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PENNSYLVANIA PUBLIC UTILITY COMMISSION
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BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 4, 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 Reply Brief

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Reply 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)
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 Reply Brief in opposition to the Philadelphia Gas Works’ (“PGW”) Renewable Natural Gas Pilot Program, as filed and as it is modified by PGW’s agreement with the Office of Consumer Advocate (“OCA”) through Stipulation (“PGW/OCA Joint Stipulation”).¹ Perhaps the most revealing deficiency of both PGW and OCA’s arguments are illustrated in the fact that neither of their Main Briefs ever acknowledge the actual cost of RNG. Both PGW and OCA remain silent about the fact that PGW’s proposed RNG purchases are projected to produce an additional \$13 to \$17.50 of costs beyond the price of conventional natural gas.

Despite the exponentially more expensive RNG costs and the fact that PGW cannot produce any evidence that it will negotiate favorable RNG contracts, PGW and OCA ignore those deficiencies and still claim that the RNG Pilot Program will comport with Section 1318 of the Public Utility Code’s (“Code”) least cost gas procurement policy requirement.² These claims are demonstrably false. As I&E will explain below, both PGW’s attempt to insert unsupported, extra-record evidence about the RNG Pilot Program’s alleged annual price impact, and its new-found attempt to defer application of the least cost gas procurement requirement until “next year’s GCR proceeding” are insufficient to meet the burden of proof in this case.

¹ I&E fully explained both the RNG Pilot Program proposal terms and the modifications imposed by the PGW/OCA Joint Stipulation on pages 3-7 of its Main Brief, and I&E incorporates them here.

² 66 Pa.C.S. 1318.

Nothing in either PGW or OCA's Main Briefs overcomes the fact that this is a gas cost rate case and the RNG Pilot Program fails to adhere to the applicable standards. Simply ignoring the standards that warrant the RNG Pilot Program's rejection is not a viable method of satisfying the burden of proof in this case. While PGW and OCA attempt to seek shelter from RNG's costs in the form of their claims that its procurement is necessary for PGW's provision of safe, adequate, and reliable service, neither party has produced evidence to support such claims. As I&E explained in its Main Brief, platitudes, generalities, speculations, and the laws and policies of other jurisdictions do not support a service-based need for RNG procurement in PGW's service territory.

Finally, the PGW/OCA Joint Stipulation is insufficient to cure to the defects of the RNG Pilot Program because it relies upon the "less harmful than originally filed" standard of approval, which has no place in this gas cost proceeding. Additionally, the vague and illusory reporting requirements the PGW/OCA Joint Stipulation adopts will provide too little information too late to benefit ratepayers, stakeholders, and the Commission. Finally, PGW and OCA ignore the Commission's existing orders rejecting piecemeal adjudication of environmental policy issues³ and mandating consideration of the COVID-19 pandemic's impact upon rates. However, the Commission's determinations still stand, and they provide yet another basis for rejecting the RNG Pilot Program.

³ 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.

II. PROCEDURAL HISTORY

I&E incorporates, by reference, the procedural history section of its Main Brief.⁴ Along with I&E, PGW, OCA, and OSBA each filed a timely Main Brief in this case on May 26, 2021.

III. BURDEN OF PROOF AND APPLICABLE LEGAL STANDARDS

I&E incorporates, by reference, the burden of proof and applicable legal standards set forth in its Main Brief.⁵ In its Main Brief, I&E recognized that PGW must prove, by a greater weight of evidence, that it is entitled to approval of its RNG Pilot Program.⁶ Now, with the clarification offered available through PGW and OCA's briefing positions that both parties are jointly seeking approval of the PGW/OCA Joint Stipulation as a complete modification of PGW's originally-proposed RNG Pilot Program,⁷ I&E submits that the OCA too is a proponent of the Stipulation who bears the burden of proof alongside PGW. I&E submits that neither party has met its burden, because as I&E explains in its Main Brief, and reasserts here, the PGW/OCA Joint Stipulation does not cure the defects of PGW's RNG Pilot Program. To be sure, the greater weight of evidence proves that the PGW/OCA Joint Stipulation would produce unjust and unreasonable gas cost rates in violation of Section 1318 and Section 1301 of the Code.⁸

⁴ I&E Main Brief, pp. 7-10.

