



August 7, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2023-3037933

Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced proceeding, please find POWER Interfaith's Reply Brief. As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document via email. Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

/s/ Devin McDougall

PA Attorney ID No. 329855

Senior Attorney

Earthjustice

1617 John F. Kennedy Blvd., Suite 2020

Philadelphia, PA 19103

[dmcDougall@earthjustice.org](mailto:dmcDougall@earthjustice.org)

(917) 628-7411

cc:

Certificate of Service

Secretary Chiavetta (via electronic filing)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2023-3037933
v.	:	
	:	
Philadelphia Gas Works	:	
	:	

**REPLY BRIEF OF POWER INTERFAITH**

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## I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.501, POWER Interfaith (“POWER”) respectfully submits this Reply Brief in support of its positions in the above-captioned proceeding (“Proceeding”) of the Pennsylvania Public Utility Commission (the “Commission”) regarding the \$85.1 million annual rate increase sought by Philadelphia Gas Works (“PGW”).<sup>1</sup> This Reply Brief is supplemental to POWER’s Main Brief and addresses those matters which require additional discussion and clarification as a result of the Main Brief filed by PGW. The arguments and analysis of POWER’s Main Brief are incorporated herein by reference.

In this Proceeding, PGW’s case rests on maintaining a “business as usual” scenario, where PGW spends more and more each year to deal with its aging infrastructure,<sup>2</sup> with more and more customers faced with an intolerable energy burden rising beyond 6% of their take-home income. However, it would not be just and reasonable, or reflective of quality management practices, for PGW to raise its rates without taking meaningful action to mitigate the affordability impacts of any rate increase and to control its infrastructure costs in order to protect affordability in the long-term.<sup>3</sup>

Instead, the Commission should require PGW to mitigate the affordability impacts of any rate increase resulting from this Proceeding. First, PGW’s proposed increase to the residential customer charge should be denied, as it would be inconsistent with principle of gradualism, would unduly burden low-income ratepayers, and would harm the ability of ratepayers to control

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<sup>1</sup> PGW 2023 Base Rate Case Filing, Volume I, Part 1 of 3, Statement of Reasons at 1, PA PUC Docket No. R-2023-3037933 (Feb. 27, 2023).

<sup>2</sup> PGW witness Dr. Peach explains that the system is “quite old”, “cost[s] more to run than most systems that combine a small city with a large suburban service territory”, where pipeline replacement “is necessarily more difficult and more costly . . .” than newer systems. PGW Statement No. 9-R, Rebuttal Test. of H. Gil Peach, at 25–26 (June 26, 2023).

<sup>3</sup> 66 Pa. C.S. § 1301(a); 52 Pa. Code § 69.2703.

their bills through energy efficiency and conservation.<sup>4</sup> Second, PGW should be required to increase its Low-Income Usage Reduction Program (“LIURP”) budget proportionally to any approved residential rate increase, which will help low-income customers access energy efficiency resources that can help them control their bill.<sup>5</sup> Third, PGW’s requested inclusion of its lobbying expenses in its revenue requirements should be denied, which will reduce the overall cost burden on ratepayers.<sup>6</sup>

The Commission should also require PGW to take action to bring its infrastructure costs under control, which will help reduce PGW’s cost of service and advance long-term affordability. First, the Commission should direct PGW to consider the cost-reduction opportunities of non-pipeline alternatives (“NPAs”), through convening a collaborative working group to investigate and develop NPA pilot projects, and through regular public reporting on its NPA initiatives.<sup>7</sup> Given that PGW’s infrastructure spending is projected to reach \$6 to \$8 billion in the coming decades,<sup>8</sup> it is essential that all cost-reduction opportunities are fully and thoroughly investigated. Second, PGW should be required to file comprehensive annual reports on the costs of its pipeline replacement work, which will help increase transparency and enable better tracking and reduction of those costs.<sup>9</sup>

Philadelphia is currently one of the most energy-burdened cities in the United States, but it does not need to remain that way.<sup>10</sup> The recommended actions presented by POWER’s

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<sup>4</sup> POWER Interfaith Statement No. 3, Direct Test. of Ben Havumaki, at 2:3–6 (May 31, 2023).

<sup>5</sup> POWER Interfaith Statement No. 2, Direct Test. of Dorie K. Seavey, PhD, at 29:8–10 (May 31, 2023).

<sup>6</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 29:20–30:3 (May 31, 2023).

<sup>7</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 26:22–27:12 (May 31, 2023).

<sup>8</sup> POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 12:7–9 (July 7, 2023).

<sup>9</sup> POWER Interfaith Statement No. 2, Direct Test. of Dorie K. Seavey, PhD, at 30:11–31:20 (May 31, 2023).

<sup>10</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 3:15–17 (May 31, 2023), citing Exh. MDK-2, PGW, Business Diversification Study, at 8.

witnesses provide a reasonable way forward to begin to address and correct the affordability challenges facing PGW's customers, and it would be just and reasonable, and in the public interest, for the Commission to direct PGW to implement them.

## II. CUSTOMER CHARGE

As detailed in POWER's Main Brief, recent Commission precedent, expert testimony, and public accounts confirm that PGW's proposed 30% fixed charge hike would impede energy efficiency efforts, harm the majority of low-income customers that are not covered by the Customer Responsibility Program ("CRP"), and cause rate shock.<sup>11</sup> PGW's Main Brief does not address any of those Commission precedents or the public testimony, but rather just reiterates its witnesses' personal beliefs, unsupported by citation or supporting evidence, that a 30% fixed charge hike will be "virtually unnoticeable."<sup>12</sup> PGW has failed to meet its burden of proof on the fixed charge hike – when the Commission weighs its own precedents and the well-supported testimony of experts and customers, versus the personal beliefs of PGW's witnesses, the Commission must conclude that the weight of the evidence supports rejection of this fixed charge hike. POWER offers a short reply on two misstatements in PGW's Main Brief.

