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	:	C-2020-3019430
Gas User Group	:	
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

RECOMMENDED DECISION

Before
Darlene Davis Heep
Administrative Law Judge

Marta Guhl
Administrative Law Judge

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I. INTRODUCTION

In this base rate proceeding filed by Philadelphia Gas Work (PGW or Company), with the Pennsylvania Public Utility Commission (Commission), pursuant to 66 Pa. C.S. § 1308(d), this decision recommends that the Commission approve a Joint Petition for Partial Settlement with the certain modifications, as discussed more fully herein. We find the terms embodied in the Joint Petition, with modifications, are just and reasonable, supported by substantial evidence and its approval is in the public interest.

The proposed rate increase is inopportune and calls for raised scrutiny under the "just and reasonable" standard in light of the uncertainty of the COVID-19 pandemic recovery and questions raised in testimony as to whether PGW requires a rate increase in the short term. PGW originally sought an increase of $70 million in additional annual revenues, or a 10.5% overall increase, effective April 28, 2020. On May 12, 2020, PGW filed a tariff supplement voluntarily extending the suspension period to December 4, 2020.

Under the Partial Settlement, a $35 million dollar base rate increase is proposed with phased-in 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) $15 million for service rendered on or after January 1, 2022. The Settlement also 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. This Settlement also includes limited COVID-19 relief, and changes to the Company's low-income program and data collection and reporting requirements.

The following parties have entered into the Partial Settlement: PGW, the Commission's Bureau of Investigation and Enforcement (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 following parties do not oppose the Partial Settlement: 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).

The following parties oppose the Partial Settlement: Clean Air Council (the Council), and Sierra Club/PA Chapter (Sierra Club) (collectively "the Environmental Stakeholders or Stakeholders). The Stakeholders ask the Commission to deny PGW's requested rate increase as insufficiently supported by the evidence. Specifically, they contend that PGW has not shown that investments in accelerated infrastructure replacement are prudent, necessary, and consistent with public interest.

We recommend that the Commission approve the Partial Settlement with the following modifications: (1) that the start of the phased-in rate increases agreed to in the Joint Petition be delayed by six months until July of 2021; (2) that PGW should not file a general rate increase pursuant to 66 Pa.C.S. § 1308(d) any sooner than January 1, 2023, absent emergency relief, tariff changes or as authorized by Commission order or industry-wide changes in regulatory policy which affect PGW's rates; and (3) that no later than 90 days following entry of the Final Order in this matter, and biannually through 2022, PGW must meet with the Commission's Pipeline Safety Division to review PGW's increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks.

With respect to the remaining litigated issues raised by the Environment Stakeholders, we recommend that the Commission reject the claims of the Stakeholders that PGW's requested rate increase is not sufficiently supported by the evidence and that the Commission should order PGW to submit a Climate Business Plan. However, because we find that the Stakeholders met their burden in establishing that the Commission may consider environmental issues when determining whether a rate increase is just and reasonable, we recommend that the Commission direct PGW to include in its next rate increase request information on PGW's planning regarding the impact of warming trends on PGW's future infrastructure projects and costs.

Proposed modification to the Partial Settlement arise out of the following: that we are in the midst of recovery from the COVID-19 pandemic, including the economy; that the actual increase will likely be more than $35 million given the trigger of increases in concurrent programs; that many of the provisions in the Settlement do not benefit the majority of PGW regular standard customers, including temporary COVID-19 relief; that previous increases have not resulted in fewer leaks in the PGW system; and that there are questions as to whether PGW urgently requires an increase to maintain its financial rating and continue its pipe replacement program.

However, the Commission has expressed concerns about the safety of the PGW system, PGW continues to experience extraordinary leaks in its infrastructure and there was a gas explosion in December of 2019, which resulted in two fatalities and is under investigation by the Commission. Therefore, it is recommended that the Commission approve the Partial Settlement with the modifications.

II. HISTORY OF THE PROCEEDING

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 PGW's Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 85) to become effective April 28, 2020, seeking an increase of $70 million (10.5%) in additional annual revenues. At that time, PGW also filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2020 (its fiscal year) in this proceeding, Docket Number P-2020-3018975.

By Order entered April 16, 2020, (*Suspension Order*), the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase and referred this matter to the Office of Administrative Law Judge. The *Suspension Order* did not consider the Petition for Waiver. This matter was assigned to the undersigned judges.

On March 6, 2020, OSBA filed a Complaint, Docket Number C-2020-3019100.

On March 10, 2020, CAUSE-PA filed a Motion to Intervene.

On March 11, 2020, I&E filed a Notice of Appearance.

On March 12, 2020, OCA filed a Complaint, Docket Number C-2020-3019161.

On March 19, 2020, Direct Energy Services, Inc. (Direct Energy) filed a Petition to Intervene.

On March 26, 2020, the Commission issued an Order and Opinion at Docket No. P-2020-3018867, allowing PGW to implement the approved provisions of its January 6, 2020 filing relative to its 2017-2022 Universal Service and Energy Conservation Plan as a Pilot Program.

On April 7, 2020, PICGUG filed a Complaint, Docket Number C-2020-3019430.

On April 10, 2020, TURN *et al*. filed a Petition to Intervene.

On April 16, 2020, the undersigned judges issued a Prehearing Order which, *inter alia*, scheduled a prehearing conference for May 5, 2020.

On April 23, 2020, counsel for PGW filed a motion for admission *pro hac vice* of Craig Berry, Esquire, to appear on behalf of PGW.

On April 29, 2020, I&E filed an Expedited Motion to Extend the Statutory Suspension Period. I&E sought an order granting an extension of the statutory suspension period arising under 66 Pa. C.S. § 1308(d) until January 14, 2021, due to the disaster emergency interruption of the normal operations of the Commission as a result of the coronavirus pandemic.

On May 4, 2020, OCA filed an Answer in Support of the Expedited Motion of I&E to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission.

On May 5, 2020, PGW filed an Answer in opposition to I&E's Expedited Motion to Extend the Statutory Suspension Period.

Also, on May 5, 2020, a Telephonic Prehearing Conference was held as scheduled. During the prehearing conference, the litigation schedule, discovery, extension of the statutory period, public input hearings and the pending Petitions to Intervene were discussed. During the Prehearing Conference, PGW voluntarily agreed to extend the statutory suspension period.

On May 12, 2020, PGW filed a Tariff Supplement voluntarily extending the suspension period to December 4, 2020.

Also, on May 12, 2020, TURN *et al.* moved for the admission *pro hac vice* of Kintéshia Scott, Esquire, to appear as counsel for TURN *et al.* in this proceeding.

On May 13, 2020, a Prehearing Order was issued. The Prehearing Order granted the Petitions to Intervene of CAUSE-PA, Direct Energy and TURN *et al*., and granted the Motion for *Pro Hac Vice* Admission of Craig Berry. Further, the procedural schedule and discovery matters were addressed. This Order also consolidated with this proceeding the PGW Petition, Docket Number P-2020-3018975, seeking waiver of the application of the statutory definition of FPFTY to permit PGW to use a FPFTY beginning in September 1, 2020 and granted Petition for the waiver. Finally, this Order scheduled Public Input Hearings for June 2-3, 2020 and Evidentiary Hearings for July 28-30, 2020.

On May 15, 2020, a Corrected Prehearing Order was issued, adjusting discovery deadlines.

A Public Comments of Individuals in Opposition to the Rate Case file was created and placed in the record by the Secretary's Bureau on May 15, 2020.

On May 22, 2020, Environmental Stakeholders filed a Petition to Intervene which was granted, over the opposition of PGW, by Order dated June 1, 2020.

On May 26, 2020, an Order was issued, grating the Motion for Admission *Pro Hac Vice* of Kintéshia Scott, Esquire on behalf of TURN *et al*.

On June 2 and 3, 2020, a total of four telephonic public input hearings were held at which a total of 25 persons including members of the public and Pennsylvania legislators provided testimony.

On June 3, 2020, State Senator Anthony Williams filed a letter in Opposition to the Rate increase.

On June 12, 2020, Environmental Stakeholders filed a Motion for Admission *Pro Hac Vice* of Devin McDougall, which was granted by Order June 22, 2020. Also, on June 12, 2020, Environmental Stakeholders filed a Motion to Dismiss Objections [of PGW] and Direct Answers to Interrogatories of the Environmental Stakeholders. PGW filed an Answer in opposition to the Motion to Dismiss of the Environmental Stakeholders on June 15, 2020.

On June 23, 2020, an order was issued admitting into the record the written statements of Public Input hearing witnesses Meenal Ravel and State Senator Sharif Street.

On June 24, 2020, PGW filed a Motion in Limine Regarding Testimony Submitted by the Environmental Stakeholders.

On June 25, 2020, PGW filed two motions: a Motion in Limine Regarding Certain Portions of Testimony Submitted by TURN *et al*., regarding Universal Service

Programs; and a Motion in Limine Regarding Certain Portions of Testimony Submitted by the Office of Consumer Advocate Regarding Universal Service Programs.

During a hearing on June 25, 2020, we granted in part and denied in part the Environmental Stakeholders' Motion to Dismiss.

On June 30, 2020 CAUSE-PA, Environmental Stakeholders, OCA and TURN *et al.* filed Answers to PGW's Motions in Limine.

On July 2, 2020, PGW filed a Motion to Dismiss the Objections of Environmental Stakeholders and Compel Responses to PGW's Interrogatories.

Also, on July 7, 2020, an Order was issued on PGW's Motion in Limine Regarding Environmental Stakeholders, granting the Motion in part and denying the Motion in part.

On July 8, 2020, an Order was issued granting in part and denying in part the PGW Motions in Limine regarding TURN *et al.* and OCA. The Motions were granted with respect to striking testimony related to specific language access requirements under the Civil Rights Act of 1964 and the Philadelphia Home Rule Charter.

On July 9, 2020, Environmental Stakeholders filed an Answer PGW's Motion to Dismiss the Objections of the Environmental Stakeholders and Compel Responses to Philadelphia Gas Works' Interrogatories.

On July 10, 2020, PGW filed a letter stating that it would present the testimony of the following additional witnesses: Denise Adamucci, Esquire; Bernard Cummings; H. Gil Peach, Ph.D., and former PUC Commissioner James H. Cawley, Esquire.

On July 15, 2020, and July 21, 2020, TURN *et al*., and the OCA, respectively, filed Petitions for Interlocutory Review and Answer to Material Questions seeking Commission review of the July 8, 2020 Order on PGW's Motion in Limine.

On July 22, 2020, Environmental Stakeholders filed a Motion to Dismiss Objections and to Compel Answers to the Environmental Stakeholders' Set I of Interrogatories Directed to Philadelphia Gas Works. PGW filed an Answer to the Motion on July 22, 2020.

On July 23, 2020, the Environmental Stakeholders filed a Motion in Limine to Exclude Portions of the Rebuttal Testimony of Philadelphia Gas Works' Witness Mr. James Cawley.

On July 24, 2020, the parties advised that they were attempting to resolve all or most of the issues and requested that the hearing scheduled for July 28, 2020, be cancelled and that the hearing start on July 29, 2020. That request was granted.

On July 27, 2020, PGW filed an Answer in Opposition to the Environmental Stakeholders' Motion in Limine to Exclude Portions of the Rebuttal Testimony of Philadelphia Gas Works' Witness Mr. James Cawley and a Brief in Opposition to the interlocutory review petitions.

On July 27, 2020, OCA, TURN *et al.* and CAUSE-PA filed briefs in support of the petitions for interlocutory review. PGW filed briefs in opposition.

An Evidentiary Hearing was held on July 29, 2020. During the hearing, the Motion to Exclude testimony of Mr. James Cawley was denied. The hearing was completed on July 29, 2020 and the July 30, 2020 hearing date was cancelled.

On August 6, 2020, the Commission granted the Petitions for Interlocutory Review and Answer to Material Question filed by TURN *et al.* and OCA, stating in its Opinion and Order as follows:

> Accordingly, we find the direct testimony at issue, offered by the witnesses of the OCA and TURN *et al*, to be relevant evidence, and its exclusion to be reversable legal error. We note that our determination is limited to the finding that the evidence is relevant and must be admitted. We make no determination as to the weight the ALJs are to ascribe to the evidence.
>
> Further, we expressly agree with the ALJs and PGW to the extent that we concur that the Commission has *no jurisdiction* to decide whether the service provided by PGW would be in violation of the PHRC or Title VI, and the ALJs are not to decide that question on the remand.

On August 10, 2020, in accordance with the Commission's August 6, 2020 Opinion and Order, an Order was issued directing TURN *et al.* and OCA to file amended testimony by August 17, 2020.

Several parties requested a change in the litigation schedule and the opportunity to respond to the amended testimony. The parties were directed to provide a joint proposed schedule. On August 12, 2020, an Order on the Joint Amended Briefing and Testimony Schedule was issued.

The parties advised on August 18, 2020, that they were close to partial settlement. The parties were given a revised litigation schedule with extensions in case of settlement.

On August 19, 2020, the parties advised that they had reached a settlement except for the following issues raised by Environmental Stakeholders, framed by PGW as follows:

> **Rate Increase**: Whether PGW's rate increase should be denied because its infrastructure modernization program inadequately accounts for potential future mandates related to climate change.
>
> **Climate Business Plan**: Whether 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.

Customer Charges: Whether any increase in the customers charges should be granted.[1]

On August 26, 2020, the Joint Petition for Partial Settlement was filed by PGW, I&E, OCA, OSBA, and PICGUG (collectively, "Joint Petitioners"). TURN, *et al* and CAUSE-PA do not oppose the Partial Settlement. Each settling party submitted Statements in Support of the Partial Settlement.

PGW and Environmental Stakeholders filed Main Briefs on August 26, 2020. Reply Briefs were filed by PGW, Environmental Stakeholders and I&E on September 2, 2020. The record in this proceeding consists of the following:

- Direct Testimony of Jeffry Pollock-PICGUG Statement No. 1, Exhibits (JP-1)-(JP-7)
- Rebuttal Testimony of Jeffry Pollock-PICGUG Statement No. 1R, Exhibits (JP-8)-(JP-9)
- Surrebuttal Testimony of Jeffry Pollock-PICGUG Statement No. 1S, Exhibits-(JP-10)-(JP-12)
- Direct Testimony and Exhibits of Harry S. Geller-TURN et al. Statement No. 1 (Revised)
- Surrebuttal Testimony of Harry S. Geller -TURN et al. Statement No. 1SR
- Joint Stipulation of Philadelphia Gas Works and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia
- Direct Testimony of Ethan Cline-I&E Statement No. 1
- Rebuttal Testimony of Ethan Cline-I&E Statement No. 1-R, I&E Exhibit No. 1-R
- Surrebuttal Testimony of Ethan Cline-I&E Statement No. 1-SR
- Direct Testimony of Anthony Spadaccio-I&E Statement No. 2
- Surrebuttal Testimony of Anthony Spadaccio-I&E Statement No 2-SR
- Direct Testimony of Scott Orr-I&E Statement No. 3
- Surrebuttal Testimony of Scott Orr-I&E Statement No. 3-SR
- Direct Testimony of Scott J. Rubin-OCA Statement No. 1,OCA Appendix A, OCA Exhibits SJR-1-SJR-6
- Surrebuttal Testimony of Scott J. Rubin-OCA Statement No. 1-S, OCA Exhibits SJR-5S-SJR-10S
- Direct Testimony of Mark E. Garrett-OCA Statement No. 2, OCA Appendix A, OCA Exhibits MEG-1-MEG-5.1-5.8

[1] Joint Petition at 17-18.

- Surrebuttal Testimony of Mark E. Garrett-OCA Statement No 2-S
- Direct Testimony of David S. Habr-OCA Statement No. 3, OCA Exhibits DSH-1-DSH-6
- Surrebuttal Testimony of David S. Habr-OCA Statement No. 3-S, OCA Exhibits DSH-1-SR-DSH-5-SR
- Direct Testimony of Jerome D. Mierzwa-OCA Statement No. 4, OCA Exhibit JDM-1
- Rebuttal Testimony of Jerome D. Mierzwa-OCA Statement No. 4-R
- Surrebuttal Testimony of Jerome D. Mierzwa-OCA Revised Statement No. 4-S, OCA Exhibit JDM-1S
- Direct Testimony of Roger D. Colton-OCA Revised Statement No. 5, OCA Exhibits RDC-1-RDC-2, OCA Appendix A
- Surrebuttal Testimony of Roger D. Colton-OCA Statement No. 5-S, OCA Exhibit RDC-1-SR
- ES Hearing Exhibit 1 - List of Environmental Stakeholders' Pre-Served Testimony and Exhibits
- ES Hearing Exhibit 2 - Direct Testimony of Dr. Ezra D. Hausman-SC Statement No. 1, Exhibits EDH-1-EDH-8
- ES Hearing Exhibit 3 - Surrebuttal Testimony of Ezra D. Hausman-SC Statement No. 1-SR , Exhibit EDH-9
- ES Hearing Exhibit 4 - PGW's Responses to Interrogatories Set CAC-I on June 10, 2020
- ES Hearing Exhibit 5 - PGW's Responses to Interrogatories Set CAC-I on July 6, 2020
- ES Hearing Exhibit 6 - PGW's Responses to Interrogatories Set CAC-II on July 6, 2020
- ES Hearing Exhibit 7 - PGW's Responses to Interrogatories Set CAC-I on July 21, 2020
- ES Hearing Exhibit 8 - PGW's Responses to Interrogatories Set ES-I on July 21, 2020
- ES Hearing Exhibit 9 - PGW's Responses to Interrogatories Set ES-I on July 21, 2020 (Attachments)
- ES Hearing Exhibit 10 - PGW's Responses to Interrogatories Set ES-I on July 24, 2020
- ES Hearing Exhibit 11 - 2017 Rate Case Testimony of Gregory Stunder
- ES Hearing Exhibit 12 - 2017 Rate Case Testimony of Kenneth Dybalski
- ES Hearing Exhibit 13 - 2017 Rate Case Testimony of Philip Hanser
- Direct Testimony of Robert D. Knecht, OSBA Statement No. 1, Exhibits IEc-1-IEc-3 (including Working Papers of Exhibit IEc-2 RDK WP1-RDK WP6)