⁵ I&E Main Brief, pp. 10-12.

⁶ *Id.*; 66 Pa. C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁷ On page 10 of its Main Brief, I&E explained that as PGW had not withdrawn the portions of its as-filed RNG Pilot Program, I&E could only assume that the conflicting portions of the PGW/OCA Joint Stipulation, which was not developed through the record and which was entered into on the same day hearings were slated to conclude, were operative. However, PGW's Main Brief (p. 18) and OCA's Main Brief (p. 12) indicate that the only relief they are seeking is approval of the PGW/OCA Joint Stipulation, thereby finally establishing for the record their clear status as joint proponents.

⁸ 66 Pa. C.S. § 1318; 66 Pa. C.S. § 1301.

IV. STATEMENT OF THE QUESTIONS PRESENTED

1. Do PGW and OCA Disregard Key Portions of Section 1318 in their Quest for Approval of the RNG Pilot Program?

Suggested Answer: Yes. PGW and the OCA disregard the fact that PGW has not and cannot provide RNG contracts that are essential components of the Commission’s review criteria. Additionally, both PGW and OCA fail to acknowledge 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. Neither party has produced any evidence to support that such extreme cost is somehow justified by any proven safe, adequate, and reliable service benefit.

2. Is the PGW/OCA Joint Stipulation Insufficient to Cure the Defects of PGW’s Originally-Filed RNG Pilot Program?

Suggested Answer: Yes. The PGW/OCA Joint Stipulation relies upon the “less harmful than originally filed” standard of approval, which has no place in this gas cost proceeding. Additionally, the vague and illusory reporting requirements it adopts will provide too little information too late. Finally, PGW and OCA ignore the Commission’s existing orders rejecting piecemeal adjudication of environmental policy issues and mandating consideration of the COVID-19 pandemic’s impact upon rates.

V. ARGUMENT

1. PGW and OCA Disregard Key Portions of Section 1318 in their Quest for Approval of the RNG Pilot Program

In each of their Main Briefs, both PGW and OCA expressly concede that the Commission must determine that PGW is pursuing a least cost fuel procurement policy.⁹ Additionally, both PGW and OCA acknowledge that satisfaction of this standard requires that the Commission conclude that: (1) PGW has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory

⁹ 66 Pa. C.S. § 1318(a).

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.¹⁰

Though the above required findings illustrate that gas costs are at the heart of this proceeding, both PGW and OCA's Main Briefs fail to support two out of the four required findings. First, neither PGW nor OCA support the second requirement listed above, because neither are able to prove that RNG supply contracts are or will be favorably negotiated because no such contacts are available for review in this case. Additionally, PGW and OCA side-step the third requirement, because they completely ignore the cost of RNG in this case. Most tellingly, neither of them ever mention the \$13.50-\$17.50 markup those costs will impose upon conventional natural gas costs,¹¹ likely because it contradicts their contrived conclusion that RNG purchases comport with least cost gas procurement. I&E identified these deficiencies both in its testimony¹² and in its Main Brief,¹³ but PGW and OCA's failure to acknowledge them in their Main

¹⁰ Id. at § 1318(a)(1)-(a)(4).

¹¹ PGW St. No. 3, p. 3.

¹² I&E St. No. 1, pp.3, 6-7; I&E St. No. 1-SR, pp.2- 4.

¹³ I&E Main Brief, pp. 15-19.

Briefs illustrates the complete contradiction of their flawed conclusion that the RNG Pilot Program is consistent with Section 1318's least cost gas procurement policy requirement.