First, PGW only cites one Commission case in its Customer Charge section: *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2012-2290597, 2012 Pa. PUC LEXIS 1757 (October 19, 2010 R.D.; Order entered December 28, 2012). PGW misreads that case, ignoring several distinguishing factors. To the extent the case is applicable here, it actually supports POWER's position on fixed charges, not PGW's.

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<sup>11</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 15–25 (July 27, 2023).

<sup>12</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 48 (July 27, 2023).

In *PPL*, the utility originally proposed hiking its residential fixed charge to a level similar to what PGW proposes here.<sup>13</sup> That original proposal failed. The Commission “conclude[d] that PPL’s original proposal is excessive, disregards the principle of gradualism and is not reasonable.”<sup>14</sup> This case supports the same conclusion as to PGW’s proposed fixed charge hike.

Recognizing that its original proposal violated the principle of gradualism, PPL offered a compromise position with a reduction in the fixed charge increase, to improve customers’ “opportunity to control their monthly distribution bills through conservation.”<sup>15</sup> PGW has not offered any such compromise for the Commission to consider in the instant case, and refuses to acknowledge that a reduced fixed charge improves customers’ opportunity to lower bills through conservation. Another distinguishing fact: PPL proposed a reduction of the volumetric charge, whereas PGW proposes an increase of that charge in the instant case.<sup>16</sup> In sum – *PPL* can be distinguished, and to the extent it is applicable, it supports rejection of PGW’s proposed fixed charge hike.

The Commission rejected PPL’s originally proposed fixed charge hike as a violation of the principle of gradualism.<sup>17</sup> PGW’s Main Brief misstates that principle. In its discussion of gradualism, PGW points to the ratio of the proposed fixed charge to the cost of service figure in PGW’s cost of service study.<sup>18</sup> This is irrelevant: it is a measure of the benefit of the fixed charge hike to PGW. The principle of gradualism relates to the impact of the fixed charge hike to customers, not the benefit to the utility. James Bonbright tells us that “[g]radualism requires that

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<sup>13</sup> Opinion and Order, PA PUC Docket No. R-2012-2290597, at 124 (Dec. 28, 2012). PPL proposed a fixed charge of \$16 per month. Adjusted for inflation, that would be \$21.14 in April 2023. PGW witness Dr. Peach claimed that an even higher fixed charge of \$21.75 (as of April 2023) would be “inherently reasonable.” PGW Statement No. 9-R, Rebuttal Test. of H. Gil Peach, at 7:2, 11:9–10 (June 26, 2023).

<sup>14</sup> Opinion and Order, PA PUC Docket No. R-2012-2290597, at 131 (Dec. 28, 2012).

<sup>15</sup> Opinion and Order, PA PUC Docket No. R-2012-2290597, at 128 (Dec. 28, 2012).

<sup>16</sup> Opinion and Order, PA PUC Docket No. R-2012-2290597, at 124 (Dec. 28, 2012).

<sup>17</sup> Opinion and Order, PA PUC Docket No. R-2012-2290597, at 131 (Dec. 28, 2012).

<sup>18</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 47 (July 27, 2023).



sudden, adverse changes to customer rates should be minimized.”<sup>19</sup> In case after case, the Commission has applied that principle to reject proposed fixed charge hikes of a similar proportion to what PGW proposes, finding they would cause rate shock.<sup>20</sup> PGW does not, and cannot, address those recent precedents, or explain why the principle of gradualism does not mandate the same result in the instant case.

### **III. LOW-INCOME USAGE REDUCTION PROGRAM**

#### **A. Introduction**

PGW’s Main Brief fails to adequately rebut the positions of numerous parties, including POWER, calling for an increase in the LIURP budget as a condition to adoption of any rate increase.<sup>21</sup> In response to these proposals for increases to the LIURP budget that would mitigate the detrimental impact of a rate increase on low-income households, PGW relies largely on the fact that it spends more on LIURP than other Pennsylvania utilities.<sup>22</sup> While accurate, this argument fails to account for the fact that PGW’s customer base is uniquely energy-burdened and contains an unusually high proportion of low-income households.<sup>23</sup> It is appropriate for PGW to have a higher LIURP budget than other Pennsylvania utilities because the LIURP budget is based on the needs of its customers, not other utilities’ customers.

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<sup>19</sup> POWER Interfaith Statement No. 3, Direct Test. of Ben Havumaki, at 5:15–16 (May 31, 2023); James C. Bonbright, *Principles of Public Utility Rates* (photo. reprinted 2005) (1961).

<sup>20</sup> Opinion and Order, PA PUC Docket No. R-2020-3018835, at 264–65 (Feb. 18, 2021); Opinion and Order, PA PUC Docket No. R-2021-3023618, at 30 (Oct. 28, 2021); Opinion and Order, PA PUC Docket No. R-2012-2290597 (Dec. 28, 2012).

<sup>21</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 78–79 (July 27, 2023) (referencing OCA, CAUSE-PA/TURN, and POWER’s positions that the LIURP budget should be increased).

<sup>22</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 78 (July 27, 2023).

<sup>23</sup> Exh. MDK-2, PGW, Business Diversification Study at 8, 16; CAUSE-PA/TURN Statement No. 1, Direct Test. of Harry S. Geller, at 6:18–7:1 (May 31, 2023) (“PGW’s service territory of Philadelphia has a poverty rate nearly double the statewide poverty rate.”).

