PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Pennsylvania Public Utility Commission	**Public Meeting August 26, 2021**
Office of Consumer Advocate	**3023970-OSA**
Office of Small Business Advocate	**Docket No. R-2021-3023970**

v.

Philadelphia Gas Works

JOINT STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR. AND COMMISSIONER RALPH V. YANORA

Before the Commission for consideration and disposition is a Joint Petition for Settlement of Philadelphia Gas Works (PGW) 2021-2022 purchased gas cost proceeding. Also before the Commission are Exceptions by the Commission's Bureau of Investigation and Enforcement (BIE), and a Letter in Lieu of Exceptions by the Office of Small Business Advocate (OSBA), to the Recommended Decision issued by the presiding administrative law judge (ALJ).

The presiding ALJ recommended approval of the Joint Petition for Settlement, which resolves all but one issue, discussed below. No Exceptions have been filed to the recommendation to approve the Joint Petition. We agree that the Joint Petition for Settlement is in the public interest and concur with its proposed approval.

The issue unresolved by the Joint Petition is the PGW proposal to include a Renewable Natural Gas (RNG) pilot in this proceeding. The parties did not agree on the implementation of the RNG pilot. The issue was therefore litigated and the presiding ALJ recommended approval of the RNG pilot with minor modifications. The BIE has filed Exceptions to the ALJ recommendation, and the OSBA has filed a Letter in Lieu of Exceptions also expressing its disagreement with approval.

This RNG pilot presents the Commission with a question not specifically addressed before: to what extent may the Commission depart from the statutory "least cost procurement" mandate to include RNG in natural gas procurement plans? Before addressing this specific issue, we believe it appropriate to review the Commission's jurisdiction and authority to explain how that controls the disposition of this matter.

Through the Public Utility Code (Code), the General Assembly directs the Commission's regulation of public utilities doing business in the Commonwealth of Pennsylvania. The Commission has only those powers, duties and jurisdiction identified in the Code. The Code's primary focus is on the adequacy, efficiency, safety and reasonableness of service and facilities, and the justness and reasonableness of the rates that utilities charge to customers.[1] The Code has other provisions that supplement and relate to these core components.

[1] 66 Pa. C.S. §§1301, 1501.

The General Assembly does review and make amendments to the Code on a regular basis to address changes or developments in public policy, technology, energy markets and Federal law. To achieve its goals, the General Assembly sometimes assigns the Commission with responsibilities and authority for matters completely unrelated to public utility service. The General Assembly has also modified the Code to include subjects related to public utility service, but which also involve the regulation of non-utilities. In each case, the authority and jurisdiction conferred on the Commission was done pursuant to a statutory change of law. To the extent this case prompts discussion of amendments to the Code, we are ready to work collaboratively with the General Assembly to address any proposals.

The Code has many provisions governing how public utilities recover just and reasonable costs from customers. Additionally, public utilities always bear the burden of proof to demonstrate that a proposed rate is just and reasonable.[2] The Commission is required to review the evidentiary record in each request for cost recovery to determine if a utility has satisfied this burden.

The Code has very specific provisions governing the regulation of natural gas costs and the determination of just and reasonable gas cost rates.[3] These provisions and associated Commission regulations provide for annual Commission review of proposed gas procurement and cost recovery filings. As part of its filing, a natural gas distribution company (NGDC) must provide information such that the Commission can determine if it is pursuing a "least cost procurement policy." If an NGDC is unable to demonstrate that it is using a least cost procurement policy, then the Commission may not conclude that its proposed rates are just and reasonable. In making such a determination, the Commission is required to find that an NGDC has "taken all prudent steps necessary to obtain lower cost gas supplies."[4]

This review of the Commission's jurisdiction and authority provides the appropriate frame of reference for PGW's 2021-2022 purchased gas cost proceeding. In response to PGW's filing, the Office of Consumer Advocate (OCA) and the OSBA filed Formal Complaints and the case was assigned to our Office of Administrative Law Judge for evidentiary hearings as required by law. The OCA and OSBA, along with the BIE, are charged with representing the interests of customers in proceedings involving rates.

