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October 15, 2020

Via E-Filing

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

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

Office of Consumer Advocate v. Philadelphia Gas Works,
Docket No. C-2020-3019161

Office of Small Business Advocate v. Philadelphia Gas Works,
Docket No. C-2020-3019100

Philadelphia Industrial and Commercial Gas User Group v. Philadelphia Gas Works,
Docket No. C-2020-3019430

Dear Secretary Chiavetta:

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

If you have any questions, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Daniel Clearfield". The signature is written in a cursive, flowing style.

Daniel Clearfield

DC/lww

Enclosure

cc: Hon. Marta Guhl w/enc.
Hon. Darlene Heep w/enc.
Certificate of Service w/enc.
Office of Special Assistants (ra-OSA@pa.gov)

CERTIFICATE OF SERVICE

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

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Dated: October 15, 2020



Daniel Clearfield, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
PHILADELPHIA GAS WORKS**

October 15, 2020

Table of Contents

I. INTRODUCTION 1

II. EXCEPTIONS 6

 A. Settlement Exceptions..... 6

 1. Settlement Exception No. 1: The RD Erred By Failing To Recognize That, By The Terms Of The Settlement, Material Modifications Of The Settlement Terms Were Not Permissible. (RD at 1, 2, 3, 54, 76, 77-78, 79, 96-97; FOF at ¶ 44, 45; COL at ¶ 6, 10; Ordering Paragraphs 3, 4, 5, 6)..... 6

 2. Settlement Exception No. 2: The RD Erred By Not Concluding That The Joint Petition For Settlement Is In The Public Interest And Should Have Been Approved Without Material Modification. (RD at 1, 2, 3, 54, 76, 77-78, 79, 96-97; FOF at ¶ 44, 45; COL at ¶ 6, 10; Ordering Paragraphs 3, 4, 6)..... 9

 3. Settlement Exception No. 3: The RD Erred By Delaying The Agreed-Upon Rate Increases For An Additional Six Months, Since The Recommended Delay Is Unsupported, Unreasonable And Would Not Provide A Sufficient Rate Increase In The FPFTY. (RD at 1, 2, 3, 76, 77-78, 96-97; FOF at ¶ 44, 45; COL at ¶ 6, 10; Ordering Paragraphs 3, 4, 6)..... 15

 4. Settlement Exception No. 4: The RD Errs In Extending The Stay Out Provision For An Additional Year. (RD at 1, 2, 54, 57, 78, 79, 97; COL at ¶ 6, 10; Ordering Paragraphs 3, 6)..... 22

 5. Settlement Exception No. 5: The ALJs Erred In Recommending That The Partial Settlement Be Modified To Require PGW To Meet With The Commission’s Pipeline Safety Division Biannually Through 2022 To Review Increasing Pipeline Replacement Costs And To Develop A Plan To Reduce Pipeline Replacement Costs And Leaks. (RD at 78-79; FOF at ¶ 35; Ordering Paragraph 5)..... 23

 B. The ALJs Erred In Determining That The Commission May Consider Environmental Factors In Its Overall Determination Of Whether A Proposed Rate Increase Is Just And Reasonable And In Recommending That PGW Include In Its Next Rate Increase Request Information Regarding Its Planning Related To Warming Climate Trends. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9)..... 28

1. Litigation Exception No. 1: The ALJs’ Recommendation That PGW Be Required To Produce Its Plan Pertaining To Warming Climate Trends Is Entirely Inconsistent With Their Legal Conclusions That The Commission Lacks Jurisdiction Over Environmental Issues And Does Not Have The Authority To Order PGW To Produce A Climate Business Plan Or Anything Resembling Same. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).....29

2. Litigation Exception No. 2: The ALJs’ Legal Conclusion That The Commission May Consider Environmental Factors In Its Overall Determination Of Whether A Rate Increase Is Just And Reasonable Is Overly Broad And, As Applied, Is Inconsistent With The Numerous Commonwealth Court Orders That Have Held That The Commission Does Not Have Jurisdiction Over Environmental Issues. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).....32

3. Litigation Exception No. 3: The ALJs’ Recommendation That PGW Must, As Part Of Its Next Rate Case, Affirmatively Show How It Is Planning For Climate Change Inappropriately And Unfairly Imposes A New Filing Requirement Only On PGW. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).37

III. CONCLUSION.....37

Attachment A Calculations Regarding FY 2021 and FY 2022

Attachment B Calculations Regarding ALJ Recommendations

I. INTRODUCTION

Philadelphia Gas Works (“PGW” or “Company”) hereby submits these Exceptions¹ to the Recommended Decision (“RD”)² of Administrative Law Judges Darlene Heep and Marta Guhl (“ALJs”) because adopting the recommendations therein would leave PGW with inadequate rate levels and insufficient financial metrics that could lead to the Company’s bond rating being downgraded and cause PGW to have to consider cutting back in infrastructure investments, essential to providing safe, adequate and reliable service to its customers.

These Exceptions address recommendations made by the RD on the uncontested partial settlement that was agreed to or not opposed by all the rate case parties except the Environmental Stakeholders, and the RD’s recommendations regarding the contested issues that were raised by the Environmental Stakeholders and which were fully litigated.

The “Joint Petitioners”³ reached a settlement on all issues other than those raised by the Environmental Stakeholders in which, rather than PGW’s requested \$70 million rate increase, smaller rate increases totaling \$35 million would be permitted; the rate increase would be phased

¹ PGW’s Exceptions to the RD’s recommended: (a) modifications to the Settlement are called “Settlement Exceptions,” and (b) the RD’s recommended resolution of the issues reserved for litigation are called “Litigation Exceptions.” The Settlement Exceptions and the Litigation Exceptions are collectively referred to as PGW’s “Exceptions.”

² In these Exceptions, (1) the Recommended Decision is referred to as the “RD” or the “Recommended Decision”; (2) Findings of Fact are referenced as “FOF at ¶ ___”; (2) Conclusions of Law are referenced as “COL at ¶ ___”; and (3) Ordering Paragraphs are referenced as “Ordering ¶ ___” or “Ordering Paragraph.”

³ The Joint Petitioners are PGW, the Bureau of Investigation and Enforcement, (“BIE” or “I&E”), the Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”) and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) (collectively, the “Joint Petitioners” or “Settling Parties”). The Settlement was not opposed by 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”). Direct Energy Services, Inc. takes no position on the Settlement. OSBA does not endorse the Revenue Requirement of the Settlement but does not oppose it. Clean Air Council and Sierra Club/PA (collectively “Environmental Stakeholders”) did not join in the Settlement and their issues, having to do with PGW’s response to climate change, were reserved for litigation. No citizen formal complaints were filed opposing the proposed rate increase.

in in three steps (without recoupment) between January 1, 2021, July 1, 2021 and January 1, 2022.

The Joint Petitioners also agreed to a “COVID-19 Relief Plan” which will provide a bill credit of \$300 and other enhancements to up to 6,660 PGW customers whose economic circumstances have been adversely affected by the pandemic,⁴ as well as numerous enhancements to PGW’s low income programs. If approved, these various agreed-to enhancements will help customers better deal with the continued economic effects resulting from the pandemic.⁵

PGW is filing Settlement Exceptions seeking the rejection by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) of the RD’s material modifications to the Joint Petition for Partial Settlement (“Joint Petition” or “Settlement”). PGW respectfully submits that the ALJs exceeded their authority by “modifying” certain important provisions within the Settlement while recommending that the modified Settlement be placed into effect. Significantly, the RD recommends that (1) the agreed-upon phased-in rate increases be delayed for six months and that (2) an additional year be added to the agreed-upon stay out.⁶

These Exceptions request that the Commission reject the RD’s material modifications to the Settlement and approve the Settlement as in the public interest. First, by the terms of the Settlement, the Commission may not make material modifications to the terms of the agreement. If it does so, any party has the right to withdraw from the Settlement and proceed to litigation,

⁴ Joint Petition at 5, ¶¶ 18-22.

⁵ Just last week, the Commission noted that while the economy is still exhibiting a downturn, the situation has improved since earlier this year. *Public Utility Service Termination Moratorium - Modification of March 13th Emergency Order*, Docket No. M-2020-3019244, Order, adopted October 8, 2020, available at <http://www.puc.state.pa.us/pcdocs/1680645.doc>.

⁶ RD at 2, 77-79. The RD also made modifications in another provision of the Settlement having to do with PGW’s at risk infrastructure replacement program, which will be addressed in Settlement Exception No. 5, below.

which PGW will be forced to do if the RD's material modifications are adopted by the Commission.

Second, PGW excepts to the failure of the RD to recognize that the Settlement must be reviewed to determine whether, overall, it is in the public interest. In fact, the Settlement represents a careful balancing of the interests of ratepayers and PGW, as reflected in the fact that both the OCA and BIE agreed to the Settlement and all other parties (except the Environmental Stakeholders that opposed the Settlement rate increase on separate grounds) either supported or did not oppose this compromise result. It contains numerous provisions that mitigate the effect of the proposed rate increase on ratepayers and provide enhancements and programs to help customers in these difficult times, and which could not be obtained from litigation (e.g., a rate increase phase-in and a stay-out).

From PGW's perspective, the Settlement's phased in rate increase was minimally reasonable. While the total \$35 million rate increase will produce *pro forma* financial metrics that are within the range of those recommended by the parties, the actual Fully Projected Future Test Year ("FPFTY") (i.e. 9/1/20 to 8/31/21) rate increase (because of the agreed upon phase-in) will only provide \$7 million in additional revenue in that year. When compared to the as-filed rate increase request being effective on December 4, 2020, this \$7 million is only 12.7% of the revenues that PGW would have realized if PGW's entire as-filed rate increase request had been effective on December 4, 2020. Likewise, when the additional revenues from the settlement phased in rate increase for both the FPFTY (i.e. FY 2021) and FY 2022 are considered, the additional billed revenues for both years still only total \$36.7 million, which is just 29.4% of the amount PGW would have billed if the entire, as-filed rate increase request had been effective on

December 4, 2019.⁷ As these percentages show, the settlement phased in rate increase approach does not result in substantial rate relief for the Company. PGW and the Settling Parties purposefully negotiated this approach in order to mitigate the FPFTY and FY 2022 rate impacts on customers.

The additional delays in rate relief recommended by the RD would further reduce PGW's allowed revenue to unreasonable and unacceptable levels. The additional six month delay means that PGW would be permitted to bill just 1.1% of the amount that it would have billed if its full, \$70 million request had been granted because it would only provide rate relief for just two (non-heating) months in the FPFTY.⁸ By effectively eliminating any rate relief in FY 2021, PGW would be left with negative cash in FY 2022, reducing its debt service coverages close to the minimums permitted by its bond ordinances, and would threaten PGW's ability to continue its construction improvements, including at risk main replacement, or maintain its current bond rating.

The RD's primary focus on the interests of customers is fundamentally at odds with the well-established requirement to balance the interests of both the Company and its ratepayers and violates PGW's statutory and constitutional rights to "just and reasonable" rates within a "zone of reasonableness." Because of this, and as noted, if the RD's modifications to the Settlement are approved, PGW will be forced to withdraw from the Settlement and fully litigate the rate case. That outcome would not be in the public interest.