- Rebuttal Testimony of Robert. D. Knecht, OSBA Statement No. 1R, Exhibits IEc-R1-IEc-R2 (including Working Papers of Exhibit IEc-R1 RDK WP6-RDK WP8)
- Surrebuttal Testimony of Robert D. Knecht, OSBA Statement No. 1S, Exhibit IEc-S1 (including Working Papers)
- PGW 2020 Rate Filing-Volumes I-III
- Direct Testimony of Gregory Stunder, PGW Statement No. 1
- Direct Testimony of Joseph F. Golden, Jr., PGW Statement No. 2, Exhibits JFG 1-JFG 4
- Errata to PGW Statement No. 2
- Direct Testimony of Daniel J. Hartman, PGW Statement No. 3
- Direct Testimony of Harold Walker, III, PGW Statement No. 4, Exhibit HW 1
- Direct Testimony of Constance E. Heppenstall, PGW Statement No. 5, Exhibit CEH 1
- Direct Testimony of Kenneth S. Dybalski, PGW Statement No. 6
- Direct Testimony of Douglas A. Moser, PGW Statement No. 7, Exhibits DAM 1- DAM 4
- Direct Testimony of Florian Teme, PGW Statement No. 8
- Rebuttal Testimony of Gregory Stunder, PGW Statement No. 1-R
- Rebuttal Testimony of Joseph F. Golder, Jr., PGW Statement No. 2-R, Exhibits JFG 1A, JFG 2A, JFG 5, JFG 6
- Rebuttal Testimony of Daniel J. Hartman, PGW Statement No. 3-R
- Rebuttal Testimony of Harold Walker, III, PGW Statement No. 4-R
- Rebuttal Testimony of Constance E. Heppenstall, PGW Statement No. 5-R, Exhibit CEH 1R
- Rebuttal Testimony of Kenneth S. Dybalski, PGW Statement No. 6-R
- Rebuttal Testimony of Douglas A. Moser, PGW Statement No. 7-R, Exhibit DAM 5
- Rebuttal Testimony of Florian Teme, PGW Statement No. 8-R
- Rebuttal Testimony of Denise Adamucci, PGW Statement No. 9-R
- Rebuttal Testimony of Bernard L. Cummings, PGW Statement No. 10-R, Exhibit BLC 1
- Rebuttal Testimony of H. Gil Peach, PGW Statement No. 11-R, Exhibits HGP 1-HGP 4
- Rebuttal Testimony of James Cawley, PGW Statement No. 12-R
- Rejoinder Testimony of Joseph F. Golden, Jr., PGW Statement No. 2-RJ, Exhibit JFG 7
- Rejoinder Testimony of Constance E. Heppenstall, PGW Statement No. 5-RJ, Exhibit CEH 2
- Rejoinder Testimony of Kenneth S. Dybalski, PGW Statement No. 6-RJ
- Rejoinder Testimony of Douglas A. Moser, PGW Statement No. 7-RJ, Exhibit DAM 6

- Rejoinder Testimony of Denise Adamucci, PGW Statement No. 9-RJ
- Errata to PGW Statement No. 9-RJ
- Rejoinder Testimony of Bernard L. Cummings, PGW Statement No. 10-RJ
- Rejoinder Testimony of H. Gil Peach, PGW Statement No. 11-RJ
- Rejoinder Testimony of James Cawley, PGW Statement No. 12-RJ
- PGW Hearing Exhibit No. 1-PGW Response to I&E RE-16
- PGW Hearing Exhibit No. 2-US EPA Methane Challenge Background-Best Management Practices (BMP) Commitment Option
- PGW Hearing Exhibit No. 3-PGW LTIIP Opinion and Order Entered August 31, 2017
- PGW Hearing Exhibit No. 4-Executive Order No. 2019-01
- PGW Hearing Exhibit No. 5-City of Philadelphia City Council Resolution No. 190728
- Joint Stipulation Between PGW and TURN, *et al*.- TURN *et al.* responses to PGW Interrogatories, Set I, Nos. 10, 11, 12 and 14; PGW Responses to TURN *et al*.: Set I Nos. 2, 4, 9,10, 12-14, 16, 17, 27-31;Set II Nos. 1, 4, 6, 7, 15, 16, 18, 22, 27, 28, 36, 38, 4144, 47, 50, 51, 55, 64, 65; Set III No. 7; Set IV Nos. 14, 17, 17 Supplemental
- Joint Stipulation Between PGW and OCA- OCA Responses to PGW Interrogatories, Set I, Nos. 89; OCA Responses to PGW Interrogatories, Set II, Nos. 8-12, 14-15, 17-18, 20, 24, 27, 33-34, 39-41, 43-45 and 53; OCA Responses to PGW Interrogatories, Set III, Nos. 16, 19, 20, 23, 23 (Supplemental) and 29; OCA Responses to PGW Interrogatories, Set VI, Nos. 9, 1215, 25 and 27-28; PGW Responses to OCA Set I, No. 20; PGW Response to OCA Set XVI, No. 8; PGW
- Responses to OCA Interrogatories, Set III, Nos. 54 and 64; PGW Responses to OSBA, Set I, Nos. 1 and 6; PGW Responses to OSBA Set II, No. 5

The record closed when we received the parties' Reply Briefs on September 2, 2020.

III. FINDINGS OF FACT

1. Philadelphia Gas Works 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 Commission as a city natural gas distribution company pursuant to 66 Pa.C.S. §§ 102 and 2212.

3. PGW provides gas sales and transportation services. *See* Filing at Volume IV; PGW St. 3 at Exhibit JFG 3.

4. PGW's fiscal year (FY) is from September 1 to August 31. *See* PGW St. 2 at 2,4.

5. PGW manages a distribution system of approximately 3,000 miles of natural gas mains and 3,000 miles of service lines supplying approximately 500,000 customers in the City and County of Philadelphia. PGW St. 7 at 2.

6. I&E is the prosecutory bureau in the Commission for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for enforcing compliance with the state and federal motor carrier safety and gas safety laws and regulations. *Implementation of Act 129 of 2008 Organization of Bureau and Offices,* Docket No. M-2008-2071852 (Order entered August 11, 2011).

7. Complainant OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

8. Complainant OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

9. CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to, and maintain, affordable water, electric, heating and telecommunication services. CAUSE-PA Petition to Intervene at 3.

10. TURN, *et al*, includes TURN, a not-for-profit advocacy organization composed of moderate and low income tenants, a substantial number of whom are customers of PGW or dependent on PGW natural gas service, and Action Alliance of Senior Citizens of Greater Philadelphia, a not-for-profit membership organization of senior citizens, many of whom are Philadelphia residents and customers of PGW. TURN, *et al* Petition to Intervene at 3.

11. Philadelphia Industrial and Commercial Gas Users Group (PICGUG) is an *ad hoc* group of large volume customers receiving natural gas utility service from PGW under both sales and transportation rate schedules, including Rate Schedule IT – Interruptible Transportation. PICGUG Complaint at 2.

12. Direct Energy Services is a licensed natural gas supplier (NGS) in the PGW service territory and serves customers in all rate classes. Petition to Intervene of Direct Energy Services at 2.

13. The Environmental Stakeholders are Clean Air Council, a member-supported environmental organization based in Philadelphia serving the Mid-Atlantic Region, and Sierra Club/PA Chapter, a member-supported environmental organization whose mission is to explore, enjoy, and protect the wild places of the Earth and to practice and promote the responsible use of the Earth's resources. Petition to Intervene of Environmental Stakeholders at 1.

14. The parties engaged in extensive discovery throughout this proceeding.

15. I&E, OCA, OSBA, TURN *et al*., PICGUG, and the Environmental Stakeholders submitted testimony in opposition to various portions of the Company's base rate filing.

16. PGW, I&E, OCA, OSBA and PICGUG (collectively, the Joint Petitioners) have entered into a Partial Settlement.

17. 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.

18. The proposed rate increase would increase in phases 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.

19. The current PGW residential customer charge is $13.75. PGW St. 1 at 7.

20. PGW's cost of service calculations produced an actual customer related cost of $26.54 for residential customers. PGW St. No. 5-R at 7; Exh. CEH-1R, Sch G.

21. The Settlement proposes that PGW be permitted to increase the customer charge in phases, for residential customers as follows: $0.35 or 2.5% on 1/1/2021; $0.35 or 2.5% on 7/1/2021; 40.45 or 3.3. % on 1/1/2022, with the charge increasing in total by $1.15, and similar phased increases proposed for the other rate classes.

22. The Settlement also proposes a "Covid-19 Relief Plan" which will provide a bill credit of $300 and other relief for up to 6,660 PGW customers whose economic circumstances have been adversely affected by the pandemic.

23. The Settlement also proposes a variety of provisions designed to assist low income customers, provides enhancements to PGW's low income customer assistance programs and its policies regarding victims of domestic violence, expands the number of languages in which key documents will be available on PGW's website and deals with other issues raised by the low income advocates.

24. TURN, *et al*. and CAUSE-PA do not oppose the Partial Settlement.

25. Environmental Stakeholders oppose the Partial Settlement.

26. The issues raised by Environmental Stakeholders in this proceeding have not been resolved in the Partial Settlement.

27. PGW should be able to maintain an investment grade bond rating with a debt service ratio of 1.88 and days 87 cash. OCA St. No. 3 at 7-8.

28. The lowest investment grade ratings are Baa3, BBB-, and BBB- for Moody's, S&P, and Fitch respectively. OCA Exhibit SJR-6, page 6.

29. PGW has solid investment grade ratings – Moody's: A3; S&P: A; Fitch: BBB+. OCA St. 3 at 5-7.

30. PGW must satisfy its bond ordinance covenants to remain financially viable. PGW St. 1 at 4; PGW St. 2 at 3-4, 13, 16-21.

31. Even with a 0% rate increase, the PGW debt to total capitalization ratios are projected to trend downward in the foreseeable future. I&E St 1 SR at 4.

32. 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).

33. Under PGW's Commission-approved Long-Term Infrastructure Improvement Plan (LTIIP), PGW projects that it will replace all cast iron main inventory in 40.1 years, based on the assumption that base rates will increase 5% every five years (starting in 2026) along with associated increases in Distribution System Improvement Charge (DSIC) recovery/spending. PGW St. No. 7, Moser Direct, at 2:13–16.

34. In the first two years of PGW's Second LTIIP, the utility has already replaced 8% more cast iron main than projected. PGW St. No. 7, Moser Direct, at 4:8–9; *id.* at 4, Figure 2 (in FY 2018, PGW planned to replace 31.8 miles of cast iron main, and actually replaced 34 miles; in FY 2019, PGW planned to replace 63.7 miles of cast iron main, and actually replaced 69.1 miles).

35. PGW has not adequately controlled the costs of its main replacement program, resulting in a five-year trend of increasing costs. I&E St. No. 3, Orr Direct, at 12–14.

36. PGW projects that with 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.

37. PGW projects that without rate relief, cash balances will decrease and be negative in FY 2022. PGW Exhibit JFG-1A (cash flow, line 23).

38. Of its approximately 500,000 customers, approximately 150,000 PGW customers are low income. See TURN, *et al.* St. 1 at 12, n. 3.

39. Only 6,600 customers will benefit from the direct account credit temporary COVID-19 relief provisions in the Partial Settlement. Joint Petition Section 18.

40. Less than a half of PGW customers will benefit from changes to the low-income programs in the Partial Settlement.

41. Because the DSIC mechanism will continue, the base increase will trigger an increase in the DSIC revenues and the rate increase for residential customers will necessarily increase the rate discounts in the Customer Responsibility Program (CRP), which means that the Universal Service and Energy Conservation (USEC) Charge will increase, resulting in an additional increase for non-low-income customers. OSBA Direct Testimony at 7-8.

42. On March 26, 2020, the Commission issued an Order allowing PGW to implement a universal services pilot program that expands participation and retention in such programs. [2]

43. The $35 million dollar increase under the Partial Settlement will also result in an actual greater increase, particularly for non-low-income customers, given the DSIC and the universal service pilot program. OSBA Direct Testimony at 2, 6.

44. Even with no increase and maintaining a strong cash balance, even without a rate increase, the Company could meet its financing requirement with 60 percent debt and 40 percent ratepayer-provided equity, while maintaining the same year-end cash balances in either scenario. OSBA Surrebuttal Testimony at 4; OSBA Direct Testimony at 11.

45. A deferred but approved increase would provide confidence to creditors and rating agencies that the Company's financial position will continue to improve. OSBA Direct Testimony at 12-13.

46. The Partial Settlement does not consider the cost to regular ratepayers of the benefits to low income customers. OSBA Surrebuttal at 2.

47. Pipeline replacement costs per mile, as reported by PGW, have increased from $1,204,801 per mile in 2015 to $1,611,987 in 2019, approximately a 33.8 % increase in cost over five years, or an average increase in cost of 6.9% per year. I&E SR3 at 5.

48. 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.

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2. *See* Docket No. P-2020-3018867.

49. 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.

50. 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.

51. 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.

52. Nationwide, 90% of emission reductions from distribution systems since 1990 are due to pipeline replacements. PGW St. No. 1-R at 7.

53. 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.

54. PGW has voluntary implemented robust energy efficiency programs which have been approved by the Commission. PGW St. No. 1-R at 9.

55. 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.

56. PGW has also voluntarily joined the Environmental Protection Agency's Methane Challenge Program, which is designed to reduce methane emissions. PGW St. No. 1-R at 9.

57. 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 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.

58. PGW is currently developing a sustainability program and has hired its first Director of Sustainability. PGW St. No. 1-R at 10.

59. 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.

60. 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.

61. PGW is exploring ways to purchase renewable natural gas and/or distribute it on its system. PGW St. No. 1-R at 10.

62. 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.

63. 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.

64. PGW has not studied whether increased or targeted energy efficiency investments could reduce the overall cost of its 40-year main replacement program. Moser Cross, Tr. at 318–19.

65. PGW has not integrated energy efficiency planning into its infrastructure planning processes. Moser Cross, Tr. at 318–19; ES Hearing Ex. 10, PGW's Responses to Environmental Stakeholders Interrogatories – Set 1, ES-I-8.f.

66. The Governor of Pennsylvania issued Executive Order 2019-01 committing to address the risk of climate change, which he characterized as "the most critical environmental threat confronting the world." SC St. No. 1, Hausman Direct, at 7–8. Executive Order 2019-01 states that "[t]he Commonwealth shall strive to achieve a 26 percent reduction of net greenhouse gas emissions statewide by 2025 from 2005 levels, and an 80 percent reduction of net greenhouse gas emissions by 2050 from 2005 levels." *Id.* at 8.

67. On September 26, 2019, Philadelphia's City Council adopted Resolution No 190728, "[u]rging the City of Philadelphia to take measures to achieve fair and equitable transition to the use of 100% Clean Renewable Energy by 2050" and stating that "[t]he City of Philadelphia must continue to take the lead in advancing proactive climate change solutions." SC St. No. 1, Hausman Direct, at 8:15–19. The Resolution further resolves "[t]hat the City of Philadelphia shall take measures to achieve a fair and equitable transition to the use of 100% clean renewable energy for electricity in municipal operations by 2030, for electricity City-wide by 2035, and for all energy (including heat and transportations) city-wide by 2050 or sooner." *Id.* at 9.

68. The expected useful life of a replaced gas main is 54 years. ES Hearing Ex. 8, PGW's Response to Discovery Request: ES-01-ES-01-25; Moser Cross, Tr. at 317.

69. If the Commonwealth and local governments do as they have committed to do, reducing emissions and transitioning to 100% clean energy by 2050, by the time PGW completes replacement of all its cast iron mains, those mains will no longer be useful for transmitting natural gas. SC St. No. 1-SR, Hausman Surrebuttal, at 4–5.

70. PGW's last request to increase rates was needed to ensure sufficient revenues despite declining demand caused by a pattern of warmer winters. Stunder Cross, Tr. at 348; ES Hearing Ex. 11, Direct Testimony of Gregory Stunder on behalf of PGW, Docket No. R-2017-2586783, at 3.

71. PGW's last rate case also required adjustments to its weather normalization clause to account for the changing climate. ES Hearing Ex. 11, Direct Testimony of Gregory Stunder on behalf of PGW, Docket No. R-2017-2586783, at 3–4.

72. Approximately 18 informal statements in opposition to the rate increase were filed with the Commission.

IV. PUBLIC INPUT HEARINGS

Four public input hearings were held telephonically due to the Governor's Emergency Order related to the COVID-19 pandemic. In total, 25 people offered testimony on the following dates and times:[3]

Date/Time	**Number of Witnesses Testifying**
Tuesday, June 2, 2020 1:00 p.m.	4
Tuesday, June 2, 2020 6:00 p.m.	8
Wednesday, June 3, 2020 1:00 p.m.	6
Wednesday, June 3, 2020 6:00 p.m.	7

The majority of PGW customers who testified at the public input hearings offered testimony regarding gas service affordability and concerns with the pandemic. Erin Blair, from the National Nurse-Led Care Consortium, testified that she was concerned with vulnerable persons who struggle with energy insecurity. Ms. Blair indicated that she was concerned that the pandemic has exacerbated these issues because people may be unemployed and waiting for unemployment compensation and other assistance. Ms. Blair noted that children are especially vulnerable and are more likely to be hospitalized and have developmental issues when they live with energy insecurity. Ms. Blair testified that energy insecurity is a public health crisis in a city with many people at or near the poverty line.[4]

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[3] One party presented an off-the-record statement at the public input hearing on June 3, 2020 at 6:00 p.m.

[4] Tr. 59-62.

Meenal Raval testified that the rate increase is not necessary. Ms. Raval indicated that PGW is already collecting a surcharge to replace infrastructure and gas lines. Ms. Raval also stated that customers are using less gas and PGW has not accounted for the climate crisis. Ms. Raval said that she is concerned with climate change and warmer weather. Ms. Raval indicated that she has invested in solar energy and replaced her gas appliances with electric appliances. Ms. Raval testified that it was not fair to make lower income customers shoulder the expenses of PGW. Ms. Raval indicated that it is time for PGW to make a new business model to account for climate change and global initiatives to combat it.[5]

Coryn Wolk testified that climate change and more energy efficiency has affected PGW's revenues. She also testified that climate change has made weather warmer and the change in temperature has lessened need for gas. Ms. Wolk acknowledged that PGW needs revenue, but low-income residents are not able to keep up with the rate increases. Ms. Wolk testified that customers are overburdened by the rates.[6]

Kathleen Philip testified that the proposed increase would be a financial hardship for her as she is currently unemployed. She also indicated that it would be difficult for other low-income customers to afford. Ms. Philip indicated that PGW could find other sources for revenue. Ms. Philip testified that even when she was working it was hard to keep up with the rates because her income was not increasing.[7]

Susan Volz testified that she is opposed to PGW's proposed rate increase. Ms. Volz questioned why a rate increase was being requested during a pandemic and economic downturn with significant unemployment. She also stated that with climate change, PGW needs to embrace becoming a utility that provides clean and affordable energy.[8]

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5 Tr. 64-67.

