BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2021-3023970
Office of Consumer Advocate	:	C-2021-3024126
Office of Small Business Advocate	:	C-2021-3024293
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

RECOMMENDED DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

A Joint Petition for Settlement ("Settlement") has been filed by the Philadelphia Gas Works ("PGW"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") (collectively "the Settling Parties") with the Pennsylvania Public Utility Commission ("Commission") regarding the annual Gas Cost Rate ("GCR") filing by PGW pursuant to 66 Pa. C.S. § 1307(f). The Commission's Bureau of Investigation and Enforcement ("I&E") and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") do not join in this Settlement but do not oppose it. The Settlement is a Partial Settlement as it resolves all issues in dispute except for one, which is PGW's proposal for authorization to include in its GCR expenditures associated with a limited pilot for the purchase of renewable natural gas ("RNG"). This decision recommends that the Commission approve the Settlement and authorize PGW's RNG pilot program proposal, as modified by the joint stipulation of PGW and OCA. The statutory deadline is September 2, 2021 and the date of the last Commission public meeting before this deadline is August 26, 2021.

The Settlement provides for a purchased GCR of $4.1361 per Mcf, based on PGW's gas cost projections at the time of the March 2, 2021 Annual Filing.[1] Additionally, the Settlement terms include a Load Balancing Charge adjustment; a refund of $2,828,211 related to arrearage forgiveness; further analysis of PGW's Universal Service and Energy Conservation Surcharge ("USC") over/under collection claim and projections; PGW's continued recovery of the fee paid to Planalytics for price analysis, buying and advisory services; modified methods of notice of future GCR proceedings; and that PGW may use estimated data for the March Quarterly GCR. This decision recommends that the Commission approve the Settlement because it is in the public interest and is consistent with the requirements of the Public Utility Code, 66 Pa. C.S. §§ 1307(f) and 1318.

The sole issue that is not part of the settlement, i.e., PGW's proposal for authorization to include in its GCR the expenditures of a pilot project incorporating RNG into its gas supply portfolio, is supported by OCA and opposed by OSBA and I&E. This decision recommends that the Commission approve the RNG pilot program, as modified by the joint stipulation of PGW and OCA, because it would aid PGW in acquiring knowledge and information pertaining to such acquisitions in projected future markets. Such a pilot project would assist in giving PGW the savvy to acquire safe, reliable and adequate product for its customers in the foreseeable marketplace.

HISTORY OF THE PROCEEDING

On February 1, 2021, PGW filed supporting information for the pre-filing of its annual 2021-2022 GCR. The filing indicated that PGW intended to depart from certain requirements of 52 Pa. Code §§ 53.45(b), 53.64(c), 53.68(a) and 53.64(i)(5)(i), to address the timing of bill inserts, public notice and underlying data to be relied upon for the March 1, 2021

[1] PGW's GCR on September 1, 2020 was $3.4107/Mcf and was increased in the Company's first quarterly GCR filing on December 1, 2020 to $3.8484. PGW's second quarter GCR filing decreased the GCR to $3.4687 effective March 1, 2021. PGW St. 1 at 5.

quarterly 1307(f) filing. A similar departure was approved in PGW's 2020-2021 GCR proceedings.[2]

On February 3, 2021, I&E filed a Notice of Appearance. The OCA filed a Complaint on February 11, 2021, at Docket Number C-2021-3024126. On February 17, 2021, the PICGUG filed a Petition to Intervene. OSBA filed a Complaint on February 26, 2021, at Docket Number C-2021-3024293.

On March 1, 2021, PGW made its definitive Section 1307(f) filing. This filing included: proposed tariff revisions (Supplement No. 140 to PGW's Gas Service Tariff – Pa P.U.C. No. 2 and Supplement No. 95 to PGW's Gas Supplier Tariff – Pa P.U.C. No. 1); supporting information regarding the computation of annual purchased gas costs for twelve months ending August 31, 2022; and the Direct Testimony of PGW witnesses. On the same date, PGW filed an Errata to update the schedules for Item 53.64(i)(1) of PGW's February 1, 2021 pre-filing.

On March 3, 2021, a Prehearing Conference Order was issued setting a Telephonic Prehearing Conference for March 9, 2021. In accordance with the Prehearing Conference Order, the Parties filed Prehearing Memorandums on March 8, 2021. A Telephonic Prehearing Conference was held on March 9, 2021, where a procedural schedule was established.

On March 10, 2021, PGW filed an Errata to Item 53.64(c)(3) Schedule 1, which consisted of two pages unintentionally excluded from PGW's pre-filing and an Errata to page 67A of PGW's Supplement No. 140 to Gas Service Tariff – Pa P.U.C. No. 2, which corrected the issued and effective dates errors.

On March 15, 2021, a Prehearing Order was issued, granting the Petition to Intervene of PICGUG and adopting the schedule and procedures established at the Prehearing Conference.

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[2] *Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-2020-3017934 (Final Order entered August 6, 2020, at Ordering Paragraph No. 9).

On March 23, 2021, a Notice for a Telephonic Hearing on May 12, 2021 and May 13, 2021 was issued.

Also on March 23, 2021, PGW filed a Motion for Protective Order and an Errata to pages 2, 7, and 82 of PGW's Tariff Supplement No. 140 to Gas Service Tariff – Pa P.U.C. No. 2, which reflected a change to page 82 and PGW's Other Post Employment Benefit Rider Surcharge. PGW also filed an Errata to page 78 of PGW's Tariff Supplement No. 140 to Gas Service Tariff – Pa P.U.C. No. 2, which removed an indication that there was a change to Paragraph 1; and Revised Schedules 13(a), 13(b), and 14.

On March 24, 2021, a Protective Order was issued.

On May 11, 2021, the parties advised that they were nearing a settlement and requested that the first day of hearings be cancelled. That request was granted.

On May 12, 2021, counsel for PGW advised that all parties had agreed to waive cross-examination of all witnesses and to stipulate by motion to the admission of the filed testimony into the record. Counsel for PGW also reported that the parties had reached a settlement on all issues except for PGW's RNG pilot proposal.

The remaining day for evidentiary hearings was cancelled, and the parties were directed to file a Joint Stipulation for Admission of Testimony and Exhibits no later than Monday, May 17, 2021. The parties were further directed to follow the previously-established litigation schedule and file Main Briefs on the RNG issue by May 26, 2021.

On May 13, 2021, PGW and the OCA filed a Joint Stipulation of terms regarding PGW's RNG pilot program proposal. ("PGW/OCA Stipulation").

On May 17, 2021, the parties filed a Joint Stipulation for Admission of Testimony and Exhibits. The stipulated testimony and exhibits were admitted into the record by Order dated May 17, 2021. The testimony and exhibits admitted into the record are as follows:

1. PGW's January 30, 2021 Pre-filing Information;

2. PGW's March 2, 2021Annual GCR Filing;

3. PGW St. 1, Direct Testimony of Florian Teme, dated March 1, 2021;

4. PGW St. 2, Direct Testimony of Ryan Reeves, dated March 1, 2021;

5. PGW St. 3, Direct Testimony of Greg Stunder, dated March 1, 2021;

6. OCA St. 1, Direct Testimony of Jerome D. Mierzwa, and accompanying Appendix A, dated April 16, 2021;

7. OSBA St. 1, Direct Testimony of Robert Knecht, and accompanying OSBA Exhibits IEc-1, IEc-3, and IEx-3, dated April 16th, 2021;

