



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 1, 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)  
Docket No. R-2021-3023970  
**I&E Exceptions**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Exceptions of the Bureau of Investigation and Enforcement (I&E)** 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,

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GLM/ac  
Enclosures

cc: Hon. Darlene Heep, Office of Administrative Law Judge (*via email only*)  
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Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Gina L. Miller  
Prosecutor  
PA Attorney ID No. 313863

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
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400 North Street  
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Dated: July 1, 2021

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## I. INTRODUCTION

### 1. The Basis for I&E's Exceptions

The Bureau of Investigation and Enforcement (“I&E”) submits these Exceptions to Administrative Law Judge (“ALJ”) Darlene Heep’s Recommended Decision (“RD”) of June 24, 2021. For purposes of clarity, I&E takes no position on the ALJ’s approval of the *Joint Petition for Settlement of Philadelphia Gas Works’ 2021-2022 GCR Proceeding* as adopted in the RD, as I&E neither joined nor opposed the Settlement. The bases for I&E’s Exceptions arise under the ALJ’s approval of PGW’s Renewable Natural Gas Pilot Program (“RNG Pilot Program”), the sole issue reserved for litigation. I&E submits, and the record supports, the determination that PGW’s RNG Pilot Program, *inter alia*, violates the Public Utility Code and warrants rejection.

I&E’s grounds for exception are threefold, although I&E submits that each one presents a valid and independent basis for reversing the ALJ’s recommendation to approve PGW’s RNG Pilot Program. First, The ALJ erred in determining that PGW met its burden of proof that RNG purchases are consistent with its least cost gas procurement obligations under Sections 1317 and 1318 of the Public Utility Code. Additionally, the ALJ erred by misconstruing I&E’s position regarding the requisite COVID-19 impact analysis, thereby failing to make the requisite “just and reasonable” rate evaluation in this case. Finally, the ALJ erred by failing to honor the Pennsylvania Public Commission’s (“Commission”) recent directive in PGW’s 2020 base rate case that disposition of environmental issues before the Commission necessitates both the development of

universal guidelines and the need for stakeholder input (both were notoriously absent here).

By way of further context, I&E will briefly explain PGW's RNG Pilot Program, both as it was originally filed and as it was later modified by modified by a Joint Stipulation between PGW and the Office of Consumer Advocate ("PGW/OCA Joint Stipulation"). As I&E demonstrated in this case, the PGW/OCA Joint Stipulation does not change the fact RNG costs will dilute the effectiveness of ratepayers' purchasing power by imposing an unprecedented and exorbitant \$13 to \$17.50 per Dth markup over and above the indexed cost of natural gas without providing any targeted or measurable safety, adequacy of service, or reliability benefits. Such a result is not only inconsistent with least cost gas procurement standards, but it is also incompatible with just and reasonable rates and adverse to the public interest; accordingly, the Commission should modify the ALJ's RD to deny PGW's RNG Pilot Program.

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

### **A. PGW's As-filed RNG Pilot Program<sup>1</sup>**

Through its GCR filing, PGW proposed to begin purchasing renewable natural gas. As PGW describes it, renewable natural gas is biogas produced from a biochemical process, such as anaerobic digestion.<sup>2</sup> According to PGW witness Stunder, RNG sources result from processes that involve the breakdown of organic matter, including biogas produced by landfills, wastewater treatment facilities, livestock operations and food

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<sup>1</sup> I&E Main Brief, pp. 3-6.

<sup>2</sup> PGW St. No. 3, p. 1.

waste.<sup>3</sup> In its initial filing, PGW proposed to begin a two-year pilot program in which it purchases up to \$500,000, or approximately 0.4% of PGW’s total “C” Factor commodity cost, of RNG during fiscal year 2022. After the first year, PGW proposed that it be permitted to increase the RNG supply it can purchase in fiscal 2023 above \$500,000, but not more than 2% of the total “C” Factor commodity cost, which it estimated to be approximated \$2.5 million.<sup>4</sup> At the conclusion of the two applicable GCR periods, PGW plans to determine whether to propose a permanent continuation of the pilot.<sup>5</sup>

Currently, PGW does not have a viable framework in place to acquire any volume of RNG within the purchasing parameters it established. Instead, PGW’s vague RNG acquisition plan generally contemplates prioritizing sourcing RNG from Pennsylvania suppliers, but then looking to suppliers outside of Pennsylvania if necessary.

Importantly, PGW does not identify the factors it will use to select RNG suppliers, or whether and how the price of RNG would be considered in its acquisition plan. Instead, PGW appears to value acquisition from the standpoint of proximity, indicating that the “focus on geographic proximity is intended to ensure that environmental benefits of RNG stay as close to PGW’s service territory as possible, and to help further the development of RNG production in PGW’s immediate vicinity.”<sup>6</sup>

While PGW focuses on RNG acquisition from a proximity standpoint, the focal point of this proceeding is gas costs. The only gas cost information PGW provides

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

<sup>4</sup> PGW St. No. 3, p. 2.

<sup>5</sup> PGW St. No. 1, p. 4.

