



October 20, 2020

Via Electronic Filing

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

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

Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced proceeding, please find the Environmental Stakeholders' Reply to the Exceptions of Philadelphia Gas Works. As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

/s/ Devin McDougall

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY OF THE ENVIRONMENTAL STAKEHOLDERS
TO THE EXCEPTIONS OF PHILADELPHIA GAS WORKS**

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.535, Clean Air Council and Sierra Club, Pennsylvania Chapter (the “Environmental Stakeholders”) respectfully submit this Reply to the Exceptions filed by Philadelphia Gas Works (“PGW”) to the Recommended Decision (“Recommended Decision”) of Administrative Law Judge Darlene Davis Heep and Administrative Law Judge Marta Guhl (the “ALJs”) in the above-captioned proceeding (“Proceeding”) of the Pennsylvania Public Utility Commission (the “Commission”).

PGW continues to insist, in its Exceptions, that the Commission has jurisdiction to consider how climate change affects rates when PGW invokes warming climate trends as a reason to raise its rates, but the Commission somehow loses jurisdiction to consider how climate change affects rates whenever any party asks that PGW conduct responsible planning to minimize the need to raise rates.

Yet the Public Utility Code is clear that the Commission has jurisdiction to consider matters that affect the justness and reasonableness of proposed rates.¹ Not only has the Commission routinely considered environmental matters affecting rates in the context of remediation work and pollution control measures,² the Commission has also considered matters

¹ 66 Pa.C.S. § 1301(a).

² *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm’n*, 613 A.2d 74 (Pa.Cmwlth. 1992), *aff’d*, 636 A.2d 627 (1994) (addressing cost recovery related to migration of pollution from utility-owned property); *Joint Application of Nui Corp., C&T Enterprises, Inc. & Valley Energy, Inc.*, No. A-125100, 2002 WL 34560229 (PUC 2002) (approving settlement that assured utility’s right to seek recovery through rates of remediation costs, if approved by the Commission); *Philadelphia Elec. Co. v. Pennsylvania Pub. Util. Comm’n*, 502 A.2d 722, 724–25 (Pa.Cmwlth. 1985) (upholding disallowance of expenditure on pollution control measures); *In Re Duquesne Light Co.*, No. S-00990753, 1999 WL 33592926 (Nov. 4, 1999) (approving issuance of pollution control refunding bonds in light of capital needs of company); *Pennsylvania Pub. Util. Comm’n*, 42 P.U.R.4th 475 (Apr. 24, 1981) (allowing expenditures for pollution control construction work); *Pennsylvania Pub. Util. Comm’n*, 32 P.U.R.4th 245 (Aug. 27, 1979) (disallowing expenditures for pollution control construction work).

such as salaries,³ health insurance plans,⁴ and bonuses,⁵ all of which arise in domains that the Commission itself does not regulate. If an issue affects the prudence or expected value of a proposed investment, there are no carve-outs, forced blind spots, or exceptions that prohibit the Commission from considering evidence on it.

It would be one thing if PGW argued simply that the Commission cannot consider climate change in any fashion as part of ratemaking. This argument would be wrong, but at least it would have the virtue of some level of internal logical consistency. However, it must be emphasized that PGW concedes “the Commission can consider in PGW’s rate cases *the effects* of global warming or climate change[.]”⁶ PGW claims that this means that the Commission can approve increases to its revenue requirement based on warming winters and decreased demand,⁷ but then also contends that the Commission is barred from examining the implications of declining demand on the expected value of PGW’s infrastructure investments or stranded asset risks affecting those investments.⁸

This amounts to a “heads PGW wins/tails the public loses” theory of ratemaking jurisdiction, in which the Commission can always approve rate increases based on climate change, but is jurisdictionally disempowered from investigating the prudence of PGW’s proposed investments in light of climate-related trends or from requiring planning to minimize the need for rate increases.

³ See, e.g., *Pennsylvania Pub. Util. Comm’n v. Valley Utils Co.*, 72 Pa. P.U.C. 310 (Mar. 22, 1990) (rejecting as unreasonable and unsupported by evidence utility’s request to increase executive salary).

⁴ *Pennsylvania Pub. Util. Comm’n v. Philadelphia Suburban Water Co.*, 71 Pa. P.U.C. 593 (Dec. 28, 1989) (approving as reasonable utility’s proposed above-inflation increase to employee benefits and health care costs).

⁵ *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate Matthew Joseficz Barbara Mcdade*, No. C-2018-2646178, 2018 WL 5620905 (Oct. 25, 2018) (approving as reasonable and supported by the evidence utility’s proposed management bonus scheme).

⁶ PGW Exceptions to the Recommended Decision (“PGW Exceptions”), at 5.

⁷ *Id.* at 31.

⁸ *Id.* at 36.

The inconsistency of this approach is unsustainable, and PGW never explains how it can be reconciled. More broadly, if PGW concedes that the Commission “can consider in PGW’s rate cases *the effects* of climate change,” on what basis does PGW object to responding to a request for information about the effects of climate change on PGW’s operations and proposed investments? PGW never answers these questions.

This is no great obstacle, because the answers are straightforward and articulated clearly in the well-reasoned Recommended Decision. As the ALJs properly confirmed, the Commission has jurisdiction to consider environmental matters that affect proposed rates, not simply to approve an increase to those rates, but also to consider requirements for prudent management to control costs. As the ALJs also properly held, since the Commission has the jurisdiction to consider the effects of climate change on PGW’s operations and investments, the Commission can request that PGW provide information on these matters when it files for its next rate increase.

The Commission should uphold the simple, common-sense recommendations of the ALJs. Many of PGW’s ratepayers already struggle to pay their gas bills.⁹ PGW’s plan to simply keep raising rates as winters warm and demand declines is unsustainable for its ratepayers. The ALJs’ recommendation that PGW provide information on its planning related to climate change along with its next rate increase request is an appropriate, tailored remedy that will help ensure that PGW engages in the type of quality cost-management planning that its ratepayers need and deserve.

