² "The primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first and at all times to serve the interests of the public." *Colombo v. Pennsylvania Pub. Util. Comm'n*, 48 A.2d 59, 61 (Pa. Super. Ct. 1946); *accord Highway Exp. Lines, Inc. v. Pennsylvania Pub. Util. Comm'n*, 169 A.2d 798 (Pa. Super. Ct. 1961).

⁵³ Motion at 7.

infrastructure plan, should satisfy the requirements of prudence by examining potentially lower-cost alternatives, such as energy efficiency measures (including electrification).⁵⁴ Such a recommendation is squarely within the Commission’s jurisdiction over the prudence, justness, and reasonableness of PGW’s proposal.⁵⁵ This recommendation also falls within the Commission’s powers to review PGW’s “[a]ction or failure to act to encourage development of cost-effective energy supply alternatives such as conservation or load management” as part of its review of the justness and reasonableness of PGW’s proposed rate.⁵⁶ Notably, incentives to promote electrification of customers’ end-uses, like incentives for customers to purchase more efficient gas-powered equipment, or subsidies for weatherization, are a type of energy efficiency measure, because they promote “conservation or load management” as a “cost-effective energy supply alternative[.]”⁵⁷

As such, the Commission does have jurisdiction to consider such measures, and PGW’s repeated arguments that it cannot be compelled to become an electric utility miss the mark. The question of how PGW will adapt if Commonwealth and City of Philadelphia authorities follow through on their commitments to require decarbonization by 2050 is a large one. But that large question does not need to be answered in order to assess whether or not the Commission has jurisdiction to consider a proposal that PGW evaluate the cost-effectiveness of energy efficiency measures, including incentives for customer end-use electrification as a load conservation measure, that may reduce the need for infrastructure spending. As discussed above, the Commission plainly does.

⁵⁴ Direct Testimony at 3–4.

⁵⁵ 66 Pa. C.S. § 1301; 52 Pa. Code § 69.2702.

⁵⁶ 66 Pa. C.S. § 523.

⁵⁷ *Id.*

Next, PGW claims that Direct Testimony’s discussion of Executive Order 2019-01 (the “Executive Order”) and City Council Resolution 190728 (the “Resolution”) should be excluded because it is “based entirely on the premise that PGW must comply with said Executive Order and Resolution.”⁵⁸ This is a misrepresentation, because the Direct Testimony is clear that it is identifying a regulatory risk, namely the risk of stranded assets, that may occur if the Commonwealth and the City of Philadelphia do what they have said they will do, which is significantly reduce or eliminate greenhouse gas emissions by 2050.⁵⁹

Moreover, beginning to plan for such a contingency is important now, because the costs to ratepayers of abrupt changes to PGW’s operations in the future may be higher than the costs of more prudently planned changes, particularly as the impacts of climate change begin to hit Philadelphia harder.⁶⁰ The Executive Order and Resolution both announce an intent for regulatory action against fossil fuels during precisely the same 30-year time period in which PGW plans to perform its proposed infrastructure work. Prudence counsels that these public policy statements, which reflect the public interest expressed at the statewide and local level and which are signals of significant regulatory risk, be considered as part of the justness and reasonability review of PGW’s proposed rates.

B. Since the Contested Portions Offer Facts and Expert Opinions Concerning the Justness and Reasonableness of PGW’s Proposed Rates, the Contested Portions are Relevant and Should Be Admitted Into Evidence

PGW also asserts that “[e]ven if the Commission had jurisdiction over the issues and recommendations in the Contested Portions,” the Contested Portions should still be excluded

⁵⁸ Motion at 7–8.

⁵⁹ Direct Testimony at 3–4.