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

regarding RNG is that it is “more expensive” than conventional natural gas, a conclusion supported by the only piece of evidence in this case regarding the estimated cost of RNG: a supplier’s response to PGW’s RFP. In the unidentified supplier’s response, it indicated that RNG purchases would include a cost adder ranging from \$13 to \$17.50 per Dth over and above the indexed cost of natural gas.<sup>7</sup>

In contrast to the expensive costs of RNG, PGW has not come close to establishing a commensurately valuable benefit, or any benefit at all, that ratepayers can expect for the squandering of their dollars. While PGW generally claims that RNG reduces greenhouse gas emissions, it does not target its pilot program to achieving any type of identified greenhouse gas emissions reduction. Instead, PGW vaguely alleges that incorporating RNG into its gas supply portfolio would further its provision of safe, adequate, and reliable service to customers, and give it experience into the RNG market, which witness Stunder speculated “could become an increasing source of gas supply in the years ahead.” PGW witness Stunder attempts to argue that incorporating RNG into PGW’s gas mix will diversify its supply portfolio for purposes of reliability and enable PGW to better respond if there are changes in the law that address carbon emissions.<sup>8</sup>

Yet, other than vague assertions and speculation, PGW has not tied RNG purchasing to any targeted or measurable safety, adequacy of service, or reliability benefits that will inure to its ratepayers. Tellingly, when pressed on how PGW would measure the success of the RNG Pilot Program, PGW simply indicated that the pilot

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

<sup>8</sup> PGW St. No. 3, p. 4.

would be successful if it involved PGW supporting the developing RNG market and gaining experience with RNG purchasing.<sup>9</sup> Significantly, in its response, PGW did not identify any target metrics that it would use to measure the RNG Pilot Program's success, in any manner related to safety, adequacy, or reliability of service. I&E submits that the only definite result of the RNG Pilot Program is that it will exponentially increase gas costs for PGW's ratepayers, and while the RD fails to acknowledge this outcome, it still exists.

**B. PGW's RNG Pilot Program as modified by the PGW/OCA Joint Stipulation<sup>10</sup>**

In an apparent attempt to make its RNG Pilot Program more palatable, on May 13, 2021, PGW entered into the PGW/OCA Joint Stipulation. In the Stipulation, PGW agrees that it would hold the purchases of RNG to \$500,000 for not only fiscal year 2022, but also for fiscal year 2023.<sup>11</sup> PGW also agrees that in next year's GCR proceeding, it will do the following: (1) Report the daily quantities of RNG purchased; (2) Report prices it paid for RNG; (3) Identify how those prices compare to other purchases; (4) Identify the GCR rate impact of its RNG purchases; (5) Identify the BTU content of its RNG purchases, to the extent such data is available; and (6) Identify the location of the facility producing the RNG and the type of facility (i.e. landfill, wastewater treatment plant, municipal solid waste, agricultural product, etc.); and (7) Identify whether its purchase of

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<sup>9</sup> PGW Exh. No. 1, Sch. 1.

<sup>10</sup> I&E Main Brief, pp. 6-7.

<sup>11</sup> PGW/OCA Joint Stipulation, p. 1.

RNG will result in the monetization of any environmental benefits and how those benefits will be reflected in the price of the RNG purchases.<sup>12</sup>

As I&E demonstrated in this case, although PGW apparently entered into the PGW/OCA Joint Stipulation to assuage the OCA's concerns, the Stipulation's modifications cannot overcome the fact that PGW's RNG Pilot Program violates the Code and is fatally flawed. To be sure, the decreased spending amount for fiscal year 2023 will save some of the ratepayers' money, but, upon closer review, the decreased spend is a red herring. Regardless of whether PGW spends \$2.5 million annually, or \$10,000 annually to procure RNG, the spending level cannot change the fact that PGW's RNG purchases would not conform to the least cost gas procurement requirement. Nor can a decreased spend change the fact that the value of ratepayers' dollars is needlessly and significantly being diminished. The applicable standard here is not "less harmful to ratepayers than originally filed." Additionally, any false sense of comfort attached to the PGW/OCA Joint Stipulation's reporting requirements is easily lost upon the realization that, if anything, they reveal that the alleged benefits of the RNG Pilot Program are wholly speculative, and that the true ratepayer impact is yet to be determined. The RD fails to acknowledge these realities and appears to adopt the "less harmful than filed" standard that has no place in the context of a GCR case where the least cost gas procurement standard governs.

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<sup>12</sup> Id. at pp. 2-3.

### 3. Procedural History

On February 1, 2021, PGW submitted its pre-filing information in support of its annual reconciliation of purchased gas costs rates. Shortly afterward, on February 3, 2021, I&E filed a Notice of Appearance in this proceeding.<sup>13</sup> On February 11, 2021 and February 26, 2021, respectively, the Office of the Consumer Advocate (“OCA”) and the Office of Small Business Advocate filed a Public Statement, a Notice of Appearance, and a formal Complaint in this case. On February 17, 2021, the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) filed a Petition to Intervene in this case.

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

On March 3, 2021, I&E received a Prehearing Conference Order which was issued to advise parties that Administrative Law Judge Darlene D. Heep (“ALJ Heep”) would be presiding in this case and to memorialize the date, time, and requirements for the Prehearing Conference. Pursuant to the Prehearing Order, a telephonic Prehearing

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<sup>13</sup> Act 129 of 2008, 66 Pa. C.S. § 308.2, authorized the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders. 66 Pa. C.S. § 308.2(a)(11). In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement (“I&E”) to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). The instant proceeding implicates I&E’s participation because it will have a rate impact upon PGW’s customers.

