**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held November 19, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman, Statement

John F. Coleman, Jr.

Ralph V. Yanora

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 Users Group C-2020-3019430

 v.

Philadelphia Gas Works

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Partial Settlement (Joint Petition or Partial Settlement) filed on August 26, 2020, by the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Philadelphia Industrial and Commercial Gas Users Group (PICGUG), and Philadelphia Gas Works (PGW or the Company) (collectively, the Joint Petitioners).

Also, before the Commission for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Darlene Davis Heep and Marta Guhl, issued on October 5, 2020, and the Exceptions and Reply Exceptions filed thereto, in the above-captioned proceeding.

Exceptions to the Recommended Decision were filed by I&E, the OCA, PICGUG, and PGW on October 15, 2020. Reply Exceptions were filed by the Clean Air Council and Sierra Club/PA Chapter (collectively, the Environmental Stakeholders) on October 20, 2020. [[1]](#footnote-2)

For the reasons stated, *infra*, we shall: (1) grant the Exceptions filed by I&E, the OCA, PICGUG, and PGW; (2) modify the ALJs’ Recommended Decision regarding the settled and litigated issues, consistent with this Opinion and Order; and (3) approve the Joint Petition for Partial Settlement, in its entirety, without modification.

As discussed below, PGW proposed a base rate change that would have increased its total annual operating revenues by approximately $70 million, or 10.5% on a total revenue basis, based on a fully projected future test year (FPFTY) beginning September 1, 2020 and ending August 31, 2021.[[2]](#footnote-3), [[3]](#footnote-4) In this Opinion and Order, we shall approve the Joint Petition, which embodies a “black box” settlement, which allows PGW to file new tariff rates designed to provide an overall distribution base rate increase of $35 million over the course of three phases.[[4]](#footnote-5)

The Partial Settlement would provide PGW with a total $35 million dollar base rate increase, with phased-in increases as follows: (1) $10 million for service rendered on or after January 1, 2021; (2) an additional $10 million for service rendered on or after July 1, 2021; and (3) $15 million for service rendered on or after January 1, 2022. Under the Partial Settlement, PGW has agreed to forego recoupment of revenues that it otherwise would collect if such a phased increase were not put in place. The Partial Settlement also permits PGW to slightly increase its customer charges. For residential customers, the customer charge would increase in phases, on the same schedule as the overall rate increase, with the charge increasing in total to $1.15/month by the third general rate increase phase. Importantly, the Partial Settlement also includes COVID-19 relief, and changes to the Company’s low-income program and data collection and reporting requirements.

# Background

PGW is a municipal public utility company, owned by the City of Philadelphia and managed and operated by the Philadelphia Facilities Management Corporation. Further, PGW is a “City Natural Gas Distribution Operation,” as defined in the Public Utility Code (Code), 66 Pa. C.S. § 102. As explained *infra*, PGW’s ratemaking process is based on a Cash Flow Ratemaking Method where its revenue requirement is the sum of operating expenses, debt service, and a “margin” sufficient to maintain the organization’s ability to attract capital on reasonable terms.[[5]](#footnote-6) *See* OCA St. No. 3 at 2-3. PGW’s service territory consists of an urban area of 134 square miles, the limits of the City of Philadelphia, Pennsylvania, and is the exclusive distributor of natural gas within the limits of the city. As of December 31, 2018, PGW served approximately 506,000 customers, 95% of which were residential. PGW St. No. 4 at 5.

The Company’s testimony provided that its $70 million base rate increase proposal was driven by several factors, including modernizing infrastructure and increases in the following: pension costs, post-retirement benefit costs, capital spending, and debt service. The Company also argued that it is critically important that it maintain its financial metrics and current financial position so that it can retain access to, and improve its borrowing costs for long-term bond transactions and access to credit facilities. PGW St. No. 1 at 3. In its request, PGW proposed to allocate approximately 84% of the proposed $70 million increase to residential customers. PGW Exh. CEH-1, Sch. A. In contrast, the Partial Settlement provides that approximately 78% of the total $35 million increase be allocated to residential customers. Partial Settlement at ¶ 23. Additionally, the Partial Settlement provides that the residential customer charge would increase in phases, on the same schedule as the overall base rate increase, with the residential monthly customer charge increasing in total by $1.15, from $13.75 to $14.90 or an 8.4% increase, in lieu of the Company’s proposal to increase the monthly residential customer charge from $13.75 to $19.25, which is a 40% increase. Partial Settlement at ¶ 24; PGW St. No. 1 at 7.

# History of Proceeding

On February 28, 2020, PGW filed Supplement No. 128 to PGW’s Gas Service Tariff – Pa. P.U.C. No. 2 (Supplement No. 128) and Supplement No. 85 to PGW’s Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 85), to become effective April 28, 2020, containing proposed changes to base rates designed to produce a net increase in PGW’s annual distribution revenue of approximately $70 million, or 10.5%, above existing distribution revenues.

On March 6, 2020, the OSBA filed a Formal Complaint. On March 10, 2020, the OCA filed a Formal Complaint, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene. On March 11, 2020, I&E filed a Notice of Appearance. On March 19, 2020, Direct Energy Services, Inc. (Direct Energy) filed a Petition to Intervene. On April 7, 2020, PICGUG filed a Formal Complaint, and on April 10, 2020, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN, *et al*.) filed a Petition to Intervene.

By Commission Order entered April 16, 2020, Supplement No. 128 and Supplement No. 85 were suspended by operation of law pursuant to Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), for up to nine months, or until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date. The Commission also initiated an investigation of PGW’s proposed general rate increase.

On April 29, 2020, I&E filed an Expedited Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission, seeking to extend the period until January 14, 2021.[[6]](#footnote-7) On May 4, 2020, the OCA filed an Answer in support of I&E’s Motion and, on May 5, 2020, PGW filed an Answer opposing I&E’s Motion.

A Telephonic Prehearing Conference was held on May 5, 2020, at which time the litigation schedule, discovery, extension of the statutory period, public input hearings and the pending Petitions to Intervene were discussed. During the Prehearing Conference, PGW voluntarily agreed to extend the statutory suspension period until December 4, 2020. The extension of the suspension period to December 4, 2020 was reflected in PGW’s Tariff Supplement No. 132 to its Gas Service Tariff – Pa. P.U.C. No. 2 and Tariff Supplement No. 89 to its Gas Supplier Tariff – Pa. P.U.C. No. 1, which were filed on May 12, 2020.

On May 13, 2020, a Prehearing Order was issued. The Prehearing Order granted the Petitions to Intervene of CAUSE-PA, Direct Energy and TURN, *et al*., and granted a Motion for *Pro Hac Vice* Admission of Craig Berry, Esquire, to appear on behalf of PGW. Further, the procedural schedule and discovery matters were addressed. This Order also consolidated with this proceeding and granted PGW’s Petition at Docket No. P-2020-3018975, wherein PGW sought waiver of the application of the statutory definition of the FPFTY, so as to permit PGW to use a FPFTY beginning in September 1, 2020. Finally, this Order scheduled public input hearings for June 2‑3, 2020 and Evidentiary Hearings for July 28-30, 2020.

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

On May 25, 2020[[7]](#footnote-8), the Environmental Stakeholders filed a Petition to Intervene. Intervention was granted, over the opposition of PGW, by Order dated June 1, 2020.

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

On June 2 and 3, 2020, a total of four telephonic public input hearings were held, at which a total of 25 persons including members of the public and members of the Pennsylvania General Assembly provided testimony. On June 3, 2020, State Senator Anthony Williams filed a letter in opposition to the rate increase.

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

Pursuant to the procedural schedule agreed to at the Prehearing Conference, the Parties served direct and rebuttal testimony on June 15, 2020 and July 13, 2020, respectively. Surrebuttal testimony was served on July 24, 2020.

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

On June 24, 2020, PGW filed a Motion in Limine Regarding Testimony Submitted by the Environmental Stakeholders. On June 25, 2020, PGW filed two motions: a Motion in Limine Regarding Certain Portions of Testimony Submitted by TURN, *et al*., regarding Universal Service Programs; and a Motion in Limine Regarding Certain Portions of Testimony Submitted by the OCA Regarding Universal Service Programs. During a hearing on June 25, 2020, the Environmental Stakeholders’ Motion to Dismiss was granted in part and denied in part.

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

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

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

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

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

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

On July 14, 2020, an Order was issued denying PGW’s Motion to Dismiss the Objections of the Environmental Stakeholders and Compel Responses to PGW’s Interrogatories.

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

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

On July 23, 2020, the Environmental Stakeholders filed a Motion in Limine to Exclude Portions of the Rebuttal Testimony of PGW’s witness Mr. James Cawley.

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

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

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

An evidentiary hearing was held on July 29, 2020. The active Parties waived cross-examination with limited exceptions, and all of their testimony and exhibits were admitted into the record. During the hearing, the Motion to Exclude testimony of Mr. James Cawley was denied. The hearing was completed on July 29, 2020, and the July 30, 2020 hearing date was cancelled.

On August 6, 2020, the Commission granted the Petitions for Interlocutory Review and Answer to Material Question filed by TURN, *et al.* and the OCA. In accordance with that Opinion and Order, the ALJs issued an Order on August 10, 2020, directing TURN, *et al.* and the OCA to file amended testimony by August 17, 2020.

The Parties advised on August 18, 2020, that they were close to partial settlement. The Parties were given a revised litigation schedule with extensions of time should a settlement materialize. On August 19, 2020, the Parties advised that they had reached a settlement except for the following issues raised by the Environmental Stakeholders, framed as follows:

1. **Rate Increase**: Whether PGW’s rate increase should be denied because its infrastructure modernization program inadequately accounts for potential future mandates related to climate change.
2. **Climate Business Plan**: Whether PGW should prepare and submit to the Commission a Climate Business Plan to significantly reduce or eliminate greenhouse gas emissions prior to being granted a rate increase.
3. **Customer Charges**: Whether any increase in the customers charges should be granted.

Joint Petition at 17-18 and ¶ 46.

The Joint Petition was filed on August 26, 2020, including Joint Petitioners’ Statements in Support of the Partial Settlement attached thereto. TURN, *et al.* and CAUSE-PA were not signatories to the Partial Settlement but indicated that they do not oppose the Partial Settlement.[[8]](#footnote-9) Joint Petition at 1.

The remaining issues raised by the Environmental Stakeholders were reserved for briefing. Accordingly, on August 26, 2020, PGW and the Environmental Stakeholders filed Main Briefs. Reply Briefs were filed by PGW, the Environmental Stakeholders and I&E on September 2, 2020 and the record closed.

The ALJs’ Recommended Decision was issued on October 5, 2020. The ALJs recommended approval of the Partial Settlement with the following modifications: (1) the start of the phased-in rate increases be delayed by six months, beginning July of 2021; (2) PGW should not file a general rate increase pursuant to 66 Pa. C.S. § 1308(d) any sooner than January 1, 2023, absent emergency relief, tariff changes or as authorized by Commission order or industry-wide changes in regulatory policy which affect PGW’s rates; and (3) no later than 90 days following entry of the Final Order in this matter, and biannually through 2022, PGW must meet with the Commission’s Pipeline Safety Division to review PGW’s increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks. R.D. at 2.

With regard to the remaining litigated issues raised by the Environmental Stakeholders, the ALJs found no merit in the argument that: 1) PGW’s requested rate increase is not sufficiently supported by the evidence; and, 2) the Commission should order PGW to submit a Climate Business Plan. However, because the ALJs found that the Environmental Stakeholders met their burden in establishing that the Commission may consider environmental issues when determining whether a rate increase is just and reasonable, the ALJs recommended that the Commission direct PGW to include in its next base rate increase request, information on PGW’s planning regarding the impact of warming trends on PGW’s future infrastructure projects and costs. *Id*.

As previously noted, I&E, the OCA, PICGUG, and PGW filed Exceptions on October 15, 2020. Reply Exceptions were filed by the Environmental Stakeholders on October 20, 2020.

# Discussion

## Legal Standards

As a preliminary matter, we note that the ALJs made seventy-two Findings of Fact and reached thirteen Conclusions of Law. R.D. at 13-23; 97-99. We will adopt the Findings of Fact and Conclusions of Law unless they are overruled expressly or by necessary implication.

Additionally, as we proceed in our review of the various positions espoused in this proceeding, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania* *v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Moreover, Section 1308(d) of the Code requires that we render a final decision granting or denying, in whole or in part, the general rate increase requested by a public utility, within a general time frame not to exceed seven months from the proposed effective date of the utility’s proposed tariff supplement. *See* 66 Pa. C.S. § 1308(d); *see also*, 52 Pa. Code § 53.31. In accordance with the statutory mandate, the Commission does not unilaterally possess the ability to implement a rate increase later than the statutorily proscribed seven-month period, except upon agreement of the parties. In that regard, the Pennsylvania appellate courts have held that the appropriate time for rates to go into effect was at the end of the statutorily proscribed suspension period and not the date of a compliance filing, and going beyond the statutory seven month deadline violated Section 1308(d) of the Code. *See Bell Telephone Co. v. Pa. PUC*, 452 A.2d 86 (Pa. Cmwlth. 1982) (*Bell Telephone*); *Joseph Horne Co. v. Pa. PUC*,485 A.2d 1105 (Pa. 1984) (*Joseph Horne)*.

More recently, the Commission has acknowledged that, while it may have the ability to alter litigation deadlines as a result of the Governor’s Proclamation of a Disaster Emergency and the Commission’s subsequent Emergency Order, it does not have the authority to alter a utility’s substantive right of a rate increase going into effect at the end of the seven-month deadline.[[9]](#footnote-10)

## Settlements Must Serve the Public Interest and be Supported By Substantial Evidence

In the instant matter, the Joint Petitioners reached an unopposed compromise on all of the issues, except for three issues raised by the Environmental Stakeholders. The Joint Petition submitted for our review and approval set forth the terms and conditions of the Partial Settlement, which the Joint Petitioners requested be approved in its entirety without modification.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See* 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. Rate cases, in general, are expensive to litigate and settlements may reduce a utility’s rate case expense; an expense which, if reasonable and prudently incurred, is entitled to be recovered from customers through rates approved by the Commission, as a cost of regulation. Therefore, a settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all of the customers of the case. It is for these reasons, that settlements are encouraged by long-standing Commission policy.

The ALJs noted that the Partial Settlement is a “black box” settlement. This means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.[[10]](#footnote-11)

*Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted).