8. I&E St. 1, Direct Testimony of Ethan Cline, and accompanying Appendix A and I&E Exhibit No. 1, dated April 16, 2021;

9. PGW St. 1R, Rebuttal Testimony of Florian Teme, and accompanying Exhibits FT-1 and FT-2, dated May 4 2021;

10. PGW St. 2R, Rebuttal Testimony of Ryan Reeves, dated May 4, 2021;

11. PGW St. 3R, Rebuttal Testimony of Greg Stunder, dated May 4, 2021;

12. OCA St. 1-SR, Surrebuttal Testimony of Jerome D. Mierzwa, dated May 11, 2021;

13. OSBA Revised St. 1-SR, Surrebuttal Testimony of Robert Knecht, dated May 11, 2021;

14. I & E St. 1-SR, Surrebuttal Testimony of Ethan Cline, dated May 11, 2021;

15. PGW Supplemental Statement No. 1-R, Supplemental Rebuttal Testimony of FlorianTeme, and accompanying PGW Exhibit FT-3;

16. PGW St. 3RJ, Rejoinder Testimony of Greg Stunder, dated May 12, 2021; and

17. Joint Stipulation of Philadelphia Gas Works and Office of Consumer Advocate, dated May 13, 2021.

On May 26, 2021, PGW, I&E, OCA, and OSBA submitted Main Briefs addressing the RNG proposal.[3]

On June 4, 2021, PGW, I&E, OCA submitted Reply Briefs; OSBA submitted a letter in lieu of a Reply Brief, and PICGUG did not file a Reply Brief. Also on June 4, 2021, PGW filed a Report on the Universal Service and Energy Conservation Surcharge for Fiscal Year 2020, and the record was closed.

FINDINGS OF FACT

1. PGW is regulated by the Commission as a city natural gas distribution company pursuant to 66 Pa.C.S. §§ 102 and 2212.

2. I&E is the prosecutory bureau in the Commission for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for enforcing compliance with the state and federal motor carrier safety and gas safety laws and regulations. *Implementation of Act 129 of 2008 Organization of Bureau and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

3. Complainant OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

4. Complainant OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

5. Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") is an *ad hoc* group of large volume customers receiving natural gas utility service from PGW under both sales and transportation rate schedules, including Interruptible Transportation. (PICGUG Petition to Intervene at 2).

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[3] Also on May 26, 2021, PICGUG submitted a letter indicating that it would not be filing a Main Brief.

6. GCR is a mechanism used to flow through the costs of natural gas and other raw materials in a timely and equitable manner. (PGW St. 1 at 9).

7. The pricing methodology utilized by PGW relies on actual prices for January 2021 and the NYMEX Futures close data (as of January 15, 2021) for the 19 forecast months of February 2021 through August 2022. (PGW St. 1 at 11).

8. PGW's gas distribution system is located in Southeastern Pennsylvania in the County and City of Philadelphia. (PGW St. 2 at 2).

9. The PGW service area is not a gas producing area and therefore PGW and its natural gas customers are dependent upon the interstate natural gas pipeline system to deliver natural gas into the PGW gas distribution system. (PGW St. 2 at 2).

10. PGW relies on interstate pipelines for all-natural gas supply, storage and transportation services, except for PGW's own on-system peak shaving facilities. PGW owns and operates two liquefied natural gas ("LNG") facilities that are used both to meet intraday, daily and seasonal supply needs as well as to meet peak day requirements. PGW also uses off-system natural gas storage services to meet winter peak requirements. (PGW St. 2 at 2).

11. Enbridge's Texas Eastern Transmission ("TETCO") and Williams' Transco Gas Pipeline ("Transco") are the two interstate natural gas pipelines that deliver gas to PGW's city gates. (PGW St. 2 at 2).

12. In FY 2020, PGW bought 82% of their winter baseload out of M-2 and 18% of their winter baseload out of the East Texas Production Zone ("ETX"). PGW bought 100% of their swing contracts out of M-2. (PGW St. 2 at 11).

13. PGW charges its Choice suppliers for the capacity that is released to the suppliers. During the winter months (November through March), Choice suppliers receive capacity based on the amount of gas that their customers are projected to use. In the summer

months (April through October), Choice suppliers receive capacity based on the amount of gas that their customers are projected to use and the amount of payback that is required to eliminate any delivery imbalances that accrued during the winter months. If suppliers over-supplied in the winter, their capacity release will be reduced in the summer months to allow PGW to payback gas that they have over-supplied. If suppliers under-supplied in the winter, their capacity release will be increased to allow the suppliers to payback the gas they owe PGW. (PGW St. 2R at 2).

14. PGW does not have any affiliated gas suppliers or pipelines. (PGW St. 2 at 5).

15. PGW uses a portfolio approach in both contract structure and pricing. The portfolio approach allows PGW to remove some of the volatility in purchasing natural gas supplies for its ratepayers. PGW utilizes a mix of: (1) daily index priced swing contracts, (2) physical forward purchase contracts, (3) storage, and (4) LNG, as appropriate given market conditions, and to the extent PGW is not constrained by its financial condition. (PGW St. 2 at 2-5).

16. PGW utilizes Planalytics to provide price analysis and buying advisory service as part of its efforts to obtain gas at least cost. (PGW St. 2 at 10-11).

17. To ensure system reliability while seeking to procure gas at the least cost, PGW physically sources the gas in accordance with its firm pipeline paths and pays demand charges. PGW reviews these contracts on a regular basis and initiates renegotiations if appropriate to protect the interests of its customers. (PGW St. 2 at 5).

18. The pipelines give PGW firm entitlements on their systems for the sourcing of gas for which PGW pays a demand charge. By sourcing supply in this way, PGW ensures its sole entitlement to this space on the pipeline and cannot be accused of infringement. Transporting gas from different locations also mitigates the impact of potential regional disruptions because not all of the supply enters the pipe at the same location. (PGW St. 2 at 5).

19. PGW also uses capacity release and off-system sales when available. The prices for the off-system sales are negotiated and 75% of associated credits and margins are returned to customers through the GCR. (PGW St. 2 at 8-9).

20. Sharing mechanisms for Capacity Off System Sales Credits utilized by PGW reduce the overall cost of gas supply and the resulting gas cost rate. (PGW St. 2 at 8).

21. The details of PGW's actual gas purchases for the 12 months ending December 31, 2020, are presented in the schedules attached to Tab 1, Item 53.64(c)(1) of PGW's February 1, 2021 Pre-filing. The details of PGW's forecast for the period of January 1, 2021 through August 31, 2022, are presented in PGW's March 1, 2021 Annual Filing.

22. Projected gas costs as reflected in this Settlement are based on design peak-day capacity requirements at a 0-degree design day temperature. (Tab 12, Item 53.64(c)(13) of PGW's February 1, 2021 Pre-filing).

23. PGW uses a two-step process to arrive at the appropriate level of usage per customer to factor in weather variations. (PGW St. 1 at 13).

24. PGW submitted supporting schedules as required by Section 53.64(a) in support of its GCR, the Price to Compare, and the rates for various surcharges including the Restructuring and Consumer Education Surcharge, the Universal Service and Energy Conservation Surcharge ("USC"), the Other Post Employment Benefit Rider Surcharges. (PGW St. 1 at 5-8).

25. PGW's schedules regarding the USC are subject to review pursuant to this settlement. (Settlement at ¶¶ 31-33)

26. PGW's USC provides for the recovery of PGW's Customer Responsibility Program ("CRP") discounts; Senior Citizen Discounts; the costs of the Enhanced Low Income

Retrofit Program ("ELIRP"); CRP arrearage forgiveness and the Conservation Incentive Credit. (PGW St. 1 at 9).

27. In its initial filing, PGW proposed a pilot program to purchase renewable natural gas ("RNG") to add to the Company's supply portfolio (Pilot Program), dedicating approximately $500,000 of its FY 2022 gas purchase costs to RNG supplies, and to expand that up to an estimated $2.5 million for FY 2023. (PGW St. 3 at 2).

28. Under PGW's proposal, this RNG would be included in PGW's gas supply portfolio and the costs included in the GCR. (PGW St. 3 at 2R).

