



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Kristine E. Marsilio
717.237.6037
kmarsilio@eckertseamans.com

July 6, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Philadelphia Gas Works 2021-2022 1307(f) Gas Cost Rate Filing
Docket No. R-2021-3023970, C-2021-3024126 and C-2021-3024293

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' (PGW") Reply Exceptions in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Kristine E. Marsilio

Kristine E. Marsilio

KEM/lww

Enclosure

cc: Hon. Darlene Heep w/enc.
Cert. of Service w/enc.
Ra-osa@pa.gov w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Reply Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email

Christy M. Appleby, Esq.
Aron J. Beatty, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
cappleby@paoca.org
abeatty@paoca.org

Sharon Webb, Esq.
Office of Small Business Advocate
Forum Place Building
555 Walnut St., 1st Fl.
Harrisburg, PA 17101
swebb@pa.gov

Gina Miller, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
ginmiller@pa.gov

Charis Mincavage, Esq.
Adeolu Bakare, Esq.
Jo-Anne Thompson, Esq.
McNees Wallace & Nurick
100 Pine Street
Harrisburg, PA 17101
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
jthompson@mcneeslaw.com

Jerome D. Mierzwa
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Columbia, MD 21044
jmierzwa@exeterassociates.com

Robert Knecht
Industrial Economics, Incorporated
2067 Massachusetts Ave.
Cambridge, MA 02140
rdk@indecon.com

Dated: July 6, 2021

Kristine E. Marsilio

Kristine E. Marsilio, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2021- 3023970
	:	
	:	
Office of Consumer Advocate	:	Docket No. C-2021-3024126
Office of Small Business Advocate	:	Docket No. C-2021-3024293
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

**REPLY EXCEPTIONS
OF PHILADELPHIA GAS WORKS**

Daniel Clearfield, Esquire
Attorney ID 26183
Kristine Marsilio, Esquire
Attorney ID 316479
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6000

Craig Berry, Esquire
Attorney ID 328527
Legal Department
Philadelphia Gas Works
800 W. Montgomery Ave
Philadelphia, PA 19122
(215) 684-6049

Date: July 6, 2021

Attorneys for
Philadelphia Gas Works

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REPLY TO EXCEPTIONS	4
1.	Reply to I&E Exception No. 1: The RD properly concludes that PGW met its burden of proving that RNG purchases are consistent with its obligations under Sections 1317 and 1318 of the Public Utility Code.	4
A.	The RD Properly Concludes that PGW’S RNG Proposal Will Allow PGW to Negotiate and Enter Favorable RNG Supply Contracts and Gain Information and Experience with a Diversified Product Portfolio.....	4
B.	The RD Properly Concludes that PGW’s RNG Proposal is Reasonable, Even if it Produces Higher than the “Least Cost.”	8
C.	The Record Contains Substantial Evidence to Support the Conclusion that Incorporating RNG into PGW’s Gas Supply Portfolio will Help PGW Achieve its Goals and Legal Mandate of Providing Safe, Adequate, and Reliable Service to its Customers.....	12
i.	Environmental Benefits Associated with RNG are Incidental, and the Commission Should Clarify that Approval of PGW’s RNG Pilot Program Proposal is Not Grounded in Environmental Issues or Environmental Policy Considerations.	14
ii.	The RD’s Determination Regarding the Diversity of Supply Benefits of PGW’s RNG Proposal is Supported by the Record.	16
2.	Reply to I&E Exception No. 2: The RD Did Not Err in its Evaluation of Whether PGW’s RNG Proposal Would Result in “Just and Reasonable” Rates.....	17
3.	Reply to I&E Exception No. 3: I&E’s Reliance on the Commission’s Order in PGW’s 2020 Rate Case is Misplaced.....	21
4.	Reply to OSBA Letter in Lieu of Exception:.....	23
III.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases

Equitable Gas Co. v. Pa. Pub. Util. Comm’n,
536 A.2d 846 (Pa. Cmwlth. 1988) 10

Popowsky v. Pa. Pub. Util. Comm’n,
676 A.2d 731 (Pa. Cmwlth. 1996) 10

Administrative

Pa. Pub. Util. Comm’n v. Phila. Gas Works,
Docket No. R-00061931 9

Pa. PUC v. Columbia Gas of Pennsylvania, Inc.,
Docket No. R-2020-3018835, Opinion and Order (Feb. 18, 2021) (“*Columbia Order*”) 18

Pa. PUC vs. Philadelphia Gas Works,
Docket No. R-2020-3017206, Opinion and Order (Nov. 19, 2020) (“*PGW Order*”) 21, 22

Statutes

66 Pa.C.S. § 1307..... 3, 10, 16, 23

66 Pa.C.S. § 1317..... passim

66 Pa.C.S. § 1318..... passim

Regulations

52 Pa. Code § 5.535 1

Pursuant to 52 Pa. Code § 5.535, Philadelphia Gas Works (“PGW”) submits these Reply Exceptions in response to the Exceptions filed on behalf of the Commission’s Bureau of Investigation and Enforcement (“I&E”) and the Letter in Lieu of Exceptions filed on behalf of the Office of Small Business Advocate (“OSBA”) in the above-captioned proceeding.

