



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

May 26, 2021

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission v.  
Philadelphia Gas Works – 1307(f) Proceeding  
Docket No. R-2021-3023970  
**I&E Main Brief**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Main Brief of the Bureau of Investigation and Enforcement** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gina L. Miller', is written over a light blue circular stamp.

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GLM/jfm  
Enclosures

cc: Hon. Darleen Heep, Office of Administrative Law Judge (*via email only*)  
Athena Delvillar, Legal Assistant OALJ (*via email only* – [sdelvillar@pa.gov](mailto:sdelvillar@pa.gov))  
Per Certificate of Service



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## **I. INTRODUCTION AND STATEMENT OF THE CASE**

### **1. I&E's Opposition to PGW's RNG Pilot Program**

The Bureau of Investigation and Enforcement (“I&E”) submits this Brief in opposition to the Philadelphia Gas Works’ (“PGW”) Renewable Natural Gas Pilot Program. I&E’s opposition to the RNG Pilot Program exists both to the proposal as it was originally filed with the Pennsylvania Public Utility Commission (“Commission”) in PGW’s 2021-2022 Gas Cost Rate (“GCR”) proceeding, and now as it is apparently modified by a Joint Stipulation between PGW and the Office of Consumer Advocate (“OCA”). In either case, whether as filed, or as modified by the PGW/OCA Joint Stipulation, PGW’s RNG Pilot Program is fatally flawed in the same ways.

Specifically, PGW’s RNG Pilot Program violates two out of four prongs of Section 1318 of the Public Utility Code’s (“Code”) least cost gas procurement policy requirement. While either of the two failures would be fatal on their own, the combination of the two violations leaves no room for doubt that the RNG Pilot Program is wholly inconsistent with the least cost procurement requirement and it must be denied. In its first violation, PGW asks the Commission to put the cart before the horse by determining that the RNG Pilot Program comports with the least cost gas procurement policy’s requirement that PGW has taken all prudent steps necessary to negotiate favorable gas supply contracts. No such determination is possible for PGW’s RNG procurement, because PGW has not and cannot produce any RNG contracts in this case.

Additionally, PGW’s RNG Pilot Program fails a second prong of the least cost gas procurement requirement because the estimated cost of RNG purchase would include an

outrageous cost adder of \$13 to \$17.50 per Dth over and above the indexed cost of natural gas. On this fact alone, I&E submits that the RNG Pilot Program directly conflicts with any determination that PGW has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth. PGW attempts to side-step the exorbitant mark-up for RNG by claiming that the RNG Pilot Program is necessary to further its provision of safe, adequate, and reliable service, and to gain purchasing experience necessary to diversify its gas supply. Yet, these claims are dispelled by, and not supported in, the record. At best, PGW's arguments are premised on speculation, the laws of other jurisdictions, and environmental policies that the Commission has already indicated, *directly in PGW's 2020 base rate case*, should not be addressed on a piecemeal basis in rate cases. Accordingly, as s I&E will further demonstrate below, PGW's RNG Pilot Program violates Section 1318 of the Code and it should be denied.

Aside from Section 1318 of the Code, PGW's RNG Pilot Program would violate Section 1301's "just and reasonable rate" requirement as well. At present, the only certain outcome of its RNG Pilot Program would be the unnecessary and warranted dilution of ratepayer's purchasing power at a time when PGW and its customers are grappling with significant customer arrearages. Here, in its request to impose exponentially more expensive gas costs on its ratepayers through RNG procurement, PGW has sought to ignore those arrearages, and to divorce itself of the COVID-19 pandemic's impact upon its ratepayers.

Yet, PGW's attempts cannot overcome the fact that the Commission has recently clarified that the unique considerations related to the COVID-19 pandemic are a factor that must be considered in the context of determining just and reasonable rates. I&E submits that the \$13 to \$17.50 per Dth premium that PGW's RNG Pilot Program would needlessly impose upon ratepayers is, on its face, sufficient to warrant a determination that it violates Section 1301's just and reasonable rate requirement. However, when the outrageous gas cost mark-up is viewed through the lens of the COVID-19 pandemic's impact in PGW's service territory, the result is not only squarely outside any determination of just and reasonable rates, but it completely offends the public interest.

## **2. PGW's RNG Pilot Program**

### **A. PGW's As-filed RNG Pilot Program**

Through its GCR filing, PGW proposed to begin purchasing renewable natural gas. As PGW describes it, renewable natural gas is biogas produced from a biochemical process, such as anaerobic digestion.<sup>1</sup> According to PGW witness Stunder, RNG sources result from processes that involve the breakdown of organic matter, including biogas produced by landfills, wastewater treatment facilities, livestock operations and food waste.<sup>2</sup> In its initial filing, PGW proposed to begin a two-year pilot program in which it purchases up to \$500,000, or approximately 0.4% of PGW's total "C" Factor commodity cost, of RNG during fiscal year 2022. After the first year, PGW proposed that it be permitted to increase the RNG supply it can purchase in fiscal 2023 above \$500,000, but

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<sup>1</sup> PGW St. No. 3, p. 1.

<sup>2</sup> PGW St. No. 3, p. 2.

not more than 2% of the total “C” Factor commodity cost, which it estimated to be approximated \$2.5 million.<sup>3</sup> At the conclusion of the two applicable GCR periods, PGW plans to determine whether to propose a permanent continuation of the pilot.<sup>4</sup>

Currently, PGW does not have a viable framework in place to acquire any volume of RNG within the purchasing parameters it established. Instead, PGW’s vague RNG acquisition plan generally contemplates prioritizing sourcing RNG from Pennsylvania suppliers, but then looking to suppliers outside of Pennsylvania if necessary. Importantly, PGW does not identify the factors it will use to select RNG suppliers, or whether and how the price of RNG would be considered in its acquisition plan. Instead, PGW appears to value acquisition from the standpoint of proximity, indicating that the “focus on geographic proximity is intended to ensure that environmental benefits of RNG stay as close to PGW’s service territory as possible, and to help further the development of RNG production in PGW’s immediate vicinity.”<sup>5</sup>

While PGW focuses on RNG acquisition from a proximity standpoint, the focal point of this proceeding is gas costs. The only gas cost information PGW provides regarding RNG is that it is “more expensive” than conventional natural gas, a conclusion supported by the only piece of evidence in this case regarding the estimated cost of RNG: a supplier’s response to PGW’s RFP. In the unidentified supplier’s response, it indicated

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<sup>3</sup> PGW St. No. 3, p. 2.

<sup>4</sup> PGW St. No. 1, p. 4.

<sup>5</sup> PGW St. No. 3, p. 3.

that RNG purchases would include a cost adder ranging from \$13 to \$17.50 per Dth over and above the indexed cost of natural gas.<sup>6</sup>

In contrast to the expensive costs of RNG, PGW has not come close to establishing a commensurately valuable benefit, or any benefit at all, that ratepayers can expect for the squandering of their dollars. While PGW generally claims that RNG reduces greenhouse gas emissions, it does not target its pilot program to achieving any type of identified greenhouse gas emissions reduction. Instead, PGW vaguely alleges that incorporating RNG into its gas supply portfolio would further its provision of safe, adequate, and reliable service to customers, and give it experience into the RNG market, which witness Stunder speculated “could become an increasing source of gas supply in the years ahead.” PGW witness Stunder attempts to argue that incorporating RNG into PGW’s gas mix will diversify its supply portfolio for purposes of reliability and enable PGW to better respond if there are changes in the law that address carbon emissions.<sup>7</sup>

Yet, other than vague assertions and speculation, PGW has not tied RNG purchasing to any targeted or measurable safety, adequacy of service, or reliability benefits that will inure to its ratepayers. Tellingly, when pressed on how PGW would measure the success of the RNG Pilot Program, PGW simply indicated that the pilot would be successful if it involved PGW supporting the developing RNG market and gaining experience with RNG purchasing.<sup>8</sup> Significantly, in its response, PGW did not identify any target metrics that it would use to measure the RNG Pilot Program’s success,

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<sup>6</sup> PGW St. No. 3, p. 3.