6 Tr. 70-72.

7 Tr. 74-75.

8 Tr. 96-98.

Niamba Baskerville also testified that she is opposed to any rate increase. Ms. Baskerville testified that many customers are struggling due to the pandemic and lack of employment and that the rates are already high.[9]

Michael Beale testified that the price of gas has gone down over the years. Mr. Beale indicated that due to the pandemic, a lot of people are experiencing economic hardship and that the burden should not be entirely on the rate payers.[10]

Karen Melton testified in opposition to PGW's proposed rate increase. Ms. Melton offered her concerns about being in the middle of a global pandemic and many people have lost their jobs and are not able to afford an increase in rates. She believes that due to climate change, PGW should not be replacing the entire system but rather be strategic in repairs to the system and helping neighborhoods transition away from natural gas.[11]

Peter Winslow testified on behalf of Smart Collaboration, ASC. Mr. Winslow questioned the increase in the monthly customer service charge because it unfairly affects low income individuals. He testified that the increase in rates punish customers who are trying to be efficient in their natural gas usage. Mr. Winslow asserts that PGW's revenue model is unsustainable as the world looks to transition away from fossil fuels. He indicates that PGW should be looking toward a new business model and not investing in older assets which could become stranded costs as the city moves away from natural gas.[12]

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[9] Tr. 100-101.

[10] Tr. 104-105.

[11] Tr. 106-108.

[12] Tr. 110-115.

Bernadene Davis testified that she is unemployed due to the pandemic and it will be very difficult to pay bills. She was also concerned that a rate increase would affect seniors and people with disabilities who are on a fixed income.[13]

Dita White-Williams testified on behalf of the Philadelphia Workers Benefit Council. Ms. White-Williams stated that she was unemployed due to the pandemic and opposes the rate increase. Ms. White-Williams indicated that her income has not gone up in years while the cost of utilities and food have gone up and it is difficult to afford. She is also concerned about children who are in homes without heat. She also testified that PGW should revise their eligibility guidelines for the customer assistance program.[14]

Alexa Ross testified on behalf of Philly Thrive. Ms. Ross testified that Philly Thrive is opposed to the rate increase and that Philadelphians are not able to absorb a rate increase due to the pandemic. Ms. Ross also noted that they would like to work with PGW to move towards renewable energy and away from natural gas.[15]

The Honorable Sharif Street testified on behalf of his constituents in the Third Senatorial District of the General Assembly of Pennsylvania. Senator Street testified that he is opposed to the requested rate increase. Senator Street stated that Philadelphia is one of the poorest large cities in the United States and many Philadelphians live below the poverty line. Senator Street testified that poverty translates to poor health outcomes, issues with children's educational performance, crime rates and community stability. Senator Street noted that 40 million Americans have applied for unemployment due the global pandemic and will increase energy insecurity. His office works with constituents to resolve issues with their PGW bills and raising rates during a time of economic insecurity is not sound policy. Senator Street indicated that PGW has one of the highest percentages of customers unable to pay for routine bills which

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[13] Tr. 116-119.

[14] Tr. 121-125.

[15] Tr. 126-129.

leads to higher uncollectible accounts. Unpaid arrearages are debts that the Company are forced to deal with and lead to limits to energy access.[16]

Mitchell Chanin, from the 350 Philadelphia Steering Committee, testified that he is opposed to the rate increase and particularly the increase in the fixed monthly charge. Mr. Chanin testified that he is concerned with affordability of rates and people will be struggling to pay their bills, especially during the pandemic. Mr. Chanin indicated that the customer assistance program is inadequate, and the income thresholds are too low and hopes that any changes in the customer assistance program will offset the impact of a rate increase. Mr. Chanin is also concerned about safety issues and thinks there needs to be greater transparency in any investigations related to safety of the public. Mr. Chanin also testified regarding climate concerns and the need to transition away from fossil fuels.[17]

Linda Hanlon, from the Eastern Service Workers Association, testified that utilities are a basic human right and the poorest members of the community are struggling to pay bills, especially during a global pandemic. Ms. Hanlon also noted that their climate change issues and moving away from fossil fuels and towards affordable and sustainable energy. Ms. Hanlon also believes that PGW should reduce rates for those who are at or below 300 percent of the Federal Poverty Guidelines.[18]

Delores Brown-Waters testified on behalf of the Philadelphia Workers Benefit Council. Ms. Brown-Waters stated that she struggles with her bills and opposes the rate increase. Ms. Brown-Waters indicated that many families struggle with heating their homes in the winter when the gas has been shut off due to lack of funds. Ms. Brown-Waters also had concerns that the customer assistance program is not adequate and does not address all of the

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16 Tr. 152-159.

17 Tr. 160-167.

18 Tr. 169-172.

expenses that families have. Ms. Brown-Waters also testified that there should be no rate increase during a pandemic when unemployment is high.[19]

Sherrie Cohen testified that she opposes PGW's proposed rate increase. She noted that the area is facing a global pandemic and high unemployment rates, as well as concerns about climate change. She indicated that PGW should be moving away from natural gas and finding a new business model that will assist lower income people.[20]

Emma Horst-Martz testified on behalf of the Pennsylvania Public Interest Research Group. Ms. Horst-Martz indicated that she had concerns about the publicity for the public input hearings and the process for signing up for the hearings. Ms. Horst-Martz noted that the organization is opposed to the proposed rate increase. She also noted that there was concerns regarding the affordability of utility rates for low income persons even with customer assistance programs. Ms. Horst-Martz also stated that the time of the rate increase is inappropriate as Philadelphians are struggling with the impacts of the pandemic and unemployment. Ms. Horst-Martz is also concerned that the high fixed charges will deter customers from practicing energy conservation.[21]

Sharon Hillman testified that she is struggling to afford basic necessities due to the pandemic. Ms. Hillman noted that PGW has a monopoly over natural gas in Philadelphia and opposes the proposed rate increase. Ms. Hillman indicates that it is counterintuitive that consumers are punished for being more energy efficient with higher rates.[22]

Lynn Robinson testified that people will be unable to make payments under the proposed rate increase and will lose service and their status as a customer. Ms. Robinson

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19 Tr. 173-179.

20 Tr. 181-184.

21 Tr. 185-189.

22 Tr. 212-215.

acknowledged that some leaking pipes should be replaced but PGW should work with the city to convert some areas from natural gas to electric heat pumps or solar energy.[23]

Kenneth Weaver testified in opposition to the proposed rate increase. Mr. Weaver indicated that he understood the need to replace leaking pipes as a safety issue. However, he noted that increasing prices and declining usage will lead to a death spiral and more people will leave the system to get electric appliances.[24]

Judy Morgan testified that she is concerned with environmental considerations because of climate change. She believes that the Company should transition away from fossil fuels and toward renewable energy. She indicates that there should be a ban on new gas hook-ups in the city.[25]

Stephen Garrison testified on behalf of Eastern Service Workers Association. Mr. Garrison stated that he has concerns about the environment and the need to move toward cleaner energy and not fossil fuels. He also indicates that the proposed rate increase will be difficult to absorb by low income customers who are already struggling with the cost of basic necessities.[26]

Angela C. Foster, also from the Eastern Service Workers Association, testified that she has dealt with disabilities and is concerned about the impact of the proposed rate increase on customers with disabilities or care for someone with disabilities. She indicated that this is especially the case due to the pandemic and the additional financial strains. Ms. Foster

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[23] Tr. 216-219.

[24] Tr. 220-222.

[25] Tr. 224-226.

[26] Tr. 228-231.

also testified that she would like PGW to work with families that are dealing with disabilities and are struggling to pay bills.[27]

Thomas Skokan, with both the Eastern Service Workers Association and the Workers Benefit Council, testified that he is concerned with customers who have had their natural gas service terminated. He indicated that he is living without gas service and is unable to afford the reconnection fees. Mr. Skokan testified that he does not want to waste energy and is worried about the environment. [28]

V. DESCRIPTION OF THE PARTIAL SETTLEMENT

PGW filed a Joint Petition for Partial Settlement on August 26, 2020. This Petition includes the terms of the Partial Settlement, including terms related to the revenue requirement, revenue allocation and rate design, customer issues, and natural gas supplier issues. The Partial Settlement also included the following exhibit:

Exhibit 1 Proof of Revenue

Additionally, Statements in Support of PGW, I&E, OCA and PICGUG are attached to the Joint Petition for Partial Settlement.

VI. TERMS AND CONDITIONS OF THE PARTIAL SETTLEMENT

The Joint Petitioners have agreed to a Partial Settlement covering all but those raised by the Environmental Stakeholders in this proceeding.

The terms and conditions of the Partial Settlement are set forth fully below, beginning at numbered paragraph 16 through and including paragraph 45 of the Joint Petition for

[27] Tr. 233-236.

[28] Tr. 237-239.

Partial Settlement filed on August 26, 2020. The Partial Settlement also includes the usual "additional terms and conditions" that are typically included in settlements. These terms, which, among other things, protect the parties' rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future rate cases by any particular position taken in this case. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petition itself.

The Joint Petitioners to the Partial Settlement include I&E, OCA, OSBA, and PICGUG. Both CAUSE-PA and TURN *et al*. have indicated their non-opposition to the Joint Partial Settlement. The settlement terms among the Joint Petitioners and PGW consist of the following terms and conditions, in *verbatim*:

REVENUE REQUIREMENT

16. In lieu of its proposed $70 million base rate increase PGW shall be permitted to increase base rates as follows: (1) $10 Million for service rendered on or after January 1, 2021; (2) 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.

Rate Case Filing

17. PGW shall not file a general rate increase pursuant to 66 Pa.C.S. § 1308(d) any sooner than January 1, 2022. This paragraph does not apply to extraordinary or emergency rate relief pursuant to 66 Pa.C. S. § 1308(e) (or upon a petition for emergency rate increase), tariff changes required or authorized by PUC order or industry-wide changes in regulatory policy which affect PGW's rates.

COVID-19 RELIEF PLAN (Limited to $2 million or maximum 6,660 customers at up to $300 per customer)

18. Beginning on or after the PUC adopts this Proposed Settlement, but no sooner than September 1, 2020, PGW shall implement a COVID-19 Relief Plan (C19RP) with the following major elements:

a. Availability: Residential customers who are in arrears including Customer Responsibility Program ("CRP") asked to pay bills without unauthorized usage on account.

b. Benefit: One-time, $300 credit per customer on PGW gas bill; credit will roll-over until exhausted

c. Enrollment: self-certification

d. Funding: GCR Pipeline Refunds in the amount of $2 million; benefit is "first come-first serve." Limited to 6660 customers. This $2.0 million is a single-issue usage one-time only use of residential pipeline refunds and does not permit future use of pipeline refunds for this purpose. However, nothing herein limits a party's right to argue for a different application of pipeline refunds in future proceedings.

e. C19RP will end March 31, 2021 or when Funding is exhausted.

19. The following residential customers are eligible for the program:

a. Contract employees and self-employed

b. Households in which a household member is caring for someone with COVID-19

c. Households in which a household member is caring for children at a time when the children's school or childcare is normally open but is not open. This will include situations in which a normally fulltime school or childcare is running in shifts to maintain social distancing (for example, putting children on two-week or three-week rotations)

d. Households with a member on furlough

e. Households experiencing financial hardship related to the pandemic

f. Households in which a member has lost work, even if there is another income-earning member in the household

20. Note: Acceptance of a credit from the program should not in any way be treated as interfering with qualification for and acceptance into CRP (although CRP customers will be eligible).

21. PGW shall comply with the PUC Order at Docket No. M-2020-3019244 dated March 13, 2020, regarding terminations. In addition, PGW shall do the following through March 31, 2021, unless otherwise indicated below:

a. Until July 1, 2021, PGW shall not remove customers from CRP for failing to complete their re-certification process.

b. Until December 31, 2020, PGW shall not require acceptance of LIURP weatherization as a condition of CRP participation;

c. PGW shall allow the submission of emailed documentation for new service applications.

d. Within 45 days of approval of the settlement in this case, PGW shall conduct outreach to customers who were terminated for non-payment in the last 12 months who owe $300 or less and provide them with information about PGW's C19RP and options for restoration of service.

e. PGW shall track the number of customers who are able to restore service solely through the use of PGW's C19RP.

f. Within 90 days of the conclusion of C19RP, PGW shall provide the parties to this settlement with the number of customers who were able to restore service through C19RP.

g. PGW shall accept at least one additional medical certificate to stop the involuntary termination of service for non-payment, regardless of whether the household has submitted the maximum number of renewal certificates in the past.

h. Conduct outreach to all customers for whom PGW has income documentation on file indicating the customer was confirmed low income within the last 12 months and promote PGW's CRP.

22. Residential customer C19RP benefits shall include:

a. Upon enrollment, suspension of PUC-regulated collection efforts for any amounts due for service beginning as of the March 2020 billing cycle and continuing through the duration of the PUC Emergency Order or April 1, 2021, whichever comes first. Customers with unauthorized usage on their accounts are not eligible for a C19RP benefit.

b. All C19RP customers who may be eligible for CRP will be encouraged to apply for CRP as a condition of receipt. For customers determined to be ineligible for CRP, any remaining current applicable balance shall be eligible for a long-term deferred payment arrangement (including the suspended amount) of no less than 12 months. The 12-month payment arrangement will be provided even if the customer has had a previous PGW and/or PUC payment arrangement; this C19RP payment agreement will not be counted by PGW as a PUC or PGW payment agreement with respect to future payment agreement eligibility. Longer payment arrangements may be offered to C19RP participants at the discretion of the Company. Customers who receive C19RP payment agreements do not waive their right to obtaining a PUC payment agreement under Section 1405. Customers who currently do not have active service and owe more than $600 or who have unauthorized usage on their accounts are not eligible for a C19RP payment arrangement.

c. Effective March 19, 2020, the customer will be eligible to receive waiver of late fees from March 19 until the end date of the current waiver of late fees. If late fees are re-implemented prior to a customer enrolling in C19RP, the customer will be responsible for those charges. Upon enrollment in C19RP, however, waiver of late fees shall commence for the customer's most recent billing cycle through April 1, 2021.

d. Upon enrollment in C19RP, reconnection fees will be waived for the duration of the PUC Emergency Order.

e. For customers enrolling in C19RP who currently do not have active service:

(i) If the customer owes $300 or less, PGW will credit the amount owed up to $300 and will waive the reconnection fee.

(ii) If the customer owes more than $300 and not more than $600, PGW will credit the $300 towards the customer's unpaid balance, waive the reconnection fee and the customer shall be eligible for a long-term deferred payment arrangement (including the suspended amount) of no less than 12 months (if not otherwise eligible for a Chapter 14 payment arrangement).

(iii) Customers or applicants with balances above $600 will be advised to bring their balance down to $600 to participate in the program.

f. Customers terminated for unauthorized use are not eligible for a C19RP payment arrangement and are not eligible for a waiver of reconnection fees.

g. If the PUC's Emergency Order has not ended by March 1, 2021, the Company agrees to meet with the parties by no later than March 5, 2021 to discuss a possible extension of the customer benefits contained in the C19RP.

REVENUE ALLOCATION AND RATE DESIGN

23. The Joint Petitioners agree to the following revenue allocation:

Rate Class	Increase Percentage	Revenue Allocation Scaled to $35 million
Residential	8.603%	27,396
Commercial	6.833%	4,092
Industrial	8.286%	388
Municipal	11.562%	525
PHA-GS	12.929%	175
PHA-Rate 8	8.660%	225
NGVS	0.000%	0
Rate IT	17.317%	2,199
TOTAL		**35,000**

Rate Class	1-Jan-2021	1-Jul-2021	1-Jan-2022	Revenue Allocation Scaled to $35 million
Residential	7,828	7,828	11,741	27,396
Commercial	1,169	1,169	1,754	4,092
Industrial	111	111	166	388
Municipal	150	150	225	525
PHA-GS	50	50	75	175
PHA-Rate 8	64	64	96	225
NGVS	0	0	0	0
Rate IT	628	628	943	2,199

Total	**10,000**	**10,000**	**15,000**	**35,000**

Customer Charges

24. The Joint Petitioners agree to the following customer charges:

Customer Class	Present Customer Charge	Increase On 1/1/2021	%	Increase on 7/1/2021	%	Increase on 1/1/2022	%	Total Cumulative Increase on 1/1/2022	%
Residential	$13.75	$0.35	2.5%	$0.35	2.5%	$0.45	3.3%	$1.15	8.4%
Commercial	$23.40	$0.60	2.5%	$0.60	2.5%	$0.75	3.2%	$1.95	8.3%
Industrial	$70.00	$1.80	2.5%	$1.80	2.5%	$2.30	3.3%	$5.90	8.4%
Municipal	$23.40	$0.60	2.5%	$0.60	2.5%	$0.75	3.2%	$1.95	8.3%
PHA – GS	$13.75	$0.35	2.5%	$0.35	2.5%	$0.45	3.3%	$1.15	8.4%
PHA - Rate 8	$23.40	$0.60	2.5%	$0.60	2.5%	$0.75	3.2%	$1.95	8.3%
NGVS	$35.00	$ -		$ -		$ -			
Interruptible									
Total									
IT A	$152.16								
IT B	$273.89								
IT C	$273.89								
IT D	$273.89								
IT E	$426.06								

Evaluation of Potential Firm Transportation Service Rate

25. In PGW's next base rate case filing, PGW will submit an evaluation as to whether it will propose a firm transportation service rate ("FTS"). If PGW's evaluation determines that Rate FTS is an appropriate service, PGW will submit a FTS proposal with its next base rate filing.

26. The evaluation shall include but not be limited to an evaluation of the following:

a. PGW shall assess the current interruptibility and alternative fuel requirements in the Rate IT tariff language and determine the potential value of interruptible transportation service;

b. Whether rate IT should be phased out;

c. If the Company is proposing Rate FTS, whether Rate FTS should include an option for negotiated flex rates for current IT customers;

d. If the Company is proposing Rate FTS, whether Rate FTS should, subject to rate gradualism, be subject to the USEC, ECR, OPEB and DSIC tariff charges;

e. If the Company is proposing Rate FTS, PGW shall conduct an evaluation of the classification and allocation of distribution mains to determine how mains costs should be reasonably allocated to all customer classes.

