



Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL: 717 237 6000  
FAX: 717 237 6019

Daniel Clearfield  
717.237.7173  
dclearfield@eckertseamans.com

August 26, 2020

**Via E-Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Fl.  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Main Brief in the above-referenced matter. Copies will be served in accordance with the attached Certificate of Service.

If you have any questions, please contact us.

Sincerely,

*Daniel Clearfield*  
Daniel Clearfield

DC/jls

Enclosure

cc: Hon. Marta Guhl w/enc.  
Hon. Darlene Heep w/enc.  
Certificate of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### Via Email

Carrie B. Wright, Esq.  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[carwright@pa.gov](mailto:carwright@pa.gov)

Sharon E. Webb, Esq.  
Office of Small Business Advocate  
Forum Place, 1<sup>st</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto:swebb@pa.gov)

Robert D. Knecht  
Industrial Economics Incorporated  
2067 Massachusetts Ave.  
Cambridge, MA 02140  
[rdk@indecon.com](mailto:rdk@indecon.com)

Darryl A. Lawrence, Esq.  
Christy M. Appleby, Esq.  
Santo G. Spataro, Esq.  
Laura Antinucci, Esq.  
Office of Consumer Advocate  
5th Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1923  
[OCAPGW2020@paoca.org](mailto:OCAPGW2020@paoca.org)

Gregory J. Stunder, Esq.  
Philadelphia Gas Works  
800 West Montgomery Avenue  
Philadelphia, PA 19122  
[Gregory.Stunder@pgworks.com](mailto:Gregory.Stunder@pgworks.com)

John W. Sweet, Esq.  
Elizabeth R. Marx, Esq.  
Ria M. Pereira, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Todd S. Stewart, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

Charis Mincavage, Esq.  
Adeolu A. Bakare, Esq.  
Jo-Anne Thompson, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com)  
[jthompson@mcneeslaw.com](mailto:jthompson@mcneeslaw.com)

Josie B. H. Pickens, Esq.  
Joline R. Price, Esq.  
Robert W. Ballenger, Esq.  
Kintéshia Scott, Esq.  
Community Legal Services, Inc.  
1410 West Erie Avenue  
Philadelphia, PA 19140  
[jpickens@clsphila.org](mailto:jpickens@clsphila.org)  
[jprice@clsphila.org](mailto:jprice@clsphila.org)  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
[kscott@clsphila.org](mailto:kscott@clsphila.org)

Joseph Otis Minott, Esq.  
Ernest Logan Welde, Esq.  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)

Cassandra R. McCrae, Esq.  
Devin McDougall, Esq.  
Earthjustice  
1617 John F. Kennedy Blvd., Suite 1130  
Philadelphia, PA 19103  
[cmccrae@earthjustice.org](mailto:cmccrae@earthjustice.org)  
[dmcDougall@earthjustice.org](mailto:dmcDougall@earthjustice.org)

Dated: August 26, 2020

*Daniel Clearfield*

---

Daniel Clearfield, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020-3017206
	:	
	:	
Office of Consumer Advocate	:	C-2020-3019161
Office of Small Business Advocate	:	C-2020-3019100
Philadelphia Industrial and Commercial Gas User Group	:	C-2020-3019430
v.	:	
	:	
Philadelphia Gas Works	:	

---

**PHILADELPHIA GAS WORKS MAIN BRIEF**

---

Of Counsel:

Craig W. Berry, Esq.  
Senior Attorney  
Graciela Christlieb, Esq.  
Senior Attorney  
Legal Department  
Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122  
Tel (215) 684-6049  
Fax (215) 684-6798  
[Craig.Berry@pgworks.com](mailto:Craig.Berry@pgworks.com)  
[Graciela.Christlieb@pgworks.com](mailto:Graciela.Christlieb@pgworks.com)

Daniel Clearfield, Esq. (I.D. No. 26183)  
Carl Shultz, Esq. (I.D. No. 70328)  
Sarah C. Stoner, Esq. (I.D. No. 313793)  
Lauren M. Burge, Esq. (I.D. No. 311570)  
Kristine Marsilio, Esq. (I.D. No. 316479)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
717.237.6000; 717.237.6019 (fax)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)  
[kmarsilio@eckertseamans.com](mailto:kmarsilio@eckertseamans.com)

Dated: August 26, 2020

*Counsel for Philadelphia Gas Works*

## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION AND PROCEDURAL HISTORY.....	1
A. INTRODUCTION .....	1
B. PROCEDURAL HISTORY.....	3
II. STATEMENT OF THE CASE.....	7
III. SUMMARY OF ARGUMENT .....	7
IV. LEGAL STANDARDS .....	10
A. CASH FLOW METHOD .....	10
B. POLICY STATEMENT .....	11
C. RATES MUST BE JUST AND REASONABLE .....	12
D. BURDEN OF PROOF .....	15
V. ARGUMENT.....	17
A. OVERALL POSITION ON RATE INCREASE.....	17
B. REVENUE REQUIREMENT .....	40
1. Pro Forma Expense Adjustments.....	42
2. Allowed Financial Metrics.....	42
3. Overall Revenue Requirement Recommendation.....	43
C. RATE STRUCTURE/COST OF SERVICE.....	43
1. Cost of Service Study.....	43
2. Revenue Allocation by Rate Class.....	43
3. Rate Design.....	43
D. CUSTOMER SERVICE .....	45
1. General Customer Service .....	45
2. Low-Income Customer Service .....	46
3. Universal Service Programs.....	46
4. PGW’s Liens and CRP Arrearage Forgiveness Cost Recovery.....	46
5. Language Access Considerations .....	46
6. Proposed Policy Changes.....	46
E. TARIFF REVISIONS .....	47
1. New Service Programs.....	47

2.	Gas Supplier Tariff Modifications .....	47
F.	INFRASTRUCTURE PROPOSALS.....	47
1.	Main Replacement Program Cost .....	47
2.	Pipeline Safety .....	48
3.	Environmental Issues .....	48
G.	MISCELLANEOUS ISSUES.....	48
1.	Annual Meeting with Suppliers .....	48
2.	Other Issues.....	48
VI.	CONCLUSION.....	48

<b>APPENDIX A</b>	Proposed Findings of Fact
<b>APPENDIX B</b>	Proposed Conclusions of Law
<b>APPENDIX C</b>	Proposed Ordering Paragraphs

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n</i> , 570 A.2d 149 (Pa. Commw. 1990) .....	15
<i>Brockway Glass v. Pa. Pub. Util. Comm'n</i> , 437 A.2d 1067 (Pa. Commw. 1981) .....	1, 16
<i>Cf. Permian Basin Area Rate Cases</i> , 390 U.S. 747 (1968).....	1, 13, 18
<i>City of Phila. v. Phila. Elec. Co.</i> , 473 A.2d 997 (Pa. 1984).....	2, 27
<i>City of Philadelphia v. Pa. Pub. Util. Comm'n</i> , 102 A.2d 428 (Pa. Super. 1954).....	13
<i>City of Philadelphia v. Pa. Pub. Util. Comm'n</i> , 829 A.2d 1241 (Pa. Commw. 2003) .....	passim
<i>City of Pittsburgh v. Pa. Pub. Util. Comm'n</i> , 43 A.2d 348 (Pa. Super. 1945).....	2, 27
<i>Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm'n</i> , 654 A.2d 72 (Pa. Commw. 1995) .....	passim
<i>Deitch Company v. Pa. Pub. Util. Comm'n</i> , 203 A.2d 515 (Pa. Super. 1964).....	16
<i>Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm'n</i> , 995 A.2d 465 (Pa. Commw. 2010) .....	15
<i>Feingold v. Bell Tel. Co. of Pa.</i> , 383 A.2d 791 (Pa. 1977).....	2, 27
<i>FPC v. Conway</i> , 426 U.S. 271 (1976).....	13
<i>Funk v. Wolf</i> , 144 A.3d 228 (Pa. Commw. 2016) .....	2, 14, 29, 30
<i>Green v. Pa. Pub. Util. Comm'n</i> , 473 A.2d 209 (Pa. Commw. 1984).....	14
<i>Hughes v. Pennsylvania State Police</i> , 619 A.2d 390 (Pa. Commw. 1992), <i>appeal denied</i> , 637 A.2d 293 (Pa. 1993) .....	2, 27

<b>Cases (continued)</b>	<b>Page(s)</b>
<i>National Utils. v. Pa. Pub. Util. Comm'n</i> , 709 A.2d 972 (Pa. Commw. 1998) .....	18
<i>Nat'l Fuel Gas Distrib. Corp. v. Pa. Pub. Util. Comm'n</i> , 464 A.2d 546 (Pa. Commw. 1983) .....	13
<i>NRG Energy, Inc. v. Pa. Pub. Util. Comm'n</i> , No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420 (Pa. Commw. Ct. June 2, 2020) 1, 15, 16, 17	
<i>Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n</i> , 502 A.2d 130 (Pa. 1985) .....	2, 12, 16, 18
<i>Pennsylvania Financial Responsibility Assigned Claims Plan v. English</i> , 541 Pa. 424, 664 A.2d 84 (Pa. 1995) .....	5, 16
<i>Pickford v. Pa. Pub. Util. Comm'n</i> , 4 A.3d 707 (Pa. Commw. 2010) .....	2, 28, 29
<i>Pittsburgh v. Pennsylvania Public Utility Commission</i> , 88 A.2d 59 (1952) .....	13
<i>Popowsky v. Pa. Pub. Util. Comm'n</i> , 869 A.2d 1144 (Pa. Commw. 2005) .....	14
<i>Pa. Pub. Util. Comm'n v. Equitable Gas Co.</i> , 73 Pa. P.U.C. 310 (1990) .....	15
<i>Pa. Pub. Util. Comm'n v. Pennsylvania Gas and Water Co.</i> , 424 A.2d 1213 (1980) cert. denied, 454 U.S. 824 (1981) .....	12
<i>Roberts v. Martorano</i> , 235 A.2d 602 (Pa. 1967) .....	2, 27
<i>Rovin, D.D.S. v. Pa. Public Utility Commission</i> , 502 A.2d 785 (Pa. Commw. 1986) .....	2, 28, 29
<i>Shenango Twp. v. Pa. Pub. Util. Comm'n</i> , 686 A.2d 910 (Pa. Commw. 1996) .....	16
<i>U.S. Steel Corporation v. PUC</i> , 390 A.2d 865 (Pa. Commw. 1978) .....	16
<i>Zucker v. PUC</i> , 401 A.2d 1377 (Pa. Commw. 1979) .....	16



<b>Administrative Cases</b>	<b>Page(s)</b>
<i>Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges</i> , P-2015-2501500, Opinion and Order entered January 28, 2016.....	3, 24
<i>PUC v. Appalachian Utilities, Inc.</i> , Docket No. R-2015-2478098, et al., 2016 Pa. PUC LEXIS 62.....	15, 16
<i>PUC v. Brezewood Telephone Company</i> , Docket No. R-901666, 1991 Pa. PUC LEXIS 45.....	1, 15
<i>PUC v. PECO</i> , Docket No. R-891364, et al., Opinion and Order entered May 16, 1990, 1990 Pa. PUC LEXIS 155 .....	1, 15
<i>PUC v. PGW</i> , Docket No. R-00006042 (Opinion and Order entered October 4, 2001) .....	12
<i>Tod and Lisa Shedlosky v. Pennsylvania Electric Co.</i> , Docket No. C-20066937 (Order entered May 28, 2008).....	2, 27
 <b>Statutes</b>	
1 Pa.C.S. § 1922.....	16
35 P.S. §§ 4003-4004.....	30
66 Pa.C.S. § 102.....	1, 10
66 Pa.C.S. § 315.....	1, 2, 15, 16
66 Pa.C.S. § 332.....	1, 16
66 Pa.C.S. § 1301.....	3, 12
66 Pa.C.S. § 1308.....	3
66 Pa.C.S. § 1501.....	6, 28, 34, 35
66 Pa.C.S. § 1502.....	35
66 Pa.C.S. § 2212.....	passim
66 Pa.C.S. §§ 2201-2212 .....	3
Act of January 8, 1960, P.L. 2119, as amended, 35 P.S. §§ 4001–4015 .....	30
Act of July 9, 2008, P.L. 935, 71 P.S. §§ 1361.1–1361.8.....	30

<b>Regulations</b>	<b>Page(s)</b>
52 Pa. Code § 69.2702 .....	passim
52 Pa. Code §§ 69.2701-2703.....	3, 10, 11
52 Pa. Code §§ 69.2703 .....	2, 11
 <b>Other Authorities</b>	
50 Pa.B. 2633 (proposed May 23, 2020) .....	4, 30
<i>A Guide to Utility Ratemaking</i> , Cawley and Kennard (2018 Edition).....	13
<a href="http://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf">http://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf</a> .....	13
<i>Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program</i> , April 21, 2015.....	3, 24

## **I. INTRODUCTION AND PROCEDURAL HISTORY**

### **A. Introduction**

Philadelphia Gas Works (“PGW” or “Company”) hereby submits this Brief on the issues reserved for litigation by the Joint Petition for Partial Settlement (“Settlement” or “Joint Petition”) to be filed on August 26, 2020, simultaneously with this Brief.

In the Settlement, the Joint Petitioners<sup>1</sup> have resolved nearly all issues in the case, with the exception of the issues raised by the Environmental Stakeholders, as discussed below. Relevant to the issues raised by the Environmental Stakeholders, the Settlement proposes that PGW be permitted to file new rates designed to produce additional base rate operating revenues on a phased in basis, instead of the Company’s originally proposed increase request of \$70 million. The Settlement proposes base rate increases as follows: (1) \$10 million for service rendered on or after January 1, 2021; (2) an additional \$10 million for service rendered on or after July 1, 2021; and (3) an additional \$15 million for service rendered on or after January 1, 2022. Additionally, the Settlement proposes that PGW be permitted to modestly increase its customer charges. For residential customers the customer charge would increase in phases, on the same schedule as the overall rate increase, with the charge increasing in total by \$1.15 per month. Similar phased increases are proposed for the other rate classes.