⁹ OCA St. No. 5, Colton Direct, at 41–42.

II. ARGUMENT

A. Reply to PGW’s First Litigation Exception: The ALJs’ Recommendation that PGW Include Information on Its Planning Relating to Climate Risks is Fully Consistent with the ALJs’ Jurisdictional Conclusions

PGW’s First Litigation Exception challenges the ALJs’ recommendation that PGW be required to include in its next rate case filing planning information related to climate change issues.¹⁰ PGW argues that this recommendation is inconsistent with the ALJs’ findings that the Commission does not have jurisdiction to (1) directly regulate environmental impacts such as greenhouse gas emissions or (2) to require the production of a Climate Business Plan.¹¹ This argument is misconceived, for the reasons explained below.

1. There Is No Inconsistency Between a Finding of No Jurisdiction to Order Emissions Reductions and Requiring PGW to Include Information on its Planning Relating to Climate Risks in its Next Rate Case Filing

First, PGW does not identify any actual inconsistency between the ALJs’ finding that the Commission cannot enforce environmental regulations and the ALJs’ recommendation that PGW include information on the effects of climate change on its business with its next rate increase request. The ALJs found that “[t]he Commission has no authority to regulate environmental issues, create environmental regulations, or mandate strictly environmental action.”¹² In support of this finding, the ALJs cite two cases, *Funk v. Wolf*, 144 A.3d 228 (Pa.Cmwlt. 2016) (“*Funk*”) and *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72, 76 (Pa.Cmwlt. 1995) (“*Country Place*”).¹³ In *Funk*, the court held that petitioners did not have a right to have the Commission establish greenhouse gas emissions limits for the Commonwealth.¹⁴ In *Country*

¹⁰ PGW Exceptions, at 29.

¹¹ *Id.* at 29–30.

¹² Recommended Decision, at 81.

¹³ *Id.* (citing *Funk v. Wolf*, 144 A.3d 228 (Pa.Cmwlt. 2016) and *Country Place Waste Treatment Co. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72, 76 (Pa.Cmwlt. 1995)).

¹⁴ *Funk*, 144 A.3d at 228; 250–51.

Place, the court held that the Commission does not have jurisdiction to require a wastewater treatment plan to reduce its emissions of offensive odors.¹⁵ As is clear from the ALJs' finding and their discussion of the cases they rely upon, the ALJs concluded that the Commission lacks jurisdiction to directly regulate strictly environmental issues, such as ordering reductions in the air pollution emissions of a facility.

However, the ALJs also correctly concluded that "the Commission may consider environmental issues when determining whether a rate increase is just and reasonable."¹⁶ Pursuant to this conclusion of law, and based on the record established in this proceeding, the ALJs recommended that PGW be required to include in its next rate increase filing information concerning its planning for climate change.¹⁷ In order to determine whether PGW is using quality management practices in evaluating and managing these climate risks, information regarding PGW's planning relating to these matters is essential.

Once PGW's novel claim that requesting information on the effects of climate change on PGW's business and ordering emission reductions are the same thing is discarded, it becomes clear that there is no contradiction between a finding that the Commission cannot order emission reductions and a finding that PGW should provide information relating to its planning to manage the risks of climate change.

2. There Is No Inconsistency Between a Finding of No Jurisdiction to Order the Production of a Climate Business Plan Including Emissions Reductions and Requiring PGW to Include Information on its Planning Relating to Climate Risks in its Next Rate Case Filing

PGW also claims that there is an inconsistency between the ALJs' finding that the Commission does not have jurisdiction to order a Climate Business Plan and the ALJs'

¹⁵ *Country Place*, 654 A.2d at 76.

¹⁶ Recommended Decision, at Conclusions of Law ¶ 13.

¹⁷ *Id.*, at Ordering Paragraphs ¶ 9.

recommendation that PGW provide information on its planning related to climate risks in its next rate case filing.¹⁸ This contention rests on a false equation between an order to prepare a Climate Business Plan that includes mandatory emission reductions prior to any rate increase and the more modest recommendation of the ALJs that PGW simply provide information on its planning relating to managing climate risks to its operations along with its next rate increase request.

The nature of the Climate Business Plan concept discussed in the Recommended Decision can be cleared up quickly. The Recommended Decision quotes PGW's own explanation of what a Climate Business Plan is, namely, a plan "to significantly reduce or eliminate greenhouse gas emissions prior to being granted a rate increase."¹⁹ The Recommended Decision also notes that a Climate Business Plan would contain other information as well, including information on potentially cost-effective investment alternatives and stranded asset risks.²⁰

In their jurisdictional analysis of the Climate Business Plan, the ALJs examined the mandatory emissions reductions aspect closely.²¹ The ALJs noted that the Commission does not have jurisdiction to enforce environmental laws or create environmental regulations.²² The ALJs also discuss *Funk* and *Country Place*, which as noted above, hold that the Commission may not order a utility to reduce its air pollution emissions.²³ After considering these authorities, the ALJs concluded that the Commission does not have the jurisdiction to order the production of a Climate Business Plan or any similar attempt to mandate emissions reductions whether denominated as a Climate Business Plan or not.²⁴ As such, it is clear that the key jurisdictional factor is the attempt to order air pollution emissions reductions.

¹⁸ PGW Exceptions, at 32.

¹⁹ Recommended Decision, at 9.

²⁰ *Id.* at 80.

²¹ *Id.* at 81.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 80.

However, the ALJs correctly found that the Commission does have the authority to consider environmental issues as they relate to the prudence of PGW's investments and the quality of PGW's management practices.²⁵ As the ALJs note, PGW has cited warming climate trends to support rate increase requests in the past, and so it is reasonable to ask that PGW produce information about how it is planning to reduce the risks and costs associated with climate change for ratepayers in the future.²⁶

PGW's attempt to counter this finding relies on two key premises. First, PGW notes that a Climate Business Plan and the climate planning information requested by the ALJs would both contain information about how climate change could impact PGW's infrastructure investments. Second, PGW asserts that this means that the two are essentially the same thing, and that if a Climate Business Plan is disallowed for jurisdictional reasons, so too should be the production of any information related to climate risks affecting PGW's infrastructure and investments.