29. PGW and OCA entered into Stipulations regarding the proposed RNG pilot program ("PGW/OCA Stipulation").

30. Under the PGW/OCA Stipulation, PGW will be limited to $500,000 of RNG purchases for two years, FYs 2022 and 2023. ("PGW/OCA Stipulation").

31. A purchase of $500,000 of RNG will be approximately 0.4% of its total "C" Factor commodity cost. (PGW St. 3 at 2; Joint Stipulation of PGW and OCA at ¶ (a)).

32. In the PGW/OCA Stipulation, PGW reserves the right to propose an increase in its RNG purchases for FY 2023 in its next annual GCR proceeding and all parties have the right to challenge such proposed increase. (Joint Stipulation of PGW and OCA at ¶ (a)).

33. In its next GCR proceeding, in accordance with the PGW/OCA Stipulations, PGW will:

(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.).

(Joint Stipulation of PGW and OCA at ¶ (b)).

34. If the Pilot Program is approved, PGW will also 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. (Joint Stipulation of PGW and OCA at ¶ (b)).

35. Following the two-year pilot, PGW would then consider whether to propose the continuation of RNG purchases. (PGW St. 3 at 4-5).

36. If PGW decides to propose the continuation of RNG, PGW would submit testimony and data in its March 1, 2023 annual GCR filing which would include information about PGW's RNG purchasing (to date) and the specifics of the Company's proposal for the continuation of an RNG purchasing program. (PGW St. 3 at 4-5).

37. Under PGW's proposal, PGW has not determined a set amount of RNG to purchase; rather, PGW would purchase RNG volumes that do not exceed the expenditure limits. (PGW St. 3 at 3).

38. PGW has proposed to prioritize sourcing RNG from Pennsylvania suppliers to ensure that the environmental benefits of RNG stay as close to PGW's service territory as possible and to further the development of RNG production in PGW's immediate vicinity. (PGW St. 3 at 3).

39. Local or regional sourcing could provide supply adequacy benefits. (PGW St. 3 at 3).

40. By purchasing limited amounts of RNG on a pilot basis over the course of two years, PGW would gain necessary experience in the RNG supply market which could become an increasing source of gas supply in the years ahead. PGW St. 3 at 3-4.

41. RNG is a biogas produced from a biochemical process and RNG has a methane content comparable to conventional natural gas and can be a suitable energy source in applications that require pipeline-quality gas. (PGW St. 3 at 1-2).

42. National, state, and local elected officials support the reduction of emissions, which can be accomplished by using RNG. (PGW St. 3 at 3).

43. PGW is heavily regulated and there are many regulations, laws and requirements with which PGW must comply when introducing RNG onto PGW's system. (PGW St. 3-R at 8-9.).

44. Including RNG in PGW's gas mix will diversify PGW's supply portfolio. (PGW St. 3 at 4).

45. Including RNG in PGW's gas mix could have benefits if there are supply shortages or disruptions that reduce the ability of PGW's traditional gas supply sources to deliver adequate supply. (PGW St. 3 at 4).

46. Sourcing the RNG from local or regional producers provides a diversity of geographic supply, and diversity of supply supports reliability. (PGW St. 3 at 4).

47. PGW's RNG proposal will permit PGW to identify and start to address any contracting, delivery or approval issues. (PGW St. 3-R at 3-4).

DESCRIPTION AND TERMS OF THE JOINT PETITION FOR SETTLEMENT

The Joint Petition for Settlement is a 16-page document. Appendix A contains the rates agreed upon by the Settling Parties. Appendix B contains a Load Balancing Charge Reconciliation Calendar Year 2020. Appendix C contains a Stipulated Record List. Appendix D contains proposed ordering paragraphs. Appendix E is the PGW Statement in Support of the Settlement. Appendix F is the OCA Statement in Support of the Settlement. Appendix G is the OSBA Statement in Support of the Settlement.[4]

TERMS AND CONDITIONS OF THE PARTIAL SETTLEMENT

The essential terms of the Joint Petition of the Settlement are set forth in Section III of the Joint Petition. [5] The Settlement terms, verbatim, are as follows: [6]

> A. Purchased Gas Cost Rates
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> 25. The GCR rate adopted by this Settlement is $4.1361 per Mcf. This rate is predicated on PGW's gas cost projections at the time of the March 1, 2021 Annual Filing. In accordance with 52 Pa. Code § 53.64, PGW will submit a quarterly adjustment to the GCR rate on or before September 1, 2021, to be effective on one day's notice, to account for actual experience and changes in forecasted natural gas prices and demand, which will establish the GCR rate, effective September 1, 2021.
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> 26. PGW shall calculate the quarterly filing updates for the 2021-2022 GCR period in accordance with the Commission's regulations at 52 Pa. Code § 53.64(i)(5).
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> 27. Attached as Appendix "A" hereto are the rates relating to this Settlement.
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> B. PGW's Load Balancing Charge ("LBC")
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> 28. PGW will calculate its LBC reflecting a 50 percent (50%) assignment of the Firm Transportation ("FT") capacity required to deliver supplies under PGW's

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[4] As indicated above, PICGUG did not file a Main or Reply Brief and did not object to the Settlement or the Pilot Program.

[5] Settlement at 5-7.

[6] Also, for ease of reference, paragraph numbering and subheadings are retained as they appear in the Settlement.

Washington Storage Service ("WSS") arrangement with Transcontinental Gas Pipe Line ("Transco").

29. PGW will modify its LBC calculation for Calendar Year 2020 so that 50 percent of the WSS capacity will be added into the excess demand determinant, as it does in the FY 2022 LBC calculations.

C. PGW's Renewable Natural Gas ("RNG") Pilot Proposal

30. The parties to this proceeding were unable to reach a unanimous settlement agreement related to PGW's RNG Pilot Proposal. As such, this issue will be reserved for litigation.

D. PGW's Universal Service and Energy Conservation Surcharge ("USC")

31. PGW will refund $2,829,211 related to arrearage forgiveness associated with average bill Customer Responsibility Program ("CRP") customers for FY 2018 and 2019 that was included twice in PGW's USC calculation by crediting the USC rate in this amount on a going forward basis, beginning in June 2021.

32. PGW will conduct a further analysis pertaining to the variances between its projected Fiscal Year ("FY") 2020 USC over-collection of $0.9 million in its 2020 GCR proceeding and its claimed under-collection of USC for FY 2020 in this proceeding of $9.4 million. PGW will report its findings to the parties by June 4, 2021. The parties reserve their right to conduct discovery and challenge the reasonableness of the USC under-collection.

33. In its next GCR proceeding, PGW will provide a comparison between its prior FY USC actual over/under-collection and the projected USC over/under-collection from the prior proceeding and identify the reasons for any material cost and/or revenue variances.

E. PLANALYTICS ENERGY BUYER SERVICES

34. PGW is permitted to continue to recover the Planalytics fee for price analysis and buying advisory services (not to exceed $125,000) for the 2021-2022 GCR period. Continued recovery of the fee beyond the 2021-2022 GCR period must be addressed in next year's Purchased Gas Cost proceeding.

F. NOTICE OF FUTURE ANNUAL GCRs AND USE OF ESTIMATED DATA FOR MARCH QUARTERLY GCR

35. The parties agree that PGW is requesting in this Settlement that the Commission permit PGW to continue to proceed as follows in its 2022-2023 GCR proceedings:

(a) provide written notice to customers by bill insert in the one-month billing cycle commencing on the date of the annual 1307(f) filing, on March 1, of a tariff addendum and tariff or tariff supplement reflecting changes in purchased gas costs and ending no later than thirty (30) days after the filing of such tariff addendum and tariff or tariff supplement, instead of beginning such notice with the one-month billing cycle commencing thirty (30) days prior to the filing of the tariff addendum and tariff or tariff supplement as required by 52 Pa. Code § 53.68(a);

(b) in company offices in which payments are accepted, provide public notice on the date of the annual 1307(f) filing, March 1, of a tariff addendum and tariff or tariff supplement reflecting changes in purchased gas costs, instead of thirty (30) days prior to the filing of such tariff addendum and tariff or tariff supplement as required by 52 Pa. Code §§ 53.68(a) and 53.45(b); and

(c) provide estimated data for both January and February in the March 1 quarterly 1307(f) filing instead of providing actual data for January alone as required by 52 Pa. Code § 53.64(i)(5)(i).