27. The parties retain all rights to challenge, refute, or propose modifications to any or all issues related to PGW's proposal for firm transportation service and/or the results of PGW's above evaluations.

Rate Technology and Economic Development ("TED") Rider and Micro-Combined Heat and Power ("Micro-CHP") Incentive Program

28. The Technology and Economic Development ("TED") Rider and Micro-CHP Incentive Program will continue as modified in this filing.

29. With respect to the TED Rider and Micro-CHP Incentive Program, PGW agrees to provide data on the number of customers, sales level and costs in its March 1, 2021 Annual Gas Cost Rate ("GCR") Filing.

Rate BUS: Back-Up Service

30. The "AVAILABILITY" section of Back-Up Service – Rate BUS will be modified as follows:

AVAILABILITY

Available at the Company's sole discretion where the Customer has installed any type of operable back-up, supplementary, standby, emergency, electric or heat generation equipment and who from, time to time, will require Gas from the Company for the Customer's operation of

that equipment. This rate shall also apply to gas service for any system for which natural gas is not the primary fuel.
If a Customer is seeking interruptible back-up service, the Customer may take interruptible service at IT rates if the Customer meets all requirements of Rate IT, including that the Customer must: (1) have installed and operable alternative fuel equipment, including appropriate fuel storage capacity, capable of displacing the daily quantity of Gas subject to curtailment or interruption; or, in the alternative, (2) demonstrate to the Company's sole satisfaction the ability to manage its business without the use of Gas during periods of curtailment or interruption.

31. In addition to this change, Back-Up Service – Rate BUS will continue as otherwise modified in this filing.

32. As part of its Annual GCR filings, PGW will provide data on the number of customers, sales levels, revenues, and the costs incurred to provide service under Rate BUS.

LOW INCOME CUSTOMER ISSUE

33. PGW shall make the following enhancements to its Universal Service Programs:

a. No later than March 31, 2021, PGW will provide an annual training to Community Based Organizations that are open on how to use the customer-facing online Customer Responsibility Program (CRP) application tool. The training will also include information about promoting CRP enrollment.

b. PGW will create a video explaining how to apply for CRP online and post the video on its website, in social media and will advertise the video in a Good Gas News. PGW will similarly publicize non-contact methods for CRP application (call for application, mail-in, online).

c. As part of its new CIS implementation, PGW shall review and adjust CRP asked to pay amounts quarterly, and increase/decrease the asked to pay amount if there has been a change in the average bill amount. If the average bill amount exceeds the household's energy burden, the customer shall be switched to a CRP Percentage of Income Bill at that time.

d. Unspent 2019 and 2020 LIURP funds shall roll over and be added to PGW's LIURP program budget through the end of the current Universal Service and Energy Conservation Plan (USECP) (i.e. 2023), until expended. These funds shall be incremental to the existing LIURP budget.

e. PGW will provide, to the tax mailing address available online or a contact address provided by a tenant, two landlord letters seeking to obtain landlord approval to perform LIURP services for a tenant. If a landlord telephone number is available, one of the letters will be replaced with a telephone call.

34. PGW agrees to track and maintain annual data as follows:

a. For PGW's LIHEAP Crisis acceptance policy:

(i) the number of customers who: receive a LIHEAP Crisis grant who had a balance due to PGW in an amount greater than the maximum Crisis grant amount; and

(ii) the dollar value of LIHEAP Crisis grants received by PGW for customers with an account balance greater than the maximum Crisis grant amount.

(iii) PGW will separately track this information for customers whose service is on and applicants or customers restoring service.

(iv) PGW will provide the parties to this settlement with the collected data on or before September 30, 2021 for the 2020-2021 LIHEAP season.

b. For properties where service has been terminated due to non-payment:

(i) The total number of customers who did not have service restored in the full year following such termination.

(ii) PGW will provide the data identified in subpart (b) to its Universal Service Advisory Group in 2022 for calendar year 2021.

c. PGW will provide the parties to this settlement with the collected data identified in subparts a and b in an excel spreadsheet.

35. PGW shall make the following policy changes:

a. Crisis Acceptance:

(i) PGW shall perform an analysis of the results of its Crisis threshold amount for that LIHEAP season at the conclusion of the LIHEAP 2020-2021 season.

(ii) PGW shall provide this analysis to the parties to the settlement at the conclusion of the LIHEAP 2020-2021 season.

(iii) For the 2021 LIHEAP season, PGW shall expand its "LIHEAP Crisis Policy" to permit customers to restore PGW service if their balance with PGW is at or below $1200, even if the grant is not enough to pay PGW's restoration requirement in full. Unauthorized usage debt is not eligible for such consideration.

b. Domestic Violence: PGW shall draft a written policy that details how PGW handles cases for victims of domestic violence in compliance with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's Regulations. This written policy will include how a call is referred to a CARES representative when a customer discloses that they are a victim of domestic violence and designate a specific team within PGW to handle those calls and inquiries. PGW will provide a copy of this policy to all signatories to this settlement within 90 days of approval of this settlement agreement. PGW agrees to consider input from the rate case parties on the drafted policy for domestic violence victims, and while the decision is within PGW's discretion, will provide an explanation for any input from the rate case parties that is not adopted and integrated into the policy.

(i) PGW shall ensure that the team that works with these calls will be specifically trained on the unique statutory and regulatory protections, as well as the vulnerabilities and need for privacy protections of victims.

(ii) PGW shall provide all customer service representatives with annual training addressing handling of customers with a PFA, or court order issued by a court of competent jurisdiction in Pennsylvania providing clear evidence of domestic violence. This training shall include the rights associated with the domestic violence protections, the procedures used to process documentation, and how to refer customers to the designated team at PGW. PGW will provide the training materials created to the rate case parties.

(iii) A PGW trainer will work with a domestic violence agency (willing to do so) to obtain input and suggestions on soft skills in working with domestic violence victims protected under a PFA or similar order. Training materials created from that input will be updated and provided to the rate case parties.

36. Within 90 days of the approval of this settlement agreement, PGW shall create website content regarding:

a. The protections available for victims of domestic violence. The website shall identify the rights associated with the domestic violence protections and the required documentation and explain specifically how a customer can self-identify and provide information to PGW. PGW agrees to consider input from rate case parties on this created content.

37. PGW shall agree to the following:

a. PGW shall provide availability to spoken language translation services, regardless of whether customers speaking that language comprise less than 5% of the PGW customer base, for service center communications.

b. PGW shall provide customer service representatives with annual training on how to utilize language assistance services and provide written hand-held reference on how to utilize spoken translation services.

c. PGW shall work with the Universal Services Advisory Group (USAG) over the next year to identify no more than ten (10) key universal service, safety, and customer service documents that will be made available in up to five (5) languages (other than English and Spanish) that will be made available on PGW's website.

38. With respect to liens and arrearage forgiveness cost recovery:

a. For 12 months, PGW shall report the number of liens perfected which include dollars subject to forgiveness pursuant to CRP and the dollars of pre-existing arrears covered by such liens.

b. For 12 months, PGW shall report the number of liens paid off which include dollars of pre-existing arrears subject to forgiveness pursuant to CRP.

c. For 12 months, PGW shall report the dollars of pre-existing arrears subject to forgiveness that were paid off as a result of a lien payoff.

39. PGW will work with its Universal Services Advisory Committee to refine its Consumer Education and Outreach Plan that was included with its Second Amended Universal Services and Energy Conservation Plan 2017-2022 at Docket Nos. P-2020-3018867, M-2016-2542415. The group will specifically address outreach to low-income customers at or below 0-50% of the Federal Poverty Level.

40. If, after the Commission's current termination moratorium expires or is otherwise terminated, the Commission issues a similar order reinstituting a termination moratorium due to the COVID-19 pandemic, while not delaying the Company's response to any cessation order, the Company will initiate discussions with the parties to this Settlement within thirty (30) days of the order to discuss a possible extension of customer benefits provided. PGW reserves the right to petition the Commission to take action or modify (i) the current termination moratorium order if the order remains in place beyond December 1, 2020, or (ii) any such similar order. The parties reserve their respective rights to respond to any Commission Order or any Company Petition or response to a Commission Order.

41. The continuation of a bad debt offset will satisfy the concerns identified by OCA witness Roger Colton at pages 61-65 regarding the double recovery of arrears collected through the CRP. PGW shall implement a 5.75% Bad Debt Offset which will offset CRP credit amounts (i.e., reported as "CRP Discount" in PGW's quarterly filings) related to average annual CRP participants exceeding 80,000 customers. The offset will be calculated as follows: (1) average annual CRP credit amount; multiplied by (2) average annual number of CRP participants exceeding 80,000 customers; multiplied by (3) 5.75%. The offset will only be effective during the effective period of the distribution base rates established in this proceeding and, unless extended by a subsequent PUC order, shall terminate upon new base rates becoming effective. In the next base rate case, all parties reserve their rights to argue their positions as to the offset.

42. Within 12 months of PUC approval of this Settlement, PGW will review the reasons why customers were denied enrollment or recertification into CRP for inability to verify income, including whether a customer provided income and was rejected because it was

unacceptable. Based on that review, PGW will determine whether PGW's list of acceptable verification documents should be expanded. Within 15 months of PUC approval of this Settlement, PGW will convene a meeting of interested Rate Case Parties to present and discuss their findings. The final results of its review will be communicated to the Rate Case Parties.

PIPELINE SAFETY ISSUES

Cast Iron Main Replacement

43. PGW will remain focused on cast iron main replacement and present a shortened timeframe for cast iron main replacement in its next LTIIP filing.

44. PGW must focus the cast iron main replacements based on risk and categorize risky assets, particularly cast-iron assets, in their Distribution Integrity Management Plan (DIMP). The DIMP must break down the cast iron assets into smaller asset group categories that allows PGW to measure the effectiveness of the replacement plan.

Main Replacement Costs

45. PGW will review its most recent Annual Asset Optimization Plan with the Commission's Pipeline Safety Division in order to discuss further cost reduction efforts.

VII. LEGAL STANDARDS/BURDEN OF PROOF

A. Legal Standard for Partial Settlement

The purpose of this investigation is to establish rates for PGW's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.[29]

A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service.[30] In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in

[29] 66 Pa.C.S. § 1301.

[30] *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa.Cmwlth. 1975).

Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of West Virginia,[31] and *Federal Power Comm'n v. Hope Natural Gas Co*.[32] In *Bluefield*, the United States Supreme Court stated:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[33]

The Commission encourages parties in contested on-the-record proceedings to settle cases.[34] Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When

31 262 U.S. 679 (1923).

32 320 U.S. 591 (1944).

33 262 U.S. at 692-93.

34 *See* 52 Pa.Code § 5.231.

active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[35] In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the Company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

This matter has not ended in a purely Black Box settlement. The case has only partially settled, and the parties incurred litigation expenses addressing the unresolved issues. Also, while the Commission historically approves the use of Black Box settlements, it is also the Commission's duty to ensure that the public interest is protected. There must be sufficient information provided in a settlement in order for the Commission to determine that a revenue requirement calculation and accompanying tariffs are in the public interest and properly balance the interests of ratepayers and utility stockholders.[36] As the Commission has stated:

> Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest.

Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assocs.,* 74 Pa. PUC 767(1991).

B. <u>Burden of Proof for Litigated Issues</u>

The public utility bears the burden of proof to establish the justness and reasonableness of its requested rate increase. As set forth in Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a):

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35 *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co*., Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa. PUC 1 (1985).

36 *See Pa. PUC v. Pa. Power Co.,* 55 Pa. P.U.C. 552, 579 (1982); *Pa. PUC v. National Fuel Gas Dist. Corp.,* 73 Pa. P.U.C. 552, 603-605 (1990).

> **(a) Reasonableness of rates –** In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa.C.S. § 315(a):

Further, the Commonwealth Court has stated:

> Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.[37]

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a *prima facie* case, the party with the burden of proof must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary." [38] Furthermore, it is well-established that the "degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence." [39] Additionally, the evidence must be substantial and legally credible, and cannot be mere "suspicion" or a "scintilla" of evidence.[40] Thus, a utility has an affirmative burden to establish the justness and reasonableness of its rate request.

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37 *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). *See also, Brockway Glass v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

38 *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1236 (Pa. 1983).

39 *Lansberry v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

40 *Id.*

However, as the Commonwealth Court has explained: "While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged."[41] Therefore, while the ultimate burden of proof does not shift from the utility, 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.[42] Furthermore, 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.[43]

VIII. DISCUSSION OF THE PARTIAL SETTLEMENT

The pursuit of a rate increase at this time and under these circumstances of the nation and Philadelphia facing COVID-19 restrictions and the associated economic effects put at the forefront whether an increase in rates is reasonable or in the public interest. PGW filed for a general rate increase on February 2, 2020. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency proclaiming the existence of a disaster emergency throughout the Commonwealth due to concerns about COVID-19 and on March 11, 2020, the World Health Organization declared COVID-19 – the coronavirus – a pandemic. On March 13, 2020, Commission Chairman Gladys Brown Dutrieuille signed an emergency order prohibiting utility terminations.[44] On March 17, 2020, the Mayor and the Commissioner of Health of the City of Philadelphia jointly issued an Emergency Order prohibiting operation of non-essential businesses to prevent the spread of COVID-19.[45]

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41 *Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa.Cmwlth. 1990).

42 *See e.g.*, *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, *et al*, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Tel. Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

43 *Pa. Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*, R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).

44 Commission *Emergency Order,* Docket No. M-2020-3019244 (Order entered March 13, 2020).

45 *Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses to Prevent the Spread of 2019 Novel* Coronavirus *(COVID-19),* March 17, 2020,; also available at:

The Commonwealth of Pennsylvania and its economy continue to recover and in large part continue to function under restrictions related to COVID-19.[46] OCA, Environmental Stakeholders, OSBA, TURN *et al.* and CAUSE-PA, raised the issue of whether it would be just and reasonable "to impose a rate increase at this time when unemployment numbers are close to record-highs and the economic effects of the pandemic will not be fully known for some time."[47] Informal public comments submitted to the Commission and testimony at the Public Input Hearings were adamantly against an increase, especially given environmental concerns and the reality of COVID-19 restrictions.

Our review of the Partial Settlement is against this backdrop.

A. Revenue Requirement and Stay-out Provision **(Joint Petition, ¶¶A.16-17)**

In its rate filing, PGW requested that it be permitted to increase its revenues by $70.0 million, based upon the Fully Projected Future Test Year ("FPFTY") of September 1, 2020 – August 31, 2021, 10.5% in additional annual revenues[48] At the time of the filing, PGW also filed a Petition for Waiver seeking waiver of the application of the statutory definition of the FPFTY so as to permit PGW to use a FPFTY beginning on September 1, 2020 (its fiscal year) in this proceeding, Docket Number P-2020-3018975. That waiver was granted on May 13, 2020.

1. Party Positions on the Rate Filing in General

PGW calculated its need for increased revenues using the "Cash Flow" method.[49]

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https://www.phila.gov/media/20200317124459/Order-and-Explanation-of-Prohibition-on-Non-Essential-Businesses.pdf.

46 *See Commission Emergency Order*, Docket No. M-2020-3019262 (Order entered March 28, 2020).

47 OCA St. 4 at 2. *See also* OSBA Direct Testimony at 8; Environmental Stakeholders Direct Testimony at 6-8; TURN, *et al*. St. 1 at 18-19; Petition to Intervene of CAUSE-PA at 4.

48 *See* Joint Petition at ¶¶ 1-3.

49 PGW St. No. 1 at 2.

The Commission issued a Policy Statement with the criteria to be reviewed in setting rates for PGW. Under 52 Pa. Code § 69.2703, the Commission will consider the following, among other relevant factors, when setting PGW's rates:

1. PGW's test year-end and (as a check) projected future levels of non-borrowed year-end cash.
2. Available short-term borrowing capacity and internal generation of funds to fund construction.
3. Debt to equity ratios and financial performance of similarly situated utility enterprises.
4. Level of operating and other expenses in comparison to similarly situated utility enterprises.
5. Level of financial performance needed to maintain or improve PGW's bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time.
6. PGW's management quality, efficiency and effectiveness.
7. Service quality and reliability.
8. Effect on universal service.

52 Pa.Code § 69.2703(a)(1)-(8). PGW asserts that it establishes the necessary rates by determining the appropriate levels of cash, debt service coverage and other financial metrics, such as debt-to-equity ratio, necessary to enable PGW to pay its bills, meet minimum debt service coverage requirements and maintain or improve a bond rating sufficient to access the capital markets at reasonable rates. [50]

PGW identifies its needs for a rate increase as follows:

> 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. Second, PGW needs cash for debt service and debt service coverage. Third, PGW has cash requirements beyond debt service. This cash, or internally generated funds ("IGF"), is used to fund construction projects and pay for other obligations (as described in Section

[50] PGW Main Brief at 5-6.

> V.B.2 of this Brief). Fourth, PGW has the need for a level of cash reserves to help PGW deal with (a) situations where revenue can fall short of expenditures and (b) unexpected emergencies. ("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."). []

PGW admits that some of the key drivers for the requested base rate increase are: increasing health care costs, general higher costs of operations, and higher levels of capital spending financed by IGF. [51]

PGW based its claimed revenue requirement on the fully forecasted 12 months ending August 31, 2021, the FPFTY. The Future Test Year (FTY) is FY 2020 and the Historical Test Year (HTY) is FY 2019.[52]

PGW also contends that at present rates, and for the FPFTY (FY 2021), it will end the year with just $45.4 million in cash, a negative cash projection in FY 2022 and dramatically decreased in the remainder of the Forecast Period (FY 2023 through FY 2025). PGW asserts that the level of cash in the FPFTY (FY 2021) equates to just 33.9 days of cash on hand, a negative cash balance being negative starting in FY 2022 and the negative balance continuing throughout the Forecast Period.[53]

PGW also contends that with respect to debt service coverage ratios, its coverage ratios are minimally above its Bond Ordinance coverage requirement of 1.5x in the FPFTY and that without rate relief, PGW would experience debt service coverage at unacceptably low levels.

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51 PGW SIS at 7.