PGW's first contention is correct as far as it goes—it is likely that both a Climate Business Plan and the climate planning information requested by ALJs would include some similar information about climate risks to PGW's infrastructure. However, PGW's second premise does not follow from the first: their limited overlap does not mean they are essentially the same. PGW ignores the critical jurisdictional difference, as highlighted in the ALJs' analysis, that a Climate Business Plan seeks mandatory emissions reductions, and is therefore extra-jurisdictional, whereas the climate planning information requested by the ALJs does not, and is therefore within jurisdiction.

²⁵ *Id.* at 81.

²⁶ *Id.*

The way that the ALJs have construed the difference between a Climate Business Plan and the climate planning information they request PGW provide in its next rate case can be depicted graphically as follows:

	Climate Business Plan	Climate Planning Information
Mandatory Greenhouse Gas Emissions Reductions	X	
Information on the Effects of Climate Change on PGW's Business Operations	X	X

PGW's argument is, essentially, that the ALJs' order to provide climate planning information is contradictory to the ALJs' determination not to order PGW to provide a Climate Business Plan that requires emission reductions. This rests on the premise that the two are identical. Such a contention is, self-evidently, unavailing.

PGW relies on trying to blur and obscure the ALJs' actual findings because PGW cannot, and does not, contest that the Commission has jurisdiction to consider the effects of climate change on PGW's business operations. As PGW concedes, "the Commission can consider in PGW's rate cases *the effects* of global warming or climate change[.]"²⁷

So, PGW agrees that the Commission can consider the effects of climate change on its business operations. What remains then for PGW to object to? PGW simply objects to being asked to provide the Commission information that the Commission needs in order to evaluate whether PGW is prudently managing the risks climate change poses to its business. It is illogical for PGW to, on the one hand, concede that the Commission can consider an issue, and then, on the other, object to providing the Commission information it needs to consider that issue.

This has been a central, and unsustainable, paradox in PGW's position from the start of this rate case. PGW accepts that the Commission has jurisdiction to consider the effects of

²⁷ PGW Exceptions, at 5.

climate change on its operations, and relies on that jurisdiction in order to obtain rate increases based on evidence of warming winter climate trends. But PGW then turns around and tries to claim that it cannot be asked to perform any responsible, forward-looking planning to minimize the costs of climate change on ratepayers. This self-serving behavior represents the perils of a monopoly business model: PGW, unless ordered by the Commission, will simply continue to raise rates on its captive ratepayers indefinitely, and will not take any action to minimize the need for rate increases unless required to do so. The time is long past for PGW to be required to do so.

B. Reply to PGW’s Second Litigation Exception: The ALJs Properly Confirmed the Commission’s Jurisdiction to Consider Environmental Matters Affecting the Justness and Reasonableness of Rates and Properly Exercised that Jurisdiction in the Recommended Decision

PGW’s Second Litigation Exception objects to (1) the ALJs’ conclusion of law that the Commission has jurisdiction to consider environmental factors that affect the justness and reasonableness of a utility’s proposed rates,²⁸ and (2) the ALJs’ exercise of jurisdiction to recommend that PGW include analysis of the impacts of climate change on its operations and infrastructure in its next rate case filing.²⁹ As discussed below, PGW’s objections are unavailing.

1. The ALJs Properly Confirmed the Commission’s Jurisdiction to Consider Environmental Matters Affecting the Justness and Reasonableness Rates

i. The ALJs’ Conclusion of Law

In the Recommended Decision, the ALJs included a conclusion of law that “the Commission may consider environmental issues when determining whether a rate increase is just and reasonable.”³⁰ The ALJs explained that “[i]t is undisputed that the Commission does not

²⁸ *Id.* at 32.

²⁹ *Id.*

³⁰ Recommended Decision, at Conclusions of Law ¶ 13.

have jurisdiction to *enforce* environmental law and regulations.”³¹ The ALJs discussed the *Funk* and *Country Place* cases, and noted that they stand for the rule that “the Commission has no authority to regulate environmental issues, create environmental regulations or mandate strictly environmental action.”³²

However, the ALJs found that the Commission does have jurisdiction to consider environmental issues that affect the justness and reasonableness of PGW’s proposed rates, including the prudence and expected value of PGW’s proposed infrastructure investments.³³ The ALJs noted that PGW itself has acknowledged the jurisdiction of the Commission to consider warming climate trends in determining whether or not a rate increase proposed by PGW is reasonable.³⁴ Consequently, the ALJs recommended “PGW include in its next rate increase request some consideration of the effect of PGW-acknowledged warming trends on needs and usage assessments and its impact upon the pipe replacement plans and infrastructure costs, and ultimately upon any rate increase requested.”³⁵ As will be discussed below, these conclusions are consistent with both the applicable statutory framework and decisional law.

ii. Statutory Framework

It is common ground that the Commission’s jurisdiction is defined by statute.³⁶ Examination of the relevant statutory provisions makes clear that the Commission has authority to consider matters affecting the justness and reasonableness of proposed rates, including the quality and efficiency of a utility’s management practices and the prudence of its investments,

³¹ *Id.* at 81 (emphasis in original).

³² *Id.* at Conclusions of Law ¶ 2.

³³ *Id.* at 81–82.

³⁴ *Id.* at 81.

³⁵ *Id.* at 96.