36. The Settling Parties do not object to PGW's request to use the public notice process and estimated data for the March 1 quarterly filing for its 2022-2023 GCR proceeding.

The Settling Parties also agreed to certain Conditions, which are set forth in Section VI of the Joint Petition[7]. These conditions, verbatim, are as follows:

56. The Settlement will go into effect upon the Commission's entry of a final order approving the Settlement, in full and without modification. If the Commission rejects the Settlement, the Agreement automatically will terminate and be null and void with the exception of paragraph c below, which will continue in full force and effect. The Settlement also shall automatically become null and void (except for paragraph c below) if the Commission, in approving the Settlement, modifies any of its terms or conditions or adds any conditions, unless it is subsequently accepted by the aggrieved signatory party, or parties, as so modified. If the Commission approves the Settlement in full and without modification, the Stipulation:

a. shall be deemed to resolve with prejudice all issues addressed by this Settlement; and

[7] See Settlement at 12-14. Again, for ease of reference, paragraph numbering is retained as it appears in the Settlement.

b. shall be implemented and shall be enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission's approval, unless such implementation and enforcement of the Settlement is stayed or enjoined by the Commission, another regulatory agency, or a Court having competent jurisdiction over the matter.

57. The Settlement is made without admission against or prejudice to any factual or legal positions which any of the signatories hereto may assert in subsequent litigation in the event that the Commission does not issue a final Order approving this Settlement in full and without modification. If the Commission does not adopt this Settlement in accordance with the terms set forth herein, the Settling Parties reserve their full right to argue that the Commission is without the legal authority to order the implementation of all or part of the terms and conditions set forth herein and no party shall be deemed to have waived or be estopped from asserting such a position before the Commission or before any court.

58. The Settlement Petition may be executed in counterparts, all of which shall constitute one agreement binding on all signatories, and shall have the same force and effect as an original instrument, notwithstanding that the signatories may not be signatories to the same original or the same counterpart.

* * *

60. Except for the issues relating to PGW's RNG pilot program which are reserved for litigation, the Settling Parties agree to waive exceptions to the ALJ's Recommended Decision if the ALJ recommends that the Joint Petition for Settlement of Philadelphia Gas Works' 2021-2022 GCR Proceeding be approved without change or modification.

LEGAL REQUIRMENTS FOR GCR PROCEEDINGS

Section 1307(f)(5) of the Public Utility Code ("Code"), 66 Pa. C.S. § 1307(f)(5), requires that the Commission determine the portion of PGW's historic period actual gas costs which meet the least cost fuel procurement standards set forth in Section 1318 of the Code, 66 Pa. C.S. § 1318. In addition, Section 1318 findings must be made with respect to the new GCR to be established in this proceeding. Section 1317 of the Code, 66 Pa. C.S. § 1317, requires the submission of certain information to enable the Commission to make a least cost fuel procurement policy evaluation.

Specifically, Section 1318 provides, in relevant part, as follows:

> (a) General rule.—In establishing just and reasonable rates . . . [n]o rates for a natural gas distribution utility shall be deemed just and reasonable unless 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. In making such a determination, the commission shall be required to make specific findings which shall include, but need not be limited to, findings that:
>
> (1) The utility has fully and vigorously represented its ratepayers' interests before the Federal Energy Regulatory Commission.
>
> (2) The utility 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) The utility 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.
>
> (4) The utility 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.[8]

PARTIAL SETTLEMENT ANALYSIS

Legal Standard for Settlement

In this case, there is a partial settlement on all issues except for those pertaining to the PGW RNG pilot program proposal. The PGW, OCA and OSBA have agreed to the Settlement. The remaining parties, I&E and PICGUG, have stated that they do not object to the Settlement.

It is the policy of the Commission to encourage settlements.[9] The standard for approval of settlement remains the same for a partial settlement, whether involving a partial

[8] 66 Pa. C.S. § 1318(a).

[9] 52 Pa.Code § 5.231.

settlement of issues or a partial settlement of the parties involved.[10] "The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest."[11]

The Commission encourages parties in contested on-the-record proceedings to settle cases.[12] Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[13] In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the Company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

However, the Commission does not simply rubber stamp a settlement. As the Commission has stated:

> Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a rate case settlement such as that proposed here, the Commission must determine that

[10] *Pa. Pub. Util. Comm'n v. Pa.-American Water Co.*, Docket Nos. R-2020-3019369 and R-2020-3019371 (Order entered February 25, 2021) at 40.

[11] *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1, 22 (1985).

[12] *See* 52 Pa.Code § 5.231.

[13] *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co*., Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

> the proposed terms and conditions are in the public interest.[14]

Regarding the partial settlement, PGW, OCA and OSBA have agreed to a Settlement that resolves all terms therein and provided Statements in Support. I&E and PICGUG have submitted letters stating that they do not object to the terms of the partial settlement terms.

DISCUSSION OF PARTIAL SETTLEMENT AND STATEMENTS IN SUPPORT

Purchased Gas Cost Rates

Pursuant to the Joint Petition, PGW is adopting a GCR of $4.1361 per Mcf as set forth in Appendix A of the Joint Petition. OCA supports this rate.[15] OSBA did not specifically address the rate but noted that it participated in the negotiations for and supports the Settlement.[16]

PGW asserts that this settlement is consistent with PGW's obligation to provide safe, adequate and reliable service while pursuing a least cost fuel procurement policy.[17] PGW will submit a quarterly adjustment to the GCR rate on or before September 1, 2021, which will establish the GCR rate, effective September 1, 2021.[18]

Load Balancing Charge ("LBC")

In the Settlement of the PGW 2020 GCR proceedings, the parties agreed to the following terms:

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14 *Pa. Pub. Util. Comm'n v. Hidden Valley Util. Servs.*, Docket No. R-2018-3001306 at 35 (Opinion and Order entered March 29, 2019), citing *Pa. Pub. Util. Comm'n v. York Water Co.,* Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water & Sewer Assocs.,* 74 Pa. PUC 767 (1991).

15 OCA Statement in Support ("St. S.") at 3.

16 OSBA St. S. at 1.

17 PGW St. S. at 3.

18 Settlement at ¶ 25.

PGW LOAD BALANCING CHARGE

a) The Time Factor for the March-19 Load Balancing Charge interest calculation will be corrected to 16/12 and incorporated in PGW's September 1, 2020 GCR filings.

b) Revised Load Balancing Charge will include 50% of the Williams' Transco Gas Pipeline ("Transco") Firm Transportation capacity costs necessary to deliver gas supplies withdrawal from storage under Transco Rate WSS (Washington Storage Service) in the calculation

c) Projected pipeline storage fuel injection and withdrawal charges will be included in the Load Balancing Charge calculation. These charges and the Transco Firm Transportation capacity costs in item 19b will be subject to reconciliation.[19]

In its initial filing in the instant proceedings, PGW proposed including approximately 100% of the capacity costs in its GCR calculations.[20] OSBA witness Knecht and OCA witness Mierza recommended that PGW modify its LBC for consistency with LBC provisions of the PGW 2020 GRC Settlement, as noted above.[21] Through its witness Florian Teme, PGW adopted this recommendation.[22] The Settlement at ¶ 29 includes this agreement which states: "PGW will modify its LBC calculation for Calendar Year 2020 so that 50 percent of the WSS capacity will be added into the excess demand determinant, as it does in the FY 2022 LBC calculations."

