**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

 Public Meeting held August 26, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement

David W. Sweet, Vice Chairman, Statement, Dissenting

John F. Coleman, Jr., Joint Statement

Ralph V. Yanora, Joint Statement

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| Pennsylvania Public Utility CommissionOffice of Consumer AdvocateOffice of Small Business Advocate v.Philadelphia Gas Works | R-2021-3023970C-2021-3024126C-2021-3024293 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Settlement of Philadelphia Gas Works’ 2021-2022 Gas Cost Recovery (GCR) Proceeding (Joint Petition or Settlement) filed on June 4, 2021, by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and Philadelphia Gas Works (PGW or the Company) (collectively, the Joint Petitioners) regarding the Company’s annual adjustment and reconciliation of its natural gas cost recovery rates filed pursuant to Section 1307(f) of the Public Utility Code (Code), 66 Pa. C.S. § 1307, to become effective September 1, 2021.[[1]](#footnote-1)

Also, before the Commission for consideration and disposition are the Exceptions of I&E and the Letter in Lieu of Exceptions (Letter Exceptions) of the OSBA, filed on July 1, 2021, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Darlene Heep, which was issued on June 24, 2021, in the above-captioned proceeding. Replies to Exceptions were filed by the OCA and PGW on July 6, 2021.

For the reasons stated, *infra*, we shall: (1) grant, in part, the Exceptions of I&E and the Letter Exceptions of the OSBA; (2) adopt, in part, and reverse, in part, the ALJ’s Recommended Decision, consistent with this Opinion and Order; (3) approve the Joint Petition for Settlement, consistent with this Opinion and Order; and (4) deny the Company’s Renewable Natural Gas (RNG) Pilot Program Proposal (RNG Pilot), consistent with this Opinion and Order.

# Background

PGW is a municipal public utility company, owned by the City of Philadelphia and managed and operated by the Philadelphia Facilities Management Corporation. Further, PGW is a “city natural gas distribution operation” and “natural gas distribution company” (NGDC) as those terms are defined in Sections 102 and 2202 of the Code, 66 Pa. C.S. §§ 102, 2202. The Parties achieved a partial settlement of the issues in this case. The single litigated issue was PGW’s proposal for authorization to include in its GCR expenditures associated with a limited pilot for the purchase of renewable natural gas.

This is an annual filing that all large NGDCs make and provides for the Company’s annual adjustment and reconciliation of its natural gas cost recovery rates. More specifically, Section 1307(f) governs recovery of natural gas costs and allows NGDCs with gross intrastate annual operating revenues in excess of $40,000,000 to file tariffs reflecting actual and projected increases or decreases in their natural gas costs, with the tariffs being effective six months from the date of filing. 66 Pa. C.S. § 1307(f)(1). In its tariff supplement (Supplement No. 140 to Gas Service Tariff – Pa. P.U.C. No. 2), filed as part of its Section 1307(f) filing on March 1, 2021, PGW proposed, *inter alia*, an increase of $0.6674/Mcf relative to the current GCR of $3.4687/Mcf, to a GCR of $4.1361/Mcf for service rendered on and after September 1, 2021.[[2]](#footnote-2) PGW also proposed to revise its retainage rate charged to suppliers to 2.6%, to be effective on September 1, 2021. *See* Supplement No. 95 to Gas Supplier Tariff – Pa. P.U.C. No. 1.

# History of the Proceeding

On February 1, 2021, PGW submitted its pre-filing information in support of its annual GCR filing to the Commission pursuant to 52 Pa. Code §§ 53.64 and 53.65.[[3]](#footnote-3)

On February 3, 2021, I&E filed a Notice of Appearance. The OCA and the OSBA filed Complaints on February 11, 2021, and February 26, 2021, respectively. PICGUG filed a Petition to Intervene on February 17, 2021.

On March 1, 2021, PGW filed with the Commission its definitive GCR filing. This filing included: (1) proposed tariff revisions (Supplement No. 140 to PGW’s Gas Service Tariff – Pa P.U.C. No. 2 and Supplement No. 95 to PGW’s Gas Supplier Tariff – Pa P.U.C. No. 1); (2) supporting information regarding the computation of annual purchased gas costs for twelve months ending August 31, 2022; and (3) the Direct Testimony and Exhibits of PGW’s witnesses. On the same date, PGW filed an Errata to update the schedules for Item 53.64(i)(1) of PGW’s February 1, 2021, pre-filing.[[4]](#footnote-4)

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

On March 23, 2021, PGW filed a Motion for Protective Order and an Errata to pages 2, 7, and 82 of PGW’s Tariff Supplement No. 140 to Gas Service Tariff – Pa. P.U.C. No. 2, which reflected: (1) a change to page 82 and PGW’s Other Post Employment Benefit Rider Surcharge and associated references to same on Pages 2 and 7; (2) an Errata to page 78 of PGW’s Tariff Supplement No. 140 to Gas Service Tariff – Pa. P.U.C. No. 2, which removed an indication that there was a change to Paragraph 1; and (3) and Revised Schedules 13(a), 13(b), and 14.

On March 24, 2021, ALJ Heep issued a Protective Order.

On April 16, 2021, I&E filed the Direct Testimony of Ethan H. Cline (I&E St. 1), the OCA filed the Direct Testimony of Jerry D. Mierzwa (OCA St. 1), and the OSBA filed the Direct Testimony of Robert D. Knecht (OSBA St. 1). On May 4, 2021, PGW filed the Rebuttal Testimonies of Florian Teme (PGW St. 1-R), Ryan E. Reeves (PGW St. 2-R), and Gregory Stunder (PGW St. 3-R).

On May 11, 2021, I&E filed the Surrebuttal Testimony of Mr. Cline (I&E St. 1-SR), the OCA filed the Surrebuttal Testimony of Mr. Mierzwa (OCA St. 1‑SR), the OSBA filed the Surrebuttal Testimony of Mr. Knecht (OSBA St. 1-S), and PGW filed the Supplemental Rebuttal Testimony of Mr. Teme (PGW Supplemental St. 1‑R).

On May 12, 2021, the OSBA filed Revised Surrebuttal Testimony (OSBA St. 1-SR (Revised)), and PGW filed the Rejoinder Testimony of Mr. Stunder (PGW St. 3‑RJ). Also on May 12, 2021, counsel for PGW sent ALJ Heep an e-mail, reporting that all of the Parties had agreed to waive cross-examination on all witnesses and to stipulate all testimony into the record. Counsel for PGW also reported that the Parties had reached a settlement on all issues, except for PGW’s RNG Pilot.

Evidentiary hearings were cancelled because the Parties agreed to waive the cross examination of witnesses. On May 13, 2021, PGW and the OCA filed a Non-Unanimous Joint Stipulation related to the RNG Pilot (PGW/OCA Stipulation). On May 17, 2021, PGW filed a Joint Stipulation for Admission of Testimony and Exhibits. On May 18, 2021, ALJ Heep issued an Order admitting the testimony and exhibits into the evidentiary record.

On May 26, 2021, PGW, I&E, the OCA, and the OSBA submitted Main Briefs, addressing PGW’s RNG Pilot.[[5]](#footnote-5)

PGW, the OCA and the OSBA filed the Settlement on June 4, 2021. That same day, PGW, I&E, and the OCA submitted Reply Briefs, and the OSBA submitted a Letter in Lieu of Reply Brief.[[6]](#footnote-6) Also on June 4, 2021, PGW filed a Report on the Universal Service and Energy Conservation Surcharge for Fiscal Year 2020, and the record was closed.

In a Recommended Decision issued on June 24, 2021, ALJ Heep recommended approval of the Joint Petition, without modification. R.D. at 23. The ALJ also approved, with minor modifications, PGW’s proposal for its RNG Pilot. *Id.* at 32‑36. The ALJ recommended the following modifications to the Settlement regarding the RNG Pilot:

The Commission may find it prudent to limit the duration of any RNG contract to no later than one year after the period of the pilot project, as recommended in the ordering paragraphs. It is also recommended that PGW prioritize local or regional producers, also included in the ordering paragraphs.

R.D. at 35.

The Exceptions of I&E and the Letter Exceptions of the OSBA were filed on July 1, 2021. Replies to Exceptions were filed by the OCA and PGW on July 6, 2021.

# Introduction

As a preliminary matter, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*,485 A.2d 1217 (Pa. Cmwlth. 1984).

The ALJ made forty-seven Findings of Fact and reached twenty-one Conclusions of Law. R.D. at 6-12, 36-39. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

## Legal Standards

### Burden of Proof

 Section 315(a) of the Code provides:

(a) Reasonableness of Rates. - In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

[66 Pa. C.S. § 315(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000262&cite=PA66S315&originatingDoc=Ia414e0560bd811e4a795ac035416da91&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). A public utility has the burden of proof to show that a proposed rate is “just and reasonable,” and the evidence produced by a utility in meeting its burden must be substantial. [*Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505 (Pa. Cmwlth. 1980)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980100003&pubNum=162&originatingDoc=Ia414e0560bd811e4a795ac035416da91&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), and [*Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1981152534&pubNum=162&originatingDoc=Ia414e0560bd811e4a795ac035416da91&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)).