<sup>7</sup> PGW St. No. 3, p. 4.

<sup>8</sup> PGW Exh. No. 1, Sch. 1.

in any manner related to safety, adequacy, or reliability of service. I&E submits that the only definite result of the RNG Pilot Program is that it will exponentially increase gas costs for PGW's ratepayers.

**B. PGW's RNG Pilot Program as Modified by the PGW/OCA Joint Stipulation**

In an apparent attempt to make its RNG Pilot Program more palatable, on May 13, 2021, PGW entered into the PGW/OCA Joint Stipulation. In the Stipulation, PGW agrees that it would hold the purchases of RNG to \$500,000 for not only fiscal year 2022, but also for fiscal year 2023.<sup>9</sup> PGW also agrees that in next year's GCR proceeding, it will do the following: (1) Report the daily quantities of RNG purchased; (2) Report prices it paid for RNG; (3) Identify how those prices compare to other purchases; (4) Identify the GCR rate impact of its RNG purchases; (5) Identify the BTU content of its RNG purchases, to the extent such data is available; and (6) Identify the location of the facility producing the RNG and the type of facility (i.e. landfill, wastewater treatment plant, municipal solid waste, agricultural product, etc.); and (7) Identify whether its purchase of RNG will result in the monetization of any environmental benefits and how those benefits will be reflected in the price of the RNG purchases.<sup>10</sup>

As I&E will demonstrate below, while PGW apparently entered into the PGW/OCA Joint Stipulation to assuage the OCA's concerns, the Stipulation's modifications cannot overcome the fact that PGW's RNG Pilot Program violates the Code and is fatally flawed. To be sure, the decreased spending amount for fiscal year

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<sup>9</sup> PGW/OCA Joint Stipulation, p. 1.

<sup>10</sup> Id. at pp. 2-3.

2023 will save some of the ratepayers' money, but, upon closer review, the decreased spend is a red herring. Regardless of whether PGW spends \$2.5 million annually, or \$10,000 annually to procure RNG, the spending level cannot change the fact that PGW's RNG purchases would not conform to the least cost gas procurement requirement. Nor can a decreased spend change the fact that the value of ratepayers' dollars is needlessly and significantly being diminished. The applicable standard here is not "less harmful to ratepayers than originally filed." Additionally, any false sense of comfort attached to the PGW/OCA Joint Stipulation's reporting requirements is easily lost upon the realization that, if anything, they reveal that the alleged benefits of the RNG Pilot Program are wholly speculative, and that the true ratepayer impact is yet to be determined.

## **II. PROCEDURAL HISTORY**

On February 1, 2021, PGW submitted its pre-filing information in support of its annual reconciliation of purchased gas costs rates. Shortly afterward, on February 3, 2021, I&E filed a Notice of Appearance in this proceeding.<sup>11</sup> On February 11, 2021 and February 26, 2021, respectively, the Office of the Consumer Advocate ("OCA") and the Office of Small Business Advocate filed a Public Statement, a Notice of Appearance, and

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<sup>11</sup> Act 129 of 2008, 66 Pa. C.S. § 308.2, authorized the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders. 66 Pa. C.S. § 308.2(a)(11). In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement ("I&E") to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). The instant proceeding implicates I&E's participation because it will have a rate impact upon PGW's customers.

a formal Complaint in this case. On February 17, 2021, the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) filed a Petition to Intervene in this case.

On March 1, 2021, PGW filed an Errata to update the schedules for Item 53.64(i)(1) of its February 1, 2021 pre-filing materials. On the same date, PGW also made its annual GCR filing in accordance with Section 1307(f) of the Public Utility Code (“Code”), which establishes a procedure for recovery of purchased gas expenses by public utilities. PGW’s filing included, *inter alia*, the RNG Pilot Program proposal.

On March 3, 2021, I&E received a Prehearing Conference Order which was issued to advise parties that Administrative Law Judge Darlene D. Heep (“ALJ Heep”) would be presiding in this case and to memorialize the date, time, and requirements for the Prehearing Conference. Pursuant to the Prehearing Order, a telephonic Prehearing Conference was held March 9, 2021, with ALJ Heep presiding. At the Prehearing Conference, a procedural schedule, and the procedures applicable to this proceeding were established and they were subsequently memorialized in ALJ Heep’s Prehearing Order issued on March 15, 2021.

After the Prehearing Conference, PGW, I&E, OCA, OSBA, and PICGUG engaged in the discovery process and participated in settlement discussions. Additionally, in accordance with the procedural schedule adopted in ALJ Heep’s Prehearing Order, the parties exchanged direct, rebuttal, surrebuttal, and rejoinder

testimony. I&E introduced the following statements of verified testimony and a corresponding exhibit:<sup>12</sup>

- I&E Statement No. 1, the Direct Testimony of Ethan H. Cline, who addressed PGW's RNG Pilot Program proposal;
- I&E Exhibit No. 1, the Exhibit to accompany the Direct Testimony of Ethan H. Cline and;
- I&E Statement No. 1-SR, the Surrebuttal Testimony of Ethan H. Cline.

Prior to the start of evidentiary hearings on May 12, 2021, all parties requested that the ALJ cancel the May 12 hearing and to permit the hearings to begin on May 13, 2021 so that parties could continue to engage in settlement discussions. ALJ Heep granted the parties' request and issued an order to facilitate the cancellation. Later, on May 12, the parties informed ALJ Heep that they had reached a settlement in principle<sup>13</sup> pertaining to all issues in PGW's GCR proceeding, except for PGW's RNG proposal, which would be reserved for litigation.

As a final request, and upon determining that no parties had identified a need to conduct cross-examination, the parties requested that ALJ Heep also cancel the hearing set for May 13, 2021 in favor of permitting parties to stipulate testimony into the record by Motion and in favor of permitting parties to litigate the RNG proposal through briefing. ALJ Heep granted all requests.

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<sup>12</sup> I&E notes that all of witness Cline's documents were verified by a statement circulated simultaneously with I&E's service of his surrebuttal testimony on May 11, 2021.

<sup>13</sup> I&E takes no position on the settlement other than that to the extent it avers that PGW is adhering to a least cost gas purchase policy, I&E opposes that averment as it relates to PGW's purchase of RNG.

On May 13, 2021, PGW filed with the Commission the PGW/OCA Joint Stipulation, which apparently outlines an agreement between those parties to modify PGW's RNG proposal. I&E notes that the PGW/OCA Joint Stipulation modifies PGW's RNG Pilot Program, and that while its terms now appear to replace the conflicting terms of PGW's original proposal and are therefore assumed to comprise the operative proposal, PGW has not included any language that withdraw the conflicting portions of its original proposal.

On May 17, 2021, the parties jointly moved for the admission of testimony and exhibits via Joint Stipulation. Later, on May 17, 2021, ALJ Heep granted the parties' Joint Stipulation for Admission of Testimony and Exhibits, and I&E's above-referenced statements and exhibit were admitted into the record.

### **III. BURDEN OF PROOF AND APPLICABLE LEGAL STANDARDS**

As the proponent in this case, PGW has the burden of proof to establish that it is entitled to the relief it is seeking.<sup>14</sup> In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible."<sup>15</sup> The preponderance of evidence standard requires proof by a greater weight of the evidence.<sup>16</sup> Therefore, to meet its burden of proof in this proceeding, PGW must

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<sup>14</sup> 66 Pa. C.S. § 332(a).

<sup>15</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>16</sup> *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999).