If the Settlement is approved by the Commission, a residential sales customer using 75 thousand cubic feet (Mcf) per year will see increases in their monthly bills as follows: (1) an increase from \$99.52 to \$101.02 or by 1.5% on January 1, 2021; (2) an increase from \$101.02 to

---

<sup>1</sup> The Joint Petitioners are the Commission’s Bureau of Investigation and Enforcement (“BIE” or “I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN, et al.” or “TURN”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”). Direct Energy Services, Inc. takes no position on the Joint Petition.

\$102.53 or by 1.5% on July 1, 2021; and (3) an increase from \$102.53 to \$104.78 or by 2.2% on January 1, 2022, for a total increase of 5.3%. If the Company's entire request had been approved, the total bill for a residential customer using 75 Mcf per year would increase from \$99.52 to \$110.68 per month, or by 11.2%. The total bill for a commercial customer using 342 Mcf of gas purchased from PGW per year will see increases in their monthly bills as follows: (1) an increase from \$351.92 to \$355.38 or by 1.0% on January 1, 2021; (2) an increase from \$355.38 to \$358.84 or by 1.0% on July 1, 2021; and (3) an increase from \$358.84 to \$363.99 or by 1.4% on January 1, 2022. If the Company's request had been approved as proposed, the total bill for a commercial customer using 342 Mcf of gas per year would have increased by 3.3%.

The full Settlement will be presented in a Petition for Partial Settlement along with Statements in Support from PGW and the settling Parties. These documents will amply demonstrate that the Settlement is in the public interest and should be adopted.

Two issues were not resolved by the Settlement. First, the Environmental Stakeholders claim that PGW's rate increase should be denied in its entirety because its infrastructure modernization efforts allegedly do not adequately take account of the effects of climate change. Included in this claim is the contention that PGW should prepare and submit to the Commission a "Climate Business Plan" to "significantly" reduce or eliminate greenhouse gas emissions prior to being granted a rate increase. Second, the Environmental Stakeholders continue to oppose any increase in the customer charge.

For the reasons set forth more fully below, PGW's proposed rate increase – as modified by the Settlement – should be approved without modification and the contentions of the Environmental Stakeholders should be dismissed.

## **B. Procedural History**

The Natural Gas Choice and Competition Act<sup>2</sup> brought city owned natural gas operations, *i.e.*, PGW, under the Commission’s jurisdiction.<sup>3</sup> PGW manages a distribution system of approximately 6,000 miles of gas mains and service lines supplying approximately 500,000 customers in Philadelphia.

On February 28, 2020, PGW filed Supplement No. 128 to PGW’s Gas Service Tariff – PA. P.U.C. No. 2 (“Supplement No. 128”) and Supplement No. 85 to Gas Supplier Tariff – Pa. P.U.C. No. 1 (“Supplement No. 85”). As filed, the rates and regulations proposed were to become effective April 28, 2020, and sought a general rate increase calculated to produce \$70 million in additional annual revenues, or a 10.5% overall increase. PGW’s filing is based on a fully projected future test year (“FPFTY”) that begins on September 1, 2020. This date is consistent with PGW’s fiscal year used for all financial filings both at the Commission and before municipal regulatory agencies.

By Order entered on April 16, 2020, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase, as well as PGW’s current rates. Accordingly, Supplement Nos. 128 and 85 were suspended by operation of law<sup>4</sup> until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date. The suspension period was reflected in Supplement No. 131 to PGW’s Gas Service Tariff – Pa. P.U.C. No. 2 and Supplement No. 88 to PGW’s Gas Supplier Tariff – Pa. P.U.C. No. 1, which were filed on April 27, 2020. Due to challenges created by the COVID-19 pandemic,

---

<sup>2</sup> 66 Pa.C.S. §§ 2201-2212.

<sup>3</sup> 66 Pa.C.S. § 2212(b); 52 Pa. Code § 69.2702 (a). There is presently only one “City Natural Gas Distribution Operation” – PGW.

<sup>4</sup> 66 Pa.C.S. § 1308(d).

PGW agreed to a voluntary extension of the suspension period to December 4, 2020. The extension of the suspension period to December 4, 2020, was reflected in Tariff Supplement No. 132 to its Gas Service Tariff – Pa. P.U.C. No. 2 and Tariff Supplement No. 89 to its Gas Supplier Tariff – Pa. P.U.C. No. 1, which were filed on May 12, 2020.

This proceeding was assigned by the Office of Administrative Law Judge (“OALJ”) to Administrative Law Judge Marta Guhl and Administrative Law Judge Darlene Heep (collectively, the “ALJs”) for hearings and the issuance of a Recommended Decision.

Formal complaints were filed by the Office of Consumer Advocate (“OCA”) at Docket No. C-2020-3019161; the Office of Small Business Advocate (“OSBA”) at Docket No. C-2020-3019100; and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) at Docket No. C-2020-3019430. The Commission’s Bureau of Investigation and Enforcement (“BIE” or “I&E”) filed a Notice of Appearance. Petitions to intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN, et al.” or “TURN”), Direct Energy Services, Inc. (“Direct Energy”) and Clean Air Council and Sierra Club/PA Chapter (collectively, the “Environmental Stakeholders”). The petitions to intervene were granted by the ALJs.<sup>5</sup>

A call-in telephonic prehearing conference was held on May 5, 2020, at which time a schedule for discovery, written testimony, hearings and briefs was established. Counsel for PGW, I&E, OCA, OSBA, PICGUG, CAUSE-PA, TURN and Direct Energy participated. The

---

<sup>5</sup> See the ALJs’ Corrected Prehearing Order dated May 15, 2020 (granting intervention of CAUSE-PA, TURN and Direct Energy). See Order Granting Petition to Intervene of Environmental Stakeholders dated June 1, 2020.

matters addressed during the prehearing conference were memorialized in the ALJs' Prehearing Order dated May 13, 2020, which was corrected on May 15, 2020.<sup>6</sup>

Four public input hearings were held on June 2 and June 3, 2020. A total of 25 PGW customers gave sworn testimony at the public input hearings.

Extensive investigation of PGW's proposed rate request was conducted by the parties. PGW responded to approximately 1,300 discovery requests. Testimony in response to the Company's filing and accompanying direct testimony was submitted on June 15, 2020 by I&E, OCA, OSBA, PICGUG, TURN and the Environmental Stakeholders; rebuttal testimony was submitted on July 13, 2020 by all parties with the exception of CAUSE-PA, TURN and Direct Energy; surrebuttal testimony was submitted on July 24, 2020 by all parties except CAUSE-PA and Direct Energy and rejoinder testimony was submitted by PGW on July 27 and July 28, 2020.

The evidentiary hearing was held on July 29, 2020.<sup>7</sup> At the hearing, the testimony<sup>8</sup> and exhibits of the parties were admitted into the record.

---

<sup>6</sup> The ALJs also granted PGW's petition, submitted with its original filing, to permit PGW to utilize the period September 1, 2020 to August 31, 2021 as its fully projected future test year.

<sup>7</sup> The ALJs issued a Cancellation Notice for the initial telephonic evidentiary hearings scheduled for July 28, 2020 and July 30, 2020.

<sup>8</sup> With respect to the testimony, the following may be noted: (i) On June 24, 2020, PGW filed a Motion in Limine Regarding the Testimony Submitted by the Environmental Stakeholders. On June 30, 2020, the Environmental Stakeholders filed their Answer in Opposition to PGW's Motion in Limine. The ALJs issued an Order on July 7, 2020, that granted PGW's motion in part. The ALJs appropriately determined that this proceeding is not the place to determine whether PGW should change its business model to electrification and, therefore, directed that any testimony pertaining to electrification will be stricken from the Environmental Stakeholder's testimony; (ii) On June 25, 2020, PGW filed Motions in Limine Regarding Certain Portions of Testimony Submitted by the OCA and TURN Regarding Universal Service Programs. On June 30, 2020, OCA filed its Answer to the Motion in Limine. On June 30, 2020, CAUSE-PA filed its Answer in Opposition to PGW's Motion in Limine. The ALJs Order on PGW's Motions in Limine Regarding Testimony on Behalf of OCA and TURN was issued July 8, 2020, and granted PGW's motions in part and denied them in part. The Order excluded portions of the direct testimony of OCA and TURN recommending that the Commission require PGW to comply with federal and local laws regarding customers with Limited English Proficiency; and (iii) On July 23, 2020, the Environmental Stakeholders filed a Motion in Limine to Exclude Portions of the Rebuttal Testimony of PGW's witness James Cawley. The ALJs denied the Environmental Stakeholder's Motion in Limine at the evidentiary hearing.

On July 31, 2020, the ALJs issued a Briefing Order which memorialized instructions on how to proceed if the parties resolved issues in this case and guidance regarding service of briefs in this matter. The Briefing Order instructed that the record was to remain open until August 31, 2020.

On August 6, 2020, the Commission issued an Opinion and Order addressing two Petitions for Interlocutory Review and Answer to Material Question (“Petitions”) filed on July 15, 2020 and July 21, 2020, by TURN, *et al.* and OCA, respectively. OCA and TURN had sought interlocutory review as to whether the ALJs’ evidentiary ruling on July 8, 2020, erred as a matter of law by granting PGW’s Motions in Limine<sup>9</sup> to exclude portions of the direct testimony of OCA and TURN on the basis that language access considerations are not within the scope of the Commission’s jurisdiction and not relevant to PGW’s quality of service in the context of this rate proceeding. The Commission found that the ALJs erred by striking testimony relevant to the question of whether PGW provides reasonable service under Section 1501 of the Public Utility Code,<sup>10</sup> granted OCA and TURN’s Petitions and returned the matter to the ALJs for further proceedings. PGW submitted its supplemental rebuttal testimony on language access issues on August 13, 2020.

On August 19, 2020, a resolution was reached by the Joint Petitioners on nearly all issues presented in this proceeding. The Settlement, together with the Statements in Support of the Settlement, are simultaneously being filed with this Brief.

In the Settlement, the Joint Petitioners have agreed to a base rate increase, an allocation of that revenue increase to the rate classes, and a rate design for all rate classes to recover the

---

<sup>9</sup> See n. 8.

<sup>10</sup> 66 Pa. C.S. § 1501.



portion of the rate increase allocated to such classes. Specifically, the Joint Petitioners have proposed that rates be designed to produce an additional \$35 million in annual base rate operating revenues phased in, and fully charged starting in January 2022, instead of the Company's filed increase request of \$70 million (that would have gone into effect at the end of 2020). The Joint Petitioners are in agreement that the Settlement is in the public interest. PGW strongly believes that the Settlement is in the best interests of PGW and its customers and should be approved by the Commission.

## **II. STATEMENT OF THE CASE**

The Statement of the Case is set forth in the above Introduction. The procedural history is set forth in Section I.B of this Brief. In addition, Appendices A (Proposed Findings of Fact), B (Proposed Conclusions of Law), and C (Proposed Ordering Paragraphs), as requested by the ALJs' Briefing Order, are incorporated herein by reference.

## **III. SUMMARY OF ARGUMENT (Litigated Issues)**

The "Environmental Stakeholders," composed of the Sierra Club and the Clean Air Council, seek to commandeer this rate proceeding to, instead, promote their agenda to end natural gas usage in Philadelphia. Their clearly stated objective is to force a ban on natural gas consumption in Philadelphia, thrusting all customers onto total electric service and effectively putting PGW out of the natural gas business.<sup>11</sup> Elements of the "Climate Business Plan" ("CBP") that the Environmental Stakeholders are seeking to require of PGW would lead to planning for a moratorium on new gas hook ups and the pursuit of the complete electrification of

---

<sup>11</sup> Dr. Hausman has been very candid in his objective that PGW "reduce and ultimately cease selling fossil fuels." SC St. No. 1 at 10. See also SC St. No. 1-SR at 8 (the need "to eliminate the use of fossil fuels as thoroughly and as quickly as possible from our energy supply....").

Philadelphia (through incentives and mandate), which would advance the policy goals of these entities – but is not in the best interests of PGW ratepayers.

PGW strongly opposes the Environmental Stakeholders’ recommendations for many reasons, but most importantly because it is based upon several false premises. There is no mandate that natural gas usage be phased out and the Commission is not empowered to do so. Neither is it the policy of this Commonwealth at any level to compel natural gas customers to switch to all electric residences, stores and restaurants.<sup>12</sup> The underlying premise – that all future electric generation will be non-fossil fuel based – has not been established either.

The Environmental Stakeholders’ recommendations would severely harm PGW’s finances and cause it to abandon its pipeline replacement program, as well as force PGW to violate those aspects of the Public Utility Code that require PGW to provide service to all that request it within its service territory in a “safe, adequate and continuous manner.” They would ultimately impose significant additional costs on PGW’s customers and make the gas system less safe.

Implementing the Environmental Stakeholders’ objectives would involve legislative debate and a new set of statutory operating principles for these regulated industries. There has been no such determination by the Pennsylvania General Assembly or any other agency of Pennsylvania or City government. Dr. Hausman is essentially asking this Commission to come to those conclusions unilaterally in this case without legislative authority.

---

<sup>12</sup> While Dr. Hausman clearly believes that conversion to electric service (presumably 100% renewably sourced) will be adequate to satisfy Philadelphia’s future energy needs when PGW is forced out, there have been no studies that address the practicality and costs of converting the entire City to electric-only service. Also, customer costs to replace existing operational heating and cooking appliance is ignored in Dr. Hausman’s testimony (except to say that switching to electric appliances should be incentivized). SC St. No. 1 at 12.

PGW is and has been preventing leaks (greenhouse gases) and protecting the public safety under programs approved under the Commission’s Distribution System Improvement Charge (“DSIC”) and Long Term Infrastructure Improvement Plan (“LTIIP”) orders, by advancing the removal of aged, unsafe and leak prone cast iron main and bare steel services. The Environmental Stakeholders’ claim that it is somehow “imprudent” to be engaging in this Commission-approved replacement program – even though this is the only reliable way to prevent leaks and to remove unsafe facilities from the system – is frankly nonsensical and reckless. One cannot make the system safe by not replacing pipe.

Moreover, it is untrue that PGW has “ignored” potential alternatives to gas usage in its infrastructure planning, including the promotion of energy efficiency, or to consider stranded asset risks associated with climate change and climate regulations.<sup>13</sup> PGW has aggressively pursued energy efficiency programs and the very nature of its pipeline replacement program reduces methane emission. The Environmental Stakeholders are simply wrong in their understanding of PGW’s programs.