Conference was held March 9, 2021, with ALJ Heep presiding. At the Prehearing Conference, a procedural schedule, and the procedures applicable to this proceeding were established and they were subsequently memorialized in ALJ Heep's Prehearing Order issued on March 15, 2021.

After the Prehearing Conference, PGW, I&E, OCA, OSBA, and PICGUG engaged in the discovery process and participated in settlement discussions. Additionally, in accordance with the procedural schedule adopted in ALJ Heep's Prehearing Order, the parties exchanged direct, rebuttal, surrebuttal, and rejoinder testimony. I&E introduced the following statements of verified testimony and a corresponding exhibit:<sup>14</sup>

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

Prior to the start of evidentiary hearings on May 12, 2021, all parties requested that the ALJ cancel the May 12 hearing and to permit the hearings to begin on May 13, 2021 so that parties could continue to engage in settlement discussions. ALJ Heep granted the parties' request and issued an order to facilitate the cancellation. Later, on May 12, the parties informed ALJ Heep that they had reached a settlement in principle<sup>15</sup>

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<sup>14</sup> I&E notes that all of witness Cline's documents were verified by a statement circulated simultaneously with I&E's service of his surrebuttal testimony on May 11, 2021.

<sup>15</sup> I&E takes no position on the settlement other than that to the extent it avers that PGW is adhering to a least cost gas purchase policy, I&E opposes that averment as it relates to PGW's purchase of RNG.

pertaining to all issues in PGW's GCR proceeding, except for PGW's RNG proposal, which would be reserved for litigation.

As a final request, and upon determining that no parties had identified a need to conduct cross-examination, the parties requested that ALJ Heep also cancel the hearing set for May 13, 2021 in favor of permitting parties to stipulate testimony into the record by Motion and in favor of permitting parties to litigate the RNG proposal through briefing. ALJ Heep granted all requests. On May 13, 2021, PGW filed with the Commission the PGW/OCA Joint Stipulation. On May 17, 2021, the parties jointly moved for the admission of testimony and exhibits via Joint Stipulation. Later, on May 17, 2021, ALJ Heep granted the parties' Joint Stipulation for Admission of Testimony and Exhibits, and I&E's above-referenced statements and exhibit were admitted into the record.

Along with I&E, PGW, OCA, and OSBA each filed a timely Main Brief in this case on May 26, 2021. Each of these parties also filed a timely Reply Brief on June 4, 2021.<sup>16</sup> The ALJ issued her RD on June 24, 2021, and I&E now submits these Exceptions in accordance the timeline established in the June 24, 2021 Secretarial Letter that was issued alongside the ALJ's RD.

#### **4. The ALJ's Recommended Decision**

In her RD, ALJ Heep recommended approval of PGW's RNG Pilot Program as outlined in the PGW/OCA Joint Stipulation, but with two modifications.<sup>17</sup> First, the ALJ

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<sup>16</sup> OSBA filed a letter in lieu of Reply Brief.

<sup>17</sup> RD at 35.

recommended the PGW/OCA Joint Stipulation be modified to limit the RNG contract term because “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.”<sup>18</sup> Additionally, the ALJ recommended that PGW be required to prioritize local or regional producers where possible.<sup>19</sup> For purposes of clarity, I&E takes no position on the ALJ’s proposed modifications, which, although unsupported in the record, appear to be intended to provide some type of guardrails for PGW’s ill-defined RNG procurement plan. However, I&E avers that these guardrails are too vague and insufficient to overcome the clear legal defects of the RNG Pilot Program in the context of this GCR case where the least cost gas procurement standard governs, and the RNG Pilot Program fails that standard.

Here, the ALJ’s recommendation for the modified approval of the PGW/OCA Joint Stipulation is based on an unsupported and erroneous determination. Specifically, the ALJ erred by concluding that that PGW met its burden of proving that the limited purchase of “potentially” higher priced RNG is consistent with its 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.<sup>20</sup> On the contrary, the record in this case clearly demonstrates that RNG is not simply “potentially” more expensive than convention natural gas, but exponentially more expensive, and without any corresponding service benefit to warrant the diluted spending power of ratepayer dollars. Additionally, the type of service-based need for

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<sup>18</sup> Id; RD at 40, ¶5(a).

<sup>19</sup> RD at 35; RD at 40, ¶5(b).

<sup>20</sup> RD at 39, COL 18.

ratepayer spending that the Commission has authorized for PGW in the past, consisting of demonstrated, quantified, and of-record evidence,<sup>21</sup> is entirely absent here.

## II. EXCEPTIONS

### 1. **The ALJ erred in determining that PGW met its burden of proof that RNG purchases are consistent with its least cost gas procurement obligations under Sections 1317 and 1318 of the Public Utility Code (RD at 39, COL 18)**

Although the ALJ's RD correctly articulates PGW's formidable burden of proving that the Commission may lawfully adopt its position,<sup>22</sup> the RD thereafter departs from any application of that burden. To be sure, the RD purports to require that PGW's RNG Pilot Program adhere to the legal requirements of Section 1318's least cost fuel procurement standards<sup>23</sup> and it correctly outlines that standard as requiring the following findings to support a determination that PGW pursuing a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers:<sup>24</sup>

- (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.