In this instance, PGW has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking with regard to the rates and tariff modifications included in its filing.

### Least Cost Fuel Procurement Policy

As discussed, *supra*, Section 1307(f) of the Code governs recovery of natural gas costs and allows NGDCs with gross intrastate annual operating revenues in excess of $40,000,000 to file tariffs reflecting actual and projected increases or decreases in their natural gas costs, with the tariffs being effective six months from the date of filing. 66 Pa. C.S. § 1307(f)(1). Section 1307 further provides that the Commission, after a hearing, shall determine the portion of the Company’s natural gas distribution costs in the previous twelve-month period that meet the standards set out in Section 1318 of the Code. 66 Pa. C.S. § 1307(f)(5). Section 1318 provides that no rates for a natural gas distribution utility shall be deemed just and reasonable unless the Commission finds that the utility is pursuing a least cost fuel procurement policy, consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers. 66 Pa. C.S. § 1318(a).

In determining whether PGW is pursuing a least cost fuel procurement policy under Section 1318 of the Code, specific findings must be made as follows:

(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).

Section 1317 of the Code, 66 Pa. C.S. § 1317, requires the submission of certain information to enable the Commission to make a least cost fuel procurement finding. The Commission has duly promulgated regulations governing GCR filings, that include extensive filing requirements. *See* 52 Pa. Code §§ 53.64 (filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of $40 million) and 53.65 (special provisions relating to natural gas distributors with gross intrastate annual operating revenues in excess of $40 million with affiliated interests).

### Settlements

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been expended in litigating the proceeding, while a partial settlement may significantly reduce the time, effort, and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Regulatory proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and conducting cross-examination of witnesses in lengthy hearings, preparing and serving Main and Reply Briefs, Exceptions and Replies to Exceptions, and preparing a reproduced record and associated briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

In this case, the Joint Petitioners have reached an accord on all but one issue that arose in this proceeding. As previously noted, the efficacy of permitting GCR recovery of the costs associated with PGW’s RNG Pilot was reserved for litigation.

# The Joint Petition

## Least Cost Fuel Procurement Policy

As discussed, *supra*, in determining whether PGW is pursuing a least cost fuel procurement policy, the Commission must make specific findings set forth in Sections 1318(a) and (b) of the Code. In that regard, excluding PGW’s RNG Pilot, the Joint Petitioners requested that the Commission make specific findings of fact that are set forth in Paragraphs 38 through 52 of the Joint Petition and which the ALJ has adopted and included in the Recommended Decision as Findings of Fact. Joint Petition at 8-11; R.D. at 7-9. In addition, the Joint Petitioners requested that the Commission find, based on the evidence presented by the Parties, that: (1) PGW’s gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended December 31, 2020; and, (2) excluding PGW’s proposed RNG Pilot, PGW’s projected purchases and purchasing policies during the eight-month interim period beginning January 1, 2021, and the projected twelve-month period beginning September 1, 2021 (the period of time the proposed rates would be in effect), meet the standards set forth in Sections 1318(a) and (b) of the Code.[[7]](#footnote-7) Joint Petition at 11-12. The ALJ found that, for purposes of the terms in the Settlement, PGW is pursuing a least cost fuel procurement policy pursuant to Section 1318. Conclusions of Law Nos. 5-10, R.D. at 37. Notwithstanding our disposition of the one reserved litigation issue in this proceeding, based on our review of the record and the terms of the Joint Petition, we find that PGW has met the requirements of Section 1318 of the Code.

## Terms and Conditions of the Settlement

As previously indicated, the Joint Petitioners have agreed to the Settlement covering all issues save one, that is, PGW’s RNG Pilot (the reasonableness and legality of which has been litigated separately). The remaining Parties to this proceeding, I&E and PICGUG, do not oppose the Settlement. In the Partial Settlement, the Joint Petitioners reached agreement on the findings pursuant to 66 Pa. C.S. § 1307(f) and 66 Pa. C.S. § 1318 of the Code. Specifically, the Joint Petitioners expressed their agreement with respect to the following issues: (1) purchased gas cost rates; (2) PGW’s Load Balancing Charge; (3) PGW’s Universal Service and Energy Conservation Surcharge; (4) PGW’s continued recovery of the fee paid to Planalytics Energy Buyer Services (Planalytics); and (5) modified methods of customer notice of PGW’s future GCR proceedings and PGW’s use of estimated data for the March 2022 Quarterly GCR. Joint Petition at 5-7.

The Settlement consists of the Joint Petition containing the terms and conditions of the Settlement and Appendices A through G. The tariff supplement describing the agreed-upon rates is Appendix A, the revised Load Balancing Charge calculation is Appendix B, the Stipulated Record List is Appendix C, the proposed ordering paragraphs constitute Appendix D, and the Statements in Support filed by PGW, the OCA, and the OSBA are contained in Appendices E through G, respectively.

The essential terms of the Settlement are set forth in ¶¶ 25-36. The Joint Petitioners agreed to the following terms and conditions:[[8]](#footnote-8)

1. **Purchased Gas Cost Rates**

25. The GCR rate adopted by this Settlement is $4.1361 per Mcf. This rate is predicated on PGW’s gas cost projections at the time of the March 1, 2021 Annual Filing. In accordance with 52 Pa. Code § 53.64, PGW will submit a quarterly adjustment to the GCR rate on or before September 1, 2021, to be effective on one day's notice, to account for actual experience and changes in forecasted natural gas prices and demand, which will establish the GCR rate, effective September 1, 2021.

26. PGW shall calculate the quarterly filing updates for the 2021-2022 GCR period in accordance with the Commission’s regulations at 52 Pa. Code § 53.64(i)(5).

27. Attached as Appendix “A” hereto are the rates relating to this Settlement.

Joint Petition at 5. The OCA noted its support for the GCR rate set forth in Appendix A to the Joint Petition, indicating an accurate representation of the terms of the Settlement. OCA Statement in Support at 3. The OSBA did not specifically address the rate, but noted both its participation in the negotiations regarding the Settlement and the OSBA’s support of it. OSBA Statement in Support at 1.

1. **PGW’s Load Balancing Charge (“LBC”)**

28. PGW will calculate its LBC reflecting a 50 percent (50%) assignment of the Firm Transportation (“FT”) capacity required to deliver supplies under PGW’s Washington Storage Service (“WSS”) arrangement with Transcontinental Gas Pipe Line (“Transco”).

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

Joint Petition at 5-6. In the Settlement of the PGW 2020-2021 GCR proceedings, approved by the Commission at Docket No. R-2020-3017934, the parties agreed to the following terms:

1. The Time Factor for the March-19 Load Balancing Charge interest calculation will be corrected to 16/12 and incorporated in PGW’s September 1, 2020 GCR filings.
2. Revised Load Balancing Charge will include 50% of the Williams’ Transco Gas Pipeline (“Transco”) Firm Transportation capacity costs necessary to deliver gas supplies withdrawal from storage under Transco Rate WWS (Washington Storage Service) in the calculation.
3. Projected pipeline storage fuel injection and withdrawal charges will be included in the Load Balancing Charge calculation. These charges and the Transco Firm Transportation capacity costs in item 19b will be subject to reconciliation.

*Pa. PUC v. Philadelphia Gas Works*, Docket No. R‑2020-3017934 (Final Order entered August 6, 2020) (Joint Petition for Settlement of Philadelphia Gas Works’ 2020-2021 GCR Proceeding at ¶ 19). PGW provides load balancing services to its transportation service customers using a reconcilable Load Balancing Charge (LBC). In order to maintain consistency with the modification agreed to in PGW’s last GCR proceeding at Docket No. R-2020-3017934, *supra*, the OCA and the OSBA recommended that the Company modify the LBC it had initially proposed in the instant proceeding. OCA St. 1 at 7-10; OCA St. 1-SR at 1-2; OSBA St. 1 at 4-5; OSBA St. 1-S at 4-6. As contemplated by the 2020 1307(f) Settlement, OCA witness Mierzwa and OSBA witness Knecht recommended that the LBC should be calculated reflecting a 50% assignment of the firm transportation capacity required to deliver supplies under PGW’s Winter Storage Service arrangement with Williams’ Transco Gas Pipeline rather than the 100% assignment utilized by PGW. OCA St. 1-SR at 1-2; OSBA St. 1-S at 4-6. In Rebuttal Testimony, PGW witness Teme adopted this recommendation. PGW St. 1-R at 9-10. The Settlement reflects the adoption of this modification to the Company’s filing. Joint Petition at ¶¶ 28-29. The Settlement specifically provides that the Company will modify its 2020 LBC calculation, stating “PGW will modify its LBC calculation for Calendar Year 2020 so that 50 percent of the WSS capacity will be added into the excess demand determinant, as it does in the FY 2022 LBC calculations.” Joint Petition at ¶ 29.