Despite the policy favoring settlements, it is well understood that the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer*). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C‑00902815 (Order entered April 1, 1996) and *CS Water and Sewer.*

Finally, we recognize that Section 704 of the Administrative Agency Law requires that adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## Justness and Reasonableness of Rates/Burden of Proof

At issue here is the Company’s general rate increase filing governed by Section 1308(d) of the Code, which provides the procedures for changing rates, the time limitations for the suspension of the new rates, and the time limitations on the Commission’s actions. 66 Pa. C.S. § 1308(d).[[11]](#footnote-12) “Under traditional ratemaking, utilities may not change rates charged to customers outside of a base rate case.” *McCloskey v. Pa. PUC*, 127 A.3d 860, 863 n.2 (Pa. Cmwlth. 2015).

Section 1301(a) of the Code mandates 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 [C]ommission.” 66 Pa. C.S. § 1301(a). Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.” *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002). There is no single way to arrive at just and reasonable rates, and “[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.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky*).

The Commission is required to investigate all general rate increase filings. *Popowsky*, 683 A.2d at 961. In deciding this or any other general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), certain general principles always apply. A public utility is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pa. PUC v.* *Pennsylvania Gas and Water Co.*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975). In determining a fair rate of return, the Commission is guided by the criteria provided by the United States Supreme Court in the landmark cases of *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679 (1923) (*Bluefield*) and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield*, the Court stated:

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

*Bluefield*, 262 U.S. at 692-693.

PGW’s ratemaking process is based on a Cash Flow Ratemaking Method where its revenue requirement is the sum of operating expenses, debt service, and a “margin” sufficient to maintain the organization’s ability to attract capital on reasonable terms.

In 2010, the Commission issued a policy statement setting forth the criteria and the financial and other considerations that are to be examined in setting PGW’s base rates at just and reasonable levels. *See* 52 Pa. Code §§ 69.2701-2703. In its Policy Statement, the Commission described the requirements of the Cash Flow Method as follows:

(b) The Commission is obligated under law to use the cash flow methodology to determine PGW’s just and reasonable rates. Included in that requirement is the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses, depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements and other internally generated funds over and above its bond coverage requirements, as the Commission deems appropriate and in the public interest for purposes such as capital improvements, retirement of debt and working capital.

52 Pa. Code § 69.2702(b). The Commission also stated that, in determining just and reasonable rate levels for PGW it would consider, among other relevant factors, the following financial factors:

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

52 Pa. Code § 69.2703.

The burden of proof to establish the justness and reasonableness of every element of a public utility’s rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. The standard to be met by the public utility is set forth in Section 315(a) of the Code, 66 Pa. C.S. § 315(a), as follows:

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

In reviewing Section 315(a) of the Code, the Pennsylvania Commonwealth Court interpreted a public utility’s burden of proof in a rate proceeding as follows:

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

*Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In general rate increase proceedings, it is well established that the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility’s burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. There is no similar burden placed on parties to justify a proposed adjustment to the Company’s filing. The Pennsylvania Supreme Court has held:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to

demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

*Berner v. Pa. PUC*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955).

This does not mean, however, that in proving that its proposed rates are just and reasonable, a public utility must affirmatively defend every claim it has made in its filing, even those which no other party has questioned. As the Pennsylvania Commonwealth Court has held:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted). *See also, Pa. PUC v. Equitable Gas Co.*, 73 Pa. P.U.C. 310, 359-360 (1990).

Additionally, Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments,[[12]](#footnote-13) the burden of proof must be on the party who proposes a rate increase beyond that sought by the utility. The mere rejection of evidence contrary to that adduced by the public utility is not an impermissible shifting of the evidentiary burden. *United States Steel Corp. v. Pa. PUC*, 456 A.2d 686 (Pa. Cmwlth. 1983).

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC*, 625, A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## D. Joint Petition for Partial Settlement

### Terms and Conditions of the Partial Settlement

As previously indicated, the Partial Settlement is a “black box” agreement, which does not specifically identify the resolution of certain disputed issues. The Joint Petition represents a Partial Settlement of all the issues raised in this proceeding, except for the three litigated issues addressed further herein, and provides for increases in rates designed to produce a net increase in PGW’s annual distribution operating revenues in the total amount of $35 million in three implementation phases. Joint Petition at 4. [[13]](#footnote-14) This represents a significant reduction compared to a scenario in which PGW would be permitted to increase its rates for the full $35 million in January 2021. These voluntary rate increase deferrals and this related revenue recovery concession means that the increases as a percentage of total rates are materially lower than PGW’s original, $70 million rate request and, in fact, PGW’s actual billed revenues will be materially lower in FY 2020-21 than $35 million.[[14]](#footnote-15) In addition, as part of the Settlement, PGW has agreed that it will not file a general rate increase pursuant to 66 Pa. C.S. § 1308(d) before January 1, 2022.[[15]](#footnote-16)

The Joint Petition consists of a twenty-two page document with a Proof of Revenues and Rates attached as Exhibit 1 and Attachments A through E, constituting Statements in Support of the Joint Petition submitted by PGW, I&E, the OCA, the OSBA, RESA, PICGUG, CAUSE-PA and TURN *et al*., respectively. The body of the document contains the terms and conditions of the Partial Settlement as agreed to by the Joint Petitioners.

The Joint Petitioners state that the Partial Settlement was achieved after conducting discovery and engaging in extended discussions. They further state that the Partial Settlement terms and conditions constitute a reasonably negotiated compromise on the issues addressed therein. Partial Settlement ¶ 48. The Joint Petitioners also agree that the Partial Settlement is in the public interest for several reasons including: the reduced base rate increase, the reduced administrative burden and cost of proceeding to uncertain litigation, and the reasonable revenue allocation. *Id.* Furthermore, the Partial Settlement addresses low-income customer issues, pipeline safety issues, and includes a COVID-19 Relief Plan to assist customers affected by the ongoing pandemic. Partial Settlement at ¶¶ 18-22; 33-45; Statements in Support A-E, generally.

The essential terms and conditions of the Partial Settlement are set forth in Paragraphs 16-45 of the Joint Petition, and are repeated verbatim below as follows:

1. **Revenue Requirement**

16. In lieu of its proposed $70 million base rate increase PGW shall be permitted to increase base rates as follows: (1) $10 Million for service rendered on or after January 1, 2021; (2) additional $10 million for service rendered on or after July 1, 2021; and (3) $15 million for service rendered on or after January 1, 2022.

*Rate Case Filing*

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

1. **COVID-19 Relief Plan (Limited to $2 million or maximum 6,600 customers at up to $300 per customer)**

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

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

* 1. Benefit: One-time, $300 credit per customer on PGW gas bill; credit will roll-over until exhausted.
	2. Enrollment: self-certification.
	3. Funding: GCR Pipeline Refunds in the amount of $2 million; benefit is “first come-first serve.” Limited to 6660 customers. This $2.0 million is a single-issue usage one-time only use of residential pipeline refunds and does not permit future use of pipeline refunds for this purpose. However, nothing herein limits a party’s right to argue for a different application of pipeline refunds in future proceedings.
	4. C19RP will end March 31, 2021 or when Funding is exhausted.

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

1. Contract employees and self-employed.
2. Households in which a household member is caring for someone with COVID-19.
3. Households in which a household member is caring for children at a time when the children’s school or childcare is normally open but is not open. This will include situations in which a normally fulltime school or childcare is running in shifts to maintain social distancing (for example, putting children on two-week or three-week rotations).
4. Households with a member on furlough.
5. Households experiencing financial hardship related to the pandemic.
6. Households in which a member has lost work, even if there is another income-earning member in the household.

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

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

1. Until July 1, 2021, PGW shall not remove customers from CRP for failing to complete their re-certification process.
2. Until December 31, 2020, PGW shall not require acceptance of LIURP weatherization as a condition of CRP participation.
3. PGW shall allow the submission of emailed documentation for new service applications.
4. Within 45 days of approval of the settlement in this case, PGW shall conduct outreach to customers who were terminated for non-payment in the last 12 months who owe $300 or less and provide them with information about PGW’s C19RP and options for restoration of service.
5. PGW shall track the number of customers who are able to restore service solely through the use of PGW’s C19RP.
6. Within 90 days of the conclusion of C19RP, PGW shall provide the parties to this settlement with the number of customers who were able to restore service through C19RP.
7. PGW shall accept at least one additional medical certificate to stop the involuntary termination of service for non-payment, regardless of whether the household has submitted the maximum number of renewal certificates in the past.
8. Conduct outreach to all customers for whom PGW has income documentation on file indicating the customer was confirmed low income within the last 12 months and promote PGW’s CRP.

22. Residential customer C19RP benefits shall include:

1. Upon enrollment, suspension of PUC-regulated collection efforts for any amounts due for service beginning as of the March 2020 billing cycle and continuing through the duration of the PUC Emergency Order or April 1, 2021, whichever comes first. Customers with unauthorized usage on their accounts are not eligible for a C19RP benefit.
2. All C19RP customers who may be eligible for CRP will be encouraged to apply for CRP as a condition of receipt. For customers determined to be ineligible for CRP, any remaining current applicable balance shall be eligible for a long-term deferred payment arrangement (including the suspended amount) of no less than 12 months. The 12 month payment arrangement will be provided even if the customer has had a previous PGW and/or PUC payment arrangement; this C19RP payment agreement will not be counted by PGW as a PUC or PGW payment agreement with respect to future payment agreement eligibility. Longer payment arrangements may be offered to C19RP participants at the discretion of the Company. Customers who receive C19RP payment agreements do not waive their right to obtaining a PUC payment agreement under Section 1405. Customers who currently do not have active service and owe more than $600 or who have unauthorized usage on their accounts are not eligible for a C19RP payment arrangement.
3. Effective March 19, 2020, the customer will be eligible to receive waiver of late fees from March 19 until the end date of the current waiver of late fees. If late fees are re-implemented prior to a customer enrolling in C19RP, the customer will be responsible for those charges. Upon enrollment in C19RP, however, waiver of late fees shall commence for the customer’s most recent billing cycle through April 1, 2021.
4. Upon enrollment in C19RP, reconnection fees will be waived for the duration of the PUC Emergency Order.
5. For customers enrolling in C19RP who currently do not have active service:
6. If the customer owes $300 or less, PGW will credit the amount owed up to $300 and will waive the reconnection fee.
7. If the customer owes more than $300 and not more than $600, PGW will credit the $300 towards the customer’s unpaid balance, waive the reconnection fee and the customer shall be eligible for a long-term deferred payment arrangement (including the suspended amount) of no less than 12 months (if not otherwise eligible for a Chapter 14 payment arrangement).
8. Customers or applicants with balances above $600 will be advised to bring their balance down to $600 to participate in the program.

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

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

1. **Revenue Allocation and Rate Design**

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

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

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

*Customer Charges*

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

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

*Evaluation of Potential Firm Transportation Service Rate*

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

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

1. PGW shall assess the current interruptibility and alternative fuel requirements in the Rate IT tariff language and determine the potential value of interruptible transportation service;
2. Whether rate IT should be phased out;
3. If the Company is proposing Rate FTS, whether Rate FTS should include an option for negotiated flex rates for current IT customers;
4. If the Company is proposing Rate FTS, whether Rate FTS should, subject to rate gradualism, be subject to the USEC, ECR, OPEB and DSIC tariff charges;
5. If the Company is proposing Rate FTS, PGW shall conduct an evaluation of the classification and allocation of distribution mains to determine how mains costs should be reasonably allocated to all customer classes.

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

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

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

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

*Rate BUS: Back-Up Service*

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

AVAILABILITY

Available at the Company’s sole discretion where the Customer has installed any type of operable back-up, supplementary, standby, emergency, electric or heat generation equipment and who from, time to time, will require Gas from the Company for the Customer’s operation of that equipment. This rate shall also apply to gas service for any system for which natural gas is not the primary fuel.

If a Customer is seeking interruptible back-up service, the Customer may take interruptible service at IT rates if the Customer meets all requirements of Rate IT, including that the Customer must: (1) have installed and operable alternative fuel equipment, including appropriate fuel storage capacity, capable of displacing the daily quantity of Gas subject to curtailment or interruption; or, in the alternative, (2) demonstrate to the Company’s sole satisfaction the ability to manage its business without the use of Gas during periods of curtailment or interruption.

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

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

1. **Low Income Customer Issues**

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

1. No later than March 31, 2021, PGW will provide an annual training to Community Based Organizations that are open on how to use the customer-facing online Customer Responsibility Program (CRP) application tool. The training will also include information about promoting CRP enrollment.
2. PGW will create a video explaining how to apply for CRP online and post the video on its website, in social media and will advertise the video in a Good Gas News. PGW will similarly publicize non-contact methods for CRP application (call for application, mail-in, online).
3. As part of its new CIS implementation, PGW shall review and adjust CRP asked to pay amounts quarterly, and increase/decrease the asked to pay amount if there has been a change in the average bill amount. If the average bill amount exceeds the household’s energy burden, the customer shall be switched to a CRP Percentage of Income Bill at that time.
4. Unspent 2019 and 2020 LIURP funds shall roll over and be added to PGW’s LIURP program budget through the end of the current Universal Service and Energy Conservation Plan (USECP) (i.e. 2023), until expended. These funds shall be incremental to the existing LIURP budget.
5. PGW will provide, to the tax mailing address available online or a contact address provided by a tenant, two landlord letters seeking to obtain landlord approval to perform LIURP services for a tenant. If a landlord telephone number is available, one of the letters will be replaced with a telephone call.

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

1. For PGW’s LIHEAP Crisis acceptance policy:

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

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

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

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

1. For properties where service has been terminated due to non-payment:
2. The total number of customers who did not have service restored in the full year following such termination.
3. PGW will provide the data identified in subpart (b) to its Universal Service Advisory Group in 2022 for calendar year 2021.
4. PGW will provide the parties to this settlement with the collected data identified in subparts a and b in an excel spreadsheet.

35. PGW shall make the following policy changes:

a. For PGW’s LIHEAP Crisis acceptance policy:

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

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

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

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

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

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

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

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

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

37. PGW shall agree to the following:

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

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

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

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

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

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

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

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

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

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

42. Within 12 months of PUC approval of this Settlement, PGW will review the reasons why customers were denied enrollment or recertification into CRP for inability to verify income, including whether a customer provided income and was rejected because it was unacceptable. Based on that review, PGW will determine whether PGW’s list of acceptable verification documents should be expanded. Within 15 months of PUC approval of this Settlement, PGW will convene a meeting of interested Rate Case Parties to present and discuss their findings. The final results of its review will be communicated to the Rate Case Parties.