## B. The Need for Increased LIURP Spending

In its Main Brief, PGW relies on the erroneous claim that POWER “presented no rational link” between the proposed rate increase and a commensurate increase to the LIURP budget.<sup>24</sup> In fact, Dr. Seavey explained the link between a rate increase and a LIURP budget increase multiple times in testimony.<sup>25</sup> As rates rise, the “benefit” side of the cost-benefit analysis of LIURP measures in a customer’s home will rise accordingly, making more customers eligible for cost-effective LIURP services.<sup>26</sup> PGW’s most recent Needs Assessment already envisioned a 17-year timeline to serve currently eligible customers with LIURP measures, and rising rates paired with outside economic factors such as inflation will only continue to increase the number of eligible customers waiting to be served.<sup>27</sup> Further, as many parties have noted, PGW itself has stated that LIURP services can reduce the costs of overall CRP subsidies by lowering the usage of some CRP customers.<sup>28</sup>

With regard to PGW’s statement that Dr. Seavey did not provide an estimate of the LIURP budget increase or a cost impact analysis, Dr. Seavey’s recommendation of a LIURP budget increase that matches the percentage of the approved average residential rate increase inherently cannot be estimated because there is no way to ascertain at the outset of a rate increase proceeding what the ultimately-approved rates will be.<sup>29</sup> However, numerous settlements in past

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<sup>24</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 79–80 (July 27, 2023).

<sup>25</sup> POWER Interfaith Statement No. 2, Direct Test. of Dorie K. Seavey, PhD, at 28:18–29:5 (May 31, 2023); POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 19:9–20:8 (July 7, 2023).

<sup>26</sup> POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 19:9–12 (July 7, 2023).

<sup>27</sup> POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 19:12–19 (July 7, 2023).

<sup>28</sup> POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 20:3–8 (July 7, 2023); *see also* CAUSE-PA/TURN, Main Brief, PA PUC Docket No. R-2023-3037933, at 15 (July 27, 2023) (“PGW touts that its Home Comfort program can help reduce the subsidy cost of CRP when targeted to serve CRP participants . . . . For CRP customers who receive a PIPP bill, bill saving from reduced usage through LIURP participation reduces the cost of the CRP subsidy paid by other ratepayers.”); OCA, Main Brief, PA PUC Docket No. R-2023-3037933, at 89 (July 27, 2023) (“As more than 60% of PGW’s LIURP participants are also CRP participants, every dollar of reduced bills to a CRP participant would be a dollar of reduced costs to be collected through the Universal Service Rider.”).

<sup>29</sup> *See* PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 79 (July 27, 2023).

rate cases have adopted this approach and increased the LIURP budget to maintain the status quo as residential rates generally increased.<sup>30</sup> Whether the Commission takes POWER's recommended approach or the recommended approach of OCA<sup>31</sup> or CAUSE-PA/TURN,<sup>32</sup> POWER maintains that the LIURP budget must be increased to mitigate the affordability impacts of any approved residential rate increase.

#### **IV. NON-PIPELINE ALTERNATIVES**

##### **A. Introduction**

In its Main Brief, PGW contends that the Commission should not order PGW to implement Mr. Kleinginna's NPA recommendations because the Commission lacks legal authority to do so and because the implementing the recommendations would be unreasonable due to safety, reliability, and other issues.<sup>33</sup> These contentions are unavailing, as explained in detail below. However, as a threshold matter, PGW's arguments rely on mischaracterizations of Mr. Kleinginna's NPA recommendations that are important to correct.

As discussed in POWER's Main Brief, Mr. Kleinginna recommended that PGW integrate consideration of cost-reduction opportunities from NPAs into its infrastructure planning in order to ensure that all opportunities to reduce its cost of service and advance affordability are fully considered. Mr. Kleinginna recommended that PGW implement that consideration through 1) a collaborative working group including PGW and any interested Commission staff to investigate

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<sup>30</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 29 (July 27, 2023) (citing examples from UGI Electric and UGI Gas rate cases in which LIURP budgets were increased commensurate with the percentage rate increase to the residential class).

<sup>31</sup> OCA, Main Brief, PA PUC Docket No. R-2023-3037933, at 89 (July 27, 2023) (taking the position that PGW should increase its LIURP budget to serve an additional 425 homes per year).

<sup>32</sup> CAUSE-PA/TURN, Main Brief, PA PUC Docket No. R-2023-3037933, at 33 (July 27, 2023) (requesting that the Commission increase funding for the Home Comfort program sufficient to serve 3,000 households per year, or an increase to \$8,925,000).

<sup>33</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 89–97 (July 27, 2023).

and develop NPA pilots and 2) regular public reporting on its NPA initiatives.<sup>34</sup> As Mr. Kleinginna testified, any potential NPA pilot should be rigorously screened for safety, cost-effectiveness, and other criteria identified by the working group.<sup>35</sup>

However, PGW mischaracterizes Mr. Kleinginna's recommendations as requiring PGW to "fundamentally alter the focus of its infrastructure planning" away from "safety and reliability."<sup>36</sup> This contention is inaccurate, as Mr. Kleinginna did not recommend any alteration in the focus of infrastructure planning away from safety and reliability. Instead, Mr. Kleinginna recommended that existing infrastructure planning include considerations of potential savings from NPAs in order to perform such work more cost-effectively and reduce the cost burden on ratepayers.<sup>37</sup> As Mr. Kleinginna further explained in surrebuttal, "I have never suggested that PGW should alter the focus of its planning away from safety or reliability. In fact, my analysis actually focuses on how PGW might more reliably and safely serve its load. Lower design requirements on the system at peak (and design) times allow for greater safety and reliability should supply be interrupted."<sup>38</sup> It also bears emphasis that, as noted above, Mr. Kleinginna recommended that all potential NPA deployments be screened carefully for consistency with safety and other planning requirements, which further illustrates that his recommendations do not call for an alteration of those requirements.