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<sup>21</sup> I&E Reply Brief, pp. 11-13, citing to *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-2015-250150 Opinion and Order, p. 10 (entered on January 28, 2016).

<sup>22</sup> RD at 24-25.

<sup>23</sup> RD at 16.

<sup>24</sup> RD at 16-17, citing 66 Pa. C.S. § 1318 (a).

- (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

Yet, despite the RD's recognition of the four required findings, it completely ignores the record evidence that PGW's RNG procurement fails two out of four requirements.

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

**A. The RD ignores PGW's failure to support any possible determination that it will negotiate favorable RNG supply contracts**

First, the RD ignores that PGW fails to offer any evidence to support the Commission's determination that its RNG Pilot Program conforms with PGW's obligation to take all prudent steps to negotiate favorable gas supply contracts. To be

sure, the record is devoid of any actual or tentative RNG contracts for review, depriving parties and the Commission of any information necessary to support the essential determination that RNG purchases would be made in conjunction with favorable gas supply contracts. Additionally, as PGW does not even bother to hint at the length of the contract terms it would consider for RNG procurement, parties and the Commission are deprived of any opportunity to consider the length of any contract terms as well. As noted above, the RD attempts to mitigate the lack of any contract term information by imposing a condition to limit the duration of any RNG contract to no later than one year after the period of the pilot project.<sup>25</sup> However, this condition provides too little protection too late, and it impermissibly enables PGW to bypass Section 1318 now. As I&E explained in its Reply Brief, the notion that PGW can unilaterally defer application of Section 1318 to RNG purchases now must be rejected.<sup>26</sup>

Consistent with the RD's attempt to mitigate the lack of any RNG contracts here,<sup>27</sup> I&E also recognizes PGW's point that PGW could not produce a signed RNG contract in this case because it would not have been prudent to commit to purchases, incur legal expenses, and use its resources until the Commission authorizes its RNG proposal.<sup>28</sup> However, the predicament that PGW highlights in its inability to provide the Commission with the information necessary to analyze any RNG contract exemplifies the fallacy of its decision to insert the RNG Pilot Program proposal into a GCR proceeding. Specifically,

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<sup>25</sup> RD at 35.

<sup>26</sup> I&E Reply Brief, p. 13.

<sup>27</sup> RD at 34.

<sup>28</sup> PGW St. No. 3-R, p. 2.

PGW is asking the Commission to conclude that its RNG purchases will be made in conjunction with favorable gas supply contracts when no supply contracts currently exist. I&E submits that such a conclusion is not prudent, warranted, or permitted in the context of a GCR proceeding where the least cost gas procurement requirement governs.

Notably, PGW's inability to produce even general RNG contract information is not just an issue of form, but also of substance, as it is further compounded by the lack of specificity in its overall RNG acquisition plan. PGW's vague RNG acquisition plan generally contemplates prioritizing sourcing RNG from Pennsylvania suppliers, but then looking to suppliers outside of Pennsylvania if necessary. Importantly, PGW does not identify the factors it will use to select RNG suppliers, or whether and how the price of RNG would be considered in its acquisition plan. The RD's recommended modifications do nothing to cure PGW's failure to adopt RNG purchasing protocol. 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. The RD's failure to recognize that the requisite Section 1318 contract determination is not met here is erroneous and provides an independent basis for exception.

**B. The RD ignores the fact that PGW's RNG Pilot Program expressly rejects lower cost gas supplies**

The RD also somehow disregards that PGW's RNG Pilot Program is wholly inconsistent with PGW's obligation to take all prudent steps necessary to obtain lower

cost gas supplies on both short-term and long-term bases both within and outside of the Commonwealth. In fact, the only gas cost information PGW provides regarding RNG is an admission that it is completely antithetical to the pursuit of lower cost supplies, and the RD somehow manages to ignore the unprecedented and exorbitant markup that RNG would impose upon the cost of conventional RNG. Specifically, PGW witness Stunder testified that RNG is “more expensive” than conventional natural gas, a conclusion supported by the only piece of evidence in this case regarding the estimated cost of RNG: a supplier’s response to PGW’s RFP. In the unidentified supplier’s response, it indicated that RNG purchases would include a cost adder ranging from \$13 to \$17.50 per Dth over and above the indexed cost of natural gas.<sup>29</sup> I&E submits that PGW’s proposal to increase gas costs by up to \$17.50 per Dth stands in diametric opposition to its obligation that it takes all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside of the Commonwealth. The RD takes pains to avoid this reality by couching RNG as “potentially higher-priced” than conventional gas,<sup>30</sup> but the record evidence established the inconvenient truth about the real cost.

Specifically, in this case, I&E witness Cline correctly recognized that PGW’s RNG Pilot Program relies on RNG that is “exponentially more expensive” than natural gas, resulting in the diminished buying power of ratepayer funds and other hidden costs.<sup>31</sup> In the analysis that led to his conclusion, witness Cline compared the TETCO M-1 cost

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<sup>29</sup> PGW St. No. 3, p. 3.

