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September 2, 2020

Via E-Filing

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

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

Dear Secretary Chiavetta:

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

If you have any questions, please contact us.

Sincerely,

Daniel Clearfield

DC/lww

Enclosure

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

CERTIFICATE OF SERVICE

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

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Dated: September 2, 2020



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PHILADELPHIA GAS WORKS REPLY BRIEF

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Dated: September 2, 2020

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I. SUMMARY OF REPLY ARGUMENT

The Clean Air Council and Sierra Club, Pennsylvania Chapter (the “Environmental Stakeholders” or “Stakeholders”) have attempted to use PGW’s rate case as a platform to raise concerns about climate change and to advance their own environmental policy goals. The Environmental Stakeholders take the position that PGW’s entire rate request should be denied until PGW has created a plan that would result in it essentially abandoning its main replacement program.

The Pennsylvania Public Utility Commission (“Commission” or “PUC”) should reject the Stakeholders’ recommendation to deny PGW’s proposed rate increase. The Stakeholders’ recommendation is based on the faulty and unsupported assertions that PGW’s proposed infrastructure modernization program is imprudent. As discussed extensively in PGW’s Main Brief, PGW’s infrastructure improvement plan – which consists entirely of replacing “at risk” mains – cast iron main and bare steel services – was proposed and approved by the Commission several years ago in PGW’s Long-Term Infrastructure Improvement Plan (“LTIIP”) and endorsed in several subsequent PUC orders. Here, PGW merely requests recognition of the incremental cost of making these necessary improvements consistent with those prior filings. The current plan for the replacement of cast iron main and bare steel services was implemented, pursuant to recommendations made by Commission Staff, to address critical safety-related issues; it would be imprudent and a violation of PGW’s obligations under the Public Utility Code to provide adequate, efficient, safe and reasonable service to abandon this effort as the Stakeholders demand.

Further, the Environmental Stakeholders’ assertions that PGW has acted imprudently, has failed to consider alternatives to its infrastructure improvement plan, or has otherwise failed to

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

The record also supports adoption by the Commission of the customer charges agreed to by the parties to the Settlement. The Cost of Service Study presented by PGW witness Constance Heppenstall demonstrates that an increase in customer charges is warranted and consistent with cost causation principles. The Environmental Stakeholders did not point to any specific concerns with this study. The record evidence also demonstrates that PGW's Universal Service Programs will significantly reduce, or eliminate, the effect of the rate or customer charge increases on participating low-income customers. Moreover, the proposed increase in customer charges, which is only a small percentage of the total bill, will not impede energy conservation efforts. The lack of fact-based analysis prepared by the Environmental Stakeholders, coupled with their general, unsupported policy arguments, renders their muddled position on customer charges indefensible.

The preparation of a so-called Climate Business Plan ("CBP"), as recommended by the Stakeholders, is also not appropriate and should be rejected for a number of reasons, including a lack of Commission jurisdiction to mandate a CBP study and the mistaken assumption that PGW has not adequately considered climate trends and environmental impacts in its infrastructure planning.

PGW has also demonstrated that its main replacement program costs are reasonable. PGW has undertaken several cost-reduction measures, all replacement work is awarded pursuant

to Requests for Proposals awarded to the lowest responsible bidder, and its replacement costs per mile are within the range of other Pennsylvania natural gas distribution companies. Moreover, this issue, which was raised by the Commission's Bureau of Investigation and Enforcement ("BI&E") in its testimony, was resolved in the settlement with BI&E and the other settling parties.

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

In making their recommendations, pipeline safety seems to be an inconvenient problem for the Environmental Stakeholders. The evidence demonstrates that the Stakeholders' recommendation to address pipeline safety by engaging in safety-related distribution system maintenance is a dangerous strategy and not appropriate for a company with such a high percentage of cast iron main, a safety concern previously recognized by Commission staff.

The law is also clear that the Commission lacks jurisdiction over the environmental policy recommendations that the Environmental Stakeholders want the PUC to adopt. The Stakeholders' attempt to characterize their issues and recommendations as being in line with typical expense adjustments is inaccurate and based on a misunderstanding and flawed

interpretation of the law. Certainly, the Commission has the authority to question levels of expenses and plant additions claimed in utility rates cases. Here, however, the 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). To extend the Commission's jurisdiction to cover the issues and recommendations of the Environmental Stakeholders would allow the Commission's jurisdiction to be virtually limitless, a power the legislature has not granted to the Commission.

Finally, the Administrative Law Judges ("ALJs") and the Commission should reject the Environmental Stakeholders' challenge to prepaid gas contracts for being improper testimony and an issue that is outside the scope of this base rate case. 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.

For the reasons expressed below, the Commission should reject the recommendations of the Environmental Stakeholders and approve PGW's proposed rate increase, as modified by the Settlement in this case.

II. LEGAL STANDARDS

A. Cash Flow Method

PGW fully briefed the issue of the cash flow method of establishing municipal utility rates.¹

B. Policy Statement

PGW fully briefed the issue of the Commission's underlying policy statement.²

¹ PGW MB at 10.

C. Rates Must Be Just and Reasonable

1. The Commission Has Jurisdiction Over the Justness and Reasonableness of PGW's Rates

PGW has also fully addressed the Section 1301 standard of “just and reasonable rates.”³

2. The Commission's Jurisdiction Does Not Include Ordering PGW to Undertake Planning to Reduce Greenhouse Gas Emissions Under the Guise of Establishing Just and Reasonable Rates for PGW

The Environmental Stakeholders misstate the law in their Brief when they attempt to characterize their position in this case as a typical expense adjustment. The Stakeholders are not asking the Commission simply to “consider any fact evidence relevant to the justness and reasonableness of PGW's rates.” Rather, they are asking the Commission to make an affirmative ruling upon the effect of PGW's operation on the environment and to determine whether PGW should be forced to implement “potentially cost-effective alternatives,” (*i.e.*, convert PGW to renewable-based, all-electric service and phase out PGW's distribution operations due to its fossil fuel content).

The Environmental Stakeholders' request is not at all like a rate case ruling on “labor markets, health insurance, pension plans, or bond markets.”⁴ Recovery of those costs is considered through the lens of rate case constructs, such as whether the costs are known and measurable or recurring or outside of the test year and focuses on whether those expenses should be recovered in rates. Here, the Environmental Stakeholders are asking the Commission not only to deny costs but to ultimately shut PGW down based upon projected climate change concerns.

² PGW MB at 11-12.

³ PGW MB at 12-15.

⁴ *See* ES MB at 50, 52 (citations omitted).

The Stakeholders' claim here is equivalent to the Commission determining, for example, that the salaries paid to its workforce were too high and then not only adjusting test year expenses to reflect a lower, reasonable amount and but also directing the utility to lower salaries to all employees. The assertion of jurisdiction to affect the actual salaries of utility workers is plainly outside of the Commission's expertise and jurisdiction.

Certainly, the Commission has the authority to question levels of expenses and plant additions claimed in utility rates cases and propose associated rate adjustments. But none of the cases cited by the Environmental Stakeholders⁵ support Commission jurisdiction over the actual activity giving rise to the expense. In the first case cited, which involved environmental remediation, it was "[the Department of Environmental Regulation ("DER")] [that] ordered Columbia to undertake an investigation of the site because DER had discovered coal tar residue in a bordering creek."⁶ The sole question decided by the PUC was whether the expense incurred was outside of the test year and, thus, unrecoverable. "Accordingly, we agree with the Commission that recovery of the expenses incurred before the future test year would be retroactive ratemaking."⁷ The other environmental cost related case cited in the Stakeholders' brief did not impose any environmental review or cost; it simply preserved the utility's future right to claim the associated expenses in a future proceeding.⁸

Under the Stakeholders' logic, the Commission's jurisdiction would be virtually limitless, because any and all Company activities and expenditures could be ruled imprudent based on the PUC's independent view, even if violative of another agency's jurisdiction, and outside the

⁵ ES MB at fn. 208, 225.

⁶ *Columbia Gas v. Pa. Pub. Util. Comm'n*, 613 A.2d 74, 76 (Pa. Commw. 1992).

⁷ *Id.* at 78.

⁸ *Joint Appl. of NUI Corp., C&T Enterprises, Inc. & Valley Energy, Inc.*, Docket Nos. A-125100 and A-120001F2000, 2002 WL 34560229 (Order entered Feb. 8, 2002).

Commission's own. Then, pursuant to the Stakeholders' logic, the utility could be ordered to modify its operations to comply with the PUC's view of "prudence." Such an expansive interpretation of the Public Utility Code would grant the Commission the authority to rule *de novo* on any matter by waving the flag of prudence. This is not, and never has been, the law.

PGW does not maintain that the Commission cannot review environmental expenses for recovery in rates. But this Commission does not possess the power, as part of such a prudency adjustment, to force an outcome outside of its jurisdiction – in this circumstance, a plan to reduce or eliminate greenhouse gas emissions, in order to (allegedly) protect the environment.

D. Burden of Proof

In their recital of how the burden of proof operates, the Stakeholders fail to acknowledge their own burden.

As explained in PGW's Main Brief, PGW has the burden of proving that the requested rates are just and reasonable.⁹ PGW must satisfy its burden of proof by a preponderance of the evidence, which "means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party."¹⁰ While a similar burden is not placed on other parties to justify a proposed adjustment to the Company's filing,¹¹ the party proposing an adjustment to a ratemaking claim bears the burden of going forward with evidence to respond to the utility's *prima facie* case of the reasonableness of its proposed rates.¹²

⁹ PGW MB at 15-17.

¹⁰ *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at *29 (Pa. Commw. Ct. June 2, 2020) (citing *Energy Conservation Council of Pa. v. Pa. Pub. Util. Comm'n*, 995 A.2d 465, 478 (Pa. Commw. 2010)).

¹¹ *PUC v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098, et al., Opinion and Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 19, 2016 Pa. PUC LEXIS 62.

¹² *See, e.g., Pa. Pub. Util. Comm'n v. PECO*, Docket No. R-891364, et al., Opinion and Order entered May 16, 1990, 1990 Pa. PUC LEXIS 155; *Pa. Pub. Util. Comm'n v. Breezewood Telephone Company*, Docket No. R-901666, Opinion and Order entered January 31, 1991, 1991 Pa. PUC LEXIS 45.