52 PGW St. 2 at 8.

53 PGW SIS at 8.

PGW also asserts that at present rates, its debt to equity capitalization ratio in the FPFTY (FY 2021) is approximately 78.15%. That percentage is below the level in the HTY (FY 2019), 84.78%. The Forecast Period shows marginal reductions in this ratio. PGW is concerned about significantly increasing its debt burden, resulting in even higher levels of debt, if it were required to do so to compensate for reduced levels of available IGF. The Company states that its goal is reducing its debt to equity level to under 60% of total capitalization, noting that "the Commission Staff has opined that a level of 70% was not unreasonable." [54]

PGW avers that it seeks to improve its *pro forma* year-end cash and debt service coverage to acceptable levels compared to the FPFTY (FY 2021) as well as for the next several years:

PGW Financial Metrics

Total Operating Revenues	Year-End Days of Cash on Hand	Debt Service Coverage (1998 Bond)	Debt-to-Equity Ratio[55]
FPFTY[56] @ Present Rates	33.9	2.15x	79.27%
Without City Fee	n/a	1.54x	n/a
FPFTY[57] @ Proposed Rates	87.0	2.35x	75.86%
Without City Fee	n/a	2.18x	n/a

Other parties weighed in on this analysis and rate request. OCA recommended that PGW's present rates be reduced by $3.0 million, its testimony noting that on February 13, 2020, Moody's Investors Service periodic review of PGW's bond ratings stated that the "Current rates are sufficient to not only adequately cover annual debt service but also provide excess cash flow to continue to increase the cash funded share of capital expenditures." [58] I&E's

54 PGW St at 7-9; Pennsylvania Public Utility Commission, Staff Report: Inquiry into the Philadelphia Gas Works' Pipeline Replacement Program, dated April 21, 2015, p. 6, 44, 50.

55 Since PGW has no "equity" in the conventional sense, this comparison is between debt and total capitalization (total debt plus City Equity). *See, e.g.*, Exh. JFG-1, pg. 4.

56 Exh. JFG-1-A.

57 Exh. JFG-2-A.

58 OCA St. 1 at 22.

recommendation was for a $47.0 million rate increase.[59] OSBA's witness initially recommended that PGW be permitted to increase rates by some $10.0 million, questioning the need for the immediate increase of the amount proposed.[60] [61]

TURN, *et al.* concluded that PGW should not be permitted to raise its rates without providing a contemporaneous commitment to improving programs and policies for the Company's low-income customers. [62] CAUSE-PA opposed the increase.[63]

After extensive discovery and motions practice, the Joint Petitioners have entered into a Partial Settlement. Under the Partial Settlement, PGW would be permitted to file rates designed to produce a total increase of $35 million in phases as follows:

- $10.0 million base rate increase on or after January 1, 2021
- $10.0 million base rate increase on July 1, 2021
- $15.0 million base rate increase on January 1, 2022

PGW has also agreed not to collect recoupment between January 2021, July 2021 and January 2022 for any deferred rate increase.

Also included in the Partial Settlement is a stay-out provision that provides that PGW will not seek another general rate increase any sooner than January 2022.

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59 I&E St. No. 1-SR at 10.

60 OSBA St. 1 at 9.g

61 OSBA St 1 at 11-12.

62 TURN, *et al*. St. 1 at 72.

63 CAUSE-PA stated in its Prehearing Memorandum that it was concerned that the proposed rate increase and tariff changes may result in unjust and unreasonable rates that would impose severe hardship on low and moderate income residential customers, CAUSE-PA Prehearing Memorandum, April 29, 2020.

2. Joint Petitioners' Positions

PGW contends that the rate increase is needed to address unavoidable increases in operating costs and to continue to achieve the financial metrics to maintain its favorable bond rating and continue its infrastructure improvements. PGW avers that it cannot produce crucially necessary cash working capital and liquidity at the current rates.[64] PGW contends that among its problems, PGW will not be able to meet its debt service coverage requirements in the FPFTY, will violate debt service coverage in FY 2022,[65] have just $45.4 million of year-end available liquidity[66] or about 33.9 days of expenses.[67] The Company argues that at the current rates, the levels of financial performance would not meet the minimum standards of financial adequacy.[68] PGW projects that its cash balances will be negative in FY 2022.[69] [70]

PGW further states that the Commission has urged PGW to expedite its work due to safety concerns. PGW avers that the Settlement allows the Company to continue such efforts, maintain its operations, and provide safe, adequate and reasonably continuous service. [71]

PICGUG supports this revenue requirement, noting that under the compromise, PGW increases its rates by $35 million, 50% of the Company's original request of $70 million.[72]

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64 *Id.* at 17.

65 PGW Exhibit JFG-1A (debt service coverage, line 23).

66 *See* JFG-1-A, which shows ending cash of $45,407; PGW St. 2-R at 15.

67 PGW St. No. 2 at 14-15; PGW St. 2-R at 15.

68 PGW St. 2 at 15.

69 PGW Exhibit JFG-1A (cash flow, line 23).

70 PGW Main Brief at 17-18.

71 PGW Main Brief at 20-21.

72 PICGUG SIS at 3. Originally, OCA recommended that the rates be reduced by $3.0 million, I&E recommended a $47.0 million rate increase and OSBA recommended that PGW be permitted to increase rates by $10.0 million.

OCA supports the $35 million figure as a reasonable compromise, particularly in light of the phase-in of the increase and the provision that PGW has agreed that the company will not file for a general rate increase any sooner than January 2, 2022.

I&E avers that it conducted an extensive investigation of the filing and believes that PGW requires the additional revenue to maintain safe, effective, and reliable service for its customers.[73] It is acknowledged by I&E that the particulars of the $35 million and how it will be used is not included in the Settlement. I&E contends, quoting the Commission, that this "black box" settlement avoids the "difficult, time-consuming, expensive and perhaps impossible" task of reaching an agreement on each component of the rate increase.[74] As OCA, I&E asserts that the delayed and phased in implementation of the rate increase addresses its concerns regarding the timing of this increase given the "tenuous economic times caused by the COVID-19 pandemic."[75]

OSBA takes no position as to whether the combined effects of the base rate increase and the stay-out provision are just and reasonable. OSBA does observe, however, that the proposed rate increases do not reflect the effects of the increases on DSIC and universal service charges. OSBA notes that excluded are the Company's estimated rate increases of $37 million that PGW ratepayers will face next year that are associated with the implementation of the "pilot program" for enhanced universal service benefit as well as the increases in DSIC charges that will likely accompany the increase in universal service charges. *See* OSBA Statement No. 1 at 8.

Additionally, OSBA references that it submitted testimony relating to the overall initial revenue requirement request of $70 million, and that its potential impact on ratepayers

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73 I&E SIS at 7.

74 I&E SIS at 8, *quoting* Statement of Commissioner Robert F. Powelson, *Pa. Pub. Util. Comm'n v. Wellsboro Elec. Co.,* Docket No. R-2010-2172662. *See also,* Statement of Commissioner Robert F. Powelson, *Pa. Pub. Util. Comm'n v. Citizens' Elec. Co. of Lewisburg, PA,* Docket No. R-2010-2172665.

75 I&E SIS at 9.

when considered in conjunction with the Company's DSIC and universal service charges meant that ratepayers would face an actual near-term increase of $124 million. *Id.* The OSBA does not affirmatively support the phased $35 million base rate increases in the *Joint Petition* but does not oppose it.[76]

3. Rate Case Stay-out

Under the Partial Settlement, PGW will not file a general rate increase any sooner than January 1, 2022. OCA and I&E support this provision as in the public interest, asserting that it provides a level of rate stability.

I&E further states that this stay out provision could not have been achieved absent Settlement.[77] OSBA observes that all types of utility service are becoming more expensive, and that "the true economic impact of the pandemic is not yet clear."[78] While finding that the reduction in the overall revenue increase in the *Joint Petition*, as well as the stay-out, will benefit all of PGW's consumers, including the Company's small business customers, the OSBA takes no affirmative position as to whether the combined effects of the base rate increase and the stay-out provision are just and reasonable.[79]

B. COVID-19 Relief Plan **(Joint Petition, ¶¶B.18-22)**

Included in the Settlement is what the parties frame as COVID-19 Relief which provides a $300 credit on PGW's gas bill for eligible residential customers who are in arrears, including CRP customers. The plan also includes outreach to eligible CRP customers, acceptance of an additional, or fourth, medical certificate to prevent shut-offs, collection of data, temporary

76 OSBA SIS at 4-5.

77 I&E SIS at 8, OCA SIS at 8.

78 OSBA SIS at 5.

79 OSBA SIS at 5.

suspension of collection efforts and temporary waiver of reconnection fees and late payment fees. [80] The relief plan is to be funded by pipeline refunds.[81]

OSBA does not oppose the COVID-19 Relief Plan. It is the understanding of OSBA that Annual Gas Cost Rate (GCR) pipeline refunds associated with the non-residential classes will continue to be credited to those non-residential customers as part of the GCR. [82]

PGW supports this relief plan, stating that it provides significant benefits to eligible customers affected by the pandemic that would not likely have been achieved outside of the settlement.[83] I&E also acknowledges the concerns of a rate increase given the pandemic and supports providing emergency relief to certain ratepayers. [84] I&E finds the COVID-19 Relief Plan to be a full and fair compromise to facilitate a Commission favored negotiated settlement in the public interest. I&E also finds that use of pipeline refunds for funding the plan is the best way, given that PGW is a cash flow utility. [85]

OCA strongly supports this COVID Relief Plan, referencing the testimony of OCA witness Scott J. Rubin concerning the financial hardships many in Philadelphia are facing due to unemployment and wage loss as a result of the pandemic, that many are fighting COVID-19 infections and that increased natural gas rates at this time would make PGW services more unaffordable.[86] According to OCA, as of mid-July, the unemployment rate in Philadelphia was 15.8% and wage loss for Philadelphian households was more than 50%.[87] OCA finds it in the

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80 PGW Main Brief at 12-13.

81 Joint Petition at ¶¶ 18-22.

82 OSBA SIS at 5-6.

83 PGW SIS at 13-14.

84 I&E SIS at 9.

85 I&E SIS at 8-9.

86 OCA St. 1, p. 21, lines 7-10.

87 OCA St. 1-SR, p. 4-5.

public interest to assist these households. [88] OCA also notes that the plan includes outreach to those eligible for Customer Responsibility low income programs and provides that PGW will meet with the parties in early 2021 to discuss further extension of the termination moratorium and benefits under the relief plan if the Commission's termination moratorium expires. [89]

C. Revenue Allocation and Rate Design **(Joint Petition, ¶¶C.23-C.32)**

According to PGW:

> Under the Partial Settlement, 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 $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, or a total increase of 5.2%. 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%.[90]

The Settlement also provides a total increase in customer charge of $1.15 in three phases- $0.35 on 1/1/21, $0.35 on 7/1/21 and $0.45 on 1/1/22 for residential customers. There are similar modest increases for other customer classes.

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88 OCA SIS at 12.

89 OCA SIS at 13.

90 PGW SIS. at 15-16. Also, attached to the Joint Petition is Exhibit 1, a Proof of Revenue, which the parties showing that the proposed rates produce a total of $35 million in additional revenues, assuming *pro forma* revenue at present rates using 20-year average degree days.

1. Revenue Allocation Joint Petitioner Positions

OSBA supports this section of the Joint Petition. Noting that every party presented its own analysis, OSBA finds that the combination of the material rate increase for Rate IT in this proceeding and the rate design analysis required for the next proceeding are good first steps toward eliminating what it considers a long-standing rate inequity relating to Rate IT service. OSBA notes that in OSBA Statement 1, OSBA asserted that the PGW's analysis contained simple spreadsheet alignment errors, it departed from established Commission precedent, it reversed long-standing Company policy regarding the allocation of certain universal service costs, and it contained a variety of other technical errors and dubious assumptions, concluding that it was very likely that the Company's revenue allocation proposal would be given no weight in any reasonable evaluation of competing revenue allocation proposals.[91] Ultimately, OSBA supports this provision of the Joint Petition as a valid compromise, a meaningful benefit to small business customers that eliminates the litigation risk associated with an increase to commercial customers proposed by OCA. [92]

PGW notes that witnesses for OCA, OSBA and PGW presented a Cost of Services studies and that I&E and PICGUG witnesses made allocation recommendations. PGW supports the revenue allocation and rate design agreed to in this Settlement because it does not endorse a particular cost of service study and is a compromise in the public interest.[93] OCA also supports this allocation as a reasonable compromise. [94]

I&E Supports the allocation of moving each class closer to its actual cost of service as well as a compromise. According to I&E, this revenue allocation is in the public interest, places costs upon the classes responsible for causing those costs, is designed to limit customer class subsidies and is consistent with *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010

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91 OSBA SIS 7-8.

92 OSBA SIS at 8.

93 *See* Joint Petition at ¶ 48.a; PGW SIS at 16.

94 OCA SIS at 4.

(Pa.Cmwlth. 2006). [95] PICGUG noted that the Interruptible Transportation (IT) customer rates will increase by 17.3% but finds that the allocation and resulting increase among large commercial and industrial classes is just and reasonable.

2. Customer Charge Joint Petitioner Positions **(Joint Petition, ¶C.24)**

PGW supports the customer charge increase of $1.15 in three phases as a reasonable compromise. PGW determined that its actual costs would justify a customer charge of $26.54 rather than the current $13.75. [96]

I&E supports the customer charge increase, noting that the cumulative residential charge increase is $1.15 over three periods, much less than the initially proposed increase by PGW from $13.75 to $19.25. OCA finds this "scaled back" increase reasonable and in line with the analysis and recommendation of its witness. [97]

I&E also supports the small increase as a significant compromise by PGW.[98] I&E asserts that a utility must be allowed to recover the fixed portion of providing service with a customer charge. However, I&E also finds that the limited customer charge increase here still allows customers to save through conservation, allowing customers greater control of their gas bills than a larger increase.[99]

OSBA supports the customer charges for commercial customers agreed to in the Settlement as "directionally consistent with the recommendations of its expert witness."[100] PGW

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95 *Lloyd* discusses the level of revenue for the different rate classes and the relationship to the cost of providing service to those different rate classes.

96 PGW SIS at 17.

97 OCA SIS at 16.

98 I&E SIS at 10.

99 I&E SIS at 11.

100 OSBA SIS at 10.

originally proposed a 40% increase on small and medium commercial customers, OSBA notes. Its 6.8 percent increase for the Commercial class as reasonably scaled back. [101]

D. Evaluation of Potential Firm Transportation Service Rate **(Joint Petition at ¶¶ 25-27)**

The Partial Settlement provides that PGW will evaluate whether to propose a firm transportation service (FTS) rate as part of its next base rate case filing. PGW will submit an FTS proposal with its next base rate filing if this evaluation shows that Rate FTS is appropriate.[102]

I&E takes no position on whether PGW should propose an FTS rate but notes that the information to be provided by PGW will allow the parties to better evaluate whether an FTS rate should be implemented. [103]

E. Rate Technology and Economic Development ("TED") Rider and Micro-Combined Heat and Power ("Micro-CHP") Incentive Program **(Joint Petition at ¶ 29)**

In its last base rate proceeding, the Company proposed to implement, on a pilot basis, the Technology and Economic Development (TED) Rider. PGW stated that the TED Rider would permit PGW to negotiate the delivery charges, as well as the customer contribution to the development and service of the infrastructure, for firm service non-residential customers on Tariff Rate Schedules for General Service (Rate GS), Municipal Service Rate (Rate MS), Philadelphia Housing Authority Service (Rate PHA) and Developmental Natural Gas Vehicle Service (Rate NGVS-Firm).

The intent of the TED Rider is to increase access and expand the use of natural gas by giving commercial customers more options to obtain natural gas services, including

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101 *Id.*

102 PGW SIS at 18.

103 I&E SIS at 11.

combined heat and power (CHP) projects, natural gas vehicles (NGVs) and fuel cells. In the Settlement of that action, the TED Rider was approved as a three-year pilot program. That settlement also adopted a Pilot Micro-CHP Incentive Program for small and medium sized commercial properties to incentivize market development and market acceptance of small targeted fuel-switching projects to increase the ability of these customers to expand natural gas usage. For projects that qualify, PGW would offer up to $750 per kW for units between 20 kW and 50 kW and up to $1,000 per kW for any units below 20 kW. [104]

In the tariff changes proposed in the filing, PGW seeks to continue its TED Rider beyond the initial three-year pilot period and modify the incentives offered through its micro-combined heat and power (CHP) incentives program to encourage customers to install micro-CHP equipment of various sizes up to 50 kW.

Under the Partial Settlement, PGW will continue the TED Rider and Micro-CHP incentive Program and provide data on the number of customers, sales level and costs as part of its 2021 Annual GCR filing. [105]

OCA supports this settlement provision, noting that it is consistent with OCA recommendations.[106] I&E did not take a position on the TED Rider or the Micro-CHP program but notes that the data to be provided by PGW will assist in evaluating both programs. [107] OSBA takes no position on these provisions.

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104 *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R- 2017-259397at 46-47.

105 Settlement at ¶ 29.

106 OCA SIS at 17-18.

107 I&E SIS at 11-12.

F. <u>Rate BUS: Back-Up Service Program</u> **(Joint Petition at ¶¶ 30-32)**

The Partial Settlement includes a continuation of the Rate BUS: Back-Up Service and a clarification as to how it will be applied. PGW also agrees to provide data on the number of customers, revenues and costs incurred under Rate BUS as part of its annual GCR filings.[108]

I&E took no position on the service. PICGUG notes that the clarification of the "Availability" section of the Company's Back-Up Service ("BUS") rate in PGW's Tariff ensures that customers seeking interruptible back-up service may take interruptible service at IT rates if the customer meets the requirements of Rate IT.[109] OCA supports this settlement provision as consistent with OCA's recommendations. [110] OSBA took no position on this issue.

G. <u>Low Income Customer Issues</u> **(*Joint Petition* at ¶¶33-42)**

1. <u>PGW's Position</u>

PGW notes that the Settlement contains numerous terms intended to address residential consumer issues raised by the OCA and the low-income policy advocacy organizations, TURN, *et al* and CAUSE-PA. PGW states that these concerns were focused on universal service and affordability issues for residential customers, including low-income customers.[111]

PGW states that this portion of the Settlement represents the results of the Joint Petitioners' extensive settlement discussions and good faith compromises of the respective positions of the parties. PGW indicates that these are in addition to the COVID-19 Relief Plan discussed above, which provides significant additional benefits to eligible customers impacted by

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108 Joint Petition at ¶¶ 31-32.