<sup>30</sup> RD at 39, COL 39.

<sup>31</sup> I&E St. No. 1, pp. 4-5.

for natural gas for March 2021, \$2.53 per Dth, to the information provided by PGW's RFP, and calculated that the RNG could cost up to approximately \$20.03 per Dth. Next, witness Cline explained that as a practical effect of PGW's RNG Pilot Program, if PGW were to replace \$500,000 of TETCO M-1 natural gas with the same dollar amount of RNG, then PGW would need to also purchase approximately 165,432 Dth of traditional natural gas in order have the same amount of supply. Assuming a \$2.53 per Dth price, this extra gas would cost an additional approximately \$418,543 (165,432 Dth x \$2.53 per Dth).<sup>32</sup> Notably, PGW did not dispute witness Cline's analysis. Nor did PGW dispute Mr. Cline's conclusion that its RNG Pilot Program would result in customers paying more for less gas.<sup>33</sup> The RD sidesteps this issue.

The RD also erroneously dismissed the hidden, and potentially unidentifiable BTU impact of the RNG costs by concluding that PGW will have an affirmative duty to report it "when available."<sup>34</sup> Here, the RD errs again because under the PGW/OCA Joint Stipulation, PGW has no such affirmative obligation, as it only makes an illusory commitment to "identify the BTU content of its RNG purchases, to the extent such data is available."<sup>35</sup> For purpose of context, the BTU content was an issue raised by OCA witness Mierzwa who testified that as a condition of approval for its RNG Pilot Program, PGW should be required to identify the BTU content of its RNG purchases and **any impact of a change in BTU content from that of other purchases on usage.**<sup>36</sup> As

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<sup>32</sup> I&E St. No. 1, pp. 5-6.

<sup>33</sup> I&E St. No. 1, p. 7.

<sup>34</sup> RD at 34.

<sup>35</sup> PGW/OCA Joint Stipulation, p.1.

<sup>36</sup> I&E Main Brief, pp. 18-19; OCA St. No. 1, p. 12 (emphasis added).

part of the PGW/OCA Joint Stipulation, PGW and OCA omitted the highlighted language above, but I&E submits that in the plain language of his direct testimony, witness Mierzwa's recommendation was premised on a concern that given the uncertain BTU content of any purchased RNG, a usage impact could be realized. Now, as part of the PGW/OCA Joint Stipulation, PGW has made only an illusory promise to identify the BTU content impact, as it has qualified such identification on "availability." The RD misconstrues PGW's reporting obligation and therefore ignores that PGW's ratepayers may never know the BTU content impact of RNG, and the corresponding price impact, providing an additional basis for rejection. This error only further compounds the RD's failure to recognize that PGW's RNG Pilot Program is directly at odds with its Section 1318 obligation because it expressly requires PGW to reject lower cost natural gas in favor of exponentially more expensive, providing an independent basis for exception.

**C. The RD overlooks PGW's failure to support any determination that the unprecedented cost of RNG is somehow justified by being essential to the provision of safe, adequate, and reliable service**

The RD appears to overlook the exorbitant cost of RNG by adopting PGW's position that RNG will support PGW in its obligation to provide reliable and adequate service in the future.<sup>37</sup> Specifically, the RD lauds PGW's proactive" stance in "[s]eeing 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. . . ."<sup>38</sup> Thus, the RD appears to divine a service benefit for customers because PGW's RNG

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<sup>37</sup> RD at 35.

<sup>38</sup> Id. at 33.

Pilot Program is consistent with a predicated change in the law. This is in line with PGW’s claims that it is proposing to purchase RNG at a price “likely higher” than conventional natural gas supplies because it believes that incorporating RNG into its supply portfolio would “further the goals” of providing safe, adequate, and reliable service to its customers,<sup>39</sup> are at best, speculative and unsupported. In support of that “belief,” PGW witness Stunder testified that national, state, and local elected officials support the reduction of emissions, and he claimed that RNG does reduce emissions. Additionally, witness Stunder pointed to procurement experience PGW could gain through its purchases of RNG, which he claims would diversify PGW’s supply portfolio, and which may be beneficial if the RNG supply market becomes an increasing source of gas supply in the years ahead.<sup>40</sup> Finally, witness Stunder claimed that if there is a potential change in state and federal law related to carbon emissions, becoming familiar with RNG now will better position PGW for the future.<sup>41</sup> As I&E demonstrated in its Main Brief,<sup>42</sup> PGW’s assertions are comprised mainly of platitudes and general policy positions, but they lack any substantive support in the evidentiary record.

**(i) The RD’s reliance on alleged emission reductions benefits are unsupported and not Grounded in Federal or State Law, or Commission-based Policy**

At the outset, the RD fails to recognize that PGW’s self-concluding statement that use of RNG produces environmental benefits<sup>43</sup> is not grounded in any record-based

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<sup>39</sup> PGW St. No. 3, p. 3.

<sup>40</sup> PGW St. No. 3, pp. 3-4.

<sup>41</sup> PGW St. No. 3, p. 4.

<sup>42</sup> I&E Main Brief, pp. 20-26.