³⁶ *City of Pittsburgh v. Pennsylvania Pub. Util. Comm’n*, 43 A.2d 348, 348 (Pa. Super. Ct. 1945) (“The commission, created by statutory law, derives its authority from legislative action.”); *See also City of Philadelphia v. Philadelphia Elec. Co.*, 473 A.2d 997, 1000 (1984); *Duquesne Light Co. v. Pennsylvania Pub. Util. Comm’n*, 63 A.2d 466, 470 (1949).

regardless of the issue area those matters arise in. As a starting point, Section 1301 of the Public Utility Code provides the Commission with the authority to investigate all general rate increase filings to ensure that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with [the] regulations or orders of the commission.”³⁷

Section 523 of the Public Utility Code provides guidance on factors the Commission needs to consider in determining whether proposed rates are just and reasonable under Section 1301, including a utility’s “efficiency, effectiveness and adequacy of service”³⁸ and an electric or gas utility’s “[a]ction or failure to act to encourage development of cost-effective energy supply alternatives such as conservation or load management[.]”³⁹

The Commission’s regulations provide further detail on how Section 1301’s requirement of just and reasonable rates is to be assessed for PGW specifically. Notably, the quality of PGW’s management is a central criterion. As the relevant regulation provides, “[i]n determining just and reasonable rate levels for PGW, the Commission will consider, among other relevant factors...PGW’s management quality, efficiency and effectiveness.”⁴⁰

Finally, Section 1501 of the Public Utility Code provides the Commission with the authority to ensure that public utilities “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper[.]”⁴¹

³⁷ 66 Pa.C.S. § 1301(a). Even outside the rate case context, the Public Utility Code authorizes the Commission to, at any time, require a utility to provide a report on “any matter whatsoever about which the commission is authorized to inquire[.]” 66 Pa.C.S. § 504.

³⁸ 66 Pa.C.S. § 523(a).

³⁹ 66 Pa.C.S. § 523(b)(4).

⁴⁰ 52 Pa. Code § 69.2703(a)(6).

⁴¹ 66 Pa.C.S. § 1501.

Significantly, none of the above-discussed statutory provisions contain any carve-outs or exceptions for environmental matters or any other issue area. The statutory framework is clear—the Commission has jurisdiction to consider evidence on matters that affect the justness and reasonableness of rates, regardless of the issue area.

iii. Decisional Law

As can be seen from the above, the Commission has clear statutory jurisdiction to examine the quality of PGW’s management practices, service, and facilities as part of a determination of whether or not a rate proposed by PGW is just and reasonable. Accordingly, case law precedent is clear that the Commission can consider evidence relevant to these matters even if that evidence relates to a domain that the Commission does not itself regulate.

To start, it has been well-settled for decades that the Commission has jurisdiction to consider environmental matters that are relevant to evaluating a utility’s proposed rates, even though the Commission does not itself issue or enforce environmental regulations. In the context of natural gas utilities, the Commission has frequently considered matters relating to environmental remediation plans and expenditures in order to determine if a utility’s proposed rates are just and reasonable.⁴² In other contexts, the Commission has considered matters relating to the prudence and recoverability of pollution control expenditures.⁴³ As such, the ALJs’ conclusion of law that “the Commission may consider environmental issues when determining

⁴² See e.g., *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm’n*, 613 A.2d 74 (Pa.Cmwlth. 1992), *aff’d*, 636 A.2d 627 (1994) (addressing cost recovery related to migration of pollution from utility-owned property); *Joint Application of Nui Corp., C&T Enterprises, Inc. & Valley Energy, Inc.*, No. A-125100, 2002 WL 34560229 (PUC 2002) (approving settlement that assured utility’s right to seek recovery through rates of remediation costs, if approved by the Commission).

⁴³ See e.g., *Philadelphia Elec. Co. v. Pennsylvania Pub. Util. Comm’n*, 502 A.2d 722, 724–25 (Pa.Cmwlth. 1985) (upholding disallowance of expenditure on pollution control measures); *In Re Duquesne Light Co.*, No. S-00990753, 1999 WL 33592926 (Nov. 4, 1999) (approving issuance of pollution control refunding bonds in light of capital needs of company); *Pennsylvania Pub. Util. Comm’n*, 42 P.U.R.4th 475 (Apr. 24, 1981) (allowing expenditures for pollution control construction work); *Pennsylvania Pub. Util. Comm’n*, 32 P.U.R.4th 245 (Aug. 27, 1979) (disallowing expenditures for pollution control construction work).

whether a rate increase is just and reasonable”⁴⁴ does not represent a new development, but rather confirmation of a decades-long chain of precedent.

More broadly, it is also well-settled that the Commission can consider evidence relating to the justness and reasonableness of a utility’s rates from other contexts that the Commission does not itself regulate. As such, the Commission hears and considers evidence on the reasonableness of PGW’s salaries, bonuses, and health insurance, despite the fact that the Commission has no jurisdiction to regulate labor markets,⁴⁵ bonus plans,⁴⁶ or health insurance.⁴⁷ As an additional example, the Commission has jurisdiction to conclude that negotiable instruments do not constitute reasonable payment under the Public Utility Code even though it does not administer the Uniform Commercial Code.⁴⁸

The Commission is the only Commonwealth agency with the jurisdiction to review, on behalf of captive ratepayers, the prudence, justness, and reasonableness of a monopoly utility’s proposed rates and expenditures. This is why the Public Utility Code, as confirmed through decisional precedent, grants the Commission broad jurisdiction to consider the evidence needed to evaluate the quality of a utility’s management practices, facilities, and service. As the Commonwealth Court has repeatedly held, “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.”⁴⁹

⁴⁴ Recommended Decision, at Conclusions of Law ¶ 13.

⁴⁵ See, e.g., *Pennsylvania Pub. Util. Comm’n v. Valley Utils Co.*, 72 Pa. P.U.C. 310 (Mar. 22, 1990) (rejecting as unreasonable and unsupported by evidence utility’s request to increase executive salary).

⁴⁶ *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate Matthew Josefowicz Barbara Mcdade*, No. C-2018-2646178, 2018 WL 5620905 (Oct. 25, 2018) (approving as reasonable and supported by the evidence utility’s proposed management bonus scheme).