109 PICGUG SIS at 4.

110 OCA SIS at 17-18.

111 PGW SIS at 19.

the COVID-19 pandemic, who may also be low-income. As a whole, PGW asserts that these sections of the Settlement constitute a reasonable resolution that balances the interests and competing positions of the Joint Petitioners and resolves all issues related to residential low-income assistance rules and programs. In addition, PGW maintains that the Settlement terms provide clarifications and enhancements to PGW's programs and policies.[112]

2. I&E's Position

I&E took no specific positions on the provisions outlined in the Low-Income Customer portion of the Settlement. However, I&E indicates that it supports the ultimate outcome of these provisions. Additionally, I&E notes that these issues are particularly important in PGW's service territory which is composed of a large low-income population. When coupled with the current tumultuous state of the economy resulting from the COVID-19 pandemic, I&E notes it is clear that assistance to low-income customers is particularly important. I&E maintains that easing the burden on these customers and providing them with the opportunity to be able to afford their utility bills is in the public interest.[113]

3. OCA's Position

OCA notes that the Settlement adopts recommendations to address the concerns raised by OCA witness Colton and TURN *et al.* witness Geller to improve Limited English Proficiency customers' language access to PGW information and services. OCA indicates that the Settlement provides that the Company will "provide availability to spoken language translation services, regardless of whether customers speaking that language comprise less than 5% of the PGW customer base, for service center communications."[114] OCA states that the Company will also incorporate annual training for its customer service representatives on how to

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112 PGW SIS at 19.

113 I&E SIS at 12.

114 Settlement at ¶ 37(a).

utilize the language assistance services, and include a written reference guide on how to access the translation services.[115] Finally, OCA submits that PGW will work with its Universal Services Advisory Group (USAG) over the next year to identify ten key universal service, safety, and customer service documents that will be made available in up to five languages, other than English and Spanish, and will be available on PGW's website.[116] [117]

OCA argues that a customer's inability to communicate with customer service representatives imposes unnecessary barriers to both the customer and PGW that limit the Company's ability to serve the customer. OCA contends that the proposed modifications to PGW's language access policies will benefit both customers and the Company. With these proposed modifications, for example, Limited English Proficiency customers will be able to more effectively negotiate a payment agreement with the Company, and the customer service representative will be able to more clearly identify the customer's income level to determine the most appropriate payment arrangement for the customer or to evaluate the customer's eligibility for CRP.[118] OCA asserts that the customer will also better understand their rights and payment obligations so that the customer will be more likely to comply with the requirements of the payment arrangement. Moreover, OCA also argues that the ability to identify a customer as "low-income" will help ensure that the customer is extended the right to important winter shutoff protections.[119] OCA maintains that these modifications are in the public interest and should be adopted.[120]

OCA also notes that the Settlement provides that PGW will track for 12 months the data necessary to determine whether there is in fact a double recovery of costs. OCA submits that this information will address the concerns raised by OCA witness Colton in this case. OCA

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115 Settlement at ¶ 37(b).

116 Settlement at ¶ 37(c).

117 OCA SIS at 19-20.

118 *See*, OCA St. 5 at 71.

119 *Id*.

120 OCA SIS at 20-21.

indicates that this information gathered will allow the parties to be able to better understand whether there is a double recovery of the costs through the perfection of the liens and the CRP arrearage forgiveness program. OCA also maintains that the parties will also be able to better understand whether and/or how much overlap there is between the dollars recovered through the lien program and the CRP arrearage forgiveness. OCA contends that the information will help to inform future recommendations regarding a potential reconciliation of the dollars collected through the lien program and the CRP arrearage forgiveness program. OCA asserts that the data to be collected under the Settlement is in the public interest and the proposed data collection should be adopted.[121]

Further, OCA notes that the Settlement adopts the recommendation of OCA witness Colton for the Company to enhance its Consumer Education and Outreach Plan and to specifically improve its outreach to potential CRP customers at or below 0-50% of the Federal Poverty Level (FPL).[122] Under the Settlement, OCA states that PGW will work with its Universal Services Advisory Committee (USAC) to refine its Consumer Education and Outreach Plan that was included with its Second Amended Universal Services and Energy Conservation Plan 2017-2022 at Docket Nos. P-2020-3018867, M-2016-2542415.[123] As a part of this review of the Consumer Education and Outreach Plan, OCA contends that the USAC will specifically address outreach to low-income customers at or below 0-50% of the Federal Poverty Level.[124] [125]

In his review of PGW's quality of service provided to low-income customers, OCA witness Colton identified a concern that the Company was not effectively identifying its

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121 OCA SIS at 21-22.

122 OCA St. 5 at 60.

123 Settlement at ¶ 39.

124 *Id.*

125 OCA SIS at 22-23.

low-income customer population.[126] OCA asserts that Mr. Colton made two recommendations as a result of his review of the Company's low-income customer service: (1) for PGW to better identify and reach out to low-income customers potentially eligible for CRP and (2) to enhance its Customer Outreach and Education Plan to address the 0-50% of Poverty population.[127] OCA argues that increased outreach efforts about CRP would benefit both CRP-eligible low-income customers and the Company. In order for PGW to effectively manage its universal service program, OCA also maintains that PGW must first adequately identify low-income customers in its system; otherwise, eligible customers cannot effectively be enrolled in CRP.[128]

As a compromise to the resolution of the bad-debt offset and possible double recovery, the Settlement provides that PGW will continue the Company's existing bad debt off-set. OCA notes that PGW will implement a 5.75% Bad Debt Offset which will offset CRP credit amounts related to average annual CRP participants exceeding 80,000 customers. Also, the offset will only be effective during the effective period of the distribution base rates established in this proceeding and, unless extended by a subsequent Commission order, shall terminate upon new base rates becoming effective. In the next base rate case, all parties reserve their rights to argue their positions as to the offset. [129] (OCA SIS at 24).

OCA argues that it is important that an offset be established in order to address the potential double recovery of costs, and the Settlement proposal will achieve that objective. OCA indicates that the Commission has previously acknowledged the potential for the double recovery of universal service costs through the USEC rider and base rates and the need to

[126] OCA St. 5 at 51-60.

[127] OCA St. 5 at 60.

[128] *Id.;* OCA SIS at 23.

[129] Settlement at ¶ 41.

address this potential over-recovery.[130] OCA contends that the bad debt off-set will maintain a mechanism for reconciliation.[131]

OCA asserts that the Settlement maintains an important off-set of the costs recovered through base rates and the USEC rider and effectively addresses the issue identified by OCA witness Colton. OCA also contends that the Settlement represents a reasonable resolution of this issue. As OCA indicates, the Settlement will continue the Company's existing bad debt offset and provides a 5.75% adjustment to CRP credits included in the USEC rider for incremental CRP participants over 80,000 participants. Finally, OCA argues that this will provide the necessary off-set to avoid double recovery of bad debt through the USEC.[132]

Lastly, OCA notes that the Settlement also addresses important low-income customer issues raised by TURN *et al.* in the testimony of Harry Geller.[133] These Settlement provisions will help to improve low-income customer education programs; operation of the CRP and Low Income Usage Reduction Program (LIURP); and, address the Company's Low Income Heating Energy Assistance Program (LIHEAP) crisis acceptance policy.[134] OCA submits that these provisions are in the public interest and should be adopted.[135]

OCA contends that the Settlement will also help to improve the operation of CRP and LIURP. OCA indicates that the Settlement includes a provision for the review and adjustment of the CRP asked to pay amounts quarterly, and an increase/decrease of the asked to pay amount if there has been a change in household income.[136] OCA argues that this provision

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130 *See Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-0006193, slip op., at 39, 42 (Order entered Sept. 28, 2007) (*2007 PGW Order*).

131 OCA SIS at 25.

132 OCA SIS at 25.

133 Settlement at ¶¶ 33-36.

134 *Id.*

135 OCA SIS at 25-26.

136 Settlement at ¶ 33(c).

will ensure that PGW will review the CRP bills to ensure that customers are not over-paying for service.[137]

OCA maintains that the Settlement will also improve the operation of PGW's LIURP. OCA states that unspent 2019 and 2020 LIURP funds will be rolled over into the current Universal Service and Energy Conservation Plan until expended.[138] OCA also asserts that PGW will also work to improve landlord consent to LIURP weatherization by providing to "the tax mailing address available online or a contact address provided by a tenant, two landlord letters seeking to obtain landlord approval to perform LIURP services for a tenant."[139] OCA indicates that a telephone call will replace one of the letters if a landlord telephone number is available.[140] OCA contends that the LIURP provisions will ensure that funds allocated for LIURP will continue to be used to address weatherization needs and the landlord outreach program will operate to educate landlords about the benefits of the program.[141]

OCA also notes that the Settlement provides changes to PGW's LIHEAP crisis acceptance policy. OCA argues that PGW will expand the pool of customers from whom it will restore or maintain service in exchange for a LIHEAP crisis grant.[142] OCA maintains that the Company will also further track and analyze data with respect to its current LIHEAP crisis acceptance policy.[143] OCA states that the program will be particularly important this year as low-income customers come out of the COVID-19 pandemic, and the additional data will help all

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137 OCA SIS at 26.

138 Settlement at ¶ 33(d).

139 Settlement at ¶¶ 33(d), (e).

140 *Id*.

141 OCA SIS at 27.

142 Settlement at ¶ 35(a).

143 Settlement at ¶ 34.

stakeholders better understand the costs and benefits of the LIHEAP crisis acceptance policy.[144] [145]

[144] PICGUG took no position on the issue of the Low-Income Customer portion of the Partial Settlement.

[145] OCA SIS at 27.

4. OSBA's Position

Although PGW's small business customers are required to pay for certain low-income customer assistance program costs, OSBA did not litigate all of the issues related to those programs in this base rate proceeding. Specifically, OSBA did not participate in the negotiation of the specific provisions in the *Joint Petition* regarding low-income programs and therefore takes no position regarding those costs. OSBA asserts that it relies on the Company and the Commission to ensure that funds provided by small business customers are expended in an efficient and effective manner.[146]

H. Pipeline Safety Issues **(Joint Settlement ¶¶ 43-45)**

1. PGW's Position

PGW contends that a goal of PGW's rate increase request is to provide adequate funding to continue to modernize its distribution system to ensure its long-term safety and reliability.[147] As part of the Settlement, PGW notes that it has agreed to continue its focus on cast iron main replacement and to present a shortened timeframe for these replacements in its next LTIIP filing.[148] Additionally, the Company indicates that PGW will focus these replacements based on risk, and will categorize risky assets (cast iron pipes) in its Distribution Integrity Management Plan (DIMP) in a way that allows PGW to measure the effectiveness of the replacement plan.[149] [150]

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146 OSBA SIS at 11.

147 *See* PGW St. No. 1 at 3.

148 Joint Petition at ¶ 43.

149 Joint Petition at ¶ 44.

150 PGW SIS at 22-23.

PGW states that it has also agreed to review its most recent Annual Asset Optimization plan with the Commission's Pipeline Safety Division to discuss further cost reduction efforts.[151] PGW argues that these agreements reflect the positions advanced by I&E and are consistent with prior Commission orders. Therefore, PGW maintains that they are in the public interest.[152]

2. <u>I&E's Position</u>

I&E asserts that removing risky cast iron mains at the most aggressive rate possible and improving safe operation of these lines to prevent cast iron main breaks, such as the fatal event that occurred on December 19, 2019[153] which remains an active investigation, should remain the utmost priority of PGW. As part of this settlement, I&E notes that PGW has agreed that it will remain focused on cast iron main replacement and, in its next LTIIP, PGW will propose a shortened timeframe for cast iron main replacement. I&E contends that the timeframe by which PGW expects to replace these cast iron mains at the agreed upon revenue increase is a quicker timeframe than that which was approved by the Commission in PGW's last LTIIP filing. I&E argues that the fact that PGW will propose a shortened timeframe in its next LTIIP filing is also in the public interest as it assures the Commission that PGW will attempt to remove these risky assets as quickly as possible.[154]

In addition, I&E states that PGW has agreed that it will break down in its DIMP cast iron assets into smaller asset categories. Breaking down cast iron assets in this manner will allow PGW which size pipes are the riskiest and prioritize their assets accordingly.[155]

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151 Joint Petition at ¶ 45.

152 PGW SIS at 23.

153 The incident on December 19, 2019, caused two fatalities and caused the destructions of a few buildings. There was a break found in the cast iron pipe in front of the site.

154 I&E SIS at 12-13.

155 I&E SIS at 13.

Furthermore, I&E also indicates that PGW has agreed to allow the Commission's Pipeline Safety Division to review its most recent Annual Asset Optimization Plan (AAOP). I&E maintains that increasing pipeline replacement costs is a concern because when the cost of replacement goes up, there is less money available overall for replacement of risky pipes. I&E asserts that allowing Pipeline Safety to review the most recent AAOP will allow for a discussion of areas where PGW can reduce costs. I&E submits that reviewing in this manner will help to identify areas where costs are trending upward and allow for a proactive approach in reducing costs.[156]

3. OSBA's Position

While OSBA did not take an active role in evaluating the pipeline safety issues in this proceeding, OSBA concludes that the provisions in the *Joint Petition* are reasonable and prudent. OSBA notes that the settlement of this proceeding avoids the litigation of competing proposals and saves the possibly significant costs of further administrative proceedings. OSBA maintains that avoiding further litigation of this matter will serve judicial efficiency and will allow it to employ its resources more efficiently in other areas.[157]

4. Other Parties' Positions

Neither OCA nor PICGUG took a position on the pipeline safety issue portions of the Partial Settlement.

I. RECOMMENDATION ON PARTIAL SETTLEMENT

The COVID-19 effect in Philadelphia, the Commonwealth, and the country, gives pause to a rate increase at this time. As noted by OCA, CAUSE-PA, Environmental Stakeholders, OSBA and I&E, as well as in the testimony at public input hearings and in

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156 I&E SIS at 13.

157 OSBA SIS at 11.

informal comments submitted, unemployment, financial difficulties and uncertainty abound in Philadelphia.

While there is some evidence that PGW will require an infusion of revenue to continue to operate and maintain and improve its infrastructure, there is also evidence that supports a finding that the need for a rate increase is not immediate and that PGW finances and ratings will not see a substantial drop if the rate increase is delayed. As stated by OSBA witness Robert D. Knecht:

> There is not a critical immediate need for a large rate increase in FY21, particularly in the midst of a pandemic, in a period of increased civil unrest, and at the same time as a Commission-approved large increase in universal service charges. Based on the Company's analysis, a rate increase could be deferred at least until FY22, when the increase will (we all hope) not be as large a shock to ratepayers. To the extent that the Commission is legally permitted to approve but defer a rate increase, the approval of the increase would serve to provide confidence to creditors and rating agencies that the Company's financial position will continue to improve.[158]

If no increase is given at this time, the testimony of record supports a finding that in the near term, PGW's investment grade rating will not be markedly adversely affected and the Company would not be placed in dire straits with respect to cash or PGW's ability to cover debt.[159] OCA's reference to a Moody's credit report on PGW that PGW's current rates are sufficient to not only adequately cover annual debt but also to provide excess cash flow to continue to increase the cash funded share of capital expenditures is not categorically disputed by PGW.[160] Additionally, the Company has replaced more mains than projected under its current rates, combined with the DSIC. [161]

158 OSBA Direct Testimony at 12.

159 *Id.*; PGW St No 7 at 2; OCA ST. 3 at 5-7; OCA St. 3 at 7-8; I&E St 1 SR at 4; *see also*, OSBS Surrebuttal Testimony at 4; OSBA Direct Testimony at 11.

160 *See* OCA St. 3 at 8.

161 PGW St. No. 7, Moser Direct, at 4:4, 8–9.

The COVID-19 relief plan included in the Partial Settlement seeks to address concerns that arise in raising rates at this time. That intention notwithstanding, the plan has limitations that do not support a finding that the increase, even given the relief plan, is reasonable or in the public interest.

PGW has approximately 500,000 customers and the direct financial relief only benefits up to 6,600 customers,[162] and only until March or April of 2021, shortly following increased winter usage and concomitant higher bills. Also, in practice, the COVID-19 relief does not benefit the majority of PGW customers, standard paying customers. Furthermore, according to OSBA testimony, any increase will actually result in a larger increase on standard customers given the DSIC and the simultaneous implementation of the universal services pilot program.[163] The Partial Settlement provides limited relief on a long-term increase and, as written, will benefit only a segment of customers. As aptly stated in OSBA testimony, if an immediate increase in rates is allowed, "PGW's non-CRP Residential and Commercial customers will see large rate increases in the coming year, from base rate, universal service, DSIC and "pilot program" effects, all in the midst of a pandemic." [164]

The Partial settlement cannot be completely rejected, however. It delays gradual implementation until January of 2021. Also, the Commission has expressed concerns about the safety of the PGW system. As PGW noted, a Commission Staff report found that: "[C]ast 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."[165] The Commission has stated that "PGW's aging gas distribution infrastructure poses significant safety and reliability issues…."

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162 Joint Petition at ¶ 18.

163 *See* OSBA Direct Testimony at 2, 6-8.

164 OSBA Surrebuttal Testimony at 2,15.

165 *Inquiry into Philadelphia Gas Works' Pipeline Replacement Program,* April 21, 2015, at 59, *available at* http://www.puc.state.pa.us/NaturalGas/pdf/PGW_Staff_Report_042115.pdf.

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.

PGW continues to experience increasing leaks in its infrastructure and contends in this proceeding that it requires an increase to address "incremental costs" of the LTIIP. [166] Additionally, the Commission is now investigating a December 2019 gas explosion that resulted in two deaths. As I&E notes in its Reply Brief, "it has been the longstanding position of the Commission and I&E's Pipeline Safety Division that PGW's aging cast iron pipe needs to be replaced as quickly and efficiently as possible." [167]

Also, there is some evidence of record that PGW's cash and debt management will be affected if there is not a rate increase in the next few years. In addition to PGW calculations of a need for a $70 million increase, I&E calculated that PGW should be allowed an increase of approximately $47 million so that PGW can meet its obligations, maintain sufficient cash on hand and have adequate operating and maintenance expenses. [168] An influx of cash from the Settlement would also allow PGW to begin to implement I&E's suggestion that PGW remove risky cast iron mains at the most aggressive rate possible. Also, the COVID-19 Relief Plan is a worthy effort to benefit PGW's most vulnerable customers.

Therefore, it will be recommended that the Commission approve the Partial Settlement, with modifications. It will be recommended that the rate increases begin in July of 2021 rather than January of 2021 to provide COVID-19 relief for all of the customers until a period where it is anticipated that the economy, and more specifically, the City of Philadelphia, has begun recovery from the pandemic in earnest. It will also be recommended that each of the subsequent scheduled increases be deferred 6 months. A delayed but approved increase will serve as assurance to rating agencies and creditors.