1. **Pipeline Safety Issues**

*Cast Iron Main Replacement*

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

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

*Main Replacement Costs*

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

Joint Petition at 6-18.

The Partial Settlement is conditioned upon the Commission’s approval of the terms and conditions contained therein without modification. The Joint Petitioners agreed that if the Commission disapproves the Partial Settlement or modifies any terms and conditions therein, then any Joint Petitioner may elect to withdraw from the Joint Petition and may proceed with litigation and, in such event, the Partial Settlement shall be void and of no force and effect. The Joint Petitioners acknowledged and agreed that the Partial Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings. Joint Petition at 19.

The Joint Petitioners acknowledged that the Partial Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner’s position with respect to any issues raised in this proceeding. *Id.* at 19. They acknowledged and agreed that this Partial Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated these proceedings. Finally, they agreed that, if the ALJs recommend that the Commission adopt the Partial Settlement without modification, the Joint Petitioners waive their right to file Exceptions with respect to any issues addressed by the Partial Settlement. *Id*. at 20. However, the Joint Petitioners indicated that they do not waive their rights to file Exceptions with respect to: (a) the Litigated Issues; (b) any modifications to the terms and conditions of this Settlement; or (c) any additional matters proposed by the ALJs in their Recommended Decision. The Joint Petitioners also reserved the right to file Replies to any Exceptions that may be filed. The Joint Petitioners further reserved the right to file Exceptions to the compliance filing in the event that any of the exhibits therein are inconsistent with the Partial Settlement and the exhibits attached thereto, the Commission’s Final Order, or pertain to issues upon which there was no settlement. *Id.*

### Statements in Support of the Partial Settlement

As previously mentioned, each of the five Joint Petitioners filed individual Statements in Support of the Partial Settlement. The Joint Petitioners submitted that the Partial Settlement is in the best interest of the Company and its customers, that the Partial Settlement is in the public interest, and that the Partial Settlement should be approved without modification.

In its Statement in Support, I&E stated that the Partial Settlement was reached after an extensive investigation of PGW’s filing and related information obtained through the discovery process, including public input hearings, to determine the amount of revenue PGW needs to provide safe, effective, and reliable service to its customers. I&E Statement in Support at 5 and 7.

PGW added in its Statement that such extensive investigation included, in addition to voluminous discovery, submission of multiple rounds of testimony by the Parties and extensive negotiations among the Joint Petitioners. PGW Statement in Support at 3. PGW claimed that because the Partial Settlement was achieved among parties representing a wide array of stakeholder interests, including low-income and residential customers by including customer service enhancements during the virtually unprecedented circumstances created by the COVID-19 pandemic and the accompanying economic consequences, the Partial Settlement represents a reasonable resolution and is in the public interest. PGW Statement in Support at 2.

In its Statement in Support, the OCA stressed the careful balance of the compromise reached, which took into consideration the current COVID-19 circumstances faced by customers and the Commonwealth. OCA Statement in Support at 9-10. Specifically, with regard to the Revenue Requirement, the OCA emphasized that the Joint Petitioners’ agreement to defer the beginning of the agreed-upon increase until January 1, 2021, and the remainder being phased-in through January 1, 2022, results in a fair compromise in light of the other provisions and protections provided to customers by this Settlement. *Id.* Additionally, based on the OCA’s analysis of the Company’s filing, the proposed revenue increase under the Settlement represents an amount which, in the OCA’s view, would be within the range of likely outcomes in the event of full litigation of the case. The OCA also noted the COVID-19 Relief Plan as a beneficial aspect of customer payment assistance and the reduced increases to the fixed customer charges for the residential class, as worthy aspects of the negotiated compromise, fully supported by substantial evidence of record. OCA Statement in Support at 10-16.

In their Recommended Decision, the ALJs provided an extensive summary of the various positions of the Parties outlined in their Statements in Support and that discussion will not be repeated here. For a detailed summary of each Party’s position on the settled issues, please refer to the ALJs’ Recommended Decision at pages 50 through 74.

### Recommended Decision on Partial Settlement

As noted, *supra*,in their Recommended Decision, the ALJs provided an extensive discussion of the issues addressed by the terms and conditions of the Partial Settlement, as well as the positions of the Joint Petitioners regarding the Partial Settlement, as set forth in the individual Statements in Support of the Settlement. R.D. at 50-74. The ALJs recommended approval of the Partial Settlement, except for three suggested modifications: (1) that the start of the three phased-in rate increases agreed to in the Joint Petition be delayed by six months until July of 2021; (2) that PGW should not file a general rate increase pursuant to 66 Pa. C.S. § 1308(d) any sooner than January 1, 2023, absent emergency relief, tariff changes or as authorized by Commission order or industry-wide changes in regulatory policy which affect PGW’s rates; and (3) that no later than 90 days following entry of the Final Order in this matter, and biannually through 2022, PGW must meet with the Commission’s Pipeline Safety Division to review PGW’s increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks. R.D. at 78-79.

The ALJs reasoned that “the COVID-19 effect in Philadelphia, the Commonwealth, and the country, gives pause to a rate increase at this time.” R.D. at 74. Citing the testimony of the OCA, CAUSE-PA, the Environmental Stakeholders, the OSBA, I&E, and public input and informal public input comments, the ALJs emphasized that unemployment, financial difficulties and uncertainty abound in Philadelphia. R.D. at 74-75. Relying heavily on the OSBA litigation position that there is not an immediate need for a large rate increase and the OCA’s litigation position that PGW’s investment grade rating will not be markedly adversely affected nor would PGW be in dire straits with respect to cash flow or debt coverage, the ALJs discounted the need for a near-term rate increase. R.D. at 75-76. And while acknowledging the COVID-19 Relief Plan as based in good intentions, the ALJs found it to be limited in terms of the direct financial relief it could provide to up to 6,600 customers for a short period of time. R.D. at 76. The ALJs initially stated that the Partial Settlement provides limited relief on a long-term increase and, as written, will benefit only a segment of customers. *Id.* The ALJs also cited their concern that, if an immediate increase is permitted, PGW customers would be seeing a base rate increase, as well as 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 Customer Assistance Program (CAP) customers recently ordered by the PUC, is implemented. *Id.*

Continuing their evaluation of the Partial Settlement, the ALJs detailed countervailing considerations, including the benefits of the Partial Settlement. These benefits include, according to the ALJs, the delayed implementation of the agreed-upon rate increases, the rate case stay-out provision, and the mitigation of pipe replacement safety concerns emphasized by I&E in supporting the Partial Settlement. R.D. at 76-78. Furthermore, the ALJs acknowledged the evidence of record supporting a determination that PGW’s cash and debt management will be affected if there is not a rate increase in the next few years. *Id*. at 77. The ALJs cited I&E’s litigation position had been that PGW should be permitted a rate increase of approximately $47 million so that PGW can meet its obligations, maintain sufficient cash on hand and have adequate operating and maintenance expenses, and that an influx of cash would allow PGW to begin to implement I&E’s suggestion that PGW remove risky cast iron mains at the most aggressive rate possible.[[16]](#footnote-17) The ALJs concluded their analysis with a statement that the COVID-19 Relief Plan is a worthy effort to benefit PGW’s most vulnerable customers. *Id.*

Based on these competing considerations, the ALJs recommended that the Partial Settlement be modified as described above, to defer the phased rate increases by six months until July 1, 2021 and extend the stay-out provision to January 1, 2023. R.D. at 77-78.

In addition, with regard to the cast iron main replacement pace and costs, the ALJs found PGW’s agreement to review its Annual Asset Optimization Plan with Commission staff to be lacking. Drawing from the litigation position of I&E, the ALJs concluded that, given the question regarding whether PGW replaces its riskiest pipes first and the notable increase in costs of pipe replacement, a more firm commitment by PGW for review of its plans by Commission staff is warranted. R.D. at 78. Drawing from I&E’s litigation stance, the ALJs recommended that the Partial Settlement be modified to provide that:

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

*Id.*

Based on the foregoing analysis, the ALJs found that, with the suggested modifications, the terms embodied in the Partial Settlement are both just and reasonable and its approval is in the public interest. R.D. at 78-79.

### Exceptions and Replies

PGW, I&E, the OCA, and PICGUG all filed Exceptions taking issue with each of the ALJs’ recommended modifications to the Partial Settlement.

#### OCA Exceptions

The OCA raises a single, but broad exception to the material modifications of the Partial Settlement and urges the Commission to approve the Partial Settlement in its entirety without modification, as a reasonable and acceptable result that is in the public interest. OCA Exc. at 4. Expressing appreciation for the efforts of the ALJs to recognize the uncommon and unfortunate circumstances of the COVID-19 pandemic, the OCA submits that these issues were at the forefront of consideration during settlement negotiations. According to the OCA, the Settlement provisions address the current circumstances by limiting and phasing the rate increase, maintaining the customer charge level, developing a COVID Relief plan, and improving the delivery of service to low income customers. *Id.*

The OCA specifically notes the ALJs’ acknowledgement that there is evidence that PGW will require a rate increase to operate, maintain, and improve its infrastructure. The OCA next points out that it approached the case with the impact of this unusual health crisis in mind and, thus, negotiated for the delayed and phased-in rate increase schedule embodied in the Partial Settlement. OCA Exc. at 4-5.

The OCA next emphasizes two important facts that the ALJs may not have thoroughly considered in making their recommendations. First, PGW is a municipal entity operating on a cash-flow basis, without the backstop of shareholders to support or buttress revenues should its financial situation become more challenging in the coming months. According to the OCA, the Joint Petitioners recognized this fact in agreeing that a $10 million rate increase could go into effect in January 2021. OCA Exc. at 5.

Second, PGW is a natural gas utility with the bulk of its revenues produced during the winter heating season. PGW’s as-filed rate case would have had new rates go into effect on December 4, 2020. The balance achieved in the Partial Settlement calls for only a slight increase to rates commencing beyond the end of the statutory suspension period to January 2021, but does not delay rate relief beyond the winter heating season – to avoid a potentially precarious financial scenario for PGW. The rate increase phasing delays recommended by the ALJs, would do otherwise. In the OCA’s view, it is not in any stakeholder’s interests to place PGW in a situation where it could potentially need to seek emergency rate relief on the heels of a base rate case based on the uncertainty created by the COVID-19 pandemic. OCA Exc. at 5-6.

The OCA next explains the significant benefits of the COVID-19 Relief Plan, acknowledging that it was developed to help many struggling customers. It provides that PGW will apply GCR Pipeline Refunds towards a one-time $300 per eligible customer credit on the PGW gas bill (C19RP credit).[[17]](#footnote-18) The $300 C19RP credit will be distributed up to a total of $2 million, or to 6,600 customers, on a “first-come-first-serve” basis to eligible customers, as that term is defined in the Settlement. The C19RP credit will roll over to the eligible customer’s subsequent PGW gas bill until exhausted.[[18]](#footnote-19) Furthermore, in addition to the C19RP credit, the Partial Settlement also includes beneficial provisions for the suspension of PUC-related collection efforts and waivers of late and reconnection fees to eligible customers.[[19]](#footnote-20) OCA Exc. at 6.

The OCA points to the further protections for low-income customers agreed to in the Partial Settlement, including the fact that customers who may be otherwise eligible for PGW’s Customer Responsibility Program (CRP) will be encouraged to apply for CRP.[[20]](#footnote-21) Another benefit negotiated in the Partial Settlement is that, if a C19RP-eligible customer is not eligible for CRP, any remaining current applicable balance that customer may have will be eligible for a long-term deferred payment arrangement (including the suspended amount) of no less than twelve months, even if the customer has a prior PGW payment arrangement and/or Commission-authorized payment arrangement.[[21]](#footnote-22) Moreover, the C19RP payment arrangement will not be considered regarding future payment arrangement eligibility and the Partial Settlement specifically provides that customers who receive C19RP payment agreements do not waive their right to also obtain a Commission-authorized payment agreement under Section 1405 of the Code.[[22]](#footnote-23) Lastly, the OCA points out that, under C19RP, if by March 1, 2021, the PUC’s Emergency Order has not ended, PGW agrees to meet with the Parties by no later than March 5, 2021, to discuss a possible extension of the customer benefits contained in the C19RP.[[23]](#footnote-24) OCA Exc. at 7. The OCA submits that these settlement terms are in the public interest because they ensure that eligible customers are informed of the CRP program and encouraged to apply, the CRP and C19RP programs do not conflict and PGW is prepared to work with customers in order to better suit the customers’ needs. *Id.*

The OCA concludes by noting that the various provisions of the Settlement are interrelated and designed to address the unique circumstances of PGW as a municipal entity regulated on a cash flow basis and the realities of the COVID-19 pandemic. OCA Exc. at 7. The OCA submits that the Partial Settlement achieves the appropriate balance and is in the public interest and requests that the Commission approve it as such. OCA Exc. at 4, 7-8.

#### I&E Exceptions

I&E excepts to the Recommended Decision on the basis that the ALJs erred by materially altering the Partial Settlement, such that it no longer reflects the compromises reached by the Joint Petitioners, violates the Code, and is inconsistent with Commission precedent. I&E Exc. at 3-4. I&E maintains that the Partial Settlement represents a fair, just and reasonable resolution of the proceeding, and as a Joint Petitioner, it fully supports the Partial Settlement as being in the public interest. I&E Exc. at 3.

I&E argues that the Recommended Decision substantially alters the revenue requirement contained in the Settlement, because it pushes the three rate increase steps contained in the Partial Settlement out an additional six months. I&E Exc. at 4. I&E argues first that, if the recommendation is accepted, it will have a chilling effect on settlements, because the compromise framed in the Partial Settlement would not be honored. I&E Exc. at 4, 7-9. I&E explains that this Commission has recognized that a settlement reflects a compromise of the positions held by the Parties and, as a result, settlements arguably promote the public interest.[[24]](#footnote-25) I&E notes that if Parties cannot trust that a settlement will not be materially altered, it may make little sense to enter into a settlement agreement. This is especially the case when most settlements contain a provision allowing a party to withdraw from the settlement in the event of a material modification. I&E Exc. at 3, 5. The benefits of reduced litigation costs and resource commitment would be lost in the event parties withdraw from the settlement and proceed to full litigation. I&E Exc. at 8-9.