⁶⁰ *Id.* at 26–28.

because “the testimony is not relevant to this rate case proceeding.”⁶¹ PGW’s arguments on this point are (1) a generalized statement that a rate case is “not a ‘free-for-all’”;⁶² (2) a conclusory claim that “[i]ssues pertaining to electrification, greenhouse gas emissions, and renewable energy are not relevant to this proceeding, as they are outside the Commission’s purview”;⁶³ and (3) a contention that the Contested Portions contain testimony seeking to improperly relitigate PGW energy efficiency programs that are addressed in other proceedings.⁶⁴

These contentions are unavailing. Under the liberal standard of relevance applicable to Commission proceedings, “all relevant evidence of reasonably probative value may be received,”⁶⁵ and evidence qualifies as relevant if it “logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact.”⁶⁶

Here, PGW has not disputed that Dr. Hausman qualifies as an expert on energy and climate issues. As an expert on these issues, Dr. Hausman’s testimony is directly relevant to determining the nature of the climate and regulatory risks and costs that may affect PGW’s proposed infrastructure investments, and the prudence of those proposed investments, all of which are material facts in a rate case.⁶⁷ As explained in Figure 1, each of the Contested Portions

⁶¹ Motion at 9.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 2 Pa. C.S. § 505.

⁶⁶ *EQT Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010, 1025 (Pa. 2019) (quoting *Commonwealth v. Johnson*, 160 A.3d 127, 146 (Pa. 2017)).

⁶⁷ See e.g., *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate*, No. C-2019-3011959, 2020 WL 2487415, at *8 (Pa. PUC Apr. 29, 2020) (citing *Popowsky*, 674 A.2d at 1153–54) (“To the extent that expenses are not incurred, imprudently incurred, or abnormally overstated during the test year, they should be disallowed and found not recoverable through rates.”); *Cohen v. Pennsylvania Pub. Util. Comm’n*, 468 A.2d 1143, 1146 (Pa. Commw. Ct. 1983), *order aff’d and remanded sub nom. Barasch v. Pennsylvania Pub. Util. Comm’n*, 507 Pa. 561, 493 A.2d 653 (1985) (quoting *Peoples Natural Gas Co. v. Pennsylvania Public Utility Commission*, 141 Pa. Superior Ct. 5, 17, 14 A.2d 133, 138 (1940)) (explaining “[r]ate setting is a process which

is relevant to core, traditional ratemaking questions of assessing whether a regulated utility has appropriately accounted for and minimized potential risks and costs.

PGW's claim that admitting evidence regarding PGW's need to responsibly plan to minimize the costs of climate impacts on its operations to ratepayers would constitute a "free-for-all" is nothing more than hyperbole. As noted above, PGW is perfectly comfortable admitting evidence regarding climate impacts when it wishes to do so in order to justify raising rates.⁶⁸ A symmetrical, consistent approach that similarly admits evidence regarding climate impacts as it relates to the need for cost minimization is far from a "free-for-all" – it is a necessity of fundamental fairness and due process.

PGW's only other argument on relevance, that "[i]ssues pertaining to electrification, greenhouse gas emissions, and renewable energy" are not relevant because they are "outside the Commission's purview" is also unavailing.⁶⁹ It is not exactly clear what PGW means by "the Commission's purview," but it appears that PGW is simply trying to repackage and recycle its jurisdictional arguments as relevance arguments. The Environmental Stakeholders have addressed such arguments in detail above and in Figure 1.⁷⁰ The key point is that the Contested Portions contain evidence concerning (1) the need for PGW to study potentially cost-effective alternatives to its infrastructure proposal, such as energy efficiency measures that may include

necessarily involves valuation of economic elements in the future tense. Because 'rates must be fixed for the future as well as for the present,' such future 'estimates . . . must necessarily enter into the disposition of any rate case.'")

⁶⁸ PGW 2017 Rate Case, *Direct Testimony of Gregory Stunder* at 3–4, No. R-2017-2586783 (Feb. 2017) ("PGW St. No. 1") ("PGW is facing declining sales, which leads to not only declining revenues but also declining cash flow and bond coverages. Warmer weather is contributing to significant decreases in consumption. Fiscal Year (FY) 2016 reflected a 20.8% warmer than normal winter and 24.5% warmer than the prior year. In fact, since 2010, the average annual usage of PGW's residential heating customer has decreased by 15.38% from 91 Mcf (for 2010-2011) to 77 Mcf (for 2015-2016). This decreased level of degree days represents a loss of about six Bcf of normal sales or roughly \$36 million in lost margin. And this trend has been long-term.").

⁶⁹ Motion at 9.