1. **PGW’s Renewable Natural Gas RNG Pilot**

As previously indicated, the Company’s RNG Pilot has been reserved for litigation, and this was explicitly acknowledged in the Joint Petition as follows:

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

Joint Petition at 6.

Accordingly, Main Briefs on the reserved issue were filed by PGW, the OCA, I&E, and the OSBA. Reply Briefs were filed by PGW, the OCA, and I&E, and the OSBA filed a Letter in Lieu of Reply Brief. A complete discussion and resolution of this litigated issue is detailed in Section V of this Opinion and Order.

1. **PGW’s Universal Service and Energy Conservation Surcharge (“USC”)**

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

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

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

Joint Petition at 6.

The Company’s Universal Service and Energy Conservation Surcharge (USC) is a reconcilable charge for the recovery of costs relating to various subsidy programs for low-income and senior citizen customers. The OSBA, through the testimony of Mr. Knecht, identified concerns with the $9.4 million under-collection of the USC that PGW included in its filing. OSBA St. 1 at 1-3. In response, PGW identified and acknowledged errors in the calculation of its USC. PGW St. 1-R at 4-7; PGW Supplemental St. 1-R at 1-2. The Settlement provides for: (1) the correction of the error and the refund of dollars in the June 1, 2021, quarterly filing;[[9]](#footnote-9) (2) further analysis of additional variances to be provided by June 4, 2021;[[10]](#footnote-10) and (3) additional reporting regarding future variances in the next Section 1307(f) proceeding. Joint Petition at ¶¶ 31‑33. The Joint Petitioners support this correction and refund and, while noting that the Parties reserve their rights to challenge and conduct discovery regarding the reasonableness of any USC under-collection, assert that these provisions of the Settlement will: (1) ensure accuracy of the USC and provide an opportunity for parties to address further concerns; and (2) provide the parties with important additional information in the next GCR proceeding to be able to evaluate any variances in the over/under-collection of the USC. OCA Statement in Support at 4-5; OSBA Statement in Support at 3-4.

1. **Planalytics Energy Buyer Services**

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

Joint Petition at 6-7.

Planalytics provides PGW with price analysis and buying advisory services. PGW St. 2 at 10-11. As in previous recent GCR settlements, the Parties have agreed that PGW may continue to recover the Planalytics fee, not to exceed $125,000. In PGW’s next GCR proceedings, the Parties will revisit this provision. *Id*.

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

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

1. provide written notice to customers by bill insert in the one-month billing cycle commencing on the date of the annual 1307(f) filing, on March 1, of a tariff addendum and tariff or tariff supplement reflecting changes in purchased gas costs and ending no later than thirty (30) days after the filing of such tariff addendum and tariff or tariff supplement, instead of beginning such notice with the one-month billing cycle commencing thirty (30) days prior to the filing of the tariff addendum and tariff or tariff supplement as required by 52 Pa. Code § 53.68(a);
2. in company offices in which payments are accepted, provide public notice on the date of the annual 1307(f) filing, March 1, of a tariff addendum and tariff or tariff supplement reflecting changes in purchased gas costs, instead of thirty (30) days prior to the filing of such tariff addendum and tariff or tariff supplement as required by 52 Pa. Code §§ 53.68(a) and 53.45(b); and
3. provide estimated data for both January and February in the March 1 quarterly 1307(f) filing instead of providing actual data for January alone as required by 52 Pa. Code § 53.64(i)(5)(i).

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

Joint Petition at 7.

As part of the Settlement, PGW requests that the Commission allow the Company to follow the same notice procedures (bill inserts, public notice processes and estimated data) in its 2022-2023 GCR proceeding as it has in its recent GCR. Joint Petition at ¶ 35. None of the Joint Petitioners disagree with this approach. The OCA noted that these procedures were approved in each of the PGW GCR proceedings since 2016-2017. OCA Statement in Support at 6.

The Settlement is conditioned upon the Commission’s approval of the terms and conditions contained therein without modification. The Joint Petitioners agreed that if the Commission disapproves the Settlement or modifies any terms and conditions therein, then any Joint Petitioner may elect to withdraw from the Joint Petition and may proceed with litigation and, in such event, the Settlement shall be void and of no force and effect, unless it is subsequently accepted by the aggrieved signatory party, or parties, as so modified. The Joint Petitioners acknowledged and agreed that the Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings. Joint Petition at 12-13.

The Joint Petitioners respectfully requested that the ALJ and the Commission approve the Settlement, including all terms and conditions thereof without modification. Joint Petition at 15.

## ALJ’s Recommendation

The ALJ found that the proposed Settlement was reasonable, was in the public interest, and therefore, recommended its approval without modification. The ALJ found that the proposed Settlement is in the public interest because the resultant rates are just and reasonable and comply with the requirements of the Code for GCR proceedings. R.D. at 22-23. The ALJ also noted the reasonable compromises reached on: (1) the LBC calculation for consistency with PGW’s 2020 GCR LBC settlement terms; (2) the concerns raised by the OSBA regarding the differences between PGW’s forecasted USC projection in its 2020 GCR proceeding and the actual USC balance at the end of 2020; and (3) PGW’s recovery of a small risk management fee under a gas price analysis and risk management contract with Planalytics in the GCR. *Id.* at 23.

Additionally, the ALJ noted with favor, the resolution of all issues in this case by settlement, except the single RNG Pilot issue. Settlement of nearly all of the issues minimizes the substantial time, expense, and effort of full litigation. Thus, the Commission’s and the Parties’ resources are preserved, and ratepayers are spared substantial litigation costs, while a settlement of all other issues that is in the public interest is secured. *Id*.

The ALJ indicated that each of the provisions of the Settlement is fair, just, and reasonable and supports the finding that, as a whole, the Settlement is in the public interest. The ALJ concluded that the Settlement met Sections 1307(f) and 1318 of the Code by providing for PGW to pursue a least cost fuel procurement policy consistent with its obligation to provide safe, adequate and reliable service to its customers. Therefore, the ALJ concluded that the Joint Petition is in the public interest and thus recommended that the Joint Petition be granted without modification. *Id*. at 37-39.

## Disposition

As previously indicated, the Joint Petitioners achieved a settlement of the majority of issues in this proceeding. The Parties waived all cross-examination and evidentiary hearings were canceled, with testimony and exhibits submitted by written stipulation. PGW, I&E, the OCA, and the OSBA submitted briefs, addressing the remaining issue in dispute, *i.e*., PGW’s RNG Pilot. The Settlement was not signed by all of the Parties, but it also was not opposed by any party.

After reviewing the Parties’ pre-served testimony, the terms of the Joint Petition, the Joint Petitioners’ Statements in Support, and the Recommended Decision, as discussed above, we concur with the ALJ’s analysis, findings and conclusions that the substantive provisions of the Joint Petition are supported by substantial evidence, are reasonable, in the public interest, and consistent with applicable legal standards under Sections 1307(f), 1317 and 1318(a) of the Code, 66 Pa. C.S. §§ 1307(f), 1317, 1318(a), and the Commission’s Regulations at 52 Pa. Code §§ 53.64 (filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of $40 million) and 53.65 (special provisions relating to natural gas distributors with gross intrastate annual operating revenues in excess of $40 million with affiliated interests).

Additionally, recognizing that the policy of the Commission is to encourage settlements, we find that the Settlement is in the public interest by avoiding further litigation of this proceeding; thereby, fostering administrative efficiency and allowing the Parties and the Commission to conserve their resources, the costs of which will ultimately be borne by ratepayers. The Settlement also enjoys the support or non-opposition by all Parties in the proceeding, representing the interests of residential, commercial and industrial customers, as well as the Company. *See generally*, 52 Pa. Code §§ 5.231, 69.401.

Accordingly, we shall adopt, without modification, the ALJ’s findings, conclusions and analysis regarding the Joint Petition in the Recommended Decision. Therefore, we shall approve the Joint Petition without modification.

# Contested Issue

## Description of PGW’s RNG Pilot and the PGW/OCA Stipulation

In its filing, PGW proposed to procure limited amounts of RNG[[11]](#footnote-11) as part of the gas supplies used to meet the needs of firm sales customers. PGW M.B. at 7. Under its plan, PGW would purchase up to $500,000 of RNG during FY 2022 (September 2021 – August 2022), equating to approximately 0.4% of its annual projected cost of gas collected through GCR rates. PGW St. 3 at 2. PGW proposed that in FY 2023, it could increase its RNG purchases to meet no more than 2% of its annual projected cost of gas. *Id*. The goal of the RNG Pilot is to gain experience in the developing RNG supply market which PGW believes could be an increasing source of gas supply in the future. PGW St. 3 at 3-4. In addition, under the RNG Pilot, PGW would prioritize purchases of RNG from Pennsylvania suppliers. PGW St. 3 at 3. PGW estimated that the price of the RNG would be more expensive than conventional natural gas. *Id*.