Moreover, the Environmental Stakeholders have totally missed that PGW is a regulated natural gas company and, as such, has a responsibility to deliver natural gas (not electricity or anything else) to its existing and future customers safely and effectively. In PGW’s view, the use of natural gas is and will continue to be part of any responsible and cost-effective effort to address climate change. But if this is to change it is up to state or federal authorities, or potentially other regulators, to change it – not the PUC (which does not have jurisdiction over environmental issues or the authority to order a “Climate Business Plan”) or the Environmental Stakeholders.

---

<sup>13</sup> SC St. No. 1-SR at 1.

Of course, climate change is and should be of serious concern to everyone. However, a general rate case is not the proper forum for raising novel climate change issues and collaterally attacking prior Commission determinations about pipeline safety and replacement. The topic should not be used, and it would be contrary to statutory ratemaking standards to derail a rate case filing that fully complies with all statutory and case law requirements. There are legitimate ways to create a forum for the policy discussion that the Environmental Stakeholder obviously seek. Denying or even postponing much needed rate relief to PGW is not one of them.

#### **IV. LEGAL STANDARDS**

##### **A. Cash Flow Method**

PGW is a “city natural gas distribution operation” as that term is defined in the Public Utility Code.<sup>14</sup> As such, just and reasonable rates for PGW are determined using the Cash Flow Method. PGW has no shareholders and does not pay a dividend or a rate of return to its owner (instead it remits a fixed annual payment to the City of Philadelphia).<sup>15</sup> Accordingly, all of the funds it needs to run the Company must come from ratepayers or from borrowing (the costs of which then must be paid by ratepayers).<sup>16</sup> Therefore, rather than having its revenue requirement determined on the basis of a fair rate of return on a used and useful rate base, PGW’s rates are set by determining the appropriate levels of cash, debt service coverage and other financial metrics necessary to enable PGW to pay its bills and maintain access to the capital markets at reasonable rates.<sup>17</sup>

---

<sup>14</sup> 66 Pa.C.S. § 102 (definitions); PGW St. 1 at 2.

<sup>15</sup> PGW St. 1 at 2.

<sup>16</sup> PGW St. 1 at 2.

<sup>17</sup> 66 Pa.C.S. § 2212(e); 52 Pa. Code §§ 69.2701-2703; PGW St. 1 at 2.

## **B. Policy Statement**

In 2010, the Commission issued a policy statement setting forth the criteria and the financial and other considerations that are to be examined in setting PGW's base rates at just and reasonable levels.<sup>18</sup> PGW St. 1 at 2; PGW St. 2 at 12. In its Policy Statement, the Commission described the requirements of the Cash Flow Method as follows:<sup>19</sup>

(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.

The Commission also stated that, in determining just and reasonable rate levels for PGW it would consider, among other relevant factors, the following financial factors:<sup>20</sup>

- PGW's test year-end and (as a check) projected future levels of non-borrowed year-end cash.
- Available short term borrowing capacity and internal generation of funds to fund construction.
- Debt to equity ratios and financial performance of similarly situated utility enterprises.
- 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.

Since PGW's rates are established using an ongoing process of examining its projected actual cash balances and debt service coverages, any expenditures incurred by the Company or

---

<sup>18</sup> 52 Pa. Code §§ 69.2701-2703.

<sup>19</sup> 52 Pa. Code § 69.2702(b).

<sup>20</sup> 52 Pa. Code §§ 69.2703(a), (b).

required by the Commission must ultimately be reflected in these calculations and included in PGW's revenue requirement.<sup>21</sup> Accordingly, any amounts that PGW is required to spend to revise its billing or collection procedures ultimately must be paid by ratepayers.

### C. Rates Must be Just and Reasonable

PGW's rates must meet the constitutional and statutory standard of being "just and reasonable."<sup>22</sup> The Pennsylvania Supreme Court has stated that the requirement of just and reasonable rates<sup>23</sup> "confer[s] upon the regulatory body [the Commission] the power to make and apply policy concerning the appropriate *balance* between prices charged to utility customers and returns on capital to utility investors *consonant with constitutional protections* applicable to both."<sup>24</sup> Therefore, in determining whether a rate increase is "just and reasonable," the

---

<sup>21</sup> See, OSBA St. 1 at 4.

<sup>22</sup> 40 Pa.B. at 2672; 52 Pa. Code § 69.2702(b). *PUC v. PGW*, Docket No. R-00006042, Opinion and Order entered October 4, 2001, at 25, *affirmed by*, *City of Philadelphia v. Pa. Pub. Util. Comm'n*, 829 A.2d 1241 (Pa. Commw. 2003) (The "just and reasonable" standard in Section 1301 is coextensive with the federal constitutional standard for determining utility rates).

<sup>23</sup> Section 1301 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 regulations or orders of the commission." 66 Pa.C.S. § 1301. In 2001, PGW's first base rate case, the Commission decided that the statute required a debt service coverage form of ratemaking. *Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-00006042, Opinion and Order entered October 4, 2001) ("*PGW 2001*") at 43, *affirmed by*, *City of Philadelphia v. PUC*, 829 A.2d 1241 (Pa. Commw. 2003). At the same time, the Commission held that the standards of "just and reasonable" rates apply: "...in following the cash flow method, the Commission is free to examine PGW's rates under the just and reasonable standard. The Commission is not required to accept the level of expense claimed by PGW or approved in a PGW budget by the [Philadelphia Gas Commission (PGC)]. If PGW fails to prove that a given expense item was prudently incurred and reasonable in amount, the Commission will make an appropriate adjustment in its rates chargeable to customers." *Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-00006042, Opinion and Order entered October 4, 2001) at 15, *affirmed by*, *City of Philadelphia v. PUC*, 829 A.2d 1241 (Pa. Commw. 2003).

<sup>24</sup> *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 130, 133 (Pa. 1985) (quoting *Pa. Pub. Util. Comm'n v. Pennsylvania Gas and Water Co.*, 424 A.2d 1213, 1219 (1980) (emphasis original), *cert. denied*, 454 U.S. 824 (1981)).

Commission has the duty and the discretion to determine the proper balance between the interests of ratepayers and the utility's owners and investors.<sup>25</sup>

After a balancing of investors' and customers' interests, the Commission must set the rate *within* the zone of reasonableness to be "just and reasonable."<sup>26</sup> Rates outside of that zone are confiscatory.<sup>27</sup> Setting rates below —instead of *within*—the normal zone of reasonableness would confiscate PGW's property and be unconstitutional.

The utility is held to a prudence standard in judging the incurrence of expenses and other costs.

Utility management makes many daily decisions regarding operations, all of which have a cost impact. On the one hand, the decisions of the utility managers chosen by the shareholder/owners of the corporation—while subject to review—are entitled to weight. The PUC does not and should not act as a super board of directors and second guess utility management in the manner of a Monday morning quarterback. On the other hand, ratepayers cannot be expected to bear costs that are imprudently or unreasonably incurred.<sup>28</sup>

Consistent case law is the foundation of this view:

As a general matter, utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions, including decisions related to the necessity and propriety of operating expenses, unless, on the basis of record

---

<sup>25</sup> *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 130, 133 (Pa. 1985) (quoting *Pa. Pub. Util. Comm'n v. Pennsylvania Gas and Water Co.*, 424 A.2d 1213, 1219 (1980) (emphasis original), cert. denied, 454 U.S. 824 (1981)).

<sup>26</sup> *See FPC v. Conway*, 426 U.S. 271, 278 (1976) ("there is no single cost-recovering rate, but a zone of reasonableness").

<sup>27</sup> *Cf. Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968) ("any rate selected ... from the broad zone of reasonableness ... cannot be attacked as confiscatory.") (emphasis added).

<sup>28</sup> *A Guide to Utility Ratemaking*, Cawley and Kennard (2018 Edition) at 81-82. ("Thus, utilities are held to the standard of a familiar legal fiction: 'the reasonably prudent [person].' The question to be answered is whether a reasonable person would have made the same decision under similar circumstances. The reasonably prudent person is neither a brilliant [person] nor a soothsayer. The standard contemplates a person of normal intelligence, foresight, and judgment.") [http://www.puc.pa.gov/General/publications\\_reports/pdf/Ratemaking\\_Guide2018.pdf](http://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf).

evidence, it finds an abuse of the utility's managerial discretion. *City of Philadelphia v. Pennsylvania Public Utility Commission*, 174 Pa. Superior Ct. 641, 102 A.2d 428 (1954). *Pittsburgh v. Pennsylvania Public Utility Commission*, 370 Pa. 305, 88 A.2d 59 (1952)....<sup>29</sup>

While Commission rate review is an established role, the Environmental Stakeholders are asking this Commission to step into areas of regulation not conferred to the PUC. Of course, environmental remediation costs can be recovered in rates.<sup>30</sup> The air quality regulations of the U.S. Environmental Protection Agency (“EPA”), the Clean Streams Act administered by the Pennsylvania Department of Environmental Protection (“DEP”) and all other manner of regulatory costs imposed outside of the PUC affect the utility’s cost structure and are flowed through rates. The Company determines its test year revenues in part by projecting test year degree days, which are affected by warming trends. This is not the same as conferring environmental jurisdiction upon the Commission through the setting of just and reasonable rates. Environmental jurisdiction cannot be bootstrapped through the Code Section 1501 requirement of safe and adequate service:

Clearly, the DER, under the Air Pollution Control Act, has been granted specific authority by the Legislature to regulate "air contamination sources" producing "air pollution" which includes obnoxious odors. Significantly, nowhere in the Law is there any grant of authority to the PUC by the Legislature, either directly or indirectly, to regulate air pollution emanating from a public utility.<sup>31</sup>

Most recently, the Commonwealth Court, in *Funk v. Wolf*, 144 A.3d 228 (Pa. Commw. 2016), found that the Commission could not make decisions based upon environmental considerations

---

<sup>29</sup> *Nat'l Fuel Gas Distrib. Corp. v. Pa. Pub. Util. Comm'n*, 464 A.2d 546, 559 (Pa. Commw. 1983).

<sup>30</sup> *Popowsky v. Pa. Pub. Util. Comm'n*, 869 A.2d 1144 (Pa. Commw. 2005); *Green v. Pa. Pub. Util. Comm'n*, 473 A.2d 209 (Pa. Commw. 1984).

<sup>31</sup> *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 76 (Pa. Commw. 1995).



or implement regulations addressing climate change. It should be equally obvious, that the Commission cannot use the Code Section 1301 “just and reasonable” rate standard to expand its jurisdiction to address climate change either.

#### **D. Burden of Proof**

PGW, as the party requesting the rate increase, has the burden of proving that the rates involved are just and reasonable.<sup>32</sup> The Commonwealth Court has stated:

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the 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.<sup>33</sup>

The public utility must satisfy its burden of proof by a preponderance of the evidence, which “means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.”<sup>34</sup>

There is no similar burden placed on parties to justify a proposed adjustment to the Company’s filing.<sup>35</sup> However, the party proposing an adjustment to a ratemaking claim bears

---

<sup>32</sup> 66 Pa.C.S. § 315(a). PGW need not affirmatively defend every claim it has made in its filing, even those which no other party has questioned absent prior notice that such action is to be challenged. *Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa. Commw. 1990)(citation omitted). *See also, Pa. Pub. Util. Comm'n v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

<sup>33</sup> *PUC v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098, et al., Opinion and Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 19, 2016 Pa. PUC LEXIS 62.

<sup>34</sup> *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at \*29 (Pa. Commw. Ct. June 2, 2020) (citing *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm'n*, 995 A.2d 465, 478 (Pa. Commw. 2010)).

<sup>35</sup> *PUC v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098, et al., Opinion and Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 19, 2016 Pa. PUC LEXIS 62.

the burden of going forward with evidence to respond to the utility's *prima facie* case of the reasonableness of its proposed rates.<sup>36</sup>

That being said, a party that offers a proposal not included in the Company's original filing bears the burden of proof for such proposal. As the proponent of a Commission order with respect to its proposals, the party must bear the burden of proof as to proposals that PGW did not include in its filing.<sup>37</sup> Section 315(a) of the Code<sup>38</sup> cannot reasonably be read to place the burden of proof on PGW with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.<sup>39</sup> Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments,<sup>40</sup> the burden of proof must be on the party who proposes a position or change beyond that sought by the utility. For example, the provisions of PGW's existing tariff are deemed just and reasonable,<sup>41</sup> and parties

---

<sup>36</sup> See, e.g., *Pa. Pub. Util. Comm'n v. PECO*, Docket No. R-891364, et al., Opinion and Order entered May 16, 1990, 1990 Pa. PUC LEXIS 155; *Pa. Pub. Util. Comm'n v. Breezewood Telephone Company*, Docket No. R-901666, Opinion and Order entered January 31, 1991, 1991 Pa. PUC LEXIS 45.

<sup>37</sup> See Section 332(a) of the Code, 66 Pa.C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at \*29-30 (Pa. Commw. Ct. June 2, 2020).

<sup>38</sup> 66 Pa.C.S. § 315(a).

<sup>39</sup> *Pa. Pub. Util. Comm'n v. Appalachian Utilities, Inc.*, PUC Docket No. R-2015-2478098, Opinion and Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 20, 2016 Pa. PUC LEXIS 62.

<sup>40</sup> 1 Pa.C.S. § 1922(1), *Pennsylvania Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 664 A.2d 84, 87 (Pa. 1995).

<sup>41</sup> The law presumes an existing tariff is just and reasonable. See, e.g., *Brockway Glass v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Commw. Ct. 1981); *Zucker v. PUC*, 401 A.2d 1377 (Pa. Commw. 1979); *U.S. Steel Corporation v. Pa. Pub. Util. Comm'n*, 390 A.2d 865 (Pa. Commw. Ct. 1978); *Deitch Company v. Pa. Pub. Util. Comm'n*, 203 A.2d 515 (Pa. Super. 1964).

challenging a previously-approved tariff provision or program bear a “heavy burden”<sup>42</sup> to demonstrate the Commission’s prior approval is no longer justified.<sup>43</sup>

Accordingly, parties raising positions not in PGW’s initial filing, and advocating an Order from the PUC directing PGW to take specified action bear a burden under Section 332(a) to present “some evidence or analysis” that convinces the PUC to enact the rule or order requested by that party.<sup>44</sup>

## V. ARGUMENT

### A. Overall Position on Rate Increase

PGW’s rates and charges are set by determining the appropriate levels of cash, debt service coverage and other financial metrics necessary to enable the Company to pay its bills and maintain efficient access to the capital markets at reasonable rates. Since the last rate proceeding, PGW has reduced debt and other costs where it is possible to do so. However, PGW needs additional revenues to address unavoidable increases in operating costs in several areas and to continue to achieve the financial metrics necessary to maintain its current favorable bond rating and to continue its infrastructure improvement efforts.