A. PGW and OCA Continue Ignore PGW's Obligation to Prove that it Will Negotiate Favorable RNG Supply Contracts

PGW readily admits that it cannot provide the Commission with any RNG contracts to review in making the requisite determination that its contracts will be favorably negotiated.¹⁴ Because PGW does not yet have Commission approval to enter into any RNG contracts, and it could not negotiate or incur expenses for such contracts, PGW asserts that ratepayers can simply be protected by imposing a \$500,000 purchasing cap on RNG.¹⁵ Using this faulty logic, and relying upon a self-determined spending cap, PGW appears to absolve itself of the statutory burden of providing the Commission with any RNG contract terms as part of this GCR case.

As I&E explained in its Main Brief, PGW's request is not prudent, warranted, or permitted in the context of a GCR proceeding where the least cost gas procurement requirement governs.¹⁶ Aside from the unresolved statutory defect, the proposed "spending cap protection" also cannot cure the overall lack of substance, which is further compounded by the lack of specificity in PGW overall RNG acquisition plan. 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

¹⁴ PGW Main Brief, p. 17.

¹⁵ Id.

¹⁶ I&E Main Brief, pp. 15-16.

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 1318.¹⁷ I&E submits that the Commission should reject PGW's attempt to absolve itself of this defect.

Offering even less than PGW, OCA's Main Brief simply fails to acknowledge that PGW has not and cannot provide an RNG supply contract for review in this proceeding. Despite the lack of any contracts for review, and without knowing any of the terms, location, costs, or length of any RNG supply contract that PGW may enter, the OCA somehow has apparently concluded that any such contracts will be favorably negotiated. I&E rejects that unsupported conclusion and asserts that Section 1318 contemplates better protection for ratepayers than expecting the Commission to grant unconditional preapproval of contracts that may impose unknown and incalculable risk upon ratepayers. Accordingly, although neither PGW nor OCA acknowledge it, the PGW/OCA Joint Stipulation does not cure PGW's failure to support any determination that RNG contracts will be favorably negotiated, which is a clear violation of the least cost gas procurement policy.

¹⁷ I&E Main Brief, pp. 15-16.

B. PGW’s and OCA’s Main Briefs Never Mention the \$13 - \$17.50 per Dth Adder that RNG Purchases Would Impose Upon Conventional Natural Gas Costs

As I&E explained in its Main Brief, the only gas cost information PGW provides regarding RNG is an admission that its expensive cost completely antithetical to the pursuit of lower cost supplies.¹⁸ Specifically, PGW witness Stunder testified that in an 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.¹⁹ Perhaps PGW and OCA’s recognition of the exorbitant cost of RNG explains why neither of them attempted to quantify it at any point in their Main Briefs.

Despite its failure to actually identify the extreme cost of RNG, PGW attempts to mitigate it by admitting that it is “more expensive compared to conventional natural gas”²⁰ but alleging the Code does not require it to purchase the least expensive gas without any further consideration.²¹ Instead, PGW avers that it is obligated to take steps to ensure the “the cost is as low as reasonably possible, consistent with its obligation to provide, reliable and adequate service.”²² As I&E explains below, neither PGW nor OCA have met the burden of proof of establishing that RNG purchasing is necessary to ensure PGW’s provision of safe, adequate and reliable service. Yet, even assuming, arguendo, that they had, the cost of RNG is a factor still must be considered. Here, PGW and OCA do not consider the cost at all because they are apparently not willing to admit

¹⁸ I&E Main Brief, pp. 16-17.

¹⁹ PGW St. No. 3, p. 3.

²⁰ PGW Main Brief, p. 10.

²¹ Id.

²² Id.

to it as part of their discussion. Yet, despite their attempts to circumvent any discussion about the actual cost of RNG in their quest to prove that it is reasonable, the ALJ and Commission must affirmatively determine that the costs of RNG comport with an overall determination that PGW has taken all prudent steps necessary to obtain lower cost gas supplies.²³ I&E submits that such determination is impossible here where PGW expressly admits that lower cost gas is available, and where PGW fails to prove that procuring RNG is essential for its provision of safe, adequate, and reliable service.