PGW and the OCA entered into the PGW/OCA Stipulation, which modified PGW’s initial proposal to hold purchases at $500,000 per year for two years, FY 2022 and FY 2023. PGW M.B. at 7. The PGW/OCA Stipulation also reserves PGW’s right to propose an increase in its RNG purchases for FY 2023 in its next annual GCR proceeding, and all parties can challenge such a proposal. *Id*. Additionally, PGW would be required to identify whether its purchase of RNG will result in the monetization of any environmental benefits and how those benefits will be reflected in the price of the RNG it purchases. PGW M.B. at 8. The PGW/OCA Stipulation also requires that PGW, in the next GCR proceedings, must:

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.).

OCA M.B. at 8-9; PGW/OCA Stipulation at 1.

## Burden of Proof for Litigated Issues

PGW has the burden of proof to establish that it is entitled to the relief it is seeking. The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a *prima facie* case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983). Furthermore, it is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” *Samuel J.* *Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Additionally, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *Id*. The utility’s burden of proof to establish the justness and reasonableness of every component of its proposal is an affirmative one and remains with PGW throughout the course of the proceedings.[[12]](#footnote-12) Thus, PGW has the burden of proof to show that every element of its proposal is just and reasonable.

## Positions of the Parties

PGW and the OCA support the PGW/OCA Stipulation. I&E and the OSBA oppose it. A summary of each Party’s position and arguments, made to the ALJ and on Exceptions/Replies, are as follows:

### PGW

PGW supported its RNG Pilot, as modified by the PGW/OCA Stipulation, to procure a limited amount of RNG to supply gas to meet the needs of its customers and include the costs to procure the RNG in its GCR. PGW St. 3, at 1; PGW M.B. at 1-2. PGW contended that the RNG Pilot will diversify its gas portfolio and help to proactively acquire knowledge, information and an understanding of the RNG market, as it believes RNG will become an increasing source of gas supply in the future. *Id*. PGW acknowledged the cost limits included in the PGW/OCA Stipulation that provide for a specific amount of allowable expenditures. PGW M.B. at 8.

PGW contended that the RNG Pilot is consistent with Sections 1317 and 1318 of the Code, because PGW is not obligated to only seek the least expensive gas without further consideration. PGW M.B. at 10; PGW St. 3 at 3 (citing *Pa. PUC v. PGW*, Docket No. R-00061931 (Opinion and Order entered September 28, 2007)). PGW also stated that national, local and state elected officials support the reduction of emissions. PGW contended that the RNG Pilot will assist PGW in providing safe, adequate and reliable service to its customers and gaining experience in the RNG supply market. PGW M.B. at 11-12; PGW St. 3 at 3.

### OCA

The OCA supported the RNG Pilot, as modified by the PGW/OCA Stipulation, and noted that it limits PGW’s RNG purchases to $500,000 of RNG in FY 2022 and 2023, rather than an unknown amount in FY 2023 as originally proposed by PGW. OCA M.B. at 1, 6. The OCA argued that without this limitation, based on projected costs, the RNG purchases would have increased from $500,000 to approximately $3.4 million in FY 2023. OCA St. 1 at 10. In addition to the $500,000 purchase limitation, the OCA noted that the PGW/OCA Stipulation includes certain reporting requirements listed above and reserves the rights of all parties to challenge any proposal. OCA M.B. at 8-9; PGW/OCA Stipulation at 1.

The OCA asserted that the RNG Pilot, as modified by the PGW/OCA Stipulation, meets the requirements of Section 1318 of the Code, which requires the utility to take “all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth….” OCA M.B. at 9 (citing 66 Pa. C.S. § 1318(a)(3)). The OCA further argued that Section 1318 does not require the purchase of the lowest cost resource available at any given time, but instead requires that the portfolio be the least cost consistent with the obligation to provide safe, adequate and reliable service over the foreseeable time horizon. OCA M.B. at 9.

The OCA contended that the RNG Pilot, as modified by the PGW/OCA Stipulation, is in the public interest because it provides an important opportunity to explore the renewable natural gas markets with limited risk to ratepayers. OCA M.B. at 9. The OCA suggested that there are potentially changing environmental concerns, particularly as they pertain to greenhouse gas emissions and climate change. OCA St. 1 at 11. To address this, the OCA noted that some states are already adopting legislation requiring net-zero emissions, that the City of Philadelphia has initiatives to reach carbon neutrality by 2050, and that the Commonwealth of Pennsylvania is also considering initiatives to reduce greenhouse gas emissions. OCA St. 1 at 11; OCA M.B. at 10.

### I&E

I&E opposed the RNG Pilot and the PGW/OCA Stipulation. I&E argued that it violates the least cost procurement requirement in Sections 1317 and 1318 of the Code. I&E asserted that the gas costs of the RNG Pilot are outrageously expensive, and such a program that expressly rejects lower-priced conventional natural gas for higher priced RNG is inconsistent with the company’s obligation to obtain least cost gas. I&E M.B. at 13-14. Specifically, I&E’s witness Cline testified that RNG would cost up to $20.03 per Dekatherm (Dth) compared to $2.53 per Dth for a conventional gas product, and he calculated that if PGW were to replace $500,000 of Texas Eastern Transmission Company M-1 natural gas with the same dollar amount of RNG, PGW would have to purchase 165,432 Dth of conventional gas to have the same amount of supply. I&E M.B. at 17.

I&E also argued that PGW’s failure to present actual or tentative RNG contracts for Commission review in this case renders the record devoid of sufficient information such as length of contracts and whether PGW can successfully negotiate such contracts. I&E M.B. at 15-16. In addition, I&E averred that the reporting requirements set forth in the PGW/OCA Stipulation are “vague and illusory.” I&E R.B. at 16-17.

Furthermore, I&E argued that PGW has not established a basis for a determination that the RNG Pilot is essential to PGW providing safe, adequate and reliable service, and that PGW cannot guarantee any environmental benefits resulting from the RNG Pilot. I&E M.B. at 21. I&E also concluded that imposing additional gas supply costs upon ratepayers to ostensibly address environmental concerns is not valid because the intended will of federal, state or local authorities to reduce greenhouse emissions has not been codified into law. I&E M.B. at 22-23. Further, I&E argued that addressing environmental concerns in this case would be inconsistent with the Commission’s prior determination in PGW’s 2020 base rate case regarding the consideration of such environmental issues. I&E R.B. at 18 (referencing *Pa. PUC v. PGW*, Docket No. R-2020-3017206 (Opinion and Order entered November 19, 2020) at 93-94).

Additionally, I&E disagreed that a benefit of the RNG Pilot would provide diversity of supply benefits because such benefits are speculative and not expected to be produced until the RNG market develops. I&E M.B. at 26-27. Absent laws requiring such RNG acquisitions, I&E contended that PGW is obligated to obtain the lowest cost gas that provides, safe, adequate and reliable service. I&E M.B. at 25-26.

Finally, I&E argued that the unreasonable expenditures for RNG will increase gas costs and have a negative impact on ratepayers, especially given the current economic recovery from the COVID-19 pandemic. I&E asserted that such an increase in gas costs is inappropriate for PGW because a large portion of its customers are low income with high arrearages and unemployment remains a concern in the service area. I&E M.B. at 27-32.

### OSBA

The OSBA opposed the RNG Pilot, contending that it, including the modifications to it in the PGW/OCA Stipulation, violates Sections 1317 and 1318 of the Code that mandate that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy. The OSBA averred that the RNG Pilot is not consistent with this requirement because the RNG supplies would cost between $13.00 and $17.50 more per Dth, essentially up to five times more, than other natural gas supplies. Based on cost alone, the OSBA argued that the RNG Pilot should be rejected. OSBA M.B. at 5-6; OSBA St. 1 at 5.

The OSBA also averred that PGW’s gas portfolio has been deemed to be safe, adequate and reliable without the RNG, and that PGW has not explained what aspects of the portfolio are unsafe, inadequate or unreliable, and thus requiring an infusion of RNG. OSBA M.B. at 6.

Finally, the OSBA disagreed that environmental concerns justify the costs of acquiring RNG, and argued that there is no guarantee that there will be any environmental benefits associated with the RNG purchases. *Id*.