OCA finds that this provision maintains consistency with the 2020 GCR proceedings.[23] PGW adopts and supports this provision as addressing the concerns of OSBA and OCA as well as correcting the original calculation.[24] OSBA supports this provision as a

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19 Joint Petition for Settlement, R-2020-3017934, ¶ 19.

20 2021 GCR Filing, Schedule 14.

21 OCA St. 1 at 7-10; OSBA St. 1 at 4.

22 PGW St. 1-R at 9.

23 OCA St. S. at 4.

24 PGW St. S at 3 *referencing* PGW St. 1-R at 9-10.

"consistent calculation for the derivation of the LBC in both the historical and the forecast period."[25]

Universal Service and Energy Conservation Surcharge ("USC")

As part of the Settlement, PGW has agreed to refund $2,829,211 related to arrearage forgiveness associated with average bill Customer Responsibility Program customers for Fiscal Years ("FY") 2018 and 2019, beginning in June of 2021. This provision arose from OSBA witness Knecht's testimony questioning the $9.4 million under-collection of the Universal Service and Energy Conservation charge reflected in the PGW filing.[26] The USC is a "reconcilable charge for the recovery of costs related to various subsidy program for low-income and senior citizen customers." [27]

PGW revisited its calculations and determined that it had twice included the $2,829,211 in its USC. The refund corrects that calculation.[28]

OSBA supports this correction and refund beginning in the June 1, 2021 quarterly filing and notes that the Settlement provides that PGW had agreed to further analysis of additional variances by June 4, 2021 and additional reporting regarding future variances in the 2022 1307(f) proceeding.[29] On June 4, 2021, PGW filed at this docket a Report on the Universal Service and Energy Conservation Surcharge for Fiscal Year 2020.

OCA concurs and further notes that the parties reserve their right to challenge and conduct discovery regarding the reasonableness of any USC under-collection. OCA also specifies that in the next GCR proceeding, PGW will include a comparison between its prior FY USC actual over/under-collection and the projected USC over/under-collection from the prior

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[25] OSBA St. S. at 3.

[26] OSBA St. 1 at 1-3.

[27] OSBA St. 1 at 1.

[28] PGW St. 1-R at 4-7; PGW St. Supplemental 1-R at 1-2.

[29] OSBA St. S. at 2-3.

proceeding and identify the reasons for any material cost and/or revenue variances. OCA finds that these provisions will "ensure accuracy of the USC and provide an opportunity for parties to address further concerns."[30]

Planalytics Energy Buyer Services

As in previous recent GCR settlements, the parties have agreed that PGW may continue to recover the Planalytics fee, not to exceed $125,000.[31] Planalytics provides PGW with price analysis and buying advisory services.[32] In the next GCR proceedings, the parties will revisit this provision.[33]

Notice of Future Annual GCRs and Use of Estimated Data for March Quarterly GCR

The Settlement provides that PGW may use the same notice procedures - bill inserts, public notice processes and estimated data - for its 2022-2023 GCR proceedings.[34] None of the Settling Parties disagree with this approach. OCA does not object and notes that these procedures were approved in each of the PGW GCR proceedings since 2016-2017.[35]

PARTIAL SETTLEMENT RECOMMENDATION

A settlement is acceptable if the terms and conditions are in the public interest.[36] The terms and conditions of this settlement meet that standard.

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30 OCA St. S. at 4-5.

31 Settlement ¶ III(E)(34).

32 PGW St. 2 at 10-11.

33 Joint Petition at 6.

34 Settlement ¶ III(F)(35).

35 OCA St. S. at 6.

36 *See*, *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

A Purchased Gas Costs Rate of $4.1361 per Mcf is agreed upon by the Settling parties. This is less than the $4.2529 per Mcf agreed to in the 2020 GCR settlement. This is clearly in the public interest. PGW will submit quarterly adjustments in accordance with 52 Pa. Code § 53.64 to account for actual experience and changes in forecasted natural gas prices and demand.

The parties have reached a reasonable compromise on the LBC calculation for consistency with its 2020 GCR settlement terms. PGW will refund $2,829,211 to correct a double count in its USC calculations. PGW will also conduct further analysis of its over/under-collection and reports its findings. These efforts will benefit ratepayers and is in the public interest because the required recordkeeping and reporting will result in a better understanding and increased efficiency of such programs.

PGW also will continue to recover the costs of consulting price analysis and buying advisory service Planalytics, not to exceed $125,000, as it has in recent GCR cycles. This service provides PGW with relevant market information to assist it when it makes gas purchases and therefore is in the public interest.

Although there remained one issue in dispute, the RNG Pilot Program, upon which the parties could not agree, the Joint Petition for Settlement resolves the great majority of the issues presented in these proceedings and saves the time and expenditures of litigation and a multi-day hearing on these issues.

The terms of the Partial Settlement are fair, just, reasonable and in the public interest. Accordingly, it is recommended that the Commission approve the Joint Petition for Settlement of Philadelphia Gas in its entirety and without modification.

CONTESTED ISSUE – PGW RNG PILOT PROGRAM PROPOSAL

Description of the Pilot Program and the PGW/OCA Stipulation

In its filing, PGW proposed to include in its GCR the costs of a pilot program in which it would procure a limited amount of RNG as part of its gas supply used to meet the needs of PGW's firm sales customers ("pilot program"). On May 13, 2021, PGW and OCA filed a Joint Stipulation regarding the proposal.

The PGW/OCA Stipulation provides that PGW would purchase up to $500,000 of RNG, approximately 0.4% of its total "C" Factor commodity cost, for two years (FY 2022 and FY 2023). It also reserves the right of PGW to propose an increase in its RNG purchases for FY 2023 in its next annual GCR proceeding. Also, under the PGW/OCA Stipulation, PGW would be required to 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. Additionally, in the next GCR proceedings, PGW would be required to:

> (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.).[37]

I&E and OSBA object to the pilot program.

Burden of Proof for Litigated Issues

PGW has the burden of proof to establish that it is entitled to the relief it is seeking.[38] The Pennsylvania Supreme Court has stated that the party with the burden of proof

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[37] May 13, 2021 Joint Stipulation of PGW and OCA.

[38] 66 Pa. C.S. § 332(a).

has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a *prima facie* case, the party with the burden of proof must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary." [39] Furthermore, it is well-established that the "degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence." [40] Additionally, the evidence must be substantial and legally credible, and cannot be mere "suspicion" or a "scintilla" of evidence.[41] Thus, a utility has an affirmative burden to establish the justness and reasonableness of its rate request.

Position of the Parties

PGW and OCA have reached Stipulations regarding the pilot program. OSBA and I&E oppose it. Their various arguments are as follows.

PGW

PGW has proposed a pilot program to procure a limited amount of RNG, as part of the gas supply used to meet the needs of PGW's firm sales customers, and to include related costs in its GCR. [42]

PGW asserts that the RNG supply market will become an increasing source of gas supply in the future and therefore it is prudent for PGW to gain an understanding of the RNG market and diversify its gas portfolio. The company contends that the RNG pilot project will allow it to proactively acquire the knowledge and information to prepare rather than under

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[39] *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1236 (Pa. 1983).

[40] *Lansberry v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

[41] *Id.*

[42] PGW St. 3 at 1.

emergency circumstances or pressure of the industry.[43] PGW contends that this will assist it in safe, adequate, and reliable service to its customers.

PGW initially proposed to purchase up to $500,000 of RNG, or approximately 0.4% of its total "C" Factor commodity cost and reserve the right to propose to increase its RNG purchases for Fiscal Year 2023 in its next annual GCR proceedings. RNG would be included in PGW's gas supply portfolio and the costs included in the GCR.[44]

Subsequently, PGW and OCA entered into certain terms in its Stipulation. In the PGW/OCA Stipulation, PGW has agreed to a more restricted pilot program which limits the RNG purchase amount to $500,000 in each of the two years of the program. [45]

PGW notes that specifying the amount of allowable expenditures in this pilot program rather than an amount of product to be purchased, with fluctuating or unknown pricing, assures that there are cost limits associated with the program.[46] PGW witness, Stunder, testified that PGW plans to first access local or regional sourcing, which would provide supply adequacy benefits.[47]

PGW contends that the pilot project is consistent with its obligations under Sections 1317 and 1318 of the Code. PGW argues that the company is not obligated under these sections to *only* seek the least expensive gas without further consideration.[48]

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43 PGW St. 3. at 1.