PGW is also excepting to the RD's modification of the Settlement as it pertains to PGW's pipeline replacement efforts. The RD imposes additional requirements on PGW to meet with the

⁷ See, Attachment A hereto.

⁸ *Id.*

Commission’s Pipeline Safety Division biannually through FY 2022 to: (1) review increasing costs of pipeline replacement; and (2) develop a plan to reduce pipeline replacement costs and leaks.⁹ The Settlement fully addresses the concerns raised by BIE regarding pipeline replacement costs and prioritization of pipeline replacements (which helps to reduce leaks in a distribution system).¹⁰ Since this issue was fully resolved in the Settlement there was no basis to impose additional costly and unnecessary requirements on PGW and BIE.¹¹

PGW is also filing exceptions regarding the RD’s resolution of the Litigated Issues raised by only one party – the Environmental Stakeholders. While the ALJs correctly determined that the Commission lacks jurisdiction over environmental issues and lacks jurisdiction to direct PGW to produce a “Climate Business Plan” (or anything “resembling” a Climate Business Plan) as the Environmental Stakeholders demanded, and that PGW’s rate increase should not be rejected because PGW has acted “imprudently” by continuing its main replacement program in the face of potential future climate change restrictions, the ALJs erred in concluding that the Commission nonetheless *may* consider environmental factors in its determination of whether a proposed rate increase is just and reasonable and that, in its next rate increase filing, PGW must file information relating to its planning for warming climate trends.¹² The ALJs’ contradictory conclusions cannot coexist. If, as the RD concludes, the Commission does not have jurisdiction to take actions to direct utilities to ameliorate or respond to climate change, it also cannot order PGW to submit information about its plans to address climate change in its rate case. Of course, the Commission can consider in PGW’s rate cases the effects of global warming or climate

⁹ RD at Ordering ¶ 5.

¹⁰ Joint Petition at ¶¶ 43-45.

¹¹ Joint Petition at ¶¶ 13, 47-48; *see also* Joint Petition, BIE Statement in Support.

¹² RD at 81-82, 96; COL at ¶ 13; Ordering ¶ 8-9.

change, such as the decrease in its *pro forma* weather sensitive sales. But the ALJs’ conclusion that the Commission may consider environmental factors in evaluating whether a rate increase is justified and ordering PGW to set forth its “plans” to address climate change in future cases is not only overly broad, but also inconsistent with Pennsylvania case law that holds that the Commission does not have jurisdiction over environmental issues.

II. EXCEPTIONS

A. Settlement Exceptions

PGW submits the following Settlement Exceptions to the portion of the RD addressing the Joint Petition.

1. Settlement Exception No. 1: The RD Erred By Failing To Recognize That, By The Terms Of The Settlement, Material Modifications Of The Settlement Terms Were Not Permissible. (RD at 1, 2, 3, 54, 76, 77-78, 79, 96-97; FOF at ¶ 44, 45; COL at ¶ 6, 10; Ordering Paragraphs 3, 4, 5, 6).

The RD made significant modifications to the Settlement by first recommending delaying the phase-in of new rates from beginning in January 2021 to instead begin in July 2021 with succeeding phased in amounts also being pushed back. The RD recommended a \$10 million increase in July 2021 (instead of January 2021), a \$10 million increase in January 2022 (instead of July 2021) and a \$15 million increase in July 2022 (instead of January 2022).¹³ The RD further recommended extending the Settlement’s stay-out provision by a full year, preventing PGW from filing another base rate case until January 2023, rather than January 2022 as provided in the Settlement.¹⁴

¹³ RD at 2; Ordering Paragraph 4.

¹⁴ RD at 2. The RD finally recommended that more review should be required of PGW’s pipeline replacement plans, despite the fact that the provisions of the Settlement were acceptable to BIE – the party that raised issues in the first place regarding said plans. *Id.*

For the reasons discussed below, the Commission does not have authority to modify the Settlement's material terms as recommended by the ALJs. The Commission must either accept or reject the Settlement package submitted by the parties, and the RD's "cherry picking" of which provisions to approve was error.

To be clear, if the Commission approves the RD's revenue requirement modifications to the Settlement, PGW will be forced to exercise its right to withdraw from the Settlement. The Settlement provides as follows:

This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the or the Company or any other Joint Petitioner elects to withdraw from the Settlement as provided above, each of the Joint Petitioners reserves their right to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.¹⁵

The RD never acknowledged this provision.

The RD's modifications to the Settlement are significant and would deprive PGW of funds that are necessary for the Company to continue to provide adequate, efficient, safe and reasonable service and facilities. As explained herein, this would threaten critical infrastructure projects as well as PGW's financial health. The additional delay in rate relief and the prohibition against filing any new base rate case until after January 1, 2023 that the RD would impose would create an untenable situation for PGW, and as such PGW would be forced to withdraw from the Settlement and proceed to full litigation.

¹⁵ Joint Petition at ¶ 52.

PGW's right to withdraw from the Settlement and proceed to litigation is crystal clear. First, it is explicitly set forth in the Joint Petition for Partial Settlement which the ALJs reviewed and seemingly approved (but with modifications), and is a standard provision in virtually every settlement. It is also one that the Commission has recognized as valid and enforceable.¹⁶

This clear right to withdraw is grounded on the parties' legal and constitutional rights. PGW – and every party to the Settlement – has a right to fully litigate its claims, including the right to present witnesses and cross-examine opposing parties' witnesses.¹⁷ As Paragraph 52 of the Settlement indicates, all Settling Parties waived their right to fully litigate the issues in this case, including the submission of briefs and reply briefs, but only on the condition that the Settlement is approved “without modification.” Those statutory rights mirror the parties' right to due process guaranteed by the United States Constitution as well as the Constitution of this Commonwealth. Making material modifications to the proposed settlement without providing PGW and the other Settling Parties their right to notice and opportunity to fully litigate their claims would be legally impermissible.

Therefore, pursuant to the Settlement and the parties' legal rights, if PGW withdraws, then the rate case will have to be fully litigated.¹⁸ This would be a time consuming process that would waste resources of PGW, the parties, and the Commission, which is particularly egregious given the effort that has already been expended to reach a reasonable settlement agreement. Moreover, as more fully described in the next Exception, a fully litigated case would eliminate a

¹⁶ See, e.g., *Pa. P.U.C. v. UGI Utilities, Inc. Gas Div.*, Docket No. R-2018-3006814, Opinion and Order entered Oct. 4, 2019, at Ordering ¶ 3.

¹⁷ 2 Pa.C.S. § 504; *ARIPPA v. PUC*, 792 A.2d 636, 660 fn. 35 (Pa.Cmwlth. 2002), citing *Rudolph v. Pennsylvania Blue Shield*, 717A.2d 508 (Pa. 1998).

¹⁸ Joint Petition at ¶ 52. While the evidentiary portion of the proceeding was completed, no briefs or reply briefs were submitted on the matters resolved by the Settlement.

host of provisions to which PGW voluntarily agreed but which cannot legally be imposed absent such agreement.

Additionally, under Section 1308(d), if there has been no final Commission order by the end of the suspension period, then PGW's originally proposed rates will go into effect subject to refund until the litigation is completed and the Commission is able to render a final decision.¹⁹ These rates would likely go into effect while the litigation process played out, including any additional hearings, briefs, and additional Commission review. This would impose much higher charges on ratepayers in the short term (subject to refund) without the significant additional benefits provided by the Settlement. This outcome is not in the public interest and should be avoided.

2. Settlement Exception No. 2: The RD Erred By Not Concluding That The Joint Petition For Settlement Is In The Public Interest And Should Have Been Approved Without Material Modification. (RD at 1, 2, 3, 54, 76, 77-78, 79, 96-97; FOF at ¶ 44, 45; COL at ¶ 6, 10; Ordering Paragraphs 3, 4, 6).

The fundamental error that the RD makes is failing to recognize that the Settlement must be evaluated in its entirety to determine if the provisions as a whole are in the public interest. As discussed below, the RD focuses predominantly on the perceived interests of ratepayers and concludes that the rate increase and stay out provisions of the Settlement needed to be modified to, in the ALJs' view, better protect ratepayers.²⁰ But in doing so, the RD failed to recognize that the Settlement is a careful balancing of all interests already including substantial benefits to ratepayers including several that would not be possible if the case is litigated; as such, it should have been approved without modification as in the public interest.

¹⁹ 66 Pa.C.S. § 1308(d).

²⁰ The RD also makes a modification in the provisions dealing with at risk main replacement, which is discussed in Settlement Exception No. 5, below.

It is well established that the Commission reviews proposed settlements to determine whether the terms are in the public interest.²¹ The Commission has traditionally defined the public interest as including ratepayers, utility owners, utilities and the regulated community.²² What is in the public interest is decided by examining the effect of the proposed Settlement on these “stakeholder” entities. Clearly, the public interest includes more than just the interest of ratepayers.

Whether a settlement satisfies this public interest standard also must be considered in light of the Commission’s long-standing policy of encouraging settlements.²³ As the Commission is aware, its stated policy is that “in the Commission’s judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.”²⁴

The Commission has made clear that rate case settlements continue to be in the public interest even during the COVID-19 pandemic. Chairman Gladys Brown Dutrieuille, on October 8, 2020, commended the use of a rate case settlement in which a rate increase for UGI was awarded starting in 2020 but in which relief was also afforded to customers experiencing hardship due to the COVID-19.²⁵

²¹ Joint Petition, PGW’s Statement in Support at 4-5 (citing cases); RD at 47, n35 (citing cases).

²² *PUC v. York Water Co.*, R-00049165 Order entered Oct. 4, 2004; *PUC v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. R-00953409, Order entered Sept. 29, 1995.

²³ 52 Pa. Code §§ 5.231, 69.391, 69.401-406.

²⁴ 52 Pa. Code § 69.401.

²⁵ She stated: “During these extraordinarily challenging times, I believe measures like those agreed upon by the Parties here are necessary and prudent to ensure reasonable access to service, and, to protect public health. Again, I applaud the Parties, including UGI, for reaching these terms.” *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2019-3015162, Statement of Chairman Dutrieuille.

Here, as in UGI's rate case, and in accordance with the Commission's express policy, the Settling Parties diligently worked to craft a settlement that properly balanced the conflicting requirements and interests of the various stakeholders and arrived at a final agreement that is clearly preferable overall than any result that might come from litigation.

Importantly, the Settlement contains significant concessions regarding PGW's proposed rate increase that will not be possible if the case is fully litigated. PGW agreed that, in lieu of its proposed \$70 million rate increase that was to go into effect no later than December 4, 2020, its base rates would be increased by only \$10 million on January 1, 2021 (rather than almost one month earlier), with an increase of \$10 million on July 1, 2021 and then a final increase of \$15 million in base rates on January 1, 2022.²⁶ PGW submitted information that showed that the Settlement rate increase produced *pro forma*, FPFTY financial metrics that were consistent with the recommendations of several of the other parties and was significantly less than the rate increase recommended as reasonable by BIE.²⁷

Moreover, while the Settlement provides for a total increase of \$35 million, the agreed to phase-in – without any right to recoupment for the deferrals – means that PGW in the FPFTY (i.e., FY 2021) will actually bill **only 12.7%** of the revenues it would have been able to bill if its full, \$70 million rate increase were approved and only 29% compared to the \$70 million in FY 2021 and FY 2022.²⁸ This is far lower than the results in PGW's previous settlements. PGW agreed to this reduced increase and phase-in to recognize the unprecedented conditions caused by the COVID-19 pandemic in which the rate increase would occur and to minimize any

²⁶ Joint Petition at ¶¶ 15-17.