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<sup>34</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 31 (July 27, 2023); POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 26:18–23; 29:1–8 (May 31, 2023).

<sup>35</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 28:4–19 (May 31, 2023).

<sup>36</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 85 (July 27, 2023). *See also* PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 85 (July 27, 2023) ("POWER's proposed integration of NPAs into PGW's infrastructure planning represents a transformational shift away from PGW's current safety-driven main replacement program.").

<sup>37</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 25 (May 31, 2023) ("[I]t would be highly beneficial for energy affordability to fully integrate consideration of NPAs into the capital planning and forecasting process in order to identify anticipated capital needs that could be deferred or reduced through less capital-intensive NPAs.").

<sup>38</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 13:1–5 (July 7, 2023).

Examining more cost-effective ways to meet infrastructure needs consistent with all safety and reliability criteria does not amount to a transformation of priorities away from safety and reliability. PGW itself states that it already looks for opportunities to reduce costs in its infrastructure planning.<sup>39</sup> Mr. Kleinginna’s recommendations build on that approach by recommending incorporating consideration of cost-reduction opportunities from NPAs. This is an extension of cost-effectiveness analysis work that PGW is already performing, not a fundamental alteration of priorities, as PGW claims.

PGW also mischaracterized Mr. Kleinginna’s testimony as recommending that NPAs be implemented through forced measures. PGW claims that Mr. Kleinginna recommended that “PGW should alter its capital and infrastructure planning to . . . force drastic reductions in customer demand or electrification on PGW’s customers.”<sup>40</sup> Notably, PGW does not provide any citation to a place in Mr. Kleinginna’s testimony that recommends forced measures.

This is because Mr. Kleinginna did not recommend any forced measures, a point which he emphasized in surrebuttal: “My testimony does not include any claims regarding the elimination of natural gas or any forced conversion of any kind. On the contrary, I recommend a collaborative working group process that includes PGW, any interested parties, and any interested Commission staff to explore the potential for NPAs to reduce the cost of PGW’s gas service through a pilot program.”<sup>41</sup> PGW even acknowledges, later in its Main Brief, that Mr. Kleinginna expressly stated that he is not advocating any forced measures, noting: “POWER’s

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<sup>39</sup> PGW Statement No. 10-R, Rebuttal Test. of Elliott S. Gold, at 2:9–10 (June 26, 2023).

<sup>40</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 86 (July 27, 2023); *See also* PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 89 (July 27, 2023) (referring to Mr. Kleinginna’s testimony as including “forced fuel switching”); PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 92 (July 27, 2023) (characterizing Mr. Kleinginna’s testimony as proposing that “PGW or the PUC . . . force customers to take energy efficiency or to convert to electricity.”).

<sup>41</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 3:12–16 (July 7, 2023).

witness claimed that he is not advocating any forced conversions or energy reductions[.]”<sup>42</sup> As such, PGW’s contentions elsewhere in its Main Brief that Mr. Kleinginna recommends forced measures are inaccurate.

Finally, PGW’s Main Brief also mischaracterizes the nature of Mr. Kleinginna’s testimony on behalf of POWER. PGW notes that POWER has, in public dialogue outside this Proceeding, supported PGW transitioning to “provide affordable heating and cooling without the use of fossil fuels.”<sup>43</sup> PGW then speculates that the only purpose of POWER’s witnesses’ proposals in this Proceeding must be “total electrification of Philadelphia[.]”<sup>44</sup> As a result, PGW argues that Mr. Kleinginna’s recommendations that PGW consider opportunities to reduce the cost of gas service and advance affordability using NPAs are “environmental proposals” that the Commission should reject because it “does not set environmental policies.”<sup>45</sup>

These contentions are inaccurate. No POWER witness asked the Commission to order “total electrification” or even to order any electrification at all. Mr. Kleinginna included geothermal networks,<sup>46</sup> which use electricity to run, in his discussion of different categories of NPAs because PGW is currently actively investigating such technology and has identified it as a potential NPA.<sup>47</sup> Mr. Kleinginna recommended that PGW consider geothermal networks for their usefulness for cost of service reduction alongside other types of NPAs, but did not recommend that any particular NPA be required for implementation. This is very different from Mr.

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<sup>42</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 92 (July 27, 2023).

<sup>43</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 84 (July 27, 2023).

<sup>44</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 84 (July 27, 2023); *See also* PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 89 (July 27, 2023) (“POWER’s proposal is envisioned as a way to ultimately eliminate PGW’s natural gas utility service from the City.”).

<sup>45</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 84–85 (July 27, 2023).

<sup>46</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 11:12–13:5 (May 31, 2023).

<sup>47</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 22:1–4 (May 31, 2023).

Kleinginna recommending that the Commission order any “electrification,” let alone the “total electrification of Philadelphia,” as PGW inaccurately states.

Similarly, it is not accurate to characterize Mr. Kleinginna’s testimony as making “environmental proposals.”<sup>48</sup> As discussed in detail in POWER’s Main Brief, Mr. Kleinginna’s testimony includes an analysis of the links between PGW’s infrastructure spending and rate affordability, quantitative modelling of potential savings opportunities from the use of NPAs as part of infrastructure planning, and recommendations for how PGW could integrate consideration of NPAs into its infrastructure planning through a collaborative working group.<sup>49</sup> Mr. Kleinginna’s testimony presents supporting evidence on the potential financial and affordability benefits of using NPAs, but no environmental issues are included in the scope of his testimony. As Mr. Kleinginna explained in surrebuttal, “My testimony does not advance any environmental claims and my recommendations do not rely on any environmental findings. My recommendations regarding an NPA pilot and working group are supported by my analysis of their potential benefits in reducing PGW’s cost of service, which will help protect affordability of gas service and avoid upward pressure on rates.”<sup>50</sup>

As discussed in POWER’s Main Brief, parties may disagree in good faith about what long term path PGW should take to comply with the City of Philadelphia’s commitment to decarbonization and 100% clean energy by 2050.<sup>51</sup> However, the issue of the affordability of PGW’s gas service is separate and urgent issue given the severe affordability challenges that currently exist and that will be exacerbated by any rate increase. All parties should be able to find

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<sup>48</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 85 (July 27, 2023).