However, a party that offers a proposal not included in the Company's original filing bears the burden of proof for such proposal.¹³ For example, the provisions of PGW's existing tariff have been deemed just and reasonable,¹⁴ and parties challenging a previously-approved tariff provision or program bear a "heavy burden"¹⁵ to demonstrate that the Commission's prior approval is no longer justified.¹⁶

As explained herein and in PGW's Main Brief: (1) PGW has met its burden of proving that the rate increase proposed in its Joint Petition for Partial Settlement is just and reasonable by a preponderance of the evidence; and (2) the Environmental Stakeholders have failed to meet their burden to justify their proposals, including the filing and approval of a "Climate Business Plan," which were not a part of PGW's initial filing.

Further, the Environmental Stakeholders have not met their "heavy burden" to show that PGW's previously approved main replacement program is no longer reasonable or prudent. Therefore, the Environmental Stakeholders' arguments and proposals must be rejected, and PGW's rate increase should be approved as outlined in the Joint Petition for Partial Settlement.

III. ARGUMENT

A. Overall Position on Rate Increase

¹³ See Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), which provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at *29-30 (Pa. Commw. Ct. June 2, 2020).

¹⁴ The law presumes an existing tariff is just and reasonable. See, e.g., *Brockway Glass v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Commw. Ct. 1981); *Zucker v. PUC*, 401 A.2d 1377 (Pa. Commw. 1979); *U.S. Steel Corporation v. Pa. Pub. Util. Comm'n*, 390 A.2d 865 (Pa. Commw. Ct. 1978); *Deitch Company v. Pa. Pub. Util. Comm'n*, 203 A.2d 515 (Pa. Super. 1964).

¹⁵ See *Respond Power, LLC v. Pennsylvania Electric Company and Respond Power, LLC v. West Penn Power Company*, Docket Nos. C-2016-2576287 and C-2016-2576292 (Order entered July 13, 2017).

¹⁶ A party challenging an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenango Twp. v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Commw. 1996).

In the Argument section of their Main Brief, the Environmental Stakeholders double down on false claims that no rate increase is appropriate, continuing to argue that “[r]esponsible stewardship of customer dollars and prudent utility management depend on robust planning for operations in the real world.”¹⁷ Notwithstanding the slew of evidence refuting their contentions, the Stakeholders persist in their claim that PGW’s infrastructure modernization program is imprudent. The Stakeholders assert that PGW has failed to consider steps that, allegedly, would eliminate the need for the replacement of all, or significant portions, of its distribution system.¹⁸ But, in fact, these claims of faulty decision-making and lack of planning are based entirely on an abject lack of understanding of how a gas distribution system functions and the reasons for PGW’s modernization efforts.

As discussed extensively in PGW’s Main Brief, PGW’s infrastructure improvement plan – which consists entirely of replacing cast iron main and bare steel services¹⁹ – has been proposed and approved by the Commission several years ago in proceedings approving PGW’s Long-Term Infrastructure Improvement Plan (“LTIIP”) and Distribution System Improvement Charge (“DSIC”).²⁰ In this case, PGW merely requests recognition of the incremental base rate distribution system costs of making these necessary improvements, a relatively small portion of the rate increase – some \$5 million of PGW’s original, \$70 million request.²¹ PGW’s currently approved plan consists of replacing aging and unsafe cast iron main and bare steel services and

¹⁷ ES MB at 18.

¹⁸ PGW “simply has not done its homework;” “is making infrastructure investments ... with no evaluation of customer needs over the long-term;” “lack any examination of ... potentially cost-effective alternatives at every opportunity,” etc. ES MB *passim*.

¹⁹ PGW St. No. 7-RJ at 1-2.

²⁰ PGW St. No. 7-RJ at 1-2.

²¹ PGW St. No. 7-RJ at 1-2; PGW Late Filed Exhibit No. 1. PGW would continue to spend this amount at the \$35 million settlement rates.

was prompted in significant part by a Commission Staff report that found: “[C]ast iron and unprotected steel pipe are a threat to life and property; therefore, the Company must accelerate its infrastructure replacement and remove its at-risk pipe from service in a more aggressive manner than what is currently contemplated.”²² PGW witness Mr. Moser explained in more detail the safety concerns posed by cast iron mains:

Because of the nature of cast iron main, it is subject to catastrophic failure with little or no warning. Tragic accidents can and have occurred as a result of a cast iron main gas leaks where the leak likely started no more than thirty minutes before the incident. PGW could simply not sufficiently anticipate natural gas leaks on cast iron main and fix them quickly enough to maintain the system at a level of safety that PGW – and the Commission – requires.²³

Mr. Moser also testified that unprotected bare steel services are prone to multiple small leaks which are difficult to isolate and to address, and a failure to systematically replace unprotected bare steel services would result in an unacceptable level of leakage and increased safety risks. The Staff Report reached this same conclusion.²⁴ In fact, replacing cast iron main and bare steel services is actually designated a “best practice” by the U.S. Environmental Protection Agency (“EPA”) for combatting methane leakage.²⁵ For these reasons, Mr. Moser concluded that PGW could not abandon its main replacement program, which is specifically mandated in its LTIIP and is consistent with the PUC staff recommendations. “Even if PGW were not obligated to engage in its current main replacement program, it would still be necessary

²² *Inquiry into Philadelphia Gas Works’ Pipeline Replacement Program*, April 21, 2015, at 59, available at http://www.puc.state.pa.us/NaturalGas/pdf/PGW_Staff_Report_042115.pdf.

²³ PGW St. No. 7-RJ at 3.

²⁴ PGW St. No. 7-RJ at 4-5.

²⁵ Tr. 410; PGW Hearing Exhibit No. 2 (US EPA Methane Challenge Background - Best Management Practices Commitment Option).

and prudent because failing to do so would create an unacceptable safety risk to [PGW's] customers and the City of Philadelphia.”²⁶

The Environmental Stakeholders barely mention this extensive evidence pertaining to the safety considerations that are the basis of PGW's infrastructure improvement plan. But these facts remain: (1) PGW's “infrastructure modernization program” is needed to remove facilities that pose an unacceptable safety risk to the public; and (2) even if appropriate authorities ordered a greenhouse gas emissions reduction, PGW would, nonetheless, need to spend ratepayer funds to replace these facilities in order to reduce or eliminate these risks. In the face of these facts, it is unfathomable how the Stakeholders could, nonetheless, characterize PGW's infrastructure modernization program as an imprudent “lack of planning.” As stated in PGW's Main Brief, it would only be imprudent if PGW *abandoned* its infrastructure modernization efforts.²⁷

Of course, PGW plans for the future. The likelihood that there will be no future use for PGW's safe pipelines is pure conjecture and lacks any statutory or regulatory confirmation.

Commissioner Cawley referred to the scenario as “entirely speculative:”

There is simply no way to know now how or to what extent (if at all!) a definitive determination that natural gas will no longer be permitted to be utilized to heat the homes and businesses of Philadelphians. This is one of Sierra Club's policy goals but by no means established.²⁸

Instead, PGW is continually planning how to provide safe and reliable gas service as required under state law. Mr. Moser expressed it succinctly: “Unless that mandate is changed by law, the only way to [provide safe and reliable gas service] is to continue to replace the

²⁶ PGW St. No. 7-RJ at 5.

²⁷ PGW MB at 26.

²⁸ PGW St. No. 12-RJ at 2.

antiquated portions of its system and to systematically test the system to identify and repair leaks.”²⁹

All of Stakeholders witness Dr. Hausman’s contentions regarding the alleged unreasonableness of PGW’s present pipeline replacement program as well as his demand that PGW formulate (and the PUC approve) a CBP are premised on the assumption that a determination has been made that PGW as a natural gas distribution company cannot continue to exist if Pennsylvania is going to address climate change. This is not true.³⁰

In PGW’s view, the use of natural gas by homes and businesses in Philadelphia is, and should continue to be, part of any responsible and cost-effective effort to address climate change.³¹ PGW witness Mr. Stunder described how continued natural gas usage has led the energy sector in reducing carbon emissions and is a valuable part of America’s energy future.³²

Perhaps the Environmental Stakeholders’ most misleading accusation is that PGW should be deemed imprudent because it (allegedly) does not incorporate the reduction of greenhouse gas emissions into its planning. Again, Mr. Moser directly addressed this claim:

PGW’s main replacement program is and has been reducing greenhouse gas emissions. Removing leak prone piping materials such as cast iron and bare steel reduce the likelihood of current and future methane emissions.³³

PGW is also a participating member of the Natural Gas STAR Methane Challenge Program, a voluntary partnership between the U.S. Environmental Protection Agency (“EPA”) and oil and natural gas companies that “promote and track ambitious, transparent commitments to

²⁹ PGW St. No. 7-R at 11.

³⁰ PGW St. No. 7-R at 11.

³¹ PGW St. No. 1-R at 5-6; PGW MB at 9, 35-37.

³² PGW St. No. 1-R at 6-8; *see* PGW MB at 35-37.

³³ PGW St. No. 7-R at 10.

voluntarily reduce methane emissions beyond regulatory requirements.”³⁴ As mentioned previously, PGW adheres to several of the Methane Challenge “best practices” which includes replacing cast iron mains and bare steel services,³⁵ the exact activities that the Environmental Stakeholders criticize the Company for doing.

What the Stakeholders are really saying is that PGW has not factored into its planning yet-to-be proposed laws – which they hope will be enacted – that would outlaw the continued use of natural gas and any replacement throughput such as renewable gas. But the Commission has never imposed an obligation on utilities to plan to respond to speculative and uncertain contingencies which could threaten the utility’s ability to provide safe, adequate and continuous service.

1. PGW Has Fully Met Its Basic Duty to Consider Alternatives That Could Save Customers Money in the Near- and Long-Term

The idea that PGW has “neglected to consider *potentially* cost-effective alternatives to infrastructure spending, like energy efficiency and other non-pipeline alternatives” is repeated over and over again by the Environmental Stakeholders. But this criticism is not well founded.

As discussed, PGW has adequately considered energy efficiency in its planning. Notably, PGW’s sales are declining due to several factors, some of their own design, including the promotion of appliance efficiency and weatherization as explained in PGW’s Main Brief.³⁶ It is a complete invention, however, to say that “PGW simply does not view energy efficiency as

³⁴ PGW St. No. 7-R at 10.