²⁷ See Joint Petition, PGW Statement in Support at 10-11.

²⁸ See Attachment A to these Exceptions.

immediate increase – to just \$10 million in January 2021 – with the remainder in the second half of 2021 and 2022.

The phase-in of rate relief is not something that the Commission could legally order absent PGW’s voluntary agreement to do so. PGW has a statutory right to new rates becoming effective no later than **December 4, 2020**, which is the last day of the suspension period.²⁹

As the Commission is aware, Section 1308 of the Public Utility Code provides for a maximum of 9 months between the filing of a general rate increase request and the date when rates are permitted to go into effect,³⁰ and existing case law establishes that the Commission does not have the authority to delay the effective date of rates beyond the statutory suspension period.³¹ The Commission has also recognized that “there appears to be a statutory right to have an effective date of new rates no later than the end of the suspension period date....”³²

In addition, PGW voluntarily agreed in the Settlement not to file another base rate case request until after January 1, 2022. This provision effectively protects customers from experiencing another base rate increase for most of 2022 and, again, cannot legally be ordered, absent PGW’s voluntary agreement. Section 1308 of the Public Utility Code provides that a

²⁹ On April 16, 2020, the above-described Tariff Supplements were suspended by the Commission until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date. <http://www.puc.state.pa.us/pcdocs/1660470.doc>. PGW voluntarily agreed to extend the suspension date until December 4, 2020. <http://www.puc.state.pa.us/pcdocs/1663022.pdf>.

³⁰ The maximum suspension period for a general rate case under Section 1308(d) is 9 months between the rate filing and the date when new rates go into effect. Accord, *PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2020-3018835, *et al.*, Opinion and Order regarding reconsideration of staff action entered August 20, 2020 at 21 (finding that, even with 12 day extension of procedural schedule from January 23, 2021 to February 4, 2021, Columbia was entitled to the appropriate rate relief in accordance with Section 1308(d) of the Public Utility Code immediately following the end of the statutory rate suspension period, which, in that case, was January 23, 2021).

³¹ *Bell Telephone Co. of Pa. v. PUC*, 452 A.2d 86 (Pa. 1982), *affirmed per curiam*, 482 A.2d 1272 (Pa. 1984) (*Bell Telephone*); *Joseph Horne Co. v. Pa. PUC*, 485 A.2d 1105, 1111 n.9 (Pa. 1984) (affirming the Commonwealth Court’s holding in *Bell Tel. Co.* that under Section 1308(d) the PUC may not suspend the effective date of filing of the revised tariffs when the effective date would thereby be more than nine months after the initial general rate increase filing).

³² *Petition of Philadelphia Electric Company for Declaratory Order*, Docket No. P-890349, Opinion and Order entered May 3, 1989; 1989 Pa PUC LEXIS 56 (*citing Bell Telephone*).

utility is constrained from filing a base rate case only until the Commission has made a final decision in a prior case, or until the expiration of the 9-month suspension period in that prior case, whichever is earlier.³³ Thus, without this Settlement term, PGW will be able to file another rate case in January 2021. Therefore, failing to approve the Settlement would eliminate this consumer benefit.

In addition to these significant financial concessions designed to ameliorate the effects of the rate increase on customers who may be financially strapped due to the negative economic effects of the pandemic, the Settlement contains a host of other provisions designed to aid customers many of which could not be ordered by the Commission if the case were fully litigated. They include:

- A COVID-19 Relief Plan,³⁴ which provides additional support for eligible customers affected by the COVID-19 pandemic. This includes a variety of detailed provisions to assist eligible customers, including a \$300 credit per customer for up to 6,660 customers; provisions making it easier for customers to enroll or maintain enrollment in CRP; suspension of collection efforts during a specific time period; additional payment arrangement availability; and waiver of certain late payment fees and reconnection fees.
- Modifications to PGW’s Universal Service and Energy Conservation Plan (“USECP”) (which was recently approved by the Commission).³⁵ The Settlement includes a wide variety of detailed provisions related to PGW’s USECP such as enhanced outreach to customers, landlords, and Community Based Organizations; quarterly adjustments to CRP asked to pay amounts to reflect actual usage; additional data collection and reporting requirements; and expansion of PGW’s Low Income Home Energy Assistance Program (“LIHEAP”) Crisis Acceptance policy.

³³ 66 Pa.C.S. § 1308(a), (d), (d.1).

³⁴ Joint Petition at ¶¶ 18-22.

³⁵ Joint Petition at ¶¶ 33-37, 39, 40, 42. PGW’s USECP for 2017-2022 was recently approved by the Commission on March 26, 2020 at Docket Nos. M-2016-2542415 and P-2020-3018867.

- Additional accommodations for customers with Limited English Proficiency.³⁶ PGW agreed to additional accommodations notwithstanding that it is in compliance with all current Commission requirements.

It is important to recognize that the Settlement was the product of extensive negotiations after development of a substantial evidentiary record.³⁷ The Settlement addressed the Settling Parties' concerns and represents a reasonable compromise that would avoid further litigation costs, which the parties agreed was in the public interest.³⁸ The RD's modifications consist of removing agreed-upon provisions from the Settlement and supplying new provisions for the Settlement to make it allegedly "more fair." Such actions fail to appreciate the carefully balanced and interrelated nature of the Settlement and that each party accepted the Settlement as reasonable in light of all the other provisions.

Approval of the RD's significant modifications to the Settlement would discourage parties from entering into future settlement agreements. Such settlements require significant time and resources to develop, and are carefully crafted to balance the various parties' positions, including recognizing the financial needs of the utility that necessitated the base rate filing. The RD's modifications undermine the settlement process and violate the Commission's policies encouraging such settlements, and therefore should be rejected.

For these reasons, the RD's modifications to the Settlement are unlawful, unreasonable, and unnecessary and must be rejected by the Commission. Reviewed as a whole, the terms of the Settlement are clearly in the public interest and should be adopted without material modification. That being said, as explained herein, if the Commission accepts the RD's modifications, PGW will be forced to withdraw from the Settlement and proceed to litigation.

³⁶ Joint Petition at ¶ 37.

³⁷ Joint Petition, PGW Statement in Support at 2.

³⁸ Joint Petition at ¶ 48.

3. Settlement Exception No. 3: The RD Erred By Delaying The Agreed-Upon Rate Increases For An Additional Six Months, Since The Recommended Delay Is Unsupported, Unreasonable And Would Not Provide A Sufficient Rate Increase In The FPFTY. (RD at 1, 2, 3, 76, 77-78, 96-97; FOF at ¶ 44, 45; COL at ¶ 6, 10; Ordering Paragraphs 3, 4, 6).

The RD properly recognizes that PGW needs rate relief, finding that continuing at its current level of rates is insufficient to produce crucially necessary cash working capital and liquidity.³⁹ PGW explained in its Brief and Statement in Support that without sufficient rate relief in the FPFTY,⁴⁰ PGW will be on the edge of not being able to meet its bond covenants in the FPFTY and will violate its debt service coverage requirements in FY 2022.⁴¹ Specifically, without rate relief, PGW's cash balances are projected to plunge and be negative in FY 2022.⁴² Importantly, these financial projections **do not include** projected additional expenses and reduced revenue in the FPFTY (FY 2021) of some \$33-35 million resulting from the economic effects of the pandemic.⁴³ Accordingly, the record shows that completely rejecting any rate increases would be inconsistent with Commission's cash flow ratemaking standards⁴⁴ and the Public Utility Code,⁴⁵ and would be illegally confiscatory.

As noted above, the Settlement recognizes PGW's need for rate relief to avoid these severely negative financial consequences and permits the Company to raise rates ultimately by \$35 million. But, at the same time, the Settlement attempts to mitigate the effect on customers by

³⁹ FOF at ¶¶ 31, 37; PGW Main Brief at 19.

⁴⁰ PGW has presented its FPFTY projection (for FY 2021, which is the 12 months ending August 31, 2021) in conformity with the Public Utility Code, 66 Pa.C.S. § 315(e). Joint Petition, PGW Statement in Support at 7; FOF at ¶ 4.

⁴¹ FOF at ¶ 32; Joint Petition, PGW Statement in Support at 8-9; PGW Main Brief at 17-18; PGW Exhibit JFG-1A (debt service coverage, line 23).

⁴² FOF at ¶ 37; PGW Exhibit JFG-1A (cash flow, line 23).

⁴³ PGW St. No. 2-R at 1, 5-9.

⁴⁴ PGW St. No. 1 at 2; 52 Pa. Code §§ 69.2701-69.2703; *see also* PGW Main Brief, Section IV.A.

⁴⁵ 66 Pa.C.S. § 2212(e) (The Commission must set PGW rates to be consistent with bond covenants).

phasing in the rate increase with a small (\$10 million) increase in January 2021, a second \$10 million increase in July 2021 and then a final increase in January 2022.⁴⁶ The first of those increases would occur during the heating season (October through March), when PGW has the greatest amount of demand, but also the greatest amount of cash obligations.⁴⁷ Notably, PGW agreed to these phased-in rate increases without requiring recoupment of the amounts that were not billed starting in January 2021. This concession alone reduced the effect of the Settlement rate increase on ratepayers by approximately \$19 million.

While the RD concluded that the Settlement was reasonable and in the public interest it recommended that the proposed rate increases be further delayed by an additional six months.⁴⁸ The RD states that the proposed delay in the agreed-upon rate increases is intended to give further relief to ratepayers due to the effects of the COVID-19 pandemic.⁴⁹ However, as discussed herein, this recommendation would significantly reduce the additional revenue permitted under the Settlement and would have severe negative impacts on the Company's financial metric and its levels of cash available to pay its bills. Accordingly, these proposed delays are neither reasonable nor in the public interest and should be rejected.

Initially it is important to recognize that the Settlement's phased-in rate increase was already a substantial concession in comparison to PGW's original proposal. PGW calculated its financial metrics on a pro forma basis in the FPFTY resulting from the Settlement *assuming that PGW would bill the full \$35 million in additional rate relief in FY 2021 as follows:*

⁴⁶ FOF at ¶¶ 17-18, 21; Joint Petition at ¶ 16.

⁴⁷ PGW St. No. 2 at 14 (PGW has substantial obligations in winter heating season); PGW St. No. 4 at 5 (PGW's customer base is largest at the end of the peak heating season and decreases afterwards); PGW St. No. 3 at 11 (PGW cash outlays are particularly large in the middle of winter).

⁴⁸ RD at 1, 2, 3, 77, 78-79, 96-97; COL at ¶¶ 6, 10; Ordering Paragraphs 3, 4, 6.

⁴⁹ *See* RD at 3, 49, 76, 77.