⁷⁰ See *supra* at Point III.A; Figure 1.

end-use electrification incentives, and (2) the need for PGW to address the stranded asset risks associated with (a) decarbonization regulations that Commonwealth and City of Philadelphia authorities have committed to pursue and (b) the direct impacts of climate change itself.⁷¹ This evidence bears directly on the core ratemaking question of whether PGW's proposed plans are prudent, just and reasonable. As such, the evidence in the Contested Portions is directly relevant to this proceeding, and PGW cannot ward off appropriate scrutiny of the issues raised by this evidence simply by labelling them "environmental issues."⁷²

Finally, PGW argues that the Contested Portion's testimony regarding the need for PGW to study energy efficiency as a potentially cost-effective alternative is irrelevant because PGW's energy efficiency programs are addressed in other Commission proceedings.⁷³ This contention fails because the Contested Portions raise energy efficiency in the context of cost-avoidance as it relates to the prudence of PGW's proposed investments in this rate case, a question which was not at issue in prior proceedings related to other aspects of PGW's energy efficiency programs.

It is notable that PGW has nowhere contested the basic principle that evidence concerning potentially lower-cost alternatives to its proposed infrastructure investment is jurisdictional and relevant. Instead, PGW attempts to muddy the waters by repeatedly insisting that the specific potentially lower-cost alternatives identified by the Environmental Stakeholders are irrelevant because they represent "environmental issues" or because some facet of PGW's energy efficiency programs has been the subject of a prior proceeding. Such arguments are unavailing, and should be disregarded.

⁷¹ See Figure 1.

⁷² Motion at 6.

⁷³ *Id.* at 9.

The Environmental Stakeholders have a due process right to submit evidence relevant to their case.⁷⁴ As argued above, the Contested Portions are directly relevant to the justness and reasonableness of PGW’s proposed rates, and should be admitted into evidence to “ensure that due process is provided to all parties and the Commission has before it all relevant evidence in order to make a fair and equitable decision[.]”⁷⁵

IV. CONCLUSION

PGW has failed to identify any legal basis for its novel argument that the Commission’s jurisdiction over ratemaking excludes all costs or risks that are environmental in origin. On the contrary, PGW’s own prior filing seeking a rate increase due to the impacts of warming winters illustrates well the direct effects that environmental factors can have on PGW’s business operations. The Environmental Stakeholders simply seek to develop the record regarding the nature of the climate and regulatory risks facing PGW during the thirty-year period which it proposes for its infrastructure investments, and to ensure that PGW is held accountable to conduct responsible planning that minimizes costs for ratepayers. For the reasons set forth above, the Environmental Stakeholders respectfully request that PGW’s Motion be denied.

June 30, 2020

Respectfully submitted,

/s/

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⁷⁴ 66 Pa. C.S.A. § 332(c); 52 Pa. Code § 5.403; *See also Borough of Bridgewater*, 124 A.2d at 173.

⁷⁵ *In Re Peco Energy Co.*, 87 Pa. P.U.C. 718.

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Figure 1. Contested Portions Jurisdiction and Relevance Chart

Contested Portion	Pages and Lines	Contents	Jurisdiction and Relevance
Contested Portion #1	Page 3, lines 7 through 8 (the sentence that begins, “I address both elements [...].”)	Dr. Hausman’s expert opinion, informed by the vulnerability of Philadelphia to climate change impacts that is discussed later in the testimony, that there is a need to reduce greenhouse gas emissions in Philadelphia.	This portion is jurisdictional and relevant because climate change impacts on Philadelphia can affect PGW’s infrastructure costs and the prudence of its proposed infrastructure plan.
Contested Portion #2	Page 3, line 14 through and including page 4, line 14	Dr. Hausman’ expert opinion that (1) PGW has inadequately studied cost-effective alternatives to its proposed infrastructure work and failed to consider stranded asset risks from climate change and potential regulatory action; (2) the preparation of a Climate Business Plan would be an appropriate vehicle to perform the aforementioned needed analyses; and (3) PGW’s proposed infrastructure plan should not be approved until the needed analyses are completed.	This portion is jurisdictional and relevant because it describes Dr. Hausman’s expert opinions regarding costs and stranded asset risks that PGW has failed to consider in its proposed infrastructure plan, which goes to the heart of whether PGW’s proposed investments are prudent, just, and reasonable. PGW has expressed disagreement with some of the recommendations proposed in Contested Portion #2, but this ordinary disagreement among parties to a litigated proceeding about appropriate remedies does not rise to the level of a jurisdictional defect entitling PGW to totally exclude this material from the proceeding.
Contested Portion #3	Page 6, lines 1 through 2 (the sentence that begins, “Methane is a powerful [...].”)	Dr. Hausman’s recitation of the basic scientific fact that methane is both an immediate safety risk to human health and a powerful contributor to climate change.	This portion is jurisdictional and relevant because methane leaks are a significant issue for PGW’s distribution network and pose serious safety risks to the public. More broadly, methane leaks also expose PGW to potential regulatory risk, because both the Commonwealth and the City of Philadelphia have committed to implementing greenhouse gas regulations in the coming decades, and methane, as a powerful greenhouse gas, would be subject to such regulations.
Contested Portion #4	Page 6, line 5 through and including line 14	Dr. Hausman’s expert opinion that (1) scientific studies, demonstrate a need to reduce fossil fuel use given the substantial risks of climate change; (2) city, state, and federal governments will likely	This portion is jurisdictional and relevant because it describes Dr. Hausman’s expert opinions regarding costs and stranded asset risks that PGW has failed to consider in its proposed infrastructure plan, which goes to the