## ALJ’s Recommended Decision

The ALJ recommended approval of the RNG Pilot, as modified by the PGW/OCA Stipulation. In addition, the ALJ recommended further modifications that: (1) any RNG contracts entered into by PGW not extend more than one year after the duration of the pilot program; and (2) PGW prioritize regional or local producers, where possible. R.D. at 40, Ordering Paragraph No. 5.

The ALJ acknowledged that the RNG Pilot is a limited program that will allow PGW to prepare for future markets. To ease any necessary adjustments to operations when laws and requirements change, the ALJ recognized the proactive approach being proposed here by PGW. The ALJ understood PGW to be planning ahead via the pilot to understand the RNG market as it relates to gas supply acquisitions. The ALJ viewed this approach as prudent, due to local, state and federal trends moving towards the reduction of greenhouse gases and the use of more environmentally friendly resources. R.D. at 33.

The ALJ found that the cost impact of the RNG Pilot, as modified by the PGW/OCA Stipulation, would be minimal. This is because the PGW/OCA Stipulation limits RNG purchases to $500,000 per year for the next two years, or 0.4% of PGW’s total commodity cost, while the majority of needed gas supply would be purchased as usual at conventional natural gas prices. R.D. at 33-34.

The ALJ disagreed with I&E’s arguments that the environmental issues PGW seeks to address are beyond the scope of the Commission’s jurisdiction and this GCR proceeding. Rather, the ALJ stated that GCR proceedings involve a consideration of market and purchase factors for PGW in acquiring natural gas to serve its customers, and that a purpose of Section 1307(f) of the Code, 66 Pa. C.S. § 1307(f), is to allow the Commission to “annually review and approve plans for purposes of reliability and supply.” The ALJ concluded that planning for expertise in future acquisitions under obvious trends is a means by which a company can assure reliability and supply. R.D. at 34.

Furthermore, regarding the concern about PGW’s lack of RNG contracts or tentative contracts, the ALJ found that the RNG Pilot will allow PGW to negotiate and enter into RNG contracts, and gain information and experience with a diversified product portfolio for application in the second year. The Recommended Decision reasoned that this information and experience will be valuable, given PGW’s testimony that entering the RNG market is not simple, that sorting through many regulations, requirements and laws will be required if RNG becomes a part of the PGW gas supply, and that identifying reputable suppliers with needed capacity will take time, effort and experience. *Id*.

Additionally, the ALJ found that reporting the British Thermal Unit (BTU) content of RNG purchases when known is reasonable. The ALJ relied on PGW’s testimony that it is uncertain whether the BTU content will be available because the sources of RNG will be off-system and subject to the specifications of the transporting pipeline, and purchases could potentially be bundled from more than one RNG source. However, the ALJ confirmed that the PGW/OCA Stipulation places an affirmative duty upon PGW to report the BTU information when available. *Id*.

The ALJ did not find persuasive the arguments of I&E that any rate increase associated with the RNG Pilot is unjustified because the PGW service area is recovering economically from the COVID-19 pandemic and the number of low-income PGW customers is large. The ALJ concluded that the Commission has yet to find COVID-19 and its effects a valid reason not to raise rates. The ALJ also pointed out that PGW has programs in place, as well as additional funds from federal COVID-19 related sources, to assist low-income customers. R.D. at 35.

To address the concern that there is uncertainty about the duration of any contract entered into under the RNG Pilot, the ALJ suggested that the Commission may find it prudent to limit the duration of any RNG contract to no later than one year after the RNG Pilot. The ALJ further recommended that PGW prioritize local or regional producers for the RNG Pilot. Because PGW testified that it is dependent upon interstate pipeline delivery systems to meet its needs, the ALJ agreed with PGW that prioritizing local and regional producers will promote a diversity of geographic supply, which supports reliability as well as the adequacy of supply. *Id*.

Based on the interest in and movement to address environmental concerns and climate change, the ALJ concluded that the RNG Pilot is a reasonable initiative to support PGW’s obligation to provide reliable and adequate service in the future. Recognizing that, while the small portion of RNG purchased under the pilot program may be more expensive than the standard product, the ALJ found that it is important that entities such as PGW be prepared for what appears to be an inevitable change in the market. PGW’s expanded understanding and use of another source of supply through the pilot program would be advantageous to PGW if there are gas supply shortages or disruptions in pipeline deliveries from PGW’s conventional sources of supply. *Id*.

Finally, the ALJ addressed the least cost procurement policy and arguments of I&E and the OSBA, by explaining that the Code provides that the utility must pursue “a least cost fuel procurement policy, *consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers”* under Section 1318 of the Code. R.D. at 36 (citing 66 Pa. C.S. § 1318 (emphasis added by the ALJ)). Based upon the ability to preemptively evaluate the impact of possible changes to environmental concerns while diversifying supply, the ALJ concluded that PGW would be preparing for the future at a relatively small cost in this limited pilot program. Moreover, the ALJ found that the associated expense is reasonable and prudent given the anticipated future requirements and possibility of saving ratepayers costs in the long run. Therefore, the ALJ determined that the RNG Pilot, as modified by the PGW/OCA Stipulation, is in the public interest and recommended its approval by the Commission. R.D. at 36.

## Exceptions and Replies

I&E filed three Exceptions to the ALJ’s Recommended Decision. The OSBA filed a Letter in Lieu of Exceptions. In response, PGW and the OCA filed Replies to Exceptions addressing the objections of I&E and the OSBA.

### I&E Exception No. 1 and Replies

In its Exception No. 1, I&E takes exception to the ALJ’s determination that PGW met its burden of proof that RNG purchases are consistent with the least cost gas procurement obligations under Sections 1317 and 1318 of the Code. I&E argues that the RNG Pilot, as modified by the PGW/OCA Stipulation, fails two of the four requirements contained in 66 Pa. C.S. §1318(a) to support a determination that PGW is pursuing a least cost fuel procurement policy consistent with its obligation to provide safe, adequate and reliable service to its customers. I&E Exc. at 12. I&E avers that each of the ways the proposal fails to satisfy the factors of the least cost gas procurement requirement, standing alone, is sufficient to warrant denial of the RNG Pilot. *Id.* at 13.

First, I&E argues that the RNG Pilot is at odds with any finding that PGW has taken all prudent steps necessary to negotiate favorable gas contracts. I&E contends that PGW fails to offer any evidence to support this finding because it did not provide any actual or tentative contracts for review by the Parties or descriptions of contract terms. I&E contends that the ALJ’s recommended modification to limit the duration of any RNG contracts does not satisfy this concern. *Id*. at 12-13.

I&E recognizes the challenge for PGW to produce any signed contracts at this time in this proceeding but suggests that this predicament exemplifies why the RNG Pilot should not have been inserted for consideration in a GCR proceeding. I&E further argues that PGW’s inability to produce general RNG contract information contributes to the lack of specificity of PGW’s proposal. I&E contends that the Recommended Decision’s erroneously fails to recognize that the Section 1318 contract determination is not met. *Id*. at 13-14.

Second, I&E argues that the RNG Pilot conflicts with a 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 contends that the Recommended Decision ignores “the unprecedented and exorbitant markup” of RNG as compared to conventional natural gas, and that the evidence in the case includes PGW’s own testimony that it is “more expensive.” Therefore, I&E concludes that PGW’s proposal to increase gas costs to purchase RNG is inconsistent with its obligation to take all prudent steps necessary to obtain lower cost gas supplies. *Id*. at 14-15.

Next, I&E argues that the Recommended Decision erroneously dismissed the BTU impact of the RNG costs by concluding that PGW will have an affirmative duty to report it “when available.” I&E suggests there is no such duty because the PGW/OCA Stipulation includes only an “illusory” commitment for PGW to “identify the BTU content of its RNG purchases, to the extent such data is available.” I&E submits that this constitutes error because PGW’s customers may never know the BTU content and price impact of RNG. Thus argues I&E, even as adjusted by the PGW/OCA Stipulation and the ALJ’s modifications, PGW’s RNG Pilot remains at odds with Section 1318 of the Code because it rejects lower cost natural gas in favor of more expensive RNG. *Id*. at 16‑17.

Finally, I&E contests the Recommended Decision must be reversed on this issue, because it overlooks PGW’s failure to support the determination that the cost of RNG is justified by being essential to PGW’s provision of safe, adequate, and reliable service. I&E avers that PGW’s claims that including RNG in its supply portfolio would further goals of safe, adequate, and reliable service, are speculative and unsupported by the record. I&E contends that PGW’s testimony that elected officials support emissions reductions, that PGW could gain experience in RNG which may be beneficial in the future, and that becoming familiar with RNG now will better position PGW for the future if there is a change in law related to carbon emissions, are general policy positions that lack substantive support in the record. I&E takes issue with PGW’s claims that RNG produces environmental benefits. I&E argues that this claim is not factually supported in the record, and PGW’s innuendo and generalized statements are insufficient to support a conclusion that RNG purchases are necessary to support PGW’s safe, adequate and reliable service. Moreover, I&E argues that PGW’s claims that elected officials support the reduction of emissions must fail because there is no federal or state law, or Commission policy, that provides for the authorization of RNG purchases or standards that should apply to the reduction of emissions. Absent such law or policy, I&E concludes that any determination that RNG procurement is necessary to ensure PGW’s provision of safe, adequate and reliable service cannot stand. I&E also suggests that the Recommended Decision’s determination that diversity of supply benefits exist as a result of the RNG Pilot are contradicted in the record. *Id*. at 17-22.