“present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”<sup>17</sup>

Here, PGW’s gas cost rates may be determined as just and reasonable “if the commission finds that the utility is pursuing a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers.”<sup>18</sup> In order to make such a determination here, the Commission must make four specific findings, including that (1) PGW has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission; (2) PGW has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility's ratepayers; (3) PGW has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies; and (4) PGW has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.<sup>19</sup> PGW fails two out of four of these standards.

Importantly, the Commission “has broad discretion in determining whether rates are reasonable.”<sup>20</sup> Additionally, the Commission is “vested with discretion to decide

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<sup>17</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>18</sup> 66 Pa. C.S. § 1318(a).

<sup>19</sup> *Id.* at § 1318(a)(1)-(a)(4).

<sup>20</sup> *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 42 Pa. Cmwlth. 242, 400 A.2d 672 (1979).

what factors it will consider in setting or evaluating a utility's rates.”<sup>21</sup> Recently, the Commission has mandated that one factor it must consider in the content of rate affordability are the unique considerations related to the COVID-19 pandemic in setting just and reasonable rates.<sup>22</sup> PGW ignores these conditions, but the evidence in this case proves they exist and that they are, in fact, impacting PGW and its customers.

As I&E demonstrates below, PGW has overwhelmingly failed to meet its burden of proof for its RNG Pilot Program both in its as-filed proposal and as apparently now modified by the PGW/OCA Joint Stipulation.<sup>23</sup> Instead of supporting PGW’s position, the greater weight of the evidence in this case proves that the RNG Pilot Program violates the Code and that it will needlessly dilute the effective use of ratepayer dollars in its already economically challenged service territory.

#### **IV. STATEMENT OF THE QUESTIONS PRESENTED**

##### **1. Does PGW’s RNG proposal violate the Public Utility Code’s least-cost fuel procurement policy?**

Suggested Answer: Yes, in two ways. First, PGW has not and cannot provide RNG contracts that are essential components of the Commission’s review criteria. Additionally, the evidence PGW offered demonstrates that use of RNG in lieu of otherwise available natural gas supplies is projected to exponentially increase gas costs by resulting in added costs of \$13 to \$17.50 per Dth, which is wholly inconsistent with least cost procurement requirement of Section 1318 of the Code.

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<sup>21</sup> *Popowsky v. Pennsylvania Public Utility Commission*, 669 A.2d 1029, 1040 (Pa.Cmwlth.1995).

<sup>22</sup> *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, R-2020-3018835, p. 48, Opinion and Order (entered on February 18, 2021).

<sup>23</sup> I&E notes that the PGW/OCA Joint Stipulation does not expressly indicate PGW’s withdrawal of conflicting terms set forth in its filing.

- 2. Has PGW failed to support any determination that its RNG proposal is essential to its provision of safe, adequate, and reliable service?**

Suggested Answer: Yes. PGW's claims regarding the need to gain experience with RNG to provide safe, adequate, and reliable service are not supported by record evidence, facts, law, or Commission-based policy.

- 3. Would approval PGW's RNG proposal result in unjust and unreasonable rates for PGW's ratepayers as they strive to recover from the economic impact of the COVID-19 pandemic?**

Suggested Answer: Yes. Approval of PGW's RNG proposal would violate Section 1301 of the Code by needlessly diluting the purchasing power of ratepayer dollars without any commensurate benefit. Although this on its own is a clear violation of Section 1301, the egregiousness of the violation is compounded by the demonstrated hardship the COVID-19 pandemic has imposed upon PGW's ratepayers.

## **V. ARGUMENT**

- 1. PGW's RNG Pilot Program Violates the Least Cost Gas Procurement Requirement**

As explained above, in this case, the Commission must determine that PGW is pursuing a least cost fuel procurement policy.<sup>24</sup> In order to reach that determination, the Commission must conclude that (1) PGW has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission; (2) PGW has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to the interests of the utility's ratepayers; (3) PGW has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas

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<sup>24</sup> 66 Pa. C.S. § 1318(a).

transportation arrangements with pipelines and other distribution companies; and PGW has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy.<sup>25</sup>

As illustrated through the above review of the findings necessary to support the Commission's approval of a utility's gas cost rate, the common thread of all the necessary findings is that they all encompass a determination regarding gas costs. Although this distinction appears obvious, it bears emphasizing here because PGW attempts to distract from the outrageously expensive gas costs its RNG Pilot Program would impose upon ratepayers by pointing to undefined and elusive environmental benefits and speculation about potential changes in the law. However, when focus is placed back on gas costs, as it must be, the facts of PGW's RNG Pilot Program foreclose two of the essential determinations that the Commission must make for its approval.

Specifically, PGW's RNG Pilot Program directly at odds with any finding that it has taken all prudent steps necessary to negotiate favorable gas supply contracts. Additionally, PGW's RNG Pilot Program also directly conflicts with any determination that PGW has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth. I&E submits that each of the two ways that PGW's RNG Pilot Program fails to satisfy the prongs of the least cost gas procurement requirement is sufficient to warrant its denial; however, the combination of the two conflicts leaves no room for doubt that it is

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<sup>25</sup> Id. at § 1318(a)(1)-(a)(4).

inconstant with PGW's least cost procurement obligation. I&E will explain each of these conflicts below.

**A. PGW Fails to Support Any Possible Determination that it Will Negotiate Favorable RNG Supply Contracts**

First, PGW fails to offer any evidence to support the Commission's determination that its RNG Pilot Program conforms with PGW's obligation to take all prudent steps to negotiate favorable gas supply contracts. To be sure, the record is devoid of any actual or tentative RNG contracts for review, depriving parties and the Commission of any information necessary to support the essential determination that RNG purchases would be made in conjunction with favorable gas supply contracts. Additionally, as PGW does not even bother to hint at the length of the contract terms it would consider for RNG procurement, parties and the Commission are deprived of any opportunity to consider the length of any contract terms as well. To be fair, I&E acknowledges PGW's point that PGW could not produce a signed RNG contract in this case because it would not have been prudent to commit to purchases, incur legal expenses, and use its resources until the Commission authorizes its RNG proposal.<sup>26</sup> However, the predicament that PGW highlights in its inability to provide the Commission with the information necessary to analyze any RNG contract exemplifies the fallacy of its decision to insert the RNG Pilot Program proposal into a GCR proceeding. Specifically, PGW is asking the Commission to conclude that its RNG purchases will be made in conjunction with favorable gas supply contracts when no supply contracts currently exist. I&E submits that such a

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<sup>26</sup> PGW St. No. 3-R, p. 2.

conclusion is not prudent, warranted, or permitted in the context of a GCR proceeding where the least cost gas procurement requirement governs.

Notably, PGW's inability to produce even general RNG contract information is not just an issue of form, but also of substance, as it is further compounded by the lack of specificity in its overall RNG acquisition plan. I&E explained earlier in its description of PGW's proposal, PGW's vague RNG acquisition plan generally contemplates prioritizing sourcing RNG from Pennsylvania suppliers, but then looking to suppliers outside of Pennsylvania if necessary. Importantly, PGW does not identify the factors it will use to select RNG suppliers, or whether and how the price of RNG would be considered in its acquisition plan. Considering the many missing pieces of PGW's RNG procurement strategy, including whether and how cost will be considered in entering supply contracts, the Commission cannot conclude that PGW's RNG Pilot Program will result in favorable supply contracts as required by Section 1318.