⁴⁷ *Pennsylvania Pub. Util. Comm’n v. Philadelphia Suburban Water Co.*, 71 Pa. P.U.C. 593 (Dec. 28, 1989) (approving as reasonable utility’s proposed above-inflation increase to employee benefits and health care costs).

⁴⁸ *Tucker v. Pennsylvania Pub. Util. Comm’n*, 917 A.2d 378, 378 (Pa.Cmwlt. 2007).

⁴⁹ *McCloskey v. Pennsylvania Pub. Util. Comm’n*, 225 A.3d 192, 195 (Pa.Cmwlt. 2020) (citing *Popowsky v. Pa. Pub. Util. Comm’n*, 683 A.2d 958, 961 (Pa.Cmwlt. 1996)).

iv. PGW's Objections

PGW's objects to the ALJs' conclusion of law on a number of grounds, each of which will be addressed in turn. PGW does agree and concede that "the Commission can consider in PGW's rate cases *the effects* of global warming or climate change[.]"⁵⁰ However, PGW contends that the ALJs' conclusion of law is somehow "[o]verly [b]road" and improperly extends the Commission's jurisdiction beyond its statutory bounds by attempting to regulate PGW's air pollution emissions.⁵¹ This contention is unavailing because it misrepresents the ALJs' holding. As discussed above, Section 1301 of the Public Utility Code authorizes and requires the Commission to investigate whether a proposed rate increase is just and reasonable.⁵² As part of this investigation, the Commission must assess if the utility has engaged in quality management practices, maintained adequate infrastructure and facilities, and provided adequate service.⁵³

In affirming the jurisdiction of the Commission to consider the prudence of a utility's management and planning relating to environmental risks to its business operations, the ALJs simply confirmed that the Commission can do what it has always done, which is evaluate the prudence of a utility's investments with no carve-out for environmental risks. As noted above, there is ample decisional law demonstrating the Commission's duty to examine the prudence of utilities' management of environmental costs and risks.⁵⁴ The ALJs expressly state that they do

⁵⁰ PGW Exceptions, at 5–6.

⁵¹ PGW Exceptions, at 32.

⁵² 66 Pa.C.S. § 1301(a).

⁵³ 66 Pa.C.S. § 523(a); 66 Pa.C.S. § 523(b)(4); 52 Pa. Code § 69.2703(a)(6); 66 Pa.C.S. § 1501.

⁵⁴ *Columbia Gas of Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n*, 613 A.2d 74 (Pa.Cmwlt. 1992), *aff'd*, 636 A.2d 627 (1994) (addressing cost recovery related to migration of pollution from utility-owned property); *Joint Application of Nui Corp., C&T Enterprises, Inc. & Valley Energy, Inc.*, No. A-125100, 2002 WL 34560229 (PUC 2002) (approving settlement that assured utility's right to seek recovery through rates of remediation costs, if approved by the Commission); *Philadelphia Elec. Co. v. Pennsylvania Pub. Util. Comm'n*, 502 A.2d 722, 724–25 (Pa.Cmwlt. 1985) (upholding disallowance of expenditure on pollution control measures); *In Re Duquesne Light Co.*, No. S-00990753, 1999 WL 33592926 (Nov. 4, 1999) (approving issuance of pollution control refunding bonds in light of capital needs of company); *Pennsylvania Pub. Util. Comm'n*, 42 P.U.R.4th 475 (Apr. 24, 1981) (allowing expenditures for pollution control construction work); *Pennsylvania Pub. Util. Comm'n*, 32 P.U.R.4th 245 (Aug. 27, 1979) (disallowing expenditures for pollution control construction work).

not have jurisdiction to regulate PGW's air emissions,⁵⁵ and PGW fails to identify any portion of the Recommended Decision that imposes a limit on PGW's air emissions.

PGW suggests that for the Commission to consider environmental information in assessing the prudence of a utility investment would unlawfully convert the Commission into an environmental regulator.⁵⁶ However, considering information about an issue as part of ratemaking does not convert the Commission into a regulator of that issue. As an example, PGW concedes that the Commission's jurisdiction includes "*the effects* of global warming or climate change"⁵⁷ and relied upon the Commission's consideration of climate trend data in order to obtain a rate increase recently.⁵⁸ PGW concedes this is lawful and proper and does not contend that this converted the Commission into a climate regulator. Similarly, the Commission's past consideration of information about environmental remediation and pollution control investments as part of ratemaking has not turned it into an environmental regulator.⁵⁹

Simply put, PGW's attempted equation between considering information about an issue as part of ratemaking and directly regulating that issue makes little sense. This is also made clear by the Commission's precedent for examining information relating to salaries, benefits, and health insurance as part of ratemaking.⁶⁰ These are all examples of areas the Commission does

⁵⁵ Recommended Decision, at 81.

⁵⁶ PGW Exceptions, at 34.

⁵⁷ PGW Exceptions, at 5–6.

⁵⁸ Recommended Decision, at Findings of Fact ¶ 70.

⁵⁹ See *supra* at Note 54.

⁶⁰ *Pennsylvania Pub. Util. Comm'n v. Valley Utils Co.*, 72 Pa. P.U.C. 310 (Mar. 22, 1990) (rejecting as unreasonable and unsupported by evidence utility's request to increase executive salary); *Pennsylvania Pub. Util. Comm'n Office of Consumer Advocate Office of Small Bus. Advocate Matthew Josefowicz Barbara Mcdade*, No. C-2018-2646178, 2018 WL 5620905 (Oct. 25, 2018) (approving as reasonable and supported by the evidence utility's proposed management bonus scheme); *Pennsylvania Pub. Util. Comm'n v. Philadelphia Suburban Water Co.*, 71 Pa. P.U.C. 593 (Dec. 28, 1989) (approving as reasonable utility's proposed above-inflation increase to employee benefits and health care costs).

not regulate, yet all areas in which it is well-settled that the Commission may consider information as part of a rate case.