More importantly, I&E states its concern that the suggested modifications to the Partial Settlement violate Section 1308(d) of the Code and are inconsistent with Commission precedent. I&E Exc. at 5-6. I&E contends that the ALJs’ recommended deferral of the first rate increase phase to July 1, 2021 would be especially harmful to PGW because its rates are determined on a cash-flow basis and PGW does not have shareholders. I&E quotes the Commission’s Policy Statement[[25]](#footnote-26) regarding setting PGW’s rates, as follows:

(b) The Commission is obligated under law to use the cash flow methodology to determine PGW’s just and reasonable rates. Included in that requirement is the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses, depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements and other internally generated funds over and above its bond coverage requirements, as the Commission deems appropriate and in the public interest for purposes such as capital improvements, retirement of debt and working capital.

I&E Exc. at 6. I&E asserts that the deferred rate increase phase-in contemplated by the Recommended Decision does not satisfy these important requirements. I&E observes that the Recommended Decision is internally inconsistent in that the ALJs seem to acknowledge that PGW is in need of rate relief for various reasons, but then decide that the increase contemplated in the Partial Settlement is not in the public interest and further recommend the Partial Settlement be approved, but only with material modification. I&E Exc. at 7. I&E contends that this internal inconsistency regarding whether a rate increase is in the public interest is, perhaps, what led to a recommendation that is, in I&E’s view, neither consistent with the Code and Commission precedent, nor with sound ratemaking principles. *Id.*

I&E next argues that the ALJs’ recommendation is inconsistent with the Code, as well as past and recent Commission precedent. Specifically, Section 1308(d) of the Code states that by operation of law, if the Commission has not entered an Order by the end of the suspension period of a base rate case, the proposed rates will go into effect at the end of the suspension period, subject to potential refund.[[26]](#footnote-27) I&E cites *Bell Telephone*,wherein the Commonwealth Court held that the appropriate time for rates to go into effect was at the end of the statutorily-proscribed suspension period and not the date of a compliance filing, and that going beyond the statutory seven-month deadline violated Section 1308(d) of the Code. I&E also cites *Joseph Horne*, where the Pennsylvania Supreme Court affirmed *Bell Telephone*, stating that:

[w]e affirmed the Commonwealth Court’s holding 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.[[27]](#footnote-28)

I&E explains that these cases demonstrate that the Commission does not unilaterally possess the ability to direct that a rate increase may only be implemented later than the statutorily-proscribed seven-month period. Such a delay of rate effectiveness may only be effectuated upon agreement of the parties. I&E Exc. at 9. In this instance, the Joint Petitioners have agreed that the first date upon which the first phase of new rates will become effective is January 1, 2021, a date beyond the December 4, 2020 end of the suspension period. I&E noted that the referenced cases stand for the proposition that the Commission is not permitted under the law to unilaterally change this date to something later than that which was agreed upon. I&E Exc. at 9-10.

I&E continues by noting that the Commission recently recognized that it does not have this power. In a recent base rate case by Columbia Gas of Pennsylvania, Inc., the Commission was faced with the question of whether the Governor’s Proclamation of Disaster Emergency related to COVID-19 and the Commission’s Emergency Order, permitted the Commission to alter a utility’s substantive right of a rate increase going into effect at the end of the seven-month suspension period set forth in Section 1308(d).

The Commission noted:

Because we are only authorizing the extension or suspension of *deadlines* and not of substantive rights, failure to meet the seven-month deadline would result in the proposed rates going into effect by operation of law. Therefore, we find that Columbia is entitled to the appropriate rate relief in accordance with Section 1308(d) of the Code immediately following the end of the original statutory rate suspension period, which, in this case, is January 23, 2021.[[28]](#footnote-29)

I&E’s position is that PGW can agree to defer by agreement the dates upon which its rates will go into effect, but the Commission has no legal authority to alter PGW’s substantive right to have the rates go into effect on those agreed-upon dates. I&E Exc. at 10-11. Finally, I&E cites to the recent UGI Utilities, Inc. – Gas Division base rate case settlement[[29]](#footnote-30) where the Commission approved a stepped rate increase similar to the one proposed here. I&E observes that the Partial Settlement here is actually more beneficial to ratepayers in that PGW has agreed to no right to recoupment of revenues that otherwise would have been collected if the rate increase were not phased. I&E Exc. at 11. I&E asserts that PGW has established that rate relief is necessary, and the Partial Settlement should be approved without modification. I&E Exc.at 12.

I&E also excepts to the ALJs’ recommendation that PGW be ordered to meet with the Commission’s Pipeline Safety Division no later than ninety days after the entry of a final order and biannually through 2022 to review PGW’s increasing costs of pipeline replacement and to develop a plan to reduce pipeline replacement costs and leaks. I&E argues that the Commission should uphold the compromise reached in the Partial Settlement and reject the ALJs’ suggested modification. I&E Exc. at 12-13. I&E explains that it had taken the position adopted by the ALJs in litigation, but that the give and take process of a comprehensive settlement resulted in a compromise by the Parties to essentially meet in the middle. I&E Exc. at 12-13. On this basis, I&E urges the Commission to leave intact the delicate balance reached in the Partial Settlement and approve it without modification. *Id.*

#### PICGUG Exceptions

PICGUG argues that the Recommended Decision erred in recommending modifications to the Partial Settlement. PICGUG asserts that by failing to recognize that the Partial Settlement is a product of compromise, there is a risk that one or more Joint Petitioners will withdraw from the Settlement, thereby requiring full litigation of the issues raised in the proceeding. Emphasizing that considerable time and resources have been expended to negotiate the terms of settlement, PICGUG notes that the Parties were able to resolve most of the issues in the case and PICGUG supports the Partial Settlement as a reasonable resolution of those issues. PICGUG Exc. at 1-3. PICGUG contends that the Partial Settlement balances the interests of ratepayers and the public, all the while providing a reasonable resolution of PGW’s claims for increased rates. According to PICGUG, the Partial Settlement avoids substantial litigation costs and is consistent with the Commission’s policy promoting negotiated settlements. For these reasons, PICGUG urges the Commission to reject the recommended six-month delay to the phased rate increases and extension of the mutually agreed upon stay-out. *Id.*

#### PGW Exceptions

PGW argues that the Recommended Decision erred by: (1) failing to recognize that, by the terms of the Partial Settlement, material modifications of the terms were not permissible; (2) not concluding that the Partial Settlement is in the public interest and should be approved without modification; (3) delaying the agreed-upon rate increases for an additional six months without legal support, and unreasonably; (4) extending the stay-out provision for an additional year; and (5) requiring PGW to meet with the Commission’s Pipeline Safety Division within ninety days of the Commission’s Order and biannually thereafter through 2022 to review increasing pipeline replacement costs and to develop a plan to reduce pipeline replacement costs and leaks. PGW Settlement Excs. 1-5 at 1-28.

##### i. PGW Settlement Exception 1

PGW requests that the Commission reject the Recommended Decision’s material modifications to the Settlement and approve the Settlement as in the public interest. 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 and proceed to litigation, a right that PGW will need to exercise in the event the modifications are approved. PGW Exc. at 2-3, 6-9. PGW claims that the Commission does not have authority to modify the Settlement’s material terms as recommended by the ALJs. According to PGW, the Commission must either accept or reject the Settlement package submitted by the Parties, and the Recommended Decision’s “cherry picking” of which provisions to approve was error. PGW Exc. at 7. PGW asserts that the Recommended Decision’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. This would threaten critical infrastructure projects as well as PGW’s financial health. PGW claims that the additional delay in rate relief and the prohibition against filing any new base rate case until after January 1, 2023 that the Recommended Decision would impose would create an untenable situation for PGW. As such, PGW would be forced to withdraw from the Partial Settlement and proceed to full litigation. *Id.*

PGW points out that its right to withdraw from the Settlement and proceed to litigation is crystal clear. That right is explicitly set forth in the Joint Petition and is a standard provision in virtually every settlement. It also is one that the Commission has recognized as valid and enforceable.[[30]](#footnote-31) PGW Exc. at 8. The right to withdraw is grounded in the parties’ legal and constitutional rights and PGW, like every party to the Partial Settlement, has a right to fully litigate its claims in the event that the compromise framed by the Joint Petitioners is materially altered. *Id.* Not only would full litigation be time consuming and costly, it also would eliminate a host of beneficial settlement provisions that PGW voluntarily agreed to, but which cannot be imposed absent such agreement. PGW Exc.at 8-9. Additionally, PGW explains that under such withdrawal circumstances and pursuant to Section 1308(d) of the Code, 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. PGW notes that this would impose much higher charges on ratepayers in the short term (subject to refund) without the significant additional benefits provided by the Settlement, an outcome that is not in the public interest and should be avoided. PGW Exc. at 9.

##### ii. PGW Settlement Exception 2

PGW argues strenuously that the Partial Settlement is in the public interest and the Recommended Decision erred by suggesting modifications that ignore the careful balance of ratepayer, public, and utility interests that must be weighed in considering the settlement as a whole. PGW Exc. at 9-14. Importantly, PGW stresses that the Partial Settlement includes substantial ratepayer benefits that would not be possible if the case was litigated. Citing the Commission’s policy statement at 52 Pa. Code § 69.401 and a recent rate case proceeding, PGW stresses that the Commission’s policy is to encourage settlements, even during this COVID-19 pandemic.[[31]](#footnote-32) PGW Exc. at 10. In this case, as in *UGI*, the Joint Petitioners diligently worked to craft a settlement that achieved the proper balance of conflicting interests and arrived at a final compromise that is clearly preferable to any result that may come from litigation. PGW Exc. at 11.

PGW details at length the concessions it agreed to and those of the other Joint Petitioners and the significant benefits that the Partial Settlement delivers. For example, PGW points out that, 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. PGW Exc. at 11 and Attachment A to PGW Exc. PGW emphasizes that this is far lower than the results in PGW’s previous settlements and PGW agreed to this reduced increase and delayed rate increase phase-in to recognize the unprecedented conditions caused by the COVID-19 pandemic. PGW Exc. at 11-12.

PGW points out, in concert with the Exceptions of I&E, that the Partial Settlement’s phasing of the reduced rate increases and the stay-out provision could not legally be imposed by the Commission, absent PGW’s voluntary agreement to do so. PGW Exc. at 12. In addition, PGW points out that, should PGW withdraw from the Partial Settlement and litigate its rate increase request, it could file another rate case in January 2021. PGW Exc. at 13.

Beyond the clear financial benefits of the Partial Settlement, PGW echoes the OCA’s Exceptions by delineating other important consumer benefits afforded its ratepayers under the comprehensive settlement package, including the COVID-19 Relief Plan,[[32]](#footnote-33) modifications to PGW’s Universal Service and Energy Conservation Plan and accommodations for customers with Limited English Proficiency. PGW Exc. at 13‑14.

PGW also mirrors I&E’s concern that material modification of the Partial Settlement would have a chilling effect on future settlement agreements. PGW Exc. at 14. PGW asserts that comprehensive settlements take significant time and resources to develop and are carefully crafted to balance the competing interests of the stakeholders. PGW urges the Commission to recognize the Partial Settlement as in the public interest and approve it as consistent with the Commission’s policy encouraging settlements. *Id.*

1. **PGW Settlement Exception 3**

PGW details the importance of providing rate relief to it on the agreed-upon phased-in schedule and significant financial detriment that would be visited upon PGW in the event rate relief were pushed out six months. PGW Exc. at 15-22. PGW notes that the Recommended Decision 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. PGW Exc. at 15. PGW explained in its Brief and Statement in Support that without sufficient rate relief in the FPFTY, 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. Specifically, without rate relief, PGW’s cash balances are projected to plunge and be negative in FY 2022.Importantly, these financial projections do not includeprojected additional expenses and reduced revenue in the FPFTY (FY 2021) of some $33-35 million resulting from the economic effects of the pandemic. Accordingly, PGW argues that the record shows that completely rejecting any rate increases would be inconsistent with Commission’s cash flow ratemaking standardsand the Code and would be illegally confiscatory. *Id.*

The Partial 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 importantly, the Partial Settlement attempts to mitigate the effect on customers by 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. PGW Exc. at 15-16. PGW explains that 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.[[33]](#footnote-34) PGW asserts that it 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. PGW Exc. at 16.

PGW argues that the Recommended Decision’s suggested modifications delaying the rate increase schedule would significantly reduce the additional revenue permitted under the Partial 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. *Id.*

PGW asks that the Commission recognize that the Partial Settlement’s phased-in rate increase was already a substantial concession in comparison to PGW’s original rate 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 FY 2021, as follows:

PGW Settlement Rates Comparison (@ $35.0 Million)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **PGW @ $70M** | **OCA** | **BIE** | **Settlement** |
| Debt Service Coverage (1998 Bonds) | 2.35x(2.18x w/o CF) | 1.88x | 1.87x | 2.03X |
| Year-End Days Cash | 87 | 73 | 68 | 65 Days |
| Debt to Equity | 75.86% | 75-80% | 77% | 77.53% |

PGW notes that 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 I&E’s litigation position that would have permitted PGW a $47 million rate increase starting on December 4, 2020. PGW Exc.at 17.

PGW continues that 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 twelve months, but PGW has agreed under the Partial Settlement to defer billing the full increase until January 1, 2022. PGW submits that the effect of these deferrals is striking. As shown on Attachment A hereto, PGW’s original $70 million rate increase request would have permitted PGW to bill an additional $125 million over FY 2021 and FY 2022. Under the Partial Settlement, the phased-in rate increase would result in additional billing of just $36.7 million over that same time, or 29.4% of PGW’s original rate request over those two fiscal years. PGW Exc. at 17-18.

PGW emphasizes that the Recommended Decision’s suggested delays to the phased-in rate increases would only permit PGW to bill $17.9 million over FY 2021 and FY 2022. PGW finds most concerning, that 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, because those months are outside the winter heating season. In other words, PGW notes that this is equivalent of PGW receiving no rate increase in the FPFTY. PGW Exc. at 18.

Through its testimony, PGW showed the effects on its financials of failing to receive a rate increase in FY 2021 and it claims that the slight ($600,000) rate increase in FY 2021 permitted by the modifications to the Partial Settlement 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 ratings and PGW’s debt service coverage would fall to about 1.72x by the end of the FPFTY. *Id.*

PGW asserts that even 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. The ALJs’ modified rate increases simply would not cover the projected cash deficit and leave PGW with year-end cash of negative $10.1 million for FY 2022 and debt service coverage at 1.75xfor FY 2022. PGW Exc. at 18-19.