**B. PGW's RNG Pilot Program Expressly Rejects Lower Cost Gas Supplies**

Even assuming, *arguendo*, that PGW's failure to prove that its RNG Pilot Program was consistent with its obligation to negotiate favorable supply contracts was not fatal (it is), it has failed a second prong of the last-cost gas procurement standard. Here, the facts of the case demonstrate that PGW's RNG Pilot Program is wholly inconsistent with PGW's obligation to take all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside of the Commonwealth. As explained above, PGW appears to value RNG acquisition from the standpoint of

proximity instead of cost.<sup>27</sup> In fact, the only gas cost information PGW provides regarding RNG is an admission that it is completely antithetical to the pursuit of lower cost supplies. Specifically, PGW witness Stunder testified that RNG is “more expensive” than conventional natural gas, a conclusion supported by the only piece of evidence in this case regarding the estimated cost of RNG: a supplier’s response to PGW’s RFP. In the unidentified supplier’s response, it indicated that RNG purchases would include a cost adder ranging from \$13 to \$17.50 per Dth over and above the indexed cost of natural gas.<sup>28</sup> I&E submits that PGW’s proposal to increase gas costs by up to \$17.50 per Dth stands in diametric opposition to its obligation that it takes all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside of the Commonwealth.

In this case, I&E witness Cline correctly recognized that PGW’s RNG Pilot Program relies on RNG that is “exponentially more expensive” than natural gas, resulting in the diminished buying power of ratepayer funds and other hidden costs.<sup>29</sup> In the analysis that led to his conclusion, witness Cline compared the TETCO M-1 cost for natural gas for March 2021, \$2.53 per Dth, to the information provided by PGW’s RFP, and calculated that the RNG could cost up to approximately \$20.03 per Dth. Next, witness Cline explained that as a practical effect of PGW’s RNG Pilot Program, if PGW were to replace \$500,000 of TETCO M-1 natural gas with the same dollar amount of RNG, then PGW would need to also purchase approximately 165,432 Dth of traditional

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<sup>27</sup> PGW St. No. 3, p. 3.

<sup>28</sup> PGW St. No. 3, p. 3.

<sup>29</sup> I&E St. No. 1, pp. 4-5.

natural gas in order have the same amount of supply. Assuming a \$2.53 per Dth price, this extra gas would cost an additional approximately \$418,543 (165,432 Dth x \$2.53 per Dth).<sup>30</sup> Notably, PGW did not dispute witness Cline’s analysis. Nor did PGW dispute Mr. Cline’s conclusion that its RNG Pilot Program would result in customers paying more for less gas.<sup>31</sup>

Tellingly, beyond witness Cline’s well-supported analysis, the terms of the PGW/OCA Joint Stipulation also suggest that the BTU content of RNG may be an additional cost-inducing factor that cannot be quantified at this time, and which may not be quantifiable in the future. More specifically, the PGW/OCA Joint Stipulation provides, in part, PGW’s commitment to “identify the BTU content of its RNG purchases, to the extent such data is available.”<sup>32</sup> For purpose of context, the BTU content was an issue raised by OCA witness Mierzwa who testified that as a condition of approval for its RNG Pilot Program, PGW should be required to identify the BTU content of its RNG purchases and **any impact of a change in BTU content from that of other purchases on usage.**<sup>33</sup> As part of the PGW/OCA Joint Stipulation, PGW and OCA omitted the highlighted language above, but I&E submits that in the plain language of his direct testimony, witness Mierzwa’s recommendation was premised on a concern that given the uncertain BTU content of any purchased RNG, a usage impact could be realized. Now, as part of the PGW/OCA Joint Stipulation, PGW has made only an

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<sup>30</sup> I&E St. No. 1, pp. 5-6.

<sup>31</sup> I&E St. No. 1, p. 7.

<sup>32</sup> PGW/OCA Joint Stipulation, p.1.

<sup>33</sup> OCA St. No. 1, p. 12 (emphasis added).

illusory promise to identify the BTU content impact, as it has qualified such identification on “availability.” While PGW may have assuaged the OCA’s concerns with its illusory promise, I&E submits that under these facts, parties, the Commission, and PGW’s ratepayers may never know the BTU content impact of RNG, and the corresponding price impact, providing an additional basis for rejection.

I&E submits that given the record facts, including the \$13 - \$17.50 adder that RNG purchases are estimated to impose above conventional natural gas costs, there can be no credible dispute that PGW’s RNG Pilot Program is wholly inconsistent with its obligation to pursue lower cost gas supplies from a price perspective. As a result, PGW hinges the viability of its RNG Pilot Program on the claim that it is consistent with PGW’s obligation to provide safe, adequate, and reliable service to its customers. As I&E will demonstrate below, PGW’s provision of service argument is without merit, not just because it is unsupported, but also because it is based upon platitudes, speculation, and policy positions that are not grounded in existing law, regulation, or Commission-based policy.

**C. PGW failed to support any determination that its RNG Pilot Program is essential to its provision of safe, adequate, and reliable service**

PGW’s claims that it is proposing to purchase RNG at a price “likely higher” than conventional natural gas supplies because it believes that incorporating RNG into its supply portfolio would “further the goals” of providing safe, adequate, and reliable

service to its customers,<sup>34</sup> are at best, speculative and unsupported. In support of that “belief,” PGW witness Stunder testified that national, state, and local elected officials support the reduction of emissions, and he claimed that RNG does reduce emissions. Additionally, witness Stunder pointed to procurement experience PGW could gain through its purchases of RNG, which he claims would diversify PGW’s supply portfolio, and which may be beneficial if the RNG supply market becomes an increasing source of gas supply in the years ahead.<sup>35</sup> Finally, witness Stunder claims that if there is a potential change in state and federal law related to carbon emissions, becoming familiar with RNG now will better position PGW for the future.<sup>36</sup>

**(i) Alleged Emission Reductions Benefits Are Unsupported and Not Grounded in Federal or State Law, or Commission-based Policy**

At the outset, witness Stunder’s self-concluding statement that use of RNG produces environmental benefits<sup>37</sup> is not grounded in any record-based quantification of any benefits inuring to PGW’s ratepayers. While witness Stunder testifies that “RNG is considered an alternative that produces less greenhouse gas than conventional natural gas,”<sup>38</sup> he never supports his testimony with any objective facts or specifics necessary to explain how the vague claims of greenhouse gas reduction would translate into a safety, adequacy of service, or reliability of service benefit to PGW’s ratepayers. I&E submits that PGW fails to make such a showing and its reliance on innuendo and generalized

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<sup>34</sup> PGW St. No. 3, p. 3.

<sup>35</sup> PGW St. No. 3, pp. 3-4.

<sup>36</sup> PGW St. No. 3, p. 4.

<sup>37</sup> PGW St. No. 3, pp. 3-4.

<sup>38</sup> PGW St. No. 3, p. 3.

statements is not sufficient to support the conclusion that RNG purchases are necessary to support PGW's safe, adequate, and reliable service.

Importantly, and as OSBA witness Knecht correctly recognized, PGW cannot guarantee that there will be any environmental benefits produced by the RNG Pilot Program. In support of his position, witness Knecht explains that PGW has not indicated that its purchases would be for gas that would otherwise be vented.<sup>39</sup> In fact, the tenuous nature of any alleged environmental benefits that could materialize from the RNG Pilot Program is enshrined in the PGW/OCA Joint Stipulation. In the PGW/OCA Joint Stipulation, PGW commits that it will "identify whether its purchase of RNG will result in the monetization of any of the environmental benefits of the RNG project and how those benefits will be reflected in the price of the RNG it purchases."<sup>40</sup> I&E submits that the plain language translation of PGW's "commitment" simply confirms the possibility that purchase of RNG might not result in the monetization of any environmental benefits. I&E also notes that the PGW/OCA Joint Stipulation fails to identify the "environmental benefits" that are to be the subject of the monetization inquiry. On these facts, there can be no straight-faced argument that the unidentified environmental benefits compel a determination that RNG purchases are integral to PGW's provision of safe, adequate, and reliable service.

Instead of pointing to quantifiable benefits, or even identifiable goal posts for measuring any benefits that ratepayers could expect from the exponentially-increased gas

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<sup>39</sup> PGW St. No. 1, p. 5.

