



COMMONWEALTH OF PENNSYLVANIA

May 26, 2021

**E-FILED**

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) /  
Docket No. R-2021-3023970**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Sharon E. Webb

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

*Enclosures*

cc: Robert D. Knecht  
Parties of Record



**TABLE OF CONTENTS**

I. Introduction ..... 1

II. Procedural History ..... 2

III. Burden of Proof & Applicable Legal Standards ..... 4

IV. Statement of the Questions Presented ..... 5

V. Argument ..... 5

VI. Conclusion ..... 7

Appendix A – Proposed Findings of Fact

Appendix B – Proposed Conclusions of Law

Appendix C – Proposed Ordering Paragraphs

**TABLE OF AUTHORITIES**

**Cases**

*Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) ..... 4

*Se-ling Hosiery v. Margulies*, 364 Pa. 45. 70 A.2d 857 (1950) ..... 4

**Statutes**

66 Pa. C.S. §332(a)..... 4

66 Pa. C.S. §1318(a)..... 4,6

**I. Introduction**

As part of its annual gas cost rate filing, Philadelphia Gas Works (“PGW” or “the Company”) has proposed to begin including renewable natural gas in its gas supplies purchases for those customers who obtain their gas supplies from PGW through the gas cost rate (“GCR”) mechanism. The Company proposes to dedicate approximately \$500,000 of its fiscal year (“FY”) 2020 gas purchase costs to RNG supplies, and to expand that up to an estimated \$2.5 million for FY 2023.

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) is participating as a party to this proceeding to ensure that the interests of small business customers of Philadelphia Gas Works (“PGW” or the “Company”) are adequately represented and protected.

## **II. Procedural History**

On February 1, 2021, Philadelphia Gas Works (“PGW” or the “Company”) submitted the pre-filing for its annual Purchased Gas Cost (“PGC”) Rate filing. On March 1, 2021 PGW made its definitive filing including Supplement No. 140 to PGW’s Gas Service Tariff- Pa. P.U.C. No 2 (“Supplement No. 140”), Supplement No. 95 to Gas Supplier Tariff Pa. P.U.C. No. 1 (“Supplement No. 95”), and supporting information regarding the computation of annual purchased gas costs for the twelve months ending August 31, 2022.

On February 26, 2021, the Office of Small Business Advocate (“OSBA”) filed a complaint against PGW’s filing.

On March 9, 2021, a prehearing conference was held before Administrative Law Judge (“ALJ”) Darleen Heep.

On March 15, 2021, ALJ Heep issued her Scheduling Order.

On April 16, 2021, the OSBA submitted the direct testimony of Robert D. Knecht. On May 11, 2021, the OSBA submitted the surrebuttal testimony of Mr. Knecht.

Prior to the evidentiary hearings, the parties reached agreement on all issues with the exception of RNG.

Evidentiary hearings scheduled for March 13, 2021, were cancelled as all parties waived cross examination.

On March 13, 2021, PGW and the Office of Consumer Advocate (“OCA”) filed a Joint Stipulation (“Non-Unanimous Joint Stipulation”) relative to the Company’s filed proposal which appears to limit purchases of RNG to \$500,000 for two years (FY 2022

and FY 2023), while allowing PGW to propose an increase for FY 2023 in its next annual GCR proceeding.<sup>1</sup>

The OSBA submits this main brief pursuant to the procedural schedule set forth in ALJ Heep's March 15, 2021, Scheduling Order.

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<sup>1</sup> See May 13, 2021, Joint Stipulation of the Philadelphia Gas Works and the Office of Consumer Advocate at Docket No. R-2021-3023970. P. 1

### **III. Burden of Proof and Applicable Legal Standards**

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 857 (1950). In this instance, PGW has the burden of proof with the respect to the RNG proposal as modified by the May 13, 2021 Non-Unanimous Joint Stipulation.

Further, Section 1318 of the Public Utility Code mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy. 66 Pa. C.S. §1318(a).

#### **IV. Statement of the Question Presented**

Does PGW's proposal to purchase RNG violate Sections 1317(a) and 1318 of the Public Utility Code that mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy?

Suggested Answer: Yes

#### **V. Argument**

##### **A. The Company's renewable natural gas ("RNG") pilot proposal**

In its initial filing, PGW proposed a pilot program which would add RNG to the Company's supply portfolio.<sup>2</sup> PGW's filed proposal was addressed in the May 13, 2021 Non-Unanimous Joint Stipulation, which would appear to limit the initial purchase (FY 2022) cost to \$500,000 and would provide for further reporting requirements in PGW's next GCR proceeding.<sup>3</sup>

OSBA witness Robert D. Knecht summarized the Company's RNG proposal, as follows:

The Company proposes to begin including RNG in its gas supply purchases for those customers who obtain their gas supplies from PGW through the GCR mechanism. The Company proposes to dedicate some \$500,000 of its FY 2020 gas purchase costs to RNG supplies, and to expand that up to an estimated \$2.5 million for FY 2023.<sup>4</sup> In responding to IRs, PGW indicates that its sole aim for this program is to develop experience in the developing RNG market.<sup>5</sup> PGW Witness Mr. Stunder also cites to:

- Environmental benefits of RNG relative to ordinary natural gas as carbon-neutral, and better than carbon neutral if the gases would otherwise be vented to the atmosphere;
- Supply adequacy benefits;
- Geographic and other supply diversity benefits.