³⁵ PGW’s Hearing Exhibit No. 2 (US EPA Methane Challenge Background - Best Management Practices Commitment Option), at 4-6.

³⁶ PGW MB at 37-39.

a means to reduce demand over the short- or long-term....”³⁷ Of course it does. It is only through manipulation of witness testimony that the Stakeholders can claim otherwise.³⁸ Considering PGW’s robust (and voluntary) Energy Efficiency and Conservation Program,³⁹ it is clear that energy efficiency is a goal shared by the Commission and the Company alike.

It is also a manipulation of the record to assert that Commissioner Cawley endorsed the Environmental Stakeholders’ thirty-five year planning horizon.⁴⁰ The Commissioner was merely confirming that completion of the pipeline replacement program would occur in 34 years “given the Commission’s mandate to get the job done and the available revenues to do it.”⁴¹

It is equally misleading to accuse Mr. Moser of stating that PGW’s planning is limited to “customers’ current needs[⁴²] ... with no thought to whether the investments will continue to provide value over their full expected useful life.”⁴³ Again, the Environmental Stakeholders seek to distort the time factor and shift focus from efficiency and replacement to the role of customer demand in current planning.

What Mr. Moser actually stated was that PGW has not “performed any studies on whether increased energy efficiency measures could enable avoiding the construction of any

³⁷ ES MB at 21. The Environmental Stakeholders’ claim is based upon a gross distortion of Mr. Moser’s testimony on cross-examination regarding whether efficiency is a decommissioning strategy for PGW to which the witness responded: “that’s part of our overall design of the system; and we do it in the near term because we need to continue to supply the customers, but we have not analyzed out over a 35-year period.” Tr. 318-319; *Id.*

³⁸ Nor is it true that there has been a “failure to even consider alternatives that may be less costly, less risky, and safer....” ES MB at 21. There is a citation to Mr. Stunder’s on-the-record examination at “343:9–344:16” but this passage contains no reference to pipeline replacement alternatives. Again, the claimed record support evaporates upon review.

³⁹ See ES Hearing Exh. 4, PGW Response to CAC-I-2.

⁴⁰ “Prudent utilities plan infrastructure investments in light of long-term need and risks, using all the alternatives at their disposal to reduce customer cost and risk.” ES MB at 21, *citing* Tr. 278:17–279:6.

⁴¹ Tr. 281.

⁴² ES MB at 21, *citing* ES Hearing Exh. 10 (*citing* PGW’s Response to ES Interrogatories Set I, No. 8.a.) which states that the Company sizes its distribution system to meet current customer demand.

⁴³ ES MB at 21, *citing* Tr. 325:4-12.

additional mains or services *over the next 35 years.*”⁴⁴ This is quite understandable given the speculative nature of any such inquiry. Mr. Moser also agreed that main replacement is based upon “current demand.”⁴⁵ The Stakeholders do not explain what is wrong with meeting current demand. In fact, the Company has a legal obligation to do so.

Again, contrary to the Stakeholders’ claims, reductions in demand have been fully factored into PGW’s pipeline replacement program.⁴⁶ Mr. Moser directly refuted Dr. Hausman’s claim in this regard:

Actually, PGW’s main replacement planning is an analysis of whether mains that otherwise should be replaced can be abandoned because of reductions in demand. In fact[,] PGW has abandoned 13.5 miles of cast iron main from 2004 to 2019 rather than replace it.⁴⁷

Furthermore, it is entirely fictitious to assert that efficiency can be a substitute for safety related pipeline replacement. One cannot manage pipeline safety through appliance efficiency and household weatherization. As Mr. Moser testified:

... while energy conservation and efficiency programs reduce demand on an individual customer basis, it will not lead to a significant reduction in the size of an urban distribution system like PGW’s. Customers do not conserve to zero usage. PGW expects to continue abandoning main similar to historical results but it reasonably anticipates that any adjustments to size will be with pipe diameter size rather than the size of its distribution system.⁴⁸

2. PGW Has Fully Met Its Duty to Evaluate and Limit Customer Exposure to Stranded Asset Risks

⁴⁴ Tr. 324 (emphasis added).

⁴⁵ Tr. 325.

⁴⁶ See PGW MB at 37.

⁴⁷ PGW St. No. 7-RJ at 5.

⁴⁸ PGW St. No. 7-RJ at 6 (emphasis added).

To convince the Commission to act, the Environmental Stakeholders allege that there will be “catastrophic and irreparable harm to the climate of the planet, as well as to the economy and livability of Philadelphia” due to climate change.⁴⁹ These projections are entirely derived from the testimony of the Stakeholders’ witness, a climate scientist that testifies regularly for the Sierra Club.⁵⁰ They also claim: “Neither PGW nor any other party has contested or rebutted these basic facts of climate change. The only question, then, is what to do with these facts.”⁵¹ In this argument, the Environmental Stakeholders directly contradict their prior position that they are not seeking for the Commission to make findings about climate change. Here, the Environmental Stakeholders are clearly asking the Commission to make findings about climate change and seeking remedial action. As discussed at length, the Commission simply does not have jurisdiction to grant this request.

The Stakeholders’ assertion also shows that their concerns are not really ones of prudence, but rather that they are actually seeking an order directing PGW to plan to go out of business. Once again, the prudence argument is based upon the future as projected by them; one in which “PGW may find itself unable to meet future requirements to decrease methane emissions.”⁵² In other words, PGW will be forced to close its doors. The legal and policy reasons why these arguments should be rejected have been previously address in this Reply Brief as well as PGW’s Main Brief.⁵³

⁴⁹ ES MB at 22.

⁵⁰ SC St. No. 1, Exh. EDH-1 at 4-8.

⁵¹ ES MB at 23.

⁵² ES MB at 25.

⁵³ PGW MB at 33-37.

The Stakeholders' claim is that PGW is acting imprudently by undertaking a modernization plan that not only has been directed by the PUC but has been endorsed (or not opposed) by all the other parties to this proceeding. In Paragraph 43 of the Partial Settlement, the Joint Petitioners, which include the PUC's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate, agreed that: "PGW will remain focused on cast iron main replacement and present a shortened timeframe for cast iron main replacement in its next LTIIP filing."

Moreover, it is particularly revealing that one of the two Environmental Stakeholders, the Clean Air Council, has previously recognized that the replacement of at-risk pipeline is important, having stated on its website:

Philadelphia Gas Works (PGW) is responsible for distributing natural gas to the city. PGW has a program to replace ageing pipes which often leak gas throughout the city, but it's underfunded. While leaks from major gas pipelines are well known as a major source of methane pollution, the cumulative effect of thousands of small-scale leaks shouldn't be ignored either. Our attorneys recently helped PGW ensure it could secure more funding to increase the pace at which its pipes are replaced.⁵⁴

It is impossible to reconcile this statement with the arguments now made. The Stakeholders arguments should be rejected.

3. The Commission Should Adopt the Customer Charge Agreed to In the Joint Petition for Partial Settlement

a. PGW's Proposed Customer Charges Appropriately Reflect Cost Causation Principles

It is noteworthy that the Environmental Stakeholders challenged PGW's proposed customer charges but failed to support their challenge with any cost or other fact-based analysis.

The Environmental Stakeholders made the bald claim that "the record does not support any

⁵⁴ PGW St. No. 12-RJ at 3, fn. 7, quoting <https://cleanair.org/waste-and-recycling/energy-efficiency/>.

change to the customer charge.”⁵⁵ This claim is patently false. PGW witness Constance Heppenstall fully supported PGW’s proposed customer charge increases in the Cost of Service Study she presented in this proceeding.⁵⁶ The lack of fact-based analysis prepared by the Environmental Stakeholders coupled with their general, unsupported policy arguments, render their muddled position indefensible. The Environmental Stakeholders’ arguments should be rejected and the ALJs and Commission should support the reasonable Settlement reached on customer charges and reflected in the Joint Petition for Partial Settlement.⁵⁷

The Environmental Stakeholders have a general misunderstanding regarding utility ratemaking.⁵⁸ They claim to have refuted PGW’s cost analysis by virtue of their policy-based criticisms of PGW’s proposed fixed customer charges increases.⁵⁹ But this “criticism” is illogical. A cost of service study is a separate component of ratemaking, clearly distinguishable from rate design. The Environmental Stakeholders claimed that PGW’s Cost of Service Study is “miscalibrated” but did not pinpoint any specific concerns with the study.⁶⁰ The Environmental Stakeholders declined to propose an alternative Cost of Service Study and did not challenge the calculation of the customer costs that were presented by PGW witness Ms. Heppenstall. Their challenges centered on PGW’s rate design (the proposed increase to fixed customer charges), not Ms. Heppenstall’s Cost of Service Study.

⁵⁵ ES MB at 32 (emphasis added).

⁵⁶ PGW Exh. CEH-1, Schedule G; PGW Exh. CEH-1R, Schedule G.

⁵⁷ Joint Petition at ¶ 24.

⁵⁸ ES MB at 38.

⁵⁹ ES MB at 38 (describing Dr. Hausman’s testimony on PGW’s fixed charge proposal as “directly challenging PGW’s cost of service study”).

⁶⁰ ES MB at 38.

The class cost of service study prepared by PGW witness Ms. Heppenstall demonstrated that the residential customer related costs far exceed the \$19.25 residential customer charge proposed in conjunction with the full \$70 million rate increase request, a proposed \$5.50 increase from the current, \$13.75 rate.⁶¹ PGW's revised Cost of Service Study reflects that residential customer related costs are \$26.54, supporting a customer charge almost 40% higher than the charge proposed by PGW.⁶² Even though PGW's revised Cost of Service Study supports a much higher increase in the residential customer charge, the Settlement reflects a modest \$1.15 increase for residential customers, phased in over 12 months.⁶³

The Environmental Stakeholders challenge increases to all customer charges, not just the residential customer charge.⁶⁴ Similar to the proposed increase for the residential customer charge, PGW's proposed increases to all other customer charges are supported by its calculation of customer costs that the Environmental Stakeholders neither acknowledge nor respond to. For example, PGW's revised Cost of Service Study supports a commercial customer charge of \$70.94. The Company proposed a commercial customer charge of \$32.75 (an increase of \$9.35 from the current \$23.40 rate), in the interest of gradualism, and settled on an increase in the customer charge of \$1.95, phased in over 12 months.⁶⁵

The proposed customer charge increases, therefore, are well grounded in cost causation principles, a legal requirement in Pennsylvania. In *Lloyd v. Pa. PUC*, the Commonwealth Court

⁶¹ Joint Petition at ¶ 24; PGW St. No. 6 at 7.