44 PGW St. 3 at 2; Joint Stipulation of PGW and OCA at ¶ (a).

45 Joint Stipulation of PGW and OCA at 1.

46 PGW Main Brief at 8.

47 PGW St 3 at 3.

48 PGW St. 3 at 3 citing *Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-00061931 (Opinion and Order Sept. 28, 2007).

PGW also observes that national local and state elected officials support the reduction of emissions. It is the company's contention that the pilot program will assist PGW in providing safe, adequate and reliable service to its customers and gaining experience in the RNG supply market.[49]

OCA

OCA supports the pilot project. OCA notes that the stipulation entered into with PGW limits the RNG purchases to $500,000 of RNG in FY 2022 and 2023 rather than an unknown amount in FY 2023.[50] The original PGW proposal provided for RNG purchases up to $500,000 in FY 2023 and that the Company could increase its RNG purchases to no more than 2 percent of its annual projected cost of gas the following year. Based on projected costs, this would have increased the RNG purchases from $500,000 to approximately $3.4 million in FY 2023. [51]

In addition to the $500,000 purchase limitation, OCA notes that the stipulation includes certain reporting requirements listed above and reserves the rights of all parties to challenge any proposal.[52]

OCA asserts that the pilot project meets the requirements of Section 1318. It notes that 1318(3) provides that the utility must 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…." [53] Similar to the position of PGW, OCA asserts that Section 1318 does not require the purchase of the lowest cost resource available at any given time, but instead requires that the portfolio be the least cost consistent with the obligation to provide safe, adequate and

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49 PGW St. 3 at 3.

50 OCA St. S. at 1.

51 OCA St. 1 at 10.

52 Joint Stipulation at 1.

53 OCA Main Brief at 8, citing 66 Pa. C.S. § 1318(3).

reliable service over the foreseeable time horizon.[54] OCA argues that Section 1318 requires that the portfolio be the least cost consistent with the obligation to provide safe, adequate and reliable service "over the foreseeable time horizon."[55]

OCA contends that the pilot project is in the public interest because it is an important opportunity to explore the renewable natural gas markets with limited risk to ratepayers while protecting the long-term interests of ratepayers.[56] OCA witness Mierzwa pointed out in his testimony that there are potentially changing environmental concerns, particularly as they pertain to greenhouse gas emissions and climate change.[57] Mr. Mierzwa also noted that some states are already adopting legislation requiring net-zero emissions, that the City of Philadelphia has initiatives to reach carbon neutrality by 2050 and that the Commonwealth of Pennsylvania is also considering initiatives to reduce greenhouse gas emissions. The terms of the PGW/OCA Stipulation regarding the pilot project are similar to the recommendations of Mr. Mierzwa. [58]

OSBA

OSBA opposes the pilot program. It contends that PGW's proposal to purchase RNG violates Sections 1317(a) and 1318 of the Public Utility Code. OSBA asserts that the 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. OSBA witness Knecht states in his testimony that the proposal is not consistent with least cost procurement because the RNG supplies would

54 OCA Brief at 8.

55 OCA Reply Brief at 2, *referencing Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-2010-2157062 (Order entered July 29, 2010) and asserting that there the Commission approved hedging programs designed for long-term pricing benefits rather immediate least cost prices.

56 OCA Brief at 8-9.

57 OCA St. 1 at 11.

58 OCA Brief at 8.

cost between $13.00 and $17.50 more per Dth than other natural gas supplies, or up to five times more.[59] OSBA argues that the proposal should be rejected based on the cost alone.

OSBA also avers that PGW's gas portfolio has been deemed to be safe, adequate and reliable without the expensive RNG and that PGW has not explained what aspects of the portfolio are unsafe, inadequate or unreliable requiring RNG.[60]

OSBA also rejects PGW's assertion that environmental concerns justify the costs of acquiring RNG in the pilot program. Mr. Knecht asserted in his testimony that PGW cannot guarantee that there are any associated environmental benefits associated with the purchase.[61]

<u>I&E</u>

I&E also opposes the pilot project for essentially three reasons. They are: 1) the proposal violates the least-cost procurement policy, 2) PGW has not established that the proposal is essential to PGW providing safe, adequate and reliable service and 3) approval of the proposal would result in unjust and unreasonable rates for PGW ratepayers as they recover from the economic impact of the COVID-19 pandemic.

I&E asserts that in accordance with 66 Pa. C.S. § 1318(a), the Commission must determine whether PGW is pursuing a least cost procurement policy and that can be found only if the Commission concludes: that (1) PGW has fully and vigorously represented the interests of its ratepayers in proceedings before the Federal Energy Regulatory Commission; (2) that 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) 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

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[59] OSBA St. 1 at 5.

[60] OSBA Brief at 6.

[61] OSBA St. 1 at 5.

the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies; and (4) that 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.[62]

I&E argues that the RNG program violates the Least Cost Procurement Requirement. I&E asserts that the gas costs of the program are "outrageously expensive" and that it directly conflicts with the obligation to lower gas costs.[63] I&E further asserts that PGW's failure to present actual or tentative RNG contracts for review renders the record devoid of sufficient information such as length of contracts and whether PGW can negotiate such contract, and that the RNG acquisition plan is vague.[64]

There is no dispute among the parties that RNG is more expensive than conventional natural gas. A program that expressly rejects lower-priced conventional natural gas for higher priced RNG, I&E argues, is inconsistent with the company's obligation to obtain least cost gas. I&E witness Cline calculated that RNG would cost up to $20.03 per Dth compared to $2.53 per Dth for conventional product. He further calculated that if PGW were to replace $500,000 of TETCO M-1 natural gas with the same dollar amount of RNG, PGW would have to purchase 165,432 Dth of traditional gas to have the same amount of supply.[65]

I&E avers that the PGW/OCA Stipulation reporting requirements are "vague and illusory," particularly noting that the stipulation provides that PGW identify the BTU content of RNG purchases, "to the extent such data is available."[66] I&E also notes that although it was omitted from the PGW/OCA Stipulation, OCA witness Mierzwa testified that as part of the RNG pilot program, PGW should be required to report any impact of a change in BTU content from

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62 *Id*.

63 I&E Brief at 13-14.

64 I&E Main Brief at 15-16.

65 I&E Main Brief at 17.

66 I&E Reply Brief at 16-17.

that of other purchases on usage. It is I&E's position that this more than suggests that the unknown BTU content of RNG acquired may also impact the overall cost of its acquisition and use.[67]

Concurring with OSBA, I&E also asserts that PGW has not established a basis for a determination that the RNG Program is essential to PGW providing safe, adequate and reliable service and agrees with OSBA witness Knecht that PGW cannot guarantee that there will be any environmental benefits produced by the RNG program.[68] I&E also finds imposing additional costs upon ratepayers is not supported based on environmental concerns because the desires of federal, state or local authorities to reduce greenhouse emissions has not been codified into law.[69]

I&E also avers that by asserting environmental concerns as a basis upon which to implement the PGW RNG pilot program, PGW is taking a different stance from its position during its 2020 base rate case where it offered testimony that a Commission rate case determination based on the perceived effects of greenhouse gases or global warming would usurp the authority of DEP.[70] I&E also asserts that addressing environmental concerns in this rate case would be contrary to the Commission's determination in the PGW 2020 rate case that to do so would deprive all stakeholders of notice and opportunity to be heard on such issues.[71]

I&E also questions the testimony of PGW witness Stunder that a benefit of PGW's RNG Pilot project would supply diversity of supply benefits, referencing that OSBA witness Knecht contends that such benefits are speculative and are not expected to be produced until the RNG market more fully develops.[72] I&E essentially contends that absent laws requiring

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67 I&E Main Brief at 18-19; PGW/OCA Joint Stipulation at 1.