In a final attempt to assuage concerns about the outrageous cost of RNG, PGW also claims that the Commission is obligated to “consider PGW’s RNG proposal under the conditions of the existing gas marketplace.”²⁴ First, because PGW has not produced any evidence about RNG procurement in any marketplace, the inquiry it raises is not possible. Additionally, the scope of and type of “marketplace” that it alleges must be considered is also undefined. To the extent that PGW may be arguing about RNG procurement in the marketplace comprised of regulated natural gas utilities in Pennsylvania, I&E is unaware that any jurisdictional entities that have participated in the RNG market. Therefore, if any “marketplace” considerations are possible in this case, they weigh against PGW’s RNG Pilot Program.

For its part, the OCA too ignores the cost of RNG and does not quantify it at all in its Main Brief. Unlike PGW, though, the OCA simply remains silent and does not attempt any cost-based defense. Instead, OCA’s support appears to be wholly predicated

²³ 66 Pa. C.S. §1318(a)(3).

²⁴ PGW Main Brief, pp. 10-11.

on the notion that a spending cap will limit risk to ratepayers,²⁵ but no level of ratepayer risk is necessary, warranted, or appropriate in this gas cost proceeding.

C. PGW and OCA Fail to Support any Determination the RNG Pilot Program is essential to PGW's Provision of Safe, Adequate, and Reliable service

Nothing in either PGW nor OCA's Main Brief supports a determination that RNG procurement is essential to PGW's provision of safe, adequate, and reliable service. I&E previously explained that PGW and OCA's attempts to allege a service-based need for RNG were predicated upon unquantified and unsupported emission reductions benefits, and that applicable standards for jurisdictional utilities do not support a service-based need for RNG purchases.²⁶ Additionally, both PGW and OCA have ignored the Commission's prior determination, in PGW's 2020 base rate case, that piecemeal consideration of environmental issues without consideration of stakeholder input and without the development of universal requirements is not appropriate.²⁷ Furthermore, I&E also illustrated that the reliability and diversity of supply benefits that PGW alleges will result from RNG procurement are unsupported because PGW readily admits that they will not materialize from the pilot program.²⁸ Finally, even the potential for any reliability and diversity of supply benefits that PGW alleges benefits beyond a pilot period will be contingent upon whether RNG will become a significant future supply source at a competitive price, which has not been established in this case.²⁹

²⁵ OCA Main Brief, p. 10.

²⁶ I&E Main Brief, pp. 19-23.

²⁷ I&E Main Brief, pp. 23-26.

²⁸ OSBA Ex. IEC-2, OSBA I-15.

²⁹ I&E Main Brief, p. 26.

Because PGW and OCA simply continue to point to the policies of other jurisdictions³⁰ and continue to allege unsupported reliability benefits that are not grounded in the record,³¹ I&E will not repeat its standing opposition to those meritless claims. To be sure, as proponents of the PGW/OCA Joint Stipulation, PGW and OCA have the burden of proof, and their attempt to satisfy it with platitudes and generalizations does not satisfy their burden. For purposes of illustration, I&E contrasts PGW's current meritless and unsupported service-based argument here with another case in which it alleged a meritorious and well-supported service-based need for increased spending.

Specifically, in 2015, PGW filed a petition to increase its distribution system improvement charge³² based on its need to provide safe, affordable and reliable service to ratepayers by replacing cast iron service mains. PGW's 2015 DSIC Petition proposed to accelerate its then-current level of replacement of cast iron gas mains by permitting it to spend approximately \$33 million annually on its main replacement program, or approximately \$11 million more than the maximum allowed under its current DSIC. In that case, PGW developed a record to illustrate that the requested level of increased spending would produce a direct and quantifiable safety and service benefit: a 44% decrease in the projected timeline to replace the cast iron mains, from eighty-six years to forty-eight years.³³

³⁰ PGW Main Brief, p. 11; OCA Main Brief, p. 10.