Continuing at its current level of rates is insufficient to produce crucially necessary cash working capital and liquidity. PGW explained that, without sufficient rate relief, PGW will be on the edge of not being able to meet its debt service coverage requirements in the FPFTY and

---

<sup>42</sup> See *Respond Power, LLC v. Pennsylvania Electric Company and Respond Power, LLC v. West Penn Power Company*, Docket Nos. C-2016-2576287 and C-2016-2576292 (Order entered July 13, 2017).

<sup>43</sup> A party challenging an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Commw. 1996).

<sup>44</sup> *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at \*32 (Pa. Commw. Ct. June 2, 2020).

will violate debt service coverage in FY 2022.<sup>45</sup> In addition, at current rates, the Company would have just \$45.4 million of year-end available liquidity.<sup>46</sup> This projected level equates to about 33.9 days of expenses.<sup>47</sup> Those levels of financial performance would not meet the minimum standards of financial adequacy.<sup>48</sup> Looking one step forward, without rate relief, PGW's cash balances are projected to plunge and be negative in FY 2022.<sup>49</sup>

PGW's requested rate increase, as modified by the Settlement, will address these deficiencies by allowing it to cover its expenses and other costs; to assure that it will be able to meet its debt service coverage requirements both in the test year and in the next few years; to provide a minimum level of cash working capital from rates so that, along with its tax exempt commercial paper program, it will have adequate liquidity to meet all of its needs throughout the year; and to permit PGW to continue to reduce its dependence on expensive long term debt to fund capital improvements.

It is axiomatic that a rate determination must produce "just and reasonable rates" and not be confiscatory so as to violate the Due Process Clause of the US Constitution.<sup>50</sup> In turn, for a rate determination to satisfy these standards it must fall within the constitutionally-required zone of reasonableness.<sup>51</sup> It is, however, a logical fallacy to assume that a recommendation is within

---

<sup>45</sup> PGW Exhibit JFG-1A (debt service coverage, line 23).

<sup>46</sup> See JFG-1-A, which shows ending cash of \$45,407; PGW St. 2-R at 15.

<sup>47</sup> PGW St. No. 2 at 14-15; PGW St. 2-R at 15.

<sup>48</sup> PGW St. 2 at 15.

<sup>49</sup> PGW Exhibit JFG-1A (cash flow, line 23).

<sup>50</sup> See, e.g., *Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-00006042, Opinion and Order entered October 4, 2001, at 25, *affirmed by, City of Philadelphia v. Pa. Pub. Util. Comm'n*, 829 A.2d 1241 (Pa. Commw. 2003) (The "just and reasonable" standard in Section 1301 is coextensive with the federal constitutional standard for determining utility rates).

<sup>51</sup> Any rate selected which falls with the broad zone of reasonableness cannot properly be attacked as unconstitutional for being confiscatory. *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968);

the zone merely because it has been recommended by a party. It is possible, as is the case here, that a party can recommend rates that fall outside of the constitutionally-required zone of reasonableness.

The Environmental Stakeholders' recommendation to completely reject any rate increase would keep the status quo. But by doing that, they would not permit the recovery of any of PGW's increased costs and expenses. This recommendation would be confiscatory, since it would not even allow additional rate recovery for the non-contested increase in debt service. A complete denial of rate relief would also return PGW to the extremely precarious financial position that it found itself in 2000; and likely place the Company, and its customers in a position where even PGW's continued ability to provide safe, reliable and adequate service could be threatened.<sup>52</sup>

The time for rate relief is now, not later. Given that cash balances are projected to plunge and be negative in FY 2022, PGW Exhibit JFG-1A (cash flow, line 23), PGW would need to file a new rate case after the conclusion of this proceeding just to keep from violating PGW's financial metrics.<sup>53</sup> However, the completion of that rate case proceeding would be too late to bill and collect enough revenue to avoid finishing FY 2022 with negative cash.<sup>54</sup> Such a result would put PGW in serious risk of (a) not being able to pay all of its obligations when they come due, and (b) of violating covenants in its Bond Ordinances.<sup>55</sup>

---

*Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 130, 132-133 (1985), appeal dismissed, 476 U.S. 1137 (1986); *National Utils. v. Pa. Pub. Util. Comm'n*, 709 A.2d 972, 977, n10 (Pa.Comm. 1998).

<sup>52</sup> See PGW St. No. 12-R at 20-23.

<sup>53</sup> See PGW St. 2-R at 16.

<sup>54</sup> See PGW St. 2-R at 16.

<sup>55</sup> PGW St. 2-R at 16.

## **B. The Arguments of the Environmental Stakeholders Are Unsupported, Unreasonable, and Unjustified**

### **1. Introduction**

The Environmental Stakeholders contend that PGW, as a natural gas distribution company, has not recognized that its continued operation is contributing to global warming and the emission of greenhouse gases. In light of these perceived circumstances, they argue that PGW is acting imprudently as it continues to modernize its natural gas distribution facilities, installing facilities the cost of which will be recovered over the next several decades (if financed by bonds).

The CBP is envisioned by the Environmental Stakeholders as a “going-out-of-the-natural-gas-business” plan, since “[d]oing otherwise risks creating burdensome stranded assets as the Company ultimately is forced to dramatically reduce, and then eliminate, gas sales.”<sup>56</sup>

It is not reasonable or prudent to invest what is likely to ultimately be hundreds of millions of dollars of ratepayer funds in modernizing infrastructure that will have no use by the time the project is complete, and the Commission should not commit to a rate increase at this time to support such a wasteful endeavor. Any ratepayer funds used to replace PGW’s distribution infrastructure should be spent in a way that is consistent with the need to reduce and ultimately cease burning fossil fuels, in Philadelphia and elsewhere.<sup>57</sup>

As stated by the Environmental Stakeholders, “The goal of the CBP would be to reduce and ultimately cease selling fossil fuels, and to eliminate GHG [greenhouse gas] emissions from the Company’s operations.”<sup>58</sup>

---

<sup>56</sup> SC St. No. 1 at 11.

<sup>57</sup> SC St. No. 1 at 6.

<sup>58</sup> SC St. No. 1 at 12

Continuing, they argue that a rate case moratorium should be imposed until PGW creates and presents an undefined “Climate Business Plan” (“CBP”), which would be unprecedented for Pennsylvania. This step would be followed by full Commission review, potentially further litigation, and a finding that the CBP is consistent with the objective of “significantly” reducing greenhouse gas (“GHG”) emissions.<sup>59</sup> Only at that point presumably would PGW’s rate request be considered and, then, only to the degree it is consistent with the CBP.<sup>60</sup>

There are numerous problems with the Environmental Stakeholders’ position, including the fact that PGW’s current main replacement program was previously filed and approved by the Commission after full public review. Historically, the Commission and PUC Staff have strongly encouraged PGW to expedite its efforts to replace its antiquated facilities for safety and reliability reasons, and the Settlement actually contains a provision requiring PGW to continue with these efforts.<sup>61</sup> Moreover, there is nothing in the Public Utility Code that authorizes the Commission to make rate case determinations based on the perceived future effects of greenhouse gases or global warming. It is false to claim that PGW has not addressed limiting gas consumption through conservation, efficiency and weatherization – it has. The Environmental Stakeholders’ real objective is the total electrification of Philadelphia, putting PGW out of the natural gas business and forcing existing gas customers to convert to all electric, in an effort to advance its agenda.

Compelling the eventual abandonment of service by PGW because its system delivers fossil fuels is both beyond the legal authority of the PUC – a fact that the ALJs have already

---

<sup>59</sup> SC St. No. 1 at 6.

<sup>60</sup> SC St. No. 1 at 4.

<sup>61</sup> Petition for Partial Settlement, ¶ 43.

acknowledged – and contrary to all the legal and regulatory obligations under which PGW currently operates.

PGW has filed and supported its proposed rate increase under existing law, including Section 2212 of the Public Utility Code, and has demonstrated that this increase is necessary to maintain its operations and provide safe, adequate and reasonably continuous service. Moreover, the Partial Settlement reflects a consensus among the other parties that it would be reasonable to permit PGW to increase its rates modestly, despite the remaining arguments of the Environmental Stakeholders. Rate cases are governed by state laws passed by the General Assembly and signed by the Governor. The Commission has promulgated a set of regulations that specify the reports, analysis, studies and other documents that must be filed in order for the rate filing to be complete. All of the other parties have agreed that a rate increase is justified. In contrast, the Environmental Stakeholders cannot point to any legal requirement that specifically directs PGW and the Commission to engage in the sort of climate change analysis that they demand in this case. There is nothing in the Commission’s filing requirements or rate case rulings that introduce climate change issues into a general rate case.

The Commission’s authority in this area of environmental concern will be debated by the parties, but certainly it should be beyond any real disagreement that it is inappropriate to launch demands by a late filed intervention in the middle of the case. The Environmental Stakeholders are proposing a major sea change from, what is currently and has been, a financially focused rate setting, to unauthorized environmental regulation. Essentially, the Environmental Stakeholders propose a wholesale rewrite of utility rate regulation that will affect the entire Commonwealth. It should be treated and rejected as such.



**2. The Environmental Stakeholders’ Proposal to Deny Any PGW Rate Increase Because of Alleged Imprudence in Infrastructure Improvement Should be Rejected.**

The Environmental Stakeholders’ claim that PGW is acting imprudently by engaging in infrastructure replacement and a demand for rate case cessation until a CBP is approved is not only beyond the legal authority of the PUC to direct but also unrealistic, unreasonable and counterproductive . As explained by PGW expert witness Commissioner James H. Cawley:

.... even if Dr. Hausman’s recommendations were adopted, they would take considerable time to implement. Meanwhile, the Company’s financial condition would need to be maintained to continue operations and ongoing infrastructure improvements. Denying the current rate increase (and necessary future ones) would not only cripple the Company but prevent it from financing the ‘energy efficiency’ or other methane reducing efforts that Dr. Hausman recommends.<sup>62</sup>

Dr. Hausman’s assertion that the Company need not undertake the systematic prioritization and replacement of cast iron and unprotected steel pipelinesbut instead, limit its efforts to immediate “safety-related distribution system maintenance and addressing major gas leakage”<sup>63</sup> is misinformed and unsupported. As noted by PGW witness Douglas Moser, this recommendation is based on a number of misunderstandings and knowledge gaps.<sup>64</sup>

First, PGW is not “proposing” an infrastructure improvement plan in this case. Rather, PGW’s infrastructure improvement plan – which consists entirely of replacing cast iron main and bare steel services<sup>65</sup> – has been proposed and approved by the Commission several years ago in its Long Term Infrastructure Improvement Plan.<sup>66</sup> In this case, PGW merely requests

---

<sup>62</sup> PGW St. No. 1-R at 5.

<sup>63</sup> SC St. No. 1-SR at 7.

<sup>64</sup> PGW St. No. 7-RJ at 1.

<sup>65</sup> PGW St. No. 7-RJ at 1-2.

<sup>66</sup> PGW St. No. 7-RJ at 1-2.

recognition of the incremental cost of making these necessary improvements, a relatively small portion of the rate increase – some \$5 million of \$70 million.<sup>67</sup>

The Commission has a long history of concern with the aging status of PGW’s pipeline and has worked with the Company and the parties to create critical solutions. PGW’s first filing was made in 2013, which the Commission approved in 2014.

In 2015 the Commission’s Staff, in an extensive report, explored ways to accelerate PGW’s pipeline replacement, explaining that: “Despite the fact that PGW accelerated its replacement efforts in 2014, Staff believes this replacement rate is not aggressive enough, given the risk this pipe poses to PGW’s system and its customers.”<sup>68</sup>

The Staff Report provided that PGW’s then-current cast iron main replacement program would not be completed for eighty years and created an unacceptable safety risk. The Staff Report concluded: “PGW’s cast iron and unprotected steel pipe are a threat to life and property; therefore, the Company must accelerate its infrastructure replacement and remove its at-risk pipe from service in a more aggressive manner than what is currently contemplated.”<sup>69</sup>

As a result, PGW’s pipeline replacement program was modified again in 2016 to greatly accelerate the projected pipeline replacement timeline from eighty-six years to forty-eight years.

As the Commission said at the time:

It is undisputed in this proceeding that PGW’s aging gas distribution infrastructure poses significant safety and reliability

---

<sup>67</sup> PGW St. No. 7-RJ at 1-2; PGW Late Filed Exhibit No.1.

<sup>68</sup> *Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works’ Pipeline Replacement Program*, April 21, 2015 at 4.

<sup>69</sup> *Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works’ Pipeline Replacement Program*, April 21, 2015 at 59.

issues, and that the current pace of the Company's replacement efforts is unacceptable and potentially harmful to the public.<sup>70</sup>

As a result, an additional \$11 million of annual revenues was authorized by the Commission to be recovered through PGW's Distribution System Improvement Charge. Even Dr. Hausman agreed that "the cast iron main poses a hazard over time and should be retired."<sup>71</sup> And as he further testified, "there are leaks which pose a danger to the public and PGW should be addressing them in a way that's acceptable to the Commission and consistent with long-term provision of reliable and low cost service."<sup>72</sup> At the same time Dr. Hausman acknowledged that he does "not have training in pipeline safety," and that the Company is the appropriate party to make recommendations to the Commission with respect to cast iron main and repairing leaks.<sup>73</sup> As he further offered: "I take you at your word that you can't go in with some epoxy and a patch and repair a cast iron main, that it still will be unsafe."<sup>74</sup> Therefore, it is clear that desertion of its infrastructure improvement plan would be a violation of PGW's obligations under Section 1501 of the Public Utility Code. As explained by Mr. Moser:

Because of the nature of cast iron main, it is subject to catastrophic failure with little or no warning. Tragic accidents can and have occurred as a result of a cast iron main gas leaks where the leak likely started no more than thirty minutes before the incident. PGW could simply not sufficiently anticipate natural gas leaks on cast iron main and fix them quickly enough to maintain the system at a level of safety that PGW – and the Commission – requires.<sup>75</sup>

---

<sup>70</sup> *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, P-2015-2501500, Opinion and Order entered January 28, 2016 at 41.