PGW Settlement Rates Comparison (@ \$35.0 Million)⁵⁰

	PGW @ \$70M	OCA	BIE	Settlement
Debt Service Coverage (1998 Bonds)	2.35x ⁵¹ (2.18x w/o CF)	1.88x ⁵²	1.87x ⁵³	2.03X
Year-End Days Cash	87 ⁵⁴	73 ⁵⁵	68 ⁵⁶	65 Days
Debt to Equity	75.86% ⁵⁷	75-80%	77% ⁵⁸	77.53%

As can be seen, the calculated financial results on a *pro forma* basis are in the range of recommendations made in the proceeding. The Settlement rate increase is also well below the recommendations of BIE that recommended that PGW be permitted a \$47 million rate increase starting on December 4, 2020.⁵⁹

Importantly, however, the metrics above assume that the full \$35 million rate increase would go into effect on September 1, 2020 (the beginning of the FPFTY) and for 12 months. But, as noted above, PGW has agreed to defer billing the full increase until January 1, 2022.⁶⁰ The effect of these deferrals is striking. As shown on Attachment A hereto, PGW’s original \$70 million rate increase would have permitted PGW to bill an additional \$125 million over FY 2021

⁵⁰ Joint Petition, PGW Statement in Support at 10. Assumes PGW bills full \$35 million in the FPFTY.

⁵¹ PGW Exh. JFG-2A, p. 3.

⁵² OCA Exh. DSH-2.

⁵³ BIE Exh. 1-SR, Sch. 1.

⁵⁴ PGW Exh. JFG-2A, p. 2.

⁵⁵ OCA St. No. 5 at 6. These levels of cash and debt service are only achieved by assuming that PGW will reduce its construction expenditures by some \$30 million.

⁵⁶ BIE Exh. 1-SR, Sch. 1.

⁵⁷ PGW Exh. JFG-2A, p. 4.

⁵⁸ BIE Exh. 1-SR, Sch. 1.

⁵⁹ BIE St. 1 at 4; BIE Exh 1, Schedule 1.

⁶⁰ Joint Petition at ¶¶ 15, 16, 17; Joint Petition, PGW Statement in Support at 10-11.

and FY 2022. The phased-in Settlement rate increase would result in additional billing of just \$36.7 million over that same time, or 29.4% of its original request over those two fiscal years.⁶¹

But the RD's recommendations would push the rate increase back even further into 2021. As a result, the RD would only permit PGW to bill \$17.9 million over FY 2021 and FY 2022.⁶² Most concerning, the delay of the initial phase of the increase from January 2021 until July 2021 would result in additional billing of just \$600,000 in FY 2021,⁶³ since those months are outside the winter heating season. This is equivalent to PGW receiving no rate increase in the FPFTY.

During the proceeding, PGW showed the effects on its financials of failing to receive a rate increase in FY 2021.⁶⁴ The slight (\$600,000) rate increase in FY 2021 permitted by the RD would not materially change these results. The Company's cash would continue to plunge by the end of the FPFTY to less than half of the amount needed to maintain its bond ratings⁶⁵ and PGW's debt service coverage would fall to about 1.72x⁶⁶ by the end of the FPFTY.

More concerning, with (virtually) no increase in FY 2021, PGW's FY 2022 *pro forma* metrics would also be negative. Without any rate relief, PGW's cash balances are projected to plunge to negative \$27.5 million in FY 2022 on a pro forma basis.⁶⁷ The ALJs' modified rate increases would not cover the projected cash deficit, and the increases, as modified by the RD,

⁶¹ See Attachment A to these Exceptions.

⁶² See Attachment A to these Exceptions. Increased billings of \$17.9 million would be only 14.3% of PGW's original request over two fiscal years. *Id.*

⁶³ See Attachment A to these Exceptions.

⁶⁴ PGW Exh. JFG-1A.

⁶⁵ Attachment B hereto, line 23. This is approximately 34 days of cash. PGW needs to maintain 70-90 days of direct cash on hand to maintain its current bond rating, apart from any commercial paper capacity. PGW St. No. 3 at 12-13; PGW St. No. 3-R at 9. See also PGW St. No. 2-R at 30, stating that BIE's proposed level of year-end cash is \$91.0 million or 68 days of cash. Maintaining at least 100 days direct cash on hand, apart from any commercial paper capacity, is likely to not only maintain but also improve PGW's bond ratings. See PGW St. No. 3 at 12-13.

⁶⁶ Attachment B hereto, line 22. Without any rate increase, debt service coverage would be 1.71x as shown on PGW Exhibit JFG-1A (debt service coverage, line 22).

⁶⁷ PGW Exhibit JFG-1A (cash flow, line 22).

would leave PGW with year-end cash of negative \$10.1 million for FY 2022⁶⁸ and debt service coverage at 1.75x⁶⁹ for FY 2022.

Simply put, the RD would leave PGW with debt service coverages close to minimum levels and without sufficient cash to pay for a variety of cash items that are not contained in its debt service coverage calculation.⁷⁰ Faced with these prospects, PGW would be forced to either suspend or limit its construction program (including its base rate funded at-risk main replacement program) to husband cash or cut back on other programs. In addition, PGW would face the prospect of a bond rating downgrade which would increase long term borrowing costs and make access to credit markets more difficult.⁷¹

In making these recommendations the RD appears to focus predominantly on the perceived fear that economic conditions caused by the current pandemic will make it difficult for an increased number of customers to pay their utility bills, without regard to the interests of PGW to continue to be financially viable.⁷² But this is erroneous as a matter of law. PGW presented the testimony of former Commissioner Cawley who explained that “[f]undamental ratemaking principles require that a utility’s revenue requirement be determined principally by an examination of the utility’s financial data and the determination of an appropriate return on the utility’s used and useful property in service to the public. Customer interests should be

⁶⁸ See, Attachment B hereto at cash flow, line 23.

⁶⁹ See, Attachment B hereto at debt service coverage, line 22.

⁷⁰ Importantly, PGW needs higher levels of debt service coverage (above the 1.5x minimum) in order to meet cash requirements not contained in the Bond Ordinance calculation or in the operating expense category of the income statement. PGW St. No. 2 at 13, 17. And PGW needs cash to pay for items included in that calculation but which are committed, such as DSIC expenditures. PGW St. No. 2 at 17.

⁷¹ PGW St. No. 2 at 18, 20; PGW St. No. 3.

⁷² See RD at 3, 49, 77.

considered but cannot be completely overriding or exclusively determinative.”⁷³ Here, the ALJs focused on perceived customer interests to modify the timing of the rate increases in the Settlement resulting in a rate increase that improperly falls outside the required “zone of reasonableness.”⁷⁴ Commissioner Cawley explained that denying a reasonable rate increase to attempt to assist a limited subset of PGW’s customers was both illegal and unconstitutional. The Commission’s legitimate concerns about the effect of the rate increase on customers who have been adversely affected by the current economic crisis can and should be addressed by establishing targeted programs for customers who have been affected and to expand assistance to low-income customers.⁷⁵ This is precisely what the Settlement does, and why, presumably, the OCA was a signatory and two low income groups – TURN *et al.* and CAUSE-PA – did not oppose the Settlement.

Apparently relying on a few statements by an OSBA witness, the RD suggested that, notwithstanding the substantial evidence to the contrary, the rate increases, as modified by the RD, would, nonetheless, enable PGW to satisfy its bond covenants, and opined that a “delayed but approved increase will serve as assurance to rating agencies and creditors.”⁷⁶ These findings are incorrect,⁷⁷ and, as explained above, the 6-month delays would have a severe negative effect

⁷³ PGW St. No. 12-R at 4.

⁷⁴ PGW St. No. 12-R at 23-25.

⁷⁵ PGW St. No. 12-R at 28-29.

⁷⁶ RD at 77; FOF at ¶ 45.

⁷⁷ The ALJ’s reliance on Mr. Knecht’s testimony on behalf of OSBA is misplaced. The overall theme of Mr. Knecht’s testimony (OSBA St. 1; OSBA St. 1-R; OSBA St. 1-SR) is that PGW should “borrow” its way out of the current pandemic and hope for the best when it ends. *See* FOF at ¶ 44; PGW St. No. 2-RJ at 4. PGW strongly disagrees with this theme and the recommendations based on this theme, since they are risky (with or without a pandemic). That being said, OSBA witness Knecht (who was not presented as an expert in rating agencies) relied upon the ratios in PGW’s financial projections for debt service coverage and year-end cash (days of cash), since he did not provide any of his own projections for those financial metrics. Mr. Knecht opined that “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.” His speculative opinion rests upon increased borrowing and “maintaining a strong cash balance,” FOF at ¶ 44, and

on PGW’s financial results in both FY 2021 and FY 2022, potentially bringing on a bond rating downgrade, a suspension or reduction of PGW’s construction program, as well as threatening PGW’s ability to satisfy its bond covenants in FY 2022. Moreover, PGW’s actual increase under the Settlement in FY 2021 – \$7 million – is actually less than the amount that the OSBA witness calculated to be minimally necessary to cover all cash items – \$10 million.⁷⁸

The ALJs also appeared to be troubled by the fact that PGW customers would be seeing increases in PGW’s Distribution System Infrastructure Charge (“DSIC”) as well as its Universal Service Charge (“USC”), which is projected to increase when the pilot program for enhanced universal service support for CAP customers recently ordered by the PUC, is implemented.⁷⁹ But the purported increase in the DSIC is actually an increase in the DSIC cap – not rates – due to PGW having slightly higher distribution revenues. Any actual increase in the DSIC (which would be fairly small in any event – \$2.6 million once the full \$35 million is in place) would have to first be approved by the PUC in PGW’s Long-Term Infrastructure Improvement Plan (“LTIP”). As for the increase in PGW’s USC to recover increased costs due to the PUC-mandated pilot program, it would be grossly unfair to deny or reduce PGW’s rate increase because PGW was required to increase its USC to respond to a PUC-mandated program.

For these reasons, the Commission should reject these modifications to the Settlement and approve the Settlement without any modifications. That being said, as noted, if the

neglects to recognize that in FY 2022 cash balances will be negative. PGW Exhibit JFG-1A (cash flow, line 23). His suggestion that PGW rely more heavily on debt rather than internally generated funds to avoid an immediate rate increase also fails to recognize that such an approach would increase costs to ratepayers in the long run (PGW showed that it is actually cheaper for it to finance infrastructure improvements using internally generated funds, see, PGW St. 2-R at 17-19, 21-23) and that such an approach would drive PGW’s debt ratio, already high at 77% under the Settlement, even higher. *Id.*

⁷⁸ Compare, Attachment A hereto and OSBA St. 1 at 12.

⁷⁹ RD at 56, 76.

Commission accepts the RD’s modifications, PGW will be forced to withdraw from the Settlement.

4. Settlement Exception No. 4: The RD Errs In Extending The Stay Out Provision For An Additional Year. (RD at 1, 2, 54, 57, 78, 79, 97; COL at ¶ 6, 10; Ordering Paragraphs 3, 6).