I. INTRODUCTION

The Exceptions filed on behalf of I&E and the Letter in Lieu of Exceptions filed by the OSBA contain a number of unsupported arguments as to why Administrative Law Judge Darlene D. Heep (“ALJ Heep”) purportedly erred in her Recommended Decision (“RD”) and why the Pennsylvania Public Utility Commission (“Commission”) should deny PGW’s Renewable Natural Gas (“RNG”) pilot program proposal, as modified by the Joint Stipulation of PGW and the Office of Consumer Advocate (“OCA”) filed in the above-captioned proceeding on May 13, 2021, and as further modified by the RD. I&E argues that PGW failed to meet its burden of proof and that the RD ignores or overlooks certain aspects of the RNG proposal that I&E asserts are lacking or unsupported. Similarly, the OSBA argues that the RD ignores the record evidence in concluding that PGW met its burden.

Contrary to claims made by I&E and the OSBA, PGW has met its burden and demonstrated that the RNG pilot program proposal will help PGW achieve its goals and meet the legal mandate of providing safe, adequate, and reliable service to its customers. As demonstrated by the record in this proceeding, the RNG supply market could become an increasingly important source of gas supply in the years ahead. Including RNG in PGW’s gas mix now is a prudent step that will enable PGW to better diversify its supply portfolio into the future, thus improving the long-range safety, adequacy, and reliability of its gas supply. Despite the claims to the contrary, the RD, in fact, directly addresses each of the issues raised by I&E,

and the findings and conclusions reached in the RD are fully supported by the law and the record evidence. The mere fact that I&E and the OSBA do not agree with the findings and/or conclusions in the RD does not support a conclusion that the ALJ erred, nor does it support a denial of PGW's RNG pilot program proposal.

Significantly, the arguments of I&E and the OSBA also disregard the important legal mandate that PGW must pursue a least cost fuel procurement policy, consistent with its "obligation to provide safe, adequate and reliable service to its customers."¹ I&E and the OSBA also fail to recognize, or give due consideration, to important aspects of PGW's RNG proposal, such as the fact that this program is a pilot, designed to gather information and to evaluate whether the program should be continued on a permanent basis, as well as the \$500,000 spending cap that will keep the cost of the program controlled to protect ratepayers. As the OCA noted in its Main Brief: "The RNG pilot program will afford PGW an important opportunity to explore the renewable natural gas markets with limited risk to ratepayers in order to potentially protect the long-term interests of ratepayers."²

I&E also mischaracterizes the RD and PGW's RNG proposal as being grounded in environmental issues and environmental policy considerations. PGW has, repeatedly, maintained that while the RNG proposal will likely result in incidental environmental benefits, the environmental considerations are not the catalyst for this proposal, nor are they necessary to support the conclusion that PGW has met its burden in this case. To be abundantly clear, PGW is not pursuing an "environmental issue" in this case, and PGW is certainly not taking the position that the Commission has jurisdiction over environmental issues or could attempt to

¹ 66 Pa.C.S. §§ 1317 and 1318.

² OCA MB at 9.

direct environmental standards or goals. PGW's proposal is a direct result of changing market conditions and an attempt to introduce and gain knowledge and experience with a new supply source, which PGW reasonably believes could produce safety and adequacy benefits in the future.³

PGW submits that the RD, appropriately, ties its approval of PGW's RNG proposal to issues of product acquisition and assurances of reliable and adequate service, issues which fall squarely within the Commission's jurisdiction and authority to regulate rates and to regulate PGW's Gas Cost Rate ("GCR") under Sections 1307(f), 1317, and 1318 of the Public Utility Code, 66 Pa.C.S. §§ 1307(f), 1317 and 1318. Given I&E's apparent confusion of the issues, however, PGW respectfully requests that the Commission clarify in its Final Order that approval of the RNG pilot program proposal is not grounded in environmental issues or the attempted enforcement of environmental policy.

For the reasons discussed below and in PGW's Main and Reply Briefs, PGW respectfully request that the Commission: (1) deny the Exceptions of I&E and Letter in Lieu of Exceptions of the OSBA; and (2) adopt the RD, subject to the clarification that approval of the RNG pilot program proposal is not grounded in environmental issues or environmental policy considerations.

³ See PGW MB at Section V.C; PGW Reply Brief at 10.

II. REPLY TO EXCEPTIONS

1. Reply to I&E Exception No. 1: The RD properly concludes that PGW met its burden of proving that RNG purchases are consistent with its obligations under Sections 1317 and 1318 of the Public Utility Code.

In its Exceptions, I&E argues that ALJ Heep erred in determining that PGW met its burden of proving that RNG purchases are consistent with its obligations under Sections 1317 and 1318 of the Public Utility Code. In support of its argument, I&E asserts that PGW's RNG proposal does not support a least cost fuel procurement policy, because: (1) PGW has failed to demonstrate that it will negotiate favorable RNG supply contracts; (2) PGW's proposal expressly rejects lower cost gas supplies; and (3) PGW has failed to demonstrate that its RNG proposal is essential to the provision of safe, adequate, and reliable service.⁴ Contrary to I&E's assertions and for the reasons explained below and in PGW's Main and Reply Briefs, PGW has met its burden of proof in this case, and the RD, which specifically considers and addresses each of these arguments, is supported by the evidence in this case.