68 I&E Main Brief at 21.

69 I&E Main Brief at 22-23.

70 *See Pa. Pub. Util. Comm'n v. PGW*, Docket No. R-2020-3017206 (Opinion and Order entered November 19, 2020) at 93.

71 *Referencing id.* at 94; I&E Reply Brief at 18.

72 OSBA St No 1-SR at 6.

such acquisitions or RNG acquisitions, PGW is obligated to obtain the lowest cost gas that provides, safe, adequate and reliable service.[73]

Lastly, I&E avers that given the current economic recovery from the COIVD-19 pandemic, the expenditures for an RNG program are unreasonable and will increase the cost of gas and have a negative impact on ratepayers. I&E witness Cline concluded that the RNG Pilot Program would result in PGW customers paying more money for less gas.[74] I&E asserts that an increase in gas cost that results from the RNG program is particularly inappropriate for PGW where a good portion of its customers are low income, the level of arrearages is high, and unemployment remains a concern in the service area. [75]

CONTESTED ISSUE – RNG PILOT PROJECT- RECOMMENDATION

PGW has proposed a pilot project in which it would purchase a limited amount of RNG as a way to gain experience in the market to prepare for the future. PGW anticipates that given local, state and federal climate concerns, particularly as it pertains to global warming and emissions reductions, RNG will become a larger part of the market and its use required in the future. OCA supports the pilot proposal, and as such entered stipulations with PGW that require reporting of findings, quantities purchased, prices and GCR rate impacts of RNG purchases.

OSBA and I&E oppose the pilot, arguing that the high cost of purchasing RNG is contrary to PGW obligations under Sections 1317 and 1318 for least cost procurement of product that is safe, adequate and reliable. They also contend that any environmental benefits of RNG are speculative at best and that although there have been local, state, and federal expressions of concern about the environment and reduction of greenhouse gases, there are no laws requiring that PGW's product includes RNG, and therefore the pilot proposal is premature. I&E further contends that purchase of RNG is not justified or required to make PGW products safe, adequate

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73 I&E Main Brief at 27.

74 I&E St. 1 at 7.

75 I&E Main Brief at 28-30; I&E Reply Brief at 19-20.

or reliable and that the increased costs is not of benefit to the ratepayers, particularly given post-COVID-19 economics.

Public entities often have to play catch up regarding policy trends and directives, scrambling to adjust operations when laws and requirements change. Here, PGW is seeking to be proactive. Seeing the writing on the wall of local, state, and federal trends to move towards reduction of greenhouse gases and what are believed to be more environmentally friendly resources, PGW is seeking an understanding of the RNG market as it relates to its product acquisitions. The RNG proposal is a limited program that will allow PGW to prepare for future markets. As PGW witness Stunder observed, to produce and obtain meaningful information and data, two GCR periods are required for the pilot program. [76]

As PGW witness Stunder explained, RNG is a biogas produced from a biochemical process and RNG has a methane content comparable to conventional natural gas and can be a suitable energy source in applications that require pipeline-quality gas. It reduces greenhouse gas emissions because it is a carbon-neutral fuel that comes from organic sources that once absorbed carbon dioxide from the atmosphere during photosynthesis. RNG can be sourced through a variety of processes and can be produced by landfills, wastewater treatment facilities, livestock operations and food waste. RNG has even greater benefits when it is produced from organic waste that would otherwise decay and emit methane into the atmosphere, as RNG production captures this methane release. [77] Regulatory and federal entities are moving toward methods to reduce greenhouse gases.[78]

While OSBA and I&E have raised understandable questions regarding the substantially higher cost of RNG, the impact of the proposal will be minimal. Rather than providing for a certain quantity of RNG to be purchased, and its associated certain price fluctuation, the amount of any such purchase is limited to $500,000 per year for the next two

[76] PGW St. 3 at 4-5.

[77] PGW St. 3 at 2.

[78] OCA St. 1 at 11.

years only. This represents 0.4% of PGW's total "C" Factor commodity cost. The majority of gas supply would be purchased as usual at conventional natural gas prices.

I&E argues that the environmental issues PGW seeks to address are beyond the scope of the concerns of the Commission and this GCR proceeding. To the contrary, GCR proceedings involve a consideration of market and purchase factors in PGW acquiring product to serve its customers. A purpose of Section 1307(f) is to allow the Commission to "annually review and approve plans for purposes of reliability and supply." Planning for expertise in future acquisitions under obvious trends is a means by which a company can assure reliability and supply.

As far as I&E's concern about PGW's lack of RNG contracts or tentative contracts, the pilot program serves the purpose of allowing PGW to negotiate and enter such contracts, gaining information and experience with a diversified product portfolio for application in the second year. PGW witness Stunder noted that entering the RNG market is not a simple task. PGW is heavily regulated and sorting through many regulations, requirements and laws will be required if RNG becomes a part of the PGW gas supply. Identifying reputable suppliers with the needed capacity will take time, effort and experience. [79]

As for concerns about BTU reporting, under the PGW/OCA Stipulation, the BTU content of RNG purchases will be reported when known. This is reasonable given the testimony of PGW witness Stunder regarding the nature of RNG. He stated that it is uncertain whether the BTU content will be available because the sources of RNG will be off-system and subject to the specifications of the transporting pipeline, and purchases could potentially be bundled from more than one RNG source.[80] Nevertheless, the PGW/OCA Stipulation places an affirmative duty upon PGW to report the BTU information when available.

[79] PGW St. 3-R at 9.

[80] PGW St. 3-R at 8.

Regarding arguments that any rate increase associated with the pilot program is not advisable given that the PGW service area is recovering economically from the COVID-19 pandemic and the number of low-income PGW customers, the Commission has yet to find COVID-19 and its effects a reason not to raise rates.[81] Also, PGW has programs in place, as well as additional funds from federal COVID-19 related sources, to assist low-income customers.[82]

A valid concern of OSBA and I&E is that there is uncertainty about the duration of any contract entered under the pilot program. The Commission may find it prudent to limit the duration of any RNG contract to no later than one year after the period of the pilot project, as recommended in the ordering paragraphs. It is also recommended that PGW prioritize local or regional producers, also included in the ordering paragraphs. As PGW witness Reeves noted, PGW is dependent upon interstate pipeline delivery systems to meet its needs.[83] A pilot RNG project prioritizing local and regional producers will promote a diversity of geographic supply, which supports reliability as well the adequacy of supply.[84]

Given the local, state and, particularly, federal movement to address environmental concerns and climate change, the pilot program is a reasonable initiative to support PGW's obligation to provide reliable and adequate service in the future. While the small portion of the product purchased under the pilot program may be more expensive than the standard product, it is important that entities such as PGW be prepared for what appears to be an inevitable change in the market. Additionally, the understanding and use of another source of supply would be advantageous to PGW if there are shortages or disruptions in and the shutting down of pipelines from PGW's traditional sources of supply.[85]

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81 See, e.g., *Columbia Gas v. Pub. Util. Comm*'n, Docket No. R-2020-3018835 (Opinion and Order entered Feb. 19, 2021).