PGW, as part of the Settlement, **voluntarily** agreed not to file a general rate increase before January 1, 2022.⁸⁰ The Settlement establishes a one-year “stay out” provision (from January 1, 2021 to January 2, 2022).⁸¹ The RD recommends extending the stay out for an additional year⁸² stating that if PGW receives a rate increase in any given year (January 1, 2022), PGW “should not” seek another increase in that same calendar year (2022).⁸³ So, as written, the RD would permit PGW to file a general rate case no sooner than January 1, 2023⁸⁴ with new rates likely in effect no sooner than late 2023. However, this recommendation was made by the ALJs without any examination of the Commission’s legal authority to mandate a stay out or the impact of the longer stay out on PGW’s financial health.

As noted, the RD’s recommended extension of the stay out precludes the possibility of a non-emergency rate increase until October 2023,⁸⁵ which is in FY 2024. That will be more than **34 months** from the end of the suspension period in this proceeding. The RD does not set forth the financial impact of extending the stay out. Nothing in the record or the RD examines whether the rates – as modified and extended by the ALJs – will be sufficient until the end of the stay out

⁸⁰ Joint Petition at ¶ 17.

⁸¹ Joint Petition at ¶ 17.

⁸² See RD at 2, 54, 57, 78, 79.

⁸³ RD at 78.

⁸⁴ See RD at 2, 54, 57, 78, 79.

⁸⁵ January 1, 2023 is a Sunday. Assuming that a general base rate filing is made on Monday, January 2, 2023, the 60-day review period would end on Friday, March 3, 2023. See 66 Pa.C.S. § 1308(a). Seven months from that date would end on Tuesday, October 3, 2023. See 66 Pa.C.S. § 1308(d).

(without extraordinary rate relief), since this proceeding is focused on the FPFTY (FY 2021). As explained above, however, delaying the allowed rate increase for an additional six months would have a severely negative impact on PGW’s financial metrics. Ordering that PGW could not file for additional non-emergency rate relief until 2023 would simply exacerbate the negative financial effects of the RD’s modifications.

More to the point, and as explained in Settlement Exception No. 2 above, the Commission does not have the legal authority to order PGW to stay out until 2023 as any such order would be in derogation of PGW’s rights under 66 Pa.C.S. § 1308(d) and the Constitutions of the United States and the Commonwealth.⁸⁶ PGW has the statutory and constitutional right to seek and obtain “just and reasonable” rates.

For these reasons, the Commission should reject these modifications to the Settlement and approve the Settlement without any modifications. Again, and as noted, if the Commission accepts the RD’s modifications, PGW will be forced to withdraw from the Settlement.

5. Settlement Exception No. 5: The ALJs Erred In Recommending That The Partial Settlement Be Modified To Require PGW To Meet With The Commission’s Pipeline Safety Division Biannually Through 2022 To Review Increasing Pipeline Replacement Costs And To Develop A Plan To Reduce Pipeline Replacement Costs And Leaks. (RD at 78-79; FOF at ¶ 35; Ordering Paragraph 5).

In the Settlement, PGW agreed to review its most recent Annual Asset Optimization Plan (“AAOP”) with the Commission’s Pipeline Safety Division to discuss efforts to reduce main

⁸⁶ See PGW Main Brief at 12-15.

replacement costs.⁸⁷ PGW also agreed to refine the way it prioritizes replacement of its cast iron assets in its Distribution Integrity Management Plan (“DIMP”).⁸⁸

The RD determined that “a more firm commitment by PGW for review of its plans by Commission staff is required.”⁸⁹ Rather than rejecting the terms of the Settlement, the ALJs recommended that the Settlement be modified to require PGW to “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 [develop a plan to reduce pipeline replacement costs and leaks].”⁹⁰ PGW excepts to this recommendation and urges the Commission to approve the Settlement terms as in the public interest. The terms of the Settlement were acceptable to BIE – the Party that raised them in the first place. Moreover, the record shows that PGW has already taken steps to prioritize for replacement the most risky pipe and to reduce pipeline replacement costs as much as possible. The RD’s additional meetings and requirements are unnecessary.

First, as discussed in Settlement Exception No. 1, the ALJs did not have the legal authority to make material alterations in the Settlement. Under the terms of the Settlement, PGW has the right to withdraw and proceed to litigation if the Commission were to modify the

⁸⁷ Joint Petition at ¶¶ 43-45; Joint Petition, PGW Statement in Support at 22-23. Specifically, the Settlement states as follows: 1. PGW will remain focused on cast iron main replacement and present a shortened timeframe for cast iron main replacement in its next LTIP filing. 2. 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. 3. 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.

⁸⁸ Joint Petition at ¶ 44.

⁸⁹ RD at 78.

⁹⁰ RD at 78. The specific ordering paragraph states “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.” Ordering Paragraph 5.

Settlement in this way. While PGW has not made a determination as to whether the modification would be so material as to require it to withdraw and proceed to litigation, there is no need to modify the Settlement in this way because the Settlement terms reasonably address BIE's concerns and are in the public interest.

This Settlement terms should be adopted by the Commission since they were an acceptable resolution of the issues regarding pipeline replacement, and, in particular, acceptable to BIE and its Pipeline Safety Division. BIE was the only party to raise pipeline replacement costs and prioritization of cast iron main replacements in its testimony and the concerns BIE raised regarding pipeline replacement costs and prioritization of cast iron main replacements were fully resolved by the record and the Settlement.⁹¹

Moreover, there is no evidentiary support for the proposed changes. The RD offers little support for the modification, vaguely referencing "questions raised in litigation regarding whether PGW replaces riskiest pipes first and the notable increasing costs of pipe replacement."⁹² But those questions were fully resolved on the record. The record reflects that PGW currently utilizes a risk analysis to identify pipe replacement prioritization.⁹³ And BIE and PGW have further agreed that in its DIMP, PGW will further categorize pipe segments based on risk analysis.⁹⁴ That commitment was memorialized in the Settlement in this proceeding.⁹⁵ And the Settlement provides that PGW must focus the cast iron main replacements based on risk and categorize risky assets, particularly cast iron assets, in its DIMP, in which it will break down the

⁹¹ Joint Petition at ¶ 45.

⁹² RD at 78.

⁹³ PGW St. No. 7-R at 3

⁹⁴ PGW St. No. 7-R at 2.

⁹⁵ Joint Petition at ¶ 44.

cast iron assets into smaller asset group categories that allows PGW to measure the effectiveness of the replacement plan.⁹⁶ Therefore, PGW showed that it has procedures in place, or has agreed to measures that will ensure that it is replacing the riskiest main first – and BIE agreed.

Moreover, both BIE and PGW agreed that replacing the riskiest main at an increased rate will reduce the leaks on PGW’s distribution system.⁹⁷ Therefore, the Settlement fully addresses all of the concerns raised by BIE (and resurrected by the ALJs) regarding PGW’s prioritization of pipe replacements and there was no need to modify the Settlement. The RD does not identify why the ALJs viewed the resolution as insufficient.

With respect to the costs of pipeline replacement, the ALJs referred to the direct testimony of BIE witness Scott Orr to support their assertion that a “more firm commitment” on reducing pipeline replacement costs is required.⁹⁸ The ALJs essentially expanded BIE’s litigation position and recommended that PGW submit a plan to reduce pipeline replacement costs and to meet with staff of the Pipeline Safety Division biannually through 2022 to review those issues.⁹⁹ The ALJs’ recommended modification to the Settlement is not supported by the record and PGW urges the Commission to reject their modification.

On the record, PGW showed that BIE’s suggestion that PGW needed to develop a plan to reduce pipeline replacement costs and review those plans with the Commission was not necessary.¹⁰⁰ The record reflects that: 1) PGW continuously works to reduce costs associated

⁹⁶ Joint Petition at ¶ 44.

⁹⁷ BIE St. No. 3 at 14; PGW St. No. 7-R at 3.

⁹⁸ RD at 78.

⁹⁹ While the term “biannually” can mean occurring once every two years or occurring twice per year, PGW presumes that the RD intended the term to mean twice per year.

¹⁰⁰ PGW St. No. 7-R at 5-6.

with pipeline replacements;¹⁰¹ 2) PGW completed the first LTIP under budget and exceeded its cast iron main removal mileage targets by 9%;¹⁰² 3) PGW's second LTIP is on budget and 15% ahead in mileage removed;¹⁰³ 4) PGW's main replacement costs are in-line with its Pennsylvania peer gas utilities in cost per mile for main replacement work;¹⁰⁴ and 5) PGW conducts all replacement work pursuant to bid and therefore is doing what can be done to obtain the lowest responsible bid price.¹⁰⁵

PGW's cost reduction efforts are apparent. To address any remaining concerns of BIE, PGW agreed in the Settlement to review its most recent AAOP with the Commission's Pipeline Safety Division in order to discuss further cost reduction efforts.¹⁰⁶

Again, BIE agreed that the terms of the Settlement are in the public interest¹⁰⁷ and affirmed its support in its Statement in Support of the Settlement.¹⁰⁸ As PGW witness Douglas

¹⁰¹ PGW St. No. 7-R at 5-6. PGW witness Douglas Moser described the various PGW efforts to reduce costs associated with pipeline replacements. Mr. Moser detailed that "PGW has and continues to identify portions of its system which are duplicative or underutilized to remove without replacement. Each replacement project is scrutinized to ensure proper pressures and flow are maintained to supply our customers with adequate, safe and reliable service. PGW also evaluates diameter reductions in replacement projects if size-for-size replacement is not warranted. Further, to reduce construction costs, PGW has increased the project size to gain economies of scale from its contractors. Less mobilizations of equipment and personnel has resulted in increased production and has kept pricing competitive. Larger projects also result in less transition work from the old main to the new. PGW also utilizes a request for proposal (RFP) bidding process which mandates the lowest cost, responsible bidder is selected for construction projects. This ensures competition among PGW's contractors vying for main replacement construction work." PGW St. No. 7-R at 5-6.

¹⁰² PGW St. No. 7-R at 6.

¹⁰³ PGW St. No. 7-R at 6.

¹⁰⁴ PGW St. No. 7-R at 7; PGW Response to BIE-PS-8.

¹⁰⁵ PGW St. No. 7-R at 7.

¹⁰⁶ Joint Petition at ¶ 45.

¹⁰⁷ Joint Petition at ¶¶ 13, 47-48; *see also* Joint Petition, BIE Statement in Support.

¹⁰⁸ BIE found that "[a]llowing Pipeline Safety to review the most recent AAOP will allow for a discussion of areas where PGW can reduce costs. Reviewing in this manner will help to identify areas where costs are trending upward and allow for a proactive approach in reducing costs." In describing its support for the Settlement, BIE explained that "PGW has agreed that it will break down in its Distribution Integrity Management Plan (DIMP) cast iron assets into smaller asset categories. Breaking down cast iron assets in this manner will allow PGW [to determine] which size pipes are the riskiest and rank their assets accordingly." Joint Petition, BIE Statement in Support at 13.

Moser explained, requiring PGW to spend time and money on a “plan of action” to reduce pipeline replacement costs would not be a prudent expenditure of ratepayer funds.¹⁰⁹ Therefore, the Settlement’s resolution of the issues raised by BIE is in the public interest and should be adopted. PGW urges the Commission to reject the ALJs’ modification of the Settlement.

B. The ALJs Erred In Determining That The Commission May Consider Environmental Factors In Its Overall Determination Of Whether A Proposed Rate Increase Is Just And Reasonable And In Recommending That PGW Include In Its Next Rate Increase Request Information Regarding Its Planning Related To Warming Climate Trends. (RD at 81-82, 96; FOF at ¶¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).