³¹ PGW Main Brief p. 12; OCA Main Brief, p. 10.

³² *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, Docket No. P-2015-2501500 ("2015 DSIC Petition").

³³ 2015 DSIC Petition, Docket No. P-2015,2501500, Opinion and Order, p. 10 (entered on January 28, 2016).

Ultimately, in PGW’s 2015 DSIC Petition case, the Commission determined that PGW met its burden of showing that a waiver of the 5% DSIC cap will “ensure and maintain adequate, efficient, safe, reliable and reasonable service.”³⁴ In reaching that conclusion, the Commission pointed to the clear record of the case supporting its determination:

It is undisputed in this proceeding that PGW’s aging gas distribution infrastructure poses significant safety and reliability issues, and that the current pace of the Company’s replacement efforts is unacceptable and potentially harmful to the public. The record reflects that 66% of PGW’s 3,000 miles of gas main infrastructure consists of at-risk cast iron and unprotected steel mains. This percentage is among the highest of any natural gas distribution company in Pennsylvania. In addition, there has been a definite upward trend in gas leaks and broken pipes on the Company’s system over the past several years. This state of affairs is particularly troubling given that PGW operates in an urban environment with a high population density.³⁵

I&E submits that type of demonstrated, quantified, and of-record evidence that the Commission relied upon to support a service-based need for increased ratepayer spending in PGW’s 2015 DSIC Petition case is notoriously absent in this case. Here, PGW not only fails to support and quantify any service-based benefits for exorbitant RNG purchases, but it readily admits that they will not materialize during the pilot period it proposes.³⁶ I&E submits that the speculative and unsupported service-based claims that PGW and OCA rely upon stand in stark contrast to the type of evidence that the Commission has required in the past. Accordingly, PGW and OCA have failed to prove

³⁴ Id. at p. 42.

³⁵ Id. at 41-42.

³⁶ OSBA Ex. IEC-2, OSBA I-15.

that the outrageous price of RNG is justified by safe, adequate, and reliable service benefits.

D. PGW's Futile Attempt to Disclaim Section 1318's Application to RNG Costs

After spending a significant portion of its Main Brief attempting to defend its RNG Pilot Program as being compliant with Section 1318's least cost gas procurement requirements,³⁷ PGW attempts to disclaim applicability of those requirements for the RNG procurement spending requested in this case. Specifically, PGW apparently attempts to defer application of Section 1318 to next year's GCR filing as demonstrated in the following passage of its Main Brief:

Certainly, in procuring RNG, PGW must take steps to ensure that the RNG cost is as low as reasonably possible, and the Commission must find in PGW's next GCR proceeding that PGW has met the standards established in 66 Pa.C.S. § 1318(a)(1)-(4).³⁸

I&E fundamentally rejects the notion that PGW can unilaterally defer application of Section 1318 to RNG purchases and respectfully avers that the ALJ and the Commission should reject it as well. To be sure, PGW elected to make its RNG Pilot Program proposal through this year's gas cost proceeding, and there is no authority to permit it to bypass the applicable standards which are intended to protect ratepayers from exactly the type of imprudent and excessive costs that PGW is proposing. Although I&E avers that PGW's implied request to defer application of Section 1318 is meritless and should be rejected, I&E submits that its

³⁷ PGW Main Brief, pp. 10-14.

³⁸ PGW Main Brief, p. 13.

attempted deferral may also be viewed as a tacit admission that PGW's RNG Pilot Program cannot satisfy Section 1318 in this case.