Here, among other matters, PGW proposed to initiate an RNG pilot program to explore the inclusion of renewable natural gas as part of its supply portfolio. As a result of litigation, PGW negotiated an agreement with the OCA to authorize the expenditure of $1 million, $500,000 per year for the next two years, on RNG. The OSBA and BIE disagreed with PGW's assertions that this program would comply with the least cost procurement requirement of the Code. Specifically, the BIE and the OSBA argued that PGW failed to meet its burden of proof that its RNG pilot would comply with the least cost procurement provisions of Sections 1317 and 1318 of the Code. Accordingly, the Parties reserved this one issue for litigation.

In its filing, PGW estimates that RNG will cost between $13.00 and $17.50 more per dekatherms (Dth) than the indexed cost of natural gas.[5] BIE's testimony points out that even

[2] 66 Pa.C.S. §315(a)
[3] 66 Pa.C.S. §§1317, 1318
[4] 66 Pa.C.S. §1318(a)(3).
[5] PGW 1307(f) Annual Filing, Statement No. 3, p. 3.

$500,000 of RNG will only buy a small portion of the same dollar expenditure for traditional natural gas. PGW will have to purchase approximately 165,432 Dth of traditional natural gas (costing the Company an additional $418,543) to make up the difference and have the same gas supply. BIE also compared the Texas Eastern Transmission Company M-1 cost of natural gas for March 2021 of $2.53 to PGW RNG estimate of $20.03 per Dth.[6]

In addition to higher RNG costs per Dth, PGW testified that it may be unable to identify the British Thermal Unit (BTU) heating content of proposed RNG purchases.[7] Gas with a lower BTU heat content is less effective at producing energy than a gas with a higher BTU. This presents the possibility that PGW customers will have to burn even more gas in order to achieve the same heating and energy result as traditional natural gas which will increase customer bills.

Based on our review of the evidentiary record and applicable law, we agree with the proposed staff recommendation to grant the Exceptions of BIE and the OSBA, in part, regarding the RNG pilot. PGW has not met its burden of proof that the RNG pilot satisfies the least cost procurement standard. Specifically, PGW did not provide substantial evidence to justify the increased costs associated with the RNG. The Code does not permit the Commission to approve the acquisition of more expensive natural gas where it has not been shown to be necessary to ensure safe, adequate, and reliable service. In our view, the portfolio elements referenced in Section 1318(a)(3) regarding short-term and long-term contracts are subordinate to and in service of the least cost procurement standard. The Code does not include exceptions to its ratemaking standards for pilot programs with limited budgets. The fact that the PGW and OCA have agreed to cap the budget is therefore not relevant to the legal determinations the Commission must make. Accordingly, we agree that PGW may not implement the RNG pilot as proposed as a part of its procurement plan for the coming year.

We appreciate and respect PGW's desire to explore utilizing RNG in its least cost gas portfolio. We emphasize that the Commission is not opposed to the utilization of RNG per se, but only that RNG use must nevertheless comply with the provisions of the Code. By way of example, the Commission acted at its last Public Meeting to permit a tariff of UGI Utilities, Inc. to go into effect regarding the distribution of RNG to retail customers. The tariff filing included certain provisions that are intended to ensure that RNG is provided at just and reasonable rates.[8]

Regarding the availability and adoption of RNG, we note that the General Assembly has established, and the Commission works to promote and oversee, a competitive market for natural gas choice in the Commonwealth.[9] This market is based on principles similar to those of Pennsylvania's now mature retail electric choice markets. The latter prominently features multiple supply options and suppliers of renewable energy products that consumers may, at their discretion, select based on individual preference. We look forward to a similarly vibrant RNG market where RNG-based options are available on like terms.

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[6] BIE Main Brief, pp17-18.
[7] PGW Reply Brief p. 8.
[8] *UGI Utilities, Inc. - Gas Division Supplement No. 21 to Tariff Gas - Pa. P.U.C. No. 7*, Docket R-2021-3026078 (Order entered August 5, 2021).
[9] 66 Pa. C.S. §§ 2201-2212.

In conclusion, we encourage PGW to review and monitor Commission actions in other gas cost proceedings involving RNG issues. We welcome consideration of a revised RNG pilot in its next plan that is responsive to our guidance and in compliance with the provisions of the Code.

JOHN F. COLEMAN, JR.
COMMISSIONER

RALPH V. YANORA
COMMISSIONER

Date: <u>August 26, 2021</u>