<sup>40</sup> PGW/OCA Joint Stipulation, p. 2.

costs that RNG purchases would impose, witness Stunder simply claims that “elected officials” support the reduction of emission.<sup>41</sup> But PGW confuses the issue, because this is a gas cost proceeding, and the alleged preferences of politicians, which may be laudable from an environmental standpoint,<sup>42</sup> would result in financial harm to PGW’s ratepayers without producing any proven benefit to its ability to provide safe and reliable service. I&E submits that at the premium additional cost RNG, which would impose an estimated adder of \$13 to \$17.50 per Dth, ratepayers must be able to expect something more than platitudes.

From I&E’s perspective, PGW’s inability to tie its RNG purchases to anything more than platitudes appears to be rooted in the fact that no federal or state law, or even Commission-based policy, exists to provide a framework necessary to authorize RNG purchases or to identify standards that should apply to reduction of emissions. Moreover, like PGW, the OCA’s support for the RNG Pilot Program is also partly rooted in a concern about the impact of global warming caused by greenhouse gas,<sup>43</sup> but it too is similarly flawed. Specifically, the analysis that OCA witness Mierzwa provides to support RNG benefits is telling in that it is premised by the statement that to begin addressing global warming, “states are adopting laws and policies that address carbon emissions associated with the energy delivered to customers.”<sup>44</sup> As an example of a state

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<sup>41</sup> PGW St. No. 3, p. 3.

<sup>42</sup> I&E takes no position regarding the merits of any pending state, federal, or local legislation or regulations regarding reduction of carbon emissions. Instead, I&E’s point is that no position on that issue is warranted in a PGW GCR proceeding unless and until authorizing legislation is passed and impacts PGW as a jurisdictional utility.

<sup>43</sup> OCA St. No. 1, p. 11.

<sup>44</sup> OCA St. No. 1, p. 11.

that has passed such legislation, witness Mierzwa points to Massachusetts now requiring net-zero greenhouse gas emissions by 2050.<sup>45</sup> In an apparent recognition that Pennsylvania has not passed any such legislation, witness Mierzwa instead noted that the City of Philadelphia has adopted an initiative to achieve carbon neutrality by 2050.<sup>46</sup> He also indicated that Pennsylvania is considering the reduction of greenhouse gas from the generation of electricity through joining the Regional Greenhouse Gas Initiative (“RGGI”).<sup>47</sup>

Despite witness Mierzwa’s reliance upon references to the City of Philadelphia’s initiative, and to the possibility that Pennsylvania might join RGGI to reduce carbon emissions related to the *power* industry, they do not overcome the fact that Pennsylvania has not adopted the type of legislation necessary to mandate carbon reduction through use of RNG. Nor has the Commission, which is charged with regulating PGW’s rates, and corresponding gas costs, as a jurisdictional entity, passed any regulations or adopted any policies that would authorize the use of expensive RNG for reduction of carbon emissions.

**(ii) The Commission Recently and Expressly Rejected  
Piecemeal Consideration of Environmental Issues in  
PGW’s 2020 Rate Proceedings**

PGW and OCA are well aware of from their recent and direct participation in PGW’s 2020 base rate case,<sup>48</sup> that the Commission has already expressly declined to

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<sup>45</sup> OCA St. No. 1, p. 11.

<sup>46</sup> OCA St. No. 1, p. 11.

<sup>47</sup> OCA St. No. 1, p. 11.

<sup>48</sup> *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Opinion and Order Entered on November 19, 2020). I&E notes that Mr. Mierzwa was an OCA witness in this case.

insert itself into the realm of establishing environmental policy in a rate case.<sup>49</sup> I&E submits that PGW should be intimately familiar with the Commission’s determination because the Commission’s Order expressly considered PGW witness Commissioner James Cawley’s position in that case:

Commissioner Cawley further explained that the Commission would “act *ultra vires*” if it made rate case determinations based on the perceived effects of greenhouse gases or global warming and would “usurp the authority” of DEP. Commissioner Cawley testified: “At the least, requiring the Commission to make ratemaking (or other) determinations in response to climate change would create the real possibility of disparate and potentially inconsistent regulation.”<sup>50</sup>

Although PGW now takes a starkly different position than the one it offered less than a year ago through Commissioner Cawley’s testimony, I&E submits that Commissioner Cawley’s concerns regarding disparate and inconsistent regulations are well-founded and avers that they should directly translate to this case as well.

Aside from recognizing Commissioner Cawley’s comments, the Commission’s Order in PGW’s 2020 rate case also recognized that addressing policy issues like climate change in a single PGW rate proceeding deprived all stakeholders of the opportunity for input and would be antithetical to developing universal guidelines:

All stakeholders deserve notice and opportunity to be heard on policy issues like climate change. This input would drive detailed and carefully constructed regulations or a policy statement governing the type, amount and breadth of information required to be submitted to the Commission.<sup>51</sup>

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<sup>49</sup> Id. at 94.

<sup>50</sup> Id. at 93 (internal citations omitted).

<sup>51</sup> Id. at 94.

I&E submits that although PGW and OCA's direct participation in PGW's 2020 rate case should have made them well-aware of the Commission's determination that a jurisdictional utility should not, sua sponte, address environmental policy issues in rate proceedings on a piecemeal basis, they have nonetheless determined to do so here via the PGW/Joint OCA Stipulation.

A simple review of the PGW/Joint OCA Stipulation indicates that PGW and OCA have agreed upon a vague reporting requirement for PGW to identify whether its purchase of RNG will result in monetization of environmental benefits.<sup>52</sup> Aside from the fact that PGW and OCA have not attempted to define "environmental benefits," their agreement deprives all stakeholders and the Commission an opportunity to determine the type, amount, and breadth of information that is necessary to measure such benefits. I&E submits that the Commission has already spoken directly to PGW on this issue, and while PGW disregards the Commission's determination in favor of its RNG Pilot Program, the Commission's determination is nevertheless valid and operative.

I&E avers that until federal and/or state law, or a Commission-based mandate is issued to support PGW's purchase of RNG, there can be no determination that procuring RNG is necessary for PGW's provision of safe, adequate and reliable service. Absent legal authority or, at a minimum, regulatorily-based policy that supports PGW's use of RNG, I&E submits that PGW's RNG Pilot Program is not an authorized use of ratepayer

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<sup>52</sup> PGW/OCA Joint Stipulation, p. 7.

funds. Accordingly, I&E respectfully requests that ALJ Heep recommend, and the Commission subsequently uphold, the denial of PGW's RNG Pilot Program.

**(iii) PGW's Touted Reliability and Diversity of Supply Benefits Are Speculative, At Best, and May Never Materialize**

Despite witness Stunder's touting of supply diversity benefits of PGW's RNG Pilot Program, PGW has admitted that the purchase volumes during the pilot period will not have a significant impact on supply diversity and/or security of supply.<sup>53</sup> Instead, PGW "anticipates" that such benefits may be produced once "the RNG market more fully develops and RNG purchases increase."<sup>54</sup> As OSBA witness Knecht aptly explained, the fact that PGW has admitted that its RNG Pilot Program will not yield the reliability and diversity benefits PGW "anticipates" in the future means that in order to credibly justify the value of its proposal, PGW must demonstrate the reasonable probability that RNG will become a significant future supply source at a competitive price.<sup>55</sup> PGW has not made such a demonstration in this case, and the only certain outcome of its RNG Pilot Program is the dilution of ratepayer's purchasing power at a time when PGW and its customers are grappling with significant customer arrearages.<sup>56</sup>

Here, at the peril of its ratepayers, PGW puts the cart before the horse because any reasonable probability that RNG will become a significant future supply source at a competitive price will hinge upon changes in federal or state law. In fact, OCA witness

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<sup>53</sup> OSBA Ex. IEc-2, OSBA I-15.

<sup>54</sup> Id.

<sup>55</sup> OSBA St. No. 1-SR, p. 6.

<sup>56</sup> I&E St. No. 1, p. 10.