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<sup>2</sup> PGW Statement No. 3 at 2.

<sup>3</sup> See Joint Stipulation of Philadelphia Gas Works and the Office of Consumer Advocate at 1.

<sup>4</sup> OSBA Statement No. 1 at 5, *citing* PGW Statement No. 3 at 2 and footnote 7.

<sup>5</sup> *Id.*, *citing* OCA-III-5, I&E-II-27, OSBA-I-7.

OSBA Statement No. 1 at 5

Further, as noted by Mr. Knecht, PGW “admits that RNG supplies would cost between \$13.00 and \$17.50 *more* per Dth than other natural gas supplies, which makes RNG up to *five* times as costly as other natural gas supplies. This proposal cannot thus be consistent with least cost procurement.<sup>6</sup>” Although the overall dollar amount of PGW’s proposal may be limited by the Non-Unanimous Joint Stipulation, the Non-Unanimous Joint Stipulation would not modify the per-mcf estimated cost of RNG supplies. Even based on the Company’s own cost estimate, RNG supplies are absurdly expensive.

The Public Utility Code mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy, consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers.<sup>7</sup> Based on the increased cost alone, PGW’s proposal should be rejected. Moreover, as PGW’s gas supply portfolio has heretofore been deemed to be safe, adequate and reliable without the inclusion of extraordinarily expensive RNG, the Company has not explained what aspects of those portfolios are unsafe, inadequate or unreliable.

PGW may be making an attempt to justify the added costs of RNG, based on environmental concerns.<sup>8</sup> However, as Mr. Knecht testified the Company cannot guarantee that there are any environmental benefits associate with the pilot as PGW does not indicate that its purchases will be for gas that would otherwise be vented, and may simply be purchasing RNG that would otherwise be used by other consumers.<sup>9</sup>

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<sup>6</sup> OSBA Statement No. 1 at 5. (*emphasis added*)

<sup>7</sup> 66 Pa. C.S. §1318(a)

<sup>8</sup> PGW Statement No. 3 at 3.

<sup>9</sup> OSBA Statement No. 1 at 4.

**IV. Conclusion**

Wherefore, the OSBA requests that the ALJ and the Commission:

Reject PGW's RNG pilot proposal, as modified by the Non-Unanimous Joint Stipulation, as inconsistent with Section 1318 of the Public Utility Code which mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement obligation.

Respectfully submitted,

/s/ Sharon E. Webb

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Dated: May 26, 2021

# Appendices

**Proposed Findings of Fact**

1. In its initial filing PGW proposed a pilot program to purchase renewable natural gas (“RNG”) to add to the Company’s supply portfolio.<sup>1</sup>
2. The Company initially proposed to dedicate approximately \$500,000 of its FY 2020 gas purchase costs to RNG supplies, and to expand that up to an estimated \$2.5 million for FY 2023.<sup>2</sup>
3. PGW’s proposal was addressed in the Non-Unanimous Joint Stipulation with the OCA that was filed May 13, 2021.
4. As Mr. Knecht testified, in responding to discovery requests, PGW indicates that its sole aim for this program is to develop experience in the developing RNG market.<sup>3</sup>
5. PGW admits that RNG supplies would cost between \$13.00 and \$17.50 more per Dth than other natural gas supplies, which makes RNG up to five times more costly than other natural gas supplies.<sup>4</sup>
6. PGW has not demonstrated that any aspects of its previous gas supply purchases are unsafe, inadequate or unreliable.
7. PGW cannot guarantee that there are environmental benefits associated with this pilot.<sup>5</sup>
8. The Company acknowledges that its pilot efforts have little or no value related to supply diversity and security of supply. <sup>6</sup> [I think this is a useful point to include, but it’s not in the brief. Perhaps it should be added at the end, or just before the point on environmental benefits.]

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<sup>1</sup> PGW Statement No. 3 at 2

<sup>2</sup> OSBA Statement No. 1 at 5

<sup>3</sup> OSBA Statement No. 1 at 5

<sup>4</sup> OSBA Statement No. 1 at 5, and PGW Statement No. 3 at 3.

<sup>5</sup> OSBA Statement No. 1 at 5

<sup>6</sup> OSBA Statement No. 1 at 6

**Proposed Conclusions of Law**

1. As the petitioner, PGW has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. §332(a)
2. To meet its burden of proof in this proceeding, PGW must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.” *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950)
3. Section 1318 of the Public Utility Code mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy. 66 Pa. C.S. §1318(a).

**Proposed Ordering Paragraph**

Therefore, it is Ordered that:

PGW's RNG proposal, both as originally filed and as modified by the May 13, 2021 Non-Unanimous Joint Stipulation with the Office of Consumer Advocate, is rejected because as it violates the mandates of the Public Utility Code that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email only (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: May 26, 2021

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