⁶² PGW Exhibit CEH-1R, Schedule G.

⁶³ Joint Petition at ¶ 24.

⁶⁴ ES MB at 32.

⁶⁵ Joint Petition at ¶ 24.

of Pennsylvania characterized cost of service as the “polestar” for ratemaking.⁶⁶ In other words, *Lloyd* found that the “directing principle” for determining the level of revenue for different rate classes should be the cost of providing service to those rate classes. PGW evaluated the cost of providing service to the various rate classes and rate elements, consistent with the directives in *Lloyd*. The Commission has found that a class cost of service study serves as a guide in setting rates.

Notwithstanding, the Environmental Stakeholders claim that PGW’s proposed rate increase should be denied because it has not “studied how increasing the customer charge would impact any of its customers.”⁶⁷ However, in doing so, they do not identify any case precedent to support their view. Their attempt to reinvent ratemaking standards should be rejected.

In fact, the increases in the Partial Settlement are a fraction of those originally proposed by PGW; the residential customer charge increase of \$1.15, starting in January 2022, is virtually identical to the hike recommended by the OCA.⁶⁸

Moreover, the overall increase, including these customer charge increases, are significantly below PGW’s original proposal. For example, if the Commission approves the Settlement, a residential customer using 75 Mcf per year will see increases in their monthly bills as follows: (1) an increase of 1.5% on January 1, 2021; (2) an increase of 1.5% on July 1, 2021; and (3) an increase of 2.2% by January 1, 2022. If the Commission approves the Settlement, 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 of 1.0% on January 1, 2021; (2) an increase by

⁶⁶ *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Commw. 2006).

⁶⁷ ES MB at 34-35.

⁶⁸ See Joint Petition, Statement A, PGW Statement in Support, at 18.

1.0% on July 1, 2021; and (3) an increase of 1.4% on January 1, 2022.⁶⁹ The Settling Parties have found that these increases reflect a reasonable compromise and are in the public interest.⁷⁰ The Environmental Stakeholders did not bother to actually consider these levels of increase and presented no evidence that they were somehow unreasonable.

While PGW's proposed customer charges appropriately reflected cost causation principles, PGW agreed to the customer charges in the Settlement in light of the unprecedented disruptions and challenges presented by the COVID-19 pandemic.⁷¹ The customer charges presented in the Settlement – as well as the overall increases – are in the public interest and should be adopted.⁷²

b. PGW's Universal Service Programs Will Significantly Reduce or Eliminate the Effect of the Rate Increase on Participating Low-Income Customers

The Environmental Stakeholders' claim that low-income customers will be disproportionately harmed by increases to the fixed customer charge reflects a general lack of understanding regarding: (1) the correlation between low-income customers and natural gas consumption or usage in PGW's service territory; and (2) PGW's low-income customer programs.⁷³ The Environmental Stakeholders' arguments with regard to low-income customers are based on the faulty assumption that low-income customers tend to be low-use customers. As PGW witness H. Gil Peach detailed in his testimony, there are numerous indications that low-

⁶⁹ Joint Petition, Statement A, PGW Statement in Support, at 15-16.

⁷⁰ Joint Petition at ¶ 14.

⁷¹ Joint Petition at ¶ 14.

⁷² Joint Petition at ¶ 14.

⁷³ ES MB at 33.

income natural gas customers in Philadelphia tend to be high-use customers.⁷⁴ For low-income customers participating in PGW’s Customer Responsibility Program (“CRP”), their tendency is high-usage. Thus, increasing the fixed portion of the customer charge does not disproportionately impact low-income customers.⁷⁵ The Environmental Stakeholders provided no data to support any other conclusion.

Moreover, as PGW witness Cawley testified, “for participating low-income customers, the Company’s universal service programs will significantly reduce or eliminate the effect of the rate increase altogether.”⁷⁶ This is because CRP customers on PGW’s “Percentage of Income” Plan will actually not see any effect of the (very modest) rate increase proposed in the Settlement.⁷⁷ He further emphasized that PGW’s customers have “substantial options available to receive economic aid should they need it.”⁷⁸ In addition to the various low-income customer programs available at this time, the Settlement proposes a COVID-19 relief plan that would further assist customers in need.⁷⁹

While the Environmental Stakeholders paint a picture of PGW burdening customers for greater financial stability for itself, they fail to take into consideration the unique nature of PGW. PGW has no shareholders and does not pay a rate of return to its owner.⁸⁰ Any expenditures incurred by PGW or required by the Commission must ultimately be paid by ratepayers. The

⁷⁴ PGW St. No. 11-R at 31-32.

⁷⁵ PGW St. No. 11-R at 32.

⁷⁶ PGW St. No. 12-R at 6.

⁷⁷ PGW St. No. 9-R at 34-35. Customers who are charged on the basis of a CRP Average Bill will also not see any initial increase as their average bill remains the same until they are recertified in the program, or until the bill amount is reviewed and adjusted as provided in the Joint Petition at ¶ 33.c.

⁷⁸ PGW St. No. 12-R at 29.

⁷⁹ Joint Petition at ¶ II.B.

⁸⁰ PGW St. No. 1 at 2.

proposed rate increase (including the proposed customer charge increases) and the increased stability created by recovering costs through a fixed charge will help reduce PGW's dependence on expensive long-term debt and insure it the ability to maintain its financial health.⁸¹ Consequently, the proposed customer charges are in the public interest as it is in the best interest of ratepayers to avoid deterioration in PGW's financial stability.

c. The Proposed Increase in Customer Charges Will Not Impede Energy Conservation Efforts

The Environmental Stakeholders' concern that the proposed increases in customer charges will impede energy conservation efforts is without merit. Their demand that any additional revenues be recovered only through volumetric charges should be denied. The Environmental Stakeholders failed to cite a single Commission precedent that supports applying an increase only to volumetric charges when cost considerations dictate otherwise, presumably because such an approach is contrary to longstanding Commission ratemaking and cost causation principles.

The Environmental Stakeholders challenge PGW's entire proposed increase because PGW did not quantify the degree of the customer charge impact to customers and their customers' conservation efforts. Their assertions, however, are at odds with evidence presented by PGW witness Kenneth Dybalski. Mr. Dybalski explained that the proposed customer charge will still only be a small percentage of the total proposed rate increase. In evaluating PGW's proposals, he found that a mere 17% of a residential customer's annual bill would consist of the fixed customer charge. His evaluation demonstrated that over 80% of a residential customer's bill would be based on volumetric rates, providing necessary price signals and an incentive to

⁸¹ See PGW MB at 17-19.

conserve energy.⁸² At the lower customer charge increases contained in the Settlement, this percentage (of revenue collected in volumetric rates) will be even larger.

The proposed increase in customer charge agreed upon by the Settling Parties is \$1.15 for residential customers, phased in over 12 months. Such an approach is reasonable, fair and in the public interest and should be adopted by the Commission.

d. Weather Normalization Adjustment Clauses and Fixed Customer Charges are Standard Components of Natural Gas Utilities' Rate Designs

The Environmental Stakeholders view an increase to fixed customer charges as a “moral hazard.”⁸³ Their position should be interpreted as general opposition to the ratemaking design and procedures that the Commission has supported and approved for years. The Environmental Stakeholders complain that it is unfair that PGW utilizes a Weather Normalization Adjustment Clause and is seeking an increase in fixed customer charges. Perhaps a more appropriate avenue for their complaints would be through legislative change that establishes new ratemaking principles for regulated industries.

PGW's Weather Normalization Adjustment Clause is not at issue in this proceeding, but defense of the mechanism appears prudent based on arguments inappropriately raised for the first time in the Environmental Stakeholders' Main Brief. It is common for natural gas utilities to have a Weather Normalization Adjustment mechanism.⁸⁴ PGW has had a Weather Normalization Adjustment Clause in place since 2002.⁸⁵ This reflects the Commission's continued approval and support of such a mechanism as part of PGW's rate design.

⁸² PGW St. No. 6-R at 6.

⁸³ ES MB at 36.

⁸⁴ *Regulatory Assistance Project Report*, ES Exh. EDH-2 at D-10.

⁸⁵ PGW Initial Filing at Vol. I (Part 1 of 3), Response to II.A.4, *Renewed Energy in Philadelphia* at vi.

PGW's Weather Normalization Adjustment Clause adjusts PGW's revenue recovery based on actually experienced sales compared to weather normalized sales. Contrary to the impression left by the Stakeholders' new argument, the Weather Normalization Adjustment Clause does not solely benefit PGW; it charges customers when actual degree days are less than the standard used (twenty year historical average) and provides customers with a credit when degree days are greater than the historical average (i.e., when the weather is colder than the twenty year historical average). It is significant that Moody's Investors Service has found PGW's Weather Normalization Adjustment Clause as "key to the utility's financial stability."⁸⁶ As mentioned above, it is in the public interest (and in the best interest of ratepayers) to maintain PGW's financial stability.

The Environmental Stakeholders' position is so extreme that they refer to increased customer charges as a "new mechanism" to shift the risk of weather variations onto customers. The Commission has previously approved increases in PGW's (and other natural gas distribution companies') fixed customer charges in numerous base rate case proceedings.⁸⁷ This is because, under standard rate design, customer-related costs are collected through a fixed customer charge.⁸⁸ As expressly predicated in *Lloyd*, customer charges are to reflect customer costs. PGW's initial customer charge proposal, and the customer charge proposal in the Settlement, moves customer classes closer to the full cost of service. As such, the proposed customer charges in the Settlement should be approved as they are just, reasonable and in the public interest.

⁸⁶ PGW Exh. JFG-3, Part 1 of 3, at 4.

⁸⁷ See, e.g., *PA PUC, et. al. v. PGW*, Opinion and Order, Docket No. R-2017-2586783 (Nov. 8, 2017).

⁸⁸ *Pennsylvania Public Utility Commission - A Guide to Ratemaking*, at 148, available at http://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf.