PGW summarizes by stating that, simply put, the Recommended Decision 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. In the face of these prospects, PGW would have no choice but 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 asserts that it would face the prospect of a bond rating downgrade which would increase long term borrowing costs and make access to credit markets more difficult. PGW Exc. at 19.

PGW notes that, in making the suggested modifications to the Partial Settlement, the Recommended Decision 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. PGW submits that a balancing of the ratepayer and utility interests is required and that the ALJs’ recommendations that focus primarily, if not solely, on the potential ratepayer hardships are therefore erroneous. PGW Exc. at 19-22.

PGW states that the ALJs also appeared to be troubled by the fact that PGW customers would be seeing increases in PGW’s DSIC as well as its 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. PGW retorts that the purported increase in the DSIC is actually an increase in the DSIC cap – not rates – due to PGW having slightly higher distribution revenues. Further, any actual increase in the DSIC (which would be fairly small according to PGW– $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 Investment Infrastructure Program (LTIIP). And, as for the increase in PGW’s USC to recover increased costs due to the PUC-mandated pilot program, PGW submits that it would be grossly unfair to deny or reduce PGW’s settled rate increase because PGW was required to increase its USC to respond to a PUC-mandated program. PGW Exc. at 21.

1. **PGW Settlement Exception 4**

PGW also excepts to the Recommended Decision’s extension of the rate case stay-out. PGW points out that it voluntarilyagreed to not file a general rate increase before January 1, 2022. As written, the Recommended Decision would permit PGW to file a general rate case no sooner than January 1, 2023 with new rates likely in effect no sooner than late 2023. PGW suggests that 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. PGW Exc. at 22.

PGW contends that the recommended extension of the stay-out precludes the possibility of a non-emergency rate increase by PGW until October 2023, which is in FY 2024. That will be more than 34 monthsfrom the end of the suspension period in this proceeding. The Recommended Decision does not set forth the financial impact of extending the stay-out. Nothing in the record or the Recommended Decision examines whether the rates, as modified and extended by the Recommended Decision, will be sufficient until the end of the stay-out, because this proceeding is focused on the FPFTY (FY 2021). PGW Exc. at 22-23. PGW reiterates that, delaying the allowed rate increase for an additional six months would have a severely negative impact on PGW’s financial metrics and ordering that PGW could not file for additional non-emergency rate relief until 2023 would simply exacerbate the negative financial effects of the Recommended Decision’s modifications.

PGW also argues, that more on point, and as explained 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) of the Code and the Constitutions of the United States and the Commonwealth. PGW asserts that it has the statutory and constitutional right to seek and obtain “just and reasonable” rates. PGW Exc. at 22-23.

1. **PGW Settlement Exception 5**

PGW alleges that the ALJs erred in recommending that the Partial Settlement should be modified to require PGW to meet with the Commission’s Gas Safety Division within ninety days of the Commission’s Order in this matter and biannually thereafter through 2022 to review increasing pipeline replacement costs and to develop a plan to reduce pipeline replacement costs and leaks. PGW Exc. at 23.

PGW points out that, in the Partial 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 replacement costs. PGW emphasizes that it also agreed in the Partial Settlement to refine the way it prioritizes replacement of its cast iron assets in its Distribution Integrity Management Plan (“DIMP”). PGW Exc. at 23.

PGW asserts, that despite these agreements, the Recommended Decision determined that “a more firm commitment by PGW for review of its plans by Commission staff is required.”In other words, rather than rejecting the terms of the Partial Settlement, the ALJs recommended that the Partial Settlement be modified in a way not advocated by I&E or supported by the record. PGW argues that the terms of the Partial Settlement were acceptable to I&E – the Party that raised them in the first place. Moreover, PGW claims that 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 Recommended Decision’s additional meetings and requirements are therefore unnecessary and should be rejected. PGW Exc. at 23-24.

According to PGW, this Partial Settlement contains an acceptable resolution of the issues regarding pipeline replacement, importantly, terms acceptable to I&E and its Pipeline Safety Division. PGW points out that I&E was the only party to raise pipeline replacement costs and prioritization of cast iron main replacements in its testimony and the concerns I&E raised were fully resolved by the record and the Settlement. I&E’s Exceptions confirm that it is on board with the terms of the Partial Settlement, including those related to this issue. PGW Exc. at 25.

PGW suggests that the Recommended Decision 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.”PGW emphasizes that those questions were fully resolved on the record, which reflects that PGW currently utilizes a risk analysis to identify pipe replacement prioritization.In addition, PGW and I&E have agreed that in its DIMP, PGW will further categorize pipe segments based on risk analysis.That commitment was memorialized in the Partial Settlement. Furthermore, the Partial 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, where it will break down cast iron assets into smaller asset group categories that allows PGW to measure the effectiveness of the replacement plan. PGW Exc. at 25-26.

Therefore, PGW submits that it has shown that it has procedures in place or has agreed to measures that will ensure that it is replacing the riskiest main first – and I&E agreed. Moreover, both I&E and PGW agreed that replacing the riskiest main at an increased rate will reduce the leaks on PGW’s distribution system. Therefore, the Settlement fully addresses all of the concerns raised by I&E (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. PGW Exc. at 26.

With respect to the costs of pipeline replacement, PGW notes that the ALJs referred to the direct testimony of I&E witness Scott Orr to support their assertion that a “more firm commitment” on reducing pipeline replacement costs is required. PGW argues that the ALJs then essentially expanded I&E’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. PGW Exc. at 26.

PGW argues that the ALJs’ recommended modification to the Partial Settlement is not supported by the record and PGW urges the Commission to reject their modification as unnecessary. PGW showed on the record that I&E’s suggestion that PGW needed to develop a plan to reduce pipeline replacement costs and review those plans with the Commission was not necessary. PGW argues that the record reflects that: (1) PGW continuously works to reduce costs associated with pipeline replacements; (2) PGW completed the first LTIIP under budget and exceeded its cast iron main removal mileage targets by 9%; (3) PGW’s second LTIIP is on budget and 15% ahead in mileage removed; (4) PGW’s main replacement costs are in-line with its Pennsylvania peer gas utilities in cost per mile for main replacement work;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.PGW Exc. at 26-27. PGW submits that its cost reduction efforts are apparent. To address any remaining concerns of I&E, 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. PGW submits that I&E’s joinder in the Partial Settlement and support of the related terms and conditions on this issue essentially speak for themselves. PGW Exc. at 27-28.

Concluding its Settlement Exceptions, PGW submits that, for all of these reasons, the Partial Settlement should be approved without modification and if it is not, PGW advises that it will be forced to withdraw therefrom. PGW Exc. at 28.

### Disposition

The Partial Settlement in this matter resolves nearly all of the issues raised in this proceeding and, except for the few issues reserved for litigation, thereby negated the need for the scheduled evidentiary hearings on the settled issues. Although the Parties did not achieve an agreement on all the issues raised in this proceeding, the attendant settlement benefits of reduced litigation time and devotion of resources should not be discounted. Significantly, the Partial Settlement was opposed by only the Environmental Stakeholders.

As noted previously, it is in the public interest to provide a public utility with the financial ability to proffer safe, efficient, and adequate service to its customers. In terms of revenue requirement, as originally filed, PGW’s Supplement No. 128 sought an increase in revenues of $70 million per year, or an approximate 10.5 percent increase over its present rates. Under the terms of the Partial Settlement, the amount of the increase has been reduced to $35 million per year, to be implemented in three rate increase steps, the first commencing on January 1, 2021 and following in six-month increments thereafter. PGW also has agreed to a voluntary rate case stay out until January 1, 2022. This negotiated increase in revenues represents a substantial reduction to the Company’s initially requested rate increase.

Based on our review of the Partial Settlement, we find that there are numerous settled issues that are beneficial to customers. Among these provisions are: (1) the reduced rate increase of $35 million implemented in three stages, as compared to PGW’s originally proposed $70 million rate increase request; (2) the compromise on the revenue allocations to the various rate classes; (3) the reduced step increases in the residential customer charges by $0.35, $0.35, and $0.45, respectively, for a total cumulative increase of $1.15 per month by January 2022; (4) the rate case stay-out until January 1, 2022; (5) the COVID-19 Relief Plan providing assistance to many eligible customers; (6) the continuation of the Technology and Economic Development Rider and data submission regarding same in PGW’s March 21, 2021 GCR filing;(7) the continuation and modification of the Back-up Service under Rate BUS, with data submission in PGW’s GCR case; (8) extensive enhancements to PGW’s Universal Service Programs; and, (9) PGW’s continued focus on cast iron main replacement priorities, including meeting with the Commission’s Pipeline Safety Division to review PGW’s Annual Asset Optimization Plan.

These extensive provisions reflect benefits that extend across all customer classes and serve the public interest. The Partial Settlement resolves the majority of the issues impacting residential consumers, small business, large business customers and the public interest at large. The benefits of the Partial Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings.

The Commission’s charge is to evaluate the Partial Settlement through the lens of a public interest review. We must consider the interests of ratepayers, but also the financial health of the utility and the stakeholders charged with guarding the public interest. In this case, we must determine if the ALJs’ suggested modifications to the Partial Settlement serve the public interest, where no party has advocated that any change be made to the Partial Settlement.[[34]](#footnote-35)

I&E, the OCA, PICGUG and PGW all speak with one voice in urging the Commission to preserve the Partial Settlement and reject the ALJs’ recommended modifications. We find their arguments persuasive that the many benefits of the Partial Settlement represent a fair compromise of the Parties’ respective positions and an accord that is consistent with the public interest. Moreover, we determine the ALJs’ material modifications to the Partial Settlement are not warranted or advisable.

A meaningful examination of the impact of the ALJs’ suggested modifications to the phased rate implementation schedule and related stay-out provision, reveals that the modifications to the Partial Settlement would not be in the public interest.

First, it must be recognized that PGW is a cash flow utility. As such, PGW must have adequate debt service coverage, sufficient days of cash on hand, and enough days cash on hand to be able to cover day-to-day operations. PGW asserted that its debt service coverage levels are crucial because if the Company falls below the 1.5x minimum requirement in its bond covenants, reflected in the City of Philadelphia Ordinance that establishes the requirements for PGW’s bonds, it will be in a technical default and its access to capital markets will be severely harmed.[[35]](#footnote-36) PGW St. No. 2 at 13.

As indicated in the Recommended Decision, PGW based its rate increase on claims of unavoidable increases in operating costs and the financial metrics it must achieve in order to maintain its favorable bond rating and continue its infrastructure improvements. R.D. at 55. PGW contended that without a rate increase PGW will not be able to meet its debt service coverage requirements in the FPFTY, will violate debt service coverage in FY 2022, have just $45.4 million of year-end available liquidity or about 33.9 days of expenses. PGW Exh. JFG-1A; PGW St. No. 2 at 14-15, PGW St. No. 2-R at 15. The ALJs agreed with PGW on this matter by incorporating these statements into their Findings of Fact. R.D. at 17 (FOF No. 32).

However, in this proceeding the Parties agreed that PGW would, in lieu of its requested $70 million base rate increase, be permitted to increase rates by $35 million in a three phase process: a $10 million increase implemented on January 1, 2021, another $10 million increase on July 1, 2021, and the final $15 million increase implemented on January 1, 2022. Partial Settlement at ¶ 15. By agreeing to this process, PGW has foregone the increments between these stepped-in phased-in increases, thus foregoing a certain amount of revenue through this settlement process that it would be otherwise entitled to had the $35 million increase been implemented in one step. The ALJs recommend that this phased-in increase be pushed out an additional six months, to begin July 1, 2021. R.D. at 2. The impact on PGW of such a modification cannot be ignored.

Although, as stated previously, this is a “black box” settlement wherein the individual components of the revenue have not been agreed upon by the Parties, PGW’s calculated impact of such a deferral as recommended by the ALJs is compelling.[[36]](#footnote-37) Specifically, the phased-in settlement increase is calculated by PGW to result in additional billing of $36.7 million over FY 2021 and FY 2022, or 29% of its original request over those two fiscal years. PGW Exceptions, Attachment A. PGW’s calculations show that the ALJs’ recommendation would only permit the Company to bill $17.9 million over FY 2021 and FY 2022, and result in additional billing of just $600,000 in FY 2021. *Id.* As PGW’s requested base rate revenue increase is based on the FPFTY ending August 31, 2021, just two months after the first phase of the rate increase is implemented, as recommended by the ALJs, the slight $600,000 rate increase in FY 2021 recommended by the ALJs would not materially change the detrimental effects on PGW’s financials of failing to receive any rate increase in FY 2021. *See* PGW Exh. JFG‑1A.

We find PGW’s arguments convincing that any delay in the base rate increase phase-in, as outlined in the Partial Settlement, especially for an additional six months, would significantly reduce the additional revenue permitted under the Partial Settlement and would have severe negative impacts on the Company’s financial metrics and its levels of cash available to pay its bills. In addition, extending the stay-out provision and thereby not permitting PGW to file for additional non-emergency rate relief until 2023 would simply exacerbate the negative financial effects of the ALJs’ recommended modifications.

As noted by all the Parties filing Exceptions, material modification of a well-crafted and well-supported settlement carries the weighty risk of parties withdrawing from the settlement pursuant to its explicit terms. Under the scenario where PGW withdraws from the Partial Settlement, PGW also would be free to file another base rate proceeding on or after January 1, 2021. When viewed in this context, the public interest in the Parties’ compromise becomes supremely evident. The benefits include, but are not limited to, a significantly reduced rate increase, collected over an extended schedule, with a stay-out provision, significantly limited fixed customer charge increases, and no right of recoupment by PGW. Coupled with these direct rate benefits are the COVID-19 Relief Plan, low income program enhancements and data reporting, accommodations for customers with Limited English Proficiency, and PGW’s willingness to work with the Commission’s Gas Safety Division to assess cast iron replacement pace and cost containment. All of these benefits carefully balance the stakeholder interests and create a compromise of the type encouraged by our policy statement.