<sup>49</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 30–42 (July 27, 2023).

<sup>50</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 3:8–12 (July 7, 2023).

<sup>51</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 48–49 (July 27, 2023).

common ground in the importance of carefully considering all opportunities to begin to correct those affordability challenges.

To sum, contrary to PGW's contentions in its Main Brief, Mr. Kleinginna did not recommend any alteration to the safety and reliability focus of PGW's infrastructure planning, the implementation of any forced measures, any requirements for specific NPAs, or any environmental findings by the Commission.<sup>52</sup> Rather, Mr. Kleinginna's recommendations are centered on ensuring that only prudent and reasonable costs are incurred for infrastructure work, by integrating fair and appropriate consideration of potentially lower-cost alternatives like NPAs.<sup>53</sup> Overspending by failing to consider lower-cost alternatives, as Mr. Kleinginna testified, would result in unjust and unreasonable rates.<sup>54</sup>

## **B. Legal Authority**

In its Main Brief, PGW contends that the Commission lacks the legal authority to direct PGW to implement Mr. Kleinginna's recommendations regarding NPAs.<sup>55</sup> First, PGW argues that no Pennsylvania law expressly requires PGW to incorporate NPAs into its capital planning.<sup>56</sup> Second, PGW argues that although POWER's position on NPAs could be sustained if POWER showed that PGW's rates are unjust and unreasonable or its service inadequate, POWER has not made such a showing.<sup>57</sup> Third, PGW argues that the examples of gas utilities implementing NPAs from New York and Colorado that Mr. Kleinginna discusses do not confer legal authority for the Commission to direct PGW to consider NPAs.<sup>58</sup> Fourth, PGW argues that any

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<sup>52</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 7:4–6 (July 7, 2023).

<sup>53</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 5:15–6:2 (May 31, 2023).

<sup>54</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 5:15–19 (May 31, 2023).

<sup>55</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 86 (July 27, 2023).

<sup>56</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 86 (July 27, 2023).

<sup>57</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 87 (July 27, 2023).

<sup>58</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 88 (July 27, 2023).



consideration of integrating NPAs into utility planning should be done through notice and comment rulemaking.<sup>59</sup> Fifth, PGW claims that integrating NPAs into its capital planning is inconsistent with its Long-Term Infrastructure Improvement Plan (“LTIIIP”).<sup>60</sup> These contentions are misplaced, for the reasons discussed below.

As explained in POWER’s Main Brief, the Commission has legal authority to direct PGW to implement consideration of cost-savings opportunities from NPAs as part of its plenary authority to require that utilities maintain just and reasonable rates.<sup>61</sup> With regard to PGW, Commission regulations specifically require the Commission to evaluate PGW’s “management quality, efficiency, and effectiveness” as part of setting just and reasonable rates for PGW, and this also encompasses the issue of whether PGW is taking reasonable steps to avoid overspending and to take advantage of cost-reduction opportunities.<sup>62</sup>

Rates cannot be considered just and reasonable if a utility is not prudently managing its expenses through taking reasonable steps to avoid overspending.<sup>63</sup> It may be accurate to state that no Pennsylvania law expressly requires consideration of NPAs as part of infrastructure planning, but it does not follow from this premise that the Commission therefore lacks legal authority to direct PGW to consider cost-reduction opportunities from NPAs. Such authority is inherent in the PUC’s general authority to require that utilities maintain just and reasonable rates and incur only reasonable and prudent expenses.

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<sup>59</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 88 (July 27, 2023).

<sup>60</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 94 (July 27, 2023).

<sup>61</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 43 (July 27, 2023); 66 Pa. C.S. § 1301.

<sup>62</sup> 52 Pa. Code § 69.2703(a)(6).

<sup>63</sup> *Pennsylvania Pub. Util. Comm’n Office of Consumer Advocate Office of Small Bus. Advocate v. Wellsboro Elec. Co.*, Docket No. C-2019-3011959, 2020 WL 2487415, at \*3 (Pa. PUC Apr. 29, 2020) (“If the record shows instead that “expenses are not incurred, imprudently incurred, or abnormally overstated . . . they should be disallowed and found not recoverable through rates.”); *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 674 A.2d 1149, 1153 (Pa. Commw. Ct. 1996) (upholding disallowance of expenditures where the utility “fail[ed] to prove that the expenses were reasonable and just).

Moreover, PGW’s failure to take adequate action to control its costs, including through considering the cost-reduction opportunities of NPAs, renders its present and proposed rates unjust and unreasonable.<sup>64</sup> As Mr. Kleinginna testified, “ensuring integrated and transparent consideration of least cost alternatives is the only way to ensure that rates are just and reasonable, because it is the only way to ensure that a utility is not overspending and unnecessarily contributing to ratepayers’ energy burden.”<sup>65</sup> Particularly in the context of the serious affordability challenges currently facing PGW’s ratepayers,<sup>66</sup> PGW’s refusal to consider the cost savings potential from NPAs is not just or reasonable. The Commission can and should direct PGW to remedy this omission.