<sup>43</sup> PGW St. No. 3, pp. 3-4.

quantification of benefits inuring to PGW's ratepayers. While the RD recognized PGW witness Stunder's testimony that "RNG is considered an alternative that produces less greenhouse gas than conventional natural gas,"<sup>44</sup> the RD failed to connect that claim with actual service benefits that would flow to PGW's ratepayers. I&E submits that this failure exists because PGW never supported its testimony with any objective facts or specifics necessary to explain how the vague claims of greenhouse gas reduction would translate into a safety, adequacy of service, or reliability of service benefit to PGW's ratepayers. I&E submits that PGW fails to make such a showing and its reliance on innuendo and generalized statements is not sufficient to support the conclusion that RNG purchases are necessary to support PGW's safe, adequate, and reliable service.

Importantly, and as OSBA witness Knecht correctly recognized, PGW cannot guarantee that there will be any environmental benefits produced by the RNG Pilot Program. In support of his position, witness Knecht explained that PGW has not indicated that its purchases would be for gas that would otherwise be vented.<sup>45</sup> In fact, the tenuous nature of any alleged environmental benefits that could materialize from the RNG Pilot Program is enshrined in the PGW/OCA Joint Stipulation. In the PGW/OCA Joint Stipulation, PGW commits that it will "identify whether its purchase of RNG will result in the monetization of any of the environmental benefits of the RNG project and how those benefits will be reflected in the price of the RNG it purchases."<sup>46</sup> I&E submits that the plain language translation of PGW's "commitment" simply confirms the

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<sup>44</sup> RD at 33; PGW St. No. 3, p. 3.

<sup>45</sup> PGW St. No. 1, p. 5.

<sup>46</sup> PGW/OCA Joint Stipulation, p. 2.

possibility that purchase of RNG might not result in the monetization of any environmental benefits. I&E also notes that the PGW/OCA Joint Stipulation fails to identify the “environmental benefits” that are to be the subject of the monetization inquiry. On these facts, there can be no straight-faced argument that the unidentified environmental benefits compel a determination that RNG purchases are integral to PGW’s provision of safe, adequate, and reliable service. The RD’s determination otherwise is not supported by any record evidence and it should be reversed.

Instead of pointing to quantifiable benefits, or even identifiable goal posts for measuring any benefits that ratepayers could expect from the exponentially-increased gas costs that RNG purchases would impose, witness Stunder simply claims that “elected officials” support the reduction of emission.<sup>47</sup> But PGW confuses the issue, because this is a gas cost proceeding, and the alleged preferences of politicians, which may be laudable from an environmental standpoint,<sup>48</sup> would result in financial harm to PGW’s ratepayers without producing any proven benefit to its ability to provide safe and reliable service. I&E submits that at the premium additional cost for RNG, which would impose an estimated adder of \$13 to \$17.50 per Dth, ratepayers must be able to expect something more than platitudes.

The RD fails to acknowledge that no federal or state law, or even Commission-based policy, exists to provide a framework necessary to authorize RNG purchases or to

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<sup>47</sup> PGW St. No. 3, p. 3.

<sup>48</sup> I&E takes no position regarding the merits of any pending state, federal, or local legislation or regulations regarding reduction of carbon emissions. Instead, I&E’s point is that no position on that issue is warranted in a PGW GCR proceeding unless and until authorizing legislation is passed and impacts PGW as a jurisdictional utility.

identify standards that should apply to reduction of emissions. Instead, the RD simply points to the OCA's support for the RNG Pilot Program,<sup>49</sup> which is also rooted in a concern about the impact of global warming caused by greenhouse gas and predicated, in part, on the policies of the City of Philadelphia.<sup>50</sup> In an apparent recognition that Pennsylvania has not passed any such legislation, witness Mierzwa instead noted that the City of Philadelphia has adopted an initiative to achieve carbon neutrality by 2050.<sup>51</sup> The ALJ's reliance upon the OCA is misplaced. Despite witness Mierzwa's reliance upon references to the City of Philadelphia's initiative, and to the possibility that Pennsylvania might join RGGI to reduce carbon emissions related to the *power* industry, they do not overcome the fact that Pennsylvania has not adopted the type of legislation necessary to mandate carbon reduction through use of RNG. Nor has the Commission, which is charged with regulating PGW's rates, and corresponding gas costs, as a jurisdictional entity, passed any regulations or adopted any policies that would authorize the use of expensive RNG for reduction of carbon emissions. Absent this, any determination that RNG procurement is necessary to ensure PGW's provision of safe, adequate, and reliable service cannot stand.

**(ii) The RD's determination regarding the diversity of supply benefits of PGW's RNG Pilot Program are contradicted in the record**

The RD's determination that "[a] pilot RNG project prioritizing local and regional producers will promote a diversity of geographic supply, which supports reliability as

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<sup>49</sup> RD at 38.

<sup>50</sup> OCA St. No. 1, p. 11.