We note with favor the OCA’s Exceptions which detail the considerations weighed by the Parties in crafting a settlement in the midst of the COVID-19 pandemic, where both ratepayer and utility interests had to be uniquely guarded. We must be cognizant of the settlement benefits that only may be gained through agreement of the Parties and, thus, will be lost if the careful balance of the Parties’ agreement is upset by our decision. In this case, these benefits include PGW’s agreed-upon delays in phased-in rate increases beyond the statutory suspension date and the stay-out provision. As strongly advocated by I&E and PGW, these beneficial terms and conditions of the Partial Settlement could not be mandated by the Commission absent the agreement of PGW. Section 1308(d) and the related caselaw cited by I&E and PGW clearly establishes that it is not within the Commission’s 1308(d) powers to mandate effective dates of rates beyond the end-of-suspension period. In addition, the rate stay-out provision of the Partial Settlement likewise is not mandated by the Code and may be implemented only with PGW’s agreement.

Foregoing the many benefits of the Partial Settlement and causing PGW to withdraw from the Partial Settlement and place its $70 million rate increase into effect subject to refund clearly would not serve the public interest, especially during this COVID-19 pandemic.[[37]](#footnote-38) Our ruling today avoids this result.

With regard to the ALJs’ recommendation that PGW be required to meet more often with the Commission’s Gas Safety Division about its cast iron replacement program and the related costs, we agree with I&E and PGW that there is no sound basis to adjust the reasonable compromise reached by the Parties in the Partial Settlement. Litigation positions notwithstanding, I&E has made clear in its Exceptions that the several provisions in the Partial Settlement detailing PGW’s expected obligations are an important part of the settlement compromise and serve the public interest. We therefore reject the ALJs’ recommended modification of the Partial Settlement on these pipeline replacement issues.

While well-meaning, the negative effects of the suggested modifications have been soundly demonstrated in the Exceptions of PGW, I&E, the OCA and PICGUG. The scale of settlement was well-balanced and is supported by substantial evidence of record. We decline to upset that careful balance reached by stakeholders representing all of the varied interests. The Joint Petitioners have provided ample record support for the terms and conditions contained in the Partial Settlement and no Joint Petitioner has filed Replies to Exceptions on the Settlement Issues. We note that the Environmental Stakeholders opposed the Partial Settlement and chose to litigate its position that no rate increase at all should be permitted. As discussed below, the ALJs denied the Environmental Stakeholders’ “no rate increase” position and no Exceptions were filed by Environmental Stakeholders challenging that determination.

For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we modify the Recommended Decision and conclude that approval of the Joint Petition for Partial Settlement, without modification, is in the public interest. Accordingly, we shall adopt the ALJs’ Recommended Decision, as modified consistent with this Opinion and Order and approve the Partial Settlement without modification.

## E. Litigated Issues

The following three issues were specifically reserved for litigation: (1) whether PGW’s rate increase should be denied because its infrastructure modernization program inadequately accounts for potential future mandates related to climate change; (2) whether PGW should prepare and submit to the Commission a Climate Business Plan to significantly reduce or eliminate greenhouse gas emissions prior to being granted a rate increase; and (3) whether any increase in the customer charges should be granted. Joint Petition at ¶ 46.

While the discussion in the Recommended Decision does not follow these issues in that particular order, the ALJs ultimately through their analysis and consideration of the interrelated subjects, made recommendations on each of these issues. As an outgrowth of the Climate Business Plan issue, the ALJs also made a recommendation that PGW be directed to file certain information on its “planning for warming weather trends on usage assessments as well as infrastructure replacement plans in its next base rate filing.” R.D. at 96-97. Each of these issues is discussed, below.

The ALJs commenced the discussion of the litigated issues by addressing PGW’s contention that the Commission lacks jurisdiction over the environmental policy recommendations of the Environmental Stakeholders. The ALJs explained PGW’s position that the Environmental Stakeholders are asking the Commission to make an affirmative ruling related to the effect of PGW’s operations on the environment and to direct PGW to implement “*potentially* cost-effective alternatives,” (*i.e.* convert PGW’s customers to other energy sources as well as direct PGW to produce a Climate Business Plan “with the stated goal of aggressively reducing and ultimately eliminating greenhouse gas emissions in the Commonwealth of Pennsylvania and the City of Philadelphia.”). The ALJs noted the Environmental Stakeholders’ assertion that the Commission has jurisdiction to consider whether environmental factors render utility expenses unreasonable and imprudent, though it does not administer environmental statutes. The Environmental Stakeholders contended:

[T]he Commission hears evidence on the reasonableness of PGW’s salaries and bonuses, benefits, and municipal bond markets despite the fact that the Commission has no jurisdiction to regulate labor markets, health insurance,pension plans, or bond markets. Further, just as the Commission has jurisdiction to conclude that negotiable instruments do not constitute reasonable payment under the Public Utility Code though it does not administer the Uniform Commercial Code,the Commission has jurisdiction to consider whether environmental factors render utility expenses unreasonable and imprudent, though it does not administer environmental statutes.[[38]](#footnote-39)

As for whether a Climate Business Plan should be presented, the Environmental Stakeholders contended that it would address the most efficient and cost-effective use of ratepayer dollars, potentially cost-effective alternatives and possible stranded asset risks posed by climate change and future climate change regulations. They argued that this is essential given the Commonwealth of Pennsylvania, Governor Wolf in Executive Order 2019-01, and City of Philadelphia commitment to reducing greenhouse gas emissions in the near future. Further, Environmental Stakeholders asserted that PGW is working with the City of Philadelphia to develop a plan that addresses future environmental and economic sustainability for PGW. R.D. at 80-81.

The ALJs concluded that it is undisputed that the Commission does not have jurisdiction to *enforce* environmental laws and regulations. The cases referenced by PGW, *Funk v. Wolf*, 144 A.3d 228 (Pa. Cmwlth. 2016) and *Country Place Waste Treatment Co. v. Pa. PUC*, 654 A.2d 72, 76 (Pa. Cmwlth. 1995), serve to establish that the Commission has no authority to regulate environmental issues, create environmental regulations or mandate strictly environmental action. The ALJs acknowledged that there is nothing in the Code, the Commission’s Regulations or Commission Order that requires anything resembling a Climate Business Plan. In addition, the ALJs noted that the Environmental Stakeholders’ proposal that the Commission hold a separate proceeding to allow for comment on the Climate Business Plan before PGW be allowed to increase its rates has no basis in the Code or the Commission’s current Regulations. Therefore, the ALJs found that there is no precedent in the Commission for a Climate Business Plan and the Environmental Stakeholders’ request that the Commission order PGW to prepare a Climate Business Plan is in effect environmental regulation and enforcement and beyond the jurisdiction of the Commission. R.D. at 81. The ALJs therefore recommended denial of the Environmental Stakeholders’ request that PGW be ordered to submit a Climate Business Plan as unsupported by any statutory, regulatory or other legal basis. R.D. at 81, 95 and 97.

The ALJs continued, stating that the Commission, however, is not prohibited from considering environmental issues as it carries out its authority to regulate public utilities such as PGW. The ALJs noted that there are environmental related issues before the Commission in this proceeding. As an example, PGW considers “warming trends” in projecting its revenue and acknowledges that the Commission has jurisdiction to consider such trends.The ALJs stated that the “Environmental Stakeholders is (sic) not in this proceeding asking PGW to reduce or eliminate greenhouse gas emissions prior to being granted a rate increase, but to consider environmental matters and its effects on the needs and planning of the Company before asking the Commission to impose higher rates on the people of Philadelphia, especially now.” R.D. at 81-82.

The ALJs noted that, by Order dated July 7, 2020, they determined that environmental considerations, including methane and other leaks that may exist in the PGW infrastructure, are relevant to determining whether the rates increase sought by PGW for infrastructure work is just and reasonable. In addition, the ALJs explained that they found relevant to the issues of the reasonableness of rates, rules and regulations, whether the proposed rate increase and associated infrastructure work present a risk of stranded assets. The ALJs stated that they would review the contested issues in accordance with that determination. R.D. at 82.

PGW filed Exceptions to the ALJs’ recommendation that it be required to file certain information on its “planning for warming weather trends on usage assessments as well as infrastructure replacement plans in its next base rate filing.” R.D. at 96-97. The Exceptions and the Environmental Stakeholders’ Replies are discussed below.

### Overall Rate Increase

After considering the Parties’ Briefs and the record as a whole, the ALJs recommended denial of the Environmental Stakeholders’ request that PGW’s rate increase be denied in its entirety. R.D. at 97. No Party, including the Environmental Stakeholders, filed Exceptions to the Recommended Decision challenging this recommendation. Based upon the record before us and the ALJs’ careful consideration of the respective positions taken by the Parties, we adopt the ALJs’ reasoning and approve the recommendation as supported by substantial evidence of record and in the public interest.

### Fixed Customer Charges

After considering the Parties’ Briefs and the record as a whole, including the Partial Settlement compromises on this issue, the ALJs recommended approval of the slight increase to the customer charges set forth in the Partial Settlement as reasonable. R.D. at 77-78 and 96. No Party, including the Environmental Stakeholders, filed Exceptions to the Recommended Decision challenging this recommendation. Based upon the ALJs’ careful consideration of the respective positions taken by the Parties and the ample record evidence, we adopt the ALJs’ reasoning and approve the recommendation as supported by substantial evidence of record and in the public interest.

### Infrastructure Improvements and Pipeline Safety Issues

The ALJs included in this section of the Recommended Decision, the Environmental Stakeholders’ basic argument that PGW should not be granted additional revenue until PGW has considered the full risks and potential losses that may be in store for customers if it continues business as usual. The ALJs did not state a recommended resolution of the Parties’ positions regarding this matter, but immediately following this section, included a recommendation requiring PGW to include planning information on “warming weather trends on system needs and usage assessments, as well as infrastructure replacement plans” in its next rate case. For this reason, we have included the discussion to elucidate the Parties’ positions on obligations with regard to pipeline infrastructure replacement and planning as it may relate to ratemaking considerations.

#### a. Parties’ Positions

The Environmental Stakeholders averred that regulated utilities are required to cost-effectively manage operations and are prohibited from imprudent spending of customer dollars. Without robust long­-term planning and evaluation of alternatives, the Environmental Stakeholders asserted that it is impossible to judge whether spending is prudent. They contended that the Commission should deny increased revenue intended to further accelerate infrastructure investments unless and until PGW can show by substantial evidence that, after consideration of alternatives, its proposed investments reflect the lowest-cost and lowest-risk solution for customers. R.D. at 92.

The ALJs noted that the Environmental Stakeholders maintain that PGW does not consider future customer needs when it decides how to replace at-risk infrastructure. Claiming that PGW does not integrate energy efficiency into its infrastructure planning process, the Environmental Stakeholders also asserted that PGW does not consider potentially cost-effective alternatives to in-kind replacement. The ALJs cast as important, the Environmental Stakeholders’ argument that PGW does not consider the potential stranded asset risk exposure it continues to saddle customers with by replacing pipeline that may become obsolete. The ALJs note the Environmental Stakeholders’ averment that PGW has not provided substantial evidence showing it would put increased revenue to prudent and necessary uses. The Environmental Stakeholders maintained that PGW’s failure to conduct any real planning to address immediate- and long-term risks should be unacceptable to this Commission. They also argued that robust planning is needed to mitigate risk and reduce costs in the near- and long-term. The Environmental Stakeholders argued that increased revenue is not needed to fulfill PGW’s existing infrastructure plan, and customers should not be required to send more dollars to PGW unless and until PGW can show it is responsibly planning for the future. R.D. at 93.

In response, PGW argued that it has demonstrated that its main replacement program costs are reasonable. The Company also noted that it has undertaken several cost-reduction measures, all replacement work is awarded pursuant to Requests for Proposals awarded to the lowest responsible bidder, and its replacement costs per mile are within the range of other Pennsylvania natural gas distribution companies. Moreover, PGW argued that this issue, which was raised by I&E in its testimony, was resolved in the Partial Settlement. *Id.*

PGW also argued that the Environmental Stakeholders’ assertion that PGW does not need a rate increase here because the main replacement set forth in PGW’s LTIIP allegedly can be accomplished without the requested rate increase is contradicted by the record in this proceeding and ignores the fact that PGW needs to cover all of its expenses and maintain cash for operations. PGW offered that, in order to sustain the pace of construction, it is important to maintain the Company’s cash flow and financial metrics and not allow them to atrophy under the weight of other expense increases. PGW contended that the Environmental Stakeholders ignore the financial needs of the Company, needs that have been recognized by the other Parties in the Partial Settlement’s recommendation that PGW be permitted to receive one-half of its original request, phased in by January 2022. R.D. at 93-94.

PGW asserted that the evidence demonstrates that the Environmental Stakeholders’ recommendation to address pipeline safety by engaging in safety-related distribution system maintenance is a dangerous strategy and not appropriate for a company with such a high percentage of cast iron main, a safety concern previously recognized by Commission staff. R.D. at 94.

I&E maintained that all regulated utilities in the Commonwealth must provide safe and reliable service. In an effort to ensure that PGW is meeting its safety obligations, the Pipeline Safety Division of I&E reviewed PGW’s filing and safety commitments. I&E noted that PGW’s Gas Safety practices have been reviewed and compromises have been reached in several areas to ensure that PGW practices are in conformity with its obligation to provide safe and reliable service. R.D. at 94.

I&E argued that the Environmental Stakeholders have skewed I&E witness Orr’s recommendation regarding cast iron main replacement costs. I&E asserted that the entire premise of I&E Witness Orr’s testimony was the need to further accelerate cast iron pipe replacement. R.D. at 94.

I&E noted that increasing pipeline replacement costs per mile are concerning from a gas safety perspective because as PGW pays more per mile to replace its risky pipe, less money is available to replace more pipe. Due to the risk associated with cast iron mains and the need to replace them as quickly as possible, I&E witness Orr recommended that PGW develop a plan that reduces pipeline replacement costs and invest the savings therefrom into additional cast iron main replacement. R.D. at 95.

I&E explained that it remains concerned about the rising costs of pipeline replacement, but it notes that this issue was addressed as part of the Partial Settlement in this proceeding. Therefore, while recognizing both the risk of cast iron pipe as well as the fact that creating a plan to reduce pipeline replacement costs would not be without cost to PGW and ultimately its ratepayers, I&E and PGW agreed that the I&E Pipeline Safety Division would be allowed to review PGW’s AAOP. I&E averred that this would give it an opportunity to collaborate with PGW on areas where pipeline replacement costs seem to be rising and give PGW the opportunity to proactively react to rising costs. R.D. at 95.