PGW also contends that the examples of NPA deployment from other states that Mr. Kleinginna discussed are inapposite, because in those states (New York and Colorado), there was express statutory or regulatory authority to implement NPAs. This misunderstands the purpose of the example. The example was offered as evidence of other gas utilities examining the technical feasibility of NPA deployment, and finding it feasible to do so.<sup>67</sup> While Pennsylvania may not have a statute or regulation that expressly requires consideration of NPAs as other states do, the existing requirement of Pennsylvania law that all rates must be just and reasonable and all expenses prudently incurred is sufficient to authorize an order that cost reduction opportunities from NPAs be prudently considered where feasible.

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<sup>64</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 30 (July 27, 2023).

<sup>65</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 5:15–19 (May 31, 2023). (“In my opinion, ensuring integrated and transparent consideration of least cost alternatives is the only way to ensure that rates are just and reasonable, because it is the only way to ensure that a utility is not overspending and unnecessarily contributing to ratepayers’ energy burden.”).

<sup>66</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 1–3 (July 27, 2023).

<sup>67</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 14:13–16 (July 7, 2023) (“It is correct that these examples are from other jurisdictions, but Mr. Smith provides no analysis or explanation of why NPAs would not work in PGW’s service territory. The technical efficacy of NPA measures in functioning to reduce cost of service is not based on jurisdiction or the type of utility deploying them.”).

PGW also argues that any consideration of NPAs as part of capital planning should be done as part of a statewide rulemaking process.<sup>68</sup> As POWER discussed in its Main Brief, this contention is misplaced.<sup>69</sup> The Commission can and should direct PGW to consider NPAs on a pilot basis through the collaborative working group process that Mr. Kleinginna recommends, and doing so could generate data that could help inform any future statewide rulemaking processes.<sup>70</sup>

Finally, PGW argues that considering NPAs would be inconsistent with its LTIIP because that would require modifying the LTIIP to “incorporate POWER’s proposed NPAs in lieu of the necessary main replacement activities[.]”<sup>71</sup> This contention misunderstands Mr. Kleinginna’s recommendations. Mr. Kleinginna did not recommend halting main replacement and substituting it with NPAs, but rather recommended examining whether NPAs, if deployed appropriately, could enable mains to be replaced with a smaller diameter pipe, reducing capital costs.<sup>72</sup> This is no more inconsistent with the LTIIP than any other means of reducing the costs of main replacement, and PGW has testified that it does seek ways to reduce the costs of such work.<sup>73</sup>

### **C. Safety, Reliability, and Implementation Issues**

In its Main Brief, PGW raises a number of safety, reliability, and implementation issues as reasons why the Commission should not direct PGW to consider NPAs as Mr. Kleinginna recommends.<sup>74</sup> As explained in this section, these arguments are unavailing. To start, PGW claims that considering NPAs would pose safety risks because it would delay the replacement of

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<sup>68</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 88 (July 27, 2023).

<sup>69</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 50 (July 27, 2023).

<sup>70</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 50 (July 27, 2023).

<sup>71</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 94 (July 27, 2023); *See also* 52 Pa. Code § 121.3.

<sup>72</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 21:7–19 (May 31, 2023).

<sup>73</sup> PGW Statement No. 10-R, Rebuttal Test. of Elliott S. Gold, at 2:9–10 (June 26, 2023).

<sup>74</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 89–97 (July 27, 2023).

at-risk cast iron mains.<sup>75</sup> It is important to note, however, that Mr. Kleinginna did not recommend deferring main replacement. As part of a comprehensive evaluation of savings opportunities, Mr. Kleinginna testified that NPAs may be able to generate savings through deferring or avoiding capital investments that would otherwise be necessary.<sup>76</sup>

However, Mr. Kleinginna was also clear that any NPA deployment must be guided by a screening criterion of safety, meaning that NPAs should not be deployed where it would lead to safety risks.<sup>77</sup> Instead, NPA deployment may, where feasible, be able to reduce the costs of pipeline replacement through allowing smaller pipes to be used for replacement, thereby avoiding higher than necessary capital expenditure.<sup>78</sup> NPA deployment could be used to defer investments where safe to do so, for example, where capital investments may be needed to serve load growth but NPA deployment could help manage demand in such a way as to defer the need for additional capital investment.

PGW also claims that considering savings from NPAs would cause reliability problems because it would require that PGW plan its infrastructure around anticipated future demand reductions from NPAs.<sup>79</sup> PGW concludes that it would not be prudent utility practice to do so, because such demand reductions may not materialize.<sup>80</sup> This misunderstands Mr. Kleinginna's recommendations. Mr. Kleinginna recommended that NPAs be considered in circumstances

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<sup>75</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 90 (July 27, 2023).

<sup>76</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 25:11-16 (May 31, 2023). "PGW's NPA initiatives, as I have discussed above, have delivered positive results for customers in terms of savings. However, it would be highly beneficial for energy affordability to fully integrate consideration of NPAs into the capital planning and forecasting process in order to identify anticipated capital needs that could be deferred or reduced through less capital-intensive NPAs. This requires taking a planned and systematic approach."

<sup>77</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 45 (July 27, 2023); POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 27:15-18 (May 31, 2023).

<sup>78</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 21:7-19 (May 31, 2023).

<sup>79</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 90-92 (July 27, 2023).

<sup>80</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 91 (July 27, 2023).

where the anticipated capital need is at least several years in the future.<sup>81</sup> This provides a period for evaluating actual demand reductions achieved from NPA investments prior to making a determination on the scope of the capital investment needed in light of any achieved reductions.