A. The RD Properly Concludes that PGW'S RNG Proposal Will Allow PGW to Negotiate and Enter Favorable RNG Supply Contracts and Gain Information and Experience with a Diversified Product Portfolio.

I&E first argues that the RD ignores PGW's failure to demonstrate that it will negotiate favorable supply contracts.⁵ In making this argument, I&E expressly acknowledges that it would not have been prudent for PGW to contractually commit to purchases, incur legal expenses, and use its resources prior to the Commission authorizing the project.⁶ Nonetheless, I&E notes that the record is devoid of any actual or tentative contracts for review and lacks general RNG

⁴ I&E Exceptions at Sections II.1.A. – V.1.C.

⁵ I&E Exceptions at Sections II.1.A.

⁶ I&E Exceptions at 13.

contract information necessary for the Commission to conclude that PGW has complied with its obligations under the Public Utility Code.⁷

Contrary to I&E's assertions, the RD specifically addresses this issue and reaches the correct conclusion that "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."⁸ The RD further provides:

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.⁹

As such, I&E's argument that the RD "ignores" this issue completely lacks merit.

Further, I&E's argument that PGW has failed to demonstrate that it will negotiate favorable supply contracts puts the cart before the horse. As PGW witness Mr. Greg Stunder explained, for PGW to have more detail regarding the procedure for obtaining RNG at this point would have required PGW to have negotiated and finalized an agreement or agreements with an RNG provider (actions that I&E admits would have been imprudent).¹⁰ The fact that PGW has not prematurely started these negotiations is not grounds for the Commission to deny this proposal.

Certainly, even if the Commission approves this proposal, PGW must continue to meet the criteria outlined in Section 1318 of the Public Utility Code, including negotiating favorable

⁷ I&E Exceptions at 12-14.

⁸ RD at 34.

⁹ RD at 34.

¹⁰ PGW St. 3-R at 2.

RNG gas supply contracts, and the parties reserve their rights to raise future challenges related thereto.¹¹ Contrary to I&E’s assertions, PGW is not attempting to “bypass” or “unilaterally defer application of Section 1318,” or to otherwise digress from standard practice or its obligations under the Public Utility Code.¹² PGW does not have an obligation to prematurely demonstrate that it **will** negotiate favorable supply contracts; rather, the obligation is for PGW to demonstrate that it **“has taken”** all prudent steps necessary to negotiate favorable supply contracts.¹³ For this reason, it is only appropriate for the Commission to consider this requirement after the contracts have been negotiated (which, again, as the evidence demonstrates and I&E agrees, would have been imprudent at this point).

Moreover, I&E’s argument fails to recognize that this program is a pilot, designed to gather information and to evaluate whether the program should be continued on a permanent basis. Per PGW’s stipulation with the OCA,¹⁴ PGW has agreed to significant reporting

¹¹ Section 1318(1)-(4) of the Public Utility Code provides that, in determining whether PGW is pursuing a least cost fuel procurement policy, the Commission must find 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.

66 Pa.C.S. § 1318(a)(1)-(4). PGW satisfies all of these standards on an overall basis.

¹² I&E Exceptions at 13.

¹³ 66 Pa.C.S. § 1318 (emphasis added).

¹⁴ While I&E attempts to classify the Joint Stipulation as “an apparent attempt [by PGW] to make its RNG Pilot Program more palatable” (I&E Exceptions at 5), PGW submits that the Joint Stipulation was merely a result of

requirements at the end of Year 1 that will serve as a basis to evaluate the terms of any contracts, as well as evaluate the success and benefits of the program, and provide valuable information that PGW would be unable to obtain if not for this pilot. These extensive reporting requirements include:

- (1) Reporting the daily quantities of RNG purchased;
- (2) Reporting prices PGW paid for RNG;
- (3) Identifying how those prices compare to other purchases;
- (4) Identifying the Gas Cost Rate (“GCR”) rate impact of its RNG purchases;
- (5) Identifying the BTU content of its RNG purchases, to the extent such data is available; and
- (6) Identifying 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.).¹⁵

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.¹⁶

At the conclusion of the two-year pilot program, PGW will consider whether to propose the continuation of RNG purchases. If PGW decides to propose the continuation of RNG, PGW will submit testimony and data in its March 1, 2023 annual GCR filing, which will include

the fact that it agreed with the OCA’s suggestions and found them to be generally acceptable. *See* PGW St. 3-R at 8. The Joint Stipulation should not be construed as an admission that PGW’s original proposal was insufficient or otherwise lacking.

¹⁵ Joint Stipulation of PGW and OCA at ¶ (b).

¹⁶ Joint Stipulation of PGW and OCA at ¶ (b).

information about PGW’s RNG purchasing (to date) and the specifics of the Company’s going forward proposal for the continuation of an RNG purchasing program.¹⁷ At this time, the parties and the Commission will be in a better position to evaluate the program (including contract terms), identify concerns, and/or request further information. In other words, this pilot program is designed to provide PGW with valuable information – including the same data that I&E asserts is “missing” and which it claims must be submitted prior to implementing the program.