In the RD, the ALJs addressed the issue of whether the Commission has jurisdiction to consider environmental issues in a rate case and to order a public utility to produce a Climate Business Plan, or some other study related to the impact of warming climate trends.¹¹⁰ While the ALJs held that the Commission lacks jurisdiction over environmental issues and lacks jurisdiction to order PGW to produce a Climate Business Plan or anything resembling same, the ALJs also concluded, however, that the Commission *may* consider environmental factors in its overall determination of whether a proposed rate increase is just and reasonable. The ALJs then recommended that PGW be required to produce, in its next rate case, “information regarding its planning related to climate change issues.”¹¹¹

As discussed below, the ALJs erred, because: 1) their recommendation for the Commission to require PGW to produce its plan pertaining to warming climate trends is entirely inconsistent with their legal conclusions that the Commission lacks jurisdiction over environmental issues and does not have the authority to order PGW to produce a Climate

¹⁰⁹ PGW St. No. 7-R at 6.

¹¹⁰ RD at 79-82.

¹¹¹ RD at 81-82, 96; COL at ¶ 13; Ordering ¶¶ 8-9.

Business Plan or anything resembling same; 2) their conclusion that the Commission may consider environmental factors in its overall determination of whether a rate increase is just and reasonable is overly broad and, as applied, is inconsistent with the numerous Commonwealth Court orders that have held that the Commission does not have jurisdiction over environmental issues; and 3) their recommendation that PGW must, as part of its next rate case, affirmatively show how it is planning for climate change inappropriately and unfairly imposes a new filing requirement only on PGW.

1. Litigation Exception No. 1: The ALJs' Recommendation That PGW Be Required To Produce Its Plan Pertaining To Warming Climate Trends Is Entirely Inconsistent With Their Legal Conclusions That The Commission Lacks Jurisdiction Over Environmental Issues And Does Not Have The Authority To Order PGW To Produce A Climate Business Plan Or Anything Resembling Same. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).

The ALJs, appropriately, held that it is “undisputed” that the Commission does not have jurisdiction to enforce environmental laws or regulations, nor does it have jurisdiction to order PGW to prepare a Climate Business Plan.¹¹² Importantly, the ALJs held that the Commission has no authority to regulate environmental issues, create environmental regulations or mandate strictly environmental action.¹¹³ The ALJs further held: “*There is nothing in the Public Utility Code, the Commission’s regulations or Commission order that requires **anything resembling a Climate Business Plan.***”¹¹⁴ The ALJs further explained that the Environmental Stakeholders’ proposal to allow for comment on the Climate Business Plan before PGW is granted a rate increase “has no basis in the Code or the Commission’s current regulations.” Accordingly, the ALJs concluded that there is no Commission precedent for a Climate Business Plan and the

¹¹² RD at 81.

¹¹³ RD at 81.

¹¹⁴ RD at 81 (emphasis added).

request of the Environmental Stakeholders for PGW to prepare one “is in effect environmental regulation and enforcement and beyond the jurisdiction of the Commission.”¹¹⁵

Nonetheless, the ALJs went on to recommend just that – for the Commission to require PGW in its next rate increase request filing to “include information regarding its *planning related to climate change issues*.”¹¹⁶ The RD contains no explanation of how this recommended planning related to climate change is distinct from a Climate Business Plan, or even from a plan “resembling a Climate Business Plan,” the latter two of which the ALJs held are clearly outside of the Commission’s jurisdiction. In fact, the RD demonstrates that these two plans are effectively the same. The ALJs listed the following characteristics of the “Climate Business Plan,” which the RD concluded the Commission could not order:

According to the Environmental Stakeholders, a Climate Business Plan would address:

1. **Needs & Efficiency** (“ the most efficient and cost-effective use of ratepayer dollars”)
2. **Pipeline Replacement Plans** (“potentially cost-effective alternatives” to PGW’s pipeline replacement plans);
3. **Infrastructure Costs/Stranded Assets** (“possible stranded asset risks posed by climate change and future climate change regulations”).

RD at 80.

But later in the RD, the ALJs recommended that PGW be ordered in its next rate case to set forth its “plan related to climate change issues,” which the RD concluded the Commission did have jurisdiction to order. According to the RD, these “plans” would include the following:

1. **Needs & Efficiency** (“consideration of the effect of [...] warming trends on needs and usage assessments”)
2. **Pipeline Replacement Plans** (“its impact upon the pipe replacement plans”)

¹¹⁵ RD at 81.

¹¹⁶ RD at Ordering ¶ 9 (emphasis added).

3. **Infrastructure Costs/Stranded Assets** (the effect of warming climate trends upon “infrastructure costs, and ultimately upon any rate increase requested.”)

RD at 96.

As can be seen, the two sets of requirements are very similar. As such, it can hardly be disputed that the recommended plan or “report” pertaining to climate change, at least, *resembles* the Climate Business Plan, of which the Commission lacks jurisdiction to order. In this regard, the ALJs’ recommendation is entirely inconsistent with their own holding that the Commission does not have jurisdiction to mandate environmental action or order PGW to produce a Climate Business Plan, or anything resembling same.

Importantly, PGW is not arguing that, in a rate case, the Commission does not have jurisdiction to address the effects of climate change on its revenue requirement. For example, in PGW’s last base rate proceeding it proposed that the number of degree days used to determine *pro forma* heating-related sales should be reduced in part to recognize the warming trends experienced in the Philadelphia area.¹¹⁷ But that is distinctly different than requiring PGW to report on planning for climate change divorced from any specific effect on PGW’s revenues or expenses. Requiring PGW to provide its plans pertaining to warming climate trends opens the door for the Commission and/or the Environmental Stakeholders (or any other interested parties) to challenge the information that is provided and to assert that other information should be provided and/or considered by PGW, or to request that the Commission order PGW to take action to reduce greenhouse gas emissions. Such requests are clearly beyond the Commission’s jurisdiction to order.

¹¹⁷ PGW Reply Brief at 25-26. Temperatures and degree day projections are a backward-looking calculation made on the basis of historic trends that are then projected a year or two forward into the test year calculations. The Commission in considering what is a “normal” level of degree days in the test year is not establishing climate goals but simply reacting to the experienced effects of warming weather; no different than when it considers expenses due to a flood or a hurricane. PGW Reply Brief at 46-47.

2. Litigation Exception No. 2: The ALJs' Legal Conclusion That The Commission May Consider Environmental Factors In Its Overall Determination Of Whether A Rate Increase Is Just And Reasonable Is Overly Broad And, As Applied, Is Inconsistent With The Numerous Commonwealth Court Orders That Have Held That The Commission Does Not Have Jurisdiction Over Environmental Issues. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).

It is axiomatic, that the Commission has only the power and jurisdiction expressly conferred or necessarily implied to it by the Legislature.¹¹⁸ The Commission must act within, and cannot exceed, that jurisdiction.¹¹⁹ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy, and jurisdiction cannot be conferred where none exists.¹²⁰

In a rate case, the Commission has jurisdiction to determine whether rates are just and reasonable,¹²¹ and it has jurisdiction over a utility's facilities and service¹²² in the context of providing utility *service* (in this case natural gas distribution service). It is "undisputed" (as the ALJs stated) that the Commission does not have jurisdiction over environmental issues and does not have jurisdiction to order PGW to produce a Climate Business Plan or anything resembling same.¹²³

¹¹⁸ See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

¹¹⁹ *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

¹²⁰ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *appeal denied*, 637 A.2d 293 (Pa. 1993); *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹²¹ 66 Pa.C.S. § 1301.

¹²² 66 Pa.C.S. §§ 1501, 1505.

¹²³ RD at 81, 95; *Funk v. Wolf*, 144 A.3d 228 (Pa.Cmwlth. 2016) ("Petitioners do not have a clear right to have Respondents conduct the requested studies [related to carbon dioxide emissions], promulgate or implement the requested regulations, or issue the requested executive orders."); *Country Place Waste Treatment Co. v. PUC*, 654 A.2d 72, 76 (Pa.Cmwlth. 1995) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor); *Rovin, D.D.S. v. PUC*, 502 A.2d 785 (Pa.Cmwlth. 1986) (enforcement of environmental statutes is specifically vested in the Pennsylvania Department of Environmental Protection and the Federal Environmental Protection Agency); *Pickford v. PUC*, 4 A.3d 707 (Pa.Cmwlth. 2010) (customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects

While the ALJs specifically held that *Funk v. Wolf* and *Country Place Waste Treatment Co. v. PUC* establish that the Commission has no authority to regulate environmental issues (which includes emissions/releases into the air or “air pollution”), create environmental regulations or mandate strictly environmental action, the ALJs, nonetheless, held that the Commission *may* consider environmental factors in its overall determination of whether the rate increase proposed is just and reasonable and recommended that PGW be required to produce, as an affirmative filing requirement in its next rate case, its plan related to climate change issues.¹²⁴

In reaching their conclusion, the ALJs do not rely upon any relevant case law. Rather, the ALJs seem to rely upon a distinction between solely environmental issues and environmental issues that may impact a base rate case. This legal conclusion, however, is overly broad and, as applied, is inconsistent with the Commonwealth Court’s determinations that the Commission does not have jurisdiction over environmental issues. The ALJs also seem to confuse the indirect effects of climate change or air pollution on a utility and its rates with the direct effects of climate change, that the Commission lacks jurisdiction to regulate.

To illustrate this point, suppose the Pennsylvania Department of Environmental Protection (“DEP”) had ordered a Commission-regulated wastewater utility to fix a problem of offensive odors being emanated from the public utility’s sewage treatment plant (similar to the facts of *Country Place Waste Treatment Co. v. PUC*), resulting in extensive and expensive infrastructure repairs and/or replacements. The effect of that DEP ruling pertaining to the costs of the DEP-mandated repairs and/or replacements would likely be *relevant* in a base rate case to demonstrate that the costs are just and reasonable and that the utility had performed its mandate

of chloramines under permits issued by the Department of Environmental Protection and, thus, outside the Commission’s jurisdiction).

¹²⁴ RD at 81-82, 96.

prudently, even though the underlying information pertains to environmental issues (solely within the jurisdiction of DEP). Correspondingly, the Commission would be able to consider that evidence in fulfilling its *jurisdictional* role of determining just and reasonable rates.¹²⁵

Importantly, in this example, the environment-related information is relevant to an issue over which the Commission has jurisdiction and can be considered by the Commission in that limited context (the utility's prudence in constructing facilities in order to maintain safe and adequate service). The Commission would not have unfettered jurisdiction to regulate air quality (by, for example, requiring the wastewater utility to produce on-going reports of its air quality control measures) or to demand that the utility file its air quality reports in its future rate cases simply because an offensive odor served as the basis of a utility-incurred expense.¹²⁶

This is no different than the general rule applicable to non-jurisdictional items in a rate case. The Commission, for example, may consider the salaries that a utility pays to its workforce to determine whether they are too high and may adjust test year expenses to reflect a lower, reasonable amount for ratemaking purposes, but does not have jurisdiction to order the utility to reduce those salaries. It is also undisputed that information pertaining to "warming trends" may be relevant to a utility's revenue projections, and the Commission has jurisdiction to consider this information for that limited purpose.