2. The PGW/OCA Joint Stipulation Fails to Cure the Defects of the RNG Pilot Program

A. The Faulty Logic PGW and OCA's "Less Harmful than As Filed" Standard

For purposes of context, the PGW/OCA Joint Stipulation reduces PGW's proposed spending cap of approximately \$2.5 million for fiscal year 2023 to the same \$500,000 cap proposed for fiscal year 2022.³⁹ In its Main Brief, I&E explained that acceptance of the PGW/OCA Joint Stipulation required a complete departure from the least cost gas procurement requirements and the just and reasonable rate mandate and instead required adoption of a contrived "less harmful than as-filed" standard.⁴⁰ In their Main Briefs, both PGW and OCA prove I&E's point by clinging to the now-reduced cap of \$500,000 for RNG purchases for fiscal year 2023 as a means of justifying PGW's non-essential purchase of expensive RNG.

Specifically, PGW's Main brief points to the \$500,000 cap as constituting a "very limited" amount of RNG purchasing.⁴¹ In an attempt to mitigate the impact, PGW offers the extra-record claim that the impact of the RNG Pilot Program will be less than \$1 annually per year for a "typical" residential heating customer. First, I&E cannot verify the veracity of such claim, because it is not grounded in the record and I&E has not had an opportunity to investigate how PGW arrived at its conclusion. Nor is I&E able to

³⁹ Id at p. 6; PGW/OCA Joint Stipulation, p. 1.

⁴⁰ I&E Main Brief, p. 7.

⁴¹ PGW Main Brief, p. 14.

discern what metrics is used to define a “typical” residential heating customer.⁴²

Regardless, even assuming, *arguendo*, that PGW’s claim here is true, it still would not provide adequate justification for imposing unwarranted and exorbitant RNG costs upon PGW’s ratepayers through this gas cost rate case. Because RNG procurement is inconsistent with the least cost gas procurement requirements and at odds with just and reasonable rates, PGW’s argument regarding an alleged impact cannot convert its violative proposal into a compliant one.

Similarly, OCA relies upon PGW’s agreement to decrease its spending for 2023 to argue that the RNG Pilot will present an important opportunity to explore the renewable natural gas markets with limited risk to ratepayers.⁴³ Like PGW, OCA’s claim relies upon faulty logic by effectively operating as an argument that ratepayers will not have to pay as much as PGW initially proposed, and therefore the PGW/OCA Joint Stipulation result will impose less of a risk that what they would have originally borne. I&E fundamentally rejects any notion that PGW’s ratepayers should be required to bear any risk in a GCR proceeding. As I&E previously explained, while the decreased spend will save some of the ratepayers’ money, that is the wrong vantage point to use here because no valid justification exists to dilute to effective use of ratepayers’ dollars for exorbitant RNG purchases when conventional natural gas is available at an exponentially lower cost.⁴⁴ Section 1318 expressly requires that PGW prove, as part of this case, that it has

⁴² I&E notes that by inserting this extra-record evidence in its Main Brief, PGW has failed to adhere to ALJ Heep’s May 17, 2021 Briefing Order directive 4(i) that parties should not include extra-record evidence in their briefs.

⁴³ OCA Main Brief, p. 9.

⁴⁴ I&E Main Brief, pp. 6-7.

taken all prudent steps necessary to obtain lower cost gas supplies, and PGW's RNG procurement is an imprudent step that will obtain the highest cost gas supply.

Accordingly, PGW and OCA's "less harmful than originally filed" standard has no place here, it is without merit, and it should be rejected.

B. The PGW/OCA Joint Stipulation's Vague and Illusory Reporting Requirements Will Provide Too Little Too Late

In their Main Briefs, both PGW and OCA summarize the reporting requirements identified in the PGW/OCA Joint Stipulation,⁴⁵ but neither of these parties provide any analysis of how the requirements will protect ratepayers or provide valuable benefits for ratepayers, parties, and the Commission. For purposes of context, the PGW/OCA Joint Stipulation memorializes PGW's agreement to do the following in its next GCR proceeding:

- (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.⁴⁶

In its Main Brief, I&E concluded 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

⁴⁵ PGW Main Brief, pp. 7-8; OCA Main Brief, p. 11.