I&E concluded by reiterating that PGW has an obligation to provide safe and reliable service to all customers. I&E asserted that the recommendations of the Environmental Stakeholders fail to take this into account and, if adopted, their proposals would serve to stymie PGW’s pipeline replacement program to the detriment of the PGW ratepayers. *Id.*

#### ALJs’ Recommendation

As noted above, the ALJs concluded that the Commission does not have authority in environmental regulation and enforcement. R.D. at 95. In addition, the Commission has no authority to order a public utility to produce a Climate Business Plan. The ALJs continued by noting that the Commission may consider environmental factors in its overall determination whether the rate increase proposed is just and reasonable. Acknowledging that, in this matter, they are constrained by the Commission’s prior precedent related to PGW, the ALJs noted that the Commission has repeatedly stressed its concern that PGW accelerate its replacement of cast iron and unprotected steel mains and lines. The Company has experienced two fatal gas explosions in the last ten years. The ALJs thus agreed with I&E that public safety is the utmost concern and that some level of rate increase is required for PGW to continue its replacement of the aging and dangerous infrastructure. As such, and as noted above, the ALJs recommended that the Commission deny the Environmental Stakeholders’ request that the rate increase be denied completely in this matter. R.D. at 96.

The ALJs then conclude, however, that in this instance “it is also important that PGW take into account environmental concerns, specifically related to climate change.” *Id.* The ALJs observed that many of the customers and representatives that presented testimony at the public input hearings in this matter indicated that they had significant concerns regarding climate change and the effect that fossil fuels have on the environment and that PGW also does not dispute that climate change is a concern. The ALJs thus agreed that these are factors that should be considered in a rate increase and that the Commission should look at these issues now before it reaches a point when PGW’s business model becomes increasingly expensive and burdensome to the ratepayers. Therefore, the ALJs recommended that PGW include in its next rate increase request some consideration of the effect of PGW acknowledged warming trends on needs and usage assessments and its impact upon the pipe replacement plans and infrastructure costs, and ultimately upon any rate increase requested. *Id.*[[39]](#footnote-40)

#### Exceptions and Replies to Exceptions

PGW filed Exceptions to the ALJs’ recommendation that it include in its next rate increase request, information regarding its planning related to warming climate trends. PGW Exc. at 28-37. PGW argues that 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 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. PGW Exc. at 28-29.

PGW argues at length that 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. Noting the importance of the ALJs’ holding that the Commission has no authority to regulate environmental issues, create environmental regulations or mandate strictly environmental action, PGW emphasized that the ALJs further determined that “[t]here is nothing in the Public Utility Code, the Commission’s regulations or Commission order that requires anything resembling a Climate Business Plan.”PGW continues by stating that 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 request of the Environmental Stakeholders for PGW to prepare one “is in effect environmental regulation and enforcement and beyond the jurisdiction of the Commission.” *Id.*

PGW complains that, despite these well-founded conclusions, the ALJs went on to recommend the opposite, that is, for the Commission to require PGW in its next rate increase request filing to “include information regarding its planning related to climate change issues.” PGW observes that the Recommended Decision 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,” both of which the ALJs held are clearly outside of the Commission’s jurisdiction. In fact, PGW argues that the Recommended Decision demonstrates that these two plans are effectively the same.

By way of illustration, PGW lists the following characteristics of the “Climate Business Plan,” which the Recommended Decision 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, PGW Exc. at 29-30.

PGW asserts that later in the Recommended Decision, the ALJs recommended that PGW be ordered in its next rate case to set forth its “plan related to climate change issues,” ostensibly determining the Commission did have jurisdiction to order such a plan. PGW Exc. at 30. PGW asserts that the Climate Business Plan and the plan related to climate change issues is one and the same and both are outside the Commission’s jurisdiction to order. *Id.*

PGW emphasizes that 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. But that, according to PGW is distinctly different than requiring PGW to report on planning for climate change divorced from any specific effect on PGW’s revenues or expenses. PGW states its concern that requiring it 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. PGW Exc. at 31.

PGW next makes the point that the Commission has the authority to consider numerous factors to the extent that they affect the utility’s revenue requirement. If environmental information does not serve to support a specific adjustment or proposal in a rate case, however, the information is not relevant to the rate case, and the Commission does not have jurisdiction to consider it. PGW Exc. at 34-35. 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. PGW Exc. at 35.

According to PGW, 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. PGW avers that in reality, however, there is no consensus about the role that natural gas will play thirty, forty, or fifty years from now. PGW further asserts that 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. As former Commissioner Cawley testified, “[i]n 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.” PGW Exh. 12RJ at 2. Commissioner Cawley further explained that the 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 the Pennsylvania Department of Environmental Protection (DEP. *Id*.). Commissioner 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.” *Id* PGW Exc. at 35-36.

PGW notes that 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 Recommended Decision so found. According to PGW, 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. *Id.* at 36

PGW avers 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 environment also cannot serve as a basis to expand Commission jurisdiction when it is not conferred by the Legislature. According to PGW, 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. PGW argues 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. PGW Exc. at 36.

PGW requests that the Commission thus reject the recommendation, dismiss the proposals of the Environmental Stakeholders, and grant PGW’s Exceptions. PGW claims that, 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. PGW Exc. at 37.

Finally, PGW contends that the ALJs’ recommendation unfairly imposes a new filing requirement only on PGW. PGW states that, 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. PGW asserts that 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 not only would be a waste of Commission resources, but it would likely result in unfair and inconsistent filing requirements amongst utilities. PGW Exc. at 37. For these additional reasons, PGW requests that the Commission reject the recommendation, dismiss the proposals of the Environmental Stakeholders, and grant PGW’s Exceptions.

The Environmental Stakeholders filed Replies to Exceptions, therein asserting that the ALJs’ recommendation is sound and should be upheld. The Environmental Stakeholders’ basic argument is that the Commission can consider climate issues in the context of a rate proceeding. They state that PGW’s claims essentially mean that the Commission can approve increases to its revenue requirement based on warming winters and decreased demand, but 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. The Environmental Stakeholders’ claim that 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 prudency of PGW’s proposed investments in light of climate-related trends or from requiring planning to minimize rate increases. Environmental Stakeholders R. Exc. at 2.

The Environmental Stakeholders claim that 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. The Environmental Stakeholders claim that it is illogical for PGW to, on the one hand, concede that the Commission can consider an issue, and then, on the other hand, object to providing the Commission information it needs to consider that issue. The Environmental Stakeholders next claims that PGW accepts that the Commission has jurisdiction to consider the effects of 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.” Environmental Stakeholders’ R. Exc. at 8-9. The Environmental Stakeholders cast this as self-serving behavior representing 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.” Environmental Stakeholders’ R. Exc. at 9.

The Environmental Stakeholders next state that 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. Noting the ALJs’ finding that PGW itself has acknowledged the jurisdiction of the Commission to consider warming climate trends in determining whether a rate increase proposed by PGW is reasonable, the Environmental Stakeholders find the ALJs’ recommendation sound. Environmental Stakeholders’ R. Exc. at 10.

According to the Environmental Stakeholders, 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. Significantly, none of the above-discussed statutory provisions contain any carve-outs or exceptions for environmental matters or any other issue area.

The Environmental Stakeholders further note that 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 those matters arise in. As a starting point, Section 1301 of the 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.”

The Environmental Stakeholders argue that Section 523 of the 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” 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[.]”

The Environmental Stakeholders assert that 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.” Environmental Stakeholders’ R. Exc. at 11, FN 40 citing 52 Pa. Code § 69.2703(a)(6).

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. Environmental Stakeholders’ R. Exc. at 10-11.

In addition to citing the enabling statute and regulations, the Environmental Stakeholders assert that case law precedent is clear that the Commission can consider evidence relevant to rate matters even if that evidence relates to a domain that the Commission does not itself regulate. They claim that 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. They assert that, 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.In other contexts, the Commission has considered matters relating to the prudence and recoverability of pollution control expenditures. Environmental Stakeholders’ R. Exc. at 12.

According to the Environmental Stakeholders, the ALJs’ conclusion about appropriate consideration of climate factors in determining whether a rate increase is just and reasonable does not represent a new development, but rather confirmation of a decades-long chain of precedent. *Id.* at 12-13.

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, bonus plans, or health insurance. 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. Environmental Stakeholders’ R. Exc. at 13.

The Environmental Stakeholders assert that 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. Environmental Stakeholders’ R. Exc. at 19.

The Environmental Stakeholders respond to PGW’s assertion that a rulemaking proceeding is the appropriate forum to consider whether to establish climate change plan filing requirements in rate cases, by claiming that the ALJs were simply identifying and filling a “gap in the record” of this rate case proceeding. According to the Environmental Stakeholders, 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. The Environmental Stakeholders assert that 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 and there is nothing unfair about requiring it. Environmental Stakeholders’ R. Exc. at 23.

Finally, the Environmental Stakeholders claim that the ALJs’ recommendation provides PGW with ample notice of the necessity to compile and submit the required information, is not wasteful of resources and would not result in inconsistent decision-making because the nature of the additional climate analysis needed for each utility will necessarily depend on the record of what each utility is already doing. Environmental Stakeholders’ R. Exc. at 23-25.

For each of these reasons, the Environmental Stakeholders request that PGW’s Exceptions on this issue be denied and the ALJs’ recommendation be upheld.

#### Disposition

The arguments of PGW and the Environmental Stakeholders are well-developed and present new issues that require careful evaluation. This Commission is a creature of statute and has only the powers conferred upon it by its enabling legislation. With that being said, in matters involving rates, the Commission’s jurisdiction is very broad and is exercised liberally in the interest of full and fair review of the rate proposals and adjustments offered by the various stakeholders. However, we must be careful to establish clear filing requirements that apply to similarly-situated utilities, such that no single utility is solely burdened with additional requirements prerequisite to rate approval. It is with these tenets in mind that we dispose of the Exceptions on this issue.

Under Section 1308(d), a utility seeking an increase in base rates carries the heavy burden to prove they are just and reasonable. When compiling information in support of a rate filing, the utility must provide evidence sufficient to support its claims. If parties disagree with the proposed rates, they have the ability to submit countervailing evidence with suggested adjustments to the proposed rates. This process is detailed in the statutory and regulatory structure of the Code and the Commission’s bountiful Regulations. Each of the cases cited by the Environmental Stakeholders involves the resolution of expense adjustments raised by parties in the context of rate proceedings. No such expense or revenue adjustments were advocated by Environmental Stakeholders in this case.

We are reticent to issue a directive to PGW that it must compile and submit information in its next base rate proceeding about warming trends and climate change impacts on its rates because it creates a new, but undefined bar of proof for PGW. It begs the question what amount of information would be sufficient to fulfill the Commission’s informational filing mandate – that is, what quantum of PGW action and evidence would have PGW satisfy that mandate? Further, given the uncertain status of the climate change debate in our Commonwealth and across the globe, without clear policy direction from the General Assembly and the Commission, we do not believe it is fair to make PGW speculate.

We find instructive on these questions the arguments PGW made in its Main Brief. PGW argued that the Environmental Stakeholders sought to commandeer this rate proceeding to promote their agenda to end natural gas usage in Philadelphia. According to PGW, the Environmental Stakeholders’ objective is to force a ban on natural gas consumption in Philadelphia, thrusting all customers onto total electric service.This position is supported by Environmental Stakeholders’ witness, Dr. Ezra D. Hausman, whose testimony included the objective of the elimination of fossil fuels. *See* SC St. No. 1 at 10. *See also*, SC St. No. 1-SR at 8 (advocating the need “to eliminate the use of fossil fuels as thoroughly and as quickly as possible from our energy supply....”). PGW argued that the elements of the “Climate Business Plan” (“CBP”) that the Environmental Stakeholders sought to require of PGW would lead to planning for a moratorium on new gas hook ups and to the pursuit of the complete electrification of Philadelphia (through incentives and mandate). PGW M.B. at 7-8.

The basic nature of a base rate proceeding is to develop rates based on the test-period concept. The Environmental Stakeholders’ argument that PGW should be undertaking planning and ostensibly be incurring costs to address potential global warming in years hence is not in conformance with the current statutory ratemaking scheme. Moreover, the suggestion that PGW should be considering pipe abandonment in lieu of replacement is arguably inconsistent with the mandate to provide safe, adequate and reasonably continuous service under Section 1501 of the Code and the Commission’s DSIC and LTIIP programs. I&E’s concerns in that regard, stated consistently throughout the course of this proceeding, are well-founded.

PGW has also pointed out that its rate case evidence on 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; PGW Exc. at 31, n. 117.

If environmental information does not serve to support a specific adjustment or proposal in a rate case, however, the information is not relevant to the rate case, and the Commission should not consider it in rendering a rate decision.

Unlike the circumstances presented in the cases cited by the Environmental Stakeholders, expense adjustments were not presented by the Environmental Stakeholders here. In fact, they 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. Rather than propose any specific adjustments in this case, the Environmental Stakeholders made the general assertion that PGW should be required to study (and plan for) climate change and climate regulation.

There is no determination about the function of natural gas utilities thirty, forty, or fifty years from now. The ALJs do not make any such conclusive finding, nor would the evidence support such a finding, because the Environmental Stakeholders have not pointed to any rule or regulation that provides that PGW or any other natural gas company will be forced to cease operations in the future. As noted earlier, former Commissioner Cawley testified on behalf of PGW: “[i]n 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.” PGW Exh. 12RJ at 2.

Commissioner Cawley further explained that the 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. *Id.* 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.” *Id.*

PGW notes that, because the testimony of the Environmental Stakeholders did not tie its claims to any specific cost being charged to ratepayers in the test year, and only made hypothetical and speculative assertions, the ALJs found that 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. 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.

We accept PGW’s argument that it is unadvisable for the Commission to make new policy or establish new filing requirements via individual rate cases. We agree with PGW that it would be unfair to impose an undefined filing requirement upon it of the kind recommended by the ALJs in the absence of statutory, regulatory or other legal order or requirement that directs the creation and submission of information that is essentially a climate change plan.

All stakeholders deserve notice and opportunity to be heard on policy issues like climate change. This input would drive detailed and carefully constructed regulations or a policy statement governing the type, amount and breadth of information required to be submitted to the Commission.

We want to be clear in stating here that we are not departing from our broad jurisdiction to regulate rates and determine the justness and reasonableness of same, including expense and revenue claims driven by weather patterns and customer usage. In fact, we encourage all parties in rate case proceedings to file appropriate information and supporting documentation for the establishment of rates and appropriate adjustments thereto. We simply find that, at this time, mandating a Climate Business Plan is beyond our primary jurisdiction.