In its Reply to Exception No. 1, PGW counters that PGW met its burden of proving that RNG purchases are consistent with the obligations under Sections 1317 and 1318 of the Code. First, PGW argues that its proposal will allow it to enter into RNG contracts and gain experience with a diversified portfolio product. PGW submits that it would be premature to negotiate and finalize supply contracts before the proposal is approved, and this should not be a reason to deny the proposal. PGW maintains that if the proposal is approved, it must continue to meet the criteria in Section 1318 of the Code, including negotiating favorable contracts. Therefore, it is appropriate for the Commission to consider whether all prudent steps were taken to negotiate the contracts after any contracts have been negotiated. In addition, PGW stresses that the RNG Pilot is a pilot with reporting requirements, designed to gather information and evaluate whether the program should be continued on a permanent basis, refuting I&E’s claim that the Commission does not have the necessary information to approve the RNG Pilot. PGW R. Exc. at 4-8.

Second, PGW contends that the ALJ properly concluded that the RNG Pilot is reasonable, even if it results in costs higher than the “least cost.” Agreeing with the ALJ’s conclusion, PGW avers that its obligations under Sections 1317 and 1318 of the Code require a least cost fuel procurement strategy, consistent with the obligation to provide safe, adequate and reliable service; but PGW posits that it is not obligated to purchase the least expensive gas without any further consideration. Because PGW’s obligation under the Code requires the least cost procurement to be consistent with its “obligation to provide safe, adequate and reliable service to customers,” PGW argues that its proposal does not run afoul of any legal prohibition. Furthermore, PGW argues that I&E’s characterization of the cost of RNG as “expensive” fails to recognize the $500,000 spending cap in the PGW/OCA Stipulation to keep prices down and protect customers. Regarding I&E’s challenge to the reporting requirement on BTU content being “illusory,” PGW contends that I&E’s claims are unfounded, and the promise to provide BTU content, if available, is reasonable. *Id*. at 8-12.

Finally, PGW contends that the record contains substantial evidence to support the ALJ’s conclusion that the RNG Pilot is essential to the provision of safe, adequate and reliable service. PGW avers that the RNG Pilot will permit PGW to gain experience with RNG procurement, as PGW believes RNG could become an increasingly important source of gas supply in the future. Furthermore, PGW clarifies that, while the RNG Pilot likely will result in incidental environmental benefits, they are not the reason for the proposal. Rather, the basis for PGW’s proposal is to introduce and gain knowledge and experience with a new supply source. As the RNG Pilot is not based on environmental considerations or advancing a particular environmental policy goal, PGW maintains that the approval of the proposal is properly within the Commission’s jurisdiction. PGW requests that the Commission make this clarification in its Final Order in this matter. *Id.* at 12‑16.

PGW further contends that the ALJ’s conclusions regarding diversity of supply benefits of the RNG Pilot are supported by the record. PGW maintains that RNG provides supply diversity benefits, which may be realized on a larger scale if RNG becomes a permanent supply source in the future. *Id*. at 16-17.

The OCA also replied to I&E Exception No. 1. The OCA avers that the ALJ correctly determined that the RNG Pilot, as modified by the PGW/OCA Stipulation, is consistent with a least cost gas procurement requirement. The OCA argues that I&E has applied too narrow of an application to Section 1318 of the Code. The OCA contends that the RNG Pilot will help ensure that PGW will be able to meet the needs of customers on a long-term basis, which satisfies the requirement at Section 1318(a)(3) of the Code, 66 Pa. C.S. § 1318(a)(3), that PGW must take “all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth…” In addition, the OCA points out that the RNG Pilot, as modified by the PGW/OCA Stipulation, is designed to ensure that it does not harm customers with the $500,000 annual cost limit and the use of competitive procurement to source the RNG. Regarding I&E’s criticism of the reporting of BTU content, the OCA believes the reporting requirements will provide important information to evaluate the program and its costs. The OCA concludes that the ALJ correctly determined that the RNG Pilot is consistent with the least cost gas procurement requirement. OCA R. Exc. at 2-4.

### I&E Exception No. 2 and Replies

In its Exception No. 2, I&E avers that the ALJ misconstrued its position regarding COVID-19 considerations and, as a result, failed to make the requisite “just and reasonable” rate evaluation. I&E clarifies that its position is that the Commission has mandated that a factor to be considered in the content of rate affordability is the unique considerations related to the COVID-19 pandemic when setting rates. I&E contends that when considering the COVID-19 pandemic impact, along with the impact of the associated termination moratorium, on PGW’s cash flow, as well as the impact on customers, permitting PGW to pay a premium for RNG does not comport with just and reasonable rates. I&E argues that the ALJ erred by not conducting the required COVID‑19 impact analysis on rate affordability, despite the evidence that PGW customers would pay more for RNG during this time. I&E Exc. at 23-25.

In its Reply to I&E’s Exception No. 2, PGW contends that the ALJ properly concluded that the impacts of COVID-19 are not a reason to reject a rate increase. In doing so, PGW states that the Commission, in *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Opinion and Order entered February 18, 2021), held that it would consider the effects of the pandemic as they impact traditional ratemaking and the cost to provide service, not that a rate increase could be deemed unreasonable because customers were experiencing negative consequences of the pandemic. PGW avers that the facts of this case do not support a COVID-19 impact analysis, but even if such impacts were considered, the record evidence shows that the City of Philadelphia is moving in a positive economic direction. PGW R. Exc. at 17-21.

Also, in response to I&E’s Exception No. 2, the OCA contends that the ALJ adequately addressed the impact of COVID-19 in her analysis. The OCA states that the impact of COVID-19 is an important consideration in determining whether rates for PGW’s customers are just and reasonable; however, the OCA avers that the minimal price impact, as ensured by the annual price cap for RNG in the PGW/OCA Stipulation, is outweighed by the development of a new, sustainable and geographically diverse long-term gas market, and submits that the limited impact on customers would not result in rates here that are unjust and unreasonable. The OCA argues that the RNG Pilot should be approved because it will permit PGW to explore Pennsylvania’s RNG markets with limited ratepayer risk, and that the RNG Pilot is consistent with the least cost gas procurement requirement. OCA R. Exc. at 4-5.

### I&E Exception No. 3 and Replies

In its Exception No. 3, I&E contends that the ALJ should not have permitted environmental concerns to be addressed in this GCR proceeding because the Commission has determined that PGW should not pursue environmental policy issues in rate proceedings on a piecemeal basis. I&E maintains that the Commission previously declined to establish environmental policy in a PGW base rate case, and yet in the instant case, PGW is taking a contradictory position to the one it took less than a year ago. I&E argues that the ALJ should have addressed this issue in the Recommend Decision, along with the need for stakeholder input and development of universal guidelines for assessing environmental policy issues. I&E argues that 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 are necessary to establish the type, amount, and breadth of information to be submitted to the Commission. I&E believes this prior direction is applicable here as well. I&E Exc. at 25-27.

In its Reply to I&E’s Exception No. 3, PGW argues that I&E’s reliance on the Commission’s Order in PGW’s 2020 base rate case is misplaced. PGW avers that it is not pursuing an environmental issue in this case, but rather is seeking approval to purchase a limited amount of RNG in an attempt to gain knowledge and experience with a new supply source. PGW maintains that its request falls squarely within the Commission’s jurisdiction and authority to regulate PGW’s rates and GCR under Sections 1317 and 1318 of the Code. PGW R. Exc. at 21-23.

### OSBA Letter Exceptions and Replies

In its Letter Exceptions, and relying upon the reasoning set forth in its Main Brief, the OSBA briefly raises several arguments. First, the OSBA argues that the PGW/OCA Stipulation must be rejected because it is inconsistent with the requirements under Section 1318(a) of the Code, 66 Pa. C.S. § 1318(a), that purchased gas costs cannot be determined to be just and reasonable unless they result from a least cost procurement policy. The OSBA avers that the RNG to be purchased here could be up to five times as costly as other natural gas supplies. OSBA Letter Exc. at 1.