Certainly, as these examples demonstrate, the Commission has the authority to consider numerous factors to the extent that they effect the utility's revenue requirement. If environmental information does not serve to support a specific adjustment or proposal in a rate case, however,

¹²⁵ 66 Pa.C.S. § 1301.

¹²⁶ *Country Place Waste Treatment Co. v. PUC*, 654 A.2d 72, 76 (Pa.Cmwlt. 1995) ("Significantly, nowhere in the Law is there any grant of authority to the PUC by the Legislature, either directly or indirectly, to regulate air pollution emanating from a public utility.").

the information is not relevant to the rate case, and the Commission does not have jurisdiction to consider it.

These are precisely the circumstances in this case. Here, unlike the examples, the Environmental Stakeholders failed to provide any evidence which would support an affirmative position in this rate case, such as a proposed adjustment to a specific expense or an adjustment to revenue projections. In fact, the Environmental Stakeholders did not propose any specific adjustments in this case. Rather, the Environmental Stakeholders made the general assertion that PGW should be required to study (and plan for) climate change and climate regulation.¹²⁷

To even, *arguably*, link these strictly environmental issues to matters within the Commission's jurisdiction, the Environmental Stakeholders relied on the unsupported and highly speculative assumption that natural gas utilities will be required to cease operations in the future in order to combat warming climate trends.¹²⁸ In reality, however, there is no consensus about the role that natural gas will play thirty, forty, or fifty years from now. The ALJs do not make any such conclusive finding, nor would the evidence support such a finding, as the Environmental Stakeholders have not pointed to any rule or regulation that provides that PGW or other gas companies will be forced to cease operation in the future.¹²⁹ As former Commissioner Cawley testified, "In my experience, the Pennsylvania Public Utility Commission does not engage in such speculation in establishing regulatory policy for the companies it regulates, especially when it would require conclusions (or guesses) about what environmental requirements will be in thirty years."¹³⁰ Commissioner Cawley further explained that the

¹²⁷ RD at 82.

¹²⁸ See RD at 82-85.

¹²⁹ The ALJs found that "if" the Commonwealth and local governments reduce emissions and transitioning to 100% clean energy by 2050, PGW's mains will no longer be useful for transmitting natural gas. FOF at ¶ 69.

¹³⁰ PGW St. No. 12-RJ at 2.

Commission would “act *ultra vires*” if it made rate case determinations based on the perceived effects of greenhouse gases or global warming and would “usurp the authority” of DEP.¹³¹

Commission Cawley testified: “At the least, requiring the Commission to make ratemaking (or other) determinations in response to climate change would create the real possibility of disparate and potentially inconsistent regulation.”¹³²

Since the testimony of the Environmental Stakeholders did not tie its adjustment to any specific cost being charged to ratepayers in the test year, and only made hypothetical and speculative assertions, the Commission did not have jurisdiction to consider the Environmental Stakeholders’ testimony in this case or to consider PGW’s climate change plan in its next case, and the RD so found. But to nonetheless declare that the Commission generally has jurisdiction to hear about “environmental matters” in a rate case – not tied to a specific rate case claim or cost – extends the Commission’s jurisdiction beyond the power the legislature granted to the Commission to establish just and reasonable rates and reasonable and adequate service.

It should also be noted that the ALJs’ reliance on the testimony of the customers at the public input hearings related to climate change and the effect that fossil fuels have on the environment¹³³ also cannot serve as a basis to expand Commission jurisdiction when it is not conferred by the Legislature. As discussed, it is clear that the Commission does not have the jurisdiction to order PGW to produce a Climate Business Plan (or any similar plan pertaining to warming climate trends) – period. This jurisdictional limitation does not change simply because the directive is to report on climate change response in the context of a base rate case, or based upon opinions expressed by consumers at the public input hearing.

¹³¹ PGW St. No. 12-R at 36.

¹³² *Id.* at 37.

¹³³ RD at 96.

For the reasons discussed above, the Commission should reject the RD, dismiss the proposals of the Environmental Stakeholders, and grant these Exceptions. If the Commission adopts the ALJs' recommendation, however, and requires PGW to produce in its next rate case information regarding its planning related to climate change issues, the Commission should make it clear that it will consider this information *only to the extent that it has a direct impact on rates or proposals in that case.*

3. Litigation Exception No. 3: The ALJs' Recommendation That PGW Must, As Part Of Its Next Rate Case, Affirmatively Show How It Is Planning For Climate Change Inappropriately And Unfairly Imposes A New Filing Requirement Only On PGW. (RD at 81-82, 96; FOF at ¶ 64-65, 69; COL at ¶ 13; Ordering Paragraphs 8-9).

Finally, the ALJs' recommendation for the Commission to require PGW to produce in its next rate case information regarding its planning related to climate change issues unfairly imposes a new filing requirement only on PGW. If the Commission believes that it has the jurisdiction to order utilities to produce information pertaining to climate change as part of their rate case filings, the Commission should impose this requirement in a universal manner through a rulemaking. Without a universal rulemaking, the Commission is opening the door for the Environmental Stakeholders to continue adjudicating this issue, on a case-by-case basis, before the Commission. This outcome would not only be a waste of Commission resources, but it would likely result in unfair and inconsistent filing requirements. For these reasons, the Commission should reject the RD, dismiss the proposals of the Environmental Stakeholders, and grant these Exceptions.

III. CONCLUSION

For the reasons set forth above, PGW respectfully requests that the Commission grant these exceptions, and reject the reasoning and recommendations of the Recommended Decision consistent with the foregoing discussion so:

- (a) That the Joint Petition for Partial Settlement is approved without modification;
and,
- (b) That the proposals of the Environmental Stakeholders are denied in their entirety.

Respectfully submitted,



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VERIFICATION

I, Joseph F. Golden, Jr., hereby state that I am the Executive Vice President and Acting Chief Financial Officer for Philadelphia Gas Works (“PGW”), I am authorized to make this verification on its behalf, and that the facts set forth in Attachments A and B to PGW’s Exceptions are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

October 15, 2020

Dated



Joseph F. Golden, Jr.
Executive Vice President
Acting Chief Financial Officer
Philadelphia Gas Works

Attachment A

FY 2021 (FPFTY): 9/1/20 to 8/31/21
FY 2022: 9/1/21 to 8/31/22

	<u>\$70M Request</u> <u>Effective 12/4/20</u>	<u>Settlement</u> <u>Increments Begin</u> <u>1/1/21</u>	<u>Recommended</u> <u>Decision</u> <u>Increments Begin</u> <u>7/1/21</u>	<u>Difference</u> <u>Between</u> <u>Settlement &</u> <u>Rec Dec</u>
FY 2021 (FPFTY)	\$ 55.0	\$ 7.0	\$ 0.6	\$ (6.4)
FY 2022	\$ 70.0	\$ 29.7	\$ 17.3	\$ (12.4)
	<u>\$ 125.0</u>	<u>\$ 36.7</u>	<u>\$ 17.9</u>	<u>\$ (18.8)</u>

**FY 2021 (FPFTY) Revenue % Compared to
\$70M effective on 12/4/20**

FY 2021 (FPFTY) Settlement / RD Revenue	\$ 7.0	\$ 0.6	
Div By: FY 2021 (FPFTY) \$70M Request Revenue	<u>\$ 55.0</u>	<u>\$ 55.0</u>	
	<u>12.7%</u>	<u>1.1%</u>	-11.6%

**FY 2021 & FY 2022 Revenue % Compared to
\$70M effective on 12/4/20**

FY 2021 & FY2022 Settlement / RD Revenue	\$ 36.7	\$ 17.9	
Div By: FY 2021 FY 2022 \$70M Request Revenue	<u>\$ 125.0</u>	<u>\$ 125.0</u>	
	<u>29.4%</u>	<u>14.3%</u>	-15.0%

Settlement Revenue

	<u>FY 2021 - FPFTY</u>	<u>FY 2022</u>
\$10 M effective on 1/1/21	\$ 6.4	\$ 10.0
\$10M effective on 7/1/21	\$ 0.6	\$ 10.0
\$15M effective on 1/1/22	\$ -	\$ 9.7
	<u>\$ 7.0</u>	<u>\$ 29.7</u>

Recommended Decision Revenue

\$10 M effective on 7/1/21	\$ 0.6	\$ 10.0
\$10M effective on 1/1/22	\$ -	\$ 6.5
\$15M effective on 7/1/22	\$ -	\$ 0.8
	<u>\$ 0.6</u>	<u>\$ 17.3</u>

Attachment B

PHILADELPHIA GAS WORKS
STATEMENT OF INCOME
(Dollars in Thousands)