⁴⁶ I&E Main Brief at 6; PGW/OCA Joint Stipulation, pp. 2-3.

speculative, and that the true ratepayer impact is yet to be determined.⁴⁷ As an example, I&E pointed to PGW's vague and illusory commitment to identify whether its purchase of RNG will result in monetization of unidentified environmental benefits to illustrate the lack of substance of the purported commitment.⁴⁸ Additionally, I&E pointed to PGW's illusory commitment to identify the BTU content of RNG purchases, "to the extent such data is available" as not only being non-committal, but as demonstrating that RNG may have a usage impact and thereby impose an additional burden that may never be measured.⁴⁹ I&E stands by its analysis of the PGW/OCA's Joint Stipulation, and avers that the touted reporting requirements will offer too little information too late.

For its part, PGW's Main Brief summarizes the reporting requirements, but it fails to advance any argument regarding their viability or benefit.⁵⁰ The OCA goes only a slight step further, as it too summarizes the reporting requirements, but it also sets forth the self-determined conclusion that they will be useful in evaluating the effectiveness of the pilot and the cost of the renewable natural gas supply purchased under the pilot.⁵¹ After stating its conclusion, the OCA failed to set forth any supporting analysis other than that it anticipates that the reporting information will help the Commission to evaluate the costs of the pilot program and the effectiveness of the pilot program in achieving its goals.⁵² Notwithstanding that the OCA has ignored the Commission's previous statement

⁴⁷ I&E Main Brief, p. 7.

⁴⁸ I&E Main Brief, p. 25.

⁴⁹ I&E Main Brief, p. 18.

⁵⁰ PGW Main Brief, pp. 7-8.

⁵¹ OCA Main Brief, p. 11.

⁵² OCA Main Brief, p. 11.

that universal guidelines should be established for addressing climate-change related issues⁵³ and the Commission had no input on the reporting requirements that PGW and OCA unilaterally agreed upon, OCA also fails to explain how the requirements would provide the Commission with any benefit. I&E submits that no analysis is possible because the vague and illusory reporting requirements provide little in the way of actual commitments, and when any information does materialize, it will be too late to shield ratepayers from the then-realized impact.

C. PGW and OCA Ignore Determinative Commission Precedent

i. Environmental Policy Issues Cannot Be Decided Here

While both PGW and OCA point to the City of Philadelphia's initiatives to reduce greenhouse gas emissions as a rationale warranting implementation of the RNG Pilot Program,⁵⁴ both simultaneously ignore the Commission's determination that PGW should not pursue environmental policy issues in rate proceedings on a piecemeal basis.⁵⁵ In its Main Brief, I&E explained that PGW and OCA are well aware of from their recent and direct participation in PGW's 2020 base rate case, that the Commission has already expressly declined to insert itself into the realm of establishing environmental policy in a rate case.⁵⁶ Now, although both PGW and OCA completely disregard the Commission's express determination, and they attempt to detour it by relying on the laws and policies of

⁵³ I&E Main Brief, pp. 24-25.

⁵⁴ PGW Main Brief, p. 11; OCA Main Brief, p. 10.

⁵⁵ I&E Main Brief, pp. 24-25, citing to *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 94, Opinion and Order (Entered on November 19, 2020).

⁵⁶ I&E Main Brief, pp. 23-24.

other jurisdictions to support their position,⁵⁷ their attempt is not viable here. The Commission has clearly indicated that environmental policy issues cannot be decided without permitting all stakeholders an opportunity for input and that the development of universal guidelines would be necessary to establish the type, amount, and breadth of information to be submitted to the Commission.⁵⁸ Although PGW and OCA ignore the Commission's position, it nevertheless applies and operates as an additional reason for rejection of the PGW/OCA Joint Stipulation.

ii. PGW and OCA Fail to Consider the COVID-19 Pandemic Impact Upon Rate Affordability

The Commission has mandated that an important factor it must consider in the content of rate affordability is the unique considerations related to the COVID-19 pandemic in setting just and reasonable rates,⁵⁹ but PGW and OCA continue to fail to factor it into their analysis of the RNG Pilot Program. In its Main Brief,⁶⁰ I&E explained that 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,⁶¹ 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.