PGW introduces a hypothetical about the Commission’s review of salaries to try to challenge the ALJs’ finding of jurisdiction—but its hypothetical actually supports the Recommended Decision.⁶¹ As discussed, the mere fact that other agencies are responsible for regulating labor markets (e.g., the Department of Labor) does not deprive the Commission of its ordinary jurisdiction to judge what level of utility salaries may be included in just and reasonable rates. If PGW sought a rate increase claiming that it was necessary to increase salaries, the Commission would be within its right to judge whether that increase is appropriate and set rates accordingly. That authority to set rates at a level that assumes reduced salaries does not transmute the Commission into the Department of Labor.

PGW also objects to the ALJs’ conclusion of law on the basis that it holds 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[.]”⁶² This contention is also unavailing, as it relies on a misrepresentation of the ALJs’ holding.

Indeed, PGW’s claim collapses upon examination of the ALJs’ actual conclusion of law. PGW selectively quotes the part of the conclusion of law that says the Commission can consider “environmental issues,” but rather conveniently forgets to quote the rest of the conclusion of law, which provides that “the Commission may consider environmental issues *when determining whether a rate increase is just and reasonable.*”⁶³ As such, the ALJs expressly tie the scope of the Commission’s jurisdiction to assessing whether a utility has carried its burden of establishing

⁶¹ PGW Exceptions, at 34.

⁶² PGW Exceptions, at 36.

⁶³ Recommended Decision, at Conclusions of Law ¶ 13 (emphasis added).

that the specific rate increase proposed in that ratemaking proceeding meets the statutory standard of being just and reasonable.

To the extent that PGW is going even further, and arguing that not only does a piece of evidence need to be tied to a specific rate case claim but that it also needs to be correlated to a specific proposed line item adjustment in order to be jurisdictional, this argument is also unavailing. To start, there is no authority in the Public Utility Code for such a proposition. Parties have a due process right to oppose a rate increase in its entirety, and do not need to unlock jurisdiction to oppose a rate increase by submitting along with their evidence an alternative increase amount or specific line item adjustments.⁶⁴ PGW's novel approach has never previously been implemented, and makes little sense.⁶⁵

Notably, the Public Utility Code provides for a discovery period in rate cases because it is recognized that the record needs to be developed in order to determine what appropriate expenditures would be. Demanding that the admission or consideration of a piece of evidence on an issue be conditioned on first proposing related line item adjustments puts the cart before the horse.⁶⁶ Pursuant to the Public Utility Code, jurisdiction to consider evidence has always been based on its connection to a specific rate case claim, not on whether or not that evidence is submitted alongside a specific line item adjustment, and PGW's proposed rewrite of the statute should be rejected.

⁶⁴ 66 Pa.C.S. § 332(c) (“[e]very party is entitled to present his case or defense by oral or documentary evidence . . . as may be required for a full and true disclosure of the facts.”); 52 Pa. Code § 5.403; *See also Borough of Bridgewater v. Pennsylvania Pub. Util. Comm’n*, 124 A.2d 165, 173 (Pa. Super. Ct. 1956) (“As an administrative body the Commission is bound by the due process provisions of constitutional law and by the principles of common fairness.”).

⁶⁵ It is also notable that PGW first raises this argument in its Exceptions, having not mentioned this concept in its extensive briefing on jurisdiction as part of motion practice during the discovery period, its Main Brief, or its Reply Brief in this proceeding.

⁶⁶ *Susan Kreider*, No. P-2015-2495064, 2016 WL 406549, at *14 (Jan. 28, 2016).

In sum, contrary to PGW’s various complaints, the Recommended Decision makes a clear and sound distinction between enforcement of environmental statutes (reserved to the authority of other agencies) and oversight of monopoly utility rates (reserved to the Commission’s exclusive jurisdiction). The Recommended Decision grasps what PGW refuses to admit: the Commission has statutory authority to consider factors impacting the justness and reasonableness of utility rates; there are no exceptions, blind spots, or carve-outs to this obligation. The PGW theory of ratemaking jurisdiction—that environmental information can be considered when it is proffered by a utility as the basis to raise rates, but the Commission somehow lacks jurisdiction to consider environmental information in connection with planning to minimize rate increases—is transparently self-serving and contrary to law.

2. The ALJs’ Jurisdictional Findings Are Properly Applied in the Recommended Decision

The ALJs applied their conclusion of law on jurisdiction by including in the ordering paragraphs a recommendation that PGW “be required at the next filing of a rate base increase request to include information regarding its planning related to climate change issues.”⁶⁷ The ALJs explained that they recommend that “PGW include in its next rate increase request some consideration of the effect of PGW-acknowledged warming trends on needs and usage assessments and its impact upon the pipe replacement plans and infrastructure costs, and ultimately upon any rate increase requested.”⁶⁸ As the ALJs noted, “the Commission should look at these issues now before it reaches a point when PGW’s business model becomes increasingly expensive and burdensome to the ratepayers.”⁶⁹

⁶⁷ Recommended Decision, at Ordering Paragraph ¶ 9.

⁶⁸ *Id.* at 96.

⁶⁹ *Id.*

PGW's objections to this application of jurisdiction are quite similar to PGW's overall objections to the ALJs' conclusions on jurisdiction. To begin, PGW repeatedly misrepresents the ALJs' recommendation as an illicit attempt to regulate the air emissions of PGW facilities.⁷⁰ However, PGW does not, and cannot, explain how requesting information about the effects of climate warming trends (that PGW itself admits are occurring) on PGW's business model somehow functions to impose mandatory emission reductions. The simple answer is that it does not, and the ALJs expressly state that they are not imposing air quality regulations on PGW. Moreover, the Public Utility Code provides express authority for the Commission to request that utilities provide information on topics relevant to the Commission's enforcement of statutory standards.⁷¹

PGW also argues that it should not be required to submit climate planning information with its next rate case because the ALJs have not tied it to a "specific rate case claim."⁷² This claim too is unavailing. As noted above, the ALJs have not recommended that PGW submit a report on climate change that is untethered to a rate case claim or issue. Instead, the ALJs explicitly stated that PGW should include "in its next rate increase request" information on how climate change may affect the prudence of the expenditures described therein.⁷³ PGW has acknowledged that climate warming trends are causing reduced demand for gas for heating in the winter, and the ALJs have recommended that PGW include analysis of this trend and "its impact

⁷⁰ PGW Exceptions, at 34.