82 PGW St. 3-R at 6-7.

83 PGW St. 2 at 2, 11.

84 PGW St. 3-R at 4; PGW St. 3 at 4.

85 See PGW St. 3 at 4.

The Code provides that the utility must pursue "a least cost fuel procurement policy, *consistent with the utility's obligation to provide safe, adequate and reliable service to its customers."* 66 Pa. C.S. § 1318 (emphasis added). As OCA witness Mierzwa stated, there are rapidly changing environmental concerns related to the emissions of GHG, and the pilot program offers potential benefits to preemptively evaluate the impact of possible changes to environmental concerns while diversifying supply.[86] PGW is preparing for the future at a relatively small cost in a limited pilot program. The associated expense is reasonable and prudent given the anticipated future requirements and markets and can save ratepayers costs in the long run. That is in the public interest. Therefore, it is recommended that the Commission approve the PGW RNG Pilot Program proposal, as modified by the PGW/OCA Joint Stipulation.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 1307(f), 1317 and 1318.

2. There is sufficient evidence of record to support the findings required by Section 1318 of the Public Utility Code, 66 Pa. C.S. § 1318.

3. The standard for approval of settlement remains the same for a partial settlement and central consideration is whether or not it is in the public interest. *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. PUC 1, 22 (1985). *Pa. Pub. Util. Comm'n v. Pa.-American Water Co.*, Docket Nos. R-2020-3019369 and R-2020-3019371 (Order entered February 25, 2021).

4. For litigated issues, the burden of proof is on the utility to establish that it is entitled to the relief sought. 66 Pa. C.S. § 332(a).

86 *See* OCA St. 1 at 11.

5. For purposes of the terms in the Joint Petition of Settlement, PGW has met the requirements of Section 1318 of the Public Utility Code by pursuing a least cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers. 66 Pa. C.S. § 1318.

6. PGW's rates for purchased gas costs during the relevant time period, as the parties have agreed upon in this proceeding, are just and reasonable and in compliance with 66 Pa.C.S. § 1318.

7. With respect to PGW's gas purchases and gas purchasing practices during the twelve-month historical reconciliation period ended December 31, 2020, PGW has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historical period.

8. During the twelve months ended December 31, 2020, PGW has met the requirements of Section 1318(a) of the Public Utility Code, 66 Pa.C.S. § 1318(a), by pursuing a least cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers.

9. With respect to the eight-month interim period beginning on January 1, 2021, and the projected twelve-month period beginning September 1, 2021, based on information currently available, the rates to be adopted result from PGW's compliance with all of the provisions of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318.

10. The proposed terms and conditions in the Settlement are in the public interest, meeting the benchmark for acceptability. *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.,* 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.,* 60 Pa. PUC 1 (1985).

11. Section 1318 of the Public Utility Code provides that no rates for a natural gas distribution company ("NGDC") shall be deemed just and reasonable unless 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. 66 Pa.C.S. § 1318.

12. "On its face, a gas utility's obligation to pursue a least cost fuel procurement strategy is just that -- an obligation to take steps to insure that the cost it -- the utility -- incurs for natural gas are as low as reasonably possible, consistent with its obligation to provide safe, reliable and adequate service." *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-00061931 at 23 (Opinion and Order Sept. 28, 2007).

13. A purchasing strategy may be reasonable even if it produces higher than the "least cost" if that strategy improves or maintains the safety, adequacy and reasonableness of the utility's gas supply. 66 Pa.C.S. § 1318.

14. Section 1317 of the Public Utility Code requires NGDCs to submit certain information to enable the Commission to make a least cost fuel procurement finding. 66 Pa.C.S. § 1317.

15. The Commission has promulgated regulations that include extensive filing requirements for NGDCs. *See* 52 Pa. Code §§ 53.64 and 53.65.

16. Section 1318 of the Public Utility Code provides the Commission with the flexibility and discretion to evaluate an NGDC's least cost fuel procurement policy under the conditions of the existing gas marketplace. *Popowsky v. Pa. Pub. Util. Comm'n*, 676 A.2d 731, 735 (Pa. Cmwlth. 1996).

17. Whether or not the utility has conformed to its statutory duties in a reasonable manner depends on the individual circumstances and facts of each particular Section 1307(f) filing. *Equitable Gas Co. v. Pa. Pub. Util. Comm'n*, 536 A.2d 846, 851 (Pa. Cmwlth. 1988).

18. PGW has met its burden of proving that the limited purchase of potentially higher-priced RNG (as compared to conventional natural gas) is consistent with PGW's obligations under Section 1317 and 1318 of the Public Utility Code to pursue a least cost fuel procurement policy, consistent with its obligation provide "safe, adequate and reliable service" to its customers. 66 Pa.C.S. §§ 1317, 1318.

19. PGW's proposed cost of RNG spending is reasonable.

20. PGW's proposal contains a reasonable level of detail sufficient for the Commission to determine that PGW has met its burden.

21. For purposes of this proceeding, PGW's projected gas purchases and projected gas purchasing policies comply with the standards of Section 1318 of the Public Utility Code. 66 Pa.C.S. § 1318.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of Philadelphia Gas Works' 2021-2022 GCR Proceeding submitted by the Philadelphia Gas Works, the Office of Consumer Advocate, and the Office of Small Business Advocate be approved.

2. That Philadelphia Gas Works be authorized to file a tariff supplement to reflect rates and terms consistent with this order to be effective for services rendered on or after September 1, 2021, to be effective on at least one day's notice, subject to quarterly adjustments permitted by Commission regulations at 52 Pa. Code § 53.64(i)(5), including a quarterly

adjustment to be effective on September 1, 2021, to reflect actual experience and changes in forecasted natural gas prices.

3. That PGW be permitted to revise its Load Balancing Charge to LBC reflect a 50 percent (50%) assignment of the Firm Transportation ("FT") capacity required to deliver supplies under PGW's Washington Storage Service ("WSS") arrangement with Transcontinental Gas Pipe Line ("Transco") and modify its LBC calculation for Calendar Year 2020 so that 50 percent of the WSS capacity will be added into the excess demand determinant, as it does in the FY 2022 LBC calculations.

4. That Philadelphia Gas Works be permitted to continue to recover the Planalytics fee for price analysis and buying advisory services (not to exceed $125,000) for the 2021-2022 GCR period. Continued recovery of the fee beyond the 2021-2022 GCR period must be addressed in next year's Purchased Gas Cost proceeding.

5. That Philadelphia Gas Works' Renewal Natural Gas pilot program proposal, as modified by the Joint Stipulation of PGW and the Office of Consumer Advocate filed in the above-captioned proceeding on May 13, 2021, be approved with the modification that:

(a) any RNG contracts entered into by PGW not extend more than one year after the duration of the pilot program, and

(b) PGW prioritize regional or local producers, where possible.

6. That Philadelphia Gas Works be permitted to provide notice as follows in its 2022-2023 GCR proceedings:

(a) provide written notice to customers by bill insert in the one-month billing cycle commencing on the date of the annual 1307(f) filing, on March 1, of a tariff addendum and tariff or tariff supplement reflecting changes in purchased gas costs and ending no later than thirty (30) days after the filing of such tariff addendum and tariff or tariff supplement, instead of beginning such notice with the one-month billing cycle commencing thirty (30) days prior to the filing of the tariff addendum and tariff or tariff supplement as required by 52 Pa. Code § 53.68(a);

(b) in company offices in which payments are accepted, provide public notice on the date of the annual 1307(f) filing, March 1, of a tariff addendum and tariff or tariff supplement reflecting changes in purchased gas costs, instead of thirty (30) days prior to the filing of such tariff addendum and tariff or tariff supplement as required by 52 Pa. Code §§ 53.68(a) and 53.45(b); and

(c) provide estimated data for both January and February in the March 1 quarterly 1307(f) filing instead of providing actual data for January alone as required by 52 Pa. Code § 53.64(i)(5)(i).

7. That the Formal Complaint of the Office of Consumer Advocate, filed at Docket No. C-2021-3024126, be deemed satisfied and marked closed.

8. That the Formal Complaint of the Office of Small Business Advocate, filed at Docket No. C-2021-3024293, be dismissed and marked closed.

9. That the Secretary mark this docket closed.

Date: June 24, 2021

/s/
Darlene Heep
Administrative Law Judge