Second, the OSBA disputes PGW’s argument that a purchasing strategy may be reasonable even if it produces higher than least cost procurement if the strategy improves or maintains the safety, adequacy and reasonableness of the gas utility’s supply. The OSBA maintains that PGW’s gas supply portfolio has been deemed safe, adequate and reasonable without including RNG, and PGW has not explained what aspects of the pilot program justify placing the additional RNG cost burden on customers. *Id*. at 2.

Third, the OSBA contends that the Commission recently acknowledged its responsibility to consider evidence and the unique considerations of the COVID-19 pandemic when setting rates. In light of PGW’s recent base rate increase, impacts of other rate mechanisms, and economic implications of the COVID-19 pandemic, the OSBA argues that any further rate increase at this time would be untimely, unjust and unreasonable. *Id*.

In reply, PGW points to and incorporates its arguments offered above in response to the claims regarding the increased cost of RNG and the impacts of the COVID-19 pandemic. PGW avers that the OSBA’s argument that PGW’s gas supply portfolio has been deemed safe, adequate and reliable without RNG is narrowly focused on short-term considerations. PGW emphasizes that the record demonstrates that RNG could be important for security and adequacy of supply in the future, and that gaining experience with RNG now will put PGW in a position to utilize it in the future. PGW R. Exc. at 23.

The OCA also replies to several of the arguments made by the OSBA, specifically those addressing whether the RNG Pilot is consistent with the least cost gas procurement requirement and its impact on gas cost rates. The OCA’s arguments are included in the discussion above addressing its Replies to I&E’s Exception Nos. 1 and 2. OCA R. Exc. at 2-5.

## Disposition

This matter comes before us on I&E’s Exceptions and the OSBA’s Letter Exceptions to the ALJ’s Recommended Decision regarding the sole issue litigated in this proceeding, which recommended approval of PGW’s RNG Pilot, as modified by the PGW/OCA Stipulation, along with two additional modifications to the proposal. While PGW’s interest in gaining knowledge and information regarding acquisitions of a possible future source of gas supply with potential environmental benefits is laudable, we conclude here that PGW did not meet its burden of proof that the proposed RNG purchases satisfy the least cost gas procurement requirements under Section 1318 of the Code, 66 Pa. C.S. 1318(a). We also disagree with the ALJ’s recommendation to approve the RNG Pilot, as modified by the PGW/OCA Stipulation, in this proceeding. In our opinion, the testimony, evidence and arguments presented by I&E and the OSBA on this issue outweighed that of PGW and the OCA. Therefore, our decision herein: (1) will grant, in part, the Exceptions of I&E and the Letter Exceptions of the OSBA; and (2) adopt in part, and reverse in part, the ALJ’s Recommended Decision, consistent with this Opinion and Order, as discussed below.

PGW’s RNG Pilot, as modified by the PGW/OCA Stipulation, is designed to aid PGW’s understanding of the RNG market and related gas supply acquisitions used to serve customers. Under the pilot program, PGW would buy a limited supply of RNG at a capped amount for two years and report on its experience. While the cost of the RNG purchases would be minimal, it will cost more than other conventional sources of gas supply.

After carefully considering the positions of the Parties, we find that PGW did not meet its burden of proof to establish the justness and reasonableness of the RNG Pilot. The evidence in the case demonstrates that the costs of the RNG Pilot, as modified by the PGW/OCA Stipulation, would not produce just and reasonable rates because the proposal is not consistent with Section 1318 of the Code, 66 Pa. C.S. § 1318. Section 1318 provides that no rates for an 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(a).

We agree with the arguments raised by I&E in its Exception No. 1, and the OSBA in its Letter Exceptions related thereto, that the RNG Pilot, as modified by the PGW/OCA Stipulation, fails to satisfy two of the four factors under Section 1318 of the Code, 66 Pa. C.S. § 1318(a)(1)-(4), considered in evaluating compliance with the least cost gas procurement requirement. First, the RNG Pilot conflicts with the third factor, which requires a 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. The uncontested evidence in the case, including the testimony of PGW’s witness, demonstrates that RNG, as compared to conventional natural gas, is more expensive. In fact, PGW’s witness testified that RNG supplies would cost between $13.00 and $17.50 more per Dth, which is up to five times more costly, than other natural gas supplies. Based on the cost alone, the RNG Pilot is inconsistent with the requirements under Section 1318(a) and, therefore, should be denied.

In addition, we agree with I&E and the OSBA that the ALJ’s Recommended Decision overlooked PGW’s failure to support the determination that the cost of RNG is justified as being essential to PGW’s provision of safe, adequate, and reliable service. No evidence was provided to show what aspects of PGW’s current or anticipated gas supply portfolio would cause PGW’s service to be rendered unsafe, inadequate or unreliable without RNG in the supply mix. Put simply, no substantial record evidence has been put forth to justify the additional cost of RNG. Any claims that including RNG in PGW’s gas supply portfolio would further provide for safe, adequate, and reliable service are speculative and unsupported by the record.

Although PGW suggests that general policy positions of elected officials in support of emissions reductions demonstrate why gaining experience now in RNG acquisitions may be beneficial if there is a future law change, the Commission does not have the authority to disregard the least cost procurement requirement under the current law. The Commission is a creature of statute and has only the powers expressly conferred upon it by its enabling legislation. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citing *Allegheny Cnty. Port Auth. v. Pa. PUC*, 237 A.2d 602 (Pa. 1967)); *Del. River Port Auth. v. Pa. PUC*, 145 A.2d 172 (Pa. 1958). There exists no federal or state law or directive at this time that provides for or requires the authorization of RNG purchases as a portion of an NGDC’s supply portfolio. Absent such a change in law, any determination at this time that RNG procurement is necessary to ensure PGW’s provision of safe, adequate and reliable service would be outside of the Commission’s authority.[[13]](#footnote-13) As such, the Commission must follow the directive of Section 1318(a) of the Code, 66 Pa. C.S. § 1318(a), that requires that purchased gas costs must result from a least cost procurement policy.

Inasmuch as Section 1318 of the Code, 66 Pa. C.S. § 1318, requires PGW to obtain its gas supply pursuant to a least cost procurement policy, and its current gas portfolio is safe, adequate and reliable without the addition of more expensive RNG,[[14]](#footnote-14) the RNG Pilot, as modified by the PGW/OCA Stipulation, should be denied.

Next, we will briefly address the second of the four factors of the least cost gas procurement requirement. We agree that the RNG Pilot, as modified by the PGW/OCA Stipulation, is not consistent with a finding that PGW has taken all prudent steps necessary to negotiate favorable gas contracts. No evidence in support of this finding was offered because there were no actual or tentative contracts, or descriptions of contract terms, presented for review by the Parties. While we acknowledge the challenge for PGW to produce such contracts or terms at this time in the proceeding, the issue is moot.

As set forth above, we disagree with the ALJ that the expense of the RNG Pilot, as modified by the PGW/OCA Stipulation, may be reasonable. We appreciate that procuring a limited amount of RNG in order to gain experience in that market, in anticipation that it could potentially become an important source of gas supply in the future, may be a commendable objective. However, there is currently no legislative mandate or directive, or perhaps most importantly, authorization, that calls for RNG to be included in PGW’s gas supply portfolio. As a result, the RNG Pilot, as modified by the PGW/OCA Stipulation, is not consistent with the least cost gas procurement requirement at Section 1318 of the Code, 66 Pa. C.S. § 1318, and it is denied. Therefore, we shall grant I&E’s Exception No. 1 and the related arguments in the OSBA’s Letter Exceptions on this issue. We shall also reverse the ALJ’s Recommended Decision, in part, consistent with the discussion in this Opinion and Order. Due to these rulings, we find that it is not necessary to address or consider, and we shall not adopt or deny, I&E’s Exception Nos. 2 and 3, and the remaining portions of the OSBA Letter Exceptions.

# Conclusion

Based upon our review, evaluation, and analysis of the record evidence in this proceeding, we shall adopt, in part, and reverse, in part, the ALJ’s findings, conclusions and analysis in the Recommended Decision. Specifically, we shall adopt the ALJ’s findings, conclusions and analysis with regard to the Joint Petition in the Recommended Decision, and we shall approve the Joint Petition without modification. We shall reverse the ALJ’s findings, conclusions and analysis with regard to the contested issue reserved for litigation, and we shall deny the RNG Pilot, as modified by the PGW/OCA Stipulation.