<sup>51</sup> OCA St. No. 1, p. 11.

well the adequacy of supply”<sup>52</sup> is directly contradicted by PGW. Specifically, PGW has admitted that the purchase volumes during the pilot period will not have a significant impact on supply diversity and/or security of supply.<sup>53</sup> Instead, PGW “anticipates” that such benefits may be produced once “the RNG market more fully develops and RNG purchases increase.”<sup>54</sup> As OSBA witness Knecht aptly explained, the fact that PGW has admitted that its RNG Pilot Program will not yield the reliability and diversity benefits PGW “anticipates” in the future means that in order to credibly justify the value of its proposal, PGW must demonstrate the reasonable probability that RNG will become a significant future supply source at a competitive price.<sup>55</sup> The RD appears to absolve PGW’s failure to support the viability of RNG as a source of supply by concluding that PGW is “preparing for the future. . . .”<sup>56</sup> Yet, PGW has not made any demonstration that RNG will be a viable source of future supply in this case, and the only certain outcome of its RNG Pilot Program is the dilution of ratepayer’s purchasing power at a time when PGW and its customers are grappling with significant customer arrearages.<sup>57</sup> In this case, the focal point must be on ensuring that PGW pursues the lowest cost gas necessary to ensure its provision of safe, adequate, and reliable service, and the record evidence proves that the RNG Pilot Program is directly at odds with that requirement.

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<sup>52</sup> RD at 35;

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

<sup>54</sup> Id.

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

<sup>56</sup> RD at 36.

<sup>57</sup> I&E St. No. 1, p. 10.

**2. The ALJ Erred by misconstruing I&E’s position regarding COVID-19 considerations and thereby failing to make the requisite “just and reasonable” rate evaluation (RD at 35, COL 6)**

In her RD, the ALJ misconstrued I&E’s position regarding the COVID-19 analysis that must factor into just and reasonable rate determinations. For purposes of clarity, I&E’s position, which is articulated fully in its Main Brief,<sup>58</sup> is simply the acknowledgment that the Commission has mandated that one factor it must consider in the content of rate affordability are the unique considerations related to the COVID-19 pandemic in setting just and reasonable rates.<sup>59</sup> To that end, the Commission recognized that in making a determination on just and reasonable rates, it is required, “to weigh evidence or unique considerations related to changes in service, market forces, and the economy.”<sup>60</sup> Accordingly, I&E’s position was 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,<sup>61</sup> there can be no straight-faced argument that permitting PGW to pay an additional \$13 to \$17.50 premium for RNG comports with just and reasonable rates.<sup>62</sup>

In her RD, the ALJ bypassed the requisite COVID-19 impact analysis, despite the clear evidence that charging PGW customers more money for less gas would impose a burden at any time, but particularly when customers are struggling to recover from the

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<sup>58</sup> I&E Main Brief, pp. 27-32.

<sup>59</sup> I&E Main Brief, p. 28, citing Pa. PUC v. *Columbia Gas of Pennsylvania, Inc.*, R-2020-3018835, p. 48, Opinion and Order (entered on February 18, 2021).

<sup>60</sup> Id.

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

<sup>62</sup> I&E Main Brief, pp. 27-32.

pandemic.<sup>63</sup> I&E notes that the record supports a determination that PGW and its customers are grappling with significant arrearage amounts stemming from the termination moratorium, and that PGW has a sizeable percentage of customers with incomes at or below 300% of the FPL.<sup>64</sup> The record also supports the conclusion that the most recent unemployment data available for Philadelphia, PGW's service territory, as available prior to close of the record here, indicated that the February 2021 unemployment rate of 7.8 percent remains significantly higher than its pre-COVID-19 pandemic unemployment rate of 4.9 percent in March 2020.<sup>65</sup> However, instead of factoring in the COVID-19 impact into the RNG cost analysis, the ALJ appears to misconstrue I&E's position as being that COVID-19 is a reason not to raise rates.<sup>66</sup>

For purposes of clarity, I&E has never taken the position, in any case, that the COVID-19 pandemic operated as a basis to deny a rate increase, and it does not espouse it here now either. Instead, consistent with the Commission's directive, I&E's position is that the ALJ was required to weigh evidence unique to the COVID-19 pandemic within the context of rate affordability; however, no weighing of such evidence appears to have occurred here. Additionally, although the ALJ noted that PGW has programs in place to assist low-income customers, there is no evidence in the record to support a conclusion that low-income customers would be positioned to pay higher costs for less gas.

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

<sup>64</sup> I&E St. No. 1, pp. 7-8; I&E Statement No. 1, pp. 9-10, referencing Philadelphia Gas Works' Comments Addressing Expiring Termination Moratorium, Docket No. M-2020-3019244 (February 16, 2021), available at <https://www.puc.pa.gov/pcdocs/1693505.pdf>

<sup>65</sup> I&E St. No. 1-SR, p. 7. US Bureau of Labor Statistics, [Philadelphia-Camden-Wilmington, PA-NJ-DE-MD: Nonfarm employment and labor force data : Mid-Atlantic Information Office : U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/news.release/atlant11.htm)

<sup>66</sup> RD at 35.

Accordingly, I&E submits that the ALJ erred by not performing the requisite COVID-19 impact analysis upon rate affordability in this case despite the record evidence of that impact,<sup>67</sup> providing an additional basis for exception.