Mierzwa tacitly admitted this point in his direct testimony through his reliance upon other jurisdiction's authorizing legislation for reduction of carbon emission to support the viability of PGW's RNG Pilot Program in Pennsylvania. Despite the misplaced reliance, in this case, the focal point cannot be the laws and policies of other states, platitudes, politics, or even laudable policy objectives. In this case, the focal point must be on ensuring that PGW pursues the lowest cost gas necessary to ensure its provision of safe, adequate, and reliable service, and the record evidence proves that the RNG Pilot Program is directly at odds with that requirement. Accordingly, I&E respectfully requests that ALJ Heep recommend, and the Commission subsequently uphold, the denial of PGW's RNG Pilot Program.

**2. PGW's RNG Pilot Program would result in unjust and unreasonable rates for PGW's ratepayers**

Just as PGW's RNG Pilot Program would directly conflict with the least cost gas procurement policy of Section 1318, it would also offend the Code's "just and reasonable" rate requirement. Specifically, the Code requires that every rate made, demanded, or received by a public utility shall be just and reasonable, and in conformity with regulations or orders of the commission.<sup>57</sup> The Commission "has broad discretion in determining whether rates are reasonable."<sup>58</sup> Additionally, the Commission is "vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates."<sup>59</sup> Recently, the Commission has mandated that one factor it must consider in the

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<sup>57</sup> 66 Pa. C.S. § 1301.

<sup>58</sup> *City of Pittsburgh v. Pennsylvania Public Utility Commission*, 42 Pa. Cmwlth. 242, 400 A.2d 672 (1979).

<sup>59</sup> *Popowsky v. Pennsylvania Public Utility Commission*, 669 A.2d 1029, 1040 (Pa.Cmwlth.1995).

content of rate affordability are the unique considerations related to the COVID-19 pandemic in setting just and reasonable rates.<sup>60</sup> To that end, the Commission recognized that in making a determination on just and reasonable rates, it is required, “to weigh evidence or unique considerations related to changes in service, market forces, and the economy.”<sup>61</sup> When viewed from the lens of the COVID-19 pandemic’s impact upon PGW, a cash-flow utility, and its ratepayers, and in consideration of the significant impact of the Commission’s termination moratorium for utilities,<sup>62</sup> there can be no straight-faced argument that permitting PGW to pay an additional \$13 to \$17.50 premium for RNG comports with just and reasonable rates.

In his direct testimony, I&E witness Cline aptly acknowledged that PGW’s RNG Pilot Program would result in its customers “paying more money for less gas.”<sup>63</sup> Witness Cline opined that charging customers more money for less gas would impose a burden at any time, but particularly when customers are struggling to recover from the pandemic.<sup>64</sup> In support of his position, witness Cline referenced the fact that PGW has only lifted its termination moratorium on April 1, 2021, making the true impact of customer arrearages uncertain.<sup>65</sup> Witness Cline correctly determined that the best available evidence of the known COVID-19 pandemic impact upon PGW and its customers came from PGW in the form of comments and statistics it provided to the Commission.

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<sup>60</sup> Pa. PUC v. *Columbia Gas of Pennsylvania, Inc.*, R-2020-3018835, p. 48, Opinion and Order (entered on February 18, 2021).

<sup>61</sup> *Id.*

<sup>62</sup> *Public Service Termination Moratorium Proclamation of Disaster Emergency-COVID 19*, Emergency Order, Docket No. M-2020-3019244 (entered on March 13, 2020).

<sup>63</sup> I&E St. No. 1, p. 7.

<sup>64</sup> I&E St. No. 1, p. 7.

<sup>65</sup> I&E St. No. 1, pp. 7-8.

Specifically, witness Cline referenced a letter submitted by PGW to the Commission on February 16, 2021 to address its position on the termination moratorium.<sup>66</sup> As part of its Comments, PGW indicated that “since implementation of the PUC Order, and even with call volumes low, approximately 35,000 customers have identified as having income at or below 300% FPL as of today’s date. The impact of the pandemic on the percentages is not yet clear, but a sizeable percentage of PGW customers have income at or below 300% FPL.”<sup>67</sup> Additionally, witness Cline also cited to PGW’s letter to the Commission on March 15, 2021 regarding customer arrearages. In its letter, PGW revealed that the level of aggregate customer arrearage dollars increased by \$22,928,362 from \$83,584,040 as of February 29, 2020 to \$106,512,402 as of February 28, 2021.<sup>68</sup>

After his analysis of PGW’s reported arrearage levels, witness Cline correctly concluded that the data demonstrated that many PGW customers remain at risk and that “PGW and its customers are now grappling with significant arrearage amounts.”<sup>69</sup> Significantly, PGW did not challenge witness Cline’s analysis or conclusion. Instead, PGW ignored the reality of the mounting arrearages, and it attempted to deflect from that inconvenient reality by arguing about improvement in the federal unemployment level

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<sup>66</sup> I&E Statement No. 1, pp. 9-10, referencing Philadelphia Gas Works’ Comments Addressing Expiring Termination Moratorium, Docket No. M-2020-3019244 (February 16, 2021), available at <https://www.puc.pa.gov/pcdocs/1693505.pdf>

<sup>67</sup> Id.

<sup>68</sup> I&E Statement No. 1, p. 10, referencing PGW’s COVID-19 Customer Reporting Requirements: At-Risk Accounts, Docket No. M-2020-3019244, p. 2, March 15, 2021, available at <https://www.puc.pa.gov/pcdocs/1696551.pdf>

<sup>69</sup> I&E St. No. 1, p. 10.

and the issuance of COVID-19 pandemic relief funding.<sup>70</sup> The flaws in PGW's position were quickly realized upon the recognition that the employment figures it relied upon were not tied to its service territory, and that COVID-19 pandemic relief funding would not be best spent paying exponentially higher gas costs than customers would normally pay.<sup>71</sup>

In response to witness Cline, PGW witness Stunder eventually provided employment statistics to support a drop of unemployment in Philadelphia as of February 2021.<sup>72</sup> Additionally, witness Stunder provided data to indicate that the COVID vaccination process was underway in Philadelphia and that access to the vaccine had recently become available to every adult in Pennsylvania.<sup>73</sup> Finally, witness Stunder provided an itemized list of COVID relief funding, including funding available from the American Rescue Plan Act, and the CARES Act to support the position that COVID relief packages are available to PGW ratepayers.<sup>74</sup> According to witness Stunder, COVID relief funds would be well-spent on enabling PGW to gain RNG knowledge and experience.<sup>75</sup>

I&E asserts that PGW's position is absurd. While PGW may have illustrated a decline in Philadelphia's unemployment rate, Mr. Stunder did not mention that the February 2021 unemployment rate of 7.8 percent remains significantly higher than the

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<sup>70</sup> I&E Ex. No. 1, Sch. 3.

<sup>71</sup> I&E St. No. 1, pp. 9-11.

<sup>72</sup> PGW St. No. 3-R, p. 5.

<sup>73</sup> PGW St. No. 3-R, pp. 5-6.

<sup>74</sup> PGW St. No. 3-R, p. 6.

<sup>75</sup> PGW St. No. 3-RJ, p. 2.

pre-COVID-19 pandemic unemployment rate of 4.9 percent in March 2020.<sup>76</sup> With this in mind, I&E witness Cline correctly acknowledged that COVID-19 pandemic impacts are still being felt and a significant amount of PGW’s customers remain impacted, illustrating that requiring ratepayers to pay exponentially higher rates for RNG than they would pay for traditional natural gas is not a prudent course of action.<sup>77</sup> Additionally, I&E fundamentally rejects PGW’s claim that Congressionally-approved federal relief funding provided for purposes of COVID-19 pandemic relief would be well-spent to fund unnecessary and exorbitant gas costs.