The RD provides additional assurances related to PGW’s RNG pilot proposal and its negotiation of contract terms. Specifically, the RD recommends 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.¹⁸ These conditions (along with the extensive reporting requirements described above) completely refute I&E’s assertion that the Commission is devoid of necessary information to approve PGW’s RNG pilot program.¹⁹

B. The RD Properly Concludes that PGW’s RNG Proposal is Reasonable, Even if it Produces Higher than the “Least Cost.”

Next, I&E argues that the RD ignored the fact that PGW’s RNG proposal is not consistent with its obligation to pursue a least cost fuel procurement policy, because PGW’s proposal expressly rejects lower cost gas supplies.²⁰ In making this argument, I&E focuses on

¹⁷ PGW St. 3 at 4-5.

¹⁸ RD at 40, Ordering Paragraph 5.

¹⁹ While I&E makes the general assertion that this information “provides too little protection too late” (I&E Exceptions at 14), I&E fails to justify what additional information should be provided, especially in light of all of the considerations discussed above.

²⁰ I&E Exceptions at Section II.1.B.

the cost of RNG compared to conventional natural gas and characterizes the RNG purchases as “exponentially more expensive.”²¹

Contrary to I&E’s claims, the RD directly addresses this issue and ultimately concludes that “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 Sections 1317 and 1318 of the Public Utility Code to pursue a least cost fuel procurement policy, consistent with its obligation [to] provide ‘safe, adequate and reliable service’ to customers.”²² In reaching this conclusion, the RD relies on a number of legal standards, **which I&E does not challenge** and which make clear that PGW is not obligated (nor is it permitted) to purchase the least expensive gas *without any further consideration*. Specifically, the RD makes the following legal conclusions:

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.

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).

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.

[...]

Section 1318 of the Public Utility Code provides the Commission with the flexibility and discretion to evaluate an NGDC’s least cost fuel

²¹ *Id.*

²² RD at 32-34 and 38-39, Conclusions ¶ 18.

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).

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).²³

I&E's argument that PGW has not met its burden merely because RNG may be more expensive than conventional natural gas is directly contrary to these (undisputed) legal standards and is internally inconsistent with I&E's next argument -- that PGW has failed to demonstrate that incorporating RNG into PGW's gas supply portfolio will help PGW achieve its goals and legal mandate of providing safe, adequate, and reliable service to its customers. Specifically, this argument completely ignores the important language in Sections 1317 and 1318 of the Public Utility Code that requires PGW to pursue a least cost fuel procurement policy consistent with its "obligation to provide safe, adequate and reliable service to its customers." It should also be noted that one can easily posit scenarios where I&E would, undoubtedly, agree that a gas utility was not obligated to restrict its natural gas supply from a single source where, for example, the risk of interruption was substantial (*e.g.*, 100% foreign LNG purchases, or 100% purchases from a single supplier). Accordingly, PGW's RNG proposal (and the conclusion reached in the RD) do not run afoul of any hard and fast legal prohibition.

Further, while I&E tries to ignore this important legal standard, I&E also implicitly acknowledges this standard (and contradicts its own argument) when it asserts that PGW has failed to support a determination that its RNG pilot program will provide safe, adequate and

²³ RD at 32-34 and 38-39, Conclusions ¶¶ 11-13 and 16-17.

reliable service.²⁴ If the *only* criteria by which the reasonableness of PGW’s gas supply portfolio is to be judged is whether each and every contract in the portfolio is the lowest price, then there would be no need for the rest of the statutory sentence — requiring that a utility’s gas supply purchases be the least cost consistent with the provision of safe, adequate and reasonable service, as I&E’s argument acknowledges.

Further, I&E’s continued characterization of the cost of RNG as “expensive”²⁵ fails to recognize, or give due consideration, to the \$500,000 spending cap that will keep prices down and protect ratepayers.²⁶ The RD, on the other hand, specifically recognizes this important component of PGW’s proposal, noting that “[t]he majority of gas supply would be purchased as usual at conventional natural gas prices.”²⁷

Finally, it is necessary to address I&E’s assertions that the RD “erroneously dismissed the hidden, and potentially unidentifiable BTU impact of the RNG costs” and that PGW’s “illusory promise” related to identifying the BTU content impact supports a rejection of PGW’s RNG proposal.²⁸ PGW, willingly, accepted all of the reporting requirements proposed by the OCA, except OCA’s proposal to identify the BTU content. In doing so, PGW explained that the source(s) of RNG will be off-system, and the RNG will be subject to specifications set forth by the FERC-regulated interstate pipeline that will be transporting the RNG, along with conventional natural gas. Additionally, RNG purchases could potentially be bundled from more

²⁴ I&E Exceptions at Section II.1.C.

²⁵ See e.g. I&E Exceptions at 4, 10, 15, 17, and 21.

²⁶ PGW St. 3 at 2; Joint Stipulation of PGW and OCA at ¶ (a).

²⁷ RD at 33-34.