**3. The ALJ erred by failing to acknowledge the Commission’s express position that uniformity and stakeholder input are prerequisites for consideration of environmental policy issues (RD at 35-36, FOF 42).**

In her RD, the ALJ concludes that “[g]iven 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.”<sup>68</sup> I&E submits that the ALJ’s attempt to permit environmental concerns to be addressed in this gas cost rate proceeding should be rejected because it ignores the Commission’s determination that PGW should not pursue environmental policy issues in rate proceedings on a piecemeal basis.<sup>69</sup> As indicated 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<sup>70</sup> that the Commission has already expressly declined to insert itself into the realm of establishing environmental policy in a PGW rate case.<sup>71</sup> As the Commission will recall, in PGW’s 2020 base rate case, it espoused a starkly different position on the insertion of environmental issues in rate cases. In that case, the Commission’s Order expressly considered PGW witness Commissioner James Cawley’s

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<sup>67</sup> I&E Statement No. 1, pp. 9-10, referencing Philadelphia Gas Works’ Comments Addressing Expiring Termination Moratorium, Docket No. M-2020-3019244 (February 16, 2021), available at <https://www.puc.pa.gov/pdocs/1693505.pdf>; I&E Statement No. 1, p. 10, referencing PGW’s COVID-19 Customer Reporting Requirements: At-Risk Accounts, Docket No. M-2020-3019244, p. 2, March 15, 2021, available at <https://www.puc.pa.gov/pdocs/1696551.pdf>.

<sup>68</sup> RD at 35.

<sup>69</sup> 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).

<sup>70</sup> I&E Main Brief, pp. 23-26.

<sup>71</sup> I&E Main Brief, pp. 23-24.

position regarding the detriments of addressing environmental issues on a piecemeal basis:

Commissioner Cawley further explained that the Commission would “act *ultra vires*” if it made rate case determinations based on the perceived effects of greenhouse gases or global warming and would “usurp the authority” of DEP. Commissioner Cawley testified: “At the least, requiring the Commission to make ratemaking (or other) determinations in response to climate change would create the real possibility of disparate and potentially inconsistent regulation.”<sup>72</sup>

Although PGW now takes the contradictory position to the one it offered less than a year ago through Commissioner Cawley’s testimony, I&E submits that Commissioner Cawley’s concerns regarding disparate and inconsistent regulations are well-founded and avers that they should directly translate to this case as well. In her RD, the ALJ did not consider this issue, but I&E submits that it is valid and warrants redress.

Additionally, the ALJ’s RD did not address the need for stakeholder input and the development of universal guidelines for assessing environmental policy issues. The RD’s failure to account for these factors is inconsistent with the Commission’s Order in PGW’s 2020 rate case which also recognized that addressing policy issues like climate change in a single PGW rate proceeding deprived all stakeholders of the opportunity for input and would be antithetical to developing universal guidelines:

All stakeholders deserve notice and opportunity to be heard on policy issues like climate change. This input would drive detailed and carefully constructed regulations or a policy statement governing the type, amount and breadth of information required to be submitted to the Commission.<sup>73</sup>

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<sup>72</sup> Id. at 93 (internal citations omitted).

<sup>73</sup> Id. at 94.

I&E submits that although PGW and OCA's direct participation in PGW's 2020 rate case should have made them well-aware of the Commission's determination that a jurisdictional utility should not, *sua sponte*, address environmental policy issues in rate proceedings on a piecemeal basis. Regardless, they have done so, and the RD has sanctioned their attempt by pointing to "rapidly changing environmental concerns related to the emission of GHG"<sup>74</sup> (greenhouse gas) as a basis to approve the RNG Pilot Program.

Now, although the RD apparently sanctions PGW and OCA's complete disregard of the Commission's express determination and adopts their attempt to detour it by relying on the laws and policies of other jurisdictions to support their position,<sup>75</sup> the attempts are 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.<sup>76</sup> I&E submits that the Commission has already spoken directly to PGW on this issue, and while PGW disregarded the Commission's determination in favor of its RNG Pilot Program, the Commission's determination is nevertheless valid and operative. Although the RD fails to acknowledge the Commission's position, it still applies and operates as an additional basis for exception.

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<sup>74</sup> RD at 36.

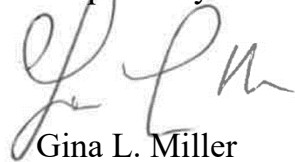
<sup>75</sup> RD at 35-36; PGW Main Brief, p. 11; OCA Main Brief, p. 10.

<sup>76</sup> 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).

### III. CONCLUSION

For the reasons stated herein, I&E respectfully requests that the Commission find that the ALJ erred in recommending the approval of that Philadelphia Gas Works proposed Renewable Natural Gas Program, as modified. To reverse this error, I&E respectfully requests that the Commission deny Philadelphia Gas Works' Renewable Natural Gas Pilot Program, as none of its modifications, including those imposed through the Joint Stipulation of Philadelphia Gas Works and the Office of Consumer Advocate, and those recommended by the Administrative Law Judge, are sufficient to cure its legal and substantive defects.

Respectfully Submitted,



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Dated: July 1, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Exceptions** on July 1, 2021, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

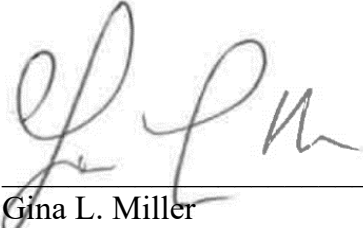
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