<sup>71</sup> Tr. at 398.

<sup>72</sup> Tr. at 396.

<sup>73</sup> Tr. at 397.

<sup>74</sup> Tr. at 405-406.

<sup>75</sup> PGW St. No. 7-RJ at 3.

These same safety-related concerns were raised in the Commission Staff’s 2015 Report, which provided that, because of the nature of these materials, a strategy of simply leaving cast iron main in the ground and repairing all leaks and breaks that arise creates an unacceptable safety risk and the potential for “catastrophic failures.”<sup>76</sup> In addition to the cast iron main replacements, approximately 19% of PGW’s FY 2021 main/service replacement budget is for these unprotected bare steel services. Mr. Moser testified that unprotected bare steel services are prone to multiple small leaks which are difficult to isolate and to address, and a failure to systematically replace unprotected bare steel services would result in an unacceptable level of leakage and increased safety risks. The Staff Report reached this same conclusion.<sup>77</sup> In fact, replacing cast iron main and bare steel services is actually designated a “best practice” by the EPA for combatting methane leakage.<sup>78</sup> For these reasons, Mr. Moser concluded that PGW could not abandon its main replacement program, which is specifically mandated in its Long Term Infrastructure Improvement Plan and is consistent with the PUC staff recommendations. “Even if PGW were not obligated to engage in its current main replacement program, it would still be necessary and prudent because failing to do so would create an unacceptable safety risk to our customers and the City of Philadelphia.” Accordingly, claiming that PGW is somehow acting imprudently by engaging in infrastructure modernization, i.e., replacing cast iron main and bare steel services, is completely unfounded.<sup>79</sup> In fact it would only be imprudent if PGW *abandoned* its infrastructure modernization efforts.

---

<sup>76</sup> PGW St. No. 7-RJ at 4.

<sup>77</sup> PGW St. No. 7-RJ at 4-5.

<sup>78</sup> Tr. 410; PGW’s Hearing Exhibit No. 2 (US EPA Methane Challenge Background - Best Management Practices Commitment Option).

<sup>79</sup> PGW St. No. 7-RJ at 5.

**3. The Environmental Stakeholders’ Demand that PGW Produce a “Climate Business Plan” Is Outside the PUC’s Jurisdiction, Unsupported, and Unwarranted.**

The Environmental Stakeholders recommend that the Commission should direct PGW to produce a CBP — a Climate Business Plan — with the stated goal of aggressively reducing and ultimately eliminating greenhouse gas emissions in the Commonwealth of Pennsylvania and the City of Philadelphia. The Environmental Stakeholders have presented no legal authority for the Commission to do this. They simply argue that Governor Wolf’s Executive Order Number 2019-01 and Philadelphia City Council Resolution No. 190728 create a preordained outcome where natural gas has no future and, therefore, it is incumbent upon the Commission to implement this outcome.<sup>80</sup>

To the contrary, the Commission lacks jurisdiction over these environmental issues and the environmental advocates totally misread and exaggerate the Executive Order and the Resolution.

**a. The Commission lacks jurisdiction over the environmental issues and recommendations made by the Environmental Stakeholders.**

To adopt the Environmental Stakeholders’ position that PGW should begin planning for a time when it will no longer be permitted to sell natural gas, the Commission must, logically, first determine that PGW’s greenhouse gas emissions are or will be at unacceptable levels and must be reduced or eliminated and also determine that it has the legal authority to direct a plan to reduce them. But the PUC does not have jurisdiction to make these determinations. It is axiomatic, that the Commission has only the power and jurisdiction expressly conferred or

---

<sup>80</sup> SC St. No. 1 at 3-4.

necessarily implied to it by the Legislature.<sup>81</sup> The Commission must act within, and cannot exceed, that jurisdiction.<sup>82</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy, and jurisdiction cannot be conferred where none exists.<sup>83</sup>

While the Commission has jurisdiction over a utility's facilities and service,<sup>84</sup> the Commonwealth Court has made it clear that those requirements are in the context of providing utility *service* (in this case natural gas service), and that the Commission does not have jurisdiction over environmental issues, or compliance with state or federal environmental laws.<sup>85</sup>

---

<sup>81</sup> See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

<sup>82</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

<sup>83</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Commw. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993); *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>84</sup> 66 Pa.C.S. §§ 1501, 1505.

<sup>85</sup> *Rovin, D.D.S. v. Pa. Pub. Util. Comm'n*, 502 A.2d 785 (Pa. Commw. 1986) (“*Rovin*”) (Enforcement of environmental statutes is specifically vested in the Department of Environmental Protection and the Federal Environmental Protection Agency.); *Pickford v. PUC*, 4 A.3d 707 (Pa. Commw. 2010) (“*Pickford*”) (customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects of chloramines under permits issued by the Department of Environmental Protection and, thus, outside the Commission’s jurisdiction); *Country Place Waste Treatment Company, Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Commw. 1995) (“*Country Place Waste Treatment Company*”) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

Specifically, in *Rovin*, the Petitioner sought review of a Commission decision to dismiss his complaint which alleged that his water utility failed to provide him with adequate, safe and reasonable water service in violation of Section 1501 of the Public Utility Code when the utility provided only some of its customers with fluoridated water. The Commonwealth Court held, “It is apparent that Petitioner herein is not complaining about the quality of *service* but rather the quality of water.” *Rovin*, 502 A.2d at 787 (emphasis in original). The Court went on to explain that water quality is statutorily regulated by the provisions of the Pennsylvania Safe Drinking Water Act and the Federal Safe Drinking Water Act. Enforcement of these statutes is specifically vested in the Department of Environmental Protection (“PADEP”) and the Federal Environmental Protection Agency. As such, the Commonwealth Court concluded that the Commission properly dismissed Petitioner’s Complaint. *Id.*

The *Pickford* case also establishes that Section 1501 is limited to utility service and does not give the Commission jurisdiction over environmental-related considerations. Specifically, in *Pickford* the Commonwealth Court found that customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects of chloramines under permits issued by DEP and, thus, outside the Commission’s jurisdiction. The Court held, “Precedent makes clear the distinction between water *service*, which the Commission may regulate, and water quality, which may only be regulated by the DEP.” *Pickford*, 4 A.3d at 713. In making its determination, the Court found that it was beyond the Commission’s jurisdiction to conduct its own evaluation of DEP-approved water treatment chemicals.<sup>85</sup> *Id.* at 714.

Perhaps the most legally relevant Commonwealth Court decision is *Country Place Waste Treatment Plant*. In *Country Place Waste Treatment Plant*, the Commonwealth Court vacated a Commission Order in which the PUC had asserted authority to regulate odors allegedly emitted by Petitioner’s waste treatment facility. In reaching this conclusion, the Court noted that the Commission did not have authority to regulate “air quality” because it is a “by-product of the service that Respondent provides” as opposed to the service itself. Importantly, the Court also held:

Clearly, the DER, under the Air Pollution Control Act, has been granted specific authority by the Legislature to regulate “air contamination sources” producing “air pollution” which includes obnoxious odors. *Significantly, nowhere in the Law is there any grant of authority to the PUC by the Legislature, either directly or indirectly, to regulate air pollution emanating from a public utility.*<sup>86</sup>

Here, much like in *Rovin*, *Pickford*, and *Country Place Waste Treatment Plant*, the issues raised by the Environmental Stakeholders are not related to PGW’s natural gas *service*, but are environmental considerations within the exclusive jurisdiction of DEP. Importantly, nowhere in the law is there any grant of authority to the Commission by the Legislature, either directly or indirectly, to regulate greenhouse gas emissions of the utilities that it regulates or to mandate a CBP.

The Commonwealth Court was very clear in its recent decision in *Funk v. Wolf* that the Commission cannot make (or be made to make) decisions based upon environmental considerations or implement regulations addressing climate change.<sup>87</sup>

---

<sup>86</sup> *Country Place Waste Treatment Company, Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d at 76 (emphasis added).

<sup>87</sup> *Funk v. Wolf* involved an action for declaratory and mandamus relief brought against the Public Utility Commission, among others, alleging that defendants' failure to develop and implement a comprehensive plan to

PGW’s expert regulatory witness, Commissioner Cawley, also provided insightful testimony, based on his extensive career in the public utility field,<sup>88</sup> demonstrating the detrimental impacts that could result if the Commission decided to make environmental regulatory determinations: “At the least, requiring the Commission to make ratemaking (or other) determinations in response to climate change would create the real possibility of disparate and potentially inconsistent regulation.”<sup>89</sup>

The place to raise these concerns are before the bodies that *do* have jurisdiction to consider them. The current climate change legislative scheme is primarily comprised of the Pennsylvania Climate Change Act and the Air Pollution Control Act, in which DEP is the state agency statutorily authorized to regulate in these areas.<sup>90</sup> For example, as noted by the Court in *Country Place Waste Treatment Plant*, the Air Pollution Control Act gives DEP broad jurisdiction to regulate “air contamination sources,” “air contamination” of which has been defined as “[s]moke, dust, fume, gas, odor, mist, radioactive substance, vapor, pollen or any

---

regulate carbon dioxide emissions violated the state constitutional “Environmental Rights Amendment.” The Commonwealth Court concluded, “Petitioners do not have a clear right to have Respondents conduct the requested studies, promulgate or implement the requested regulations, or issue the requested executive orders.” *Funk*, 144 A.3d at 250-51.

<sup>88</sup> Importantly, Commissioner Cawley has helped to shape utility law in Pennsylvania through his work as a consultant, attorney, and lobbyist. As counsel to the Pennsylvania Senate Consumer Affairs Committee, Commissioner Cawley was a major draftsman of substantial amendments to Pennsylvania’s public utility laws. During that time period, Commissioner Cawley spent a great deal of time studying the history of public utility regulation and public utility ratemaking in the United States. The Committee’s work culminated in the passage of Acts 215 and 216 of 1976. Commissioner Cawley then worked with the Pennsylvania Joint State Government Commission to codify those laws into the Pennsylvania Public Utility Code. Notably, Commissioner Cawley also served two terms as a member of the Pennsylvania Public Utility Commission, the first from 1979 to 1985. During his first term, Commissioner Cawley co-authored a guide to ratemaking before the Commission. Commissioner Cawley’s second term was from 2005 to 2015, and he served as the Chairman of the Commission from 2008 to 2011. PGW St. No. 12-R at 1-2.

<sup>89</sup> PGW St. No. 12-R at 36-38.

<sup>90</sup> *Funk v. Wolf*, 144 A.3d at 250; Act of July 9, 2008, P.L. 935, 71 P.S. §§ 1361.1–1361.8; Act of January 8, 1960, P.L. 2119, *as amended*, 35 P.S. §§ 4001–4015.



combination thereof.”<sup>91</sup> Further, DEP has recently been directed by Governor Wolf to develop a rulemaking package to abate, control, or limit CO2 emissions from fossil-fueled electric power generators via Executive Order 2019-7.<sup>92</sup> And DEP is currently reviewing a proposed rulemaking directed at regulating methane emissions from the oil and gas industry.<sup>93</sup> PGW’s various gas operations – such as its LNG facilities – are subject to numerous DEP permitting requirements. As Commissioner Cawley explained, the Commission would “act *ultra vires*” if it made the determinations recommended by the Environmental Stakeholders and would “usurp the authority” of DEP.

The Environmental Stakeholders sole legal support, Executive Order Number 2019-01 and Philadelphia City Council Resolution No. 190728, is based on an overly expansive reading and presumes outcomes that the documents do not require. They are non-binding and “aspirational” in nature.<sup>94</sup> Moreover, there is no specific action plans contained in these documents. Commissioner Cawley explained:

[Dr. Hausman’s] entire testimony presupposes that the continued operation of PGW as a natural gas distribution company is or will be unreasonable and should be ended because it unreasonably contributes to global warming. But no such legislative directive to that effect has been made by the Pennsylvania General Assembly or any other agency of Pennsylvania Government. Yet, Dr. Hausman asks the Commission to deny rate relief based on those conclusions.<sup>95</sup>

---

<sup>91</sup> 35 P.S. §§ 4003-4004.

<sup>92</sup> <https://www.dep.pa.gov/Pages/default.aspx>.

<sup>93</sup> Control of VOC Emissions from Oil and Natural Gas Sources, 50 Pa.B. 2633 (proposed May 23, 2020) (to be codified at 25 Pa. Code Chapters 121 and 129).

<sup>94</sup> PGW St. No. 12-R at 35.

<sup>95</sup> PGW St. No. 12-R at 35-36.

To the extent that the City Council resolution contains specifics it “resolves to appoint members to the Philadelphia Gas Commission ‘who support and advocate for clean renewable energy in PGW’s operations.’”<sup>96</sup> It is distortive for the Environmental Stakeholders to read the document as an indictment of PGW’s continued operation when the document sees “clean renewable” gas as the gas company’s future throughput.

While the Commission clearly does not have jurisdiction to take the action that the Environmental Stakeholders demand, this is not to say that the Commission cannot or should not take into account the actual effects of climate change, such as warmer winters, on PGW’s operations or the directives of actual laws or regulations. This is why it is perfectly reasonable (and necessary) for PGW to, for example propose a *pro forma* level of revenues that take into account the actual effects of warming weather on its actually experienced degree days.<sup>97</sup> As Commissioner Cawley pointed out, considering the past effects of warming weather when projecting *pro forma* sales in the fully projected future test year is not at all similar to the PUC ordering PGW to reduce or eliminate its GHG levels or to plan to do so thirty years hence.<sup>98</sup>

For the reasons explained above, the Commission should deny the recommendations of the Environmental Stakeholders, as the Commission lacks jurisdiction over these environmental issues.

---

<sup>96</sup> PGW St. No. 12-R at 37.

<sup>97</sup> *See*, Tr. 347-349.

<sup>98</sup> *See*, Tr. 290-301.