⁷¹ 66 Pa.C.S. § 504 (providing that the Commission "may require any public utility to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe, and special reports concerning any matter whatsoever about which the commission is authorized to inquire, or to keep itself informed, or which it is required to enforce.").

⁷² PGW Exceptions, at 36.

⁷³ Recommended Decision, at Ordering Paragraph ¶ 9.

upon the pipe replacement plans and infrastructure costs.”⁷⁴ As such, PGW’s claim that the ALJs’ request is insufficiently tied to specific claims must fail.

Similarly, PGW’s contention that the ALJs’ recommendation is based solely on speculation about the distant future also misses the mark. PGW claims that the only “link” between climate change and “matters within the Commission’s jurisdiction” is the “speculative assumption that natural gas utilities will be required to cease operations in the future in order to combat warming climate trends.”⁷⁵ To start, as noted above, this is a misrepresentation. PGW itself has conceded that climate change is occurring and that warming climate trends are already adversely impacting its business model by reducing the demand for gas in the winter, and PGW has already sought a rate increase to compensate.⁷⁶ As the ALJs noted, if PGW wants to raise rates based on climate change trends, it should be required to plan responsibly to minimize the costs and risks of climate change for its ratepayers—“before it reaches a point when PGW’s business model becomes increasingly expensive and burdensome to the ratepayers.”⁷⁷

More broadly, the ALJs properly found, based on clear record evidence, that PGW’s infrastructure investments face “a risk of stranded assets given regional environmental planning issues.”⁷⁸ As the record demonstrates, the Commonwealth has set aggressive greenhouse gas reduction goals for the coming decades, and the City of Philadelphia has committed to completely eliminating natural gas from its energy supply by 2050.⁷⁹ No party to this proceeding has asserted that regulatory implementation of these goals is an absolute certainty, but it does not have to be in order to warrant responsible contingency planning. The nature of a “risk” of

⁷⁴ *Id.* at 96.

⁷⁵ PGW Exceptions, at 35.

⁷⁶ *Id.* at 5–6 (“Of course, the Commission can consider in PGW’s rate cases the effects of global warming or climate change[.]”) (emphasis in original); Recommended Decision, at Findings of Fact ¶ 70.

⁷⁷ Recommended Decision, at 96.

⁷⁸ *Id.* at 82.

⁷⁹ Recommended Decision, at Findings of Fact ¶¶ 66–67.

stranded assets is that it is not certain, but if the risk's consequences are profound, prudence counsels advance planning.

As PGW has conceded, risk can be usefully assessed in terms of probability multiplied by the magnitude of the consequence.⁸⁰ Here, if PGW were to be required to completely cease distributing natural gas in Philadelphia by 2050, it would have extremely severe impacts on PGW's finances and business model.⁸¹ Moreover, it would directly threaten the ability of PGW to recover the expected lifetime value of its infrastructure investments, including pipe replacements, which PGW assumes will be in use and returning value far past 2050.⁸² Contingency planning for stranded asset risks is an ordinary part of responsible utility management. PGW has refused to do so, despite very clear signals of potential regulatory action, and it is appropriate that the Commission step in, on behalf of ratepayers, to require responsible planning.

Finally, PGW includes in its objections to the ALJs' exercise of jurisdiction in the Recommended Decision an attempt to collaterally re-litigate the admission of the Environmental Stakeholders' testimony to the record.⁸³ As a starting point, this contention is untimely, because PGW's window for appealing the ALJs' denial of PGW's jurisdiction-based motion in limine to exclude the Environmental Stakeholders' testimony has closed.⁸⁴ More broadly, however, the Commission has jurisdiction to consider the Environmental Stakeholders testimony for all the same reasons, explained at length above, that the Commission has jurisdiction to consider

⁸⁰ *Main Br. of the Environmental Stakeholders*, at 46, Docket No. R-2020-3017206 (Aug. 26, 2020) (citing Moser Cross, Tr. at 315) (agreeing that low probability, high consequence events are high risk)) ("Environmental Stakeholders Main Brief").

⁸¹ SC St. No. 1-SR, at 3; Resolution No. 190728, at 1–2.

⁸² *Main Br. of the Environmental Stakeholders*, at 45 (citing Moser Cross, Tr. at 317).

⁸³ PGW Exceptions, at 35.

⁸⁴ 52 Pa. Code § 5.302.

environmental matters that affect the justness and reasonableness of a utility’s proposed rates.⁸⁵ As the ALJs explain in the Recommended Decision, the Environmental Stakeholders challenged the specific rate increase and revenue requirement proposed by PGW in this rate case as unsupported by the record, because PGW did not show how it is just and reasonable in light of declining demand trends and stranded asset risks.⁸⁶ These concerns go to core ratemaking questions, and implicate the traditional role of the Public Utility Commission in regulating a monopoly utility to ensure that the utility plans responsibly to control costs, instead of simply raising rates freely. As such, PGW’s collateral attack on the admissibility of the Environmental Stakeholders’ testimony is not only untimely, it is unavailing.

C. Reply to PGW’s Third Litigation Exception: The ALJs’ Recommendation that PGW Include Climate Planning Information in Its Next Rate Increase Filing Is an Appropriate and Tailored Remedy That Provides PGW Extensive Advance Notice for Compliance

PGW’s Third Litigation Exception objects to the ALJs’ recommendation that PGW include information on its planning related to climate change on the grounds that it “unfairly” imposes this requirement “only on PGW.”⁸⁷ PGW asserts that a more appropriate approach would be a “universal rulemaking” governing the inclusion of information on climate change in rate increase requests, which PGW states will avoid “inconsistent filing requirements.”⁸⁸ These objections are misplaced, for the reasons explained below.