4. Preparation of a Climate Business Plan Is Not Appropriate and Should Not Be Required

The principal contention of the Environmental Stakeholders is the demand that PGW should be directed to draft an “integrated Climate Business Plan” (“CBP”) or similar document that would be publicly reviewed after hearings and approved by the PUC.⁸⁹ The CBP is envisioned by the Environmental Stakeholders as a “going-out-of-the-natural-gas-business” plan, since “[d]oing otherwise risks creating burdensome stranded assets as the Company ultimately is forced to dramatically reduce, and then eliminate, gas sales.”⁹⁰

There are numerous infirmities with this demand,⁹¹ all of which were addressed in PGW’s Main Brief, and include:

- Nowhere in the law is there any grant of authority to the Commission by the Legislature, either directly or indirectly, to regulate greenhouse gas emissions of the utilities or to mandate a CBP to study the subject.⁹²
- The scenario for which PGW would have to plan is “complete speculation.”⁹³
- The CBP exercise is based on the mistaken assumption that PGW has not adequately considered climate trends and environmental impacts in its infrastructure planning.⁹⁴
- Elements of the CBP as generally sketched out by Dr. Hausman include efficiency, weatherization, and energy audit. These are objectives that the Commission and PGW have been pursuing for years and which need no further study.⁹⁵
- Dr. Hausman provides no specifics of how PGW is expected to prepare the CBP that he recommends.

⁸⁹ ES MB at 28-30.

⁹⁰ SC St. No. 1 at 11.

⁹¹ Beyond the fact that the Stakeholders want to hold the rate case hostage to it.

⁹² PGW MB at 29-32.

⁹³ PGW MB at 33.

⁹⁴ PGW MB at 37

⁹⁵ PGW MB at 37.

- Climate change is an emerging concern and being debated at all levels of government and industry. It is unrealistic and unfair to expect PGW to lead the debate and propose the solution before then.⁹⁶

The issues underlying a CBP will be controversial and resolution of them difficult. Dr. Hausman's exhibit of his Sierra Club comments before Public Service Commission of the District of Columbia ("PSCDC")⁹⁷ demonstrates this point dramatically. In a docket before the PSCDC involving AltaGas Ltd.'s acquisition of Washington Gas Light, the applicants agreed to prepare a CBP as part of a settlement.⁹⁸ Preparation of the study by Washington Gas Light took almost two years. As filed on March 16, 2020,⁹⁹ the plan "achieves ... 100 percent carbon neutrality associated with the use of natural gas by 2050" and acknowledges the continued operation of Washington Gas past that date.¹⁰⁰

Dr. Hausman roundly condemned the Plan on multiple levels arguing that:¹⁰¹

- it "is plagued with unrealistic projections"
- it "routinely brush[es] aside uncertainties in key assumptions of a magnitude that, if reasonably considered, would likely overwhelm the studies' finding."
- it "relies upon misleading nomenclature"
- it uses a "false comparison to a poorly defined alternative to support its conclusions"
- "many key assumptions on which the authors rely in both studies are either unreferenced, or are referenced to unreliable and biased sources such as the American Gas Association..."

⁹⁶ PGW MB at 40.

⁹⁷ Introduced as Exhibit B to SC St. No. 1.

⁹⁸ *In the Matter of The Merger of AltaGas Ltd. And WGL Holdings, Inc.*, Formal Case No. 1142, Order No. 19396 (June 29, 2018).

⁹⁹ Introduced as Exhibit A to SC St. No. 1.

¹⁰⁰ *In the Matter of The Merger of AltaGas Ltd. And WGL Holdings, Inc.*, Formal Case No. 1142, Public Notice (March 20, 2020); https://washingtongasclimatebusinessplan.com/wp-content/uploads/2020/03/AltaGas-Ltd_CB_P_2020_v6.3_Overview.pdf.

¹⁰¹ Exhibit EDH-9 Sierra Club, Comments and Request to Institute an Evidentiary Proceeding, DC PSC Formal Case No. 1154 (June 15, 2020), at 5-6.

The Sierra Club is now seeking rejection and full evidentiary hearings from the PSCDC. AltaGas has stated that the merger settlement only required that the CBP be filed and public hearings held.¹⁰² It is apparent that, if the Commission granted the Stakeholders' request for PGW to produce a CBP in this case, the CBP would raise additional, controversial issues, which are, as discussed, beyond this Commission's jurisdiction to address. The Commission should not permit this kind of wide-ranging environmental investigation to occur under the guise of "prudent ratemaking."

B. Revenue Requirement

These subjects were fully addressed in PGW's Main Brief.¹⁰³

C. Rate Structure/Cost of Service

1. Cost of Service Study

This subject was fully addressed in PGW's Main Brief.¹⁰⁴

2. Revenue Allocation

This subject was fully addressed in PGW's Main Brief.¹⁰⁵

3. Rate Design

This subject is addressed in Section III.A.3 of this Reply Brief.

D. Customer Service

These subjects were fully addressed in PGW's Main Brief.¹⁰⁶

E. Tariff Revisions

¹⁰² *In the Matter of The Merger of AltaGas Ltd. And WGL Holdings, Inc.*, Formal Case No. 1142, Letter of AltaGas Ltd. to the PSCDC dated June 25, 2020.

¹⁰³ PGW MB at 40-43.

¹⁰⁴ PGW MB at 43.

¹⁰⁵ PGW MB at 43.

¹⁰⁶ PGW MB at 45-46.

These subjects were fully addressed in PGW's Main Brief.¹⁰⁷

F. Infrastructure Proposals

1. Main Replacement Program Costs Are Reasonable

a. PGW's Commission-Approved Accelerated LTIIIP Cannot Be Fulfilled Without a Rate Increase

Without the benefit of any supporting witness testimony, the Environmental Stakeholders, nevertheless, assert that PGW's existing LTIIIP "can be completed without additional revenues."¹⁰⁸ It does so at this juncture of its brief by pointing out that PGW has been successfully implementing both of its approved LTIIIPs. The Environmental Stakeholders' assertions are simply inaccurate.

First, it is a disservice to PGW, the Commission and the public to criticize the fact that PGW has been able to move its final replacement date for cast iron and unprotected steel from the 88 years contained in the first LTIIIP (originally over 100 years)¹⁰⁹ to the most recent projection of 40 years or less under the second LTIIIP.¹¹⁰ As fully detailed in PGW's Main Brief, this accomplishment is a product of a sustained effort by many to make PGW's distribution network safe and to do so as soon as possible.¹¹¹

PGW is maintaining the construction work identified and approved by the Commission under its LTIIIP and has accelerated its completion. "PGW completed the first LTIIIP under budget and exceeded its cast iron main removal mileage targets by 9%. The second LTIIIP is also

¹⁰⁷ PGW MB at 47.

¹⁰⁸ ES MB at 40.

¹⁰⁹ *Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program*, April 21, 2015, at 4.

¹¹⁰ PGW St. No. 7-R at 6.

¹¹¹ PGW MB at 23-26. The development and finalization of an LTIIIP is a public process pursuant to Act 11 of 2012. Neither of the Environmental Stakeholders participated in either of PGW's LTIIIP proceedings.

off to a strong start, on budget and 15% ahead in mileage removed.”¹¹² This is a point of pride for PGW and rightfully so.

b. PGW Has Fully Demonstrated the Need for Rate Relief to Continue Infrastructure Improvement in Compliance with Its LTIP

Next, the Environmental Stakeholders argue that PGW does not need rate relief to continue to perform in this manner. The Stakeholders rely on the fact that PGW is aggressively meeting its LTIP objectives to support their conclusion that the Company must not need any rate relief. They go so far as to claim: “The record does not explain, however, why PGW needs a rate increase to accelerate beyond its Commission-approved LTIP.”¹¹³ There are numerous fallacies here, as well as a complete misunderstanding of PGW’s finances and the cash flow method of ratemaking.

As a point of fact, PGW is not building beyond its second LTIP. The evidence cited by the Environmental Stakeholders shows that the pace toward the LTIP objectives has been sustained and is vigorous.¹¹⁴ It is ahead of schedule, but all projects are contained within the second LTIP.¹¹⁵ This should be viewed as a good thing, consistent with the objectives set by the Commission. PGW’s additional reducing of the open leaks back log cannot be viewed unfavorably either.

Moreover, PGW is not proposing here to accelerate its main replacement program. What the Environmental Stakeholders latch onto is Mr. Moser’s observation that if PGW had been awarded its full rate increase of \$70 million, its distribution revenues would go up. Since a

¹¹² PGW St. No. 7-R at 6.

¹¹³ ES MB at 41.

¹¹⁴ ES MB at 42.

¹¹⁵ PGW St. No. 7-RJ at 1-2; PGW Late Filed Exhibit No. 1.

major portion of its main replacement program is funded through its 7.5% DSIC, the rate increase would increase distribution revenue against which the 7.5% DSIC would be applied, thus producing more revenues for replacement.¹¹⁶ PGW would still be required to justify expending the additional DSIC funding in its next LTIP. Mr. Moser observed that if all of these things occurred PGW would be able to request an acceleration of its main replacement pace from approximately 40 years to approximately 35 years.¹¹⁷ Mr. Moser therefore was not proposing an acceleration of its main replacement program, he was describing a consequence of rate relief.

The main thrust of the Environmental Stakeholders' argument is also wrong. Of course, PGW addressed the need for rate relief as it affects continued pipeline replacement.¹¹⁸ The Environmental Stakeholders simply failed to digest and understand the rate case testimony filed by PGW. This statement, made by a party with no rate case experience, demonstrates a lack of understanding of the cash flow method of accounting and ratemaking. It is notable that the parties that specialize in rate setting, OCA, BI&E and OSBA, have all agreed that an additional \$35 million in annual base rate operating revenues is necessary.

Like any business, PGW (unlike publicly held utilities) needs to cover all of its expenses and maintain cash for operations. The Company relies upon two sources of funding: internally generated cash (from tariffed revenues) and bond financing. There are no equity shareholders and no ability to raise funds by stock issuance.

¹¹⁶ PGW St. No. 7 at 2.

¹¹⁷ PGW St. No. 7 at 2. Under the Settlement, any potential acceleration will be less because the amount of additional distribution revenues and DSIC charges will be less. PGW and the Settling Parties agreed that "PGW will...present a shortened timeframe for cast iron main replacement in its next LTIP filing." Joint Petition for Partial Settlement at ¶ 43.