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[166] I&E ST. 3 at 8-9.

[167] I&E RB at 7.

[168] *See* I&E St. 1.

As to the stay-out provision, it is correct that it affords a level of rate stability that may not be available should the case be fully litigated.[169] However, in accordance with this Settlement, PGW is receiving a rate increase in 2022. Given that, PGW should not seek yet another increase until July of 2022 or January 2023. By then, the use and impact of DSIC and universal Services pilot program and any rate increase allowed here can be more fully assessed.

Additionally, the Partial Settlement contains a simple statement that PGW will review its Annual Asset Optimization Plan with Commission staff. [170] Given the questions raised in this litigation regarding whether PGW replaces riskiest pipes first and the notable increasing costs of pipe replacement,[171] a more firm commitment by PGW for review of its plans by Commission staff is required. I&E states that, at a minimum, PGW needs to submit an outline and proposed goals describing its plan to reduce costs for pipeline replacement within 60 days after the final order is entered in this case and that this outline should be reviewed yearly by the Pipeline Safety Division during a meeting or as part of an annual inspection. [172]

It will be recommended that the Partial Settlement be modified to provide that within 90 days of the final order, PGW will submit to the Commission Pipeline Safety Division a plan for addressing its riskiest pipes first and to reduce costs for pipeline replacement and that PGW meet with the Commission's Pipeline Safety Division biannually through 2022 to review these issues.

For all the foregoing reasons, we find the terms embodied in the Joint Petition for Partial Settlement, with modifications, are both just and reasonable and its approval is in the public interest. We recommend the Commission approve the Partial Settlement with the modifications, as follows: (1) That the start of the phased-in rate increases agreed to in the Joint

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169 I&E RB at 8.

170 Joint Petition at Section 45.

171 I&E St. No. 3, Orr Direct, at 8, 12–14.

172 I&E St. 3 at 5.

Petition be delayed by six months until July of 2021; (2) That PGW should not file a general rate increase pursuant to 66 Pa.C.S. § 1308(d) any sooner than January 1, 2023, absent emergency relief, tariff changes or as authorized by Commission order or industry-wide changes in regulatory policy which affect PGW's rates; and (3) That no later than 90 days following entry of the Final Order in this matter, and biannually through 2022, PGW must meet with the Commission's Pipeline Safety Division to review PGW's increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks

IX. LITIGATED ISSUES

A. JURISDICTION – ENVIRONMENTAL STAKEHOLDER ISSUES

PGW contends that the Commission lacks jurisdiction over the environmental policy recommendations of the Environmental Stakeholders. The Company contends that the Environmental Stakeholders are asking the Commission to make an affirmative ruling related to the effect of PGW's operations on the environment and to direct PGW to implement "*potentially* cost-effective alternatives," (*i.e.* convert PGW's customers to other energy sources as well as 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.").[173] Particularly, PGW contends that the Environmental Stakeholders request "[t]o extend the Commission's jurisdiction to cover the issues and recommendations of the Environmental Stakeholders would allow the Commission's jurisdiction to be virtually limitless, a power the legislature has not granted to the Commission."[174]

173 PGW RB at 4 -5, PGW MB at 27.

174 PGW RB at 4.

Environmental Stakeholders assert that the Commission has jurisdiction to consider whether environmental factors render utility expenses unreasonable and imprudent, though it does not administer environmental statutes. [175] They contend:

> [T]he Commission hears evidence on the reasonableness of PGW's salaries and bonuses, benefits, and municipal bond markets despite the fact that the Commission has no jurisdiction to regulate labor markets,[176] health insurance,[177] pension plans,[178] or bond markets. Further, just as the Commission has jurisdiction to conclude that negotiable instruments do not constitute reasonable payment under the Public Utility Code though it does not administer the Uniform Commercial Code,[179] the Commission has jurisdiction to consider whether environmental factors render utility expenses unreasonable and imprudent, though it does not administer environmental statutes. [180]

As for the Climate Business Plan that has been presented, the Environmental Stakeholders contend that it would address the most efficient and cost-effective use of ratepayer dollars, potentially cost-effective alternatives and possible stranded asset risks posed by climate change and future climate change regulations. They argue that this is essential given the Commonwealth of Pennsylvania, Governor Wolf in Executive Order 2019-01, and City of Philadelphia[181] commitment to reducing greenhouse gas emissions in the near future.[182] Further,

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175 Environmental Stakeholders Main Brief at 15.

176 *See, e.g.*, *Pa. Pub. Util. Comm'n v. Valley Utils. Co.*, 72 Pa. P.U.C. 310 (Mar. 22, 1990) (rejecting as unreasonable and unsupported by evidence utility's request to increase executive salary).

177 *Pa. Pub. Util. Comm'n v. Philadelphia Suburban Water Co.*, 71 Pa. P.U.C. 593 (Dec. 28, 1989) (approving as reasonable utility's proposed above inflation increase to employee benefits and health care costs).

178 *Pa. Pub. Util. Comm'n Office of Consumer Advocate Office of Small Bus. Advocate Matthew Josefwicz Barbara Mcdade*, No. C-2018-2646178, 2018 WL 5620905 (Oct. 25, 2018) (approving as reasonable and supported by the evidence utility's proposed management bonus scheme).

179 *Tucker v. Pa. Pub. Util. Comm'n*, 917 A.2d 378 (Pa.Cmwlth. 2006).

180 Environmental Stakeholders MB at 15.

181 SC St. No. 1, Hausman Direct, at 7:7–10 (citing Pa. Exec. Order No. 2019-01); *Id.* at 13:18–22 (citing Resolution No. 181081).

182 SC St. No 1, Hausman Direct, at 28:9–29:19.

Environmental Stakeholders assert PGW is working with the City of Philadelphia to develop a plan that addresses future environmental and economic sustainability for PGW.[183]

It is undisputed that the Commission does not have jurisdiction to *enforce* environmental laws and regulations. The cases referenced by PGW, *Funk v. Wolf*, 144 A.3d 228 (Pa.Cmwlth. 2016) and *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 76 (Pa.Cmwlth. 1995), can serve to establish that the Commission has no authority to regulate environmental issues, create environmental regulations or mandate strictly environmental action. There is nothing in the Public Utility Code, the Commission's regulations or Commission order that requires anything resembling a Climate Business Plan. The Environmental Stakeholders' proposal that the Commission hold a separate proceeding to allow for comment on the Climate Business Plan before PGW be allowed to increase its rates has no basis in the Code or the Commission's current regulations. There is no precedent in the Commission for a Climate Business Plan. The request by Environmental Stakeholders that the Commission order PGW to prepare a Climate Business Plan is in effect environmental regulation and enforcement and beyond the jurisdiction of the Commission.

However, the Commission is not prohibited from considering environmental issues as it carries out its authority to regulate public utilities such as PGW. There are environmental related issues before the Commission in this proceeding. As an example, PGW considers "warming trends" in projecting its revenue and acknowledges that the Commission has jurisdiction to consider such trends.[184] Environmental Stakeholders is not in this proceeding asking PGW to reduce or eliminate greenhouse gas emissions prior to being granted a rate increase but to consider environmental matters and its effects on the needs and planning of the

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183 SC St. No. 1, Hausman Direct, at 14:12–13 (quoting testimony from Christine Knapp, Director of Sustainability for the City of Philadelphia, during hearing on PGW's sustainability, pursuant to Resolution No. 181081).

184 *Id.* at 14, 32.

Company before asking the Commission to impose higher rates on the people of Philadelphia, especially now. [185]

By Order dated July 7, 2020, we determined that environmental considerations, including methane and other leaks that may exist in the PGW infrastructure, are relevant to determining whether the rates increase sought by PGW for infrastructure work is just and reasonable.

We also determined that whether the proposed rate increase and associated infrastructure work present a risk of stranded assets given regional environmental planning issues are relevant to the reasonableness of the proposed rates, rules and regulations. We will review the contested issues in accordance with that determination.[186]

B. OVERALL RATE INCREASE

1. Environmental Stakeholders' Position

The Environmental Stakeholders contend that PGW has failed to carry its burden of proving that its requested rate increase is just and reasonable because (1) PGW has failed to study potentially cost-effective alternatives, such as energy efficiency, to its proposed infrastructure investments, and (2) PGW has failed to study stranded asset risks to its proposed infrastructure investments from climate change and climate regulations.[187] Environmental

185 PGW MB at 2; *Direct Testimony of Ezra D. Hausman on Behalf of the Environmental Stakeholders*, at 28:9–29:19, Docket No. R-2020-3017206 (June 15, 2020) ("SC St. No 1, Hausman Direct").

186 PGW also contends that the Commission should reject the Environmental Stakeholders' challenge to prepaid gas contracts for being improper testimony and an issue that is outside the scope of this base rate case, citing *Funk v. Wolf*, 144 A.3d 228 (Pa.Cmwlth. 2016) and *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 76 (Pa.Cmwlth. 1995). PGW RB at 46-47. A review of the pleadings shows that prepaid gas contracts for terms up to 30 years are referenced by Environmental Stakeholders as an example of long-range planning by PGW. *See* Environmental Stakeholders MB at 56. Therefore, it will not be addressed as a claim in this matter.

187 Environmental Stakeholders (ES) MB at 2.

Stakeholders do not contest the amount of the revenue to be generated through the settlement as much as the use and planning for the revenue. They contend that PGW has not adequately taken climate issues into consideration when determining its revenue requirements, particularly demand reductions that arise out of warming trends acknowledged by PGW.[188]

Although PGW asserts that it "determines its test year revenues in part by projecting test year degree days, which are affected by warming trends," [189] the Environmental Stakeholders contend that PGW should not use rate increases to maintain operations of the Company at its current level when the Company acknowledges decreasing use of gas driven by warming trends. Therefore, they assert, asking the Commission to impose a rate increase to invest in infrastructure that may result in stranded assets is contrary to reason and is not in the public interest. The Environmental Stakeholders reference that the "Governor of Pennsylvania has committed to reducing greenhouse gas emissions 26% statewide by 2025, and 80% statewide by 2050.[190] They also note that the Philadelphia City Council has committed to "proactive climate change solutions," including reducing the City's carbon footprint by 80% before 2050 and transitioning to the use of 100% renewable energy "for all energy (including heat and transportation) city-wide by 2050 or sooner."[191] [192] Without planning for implementation, it is argued, PGW is effectively shifting the cost risks of weather variability to customers.[193]

The Stakeholders argue that PGW's operations face considerable immediate and long-term challenges, but the Company has not planned to meet those challenges. They also

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188 ES MB at 8-9, RB at 17-18.

189 PGW Main Brief at 14.

190 Pa. Exec. Order No. 2019-01 at 2 (Jan. 8, 2019) ("Order No. 2019-01") (emission percentages relative to 2005 levels).

191 *Urging the City of Philadelphia to take measures to achieve fair and equitable transition to the use of 100% Clean Renewable Energy by 2050*, Resolution No. 190728, at 2 (Sept. 26, 2019) ("Resolution No. 190728"),https://phila.legistar.com/LegislationDetail.aspx?From=RSS&ID=4142523&GUID=BA06CC3B-7B43-4743-A07E-515A145C4A2A.

192 ES MB at 8.

193 ES MB at 27

note that PGW operates a distribution system designed to transport natural gas that is comprised of aging, at-risk infrastructure. They also indicate that improving the safety of PGW's aging system requires removal of at-risk components, a process that will take PGW approximately four decades to complete based on current assumptions.[194]

In addition to these intentional commitments to reduce reliance on natural gas as an energy source, PGW's operations face direct climate risks that impose real costs on customers. For example, PGW has been grappling with the challenges of weather variability and warming winters for at least two decades. Warming winters depress demand, but customers' reduced need for natural gas does not reduce the fixed costs of operating and maintaining PGW's system, prompting PGW to seek rate increases.[195] Weather variability destabilizes PGW's cash flow, a problem addressed since 2002 through PGW's Weather Normalization Adjustment, which guarantees PGW collects expected revenues even when abnormal weather causes customers to use less natural gas.[196] Increased variability and a long-term trend of warming weather are likely to be joined by additional physical risks, including severe storms and extreme weather events.[197] The predicted rise in Sea levels to occur within this century could result in hundreds of millions of dollars—if not billions—in lost property values across the Commonwealth and the displacement of "more than 5,000 people residing in more than 2,00 homes—mostly in Philadelphia[.]"[198] [199]

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[194] ES MB at 7-9.

[195] *E.g.*, ES Hearing Ex. 11 at 3.

[196] PGW Vol. I, II.A.4, Renewed Energy in Philadelphia, p. vi ("Recognizing the need to stabilize and normalize revenue due to variations in weather from one fiscal year to another fiscal year, PGW requested and received approval from the PUC in 2002 for a Weather Normalization Adjustment Clause (WNA) to address fluctuating revenue due to weather conditions.").

[197] SC St. No. 1, Hausman Direct, at 13 (quoting Authorizing the Committee on Transportation and Public Utilities to conduct hearings regarding the sustainability of the Philadelphia Gas Works. Resolution No. 181081 at 1 (Dec. 6, 2018), https://phila.legistar.com/View.ashx?M=F&ID=6828110&GUID=C0AC9F32-F7E1-41B3-AF8ECB25B86D6837.

[198] *Id.* (quoting Exhibit EDH-3 at 16).

[199] ES MB at 7-9.

The Environmental Stakeholders understand that PGW must remove at-risk infrastructure, but they maintain that PGW cannot remove that infrastructure and make in-kind replacements without exposing customers to substantial stranded asset risks. They aver that replacement pipeline may be a reasonable investment when you can expect to get fifty-four years of value from it; but when it may only be used and useful for a fraction of that time, replacement pipeline may not be the lowest-cost, lowest-risk investment. The Environmental Stakeholders assert that this is the scenario where detailed and comprehensive plan for the future is most needed.[200]

2. PGW's Position

PGW argues that the Environmental Stakeholder's 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.[201] PGW opposes the Environmental Stakeholders' recommendations for many reasons, but most importantly because it is based upon several false premises. PGW asserts that there is no mandate that natural gas usage be phased out and the Commission is not empowered to do so. PGW also argues that it is not the policy of the Commonwealth at any level to compel natural gas customers to switch to all electric residences, stores and restaurants.[202] [203]

PGW asserts that the Environmental Stakeholders' recommendations would 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

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200 ES MB at 7-9; ES RB at 43-47.

201 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….").

202 SC St. No. 1 at 12.

203 PGW MB at 7.

request it within its service territory in a “safe, adequate and continuous manner.” PGW argues that the recommendations would impose significant additional costs on PGW’s customers and make the gas system less safe.[204]

PGW also avers that implementing the Environmental Stakeholders’ objectives would involve legislative debate and a new set of statutory operating principles for regulated public utilities. PGW notes that at this point there has been no such determination by the Pennsylvania General Assembly or any other agency of Pennsylvania or City government. PGW maintains that the Environmental Stakeholders’ witness, Dr. Hausman, is asking the Commission to come to those conclusions unilaterally in this case without any legislative authority.[205]

PGW argues that it is and has been preventing leaks and protecting the public safety under programs approved within the Commission’s DSIC and LTIIP orders, by advancing the removal of aged, unsafe and leak prone cast iron mains and bare steel services.[206] PGW asserts that the Commission should reject the Stakeholders’ recommendation to deny PGW’s proposed rate increase. PGW contends that the Stakeholders’ recommendation is based on the faulty and unsupported assertions that PGW’s proposed infrastructure modernization program is imprudent. In this matter, PGW requests recognition of the incremental cost of making these necessary improvements consistent with those prior filings. PGW indicates that the current plan for the replacement of cast iron mains and bare steel services was implemented, pursuant to recommendations made by Commission Staff, to address critical safety-related issues; it would be imprudent and a violation of PGW’s obligations under the Public Utility Code to provide inadequate, inefficient, unsafe and unreasonable service.[207]

Further, PGW also maintains that the Environmental Stakeholders’ assertions that the Company acted imprudently, failed to consider alternatives to its infrastructure improvement

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[204] PGW MB at 8.

[205] PGW MB at 8.

[206] PGW MB at 9-10.

[207] PGW RB at 1-2.

plan, or failed to plan for a future of safe and reliable gas service are inaccurate and not supported by the record. PGW argues that the record evidence demonstrates that the use of natural gas by homes and businesses in Philadelphia is, and should continue to be, part of any responsible and cost-effective effort to address climate change. Further, PGW states that it has considered reductions in demand in implementing its pipeline replacement program.[208]

3. I&E's Position

I&E filed a Reply Brief in this matter related to the litigated issues, specifically related to pipeline safety issues. I&E asserts that the main crux of the Environmental Stakeholders' argument in this proceeding seems to be that PGW should find a way to exit the natural gas business and not accelerate the replacement of aging infrastructure to plan for this eventuality. I&E argues that the Commission has consistently encouraged PGW to accelerate replacement of its aging cast iron and bare steel pipeline.[209]

In this proceeding, I&E states that PGW and the majority of the parties were able to agree to a level of rate relief that I&E believes to be just and reasonable. I&E maintains that the rate relief PGW requested in this proceeding allows it to accelerate its replacement of cast iron mains at a rate that exceeds that approved in its LTIIP. I&E avers that accelerating replacement of cast iron gas pipeline is in the public interest as it is the riskiest type of gas pipeline currently in the ground in PGW's service territory. Further, I&E contends that PGW, as compared to other NGDCs, currently has the longest projected replacement timeframes for these risky assets. I&E argues that expediting the replacement timeline is important as PGW's leaks per mile on cast iron have been increasing. I&E notes that in 2016, PGW had 0.53 leaks per mile, while in 2018 it had 0.66, and 0.69 in 2019. I&E asserts that there is a need for PGW to expeditiously remove the risky pipe.[210]

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208 PGW RB at 1-2.