²⁸ I&E Exceptions at 16-17.

than one RNG source, and therefore, PGW explained that it is uncertain if the BTU content will be available. Nonetheless, PGW agreed that, should PGW be able to identify the BTU content, PGW will provide it.²⁹ As such, PGW’s promise to provide the BTU content, if available, is reasonable and cannot serve as a basis for the Commission to deny PGW’s proposal. Contrary to I&E’s assertions, the RD did not ignore this issue, but rather found this reporting requirement to be “reasonable given the testimony of PGW witness Stunder regarding the nature of RNG.” The RD further notes that this reporting requirement places an affirmative duty upon PGW to report the BTU information when available.”³⁰ As such, I&E’s claims to the contrary are wholly unfounded.

For the reasons explained above and in Sections III and V.C. of PGW’s Main Brief and in Section V.1.B. of its Reply Brief, PGW’s RNG proposal is reasonable even if it produces higher than the “least cost,” and this issue was thoroughly considered and addressed by ALJ Heep in the RD.

C. The Record Contains Substantial Evidence to Support the Conclusion that Incorporating RNG into PGW’s Gas Supply Portfolio will Help PGW Achieve its Goals and Legal Mandate of Providing Safe, Adequate, and Reliable Service to its Customers.

Next, I&E argues that the RD overlooks PGW’s failure to support a determination that PGW’s RNG proposal is essential to the provision of safe, adequate, and reliable service.³¹ As discussed, the RD, in fact, found that PGW’s RNG proposal is essential to the provision of safe, adequate, and reliable service.³² Further, contrary to I&E’s claims, the record contains

²⁹ PGW St. 3-R at 8.

³⁰ RD at 34.

³¹ I&E Exceptions at Section II.1.C.

³² RD at 39, Conclusions ¶ 18.

substantial evidence to support the conclusion in the RD that incorporating RNG into PGW’s gas supply portfolio will help PGW achieve its goals and legal mandate of providing safe, adequate, and reliable service to its customers. As the OCA noted in its Main Brief, “The RNG pilot program will afford PGW an important opportunity to explore the renewable natural gas markets with limited risk to ratepayers in order to potentially protect the long-term interests of ratepayers.”³³ As demonstrated by the record in this proceeding and explained in Section V.C. of PGW’s Main Brief and in Section V.1.C. of its Reply Brief, the RNG supply market could become an increasingly important source of gas supply in the years ahead. As Mr. Stunder explained, it is not hard to envision circumstances in the future in which having the ability to purchase RNG as opposed to gas sourced from the Gulf region of the U.S. or the Marcellus Shale regions could be important for PGW to maintain security and adequacy of supply. To be in a position to utilize this supply alternative in the future, PGW needs to gain experience with RNG procurement today. This experience will permit PGW to identify and start to address any contracting, delivery, or approval issues.³⁴

The record shows that including RNG in PGW’s gas mix is a prudent step that will diversify PGW’s supply portfolio.³⁵ Mr. Stunder testified: “This 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.”³⁶ Further, the evidence demonstrates that sourcing the RNG from local or regional producers (as PGW has proposed) provides a diversity of geographic supply,

³³ OCA MB at 9.

³⁴ PGW St. 3 at 3-R at 3-4.

³⁵ PGW St. 3 at 4.

³⁶ PGW St. 3 at 4.

and diversity of supply supports reliability.³⁷ In reaching its conclusion, the RD specifically contemplates the record evidence and the testimony provided by PGW's witnesses.³⁸

As such, the record contains substantial evidence to support the conclusion in the RD that incorporating RNG into PGW's supply portfolio will help PGW achieve its goals and legal mandate of providing safe, adequate, and reliable service to its customers.

i. Environmental Benefits Associated with RNG are Incidental, and the Commission Should Clarify that Approval of PGW's RNG Pilot Program Proposal is Not Grounded in Environmental Issues or Environmental Policy Considerations.

I&E asserts that the RD's reliance on alleged emissions reduction benefits of PGW's RNG proposal are unsupported.³⁹ First, PGW disagrees with this statement. Mr. Stunder provided substantial evidence to support a finding that RNG has emission reduction benefits.⁴⁰ Second and perhaps more important, I&E's argument misses the point and mischaracterizes the RD and PGW's RNG proposal as being grounded in environmental issues or an attempt to further environmental policy considerations. PGW has, repeatedly, maintained that while PGW's RNG proposal will likely result in incidental environmental benefits, the environmental considerations are not the catalyst for this proposal, nor are they necessary to support the conclusion that PGW has met its burden in this case. PGW's proposal is a direct result of changing market conditions and an attempt to introduce and gain knowledge and experience with a new supply source, which PGW reasonably believes could produce safety and adequacy

³⁷ PGW St. 3 at 4.

³⁸ See RD at 33-35.

³⁹ I&E Exceptions at Section II.1.C.i.

⁴⁰ PGW St. 3 at 2; see also RD at 33.

benefits in the future.⁴¹ To be abundantly clear, PGW is not pursuing an “environmental issue” in this case, and PGW is certainly not taking the position that the Commission has jurisdiction over environmental issues. Rather, PGW is seeking a ruling that its proposed purchases of RNG are consistent with its obligations under Sections 1317 and 1318 of the Public Utility Code. This issue is directly relevant to, and appropriately addressed in, a GCR proceeding.