**b. The Environmental Stakeholders have failed to meet their burden of proving that their recommendation that the Commission require PGW to produce a CBP is just and reasonable.**

When confronted by the overwhelming evidence that the PUC has no jurisdiction to require PGW (or any other natural gas companies) to reduce or cease operations to combat greenhouse gas emissions, the Environmental Stakeholders witness Dr. Hausman revised his position and contended that the Commission should nonetheless begin a process of determining how PGW should respond in the event that some other regulation or law requires such a reduction or curtailment of operations. This “due consideration” he alleges would only be “prudent.”<sup>99</sup> There are numerous fatal flaws in this line of reasoning.

First, the demand for such planning is based on complete speculation. The Environmental Stakeholders have not pointed to any rule or regulation that suggests that PGW or other gas companies will be forced to cease operation 30 or 40 years hence. This recommendation is based on the unsupported assumption that PGW, as a natural gas distribution company, cannot continue to exist if Pennsylvania is going to address climate change. However, there is no consensus about the role that natural gas will play thirty years from now. In fact, a valid school of thought is that natural gas is and will continue to be an important bridge technology. The Environmental Stakeholders’ demands, therefore, are grounded in their own, one-sided advocacy that there is no place for natural gas as an energy source. This position is certainly speculative to say the least.

Second, the Environmental Stakeholders demand that PGW basically abandon gas service and that all of its customers be forced to use electricity for cooking and heating. The

---

<sup>99</sup> ES St. 1-SR at 5.

Environmental Stakeholders' recommendations are based on a policy preference and belief that electricity will eventually be entirely based upon renewable technology and, thus, a better energy source than natural gas from the standpoint of limiting global warming.

But, again, this is pure speculation, as Commissioner Cawley testified:

There is simply no way to know now how or to what extent (if at all!) a definitive determination that natural gas will no longer be permitted to be utilized to heat the homes and businesses of Philadelphians. This is one of Sierra Club's policy goals but by no means established. In my experience, the Pennsylvania Public Utility Commission does not engage in such speculation in establishing regulatory policy for the companies it regulates, especially when it would require conclusions (or guesses) about what environmental requirements will be in thirty years.<sup>100</sup>

During the hearing, Dr. Hausman frankly admitted that he was demanding that PGW "reduce load" to certain areas of its service territory. When asked how that would be accomplished, he indicated that customers would have to be converted to other energy sources that are more acceptable to the Environmental Stakeholders – chiefly electricity.<sup>101</sup> But as the

---

<sup>100</sup> PGW St. No. 12-RJ at 2.

<sup>101</sup> Tr. at 406-408. During the cross-examination of Dr. Hausman, the following exchange took place:

Q. Okay. And you mentioned before and I just don't quite understand how this would work. You indicated that you wanted us to do in our planning to consider retirement rather than replacement; but, if our load decreases incrementally, Dr. Hausman, but no area of the city ceases using natural gas, when we talk about retirement, wouldn't we be talking about simply reducing the size of the mains that would be installed when we replace them? We wouldn't be able to retire the facilities completely, would we?

A. Well, you're raising a hypothetical scenario which I don't think is consistent with what would be required to actually put the Governor's Executive Order and the City Council resolution into effect. I think more likely is that over time that areas of the city would cease to have gas service. Mr. Stunder raised the issue of electrification which was originally stricken from my testimony, but I don't know if it's permissible to mention that; but energy efficiency and other approaches which would gradually over time and maybe one location at a time eliminate the use of natural gas. That's what would be consistent with the City Council resolution and the Governor's Executive Order; and, as far as I can tell, the company has not considered any plan to adhere to those.

Q. Well, that's because those are aspirational, Dr. Hausman. But just so I understand, just so we're clear, when you talk about retirement, you're talking about retirement as a result of some program where end-user customers would no longer be using natural gas I guess in a particular area or in a subset of PGW's service territory. Is that what you're talking about?

A. That's right. [...].

ALJs have already ruled, the PUC has no authority to order PGW to engage in converting its customers to electricity. Specifically, in this proceeding, the ALJs have held: “These proceedings are not the place to determine whether PGW should change its business model to electrification.”<sup>102</sup>

Underlying the ALJs’ ruling on electrification is the plain fact that PGW as a natural gas distribution company has an obligation to provide natural gas service in a safe and adequate manner.<sup>103</sup> This obligation extends not only to existing customers but also to any person wishing natural gas service who otherwise meets the requirements of its tariffs. It would be a violation of PGW’s Tariff, and its obligations under the Public Utility Code to deny gas service to an otherwise eligible customer.<sup>104</sup>

Third, natural gas *does* have a place in a reduced greenhouse gas future contrary to the Environmental Stakeholders’ view. As demonstrated through the testimony of Mr. Stunder, natural gas has helped lead the reduction in United States greenhouse gas emissions. Furthermore, “the natural gas delivery system is flexible, reliable, and versatile, and enables increased integration of renewable energy.” Importantly, Mr. Stunder explained that the use of natural gas, in combination with renewable energy and efficiency, has contributed to energy-related carbon dioxide emissions declining in the United States to the lowest levels in nearly twenty-five years.<sup>105</sup>

---

<sup>102</sup> Order on PGW’s Motion in Limine Regarding the Direct Testimony of Ezra D. Hausman, Ph.D. Submitted by the Environmental Stakeholder (July 7, 2020).

<sup>103</sup> 66 Pa.C.S. § 1501.

<sup>104</sup> *See, e.g.*, 66 Pa.C.S. §§ 1501 (prohibits unreasonable delay by a utility to provide service) and 1502 (prohibits unreasonable discrimination against a customer or applicant and denial of service to applicant must be for cause).

<sup>105</sup> PGW St. No. 1-R at 6.

The record shows that on a national basis, while the use of natural gas has grown, carbon dioxide emissions from the residential, commercial and industrial sectors have not changed materially. For example, the record demonstrates that, since 1970, natural gas utilities have added 30 million residential customers with virtually no increase in emissions. As Mr. Stunder explained, “This is because of customer conservation, stronger energy efficiency standards, and the efforts of natural gas distribution companies to promote energy efficiency, such as PGW’s energy efficiency programs.”<sup>106</sup>

Methane emissions from natural gas distribution systems have declined 73% since 1990, even as natural gas distribution companies added more than 760,000 miles of pipeline. Mr. Stunder testified that a Washington State University study found that “as little as 0.1% of natural gas delivered nationwide is emitted from local distribution systems.”<sup>107</sup>

Further, the evidence demonstrates that, from wellhead to burner tip, natural gas is 91% energy efficient, and households with natural gas versus households with all-electric appliances produce 41% less greenhouse gas emissions.<sup>108</sup>

There are other downsides to abandoning PGW’s natural gas distribution systems. Mr. Stunder testified that such action would eliminate the ability for PGW to use its infrastructure to deliver other types of energy such as renewable energy, storage and the delivery of renewable gases derived from biogenic sources. As Mr. Stunder explained, the gas system’s ability to integrate high-value sources of energy like renewable natural gas and hydrogen may become a valuable approach to reaching carbon emission reduction goals. Additionally, Mr. Stunder

---

<sup>106</sup> PGW St. No. 1-R at 6.

<sup>107</sup> PGW St. No. 1-R at 6-7.

<sup>108</sup> PGW St. No. 1-R at 7-8.

explained that other technologies are being developed like “power to gas” which can utilize excess renewable electricity to create renewable hydrogen and renewable natural gas.<sup>109</sup>

Fourth, the Environmental Stakeholders’ recommendations are based on the mistaken assumption that PGW has not adequately considered climate trends and environmental impacts in its infrastructure planning. PGW’s pipeline replacement plan and efforts to reduce gas leaks and methane emissions go hand-in-hand. For example, nationwide, 90% of emission reductions from distribution systems since 1990 are due to pipeline replacements. Mr. Stunder explained that, for PGW, a reduction in gas leaks and methane reductions can be attributed to PGW’s “commitment to systematically replacing the facilities that are most at risk of leaking and using a sophisticated main replacement prioritization model to identify the facilities that should be removed.” While these efforts are primarily geared to making PGW’s system safer and more reliable, they also result in the reduction of gas leaks, which in turn reduces methane emissions.<sup>110</sup>

Elements of the CBP as generally sketched out by Dr. Hausman include efficiency, weatherization and energy audit.<sup>111</sup> These are objectives that the Commission and PGW have been pursuing for years. Mr. Stunder testified that PGW is currently doing several things to reduce emissions and is assessing or planning other ways to reduce emissions in the future. First, PGW has voluntarily implemented robust energy efficiency programs which have been approved by the Commission. Mr. Stunder summarized these programs as follows:

- Home Comfort Program
  - PGW’s low income usage reduction program weatherized 21,880 low-income customer homes and 22 multi-family buildings (where a majority

---

<sup>109</sup> PGW St. No. 1-R at 8.

<sup>110</sup> PGW St. No. 1-R at 7.

<sup>111</sup> SC St. No. 1 at 12

of the tenants are low-income) at a cost of \$60 million during FY 2011 to FY 2019.

- On average, low income customers experience a first year 13% usage reduction from pre-weatherization usage.
  
- Energy Sense Program
  - PGW has awarded 6,200 rebates and grants to residential, commercial and industrial customers at a PGW cost of \$9.7 million during FY 2011 to FY 2019.
  
- Energy Conservation Program Savings
  - The estimated resources saved are 14.9 Bcf of natural gas and 862,000 metric tons of CO<sub>2</sub>e over the lifetime of the conservation measures PGW has installed in low income and other properties during FY 2011 to FY 2019.<sup>112</sup>

Second, PGW's cast iron main replacement program and service replacement program have decreased methane emissions by 9,500 metric tons since 1991. PGW has also voluntarily joined the EPA's Methane Challenge Program, which is designed to reduce methane emissions.<sup>113</sup>

Third, PGW has reduced emissions and/or waste with the following efforts:

- Installing new technology at its LNG plant in 2005 that has reduced natural gas usage in its natural gas liquefaction process by ~90% and significantly reduced criteria pollutants
- Achieving energy reductions for electricity, heating and hot water by installing a Combined Heat and Power unit at PGW headquarters
- Installing Variable Frequency Drives for HVAC systems
- Compressed Natural Gas fleet vehicles.
- Water and wastewater management
- Field Operation GPS trip planning
- LED Retrofits
- Electronic waste recycling and paper reduction program
- Becoming a member of the Zero Waste Partnership<sup>114</sup>

Fourth, PGW is currently developing a sustainability program and has hired its first Director of

Sustainability.<sup>115</sup> Fifth, PGW is voluntarily participating in a diversification study, along with

---

<sup>112</sup> PGW St. No. 1-R at 9.

<sup>113</sup> PGW St. No. 1-R at 9.

<sup>114</sup> PGW St. No. 1-R at 9-10.



the City of Philadelphia, which will provide a roadmap for potential business model strategies that have revenue potential, will reduce carbon, and will maintain PGW's workforce.<sup>116</sup> Sixth, PGW is currently conducting a Greenhouse Gas (GHG) inventory, and when completed, PGW will study ways to reduce its inventory.<sup>117</sup> Finally, as the record demonstrates, PGW is exploring ways to purchase renewable natural gas and/or distribute it on its system.<sup>118</sup>

Mr. Moser also provided evidence of PGW's efforts to consider climate trends and environmental issues in its infrastructure planning. For example, Mr. Moser testified that PGW has studied gas quality specifications for renewable natural gas and has determined that PGW's distribution system and storage can accept renewable natural gas that meets these specifications. Mr. Moser also testified that PGW, in its main replacement planning, analyzes whether mains that otherwise should be replaced can be abandoned or resized because of reductions in demand. In this regard, Mr. Moser testified that PGW has abandoned 13.5 miles of cast iron main from 2004 to 2019 rather than replace it.<sup>119</sup> As such, the record makes clear that PGW has considered climate change and environmental issues in its infrastructure planning.

**c. The Environmental Advocates have conceded that they need to make their case elsewhere.**

As noted, after the Company's presentation in rebuttal testimony, Dr. Hausman and the Environmental Stakeholders appeared to soften their insistence on production of a CBP as a precondition to rate relief in this case. Now, apparently, "a holistic Climate Business Plan or

---

<sup>115</sup> PGW St. No. 1-R at 10.

<sup>116</sup> PGW St. No. 1-R at 10.

<sup>117</sup> PGW St. No. 1-R at 10.

<sup>118</sup> PGW St. No. 1-R at 10.

<sup>119</sup> PGW St. No. 7-RJ at 6.

simply issue-specific analytical studies” will do.<sup>120</sup> And “[e]ven if PGW is not required to produce such a plan at this time, PGW should still be required to study the stranded asset risk as part of its infrastructure planning process, and to monitor that risk as it may increase over time with further climate and regulatory developments.”<sup>121</sup> Nevertheless, problems remain, even with this seemingly more moderate approach.

Principal among them is the lack of recognized legal authority for the PUC to order a CBP, as detailed above, and the absence of established standards for factoring climate change into natural gas distribution company decision making recognized by Pennsylvania regulators.

In this case, Dr. Hausman provides no specifics of how PGW is expected to prepare the CBP that he recommends.<sup>122</sup> Climate change is an emerging concern and is being debated at all levels of government and industry. It would be unfair to force PGW to synthesize all of the science and proposed remedies before any of the larger discussion begins to sort itself out and achieves some degree of clarity. It is unrealistic to expect PGW to lead the debate and propose the solution before then. It is unfair and bad policy to convert this rate case into a referendum on the natural gas business and to force the City of Philadelphia “to eliminate the use of fossil fuels as thoroughly and as quickly as possible from our energy supply”<sup>123</sup> in the absence of any industry wide policy or determination. For all of these reasons, the Environmental Stakeholders’ demands should be rejected.

### **C. Revenue Requirement**

---

<sup>120</sup> SC St. No. 1-SR at 6.

<sup>121</sup> SC St. No. 1-SR at 6.

<sup>122</sup> SC St. No. 1 at 12 only lists the general “elements” of a CBP.

<sup>123</sup> PGW St. No. 12-RJ at 8.

PGW as a cash flow company must secure from rates the cash it needs to meet its expenses and obligations. There are a broad range of expenses that are incurred by PGW in order to provide service to its customers. PGW also has other obligations, such as debt service and debt service coverage, that require cash. The full range of these expenses and obligations are reflected in within PGW's financial projections (PGW Exhibit JFG-1A and JFG-2A).