⁵⁷ PGW Main Brief, p. 11; OCA Main Brief, p. 10.

⁵⁸ I&E Main Brief; citing to *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, p. 93, Opinion and Order (Entered on November 19, 2020).

⁵⁹ *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, R-2020-3018835, p. 48, Opinion and Order (entered on February 18, 2021).

⁶⁰ I&E Main Brief, pp. 27-28.

⁶¹ *Public Service Termination Moratorium Proclamation of Disaster Emergency-COVID 19*, Emergency Order, Docket No. M-2020-3019244 (entered on March 13, 2020).

Just as the OCA's Main Brief was silent on the cost of RNG, it was also silent on the COVID-19 pandemic's impact upon PGW and its ratepayers. Nor did OCA's testimony make any mention of rate affordability, let alone in the context of the COVID-19 pandemic. To that end, I&E submits that it is self-evident that OCA has not factored the COVID-19 pandemic's impact upon affordability in this gas cost rate case.

For its part, PGW claims that the rationale that supports the need for the RNG Pilot Program exists regardless of the economy, and that the present state of the economy "should not be a significant factor in the Commission's determination."⁶² To the extent that PGW deems economic concerns worthy of any consideration in this case, it argues that the City of Philadelphia's unemployment rate is declining and that COVID-19 vaccination rates are increasing. Additionally, PGW points to the City of Philadelphia's Health Commissioner easing restrictions and the availability of COVID relief funding for PGW's ratepayers in an attempt to assuage any COVID-19 pandemic impact concerns about the cost impact of RNG.⁶³

I&E submits that PGW's attempts to minimize any consideration of the COVID-19 pandemic's impact upon its service territory are easily dispelled by the data it has previously supplied to the Commission. As explained in I&E's Main Brief, as recently as February 16, 2021, PGW informed the Commission that the impact of the pandemic on its service territory was not yet clear. While the impact could not then be fully determined, PGW was able to report that its level of aggregate customer arrearage dollars

⁶² PGW Main Brief, pp. 14-15.

⁶³ PGW Main Brief, pp. 15-16.

increased by \$22,928,362 from \$83,584,040 as of February 29, 2020 to \$106,512,402 as of February 28, 2021.⁶⁴ Now, in its Main Brief, PGW continues to ignore the significant arrearages it and its customers must grapple with, but I&E submits that they are the best available evidence of the COVID-19 pandemic's impact upon PGW's operations and ratepayers.

While the reopening of restaurants and increased access to vaccinations are reassuring from a health perspective, they do not speak directly to PGW and its ratepayers' economic plight. In contrast, the PGW-supplied arrearage information I&E presented is reflective of the COVID-19 pandemic's demonstrable economic impact upon PGW and its ratepayers, which is relevant in the determination of rate affordability. To that end, I&E reasserts that charging customers more money for less gas would impose a burden at any time, but particularly when customers are demonstrably proven to be struggling to recover from the pandemic.⁶⁵ Finally, I&E again summarily rejects the absurd notion that COVID-19 relief funding should be used to fund unnecessary and exorbitant RNG costs, and PGW's claim to the contrary does not merit any further consideration beyond that which I&E has already presented.⁶⁶

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

⁶⁴ I&E Main Brief, pp. 28-29 (internal citations omitted).

⁶⁵ I&E St. No. 1, p. 7.

⁶⁶ I&E Main Brief, pp. 30-31; I&E St. No. 1-SR, pp. 7-8.

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 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 above, 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,



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June 4, 2021

**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 Reply Brief** on June 4, 2021, in the manner and upon the persons listed below:

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