While the RD (and PGW) acknowledge the potential environmental benefits, PGW submits that approval of PGW’s RNG proposal is not based on environmental considerations. Rather, the RD specifically ties its approval of PGW’s RNG proposal to issues of product acquisition and assurances of reliable and adequate service. For example, the RD provides that “GCR proceedings involve a consideration of market and purchase factors” and that “[p]lanning for expertise in future acquisitions under obvious trends is a means by which a company can assure reliability and supply.”⁴² The RD further states that “PGW is seeking an understanding of the RNG market as it relates to its product acquisitions.”⁴³ Additionally, the RNG proposal “will allow PGW to prepare for future markets” and “the pilot program is a reasonable initiative to support PGW’s obligation to provide reliable and adequate service in the future.”⁴⁴ The RD also holds that “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.”⁴⁵ These holdings fall squarely within the Commission’s

⁴¹ See PGW MB at Section V.C; PGW Reply Brief at 10.

⁴² RD at 34.

⁴³ RD at 33.

⁴⁴ RD at 33, 35.

⁴⁵ RD at 35.

jurisdiction and authority to regulate rates and to regulate PGW's GCR under Sections 1307(f), 1317, and 1318 of the Public Utility Code, 66 Pa.C.S. §§ 1307(f), 1317 and 1318, and should not be misconstrued as being founded on furthering or directing actions in an attempt to advance a particular environmental policy goal.

Given I&E's confusion over the issues, however, PGW respectfully requests that the Commission clarify in its Final Order that approval of the RNG pilot program proposal is not based on an attempt to implement environmental policy or achieve environmental goals, over which the PUC has no jurisdiction.

ii. The RD's Determination Regarding the Diversity of Supply Benefits of PGW's RNG Proposal is Supported by the Record.

Next, I&E asserts that the RD's determination that PGW's RNG proposal will provide diversity of supply benefits is contradicted by the record.⁴⁶ Contrary to I&E's assertion, the RD's conclusions about the diversity of supply benefits are supported by the record evidence. The RD finds that "[s]ourcing the RNG from local or regional producers provides a diversity of supply, and diversity of supply supports reliability."⁴⁷ This finding is directly supported by the testimony of PGW witness Mr. Stunder.⁴⁸ Since RNG purchase volumes will be limited during the initial pilot years (in order to help protect ratepayers while PGW becomes more familiar with sourcing RNG), certainly the associated benefits are going to be limited as well. The fact that the RNG purchase volumes (and associated benefits) are limited during the pilot period, however, does not change the fact that RNG provides diversity benefits, which may be realized

⁴⁶ I&E Exceptions at Section II.1.C.ii.

⁴⁷ RD at 12, Conclusion ¶ 46.

⁴⁸ PGW St. 3 at 4.

on a larger scale should RNG become a permanent (and more prominent) supply source in the years ahead. Thus, there is no contradiction in PGW’s testimony or the RD’s finding.

It is also worth noting that there is no legal basis or Commission precedent to support I&E’s proposed adoption of the OSBA-created “reasonable probability” standard.⁴⁹ This standard, which would require PGW to demonstrate a “reasonable probability” that RNG would become a significant future supply source at a competitive price, was completely invented by OSBA witness Mr. Knecht.⁵⁰ There is no legal basis or Commission precedent to support this “reasonable probability” standard. As discussed, the legal standard requires that a natural gas utility must show that it “is pursuing a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers.” As further discussed, PGW has met its burden of demonstrating that PGW’s RNG pilot program proposal will help PGW to maintain the safety, adequacy, and reasonableness of the utility’s gas supply. The two-year pilot program and required reporting requirements will help to ensure that this standard is met before this program is implemented on a permanent basis, and the \$500,000 spending cap will help to protect ratepayers in the interim.

2. Reply to I&E Exception No. 2: The RD Did Not Err in its Evaluation of Whether PGW’s RNG Proposal Would Result in “Just and Reasonable” Rates.

In its second Exception, I&E asserts that the RD misconstrued I&E’s position regarding COVID-19 considerations and, therefore, failed to make the requisite “just and reasonable rate” determination. In its argument, I&E asserts that ALJ Heep bypassed the requisite COVID-19 impact analysis, which required ALJ Heep to weigh evidence unique to the COVID-19 pandemic

⁴⁹ I&E Exceptions at 22.

⁵⁰ PGW St. 3-RJ at 3.

within the context of rate affordability. I&E further asserts that the record does not support the conclusion that low-income customers would be positioned to pay higher costs for less gas.⁵¹

Contrary to I&E's position, the RD, correctly, concludes that the impacts of COVID-19 are not a valid reason to reject a rate increase.⁵² In *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, Opinion and Order (Feb. 18, 2021) ("*Columbia Order*"), the Commission specifically *rejected* any general claim that a rate increase could be deemed unreasonable simply because customers were experiencing the negative economic effects of the COVID-19 pandemic.⁵³ Instead, the Commission held that it would consider the effects of the pandemic to the extent they impact the traditional ratemaking methodologies and impact a utility's cost of providing service.⁵⁴ So, for example, if the evidence in this case had demonstrated that the COVID-19 pandemic resulted in an increase in the cost of RNG, under the *Columbia Order*, the Commission could, arguably, consider this evidence in evaluating whether it was reasonable to implement PGW's RNG proposal at this time. These are not the facts of this case. The *Columbia Order* supports the conclusion that the social-economic impact of the COVID-19 pandemic, alone, does not justify the denial of PGW's RNG proposal.⁵⁵ This point is

⁵¹ I&E Exceptions at Section II.2.