We observe that the ALJs denied the Environmental Stakeholders’ broad request to deny the rate increase in its entirety and recommended the approval of the Partial Settlement with modifications. No alleged “gap in the record” regarding climate information was so great that the ALJs were convinced that the proposed settlement rates should be rejected, or even that an adjustment should be made. Instead, the approach taken was to paint broad policy strokes advocating a regulatory scheme quite different than the existing landscape.

Accordingly, the ALJs’ recommendation on this issue is rejected and PGW’s Exceptions are granted.

# IV. Conclusion

We have reviewed the record as developed in this proceeding, including the ALJs’ Recommended Decision and the Exceptions and Replies filed thereto. Based upon our review, evaluation and analysis of the record evidence, we shall grant the Exceptions filed by PGW, I&E, the OCA, and PICGUG, approve the Partial Settlement in its entirety, and adopt the ALJs’ Recommended Decision, as modified, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of the Bureau of Investigation and Enforcement, filed on October 15, 2020, are granted, consistent with this Opinion and Order.

2. That the Exceptions of Philadelphia Gas Works, filed on October 15, 2020, are granted, consistent with this Opinion and Order.

3. That the Exceptions of the Office of Consumer Advocate, filed on October 15, 2020, are granted, consistent with this Opinion and Order.

4. That the Exceptions of the Philadelphia Industrial and Commercial Gas Users Group, filed on October 15, 2020, are granted, consistent with this Opinion and Order.

5. That the Recommended Decision of Administrative Law Judges, Darlene Davis Heep and Marta Guhl, issued on October 5, 2020, is adopted as modified by and consistent with this Opinion and Order.

6. That the Joint Petition for Partial Settlement filed on August 26, 2020, by the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Philadelphia Industrial and Commercial Gas Users Group, and Philadelphia Gas Works, is approved in its entirety, without modification.

7. That Philadelphia Gas Works shall not place into effect the rates, rules, and regulations contained in Supplement No. 128 to Gas Service Tariff – Pa. P.U.C. No. 2, as filed.

8. That Philadelphia Gas Works shall not place into effect the rates, rules, and regulations contained in Supplement No. 85 to Gas Service Tariff – Pa. P.U.C. No. 1, as filed.

9. That Philadelphia Gas Works is authorized to file tariffs, tariff supplements and/or tariff revisions, designed to produce a total annual distribution rate revenue increase of approximately $35 million, consistent with the manner described and the rates, rules and regulations set forth in Exhibit 1 (proof of revenue) in the Joint Petition for Partial Settlement.

10. That Philadelphia Gas Works is authorized to file tariffs, tariff supplements and/or tariff revisions, on at least one day’s notice, and pursuant to the provisions of 52 Pa. Code §§ 53.1, *et seq.*, and 53.101, designed to increase annual distribution rate revenue as follows: (1) $10 million for service rendered on or after January 1, 2021; (2) additional $10 million for service rendered on or after July 1, 2021; and (3) $15 million for service rendered on or after January 1, 2022.

11. That Philadelphia Gas Works shall file detailed calculations with its tariff filings, which shall demonstrate to the Commission’s satisfaction that the filed tariff adjustments comply with the provisions in Exhibit 1 (proof of revenue).

12. That Philadelphia Gas Works shall allocate the authorized increase in operating distribution revenue to each customer class, and rate schedule within each customer class, in the manner prescribed in in Exhibit 1 (proof of revenue).

13. That, upon acceptance and approval by the Commission of the tariff supplements filed by Philadelphia Gas Works, consistent with this Opinion and Order, the investigation at Docket R-2020-3017206 be marked closed.

14. That the Formal Complaint filed by the Office of Consumer Advocate in this proceeding at Docket Number C-2020-3019161 be dismissed and marked closed.

15. That the Formal Complaint filed by the Office of Small Business Advocate in this proceeding at Docket Number C-2020-3019100 be dismissed and marked closed.

16. That the Formal Complaint filed by the Philadelphia Industrial and Commercial Users Group in this proceeding at Docket Number C-2020-3019430 be dismissed and marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 19, 2020

ORDER ENTERED: November 19, 2020

1. All of the Exceptions filed by I&E, the OCA, and PICGUG address the Recommended Decision’s suggested modifications to the Partial Settlement. PGW’s Exceptions address both the Recommended Decision’s modifications to the Partial Settlement (PGW Settlement Exceptions) and the Recommended Decision’s recommendations on certain litigated issues (PGW Litigation Exceptions). No party filed Replies to the Exceptions that address modifications to the Partial Settlement. The Environmental Stakeholders did not file Exceptions to the Recommended Decision and its Replies address only the PGW Litigation Exceptions. [↑](#footnote-ref-2)
2. The future test year (FTY) ended August 31, 2020, and the historic test year (HTY) ended August 31, 2019. [↑](#footnote-ref-3)
3. Concurrent with the filing of this general base rate case, PGW filed a petition requesting that the Commission waive the application of the statutory definition of the FPFTY so as to permit PGW to use a FPFTY beginning on September 1, 2020 (its fiscal year) in this proceeding. *See Petition of Philadelphia Gas Works for Waiver of Statutory Definition of Fully Projected Future Test Year*, Docket No. P-2020-3018975. Because the instant base rate increase request was filed on February 28, 2020, the statutory definition of FPFTY, 66 Pa. C.S. § 315(e), would require the FPFTY commence in November, 2020 and continue for twelve months. [↑](#footnote-ref-4)
4. The total annual revenue increase contemplated by the Partial Settlement represents an increase of $35 million to PGW’s current annual distribution revenue of $660,096,000, or approximately 5.3%. *See* PGW Exh. JFG-1. [↑](#footnote-ref-5)
5. Other than PGW and Pittsburgh Water and Sewer Authority (PWSA), utilities under the jurisdiction of the Commission use the rate base/rate of return methodology to set rates. [↑](#footnote-ref-6)
6. On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued a Proclamation of Disaster Emergency due to the coronavirus (COVID-19) pandemic. Due to ongoing concerns surrounding COVID-19, the Commission’s offices were closed on or about March 16, 2020, and the Commission’s employees were directed to self-isolate. However, Commission employees with the ability to work remotely from home were directed to continue operations as possible during the period of self-isolation. The period of self-isolation continued from March 16, 2020 and is still in effect as of the date of this Opinion and Order. [↑](#footnote-ref-7)
7. We note that while Recommended Decision states that this petition was filed on May 22, 2020 and uses that date the Commission’s case tracking system indicates that the Commission received it on May 25, 2020. [↑](#footnote-ref-8)
8. Direct Energy takes no position on the Partial Settlement. The OSBA does not endorse the Revenue Requirement provision of the Partial Settlement, but does not oppose it. The Environmental Stakeholders are the only party to voice opposition to the Partial Settlement. Joint Petition at 1. [↑](#footnote-ref-9)
9. *Pa. PUC Columbia Gas of Pa. Inc.*,Docket No. R-2020-3018835 (Order on Petition for Reconsideration of Staff Action entered August 20, 2020) at 20-21. *See also*, *Pa. PUC v. Pennsylvania American Water Company*,Docket Nos. R‑2020‑3019369 and R-2020-3019371 (Order on Petition for Reconsideration of Staff Action entered August 20, 2020). [↑](#footnote-ref-10)
10. *Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted). [↑](#footnote-ref-11)
11. Among other things, Section 1308(d) of the Code requires the Commission to render a final decision granting or denying, in whole or in part, the general rate increase requested by a public utility, within a general time frame not to exceed seven months from the proposed effective date of the utility’s proposed tariff supplement. *See* 66 Pa. C.S. § 1308(d); *see also*, 52 Pa. Code § 53.31 (requiring a tariff proposing rate increase to be effective upon sixty days’ advance notice). Unless the utility voluntarily extends the suspension period, the Commission’s non-action within this timeframe means, by operation of law, the utility’s proposed general rate increase will go into effect, as proposed, at the end of such period. *See* 66 Pa. C.S. § 1308(d). [↑](#footnote-ref-12)
12. 1 Pa. C.S. § 1922(1), *PA Financial Responsibility Assigned Claims Plan v. English*, 64 A.2d 84 (Pa. 1995). [↑](#footnote-ref-13)
13. The first rate increase will take effect on January 1, 2021, and is designed to produce additional annual revenue of $10 million. The second increase will take effect on July 1, 2021, six months later, and is designed to produce additional revenues of $10 million. Lastly, a third increase of $15 million occurs on or after January 1, 2022. Partial Settlement at ¶ 16. [↑](#footnote-ref-14)
14. Under the Partial Settlement, a residential sales customer using 75 thousand cubic feet (Mcf) per year will see increases in their monthly bills as follows: (1) an increase from $99.52 to $101.02 or by 1.5% on January 1, 2021; (2) an increase from $101.02 to $102.53 or by 1.5% on July 1, 2021; and (3) an increase from $102.53 to $104.78 or by 2.2% on January 1, 2022, or a total increase of 5.2%. If the Company’s entire request had been approved, the total bill for a residential customer using 75 Mcf per year would increase from $99.52 to $110.68 per month, or by 11.2%. The total bill for a commercial customer using 342 Mcf of gas purchased from PGW per year will see increases in their monthly bills as follows: (1) an increase from $351.92 to $355.38 or by 1.0% on January 1, 2021; (2) an increase from $355.38 to $358.84 or by 1.0% on July 1, 2021; and (3) an increase from $358.84 to $363.99 or by 1.4% on January 1, 2022. If the Company’s request had been approved as proposed, the total bill for a commercial customer using 342 Mcf of gas per year would have increased by 3.3%. R.D. at 59. [↑](#footnote-ref-15)
15. The stay-out provision does not include requests for emergency or extraordinary rate relief that may be made pursuant to Section 1308(e) of the Code, 66 Pa. C.S. § 1308(e), tariff changes required or authorized by PUC order or industry-wide changes in regulatory policy which affect PGW’s rates. [↑](#footnote-ref-16)
16. Joint Petition ¶ 45. [↑](#footnote-ref-17)
17. Joint Petition at ¶ 18. [↑](#footnote-ref-18)
18. Joint Petition at ¶ 19. [↑](#footnote-ref-19)
19. Joint Petition at ¶¶ 12 and 22 (c)-(d). [↑](#footnote-ref-20)
20. Joint Petition at ¶ 22(b). [↑](#footnote-ref-21)
21. *Id.* [↑](#footnote-ref-22)
22. *Id.,* 66 Pa. C.S. § 1405. [↑](#footnote-ref-23)
23. Joint Petition at ¶ 22(g). [↑](#footnote-ref-24)
24. *CS Water and Sewer* at 771. [↑](#footnote-ref-25)
25. 52 Pa. Code § 69.2702(b). [↑](#footnote-ref-26)
26. 66 Pa. C.S. § 1308(d). [↑](#footnote-ref-27)
27. *Joseph Horne* at 1111. [↑](#footnote-ref-28)
28. *Columbia Gas of Pa., infra.*, *see also, Pennsylvania American cited infra.* [↑](#footnote-ref-29)
29. *Pa. PUC v. UGI*, Docket No. R-2019-3015162 (Order entered October 8, 2020). [↑](#footnote-ref-30)
30. *See, e.g*., *Pa. PUC v. UGI Utilities, Inc. Gas Div*., Docket No. R‑2018‑3006814 (Opinion and Order entered Oct. 4, 2019), at Ordering ¶ 3. [↑](#footnote-ref-31)
31. PGW cites to Chairman Gladys Brown Dutrieuille’s commendation of the parties’ use of a rate case settlement in which a rate increase was afforded to UGI, but relief also afforded to customers experiencing hardship due to COVID-19. *See Pa. PUC v. UGI Utilities, Inc.- Gas Division*, Docket No. R-2019-3015162, *(UGI),* Statement of Chairman Dutrieuille. [↑](#footnote-ref-32)
32. As noted by the OCA, the COVID-19 Relief Plan was negotiated as a part of the settlement compromise and not an initial proposal in PGW’s initial rate filing. OCA Exc. at 10, n. 10. [↑](#footnote-ref-33)
33. *See also*,OCA Exc. at 5. [↑](#footnote-ref-34)
34. The Recommended Decision denied the Environmental Stakeholders’ position that PGW’s rate increase should be denied in its entirety and the Environmental Stakeholders did not file Exceptions challenging this recommendation. Furthermore, the Environmental Stakeholders did not take a position on whether the Partial Settlement should be approved or rejected in its Replies to Exceptions. [↑](#footnote-ref-35)
35. The General Gas Works Revenue Bond Ordinance of 1998, approved on May 30, 1998, Bill No. 980232, as amended and supplemented from time to time (the “1998 General Ordinance”) and the General Gas Works Revenue Bond Ordinance of 1975, approved on May 30,1975, Bill No. 1871, as amended and supplemented from time to time (the “1975 General Ordinance”) (collectively referred to as the “Bond Ordinance”). [↑](#footnote-ref-36)
36. The Partial Settlement is a “black box” settlement, in which the Parties have not specifically reached an agreement on each of the disputed accounting and ratemaking issues raised in this matter, including cost of capital issues. Therefore, because of the disagreements over various components of the Company’s revenue requirement calculation, it is not possible to precisely determine the extent of the accuracy to which Attachments A and B of PGW’s Exceptions calculate levels of cash, debt service coverage and other financial metrics necessary to enable PGW to pay its bills and maintain access to the capital markets at reasonable rates. No party has filed Replies to Exceptions challenging PGW’s Exhibit A calculations showing the anticipated negative financial impact, which is based in PGW’s record evidence. [↑](#footnote-ref-37)
37. *See Columbia Gas, Pennsylvania American Water, supra,* and 66 Pa. C.S. § 1308(d). [↑](#footnote-ref-38)
38. Environmental Stakeholders M.B. at 15, R.D. at 80. [↑](#footnote-ref-39)
39. The ALJs also recommended that the Commission should reject the Environmental Stakeholders’ challenge to prepaid gas contracts for being an issue that is outside the scope of this base rate case. The ALJs noted that, if the Environmental Stakeholders wish to challenge PGW’s prepaid gas contracts, PGW’s Section 1307(f) Gas Cost Rate proceeding, and not a base rate case, is the appropriate forum to raise such issues. This issue was not stated as a reserved issue for litigation and we decline to address it here, as it clearly is not relevant to this base rate proceeding. [↑](#footnote-ref-40)