¹¹⁸ The reference to unsatisfactory interrogatory answers is incomplete and confusing. ES MB at 41-42 citing PGW's Responses to Discovery Request ES-01-ES-01-20, -21. PGW did answer the question posed and clearly said "something in response." The request was to confirm numbers, not to offer an explanation. If the Stakeholders were dissatisfied with the answer, they should have raised the issue with PGW or filed a motion to compel. It did neither.

There are many factors driving the need for rate relief. As PGW witness Mr. Golden described:

Some of the key drivers for the requested base rate increase are: increasing health care costs, general higher costs of operations, and higher levels of capital spending financed by IGF [internally generated funds]. The statement of income as presented on an accrual basis, shows operating expenses remaining relatively the same in the FPFTY as the recent prior years. However, the increase in cash outlays for OPEB payments and cash outlays for pension payments are not seen because, as a result of the implementation of recent GASB pronouncements, some of these cash outlays are not recorded on the income statement (rather, on the balance sheet). Given that PGW's rates are based on the cash flow ratemaking methodology, these cash outlays must be considered as well. Other key drivers include increased capital spending for projects like the CIS replacement and building consolidation which are financed, in part, by internally generated funds. Additionally, debt service has increased.¹¹⁹

It is also not accurate to assert that this rate case is entirely due to the ongoing costs of implementing the LTIIP.¹²⁰ In fact, pipeline replacement is not a major driver of this rate request. PGW has simply requested recognition of the incremental cost of making these improvements under the latest LTIIP,¹²¹ which is a relatively small portion of the rate increase – some \$5 million of the \$70 million request.¹²² Yet, the Environmental Stakeholders recommend that the Commission deny the entire request.

In order to sustain the pace of construction, however, it is important to maintain the Company's cash flow and realize adequate debt service coverages and not allow them to atrophy under the weight of other expense increases. The significance of cash flow in meeting the Company's LTIIP obligation cannot be under estimated. Mr. Golden explained:

¹¹⁹ PGW St. No. 2 at 6.

¹²⁰ ES MB at 41.

¹²¹ PGW St. No. 7-RJ at 1-2.

¹²² PGW Late Filed Exh. No. 1.

In the last ten fiscal years, PGW has been able to finance approximately \$260.9 million of capital additions through IGF [internally generated funds from cash flow], which otherwise would have had to come from additional long-term borrowing... Thus, the rate increase requested by PGW is *critically necessary* to place the Company in a position to continue to modernize its infrastructure, take additional steps to make its distribution system safer and more efficient, and continue to improve customer service.¹²³

Generally, pipeline construction costs are financed through these two funding sources as

Mr. Stunder explained:

While some of those [construction] efforts have been financed through surcharges (i.e., the acceleration of PGW's main replacement program) and base rates, PGW issued revenue bonds in 2017 and uses 'pay as you go financing' from rate based internally generated funds.¹²⁴

Internally generated funds are a very large part of construction financing. The Company has forecasted \$89.4 million in cash available from operations and a \$154.1 million *total* construction budget for the FPFTY.¹²⁵ The sources of this capital spending are \$78.1 million in debt financing, \$35 million in DSIC funding and \$41 million from internal cash flow.¹²⁶

The internally generated funds are being stretched as time goes on and non-construction expenses increase. Under present rates in the FPFTY, PGW is forecasting 33.9 days of cash (\$45.2 million) with negative cash flow thereafter.¹²⁷ Negative cash flow would be potentially disastrous¹²⁸ for PGW:

¹²³ PGW St. No. 2 at 3-4 (emphasis added).

¹²⁴ PGW St. No. 1 at 3; *see also* PGW St. No. 2 at 17 ("PGW continues to utilize IGF for capital construction to reduce its dependence on long-term debt financing and contributed between \$18.0 million to \$33.0 million in the last five fiscal years (i.e. FY 2015 to FY 2019) towards IGF.")

¹²⁵ Exhibit JFG-1A (Cash Flow Statement).

¹²⁶ Exhibit JFG-1A (Cash Flow Statement).

¹²⁷ PGW St. No. 2 at 14-15

¹²⁸ "Thus, the FPFTY's balance of just 33.9 days cash on hand at fiscal year-end would result in zero or close to zero balances in January and February, leaving very little ability to respond to contingencies such as lower than pro forma sales or unanticipated expenditures." PGW St. No. 2 at 15.

a cash balance of only 33.9 days would not only be extremely concerning to the rating agencies, it would also pose real challenges to the Company's ability to meet all of its obligations when they came due.¹²⁹

PGW's debt rating will also deteriorate without rate relief:

... without the supportive cost recovery that PGW is seeking in this rate case, I reasonably foresee such consequences as rating downgrades of PGW that would impose immediate financial costs to PGW in the form of substantially higher borrowing costs, limited opportunities for PGW to refinance its existing debt costs, and the imposition of higher credit facility fees.¹³⁰

A denial of rate relief therefore would rob PGW of the ability to continue to fully fund its construction program from internally generated funds and would seriously threaten its financial metrics, which in turn could threaten its bond rating and make it harder and more expensive to raise capital.¹³¹

In the Joint Petition for Partial Settlement now pending before the Administrative Law Judges, the Company has agreed to accept rate relief of \$35 million in lieu of the original \$70.0 million request. This reduces the cash flow days to 65, well below the 87 days that it originally sought.¹³² Considering the evidence presented by PGW that its full \$70 million rate increase was reasonable, the Settlement rate increase is plainly justified and reasonable. Moreover, the argument that PGW could somehow continue its existing infrastructure modernization program

¹²⁹ PGW St. No. 2 at 15; *see also* PGW St. No. 2 at 21 (“If actual expenses were to exceed ‘normal’ levels because of abnormally cold weather or an unanticipated spike in gas prices, PGW could be left having to rely on its limited short-term commercial paper for liquidity.”).

¹³⁰ PGW St. No. 3 at 15; *see also* PGW St. No. 2 at 20 (“PGW would be in serious risk of not being able to meet its cash obligations-and absent some timely rate relief-having its debt service coverage levels fall below the level mandated in the Bond Ordinance. If either of these events occurred, it would be entirely realistic for the rating agencies to downgrade or put a negative outlook on PGW's bonds.”).

¹³¹ PGW St. No. 3-R; PGW St. No. 4-R at 4-5.

¹³² Joint Petition, Statement A, PGW Statement in Support, at 10.

at the same pace and scope without any increase is simply inconsistent with the overwhelming evidence and should be rejected.

c. PGW Fully Addressed BI&E's Concerns About Cost Trends

In their brief, the Environmental Stakeholders also champion a concern raised by BI&E regarding the increase in pipeline replacement costs, which they never raised in their testimony and which was fully resolved by the Settlement. The Environmental Stakeholders are correct in stating that total costs for pipeline replacement on a per mile basis have trended upwards.¹³³ However, their insinuation that this upward trend in cost is due to an “absence of management quality, effectiveness, and efficiency” is baseless and should be disregarded.¹³⁴ PGW continuously works to reduce costs associated with pipeline replacements. PGW witness Douglas Moser described the various PGW efforts in this regard as set forth below:¹³⁵

PGW has and continues to identify portions of its system which are duplicative or underutilized to remove without replacement. Each replacement project is scrutinized to ensure proper pressures and flow are maintained to supply our customers with adequate, safe and reliable service. PGW also evaluates diameter reductions in replacement projects if size-for-size replacement is not warranted. Further, to reduce construction costs, PGW has increased the project size to gain economies of scale from its contractors. Less mobilizations of equipment and personnel has resulted in increased production and has kept pricing competitive. Larger projects also result in less transition work from the old main to the new. PGW also utilizes a request for proposal (RFP) bidding process which mandates the lowest cost, responsible bidder is selected for construction projects. This ensures competition among PGW's contractors vying for main replacement construction work.

PGW's cost reduction efforts are apparent. As mentioned above, PGW completed the first LTIP under budget and exceeded its cast iron main removal mileage targets by 9%. The second LTIP

¹³³ I&E St. No. 3 at 12.

¹³⁴ ES MB at 43.

¹³⁵ PGW St. No. 7-R at 5-6.

is also off to a strong start, on budget and 15% ahead in mileage removed.¹³⁶ PGW appreciates the glimmer of a compliment contained in the Environmental Stakeholders' Main Brief where they state "it is fair to say that PGW is successfully making progress toward fulfilling its obligations under the Second LTIIP."¹³⁷

PGW's main replacement costs are also in-line with its Pennsylvania peer gas utilities in cost per mile for main replacement work. The latest Annual Asset Optimization Plans (AAOP) (2019) filed with the Commission for PECO, UGI and Peoples Natural Gas, reflects that these companies are experiencing costs per mile of \$1.78M, \$1.26M and \$0.94M, respectively.¹³⁸ The FY 2019 data shows a cost per mile of \$1.61M.¹³⁹ Given that PGW operates entirely in a dense urban environment, it is not surprising that its replacement costs would be somewhat higher than companies with less urban service territories, such as UGI and Peoples.

BI&E's concern regarding pipeline replacement costs was resolved in the Joint Petition for Partial Settlement. PGW agreed to review its most recent Annual Asset Optimization Plan with the Commission's Pipeline Safety Division in order to discuss further cost reduction efforts.¹⁴⁰

As such, the ALJs and Commission should disregard claims that PGW has failed to control costs and that its rate increase request should be denied. Based on the aforementioned cost reduction efforts of PGW and the fact that it is in-line with its peers, the Settlement provision resolving BI&E's concern should be approved.

¹³⁶ PGW St. No. 7-R at 6.

¹³⁷ ES MB at 42.

¹³⁸ PGW St. No. 7-R at 7.

¹³⁹ PGW Response to BI&E-PS-8.

¹⁴⁰ Joint Petition at ¶ 45.

d. There Is A Long-Term Need for Pipeline Replacement. The Idea That There Are “More Cost-Effective and Less-Risky Alternatives” Can Not be Supported By the Evidence.

In this section of their Main Brief, the Environmental Stakeholders continue to repeat the same misstatements, and even misrepresentations, as they repeat the no-future-for-natural-gas argument again and again. The claimed existence of “*potentially* cost-effective alternatives” and the allegation of imprudence, again, is a code phrase for “PGW is not planning to stop delivering natural gas to its customers.” In this regard, PGW incorporates its prior arguments presented in its Main and Reply Briefs.