Broadly speaking, PGW's cash requirements fall into four categories. First, PGW needs cash for operating expenses and to compensate for uncollectibles, since PGW must pay for basic day-to-day operations and maintenance activities from rates.<sup>124</sup> Second, PGW needs cash for debt service and debt service coverage.<sup>125</sup> Third, PGW has cash requirements beyond debt service. This cash, or internally generated funds, is used to fund construction projects<sup>126</sup> and pay for other obligations (as described in Section V.B.2 of this Brief). Fourth, PGW has the need for a level of unbudgeted cash reserves to help PGW deal with (a) situations where revenue can fall short of expenditures and (b) unexpected emergencies. PGW St. 2-R at 15 ("PGW incurs costs to provide the service (labor, materials, supplies, services, etc.) in advance of bills being rendered and revenue collected for providing the service. The timing of the costs necessary to run the business precede the timing of the receipt of revenues to cover those costs, which means a reserve of cash always must be available to handle basic day-to-day utility operations.").

The proposed revenue requirement is set forth in the Settlement.

---

<sup>124</sup> 52 Pa. Code § 69.2702(b). (The Commission has "the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses ...").

<sup>125</sup> 52 Pa. Code § 69.2702(b). (The Commission has "the subsidiary obligation to provide revenue allowances from rates adequate to cover its ... depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements ...").

<sup>126</sup> 52 Pa. Code § 69.2702(b). (The Commission has "the subsidiary obligation to provide revenue allowances from rates adequate to cover its ... [need for] 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.").

PGW's overall position on these recommendations is set forth in Sections V.A will not be restated here. Consistent with the common outline, the following parts address other issues related to PGW's revenue requirement.

**1. Pro Forma Expense Adjustments**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**2. Allowed Financial Metrics**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**a. Debt Service Coverage**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**b. Days of Cash**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**c. Debt to Total Capitalization**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**3. Overall Revenue Requirement Recommendation**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**D. Rate Structure/Cost of Service**

**1. Cost of Service Study**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**2. Revenue Allocation by Rate Class**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**3. Rate Design**

**a. Summary of Proposed Rate Design**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **b. Customer Charges**

The Joint Petitioners were able to reach a resolution of this issue. That being said, Environmental Stakeholders' witness Dr. Hausman opposed PGW's proposed increase in customer charges claiming that they would be harmful to low-income customers. Dr. Hausman also asserted that PGW's proposal would be at cross purposes with energy efficiency initiatives. Dr. Hausman further argued that fixed costs are only fixed in the short term and that the Company should be directed to build any approved rate increase into the volumetric charge for all customer classes.<sup>127</sup>

PGW witness Krenneth Dybalski refuted Dr. Hausman's assertion that the proposed rate increase will impede energy conservation efforts. First, Mr. Dybalski pointed out that PGW's cost of service study demonstrated that the residential customer related costs are actually \$26.54, almost 40% higher than the level of customer charge that PGW had proposed at the full \$70 million rate increase — \$19.25.<sup>128</sup> PGW witness Connie Heppenstall fully supported PGW's proposed increase in the Cost of Service Study she provided in this proceeding. While Dr. Hausman broadly asserted that fixed costs should be limited, neither he (nor any other party) addressed the revised calculation of the costs that were presented by Ms. Heppenstall.

Further, as Ms. Dybalski testified, the proposed customer charge will still only be a small percentage of the total proposed rate increase and, as such, will still provide an incentive for customers to save money by lowering energy usage. Mr. Dybalski explained:

For example, I have calculated the impact of PGW's proposals on a typical residential customer with usage of 75 Mcf per year in terms of the fixed vs variable portions of his/her bill. Under PGW's proposal, the total, annual bill for said customer will be \$1,328.20. Of that, only \$231.00

---

<sup>127</sup> SC St. No. 1 at 18-25.

<sup>128</sup> PGW St. No. 6-R at 5-6.

(17.4%) represents the fixed customer charge, whereas \$1,097.20 (82.6%) represents the variable portion. As this calculation shows, more than 80% of an average annual, residential bill is based on volumetric rates. As such, PGW's proposals should provide the necessary price signals and not impede energy conservation.<sup>129</sup>

As explained by Mr. Dybalski, the concern that the proposed increase in customer charge will impede energy conservation efforts is without merit. Dr. Hausman's assertion that fixed costs are only fixed in the short term and his recommendation for PGW to build any rate increase into its volumetric charges is inconsistent with utility costing principles, as well as Commission precedent and the rate structure of every Pennsylvania utility.

Finally, the proposed increase in customer charge agreed to in the Settlement (\$1.15 for Residential customers, phased in over 12 months) is eminently reasonable and fair, evidenced by the fact that the parties supporting or not opposing the Joint Petition were able to agree to this level as a reasonable compromise. The Environmental Stakeholders' unfounded opposition therefore should be rejected.

### **c. Rate IT Design**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **E. Customer Service**

### **1. General Customer Service**

---

<sup>129</sup> PGW St. No. 6-R at 6.

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **2. Low-Income Customer Service**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **3. Universal Service Programs**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **4. PGW's Liens and CRP Arrearage Forgiveness Cost Recovery**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **5. Language Access Considerations**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **6. Proposed Policy Changes**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.



**F. Tariff Revisions**

**1. New Service Programs**

**a. Continuation of the Technology and Economic Development Rider**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**b. Modifications to the Micro-Combined Heat and Power Incentive Program**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**c. Clarifications to Back-Up Service – Rate BUS**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**2. Gas Supplier Tariff Modifications**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

**G. Infrastructure Proposals**

**1. Main Replacement Program Cost**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **2. Pipeline Safety**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

## **3. Environmental Issues**

PGW addresses the environmental issues raised in this proceeding in Sections V.A-V.B of this Brief.

### **H. Miscellaneous Issues**

#### **1. Annual Meeting with Suppliers**

The Joint Petitioners were able to reach a resolution of this issue. The testimony of Dr. Hausman does not directly address this issue. PGW will respond to this issue, if the Environmental Stakeholders contest this issue.

#### **2. Other Issues**

No other issues were identified by PGW. PGW will respond to any “other issues” raised by the Environmental Stakeholders.

## **VI. CONCLUSION**

For all the foregoing reasons, PGW respectfully requests that Administrative Law Judges Darlene Heep and Marta Guhl and the Commission approve the rate increase and other proposals set forth in Supplement No. 128 to PGW’s Gas Service Tariff and Supplement No. 85 to PGW’s Supplier Tariff consistent with the Settlement, this Brief, the Proposed Findings of Fact

(Appendix A), the Proposed Conclusions of Law (Appendix B), and the Proposed Ordering Paragraphs (Appendix C).

Respectfully submitted,

*Daniel Clearfield*

---

Of Counsel:

Craig W. Berry, Esq.  
Senior Attorney  
Graciela Christlieb, Esq.  
Senior Attorney  
Legal Department  
Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122  
Tel (215) 684-6049  
Fax (215) 684-6798  
[Craig.Berry@pgworks.com](mailto:Craig.Berry@pgworks.com)  
[Graciela.Christlieb@pgworks.com](mailto:Graciela.Christlieb@pgworks.com)

Daniel Clearfield, Esq. (I.D. No. 26183)  
Carl Shultz, Esq. (I.D. No. 70328)  
Sarah C. Stoner, Esq. (I.D. No. 313793)  
Lauren M. Burge, Esq. (I.D. No. 311570)  
Kristine Marsilio, Esq. (I.D. No. 316479)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
717.237.6000; 717.237.6019 (fax)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)  
[kmarsilio@eckertseamans.com](mailto:kmarsilio@eckertseamans.com)

Dated: August 26, 2020

*Counsel for Philadelphia Gas Works*

**PROPOSED FINDINGS OF FACT**

1. Philadelphia Gas Works (“PGW” or “Company”) is a collection of real and personal assets used for distributing natural gas to retail gas customers owned by the City of Philadelphia (“City”). PGW St. 1 at 2; PGW Exhibit JFG-3 (Part 1) at 3, 6.
2. PGW is regulated by the Public Utility Commission as a city natural gas distribution company pursuant to 66 PA. C. S. § 102 and 2212.
3. In this base rate case, PGW originally requested an overall rate increase of \$70 million per year. PGW St. 1 at 1-2.
4. PGW’s fiscal year (“FY”) is from September 1 to August 31. *See* PGW St. 2 at 2, 4.
5. PGW must satisfy its PGW’s bond ordinance covenants to remain financially viable. PGW St. 1 at 4; PGW St. 2 at 3-4, 13, 16-21.
6. Without sufficient rate relief, PGW will be on the edge of not being able to meet its debt service coverage requirements in the FPFTY and will violate debt service coverage in FY 2022. PGW Exhibit JFG-1A (debt service coverage, line 23).
7. At current rates, the Company would have just \$45.4 million of year-end available liquidity, which equates to 33.9 days of expenses. PGW St. No. 2 at 14-15; PGW St. 2-R at 15.
8. Without rate relief, PGW’s cash balances are projected to plunge and be negative in FY 2022. PGW Exhibit JFG-1A (cash flow, line 23).
9. In the Settlement, the Joint Petitioners<sup>130</sup> have resolved nearly all issues in the case, with the exception of the issues raised by the Clean Air Council and Sierra Club/PA Chapter (collectively, the “Environmental Stakeholders”). Settlement at 1; Settlement at ¶¶ 13, 14.
10. In the Settlement, the Joint Petitioners have agreed to a base rate increase, an allocation of that revenue increase to the rate classes, and a rate design for all rate classes to recover the portion of the rate increase allocated to such classes. Specifically, the Joint Petitioners have proposed that rates be designed to produce an additional \$35 million in annual base rate operating revenues phased in, and fully charged starting in January 2022 instead of the Company’s filed increase request of \$70 million. Settlement at ¶ 15.

---

<sup>130</sup> The Joint Petitioners are the Commission’s Bureau of Investigation and Enforcement (“BIE” or “I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”). The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania do not oppose the Settlement. Direct Energy Services, Inc. takes no position on the Joint Petition.

## Appendix A

11. The Joint Petitioners are in agreement that the Settlement is in the public interest. Settlement at ¶¶ 13, 14, 47-48.
12. Increasing the customer charge is fully supported by PGW's Cost of Service Study prepared by PGW witness Heppenstall. PGW St. 1 at 7-8; PGW St. 5 at 5; PGW St. 6 at 5-10.
13. PGW's Cost of Service Study determined that the fixed customer costs for Residential customers was \$26.54. PGW St. 5-R at 7. This is substantially higher than PGW's proposed customer charge at the full \$70 million rate increase of \$19.25. PGW St. No. 6-R at 5-6.
14. Similar costs for other customer classes, substantially in excess of PGW's proposed customer charges were also computed in PGW's Cost of Service Study. PGW St. 6-R at 5-6; PGW Exhibit CEH-2.
15. The Environmental Stakeholders did not address or revise the calculation of the costs that were presented by Ms. Heppenstall in PGW's Cost of Service Study. PGW St. No. 6-RJ at 1-2.
16. The Settlement proposes that PGW be permitted to increase its customer charges. For residential customers the customer charge would increase in phases, on the same schedule as the overall rate increase, with the charge increasing in total by \$1.15 per month. Settlement at ¶¶ 15, 24.
17. The Environmental Stakeholders continue to oppose any increase in the customer charge. SC St. No. 1 at 18-25.
18. The Environmental Stakeholders witness Hausman expressed concern that increasing the customer charge would be harmful to low-income customers. SC St. No. 1 at 18-25. Dr. Hausman also asserted that PGW's proposal would be at cross purposes with energy efficiency initiatives. *Id.*
19. The proposed customer charge is well below the actual customer costs computed in PGW's Cost of Service Study and will still only be a small percentage of the total proposed rate increase. As such, there will continue to be a substantial incentive for customers to save money by lowering energy usage. *See* PGW St. No. 6-R at 6.
20. PGW's proposal, as modified by the Settlement, provides the necessary price signals and will not impede energy conservation. *See* PGW St. No. 6-R at 6.
21. The Environmental Stakeholders claim that PGW is acting imprudently by engaging in infrastructure replacement. SC St. No. 1-SR at 7.
22. PGW did not propose an infrastructure improvement plan in this proceeding. PGW St. No. 7-RJ at 1-2.

## Appendix A

23. PGW's infrastructure improvement plan – which consists entirely of replacing cast iron main and bare steel services – was proposed and approved by the Commission several years ago in PGW's Long Term Infrastructure Improvement Plan. PGW St. No. 7-RJ at 1-2.
24. In this proceeding, PGW requests recognition of the incremental cost of making improvements identified in its Long Term Infrastructure Improvement Plan, which represents a relatively small portion of the rate increase – some \$5 million of \$70 million. PGW St. No. 7-RJ at 1-2; PGW Late Filed Exhibit No.1
25. In 2015, the Commission's Staff, in an extensive report, explored ways to accelerate PGW's pipeline replacement. *Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program*, April 21, 2015.
26. The Commission has stated that "PGW's aging gas distribution infrastructure poses significant safety and reliability issues...." *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, P-2015-2501500, Opinion and Order entered January 28, 2016 at 41.
27. The Environmental Stakeholders' witness Ezra Hausman acknowledged that "the cast iron main poses a hazard over time and should be retired" and that "there are leaks which pose a danger to the public and PGW should be addressing them in a way that's acceptable to the Commission and consistent with long-term provision of reliable and low cost service." Tr. at 396.
28. Unprotected bare steel services are prone to multiple small leaks which are difficult to isolate and to address, and a failure to systematically replace unprotected bare steel services would result in an unacceptable level of leakage and increased safety risks. PGW St. No. 7-RJ at 4-5.
29. PGW is obligated to engage its current main replacement program, as mandated in its Long Term Infrastructure Improvement Program, and failure to do so would create an unacceptable safety risk to PGW's customers. PGW St. No. 7-RJ at 5.
30. The Environmental Stakeholders recommend that the Commission should direct PGW to produce a Climate Business Plan. SC St. No. 1, 1-SR.
31. The goal for the Climate Business Plan, as stated by the Environmental Stakeholders, "would be to reduce and ultimately cease selling fossil fuels, and to eliminate GHG [greenhouse gas] emissions from the Company's operations." SC St. No. 1 at 12.
32. The Climate Business Plan is envisioned by the Environmental Stakeholders as a "going-out-of-the-natural-gas-business" plan, since "[d]oing otherwise risks creating burdensome stranded assets as the Company ultimately is forced to dramatically reduce, and then eliminate, gas sales." SC St. No. 1 at 11.