		<p>be seeking to transition to carbon-free energy sources in coming years; (3) PGW’s proposed infrastructure investments should be reviewed in light of these risks and PGW should not be permitted to continue to invest in assets that will become stranded in a climate-constrained future.</p>	<p>heart of whether PGW’s proposed investments are prudent, just, and reasonable.</p>
<p>Contested Portion #5</p>	<p>Page 7 line 4 through and including page 18, line 10</p>	<p>This portion contains the entirety of Point IV of the Direct Testimony, “Planning for a Climate-Constrained Future.” Point IV includes discussion of the regulatory risks to PGW signaled by Commonwealth and City of Philadelphia policy documents expressing clear, public commitments to significantly reduce or eliminate greenhouse gas emissions by 2050. Point IV also recommends that PGW account for such risks in its planning to avoid wasting ratepayer funds.</p> <p>This portion also contains the entirety of Point V of the Direct Testimony, “Need for a Climate Business Plan.” Point V contains Dr. Hausman’s expert opinion that, in light of the risks posed by climate change, a Climate Business Plan prepared by PGW should include planning for eliminating PGW’s greenhouse gas emissions by 2050. Point V also identifies climate-related planning that PGW is conducting in coordination with the City of Philadelphia that could inform its preparation of a Climate Business Plan. Point V also discusses examples of climate-related planning initiatives related to natural gas utilities in other jurisdictions.</p>	<p>This portion is jurisdictional and relevant because it describes Dr. Hausman’s expert opinions regarding costs and stranded asset risks that PGW has failed to consider in its proposed infrastructure plan, which goes to the heart of whether PGW’s proposed investments are prudent, just, and reasonable. PGW has expressed disagreement with some of the recommendations proposed in Contested Portion #5, but this ordinary disagreement among parties to a litigated proceeding about appropriate remedies does not rise to the level of a jurisdictional defect entitling PGW to totally exclude this material from the proceeding.</p>
<p>Contested Portion #6</p>	<p>Page 26, line 1 through and including page 28, line 7</p>	<p>This portion contains the entirety of Point VII of the Direct Testimony, “Risks for PGW Customers.” Point VII describes the projected impacts of climate change on Philadelphia and</p>	<p>This portion is jurisdictional and relevant because it describes Dr. Hausman’s expert opinions regarding costs and stranded asset risks that PGW has failed to consider in its proposed infrastructure plan, which goes to the</p>

		explains the stranded asset risks that such impacts pose for PGW's infrastructure.	heart of whether PGW's proposed investments are prudent, just, and reasonable.
Contested Portion #7	Page 28, line 11 through and including page 29, line 12	This portion contains the same text as contained in Contested Portion #2.	This portion contains the same text as contained in Contested Portion #2.

VERIFICATION

I hereby verify that the facts contained in the foregoing pleading are true and accurate to the best of my knowledge and that I am duly authorized to make this verification, and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: June 30, 2020

/s/

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of this electronically-filed document upon the parties, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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