PGW further argues, in relation to reliability, that considering NPAs will raise the possibility of curtailments if demand reductions from NPAs do not materialize or if demand changes in the future.<sup>82</sup> These concerns are misplaced, because Mr. Kleinginna did not recommend blanket deployment of NPAs to reduce demand in isolation from infrastructure planning. Instead, Mr. Kleinginna's recommendations are for NPAs to be considered as part of an integrated infrastructure planning process that considers the potential for changes in demand in the future. Mr. Kleinginna also recommended that NPAs be introduced carefully, on a pilot basis, through a collaborative working group that would develop screening criteria to ensure that all NPA deployments are fully consistent with safety and reliability needs and that enough capacity buffer is retained to meet all design day needs.<sup>83</sup>

PGW also argues that it has "already implemented many of POWER's proposals when they are consistent with PGW's obligation to provide its customers safe, adequate, reliable, and reasonably priced natural gas service," noting that PGW has voluntary energy efficiency programs and "does reduce and abandon mains when demand reductions are known, permanent, and when PGW is still in a position to meet future demand."<sup>84</sup> Mr. Kleinginna's testimony acknowledged the benefits of PGW's existing NPA initiatives.<sup>85</sup> His recommendation, however,

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<sup>81</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 44 (July 27, 2023); POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 10:6-13 (May 31, 2023).

<sup>82</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 91 (July 27, 2023).

<sup>83</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 32 (July 27, 2023); POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 27:15-18 (May 31, 2023).

<sup>84</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 93 (July 27, 2023).

<sup>85</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 21:21-22:17; 25:11-16 (May 31, 2023).

is to build on those initiatives and examine the potential for using NPAs in a proactive fashion to reduce the cost burden of PGW's infrastructure.<sup>86</sup> That PGW's existing NPA initiatives have been beneficial is not a reason to decline to investigate whether those benefits could be extended and amplified. On the contrary, it provides a strong reason to ensure such an investigation is fully and thoroughly conducted.

PGW also claims that considering NPAs as Mr. Kleinginna recommends requires forced elimination of gas service and forced main abandonment, which is inconsistent with its obligations to provide safe and reliable gas service and which cannot be done if a customer desires to keep its gas service.<sup>87</sup> This is not accurate, because as discussed above, Mr. Kleinginna was clear that his recommendation to examine cost reduction opportunities does not include *any* forced measures, but relies on a voluntary approach.<sup>88</sup> For example, as Mr. Kleinginna discusses, PGW should examine whether, through targeted NPA investments, main replacement could be performed at lower cost with smaller pipes.<sup>89</sup> Since Mr. Kleinginna's recommendations are for only voluntary measures, they cannot result in the forced elimination of gas service.

One potential NPA that Mr. Kleinginna discusses, geothermal networks, would involve customers in a project area, on a *voluntary* basis, shifting from gas service to using geothermal energy for heating and cooling. As discussed in Mr. Kleinginna's testimony, PGW is currently actively investigating this technology through a feasibility study and has identified it as a potential NPA.<sup>90</sup> This technology is still under investigation, and Mr. Kleinginna did not recommend that its use be required, but recommended only that it be considered alongside other

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<sup>86</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 21:21–22:17; 25:11-16 (May 31, 2023).

<sup>87</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 89–90, 92 (July 27, 2023).

<sup>88</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 3:8–16 (July 7, 2023).

<sup>89</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 13:13–15 (May 31, 2023).

<sup>90</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 22:1–4 (May 31, 2023).

potential NPA solutions as a means of reducing the cost burden of PGW's infrastructure by reducing demand in portions of PGW's distribution grid. Geothermal networks are a new technology, and their cost-reduction potential is not yet determined, but this is not a reason to exclude them from consideration—it is all the more reason to ensure their potential is fully investigated through the transparent and collaborative working group process that Mr. Kleinginna recommends.

PGW also raises, as an objection to Mr. Kleinginna's voluntary approach to NPA deployment, that customer uptake of voluntary energy efficiency measures has historically been a challenge for PGW.<sup>91</sup> However, while this may have been a historical challenge with PGW's existing energy efficiency programs, the collaborative working group approach that Mr. Kleinginna recommends would provide a mechanism for community groups to participate in developing more effective means for community outreach for voluntary programs, which could help overcome historical barriers to participation.<sup>92</sup> This approach would ensure that potential solutions to voluntary customer uptake challenges are fully and appropriately considered, instead of simply assuming that the challenges are insuperable.

PGW further argued that it should not be directed to consider cost reduction opportunities from NPAs because no savings are possible.<sup>93</sup> Specifically, PGW argues that if it implements both its LTIP main replacement program and NPAs, this will increase and not decrease costs.<sup>94</sup> However, this assumes the conclusion of the investigation that PGW objects to performing. Given Philadelphia's current energy affordability challenges, which will be worsened by any rate increase, all possible savings opportunities should be investigated, not dismissed out of hand

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<sup>91</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 92 (July 27, 2023).

<sup>92</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 41 (July 27, 2023).

<sup>93</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 94 (July 27, 2023).

<sup>94</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 90, 94 (July 27, 2023).

prior to investigation.<sup>95</sup> Moreover, since NPAs would only be deployed where, after careful screening and evaluation, they will serve to lower capital and operating costs, they would not add additional expenses, but instead would support existing infrastructure work being completed more cost-effectively and efficiently.

PGW also objects to Mr. Kleinginna's recommendations on the grounds that those recommendations did not include adjustments to PGW's rates to incorporate and allocate the costs of NPA deployment.<sup>96</sup> As a starting point, Mr. Kleinginna recommended that NPAs only be deployed where they would generate net savings, not a net cost, as discussed above. The up-front costs of NPA deployment would depend on the particularities of the specific deployment under consideration, which is why Mr. Kleinginna recommended that PGW implement its consideration of NPAs through a collaborative working group and on a pilot basis. This provides a mechanism for the careful advance assessment of the up-front costs and net savings of any potential NPA deployment. Such up-front costs and net savings could be allocated using PGW's existing methodology for allocating the costs of service, and to the extent that any modifications may be warranted, the working group would also provide a mechanism for addressing those issues as part of pilot consideration and development.