In this section of their brief, the Stakeholders also include a table which appears to depict the age and years of value of various pipeline replacements by the year 2050.¹⁴¹ This table contains no record citation, yet appears to be simply a visualization of the same unsupported, but recurrent, prediction – that PGW’s plant will have no use in 2050 and will be wastefully abandoned leaving “stranded costs” in its wake. First, this allegation is factually inaccurate, as PGW either recovers the cost of its main replacement in the year in which it makes the replacement (via pay-as-you-go financing from rates) or by issuing 30 year bonds.¹⁴² Therefore, PGW’s fully projected future test year investment will in fact be fully recovered from ratepayers by at least 2051. Therefore the entire premise of “stranded investment” is bogus.

Moreover, the claims are entirely based upon numerous assertions that are claimed (or intimated) as facts. “*If the City of Philadelphia does, in fact, transition to 100% clean energy by 2050...*”¹⁴³ Clearly, the Environmental Stakeholders are conceding that the matter is not at all

¹⁴¹ ES MB at 45.

¹⁴² PGW St. No. 7-RJ at 2.

¹⁴³ ES MB at 46 (emphasis added).

certain. Further, as noted previously, the City Council Resolution actually finds a path forward for PGW in renewable gas.

2. Pipeline Safety

The Environmental Stakeholders state: “All parties agree that the safety of PGW’s system is paramount.” Their proposed delay of rate relief and vague advice, however, would demonstrably harm the effort and the proposed slow down makes no sense.¹⁴⁴ It is vague and of little benefit. Safety seems to be a niggling, inconvenient problem to the Environmental Stakeholders that needs to be wordsmithed away. The assurances to the contrary ring hollow as was explained in PGW’s Main Brief.¹⁴⁵

Dr. Hausman, the Stakeholders’ witness, described, with no details, that the Company should engage in “safety-related distribution system maintenance and addressing major gas leakage” as an alternative to pipeline replacement.¹⁴⁶ Mr. Moser characterized this as a

¹⁴⁴ The Environmental Stakeholders argue that PGW’s main replacement program “does nothing to examine or fully utilize opportunities to increase safety” and ignores “potentially safer and cost-effective alternatives.” ES MB at 48. This characterization of PGW’s main replacement program is absurd and not supported by the record in this proceeding. PGW’s infrastructure improvement plan, which consists of the replacement of cast iron main and unprotected steel pipe, has been implemented and expedited *for safety-related reasons* and pursuant to recommendations of Commission staff. As discussed, in 2015, Commission Staff issued a report related to PGW’s cast main replacement program. As PGW witness Mr. Moser explained, the Staff Report labeled cast iron main and unprotected steel as “at risk” facilities and provided that because of their propensity for breaks and leaks, they pose a safety hazard that had to be eliminated more quickly than PGW’s then-current plan. The Staff Report concluded: *“PGW’s cast iron and unprotected steel pipe are a threat to life and property; therefore, the Company must accelerate its infrastructure replacement and remove its at-risk pipe from service in a more aggressive manner than what is currently contemplated.”* In response to the Staff Report and the safety-related concerns expressed therein, PGW filed for and received authorization to increase the cap on its Distribution System Improvement Charge (“DSIC”) and subsequently filed a revised LTIIP which proposed cast iron main replacement that would result in PGW’s cast iron main removed in 48 years. PGW St. No. 7-RJ at 2-3. As explained by Mr. Moser, “Even if PGW were not obligated to engage in its current main replacement program, it would still be necessary and prudent because failing to do so would create an unacceptable safety risk to [PGW’s] customers and the City of Philadelphia.” PGW St. No. 7-RJ at 5. Thus, any assertion that PGW’s main replacement program ignores safety-related considerations is completely absurd and unsupported.

¹⁴⁵ PGW MB at 23-26.

¹⁴⁶ SC St. No. 1-SR at 7.

dangerous strategy and not appropriate for a company with “such a high percentage of cast iron main:”

Because of the nature of cast iron main, it is subject to catastrophic failure with little or no warning. Tragic accidents can and have occurred as a result of a cast iron main gas leaks where the leak likely started no more than thirty minutes before the incident. PGW could simply not sufficiently anticipate natural gas leaks on cast iron main and fix them quickly enough to maintain the system at a level of safety that PGW – and the Commission – requires.¹⁴⁷

Both the Commission Staff report and the Commission have previously concurred in this assessment.¹⁴⁸

The Environmental Stakeholders’ expressed concerns over safety take up a single paragraph of this section entitled “Pipeline Safety.” The reminder is taken up by repetitions of the vague and, at page 47 of 59 of their brief, still undefined and unexplained concept of “*potentially* cost-effective alternatives” to pipeline replacement.

Although efficiency has been repeatedly offered as an example of “*potentially* cost-effective alternatives,” the Company has several times explained that it has a robust efficiency promotion program and, besides, efficiency does not take consumption to zero; it merely reduces it.

Nowhere in its Main Brief, even at this late stage of the advocacy in this case, are PGW and the Commission even remotely advised about the nature and impact of these “*potentially* cost-effective alternatives” to pipeline replacement. Frankly, PGW has no clue as to what they are, let alone how to incorporate them into a Climate Business Plan.

3. Environmental Issues

¹⁴⁷ PGW St. No. 7-RJ at 3.

¹⁴⁸ PGW MB at 23-26.

a. The PUC Lacks the Jurisdiction to Deny Rate Relief Based Upon Environmental Concerns or to Force PGW to Undertake Affirmative Action Due to Environmental Considerations

This section of the Environmental Stakeholders' Main Brief is almost a word-for-word repeat of the argument set out previously in Section IV.C.1 that they are simply raising a typical rate case prudence argument. PGW incorporates its previous statements on this topic.¹⁴⁹

As noted previously, the Commission did not determine the efficacy of environmental action in the cases cited by the Stakeholders. It did not rule on whether the expense should have been incurred or compel a particular action in light of the incurrence of a particular expense. Rather, recovery of the cost was considered through the lens of rate case constructs, such as whether the costs are known and measurable or recurring or outside of the test year. The consequence was a denial of the recovery of an expense or a capital addition in rates. Here, the Environmental Stakeholders are asking the Commission to not only rule that certain costs are imprudent (even though they are not) but also to direct PGW to plan to and take specific actions with the goal of shutting down the Company.

Further, *Cohen*¹⁵⁰ does not support some limitless future test year view as the Environmental Stakeholders claim.¹⁵¹ In that case, UGI and the parties were having difficulty forecasting sales *for the test year* due to volatile commodity pricing changes, not thirty years hence.¹⁵²

¹⁴⁹ PGW MB at 27-32, PGW RB at Section IV.C.1.

¹⁵⁰ *Cohen v. Pennsylvania Pub. Util. Comm'n*, 468 A.2d 1143 (1983).

¹⁵¹ ES MB at 52 (“[T]he Commission must consider both current and probable future conditions impacting the justness and reasonableness of rates.”).

¹⁵² *Cohen v. Pennsylvania Pub. Util. Comm'n*, 468 A.2d 1143, 1146 (1983) (“Rate setting is a process which necessarily involves valuation of economic elements in the future tense. Because ‘rates must be fixed for the future as well as for the present,’ such future ‘estimates . . . must necessarily enter into the disposition of any rate case.’” *Citing Peoples Natural Gas Co. v. Pennsylvania Public Utility Commission*, 141 Pa. Superior Ct. 5, 17, 14 A.2d 133, 138 (1940)). The time frame referred to was a future test year.

The Environmental Stakeholders misunderstand both PGW's position and the law on this point. In its Main Brief, PGW recognizes that environmental remediation costs can be recovered in rates.¹⁵³ Similarly, regulatory costs and other compliance costs associated with environmental regulations that are imposed by the U.S. EPA or the Pennsylvania DEP can affect the utility's cost structure, and these costs are flowed through rates.¹⁵⁴ Thus, PGW is not attempting to create a "donut hole" in the Commission's jurisdiction over ratemaking, as the Stakeholders suggest.¹⁵⁵

Implicit in the Environmental Stakeholders' arguments, however, is the assumption that there has been some statutory or regulatory determination that Philadelphia (and Pennsylvania more broadly) should move toward total electrification in the coming decades, and PGW will not be permitted to continue operating as a natural gas distribution company.¹⁵⁶ In fact, there has been no such determination. The Environmental Stakeholders have presented no legal authority for this assumption; rather, they simply argue that Governor Wolf's Executive Order Number 2019-01 and Philadelphia City Council Resolution No. 190728 create a predetermined outcome that natural gas should be phased out, and it is incumbent upon the Commission to implement this outcome.¹⁵⁷ These resolutions are not binding on the Commission and do not confer jurisdiction on the Commission to implement the stated aspirational policy goals.

In order to adopt the Environmental Stakeholders' positions, the Commission would be required to: (1) determine that PGW's greenhouse gas emissions are currently or will in the future be at unacceptable levels and, therefore, must be reduced or eliminated; and (2) determine

¹⁵³ *Popowsky v. Pa. Pub. Util. Comm'n*, 869 A.2d 1144 (Pa. Commw. 2005); *Green v. Pa. Pub. Util. Comm'n*, 473 A.2d 209 (Pa. Commw. 1984).

¹⁵⁴ PGW MB at 14.

¹⁵⁵ ES MB at 52.

¹⁵⁶ See PGW MB at 21.

¹⁵⁷ See SC St. No. 1 at 3-4; ES MB at 22-25.

that it has the legal authority to direct PGW to develop a plan to reduce or eliminate those emissions.¹⁵⁸ The Commission does not have jurisdiction to make such determinations. Without the jurisdiction to require PGW to develop a “climate business plan” to reduce or eliminate greenhouse gas emissions, the Commission cannot determine that PGW’s pipeline replacement costs are unreasonable or imprudent on that basis.