LINE NO.	HTY 2018-19	FTY 2019-20	FPFTY 2020-21	FORECAST 2021-22	FORECAST 2022-23	FORECAST 2023-24	FORECAST 2024-25	LINE NO.	
OPERATING REVENUES									
1.	Non-Heating	25,065	\$ 24,026	\$ 21,466	\$ 20,547	\$ 19,683	\$ 18,889	\$ 18,031	1.
2.	Gas Transport Service	63,565	66,378	67,767	69,251	70,578	71,981	73,328	2.
3.	Heating	603,521	579,656	576,418	575,835	576,884	580,122	580,938	3.
4.	Revenue Adjustment (TED/BUS Rate)	-	270	400	531	662	792	922	4.
5.	Revenue Enhancement - FY2021	-	-	600	17,300	35,000	35,000	35,000	5.
6.	Weather Normalization Adjustment	1596	92	-	-	-	-	-	6.
7.	Appropriation for Uncollectible Reserve	(29,983)	(30,927)	(29,978)	(30,050)	(30,895)	(31,064)	(31,122)	7.
8.	Unbilled Adjustment	320	617	(36)	(25)	14	13	38	8.
9.	Total Gas Revenues	664,084	640,112	636,637	653,389	671,926	675,733	677,135	9.
10.	Appliance Repair & Other Revenues	7,908	7,910	7,964	8,044	8,125	8,207	8,290	10.
11.	LNG Project Revenues	-	-	-	-	1,550	2,000	3,000	11.
12.	Other Operating Revenues	12,736	11,264	11,173	11,412	11,686	11,740	11,759	12.
13.	Total Other Operating Revenues	20,644	19,174	19,137	19,456	21,361	21,947	23,049	13.
14.	Total Operating Revenues	684,728	659,286	655,774	672,845	693,287	697,681	700,185	14.
OPERATING EXPENSES									
15.	Natural Gas	206,801	195,397	191,548	189,544	191,040	194,269	196,115	15.
16.	Other Raw Material	24	10	10	10	10	10	10	16.
17.	Sub-Total Fuel	206,825	195,407	191,558	189,554	191,050	194,279	196,125	17.
18.	CONTRIBUTION MARGINS	477,903	463,879	464,216	483,291	502,237	503,402	504,060	18.
19.	Gas Processing	22,028	22,512	21,740	22,918	22,291	22,917	23,545	19.
20.	Field Services	-	-	-	-	-	-	-	20.
21.	Distribution	-	-	-	-	-	-	-	21.
20.	Field Operations	79,341	85,188	86,412	88,554	90,765	93,041	95,367	20.
21.	Collection	4,212	4,383	4,430	4,541	4,654	4,771	4,889	21.
22.	Customer Service	13,983	15,248	15,751	16,145	16,549	16,962	17,385	22.
23.	Account Management	8,277	9,206	9,245	9,476	9,712	9,954	10,202	23.
24.	Marketing	4,232	4,999	4,916	5,040	5,167	5,297	5,430	24.
25.	Administrative & General	69,631	84,074	85,191	84,959	86,192	89,573	89,954	25.
26.	Health Insurance	22,080	25,340	27,151	29,091	31,171	33,402	35,794	26.
27.	Environmental	-	792	1,059	2,862	1,012	972	993	27.
28.	Capitalized Fringe Benefits	(9,786)	(13,716)	(8,969)	(9,546)	(9,921)	(10,347)	(10,200)	28.
29.	Capitalized Administrative Charges	(14,276)	(16,793)	(22,707)	(21,788)	(20,247)	(19,722)	(20,129)	29.
30.	Amortization of Restructuring Costs	-	-	-	-	-	-	-	30.
31.	Pensions	30,268	29,844	23,577	25,808	30,287	28,655	27,429	31.
32.	Taxes	8,705	9,280	9,481	9,586	9,779	9,974	9,906	32.
33.	Other Post Employment Benefits	28,351	24,732	25,422	31,592	20,795	24,446	22,197	33.
34.	Proposed Bond Refunding Savings	-	(1,437)	(589)	(588)	(590)	(588)	(220)	34.
35.	Cost / Labor Savings	-	144	519	708	726	744	763	35.
36.	Sub-Total Other Operating & Maintenance	267,046	283,796	282,629	299,358	298,342	310,051	313,305	36.
37.	Depreciation	63,686	65,602	67,934	73,264	76,516	71,157	71,142	37.
38.	Cost of Removal	4,500	4,500	4,500	4,500	4,500	4,500	4,500	38.
39.	To Clearing Accounts	-	-	-	-	-	-	-	39.
40.	Net Depreciation	68,186	70,102	72,434	77,764	81,016	75,657	75,642	40.
41.	Sub-Total Other Operating Expenses	335,232	353,898	355,063	377,122	379,358	385,708	388,947	41.
42.	TOTAL OPERATING EXPENSES	542,057	549,305	546,621	566,676	570,408	579,987	585,072	42.
43.	OPERATING INCOME	142,671	109,981	109,153	106,169	122,878	117,694	115,113	43.
44.	Interest Gain / (Loss) and Other Income	10,787	4,369	7,400	6,706	5,897	7,473	7,098	44.
45.	INCOME BEFORE INTEREST	153,458	114,350	116,553	112,876	128,776	125,166	122,211	45.
46.	INTEREST								46.
47.	Long-Term Debt	46,136	50,520	54,442	51,549	48,512	57,937	54,824	47.
48.	Other	(10,523)	(11,337)	(9,612)	(6,980)	(1,543)	(5,690)	(5,280)	48.
49.	AFUDC	(1,295)	(1,718)	(2,212)	(2,504)	(2,091)	(1,922)	(1,956)	49.
50.	Loss From Extinguishment of Debt	5,278	4,845	4,460	4,047	3,615	3,348	2,972	50.
51.	Total Interest	39,596	42,310	47,078	46,112	48,493	53,673	50,560	51.
52.	NET INCOME	113,862	72,040	69,475	66,764	80,283	71,493	71,650	52.
53.	City Payment	18,000	18,000	18,000	18,000	18,000	18,000	18,000	53.
54.	NET EARNINGS	\$ 95,862	\$ 54,040	\$ 51,475	\$ 48,764	\$ 62,283	\$ 53,493	\$ 53,650	54.

PHILADELPHIA GAS WORKS
CASH FLOW STATEMENT
(Dollars in Thousands)

LINE NO.	HTY 2018-19	FTY 2019-20	FPFTY 2020-21	FORECAST 2021-22	FORECAST 2022-23	FORECAST 2023-24	FORECAST 2024-25	LINE NO.
SOURCES								
1.	\$ 113,862	\$ 72,040	\$ 69,475	\$ 66,764	\$ 80,283	\$ 71,493	\$ 71,650	1.
2.	57,048	60,396	63,079	68,808	72,473	67,400	67,558	2.
3.	(5,102)	(3,491)	(4,708)	(3,988)	(3,159)	(4,715)	(4,320)	3.
	-	-	-	-	-	-	-	.
	-	-	-	-	-	-	-	.
4.	-	2,600	-	-	-	2,350	-	4.
5.	(20,376)	(27,609)	(37,907)	(26,891)	(21,985)	(35,039)	(39,027)	5.
6.	145,431	103,935	89,938	104,692	127,612	101,489	95,861	6.
7.	45,000	65,009	78,084	88,177	74,039	66,418	67,892	7.
	-	-	-	-	-	-	-	.
	-	-	-	-	-	-	-	.
	-	-	-	-	-	-	-	.
8.	-	-	-	-	-	-	-	8.
9.	-	-	-	-	-	-	-	9.
10.	-	-	-	-	-	-	-	10.
11.	<u>190,431</u>	<u>168,944</u>	<u>168,022</u>	<u>192,869</u>	<u>201,651</u>	<u>167,907</u>	<u>163,753</u>	11.
USES								
12.	\$110,523	\$119,673	\$154,084	\$174,477	\$145,691	\$133,918	\$136,292	12.
13.	-	-	-	-	-	-	-	13.
13.	51,820	52,870	54,956	55,433	59,165	61,253	64,756	13.
	-	-	-	-	-	-	-	.
	-	-	-	-	-	-	-	.
	-	-	-	-	-	-	-	.
14.	-	-	-	-	-	-	-	14.
15.	-	-	-	-	-	-	-	15.
16.	18,000	18,000	18,000	18,000	18,000	18,000	18,000	16.
17.	16,994	742	(3,204)	1,132	(978)	3,456	119	17.
18.	197,337	191,285	223,836	249,042	221,878	216,627	219,167	18.
19.	(6,906)	(22,341)	(55,813)	(56,173)	(20,227)	(48,720)	(55,414)	19.
20.	<u>190,431</u>	<u>168,944</u>	<u>168,022</u>	<u>192,869</u>	<u>201,651</u>	<u>167,907</u>	<u>163,753</u>	20.
21.	131,051	124,146	101,805	45,992	(10,181)	(30,408)	(79,128)	21.
22.	(6,906)	(22,341)	(55,813)	(56,173)	(20,227)	(48,720)	(55,414)	22.
23.	<u>\$ 124,146</u>	<u>\$ 101,805</u>	<u>\$ 45,992</u>	<u>\$ (10,181)</u>	<u>\$ (30,408)</u>	<u>\$ (79,128)</u>	<u>\$ (134,542)</u>	23.
24.	-	-	-	-	-	-	-	24.
25.	-	-	-	-	-	-	-	25.
26.	35,641	33,000	35,000	37,000	37,000	37,000	37,000	26.
27.	29,882	21,664	41,000	49,300	34,652	30,500	31,400	27.
28.	65,523	54,664	76,000	86,300	71,652	67,500	68,400	28.

PHILADELPHIA GAS WORKS
DEBT SERVICE COVERAGE
(Dollars in Thousands)

LINE NO.	HTY <u>2018-19</u>	FTY <u>2019-20</u>	FPFTY <u>2020-21</u>	FORECAST <u>2021-22</u>	FORECAST <u>2022-23</u>	FORECAST <u>2023-24</u>	FORECAST <u>2024-25</u>	LINE NO.
FUNDS PROVIDED								
1. Total Gas Revenues	\$ 664,084	\$ 640,112	\$ 636,637	\$ 653,389	\$ 671,926	\$ 675,733	\$ 677,135	1.
2. Other Operating Revenues	<u>20,644</u>	<u>19,174</u>	<u>19,137</u>	<u>19,456</u>	<u>21,361</u>	<u>21,947</u>	<u>23,049</u>	2.
3. Total Operating Revenues	684,728	659,286	655,774	672,845	693,287	697,681	700,185	3.
4. Other Income Incr. / (Decr.) Restricted Funds	10,787	878	2,692	2,718	2,738	2,758	2,777	4.
5. City Grant	-	-	-	-	-	-	-	5.
5. AFUDC (Interest)	<u>1,295</u>	<u>1,718</u>	<u>2,212</u>	<u>2,504</u>	<u>2,091</u>	<u>1,922</u>	<u>1,956</u>	5.
6. TOTAL FUNDS PROVIDED	696,810	661,882	660,677	678,067	698,116	702,360	704,918	6.
FUNDS APPLIED								
7. Fuel Costs	206,825	195,407	191,558	189,554	191,050	194,279	196,125	7.
8. Other Operating Costs	<u>335,232</u>	<u>353,898</u>	<u>355,063</u>	<u>377,122</u>	<u>379,358</u>	<u>385,708</u>	<u>388,947</u>	8.
9. Total Operating Expenses	542,057	549,305	546,621	566,676	570,408	579,987	585,072	9.
10. Less: Non-Cash Expenses	<u>74,552</u>	<u>73,083</u>	<u>69,157</u>	<u>76,765</u>	<u>84,545</u>	<u>77,603</u>	<u>76,412</u>	10.
11. TOTAL FUNDS APPLIED	467,505	476,222	477,464	489,911	485,864	502,384	508,660	11.
12. Funds Available to Cover Debt Service	229,305	185,659	183,213	188,157	212,252	199,976	196,259	12.
13. 1975 Ordinance Bonds Debt Service	-	-	-	-	-	-	-	13.
14. Debt Service Coverage 1975 Bonds	-	-	-	-	-	-	-	14.
13. Net Available after Prior Debt Service	229,305	185,659	183,213	188,157	212,252	199,976	196,259	13.
14. Equipment Leasing Debt Service	<u>-</u>	<u>-</u>	<u>(47,075)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	14.
15. Net Available after Prior Capital Leases	229,305	185,659	230,288	188,157	212,252	199,976	196,259	15.
16. 1998 Ordinance Bonds Debt Service	98,417	100,784	106,790	107,718	108,452	113,799	120,191	16.
17. 1999 Ordinance Subordinate Bonds Debt Service - (TXCP)	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	17.
18. Total 1998 Ordinance Debt Service	98,417	100,784	106,790	107,718	108,452	113,799	120,191	18.
19. Debt Service Coverage 1998 Bonds	2.33	1.84	2.16	1.75	1.96	1.76	1.63	19.
20. Net Available after 1998 Debt Service	130,888	84,875	123,498	80,439	103,800	86,177	76,068	20.
1998 Ordinance Subordinate Bond Debt Service	-	-	-	-	-	-	-	.
Debt Service Coverage Subordinate Bonds	-	-	-	-	-	-	-	.
21. Aggregate Debt Service	98,417	100,784	106,790	107,718	108,452	113,799	120,191	21.
22. Debt Service Coverage (Combined liens)	2.33	1.84	1.72	1.75	1.96	1.76	1.63	22.
23. Debt Service Coverage (Combined liens with \$18.0 City Fee)	2.15	1.66	1.55	1.58	1.79	1.60	1.48	23.