Furthermore, we shall grant I&E’s Exception No. 1 and the portions of the OSBA’s Letter Exceptions related to the RNG Pilot, as modified by the PGW/OCA Stipulation, and the least cost procurement issue. Also, as explained above, we shall not address or consider I&E’s Exception Nos. 2 and 3, and the remaining portions of the OSBA’s Letter Exceptions; **THEREFORE,**

 **IT IS ORDERED:**

1. That the Exceptions filed by the Commission’s Bureau of Investigation and Enforcement on July 1, 2021, are granted, in part, consistent with this Opinion and Order.
2. That the Letter in Lieu of Exceptions filed by the Office of Small Business Advocate on July 1, 2021, is granted, in part, consistent with this Opinion and Order.
3. That the Recommended Decision of Administrative Law Judge Darlene Heep, issued on June 24, 2021, is adopted, in part, and reversed, in part, consistent with this Opinion and Order.
4. That the Joint Petition for Settlement of Philadelphia Gas Works’ 2021-2022 Gas Cost Recovery Proceeding filed on June 4, 2021, by the Office of Consumer Advocate, the Office of Small Business Advocate, and Philadelphia Gas Works is approved without modification.
5. That Philadelphia Gas Works be permitted to file a tariff supplement, on at least one day’s notice to the Commission, containing changes in rates to provide for the recovery of the costs of purchased gas, consistent with the terms and conditions of the Joint Petition for Settlement of Philadelphia Gas Works’ 2021-2022 Gas Cost Recovery Proceeding pursuant to 66 Pa. C.S. § 1307(f).
6. That the formal complaints of the Office of Consumer Advocate at Docket No. C-2021-3024126, and the Office of Small Business Advocate at Docket No. C-2021-3024293, be marked satisfied.
7. That Philadelphia Gas Works, the Office of Consumer Advocate, and the Office of Small Business Advocate be ordered to comply with the terms and conditions of the Joint Petition for Settlement of Philadelphia Gas Works’ 2021-2022 Gas Cost Recovery Proceeding pursuant to 66 Pa. C.S. § 1307(f) executed and submitted in this proceeding as though each term and condition stated therein had been the subject of an individual ordering paragraph.
8. That upon the filing of a tariff supplement by Philadelphia Gas Works, acceptable to the Commission as conforming with this Order and the Joint Petition for Settlement of Philadelphia Gas Works’ 2021-2022 Gas Cost Recovery Proceeding pursuant to 66 Pa. C.S. § 1307(f), and the Commission’s approval thereof, the purchased gas cost rates established therein become effective for service rendered on and after September 1, 2021.
9. That upon acceptance and approval by the Commission of the tariff supplement and supporting data filed by Philadelphia Gas Works, as being consistent with this Order and the Joint Petition for Settlement of Philadelphia Gas Works’ 2021‑2022 Gas Cost Rate Proceeding, pursuant to 66 Pa. C.S. § 1307(f), the inquiry and investigation at Docket No. R-2021-3023970 be terminated and the docket marked closed; and that the formal complaint dockets be marked closed at Docket Nos. C‑2021‑3024126 and C-2021-3024293.
10. That the Renewable Natural Gas Pilot Program Proposal, proposed by Philadelphia Gas Works, and modified by the Joint Stipulation of Philadelphia Gas Works and the Office of Consumer Advocate, is denied.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: August 26, 2021

ORDER ENTERED: August 26, 2021

1. The Commission’s Bureau of Investigation and Enforcement (I&E) and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) have indicated that, although they are not parties to the Settlement, they do not oppose the Settlement. As noted within the Joint Petition, PGW’s RNG Pilot is not addressed in the Settlement, and was the sole issue reserved for litigation. [↑](#footnote-ref-1)
2. PGW’s GCR on September 1, 2020 was $3.4107/Mcf and was increased in the Company’s first quarterly GCR filing on December 1, 2020 to $3.8484/Mcf. PGW’s second quarter GCR filing decreased the GCR to $3.4687/Mcf effective March 1, 2021. PGW St. 1 at 5. [↑](#footnote-ref-2)
3. The instant filing indicated that, pursuant to the Commission’s approval in its 2020-2021 GCR, PGW intended to depart from certain requirements of 52 Pa. Code §§ 53.45(b), 53.64(c), 53.68(a) and 53.64(i)(5)(i), to address the timing of bill inserts, public notice and underlying data to be relied upon for the March 1, 2021 quarterly 1307(f) filing. R.D at 2-3; *Pa. PUC v. Philadelphia Gas Works*, Docket No. R‑2020‑3017934 (Final Order entered August 6, 2020) at Ordering Paragraph No. 9. [↑](#footnote-ref-3)
4. PGW submitted its GCR filing through the Commission’s eService capabilities because the Commission’s offices closed on or about March 16, 2020 due to the Coronavirus 2019 pandemic (COVID-19). All service and filing of documents by the Parties, and by the Commission, occurred electronically during the pendency of this proceeding. [↑](#footnote-ref-4)
5. PICGUG did not file a Main Brief. [↑](#footnote-ref-5)
6. PICGUG did not file a Reply Brief. [↑](#footnote-ref-6)
7. It is noted in the Joint Petition that, regarding the eight-month interim period and the twelve-month projected period, it is expressly understood and agreed that this finding is made solely for the purpose of setting prospective rates that shall continue to be subject to the standards of Section 1318 of the Code, 66 Pa. C.S. § 1318, and to further review in an appropriate future proceeding. Joint Petition at 12. [↑](#footnote-ref-7)
8. The terms of the Joint Petition are detailed here using their original paragraph numbering. [↑](#footnote-ref-8)
9. The Settlement provides that PGW will refund $2,829,211 related to arrearage forgiveness associated with average bill Customer Responsibility Program (CRP) customers for Fiscal Year (FY) 2018 and 2019 that was included twice in PGW’s USC calculation by crediting the USC rate in this amount on a going forward basis, beginning in the June 1, 2021 quarterly filing. Joint Petition at ¶ 31. [↑](#footnote-ref-9)
10. The Settlement also provides for a further analysis pertaining to the variances between its projected FY 2020 USC over-collection of $0.9 million in its 2020 GCR proceeding and its claimed under-collection of USC for FY 2020 in this proceeding of $9.4 million. Joint Petition at ¶ 32. On June 4, 2021, PGW filed at this docket a Report on the Universal Service and Energy Conservation Surcharge for Fiscal Year 2020. [↑](#footnote-ref-10)
11. According to PGW, RNG is a biogas produced from a biochemical process. It has a methane content comparable to conventional natural gas and can be a suitable energy source in applications that require pipeline-quality gas. It reduces greenhouse gas emissions because it is a carbon-neutral fuel that comes from organic sources that once absorbed carbon dioxide from the atmosphere during photosynthesis. RNG can be sourced through a variety of processes and can be produced by landfills, wastewater treatment facilities, livestock operations and food waste. RNG has greater benefits when it is produced from organic waste that would otherwise decay and emit methane into the atmosphere, as RNG production captures this methane release. PGW St. 3 at 1-2. [↑](#footnote-ref-11)
12. *See Pa. PUC v. Columbia Gas of Pennsylvania, Inc*., Docket No. R‑2014‑2407345, 2014 Pa. PUC LEXIS 691, at \*11 (Oct. 23, 2014) (“The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested Rider. Instead, the utility’s burden, to establish the justness and reasonableness of every component of its request, is an affirmative one and remains with the public utility throughout the course of the proceeding.”). [↑](#footnote-ref-12)
13. To the extent the Legislature wants RNG to be included in the NGDC’s gas supply portfolio, or the portfolio to be sourced under a different standard than least cost, it could adopt legislative provisions creating such authority for the Commission. For example, when the Legislature desired that a prescribed amount of electric energy sold to retail customers be derived from certain alternative energy sources, it enacted the Alternative Energy Portfolio Standards Act of 2004 (amended in 2008). *See*, 73 P.S. § 1648.4 and 66 Pa. C.S. § 2814. Also, when the Legislature wanted electric utility default service to be sourced from contracts with varying lengths at the least cost to customers over time rather than sourcing the power at prevailing market prices, it enacted Act 129 of 2008. *See*, 66 Pa. C.S. §2807(e)(3.4) and (3.7). [↑](#footnote-ref-13)
14. 14 We are not persuaded by the OCA’s reliance on *Pa. PUC v. PGW*, Docket No. R-2010-2157062 (Order entered July 29, 2010), to support its argument that Section 1318 does not require the purchase of the lowest cost resource available at any given time, but instead requires that the portfolio be the least cost consistent with the obligation to provide safe, adequate and reliable service over the foreseeable time horizon. *See*, OCA M.B. at 8; OCA R.B. at 2. The OCA claims that support of the RNG Pilot can be found in Commission-approved hedging programs in GCR cases, arguing that both are designed for long-term pricing benefits rather than immediate least cost prices. While it is true that limited hedging in gas supply portfolios has been approved in the context of GCR settlements in order to afford the NGDC’s a measure to mitigate natural gas price volatility, authorizing direct purchases of high-cost gas like RNG has never been approved as part of a least cost gas procurement plan. The issue here is not about the concept of hedging for volatility purposes; rather it is addressing whether to add a portion of higher-priced RNG to PGW’s gas supply portfolio in order to gain experience and knowledge with a possible future alternative source of supply with potential environmental benefits. [↑](#footnote-ref-14)