To start, there is nothing new or unfair about a utility in a rate case being ordered to provide information needed to fill a gap in the record. Under the Public Utility Code, PGW is not

⁸⁵ See *supra* at Section II.B.1. As discussed in Section II.B.1.iv, a party to a rate case must make a specific claim regarding the proposed rate increase, but there is no requirement in the Public Utility Code that a party must propose an alternative increase amount or specific line item adjustments in order to present evidence or participate in the rate case.

⁸⁶ Recommended Decision, at 82–83.

⁸⁷ PGW Exceptions, at 37.

⁸⁸ *Id.*

simply entitled to rate increases on the presentment of a request.⁸⁹ Instead, PGW, by statute, bears the burden of demonstrating that its proposed rate increase is just and reasonable.⁹⁰ The ALJs reasonably found that, based on the record, PGW had failed to evaluate the impacts of climate change on its business operations, particularly the impacts of declining winter demand on its infrastructure needs and the stranded asset risks posed to infrastructure investments with payback periods extending past 2050.⁹¹ The natural and appropriate remedy is to order PGW to fill this gap, to provide the Commission with the information necessary evaluate PGW’s proposed investments. There is nothing unfair about a utility applying for a rate increase being asked to supply information necessary for the evaluation of that rate increase.⁹²

Furthermore, an additional reason that it is inappropriate for PGW to complain of unfairness is that the ALJs have proposed providing PGW with extensive advance notice of the need to supply the requested information. The Environmental Stakeholders argued that PGW should be required to supply the information as part of this rate case, but the ALJs only asked that PGW provide information about the effects of climate change on its proposed investments as part of its next rate increase filing.⁹³ PGW has ample notice and time to gather the appropriate information. Under the ALJs’ proposed modifications to the Partial Settlement, PGW would not file for a rate increase until July 2022 or January 2023, and under the un-modified Partial Settlement, PGW agreed not to seek another rate increase until January 2022.⁹⁴

⁸⁹ 66 Pa.C.S. § 1301(a).

⁹⁰ *Id.*

⁹¹ Recommended Decision, at 96–97.

⁹² Even outside the rate case context, the Commission has the statutory authority to request, at any time, that a utility provide a report regarding any matter within the Commission’s jurisdiction to consider. 66 Pa.C.S. § 504.

⁹³ Recommended Decision, at Ordering Paragraph ¶ 9.

⁹⁴ Recommended Decision, at 54 (January 2022 stay-out provision in Partial Settlement); Recommended Decision, at 78 (“However, in accordance with this [Partial] Settlement, PGW is receiving a rate increase in 2022. Given that, PGW should not seek yet another increase until July of 2022 or January 2023.”).

Moreover, it should be said that gathering information on the potential costs and risks of climate change to PGW's business operations and infrastructure plans is not some kind of abstract compliance exercise. It is a matter of basic prudence and quality management practices, and it is part of the obligation that PGW owes its ratepayers to manage its business in a forward-looking, responsible way that minimizes the need for rate increases. There is no reason for PGW to wait to start doing this, because it should have already been doing it.

PGW also claims that it is "unfair" that it be asked to provide this information because, according to PGW, other gas utilities are not doing so.⁹⁵ But PGW provides no evidence for this claim, and the record is completely bare of any information about what other Pennsylvania gas utilities may or may not be doing with respect to planning to manage the costs of climate change for their ratepayers. As such, there is no basis in the record to reach a comparative conclusion that all other gas utilities are behaving as irresponsibly as PGW with regard to this issue. On the record before the Commission in this matter, PGW has failed to manage its business operations responsibly with regard to climate risks, and as such it is fair that PGW be held accountable for correcting that gap in its next rate increase filing.

PGW also claims that a universal rulemaking is necessary to ensure "consistency" in the information provided about climate risk management by gas utilities.⁹⁶ This claim too is unavailing. The nature of the additional climate analysis needed for each utility will necessarily depend on the record of what each utility is already doing. It should not be assumed, based on no record evidence, that all utilities will need to add information to the degree that PGW does. Moreover, to the extent that a utility contemplating a rate increase request seeks additional guidance, they could examine any order on this topic that results from this rate case. Since the

⁹⁵ PGW Exceptions, at 37.

⁹⁶ *Id.*

record on how climate change can affect utility operations and infrastructure investments has been well-developed in this proceeding, it could serve as a useful model. PGW has identified no basis for suggesting that the Commission needs to start from scratch on this issue by initiating a new universal rulemaking before asking PGW to correct the gaps identified by the ALJs in this proceeding.

PGW further claims that it would risk being “wasteful” for it to provide the information requested in the absence of a universal rulemaking.⁹⁷ In fact, it would be wasteful to discard all of the time and money that the parties and the Commonwealth have put into developing the record in this proceeding. As the ALJs note, the parties “engaged in extensive discovery throughout this proceeding.”⁹⁸ After a hearing and full briefing on the issues, the ALJs reached their conclusion that PGW needs to provide further information about its climate-related planning in its next rate increase. Nothing further is needed substantively or procedurally for PGW to begin filling the gaps identified by the ALJs. PGW’s ratepayers deserve to start seeing the benefits from all of the resources invested in this proceeding; it is further unnecessary delay that would be wasteful.

III. CONCLUSION

For the reasons stated herein, the Environmental Stakeholders respectfully request that the Commission deny PGW’s Litigation Exceptions in their entirety.

October 20, 2020

Respectfully submitted,

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⁹⁷ *Id.*

⁹⁸ Recommended Decision, at Findings of Fact ¶ 14.

CERTIFICATE OF SERVICE

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

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Dated: October 20, 2020

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