Perhaps the absurdity of PGW’s position that COVID-19 pandemic relief funding would be well-spent towards funding its RNG Pilot Program is best exemplified when it is considered in the context of its 2020 request for rate relief. In its rate case, PGW initially requested an increase of its total annual operating revenues by approximately \$70 million,<sup>78</sup> but it ultimately agreed to settle the case at an overall distribution base rate increase of \$35 million over the course of three phases.<sup>79</sup> In its Opinion and Order, issued just over six months ago, the Commission recognized PGW’s position that the rate case settlement contemplated the plight of low-income and residential customers, by including customer service enhancements “during the virtually unprecedented

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<sup>76</sup> I&E St. No. 1-SR, p. 7. US Bureau of Labor Statistics, [Philadelphia-Camden-Wilmington, PA-NJ-DE-MD: Nonfarm employment and labor force data : Mid-Atlantic Information Office : U.S. Bureau of Labor Statistics \(bls.gov\)](#)

<sup>77</sup> I&E St. No. 1-SR, pp. 7-8.

<sup>78</sup> *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 2 (Opinion and Order Entered on November 19, 2020).

<sup>79</sup> *Id.*

circumstances created by the COVID-19 pandemic and the accompanying economic consequences. . . .”<sup>80</sup>

In fact, PGW’s position regarding the settlement included the statement that its “financial concessions [were] designed to ameliorate the effects of the rate increase on customers who may be financially strapped due to the negative economic effects of the pandemic. . . .”<sup>81</sup> Furthermore, in the settlement, PGW agreed to establish a COVID-19 Relief Plan, funded at up to \$2 million (or a maximum of 6,600 customers at up to \$300 per customer) to be funded by GCR pipeline refunds.<sup>82</sup> Now, six months later, in its first GCR proceeding since its 2020 rate case, PGW seeks to impose exorbitant and unwarranted RNG Pilot Programming costs upon the same group of “financially strapped” customers. I&E avers that such a result is not only squarely outside any determination of just and reasonable rates, but it completely offends the public interest.

I&E submits that the \$13 to \$17.50 per Dth premium that PGW’s RNG Pilot Program would needlessly impose upon ratepayers is, on its face, sufficient to warrant a determination that it violates Section 1301’s just and reasonable rate requirement. Yet, the violation becomes even more obvious when it is viewed through the lens of the COVID-19 pandemic impact considerations that the Commission has concluded must be factored into the determination of just and reasonable rates. On these facts, and for the

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<sup>80</sup> Id. at 40.

<sup>81</sup> *Pa. PUC vs. Philadelphia Gas Works*, PGW Exceptions, p. 13, Docket No. R-2020-3017206 (October 15, 2020)

<sup>82</sup> *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, pp. 23-24, Opinion and Order (entered on November 19, 2020).

reasons explained above, I&E respectfully requests that ALJ Heep recommend, and the Commission subsequently uphold, the denial of PGW's RNG Pilot Program.

## **VI. CONCLUSION**

For the reasons outlined in this Main Brief, I&E respectfully requests that Administrative Law Judge Darlene D. Heep recommend, and the Commission subsequently uphold, the denial of Philadelphia Gas Works' Renewable Natural Gas Pilot Program both as it was filed, and as modified through the Joint Stipulation of Philadelphia Gas Works and the Office of Consumer Advocate filed on May 13, 2021.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gina L. Miller". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Gina L. Miller

Prosecutor

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Dated: May 26, 2021

## PROPOSED FINDINGS OF FACT

1. I&E is charged with representing the public interest in ratemaking and service matters, and to enforce compliance with the Pennsylvania Public Utility Code (“Code”). 66 Pa. C.S. §§ 101 et seq., and Commission regulations, 52 Pa. Code §§ 1.1 et seq. See Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).
2. Through its GCR filing, PGW proposed to begin purchasing renewable natural gas. PGW St. No. 3, p.1.
3. Renewable natural gas is biogas produced from a biochemical process, such as anaerobic digestion. PGW St. No. 3, p. 1.
4. In its initial filing, PGW proposed to begin a two-year pilot program in which it purchases up to \$500,000, or approximately 0.4% of PGW’s total “C” Factor commodity cost, of RNG during fiscal year 2022. After the first year, PGW proposed that it be permitted to increase the RNG supply it can purchase in fiscal 2023 above \$500,000, but not more than 2% of the total “C” Factor commodity cost, which it estimated to be approximated \$2.5 million. PGW St. No. 3, p. 2.
5. PGW’s vague RNG acquisition plan generally contemplates prioritizing sourcing RNG from Pennsylvania suppliers, but then looking to suppliers outside of Pennsylvania if necessary. PGW St. No. 3, pp. 3-4.
6. RNG purchases would include a cost adder ranging from \$13 to \$17.50 per Dth over and above the indexed cost of natural gas. PGW St. No. 3, p. 3.
7. PGW claims that incorporating RNG into PGW’s gas mix will diversify its supply portfolio for purposes of reliability and enable PGW to better respond if there are changes in the law that address carbon emissions. PGW St. No. 3, p. 4.
8. PGW simply indicated that the pilot would be successful if it involved PGW supporting the developing RNG market and gaining experience with RNG purchasing. PGW Exh. No. 1, Sch. 1
9. On May 13, 2021, PGW entered into the PGW/OCA Joint Stipulation.
10. The PGW/OCA Joint Stipulation indicates that PGW and OCA agree that PGW would hold the purchases of RNG to \$500,000 for not only fiscal year 2022, but also for fiscal year 2023. PGW/OCA Joint Stipulation, p. 1.

11. The PGW/OCA Joint Stipulation indicates that PGW and OCA agree that PGW will do the following in next year's GCR filing: (1) Report the daily quantities of RNG purchased; (2) Report prices it paid for RNG; (3) Identify how those prices compare to other purchases; (4) Identify the GCR rate impact of its RNG purchases; (5) Identify the BTU content of its RNG purchases, to the extent such data is available; and (6) Identify the location of the facility producing the RNG and the type of facility (i.e. landfill, wastewater treatment plant, municipal solid waste, agricultural product, etc.); and (7) Identify whether its purchase of RNG will result in the monetization of any environmental benefits and how those benefits will be reflected in the price of the RNG purchases. PGW/OCA Joint Stipulation, pp. 2-3.
12. The BTU content was an issue raised by OCA witness Mierzwa who testified that as a condition of approval for its RNG Pilot Program, PGW should be required to identify the BTU content of its RNG purchases and any impact of a change in BTU content from that of other purchases on usage." OCA St. No. 1, p. 12.
13. PGW has made only an illusory promise to identify the BTU content impact, as it has qualified such identification on "availability." PGW/OCA Joint Stipulation, p. 2.
14. The PGW/OCA Joint Stipulation fails to identify the "environmental benefits" that are to be the subject of any monetization inquiry. PGW/OCA Joint Stipulation, p. 3.
15. PGW could not produce a signed RNG contract in this case because it would not have been prudent to commit to purchases, incur legal expenses, and use its resources until the Commission authorizes its RNG proposal. PGW St. No. 3-R, p. 2.
16. PGW values RNG acquisition from the standpoint of proximity instead of cost, indicating that the "focus on geographic proximity is intended to ensure that environmental benefits of RNG stay as close to PGW's service territory as possible, and to help further the development of RNG production in PGW's immediate vicinity." PGW St. No. 3, p. 3.
17. PGW witness Stunder testified that RNG is "more expensive" than conventional natural gas. PGW St. No. 3, p.3.