209 I&E RB at 3.

210 I&E RB at 3-4.

I&E notes that as the Commission Bureau charged with enforcing the safety regulations found in 49 CFR § 192, this is in direct contradiction to the position it takes in this proceeding. While natural gas is, no doubt, a reasonably priced and efficient way to heat a home, natural gas can also be extremely dangerous. I&E asserts that a natural gas facility must be adequately and properly maintained in order to minimize those associated risks. Therefore, it has been the longstanding position of the Commission and I&E's Pipeline Safety Division that PGW's aging cast iron pipe needs to be replaced as quickly and efficiently as possible.[211]

In December of 2019, I&E states that PGW experienced a gas pipeline explosion which resulted in two fatalities, along with the destruction of multiple homes. While this incident is currently part of an active investigation by I&E's Pipeline Safety Division, I&E indicates that in front of the structure involved, a cast iron main break was found. In fact, in 2011, I&E filed a Complaint against PGW for an incident Philadelphia, in which a natural gas explosion at home located on Torresdale Avenue occurred. In this incident the explosion leveled one building, damaged several surrounding properties and damaged six vehicles and resulted in injury to five PGW employees and the death a PGW employee. I&E argues that these types of incidents serve to highlight how tremendously important it is for PGW to replace the aged cast iron pipeline contained in its service territory.[212]

I&E avers that the risk associated with PGW's pipe has also been an ongoing concern to this Commission. In its 2015 Staff Report, the Commission noted that:

> Unprotected steel mains, like cast iron, also pose a corrosion risk because of the lack of cathodic protection. PGW has approximately 493 miles of unprotected steel still in service. With its 1,500 miles of cast iron and 493 miles of unprotected steel, PGW has the highest percentage of high-risk pipe in the ground when compared to any other large NGDC in the Commonwealth by a factor of two. Moreover, PGW's gas mains are among the oldest in the state, with more than 1,170 miles installed before 1940.[213]

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211 I&E RB at 7.

212 I&E RB at 7.

213 I&E RB at 8.

To assist PGW in that endeavor, I&E notes that the Commission issued an Order in 2016 allowing it to raise its DSIC cap from 5% of billed revenues to 7.5% of billed revenues. In that Order the Commission stated:

> …we will grant PGW's request for a waiver of the 5% DSIC cap, pursuant to Section 1358(a)(1) of the Code, and we will permit PGW to raise its DSIC cap to 7.5%, subject to the conditions set forth herein. It is undisputed in this proceeding that PGW's aging gas distribution infrastructure poses significant safety and reliability issues, and that the current pace of the Company's replacement efforts is unacceptable and potentially harmful to the public.
>
> It is clear that in order for PGW to address these substantial infrastructure issues, it must obtain the additional funding necessary to further accelerate its main replacement efforts.[214]

In addition, in its Order of PGW's Petition to Modify its LTIIP, in which PGW planned to accelerate cast iron and unprotected bare steel replacement, the Order stated, "the Commission believes PGW's increased spending on infrastructure replacement through its increased DSIC cap to be in the public interest. As it should greatly accelerate PGW's replacement of at-risk pipe, which will provide increased safety and reliability through the reduction of main breaks and leaks."[215]

I&E argues that public utilities are statutorily required to provide their customers with safe and reliable service under Section 1501 of the Public Utility Code. I&E avers that there is no exception to this rule. However, inherent in natural gas service is some level of risk associated with the fact that natural gas is a combustible substance. I&E contends that not replacing aged, dangerous cast iron is simply not an option for PGW given its continuing obligation to safely serve its customers.[216]

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214 I&E RB at 8.

215 I&E RB at 9.

216 I&E RB at 9.

As I&E notes, the Joint Petitioners have agreed to a level of revenue that is appropriate. I&E asserts that the revenue requirement contained in the Settlement is approximately half of what PGW sought in the filing of its rate case; however, PGW will still be able to accelerate its cast iron replacement program and propose a further acceleration in its next LTIIP filing. As the Bureau charged with representing the public interest and enforcing the gas safety regulations found in the Code of Federal Regulations (CFR), I&E believes this is an appropriate resolution that will result in just and reasonable rates and accelerating cast iron replacement will reduce the risks associated with these assets in PGW's service territory.[217]

C. FIXED CUSTOMER CHARGE

1. Environmental Stakeholders' Position

Environmental Stakeholders opposes increasing the Customer Charge. Although acknowledging that the settlement customer charge increase is less than the original PGW proposal to increase this charge to $19.95, or by 30 percent, Environmental Stakeholders contend that PGW failed to rebut evidence submitted by the Environmental Stakeholders that a fixed charge increase will negatively impact customers, particularly low-income customers, and will impede energy efficiency and conservation.

They also assert that customer charges are not the appropriate method to recover fixed costs in that it is inconsistent with economic theory and basic utility accounting principles. Quoted is Environmental Stakeholders' witness, Dr. Hausmann, who stated that PGW's request to increase its customer charge "is an expression of the monopoly power of the utility, and should be regarded with skepticism by the regulatory body whose responsibility it is to rein in that monopoly power."[218]

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[217] I&E RB at 10-11.

[218] *Id.* at 23:22–24:1; ES RB at 21-22.

Environmental Stakeholders further assert that increased recovery through fixed rather than variable charges harms customers generally, and disproportionately harms low-income customers.[219] Additionally, they argue that increased customer charge diminishes customers' ability to control their bills through changes in usage, conservation measures and, coupled with higher fixed charges discourages energy efficiency by dampening price signals. [220]

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219 ES MB at 32. SC St. No. 1, Hausman Direct, at 21; *Direct Test. of Harry S. Geller on Behalf of Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of Greater Philadelphia*, at 10, Docket No. R-2020-3017209 (June 15, 2020) (TURN, *et al.* St. No. 1, Geller Direct); OCA St. No. 5, Colton Direct, at 16–18.

220 ES MB at 34.

3. PGW's Position

PGW argues that the record supports adoption by the Commission of the customer charges agreed to by the parties to the Settlement. The Cost of Service Study presented by PGW witness Constance Heppenstall demonstrates that an increase in customer charges is warranted and consistent with cost causation principles.[221] PGW notes that the Environmental Stakeholders did not point to any specific concerns with this study. PGW also maintains that the record evidence also demonstrates that PGW's Universal Service Programs will significantly reduce, or eliminate, the effect of the rate or customer charge increases on participating low-income customers. Moreover, PGW asserts that the proposed increase in customer charges, which is only a small percentage of the total bill, will not impede energy conservation efforts.[222]

D. INFRASTRUCTURE IMPROVEMENTS AND PIPELINE SAFETY ISSUES

1. Environmental Stakeholders' Position

The Environmental Stakeholders argue that nothing in the record shows PGW has considered the full risks and potential losses that may be in store for customers if it continues business as usual. They aver that regulated utilities are required to cost-effectively manage operations and are prohibited from imprudent spending of customer dollars. Without robust long-term planning and evaluation of alternatives, the Environmental Stakeholders assert that it is impossible to judge whether spending is prudent. They contend that the Commission should deny increased revenue intended to further accelerate infrastructure investments unless and until PGW can show by substantial evidence that, after consideration of alternatives, its proposed investments reflect the lowest-cost and lowest-risk solution for customers.[223]

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221 *See* PGW St. 1 at 7-8; PGW St. 5 at 5; PGW St. 6 at 5-10; PGW Exh. CEH-1, Schedule G; PGW Exh. CEH-1R, Schedule G.

222 PGW MB at 18-19; PGW RB at 2.

223 ES MB at 9-10, 43-47.

Moreover, the Environmental Stakeholders maintain that PGW does not consider future customer needs when it decides how to replace at-risk infrastructure. PGW does not integrate energy efficiency into its infrastructure planning process. They also assert that PGW does not consider potentially cost-effective alternatives to in-kind replacement. Importantly, the Environmental Stakeholders argue that PGW does not consider the potential stranded asset risk exposure it continues to saddle customers with by replacing pipeline that may become obsolete. The Stakeholders aver that PGW has not provided substantial evidence showing it would put increased revenue to prudent and necessary uses. They maintain that PGW's failure to conduct any real planning to address immediate- and long-term risks should be unacceptable to this Commission. They also argue that robust planning is needed to mitigate risk and reduce costs in the near- and long-term. The Stakeholders argue that increased revenue is not needed to fulfill PGW's existing infrastructure plan, and customers should not be required to send more dollars to PGW unless and until PGW can show it is responsibly planning for the future.[224]

2. PGW's Position

PGW argues that it has demonstrated that its main replacement program costs are reasonable. The Company notes that it has undertaken several cost-reduction measures, all replacement work is awarded pursuant to Requests for Proposals awarded to the lowest responsible bidder, and its replacement costs per mile are within the range of other Pennsylvania natural gas distribution companies. Moreover, this issue, which was raised by I&E in its testimony, was resolved in the settlement with and the other settling parties.[225]

PGW also argues that the Stakeholders' assertion that PGW does not need a rate increase here because the main replacement set forth in PGW's LTIIP allegedly can be accomplished without the requested rate increase is contradicted by the record in this proceeding and ignores the fact that PGW needs to cover all of its expenses and maintain cash for operations. In order to sustain the pace of construction, PGW states that it is important to

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224 ES MB at 9-10, 43-47.

225 PGW MB at 9-10, 47-48; PGW RB at 1-2, 29-38.

maintain the Company's cash flow and financial metrics and not allow them to atrophy under the weight of other expense increases. PGW contends that the Stakeholders ignore the financial needs of the Company, needs that have been recognized by the other parties in the Partial Settlement's recommendation that PGW be permitted to receive one-half of its original request, phased in by January 2022.[226]

PGW asserts the evidence demonstrates that the Stakeholders' recommendation to address pipeline safety by engaging in safety-related distribution system maintenance is a dangerous strategy and not appropriate for a company with such a high percentage of cast iron main, a safety concern previously recognized by Commission staff.[227]

3. I&E's Position

I&E maintains that all regulated utilities in the Commonwealth must provide safe and reliable service. In an effort to ensure that PGW is meeting its safety obligations, the Pipeline Safety Division of I&E reviewed PGW's filing and safety commitments. I&E notes that PGW's Gas Safety practices have been reviewed and compromises have been reached in several areas to ensure that PGW practices are in conformity with its obligation to provide safe and reliable service.[228]

I&E argues that the Environmental Stakeholders have skewed I&E witness Orr's recommendation regarding cast iron main replacement costs. I&E asserts that the entire premise of I&E witness Orr's testimony was the need to further accelerate cast iron pipe replacement.[229]

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226 PGW RB at 3.

227 PGW RB at 1-2, 29-38.

228 I&E RB at 12.

229 I&E RB at 12-13.

I&E notes that increasing pipeline replacement costs per mile are concerning from a gas safety perspective because as PGW pays more per mile to replace its risky pipe, less money is available to replace more pipe. Due to the risk associated with cast iron mains and the need to replace them as quickly as possible, I&E witness Orr recommended that PGW develop a plan that reduces pipeline replacement costs and invest the savings therefrom into additional cast iron main replacement. [230]

Because I&E remains concerned about the rising costs of pipeline replacement it notes that this issue was addressed as part of the Joint Petition for Partial Settlement in this proceeding. Therefore, while recognizing both the risk of cast iron pipe as well as the fact that creating a plan to reduce pipeline replacement costs would not be without cost to PGW and ultimately its ratepayers, I&E and PGW agreed that the I&E Pipeline Safety Division would be allowed to review PGW's AAOP. I&E avers that this will give it an opportunity to collaborate with PGW on areas where pipeline replacement costs seem to be rising and give PGW the opportunity to proactively react to rising costs.[231]

As explained above, PGW has an obligation to provide safe and reliable service to all customers. The recommendations of the Environmental Stakeholders fail to take this into account. If adopted, their proposals would serve to stymie PGW's pipeline replacement program to the detriment of the PGW ratepayers.[232]

E. RECOMMENDATIONS

As discussed herein, we agree that the Commission does not have authority in environmental regulation and enforcement. As was noted above in Subsection A of this Section, the Commission has no authority to order a public utility to produce a Climate Business Plan.

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230 I&E RB at 13-14.

231 I&E RB at 14.

232 I&E RB at 15.

However, as has also been noted, the Commission may consider environmental factors in its overall determination whether the rate increase proposed is just and reasonable. In this matter, we are constrained by the Commission's prior precedent related to PGW. The Commission has repeatedly stressed its concern that PGW accelerate its replacement of cast iron and unprotected steel mains and lines. The Company has experienced two fatal gas explosions in the last ten years. We agree with I&E that public safety is the utmost concern and that some level of rate increase is required for PGW to continue its replacement of the aging and dangerous infrastructure. As such, we recommend that the Commission deny the Environmental Stakeholders' request that the rate increase be denied completely in this matter.

In this instance, it is also important that PGW take into account environmental concerns, specifically related to climate change. Many of the customers and representatives that presented testimony at the Public Input Hearings in this matter indicated that they had significant concerns regarding climate change and the effect that fossil fuels have on the environment.[233] PGW also does not dispute that climate change is a concern. We agree that these are factors that should be considered in a rate increase and that the Commission should look at these issues now before it reaches a point when PGW's business model becomes increasingly expensive and burdensome to the ratepayers. Therefore, it will be recommended that PGW include in its next rate increase request some consideration of the effect of PGW acknowledged warming trends on needs and usage assessments and its impact upon the pipe replacement plans and infrastructure costs, and ultimately upon any rate increase requested. Finally, we recommend that the Commission should reject the Environmental Stakeholders' challenge to prepaid gas contracts for being an issue that is outside the scope of this base rate case. If the Environmental Stakeholders wish to challenge PGW's prepaid gas contracts, PGW's Section 1307(f) Gas Cost Rate proceeding, and not a base rate case, is the appropriate forum to raise such issues.

Therefore, it is recommended that the Commission approve the Partial Settlement with the following modifications: (1) that the start of the phased-in rate increases agreed to in the

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[233] *See* Section IV of this Recommended Decision where the testimony of the witnesses at the Public Input Hearings is summarized. Of the 25 people who testified on the record at the hearings, 14 people mentioned concerns about the environment, climate change or the need to move toward renewable energy in their testimony.

Joint Petition be delayed by six months until July of 2021; (2) that PGW should not file a general rate increase pursuant to 66 Pa.C.S. § 1308(d) any sooner than January 1, 2023, absent emergency relief, tariff changes or as authorized by Commission order or industry-wide changes in regulatory policy which affect PGW's rates; (3) that no later than 90 days following entry of the Final Order in this matter, and biannually through 2022, PGW must meet with the Commission's Pipeline Safety Division to review PGW's increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks.

Based on the above, this Decision also recommends that the Commission deny the Environmental Stakeholders' proposal that PGW submit a Climate Business Plan. It is recommended that the Commission deny the Environmental Stakeholders' request that the rate increase be denied, as it is critical that PGW replaces the aging pipeline in its system for public safety. However, this Decision recommends that PGW be required to include in its next rate increase request information on its planning for warming weather trends on system needs and usage assessments as well as infrastructure replacement plans.

X. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 1308(d).

2. The Commission has no authority to regulate environmental issues, create environmental regulations or mandate strictly environmental action. *Funk v. Wolf*, 144 A.3d 228 (Pa.Cmwlth. 2016) and *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 76 (Pa.Cmwlth. 1995).

3. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Elec.Co*., 60 Pa. PUC 1 (1985).

4. Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.,* Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assocs.,* 74 Pa. P.U.C. 767(1991).

5. There must be sufficient information provided in a settlement in order for the Commission to determine that a revenue requirement calculation and accompanying tariffs are in the public interest and properly balance the interests of ratepayers and utility stockholders. *See Pa. Pub. Util. Comm'n v. Pennsylvania Power Co.,* 55 Pa. P.U.C. 552, 579 (1982); *Pa. Pub. Util. Comm'n v. National Fuel Gas Dist. Corp.,* 73 Pa. P.U.C. 552, 603-605 (1990).

6. The Joint Petition for Partial Settlement with modifications 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.Cmwlth. 2006).

7. The burden of proof in a ratemaking proceeding is on the public utility. See 66 Pa.C.S. § 315(a); *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n.*, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). *See also, Brockway Glass v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

8. 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.*, *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, *et al*, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Telephone Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

9. 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. *Pa. Pub. Util. Comm'n et al. v. Columbia Gas of Pa. Inc.*, R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).

10. The Philadelphia Gas Works has met its burden of establishing that the rates indicated in the Joint Petition for Partial Settlement are just and reasonable as modified by this Recommended Decision.

11. The Environmental Stakeholders have not met their burden of establishing that the Commission may order the Philadelphia Gas Works to submit a Climate Business Plan.

12. The Environmental Stakeholders have not met their burden of establishing that an increase in the fixed customer charges is unjust or unreasonable.

13. The Environmental Stakeholders have met their burden in establishing that the Commission may consider environmental issue when determining whether a rate increase is just and reasonable.

XI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That PGW Late-filed Exhibit 1 is admitted into the record.

2. That the rates, rules and regulations contained in Supplement No. 128 to PGW's Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 128) and Supplement No. 85 to

PGW’s Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 85) not be permitted to be placed in effect.

3. 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 Exhibit 1 (proof of revenues) to the Joint Petition for Settlement as modified by this Recommended Decision.

4. That PGW shall be permitted to increase base rates as follows: (1) $10 Million for service rendered on or after July 1, 2021; (2) additional $10 million for service rendered on or after January 1, 2022; and (3) $15 million for service rendered on or after July 1, 2022.

5. That no later than ninety (90) days following entry of the Final Order in this matter, and biannually through 2022, PGW must meet with the Commission’s Pipeline Safety Division to review PGW’s increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks.

6. That upon entry of the Commission’s Order approving the Joint Petition for Partial Settlement as modified by this Recommended Decision, Philadelphia Gas Works shall be permitted to file tariff supplements in compliance with the Joint Petition for Settlement as modified by this Recommended Decision, to become effective upon at least one day’s notice.

7. That the Environmental Stakeholders’ proposal that the Philadelphia Gas Works be required to submit a Climate Business Plan to the Commission be denied.

8. That the Environmental Stakeholders’ proposal regarding the Philadelphia Gas Works’ consideration of climate change issues be granted.

9. That the Philadelphia Gas Works be required at the next filing of a rate base increase request to include information regarding its planning related to climate change issues.

10. That the complaint of the Office of Consumer Advocate at Docket No. C-020-3019161 be deemed satisfied as to all issues and shall be marked closed.

11. That the complaint of the Office of Small Business Advocate at Docket No. C-2020-3019100 be deemed satisfied as to all issues and shall be marked closed.

12. That the complaint of Philadelphia Industrial and Commercial Users Group at Docket No. C-2020-3019430 be deemed satisfied and marked closed.

13. That upon acceptance and approval by the Commission of the tariff supplements and proof of revenues filed by the Philadelphia Gas Works consistent with this Order, this proceeding be marked closed.

Date: September 30, 2020

/s/
Darlene Davis Heep
Administrative Law Judge

/s/
Marta Guhl
Administrative Law Judge