It is also well established that the Commission cannot act as a “super board of directors” to interfere with utility management decisions. The courts have found that:

As a general matter, utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions, including decisions related to the necessity and propriety of operating expenses, unless, on the basis of record evidence, it finds an abuse of the utility’s managerial discretion. *City of Philadelphia v. Pennsylvania Public Utility Commission*, 174 Pa. Superior Ct. 641, 102 A.2d 428 (1954). *Pittsburgh v. Pennsylvania Public Utility Commission*, 370 Pa. 305, 88 A.2d 59 (1952).¹⁵⁹

In *Coplay Cement Manufacturing v. Public Service Commission*, the Pennsylvania Supreme Court declared that it was not the intent of the Legislature that the Commission “should be a board of managers to conduct and control the affairs” of public utilities.¹⁶⁰ In *Bell Telephone Co. of Pa. v. Driscoll*, the Pennsylvania Supreme Court reiterated that the Commission has not been empowered to manage the business of the corporation, and if it could do so, it would be able to determine the economic and fiscal policy of the utility, which would constitute an illegal and unconstitutional delegation of authority.¹⁶¹

¹⁵⁸ See PGW MB at 27-28.

¹⁵⁹ *Nat’l Fuel Gas Distrib. Corp. v. Pa. Pub. Util. Comm’n*, 464 A.2d 546, 559 (Pa. Commw. 1983).

¹⁶⁰ *Coplay Cement Manufacturing Co. v. Public Service Commission*, 271 Pa. 58, 61, 114 A. 649 (1921).

¹⁶¹ *Bell Telephone Co. of Pa. v. Driscoll*, 343 Pa. 109, 118-119, 21 A.2d 912 (1941).

The United States Supreme Court has even addressed this issue, and emphasized that “while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership.”¹⁶² Therefore, it is outside the Commission’s jurisdiction to determine whether PGW’s management decisions and planning are appropriate as they relate to compliance with any current or future regulations related to climate change mitigation and then direct PGW to comply with the PUC’s view of prudent management. It can only modify PGW’s rate request or rule on whether the Company is providing adequate and reasonable utility service.

But this distinction seems entirely lost on the Environmental Stakeholders. They are not simply asking the Commission to determine whether environmental factors cause PGW’s expenses to be unreasonable or imprudent. They are asking the Commission to go far beyond this determination and to, in effect, set environmental policy that has not previously been established in Pennsylvania. It is well established that the Commission does not have jurisdiction to enforce environmental laws and regulations, and certainly does not have jurisdiction to create new requirements regarding climate change through an individual utility base rate case.

The Environmental Stakeholders also misunderstand the Commonwealth Court’s decision in *Funk v. Wolf*, 144 A.3d 228 (Pa. Commw. 2016) (hereinafter, *Funk*), and its applicability to this proceeding. *Funk* involved an action for declaratory and mandamus relief brought against the Public Utility Commission, among others, alleging that the defendants’ failure to develop and implement a comprehensive plan to regulate carbon dioxide emissions violated Article I, Section 27 of the Pennsylvania Constitution (also known as the

¹⁶² *Southwestern Bell Tel. Co. v. Pub. Serv. Comm’n*, 262 U.S. 276, 289 (1923).

“Environmental Rights Amendment” or “ERA”).¹⁶³ The Commonwealth Court found that “Petitioners do not have a clear right to have Respondents conduct the requested studies, promulgate or implement the requested regulations, or issue the requested executive orders.”¹⁶⁴

The Environmental Stakeholders are correct that *Funk* did not prevent the Commission from exercising “its ordinary jurisdiction to enforce and execute the provisions of the Public Utility Code.”¹⁶⁵ However, in this proceeding, the Environmental Stakeholders are not simply asking the Commission to carry out the Public Utility Code. Rather, as discussed above, if the Commission were to adopt the Environmental Stakeholders’ position, it would first be required to determine that PGW’s current or future greenhouse gas emissions are unacceptable and must be reduced or eliminated, and then direct PGW to develop a plan to reduce or eliminate those emissions. These actions are not currently within the Commission’s jurisdiction and are not part of the Public Utility Code. In *Funk*, the Commonwealth Court clearly recognized that the Commission does not have the authority to create regulations or policies, conduct studies, or otherwise attempt to regulate greenhouse gas emissions. Therefore, the Commission does not have jurisdiction to decide this base rate proceeding based on environmental considerations.

The more germane cases to cite are those where the Commission was being affirmatively asked to undertake some action in furtherance of environmental goals, not simply pass through environmentally related costs. It is well settled in the field of water utilities, for example, that

¹⁶³ See PGW MB at fn. 87.

¹⁶⁴ *Funk*, 144 A.3d at 250-51.

¹⁶⁵ ES MB at 53.

there is a “clear the distinction between water *service*, which the Commission may regulate, and water quality, which may only be regulated by the DEP.”¹⁶⁶

Even if Petitioners sought merely to demonstrate that other treatment methods did not have the adverse impacts of chloramines, the Commission, in order to make this determination would have to supplant the water quality standards established pursuant to the Pennsylvania Safe Drinking Water Act for chloramines and conduct its own evaluation of the comparative safety of these DEP-approved water treatment chemicals. Such an undertaking was beyond the jurisdiction of the Commission.¹⁶⁷

The Court’s ruling strikes remarkably close to the Stakeholder request here.

It is also a false premise for the Stakeholders to argue that recognizing that temperatures affect company revenues and projecting warmer temperature is the same type of adjustment they seek to make. 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. The Environmental Stakeholders are asking the Commission to rule on a much different matter – that PGW’s throughput product is contributing to that rise in temperature, that the changing climate and governmental responses will outlaw fossil fuels consumption entirely and that PGW must begin phasing out.

¹⁶⁶ *Pickford v. PUC*, 4 A.3d 707, 2010 Pa. Commw. LEXIS 505 (Pa. Commw. Ct., June 29, 2010), *citing* *Rovin, D.D.S. v. Pennsylvania Public Utility Commission*, 94 Pa. Commw. 71, 502 A.2d 785 (Pa. Cmwlth. 1986) (emphasis in original).

¹⁶⁷ *Pickford v. PUC*, 2010 Pa. Commw. LEXIS 505, *18, 4 A.3d 707, 714.

b. Commissioner Cawley's Testimony Is Germane, Relevant and Helpful

Commissioner Cawley¹⁶⁸ testified as an expert in Pennsylvania regulatory matters, which he clearly is. He was not presented as an expert on climate change and no amount of badgering on cross examination on what “global warming means”¹⁶⁹ and subsequent exaggeration of its importance in brief means anything at all. The “principal subject”¹⁷⁰ of his testimony was not the science of climate change.

Although the Environmental Stakeholders could have employed a regulatory expert, they selected to rely upon an environmental scientist. That was their choice to make and PGW has accepted his credentials as such without criticizing him for not understanding regulatory issues.

In remaining part, the attack on the Commissioner's knowledge is a mischaracterization of his testimony. The Commissioner was aware that temperature affects the revenues of a gas distribution company. The transcript reflects nothing more than a semantically confused exchange where the witness was increasingly uncomfortable with opposing counsel's insistent choice of terminology.¹⁷¹ Commissioner Cawley was making the point that the Commission cannot decide the merits of environmental issues. There is a clear difference.

G. Miscellaneous Issues

¹⁶⁸ The Environmental Stakeholders address him as “Mr.” Cawley. It is an acknowledgement of his extensive knowledge of regulatory matters and achievements, particularly in Pennsylvania, to refer to him by the title Commissioner, something that the Stakeholders would deny him. This is no more inappropriate than referring to Dr. Hausman as Mr. It is petty.

¹⁶⁹ Tr. 283-291.

¹⁷⁰ ES MB at 54.

¹⁷¹ “I don't know why you want to put those words in my mouth.” Tr. 287.

a. The Environmental Stakeholders' Challenge Related to PGW's Prepaid Gas Contracts Should be Rejected

The Environmental Shareholders next venture well beyond objections to main replacement and pose a protest of sorts to PGW's least cost gas procurement practices, because the Company is buying gas for future delivery and consumption. The Environmental Stakeholders improperly utilize their Main Brief to testify on this issue, an issue they failed to raise in testimony. A search of their testimony reveals that not even a single sentence of their testimony challenges PGW's use of prepaid gas contracts. The ALJs and Commission should reject the Environmental Stakeholders' challenge to prepaid gas contracts for being improper testimony.

Since PGW did not have the opportunity to rebut the claims of the Environmental Stakeholders in testimony, it offers that prepaid gas contracts are standard in the industry for reliability and to manage potential price volatility. As Mr. Stunder explained:

PGW has taken advantage of provisions in the Internal Revenue Code that permit municipal gas companies to use tax exempt bond financed prepaid gas purchase arrangements to obtain significant discounts on those purchases. For FY 2020, PGW will save approximately \$2.3 million for gas sales customers as a result of prepaid gas purchase arrangements. For FY 2021, PGW anticipates that gas sales customers will save approximately \$2.9 million from the prepaid arrangements.¹⁷²

No other party to the case challenged the prudence of these prepaid gas purchases. This is telling. The parties to the proceeding have considerable experience with gas purchasing, and most of the parties routinely participate in PGW's Section 1307(f) Gas Cost Rate proceedings, wherein recovery of natural gas costs are addressed and approved by the Commission. If the Environmental Stakeholders wish to challenge PGW's prepaid gas contracts, PGW's Section

¹⁷² PGW St. No. 1 at 6.

1307(f) Gas Cost Rate proceeding, and not a base rate case, is the appropriate forum to raise such issues.

The Environmental Stakeholders' only point is to warn that "PGW should take care not to commit to purchasing gas supply without an evidence-based forecast reasonably showing that supply will be needed over the entire contract term."¹⁷³ PGW appreciates the suggestion, but, once again the Stakeholders seem to be fixated on phasing out PGW's infrastructure and, now, throughput also. Additionally, PGW is obligated to pursue a least cost fuel procurement policy as required by Section 1318 of the Public Utility Code.¹⁷⁴ If PGW did not take advantage of the significant savings provided by these prepaid gas contracts, as the Environmental Stakeholders would require, the Company may not be procuring fuel at the least cost to consumers in violation of the Public Utility Code.

¹⁷³ ES MB at 57.

¹⁷⁴ 66 Pa. C.S. § 1318.

IV. CONCLUSION

Based on the foregoing, PGW respectfully requests that Administrative Law Judges Darlene Heep and Marta Guhl and the Commission approve the Settlement without modification, deny the Environmental Stakeholders' requests and permit PGW to file a tariff supplement that reflects PGW's initial filing as modified by the Settlement.

Respectfully submitted,



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