18. I&E witness Cline compared the TETCO M-1 cost for natural gas for March 2021, \$2.53 per Dth, to the information provided by PGW's RFP, and calculated that the RNG could cost up to approximately \$20.03 per Dth. Next, witness Cline explained that as a practical effect of PGW's RNG Pilot Program, if PGW were to replace \$500,000 of TETCO M-1 natural gas with the same dollar amount of RNG, then PGW would need to also purchase approximately 165,432 Dth of traditional natural gas in order have the same amount of supply. Assuming a \$2.53 per Dth price, this extra gas would cost an additional approximately \$418,543 (165,432 Dth x \$2.53 per Dth). I&E St. No. 1, pp. 5-6.
19. I&E witness Cline concluded that PGW's RNG Pilot Program would result in customers paying more for less gas. I&E St. No. 1, p. 7.
20. The Commission's Order in PGW's 2020 rate case also recognized that addressing policy issues like climate change in a single PGW rate proceeding deprived all stakeholders of the opportunity for input and would be antithetical to developing universal guidelines. *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 94 (Opinion and Order Entered on November 19, 2020).
21. In its 2020 rate case, PGW's own witness, Commissioner James Cawley, testified that the Commission would "act *ultra vires*" if it made rate case determinations based on the perceived effects of greenhouse gases or global warming and would "usurp the authority" of DEP. *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 93 (Opinion and Order Entered on November 19, 2020).
22. OCA witness Mierzwa direct testimony reveals his reliance upon other jurisdiction's authorizing legislation for reduction of carbon emission to support the viability of PGW's RNG Pilot Program in Pennsylvania. OCA St. No. 1, p. 11.
23. PGW "anticipates" that diversity of supply and/or security of supply benefits may be produced once "the RNG market more fully develops and RNG purchases increase." OSBA Ex. IEC-2, OSBA I-15.
24. In order to credibly justify the value of its proposal, PGW must demonstrate the reasonable probability that RNG will become a significant future supply source at a competitive price. OSBA St. No. 1-SR, p. 6.
25. In this gas cost rate case, the focal point must be on ensuring that PGW pursues the lowest cost gas necessary to ensure its provision of safe, adequate, and reliable service. 66 Pa. C.S. §1318.

26. Charging customers more money for less gas would impose a burden at any time, but particularly when customers are struggling to recover from the pandemic. I&E St. No. 1, p. 7.
27. The best available evidence of the known COVID-19 pandemic impact upon PGW and its customers came from PGW in the form of comments and statistics it provided to the Commission. I&E St. No. 1, pp. 9-10.
28. As of February 21, 2021, approximately 35,000 PGW customers have identified as having income at or below 300% FPL. I&E Statement No. 1, pp. 9-10, referencing Philadelphia Gas Works' Comments Addressing Expiring Termination Moratorium, Docket No. M-2020-3019244 (February 16, 2021), available at <https://www.puc.pa.gov/pcdocs/1693505.pdf>
29. PGW provided the Commission with a report that revealed that its level of aggregate customer arrearage dollars increased by \$22,928,362 from \$83,584,040 as of February 29, 2020 to \$106,512,402 as of February 28, 2021.
30. I&E Statement No. 1, p. 10, referencing PGW's COVID-19 Customer Reporting Requirements: At-Risk Accounts, Docket No. M-2020-3019244, p. 2, March 15, 2021, available at <https://www.puc.pa.gov/pcdocs/1696551.pdf>
31. The February 2021 unemployment rate of 7.8 percent for Philadelphia remains significantly higher than the pre-COVID-19 pandemic unemployment rate of 4.9 percent in March 2020. I&E St. No. 1-SR, p. 7. US Bureau of Labor Statistics, [Philadelphia-Camden-Wilmington, PA-NJ-DE-MD: Nonfarm employment and labor force data : Mid-Atlantic Information Office : U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/news.release/atlant11.z00.htm)
32. In its 2020 rate case, PGW initially requested an increase of its total annual operating revenues by approximately \$70 million, but it ultimately agreed to settle the case at an overall distribution base rate increase of \$35 million over the course of three phases. *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 2, Opinion and Order (entered on November 19, 2020).
33. In the settlement of its 2020 rate case, PGW agreed to establish a COVID-19 Relief Plan, funded at up to \$2 million (or a maximum of 6,600 customers at up to \$300 per customer) to be funded by GCR pipeline refunds. *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, pp. 23-24, Opinion and Order (entered on November 19, 2020).

34. Congressionally approved federal relief funding provided for purposes of COVID-pandemic relief would not be prudently spent to fund unnecessary and exorbitant gas costs. I&E St. No. 1-SR, p. 9.

## PROPOSED CONCLUSIONS OF LAW

1. As the petitioner, PGW has the burden of proof in this proceeding. 66 Pa. C.S. § 332(a).
2. PGW has not met its burden of proving by a preponderance of the evidence that its proposed RNG Pilot Program complies with the least cost gas procurement requirement imposed by Section 1318 of the Public Utility Code.
3. With respect to its RNG Pilot Program, PGW has failed to prove that it has taken all prudent steps necessary to negotiate favorable renewable natural gas supply contracts. 66 Pa. C.S. § 1318(a)(1)
4. PGW's RNG Pilot Program directly violates the requirement that PGW take all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth. § 1318(a)(2)
5. The \$13 -\$17.50 adder that PGW's RNG purchases are estimated to impose above conventional natural gas costs are wholly inconsistent with take all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth. § 1318(a)(2).
6. PGW has not met its burden of proof of establishing that purchasing RNG is essential to its provision of safe, adequate, and reliable service to its customers. 66 Pa. C.S. § 1318; 66 Pa. C.S. § 1501.
7. Pennsylvania has not adopted any legislation that requires PGW to purchase RNG in order to reduce carbon emissions or to achieve any other environmental goal.
8. Pennsylvania has not adopted any legislation that requires PGW to purchase RNG in order to diversify its natural gas supply.
9. The Commission has not adopted any order, regulation, or policy statement that requires or authorizes PGW's RNG procurement to reduce carbon emissions or to achieve any other environmental goal.
10. The Commission has not adopted any order, regulation, or policy statement that either requires or authorizes PGW to engage in RNG procurement in order to diversify its natural gas supply.
11. The Commission has expressly declined to insert itself into the realm of establishing environmental policy on a piecemeal basis for one utility. *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 94, Opinion and Order, (entered on November 19, 2020).

12. The PGW/OCA Joint Stipulation is insufficient to cure the RNG Pilot Program's violations of the least cost gas procurement requirement of Section 1318 of the Code.
13. PGW has not met its burden of proving by a preponderance of the evidence that its proposed Renewable Natural Gas Pilot Program is just, reasonable, and in the public interest as required by Section 1301 of the Public Utility Code.
14. The Commission has mandated that one factor it must consider in the content of rate affordability are the unique considerations related to the COVID-19 pandemic in setting just and reasonable rates. Pa. PUC v. *Columbia Gas of Pennsylvania, Inc.*, R-2020-3018835, p. 48, Opinion and Order (entered on February 18, 2021).
15. Congressional funding issued for the purpose of providing relief from the COVID-19 pandemic was not intended to fund unnecessary and exorbitant gas costs.
16. The PGW/OCA Joint Stipulation adopts the RNG Pilot Program by imposing reporting requirements that have not been vetted by the Commission and will not encompass the input of stakeholders.
17. The PGW/OCA Joint Stipulation is insufficient to cure the RNG Pilot Program's violations of the just and reasonable rate requirement of Section 1301 of the Code

**PROPOSED ORDERING PARAGRAPH**

THEREFORE, IT IS RECOMMENDED:

That the Philadelphia Gas Works proposal to implement a Renewable Natural Gas Pilot Program, as filed and as thereafter modified by the Joint Stipulation of PGW and the Office of Consumer Advocate, including all terms and conditions contained therein, is denied.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	Docket No.: R-2021-3023970
	:	
Philadelphia Gas Works	:	
1307(f) Proceeding	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **I&E Main Brief** on May 26, 2021, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

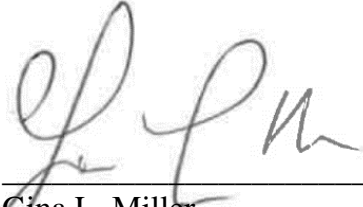
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