## Appendix A

33. The Environmental Stakeholders requests are in effect a demand that, at some point in the future, PGW abandon gas service and that all of its customers be forced to convert to other energy sources – chiefly electricity. Tr. at 406-408.
34. In this proceeding, the ALJs have held: “These proceedings are not the place to determine whether PGW should change its business model to electrification.” Order on PGW’s Motion in Limine Regarding the Direct Testimony of Ezra D. Hausman, Ph.D. Submitted by the Environmental Stakeholder (July 7, 2020).
35. The Environmental Stakeholders argue that a rate case moratorium should be imposed until the Commission approves a Climate Business Plan created by PGW. SC St. No. 1 at 6.
36. The Environmental Stakeholders advocate that following Commission approval of the Climate Business Plan, PGW could seek rate relief only to the degree it is consistent with the Climate Business Plan. SC St. No. 1 at 4.
37. The Environmental Stakeholders sole legal support for its recommended Climate Business Plan, Executive Order Number 2019-01 and Philadelphia City Council Resolution No. 190728, are “aspirational” in nature. PGW St. No. 12-R at 35.
38. PGW challenged the arguments of the Environmental Stakeholders on behalf of the Climate Business Plan (and the rate case moratorium) as unsupported, unreasonable, unjustified and beyond the legal authority of the PUC to require. *See, e.g.*, PGW St. 1-R; PGW St. 12-R.
39. The rate case moratorium recommendation by the Environmental Stakeholders is completely outside of the constitutionally-required zone of reasonableness and would fail to establish “just and reasonable rates.” PGW St. 1-R; PGW St. 12-R, 12-RJ. *See also* PGW St. 2, 2-R, 2-RJ; PGW St. 3, 3-R; PGW St. 4, 4-R.
40. The recommendations of the Environmental Stakeholders do not provide sufficient earnings of debt service coverage cushion to assure that PGW will avoid a technical default. PGW St. 2, 2-R, 2-RJ; PGW St. 3, 3-R; PGW St. 4, 4-R.
41. The Pennsylvania Department of Environmental Protection (“DEP”) is currently reviewing a proposed rulemaking directed at regulating methane emissions from the oil and gas industry. Control of VOC Emissions from Oil and Natural Gas Sources, 50 Pa.B. 2633 (proposed May 23, 2020) (to be codified at 25 Pa. Code Chapters 121 and 129).
42. The use of natural gas, in combination with renewable energy and efficiency, has contributed to energy-related carbon dioxide emissions declining in the United States to the lowest levels in nearly twenty-five years. PGW St. No. 1-R at 6.
43. On a national basis, while the use of natural gas has grown, carbon dioxide emissions from the residential, commercial and industrial sectors have not changed materially due to “customer conservation, stronger energy efficiency standards, and the efforts of natural

## Appendix A

gas distribution companies to promote energy efficiency, such as PGW's energy efficiency programs." PGW St. No. 1-R at 6.

44. Methane emissions from natural gas distribution systems have declined 73% since 1990, even as natural gas distribution companies added more than 760,000 miles of pipeline. PGW St. No. 1-R at 6-7.
45. Evidence demonstrates that, from wellhead to burner tip, natural gas is 91% energy efficient, and households with natural gas versus households with all-electric appliances produce 41% less greenhouse gas emissions. PGW St. No. 1-R at 7-8.
46. Abandoning PGW's natural gas distribution systems would eliminate the ability for PGW to use its infrastructure to deliver other types of energy such as renewable energy, storage and the delivery of renewable gases derived from biogenic sources. PGW St. No. 1-R at 8.
47. Other technologies are being developed like "power to gas" which can utilize excess renewable electricity to create renewable hydrogen and renewable natural gas. PGW St. No. 1-R at 8.
48. PGW's pipeline replacement plan and efforts to reduce gas leaks and methane emissions go hand-in-hand. PGW St. No. 1-R at 7.
49. Nationwide, 90% of emission reductions from distribution systems since 1990 are due to pipeline replacements. PGW St. No. 1-R at 7.
50. For PGW, a reduction in gas leaks and methane reductions can be attributed to PGW's "commitment to systematically replacing the facilities that are most at risk of leaking and using a sophisticated main replacement prioritization model to identify the facilities that should be removed." PGW St. No. 1-R at 7.
51. Replacing facilities that are most at risk of leaking and using a sophisticated main replacement prioritization model not only make PGW's system safer and more reliable, but also result in the reduction of gas leaks, which reduces methane emissions. PGW St. No. 1-R at 7.
52. PGW has voluntarily implemented robust energy efficiency programs which have been approved by the Commission. PGW St. No. 1-R at 9.
53. PGW's cast iron main replacement program and service replacement program have decreased methane emissions by 9,500 metric tons since 1991. PGW St. No. 1-R at 9.
54. PGW has also voluntarily joined the EPA's Methane Challenge Program, which is designed to reduce methane emissions. PGW St. No. 1-R at 9.
55. PGW has reduced emissions and/or waste with the following efforts: (1) Installing new technology at its LNG plant in 2005 that has reduced natural gas usage in its natural gas liquefaction process by ~90% and significantly reduced criteria pollutants; (2) Achieving



## Appendix A

energy reductions for electricity, heating and hot water by installing a Combined Heat and Power unit at PGW headquarters; (3) Installing Variable Frequency Drives for HVAC systems; (4) Compressed Natural Gas fleet vehicles; (5) Water and wastewater management; (6) Field Operation GPS trip planning; (7) LED Retrofits; (8) Electronic waste recycling and paper reduction program; and (9) Becoming a member of the Zero Waste Partnership. PGW St. No. 1-R at 9-10.

56. PGW is currently developing a sustainability program and has hired its first Director of Sustainability. PGW St. No. 1-R at 10.
57. PGW is voluntarily participating in a diversification study, along with the City of Philadelphia, which will provide a roadmap for potential business model strategies that have revenue potential, will reduce carbon, and will maintain PGW's workforce. PGW St. No. 1-R at 10.
58. PGW is currently conducting a Greenhouse Gas (GHG) inventory, and when completed, PGW will study ways to reduce its inventory. PGW St. No. 1-R at 10.
59. PGW is exploring ways to purchase renewable natural gas and/or distribute it on its system. PGW St. No. 1-R at 10.
60. PGW has studied gas quality specifications for renewable natural gas and has determined that PGW's distribution system and storage can accept renewable natural gas that meets these specifications. PGW St. No. 7-RJ at 5.
61. Based on main replacement planning and analysis as to whether mains that should otherwise be replaced can be abandoned or resized because of reductions in demand, PGW has abandoned 13.5 miles of cast iron main from 2004 to 2019 rather than replace it. PGW St. No. 7-RJ at 6.

**PROPOSED CONCLUSIONS OF LAW**

1. PGW is a “city natural gas distribution operation” as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. §102.
2. PGW’s rates must meet the constitutional and statutory standard of being “just and reasonable.” *PUC v. PGW*, Docket No. R-00006042, Opinion and Order entered October 4, 2001 at 25, *affirmed by, City of Philadelphia v. Pa. Pub. Util. Comm’n*, 829 A.2d 1241 (Pa. Commw. 2003) (The “just and reasonable” standard in Section 1301 is coextensive with the federal constitutional standard for determining utility rates).
3. For rates to meet the just and reasonable standard, they must remain within a zone of reasonableness. *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968) (“any rate selected ... from the broad zone of reasonableness ... cannot be attacked as confiscatory.”) (emphasis added).
4. Rates outside of that zone are confiscatory. *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968).
5. The burden of proof in a ratemaking proceeding is on the public utility. See 66 Pa.C.S. § 315(a); *NRG Energy, Inc. v. Pa. Pub. Util. Comm’n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at \*29 (Pa. Commw. Ct. June 2, 2020); *Brockway Glass v. PUC*, 437 A.2d 1067, 1070 (Pa. Commw. 1981).
6. A party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. See, e.g., *PUC v. PECO Energy Co.*, Docket No. R-891364, et al, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *PUC v. Breezewood Telephone Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).
7. A party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof regarding that issue. See Section 332(a) of the Code, 66 Pa.C.S. § 332(a) (provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding); *NRG Energy, Inc. v. Pa. Pub. Util. Comm’n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at \*29-30 (Pa. Commw. Ct. June 2, 2020).
8. Public utilities are not, however, required to affirmatively defend claims that have gone unchallenged. See *Allegheny Ctr. Assoc.’s v. PUC*, 570 A.2d 149, 153 (Pa. Commw. 1990).
9. The Company has sustained its burden of proving that it should be granted an increase in rates. 66 Pa.C.S. §1308(d).
10. The rates, terms and conditions contained in the Philadelphia Gas Works’ base rate increase filing – as modified by the Settlement – are just, reasonable and in the public interest and are in accord with the rules and Regulations of the Commission and the

## Appendix B

provisions of the Public Utility Code. See 66 Pa.C.S. § 315(a); 52 Pa. Code §§ 69.2703(a), (b).

11. The Environmental Stakeholders have not met their burden of showing that there should not be any increase in the customer charge.
12. The Joint Petition for Partial Settlement is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Commw. 2006).
13. The Environmental Stakeholders have not met their burden of showing that PGW should be directed to produce a Climate Business Plan.
14. It is axiomatic that the Commission has only the power and jurisdiction expressly conferred or necessarily implied to it by the Legislature. See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).
15. The Commission must act within, and cannot exceed, that jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).
16. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy, and jurisdiction cannot be conferred where none exists. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Commw. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993); *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).
17. The Commission lacks jurisdiction over environmental issues. *Rovin, D.D.S. v. Pa. Pub. Util. Comm'n*, 502 A.2d 785 (Pa. Commw. 1986) (“*Rovin*”) (enforcement of environmental statutes is specifically vested in the Pennsylvania Department of Environmental Protection and the Federal Environmental Protection Agency); *Pickford v. PUC*, 4 A.3d 707 (Pa. Commw. Ct. 2010) (“*Pickford*”) (customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects of chloramines under permits issued by the Department of Environmental Protection and, thus, outside the Commission’s jurisdiction); *Country Place Waste Treatment Company, Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Commw. 1995) (“*Country Place Waste Treatment Company*”) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).
18. The Commission lacks the legal authority to direct PGW to produce a Climate Business Plan. *Id.* See also *Funk v. Wolf*, 144 A.3d 228 (Pa. Commw. 2016), where the Commonwealth Court found that the Commission could not make decisions based upon environmental considerations or implement regulations addressing climate change.

## Appendix B

19. The Commission would “act *ultra vires*” if it made the determinations recommended by the Environmental Stakeholders and would “usurp the authority” of DEP.
20. There is nothing in the Public Utility Code that authorizes the Commission to make rate case determinations based on the perceived future effects of greenhouse gases or global warming.
21. The Environmental Stakeholders have not sustained their burden of showing that no rate increase should be allowed until Philadelphia Gas Works compiles and presents a Climate Business Plan.
22. The Environmental Stakeholders have not sustained their burden of showing that PGW’s infrastructure modernization efforts to replacing cast iron main and bare steel services are imprudent or unreasonable.
23. The Commission lacks the legal authority to make rate case determinations based on the perceived future effects of greenhouse gases or global warming. 66 Pa.C.S. § 2212(e); 52 Pa. Code §§ 69.2701-2703. *See also* 66 Pa.C.S. § 1301, 1501; *Butler Township Water Co. v. Pa. Pub. Util. Comm’n*, 473 A.2d 219, 221 (1984); *T.W. Phillips Gas and Oil Co. v. Pa. Pub. Util. Comm’n*, 474 A.2d 355 (1984).

**PROPOSED ORDERING PARAGRAPHS**

THEREFORE, IT IS ORDERED:

1. That the Joint Petition for Partial Settlement filed on August 26, 2020 by Philadelphia Gas Works (“PGW” or the “Company”), the Bureau of Investigation and Enforcement, (“BIE” or “I&E”), the Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), (collectively, the “Joint Petitioners”), with Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN, et al.”) And the Coalition For Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) not opposing the settlement, is approved without modification.
2. That Philadelphia Gas Works shall be permitted to increase annual operating revenues in the total amount of \$35 million consistent with the rates, rules and regulations set forth in the Joint Petition for Partial Settlement. That \$35 million in annual base rate operating revenues shall be phased in, as follows: (1) \$10 million for service rendered on or after January 1, 2021; (2) an additional \$10 million for service rendered on or after July 1, 2021; and (3) \$15 million for service rendered on or after January 1, 2022.
3. That upon entry of this Opinion and Order, Philadelphia Gas Works shall be permitted to file tariff supplements, upon less than statutory notice, and pursuant to the provisions of 52 Pa. Code §§ 53.31 and 53.101, to be effective for service rendered on and after (1) January 1, 2021 for the first phase (\$10 million) of the total rate increase; (2) July 1, 2021 for the second phase (\$10 million) of the total rate increase; and (3) January 1, 2022 for the third phase (\$15 million) of the total rate increase.
4. That the proposals of the Environmental Stakeholders that PGW’s rate increase should be denied on the ground that PGW’s infrastructure modernization program allegedly inadequately accounts for potential future mandates relating to climate change be denied.
5. That the proposals of the Environmental Stakeholders regarding the production of a climate business plan by Philadelphia Gas Works be denied.
6. That the proposals of the Environmental Stakeholders regarding the Philadelphia Gas Works’ customer charges be denied.
7. That the Formal Complaint of the Office of Consumer Advocate, filed at Docket No. C-2020-3019161, be dismissed and marked closed.
8. That the Formal Complaint of the Office of Small Business Advocate, filed at Docket No. C-2020-3019100, be dismissed and marked closed.
9. That the Formal Complaint of the Philadelphia Industrial And Commercial Gas Users Group, filed at Docket No. C-2020-3019430, be dismissed and marked closed.
10. That Philadelphia Gas Works shall comply with all directives, conclusions and recommendations contained in the Commission’s Opinion and Order that are not the

## Appendix C

subject of individual ordering paragraphs as fully as if they were the subject of specific ordering paragraphs.

11. That upon acceptance and approval by the Commission of the tariff supplements and proof of revenues filed by the Philadelphia Gas Works in compliance with this Opinion and Order, the investigation at R-2020-3017206 be marked closed.