⁵² RD at 54.

⁵³ *Columbia Order* at 50-51 ("[W]hile we acknowledge that the COVID-19 pandemic is a significant social-economic event, we disagree with the ALJ's recommendation to completely deny Columbia's requested rate relief due to the pandemic's impact and to forgo a review of the case utilizing the traditional ratemaking methodologies.").

⁵⁴ *Columbia Order* at 51.

⁵⁵ *See Columbia Order* at 50-51.

especially compelling here, where PGW’s RNG proposal contains a \$500,000 spending cap that will serve to protect ratepayers as the economy recovers.⁵⁶

While PGW maintains that the facts of the case did not support a COVID-19 impact analysis, the RD, *did*, in fact, consider the impact of COVID-19 on low-income customers, specifically determining that PGW programs and federal funds are in place to assist low income customers.⁵⁷

Further, even if the Commission decided to further consider the impact of COVID-19 or the state of the economy, the record demonstrates that the City of Philadelphia is moving in a positive direction economically. Specifically, as of February of 2021 (the latest period available at the time Mr. Stunder provided his Rebuttal Testimony), the federal Bureau of Labor Statistics reported that the Philadelphia metropolitan area’s unemployment rate was estimated at 7.8 percent,⁵⁸ down from a pandemic-high of 15.0 percent in April of 2020. Additionally, the record evidence demonstrates that, as of April 27, 2021, the City of Philadelphia had fully vaccinated 349,129 city residents, with another 186,987 residents partially vaccinated. Further, the Commonwealth of Pennsylvania had fully vaccinated 59,672 Philadelphia residents and partially vaccinated another 33,866. Presently, every Pennsylvania adult is eligible for the COVID-19 vaccine. Mr. Stunder explained that this data is “particularly encouraging for the economy” and that some of the sectors hardest-hit by the pandemic, such as dining and hospitality, will

⁵⁶ PGW St. 3 at 2; Joint Stipulation of PGW and OCA at ¶ (a); *see also* RD at 33-34 (acknowledging the rate cap and that the majority of gas supply would be purchased as usual at conventional natural gas prices).

⁵⁷ RD at 54.

⁵⁸ Currently, the Bureau of Labor Statistics reports the unemployment rate in the Philadelphia metropolitan area at 6.1% as of May 2021. <https://www.bls.gov/web/metro/laurgma.htm>. While this data is not in the record, the Commission can take administrative notice of the fact that the downward trend has continued. It should also be noted that the GCR will not go into effect for another two months, at which time the unemployment rate may be even lower.

improve, as evidenced by the City of Philadelphia Health Commissioner’s April 26, 2021 announcement that indoor dining capacity will increase and indoor catered events will be permitted beginning May 7, 2021. Further, Mr. Stunder noted that the Health Commissioner also plans to ease restrictions as COVID-19 cases decline.⁵⁹

Additionally, the evidence in this proceeding establishes that the federal COVID relief packages provide funds that will be directly available to PGW ratepayers. For example, the American Rescue Plan Act provides an additional \$4.5 billion in Low Income Home Energy Assistance Program (“LIHEAP”) funding for FY 21, which shall remain available until September of 2022 and is in addition to the \$3.75 billion of LIHEAP funding provided in the FY 21 budget. As such, the potential LIHEAP funding available for FY 21 is \$8.5 billion. Mr. Stunder explained that, while there are many factors that influence the amount of dollars that actually flow to PGW from the LIHEAP program in any given year, as a reference, in FY 20, PGW received \$24.4 million (between its cash and crisis programs) out of the total \$4.6 billion in LIHEAP. Further, the American Rescue Plan Act provides an additional \$21.6 billion for rental assistance that covers both rent and utility bills. This funding is in addition to the initial \$25 billion in rental assistance that came from the 2020 federal COVID relief package. Mr. Stunder testified that this rental assistance program will directly benefit PGW customers and that PGW is currently working with a community development organization on how the funds will be distributed. Additionally, the American Rescue Plan Act includes \$10 billion for homeowner assistance that provides both mortgage and utility relief.⁶⁰ Mr. Stunder testified that federal

⁵⁹ PGW St. 3-R at 5-6.

⁶⁰ PGW St. 3-R at 6-7.

assistance funds are well-spent on enabling PGW to gain the necessary knowledge and experience of procuring RNG.⁶¹

For the reasons discussed above, the RD did not err in its evaluation of whether PGW's RNG proposal would result in "just and reasonable" rates.

3. Reply to I&E Exception No. 3: I&E's Reliance on the Commission's Order in PGW's 2020 Rate Case is Misplaced.

Finally, I&E argues that the RD erred by failing to acknowledge the Commission's express position that uniformity and stakeholder input are prerequisites for consideration of environmental policy issues.⁶² I&E's reliance on *Pa. PUC vs. Philadelphia Gas Works*, Docket No. R-2020-3017206, Opinion and Order (Nov. 19, 2020) ("*PGW Order*") is misplaced and as discussed in detail in Section II.1.C.i. above, I&E gravely mischaracterizes the RD and PGW's RNG proposal as being grounded in environmental issues and environmental policy considerations. PGW incorporates its discussion in Section II.1.C.i herein.

By way of further answer, the pertinent issue before the Commission in the *PGW Order* was whether the Commission had jurisdiction to require PGW to submit a Climate Business Plan, or information about warming climate trends and climate change impacts, in its next base rate case.⁶³ The issue in the *PGW Order* did not involve a specific rate case adjustment or proposal. In fact, in concluding that the Commission lacked jurisdiction over this issue, the Commission held:

We want to be clear in stating here that we are not departing from our broad jurisdiction to regulate rates and determine the justness and reasonableness of same, including expense and revenue claims

⁶¹ PGW St. 3-R at 6-7.

⁶² I&E Exceptions Section II.3.

⁶³ *See PGW Order* at 90-95.

driven by weather patterns and customer usage. [...] We simply find that, at this time, mandating a Climate Business Plan is beyond our primary jurisdiction.⁶⁴

The Commission further held that if environmental information does not serve to support a specific adjustment or proposal in a rate case, the information is not relevant and the Commission should not consider it.⁶⁵

In the *PGW Order*, the Commission also agreed with PGW that requiring PGW to submit a Climate Business Plan, or information about warming climate trends and climate change impacts, in its next base rate case would unfairly impose an undefined filing requirement upon PGW. In this regard, the Commission stated: “All stakeholders deserve notice and opportunity to be heard on policy issues like climate change” and that this stakeholder input would be necessary to carefully construct regulations or policy statements detailing the type, amount and breadth of information required to be submitted.⁶⁶ The *PGW Order*, certainly, did not necessitate a stakeholder collaborative to consider PGW’s proposed supply acquisition.

Unlike the Environmental Stakeholders in the PGW rate case, PGW is not pursuing an “environmental issue” in this case, and PGW is certainly not taking the position that the Commission has jurisdiction to mandate a Climate Business Plan, or related filing requirements **at all** – let alone on a case-by-case basis. As discussed, PGW is seeking Commission approval to purchase a limited amount of RNG as a direct result of changing market conditions and an attempt to introduce and gain knowledge and experience with a new supply source which appears likely to gain in importance and availability in the future. PGW reasonably believes that

⁶⁴ *PGW Order* at 94.

⁶⁵ *PGW Order* at 92.

⁶⁶ *PGW Order* at 94.

its RNG proposal could produce safety and adequacy benefits in the future.⁶⁷ As such, PGW is seeking a ruling that its proposed purchases of RNG are consistent with its obligations under Sections 1317 and 1318 of the Public Utility Code. These issues fall squarely within the Commission's jurisdiction and authority to regulate rates and to regulate PGW's GCR under Sections 1307(f), 1317, and 1318 of the Public Utility Code, 66 Pa.C.S. §§ 1307(f), 1317 and 1318.

4. Reply to OSBA Letter in Lieu of Exception:

In its two-page Letter in Lieu of Exceptions, the OSBA asserts that the RD ignores the record evidence which demonstrates that: (1) Because of the increased cost of RNG, PGW's proposal should be rejected; (2) PGW's gas supply portfolio has been deemed safe, adequate, and reliable without RNG; and (3) PGW's RNG proposal is not just and reasonable in consideration of the COVID-19 pandemic. PGW has fully addressed the claims regarding the increased cost of RNG and the impacts of the COVID-19 pandemic in Sections II.1.B. and II.2. above, and PGW incorporates those arguments herein.

The OSBA's argument that PGW's gas supply portfolio has been deemed safe, adequate, and reliable without RNG is focused too narrowly on short-term considerations. Again, it is worth emphasizing that the record demonstrates (and the RD concludes) that RNG could be important for security and adequacy of supply in the future. To be in a position to utilize this supply alternative in the future, PGW needs to gain experience with RNG procurement today. PGW incorporates its discussions in Section II.1.C. herein.

⁶⁷ See PGW MB at Section V.1.C.iii.

III. CONCLUSION

WHEREFORE, Philadelphia Gas Works respectfully request that the Commission: (1) deny the Exceptions of I&E and Letter in Lieu of Exceptions of the OSBA; and (2) adopt the RD, subject to the clarification that approval of the RNG pilot program proposal is not grounded in environmental issues or environmental policy considerations.

Respectfully submitted,

Kristine E. Marsilio

Daniel Clearfield, Esquire
Attorney ID 26183
Kristine Marsilio, Esquire
Attorney ID 316479
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6000

Craig Berry, Esquire
Attorney ID 328527
Legal Department
Philadelphia Gas Works
800 W. Montgomery Ave
Philadelphia, PA 19122
(215) 684-6049

Attorneys for Philadelphia Gas Works

Date: July 6, 2021