PGW also contends that implementation of Mr. Kleinginna's recommendations is unreasonable because NPA deployment would require "drastic" demand reductions and would need to be performed on a massive scale that is not feasible to accomplish.<sup>97</sup> This claim is

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<sup>95</sup> POWER Interfaith, Main Brief, PA PUC Docket No. R-2023-3037933, at 1–3 (July 27, 2023).

<sup>96</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 94 (July 27, 2023).

<sup>97</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 93–94 (July 27, 2023). PGW claims that 600,000 homes would be needed to be retrofitted to achieve "POWER's projected necessary design day reductions," but this statement is inaccurate. In his Direct Testimony, Mr. Kleinginna calculated that a 36% demand reduction in a particular portion of the distribution system could enable the replacement of 10 inch diameter pipe with 8 inch diameter pipe. PGW appears to be claiming that Mr. Kleinginna testified that a 36% demand reduction is "necessary" across the entire PGW distribution system, which is not accurate. See POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 21:8–15 (May 31, 2023).



misplaced. Mr. Kleinginna does not recommend that NPAs must be deployed on a massive scale or not at all, and there is nothing about Mr. Kleinginna's NPA recommendations that require massive deployments or drastic demand reductions. Instead, Mr. Kleinginna recommends that PGW implement its consideration of NPAs through a pilot approach that can generate knowledge that can be applied in the future,<sup>98</sup> which is an incremental, iterative, and data-driven approach. Any potential pilot would be carefully screened for safety, reliability, and cost-effectiveness criteria, and there is no presupposition or requirement that a potential pilot would need to be large or drastic in its scope to generate useful knowledge.

Finally, PGW also objected to Mr. Kleinginna's recommendation that PGW implement its consideration of NPAs through a collaborative working group process on the grounds that doing so would reduce transparency, would displace the Commission as regulator of PGW, and would be unduly burdensome.<sup>99</sup> To start, PGW's claim that Mr. Kleinginna's proposed NPA collaborative working group process would reduce transparency is without merit. Considering NPA deployment on a pilot basis through a transparent and collaborative working group process would enhance the ability of the Commission to exercise oversight of PGW, rather than reduce it. As part of that process, Mr. Kleinginna's recommended monthly NPA working group reports and biannual NPA initiatives reports would improve transparency and provide more information to the Commission than it currently receives.<sup>100</sup> As such, it is not accurate to claim, as PGW does, that convening a collaborative working group to develop NPA pilots somehow reduces transparency. It does not—it will lead to more transparency that will support the Commission's regulatory oversight.

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<sup>98</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 28:5–19 (May 31, 2023).

<sup>99</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 95 (July 27, 2023).

<sup>100</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 32:6–12 (May 31, 2023).

PGW further contends that convening the collaborative working group as Mr. Kleinginna recommends would require the “explicit relinquishment of PUC authority” and would displace the Commission as regulator of PGW, with working group members becoming “super-regulators.”<sup>101</sup> This is not the case. Under Mr. Kleinginna’s proposal, the PUC would exercise its regulatory authority to require that PGW fully and appropriately investigate and utilize cost-reduction opportunities from NPAs as part of ensuring that PGW’s expenses are prudently incurred and that PGW’s rates are just and reasonable. None of the Commission’s powers to regulate and supervise PGW’s rates and service would be abridged. Using the mechanism of a collaborative working group to transparently investigate and develop potential NPA pilots would, as discussed above, provide the Commission with more information, not less, and enhance its oversight, not diminish it.

Moreover, a party’s participation in the collaborative working group would provide an opportunity for that party to contribute their perspective and knowledge to the pilot investigation process, but would not suddenly render that working group participant “super regulator” with new legal powers to unilaterally issue regulatory decisions. Instead, the working group would work collaboratively to investigate and develop pilot opportunities in a transparent fashion, with regular reporting to the Commission and subject to the full oversight of the Commission.

PGW also claims that the collaborative working group process would be unduly burdensome, given existing regulatory oversight over PGW.<sup>102</sup> It is true that the collaborative working group process would entail some level of burden, but given the urgency of controlling infrastructure costs and the need to take action to advance and protect affordability, such a burden is warranted. Moreover, a collaborative working group process would provide important

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<sup>101</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 95–96 (July 27, 2023).

<sup>102</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 96 (July 27, 2023).

benefits that would outweigh the burdens of such a process. Such an approach is well-matched to the needs of considering cost-reduction opportunities from NPAs and investigating and developing potential pilots. NPAs involve building on existing measures, like PGW's energy efficiency programming, in new ways to examine the potential for targeted NPA investments that can generate capital and operational savings. This combination of existing and new concepts is well-suited for a collaborative working group approach that makes effective use of the knowledge and perspective of stakeholders, including community organizations.

#### **D. Conclusion**

In sum, the Commission has the authority to direct PGW to consider the cost reduction opportunities from NPAs for its capital spending, and the Commission can and should exercise that authority. PGW's objections are predicated on its contentions that its current "business as usual" infrastructure planning is good enough and that if NPA deployment is mismanaged, it could cause safety and reliability problems. Both of these arguments are misplaced. PGW's customers are currently facing unacceptably severe affordability challenges, which will only worsen with further rate increases in the future. Something must be done to protect and advance affordability, and PGW must take every opportunity to examine where it can find capital and operating savings, including through consideration of NPAs where their deployment is safe, reliable, and cost-effective.

This last part is key: Mr. Kleinginna's recommendation is for NPAs to be carefully considered through a collaborative working group process that thoroughly screens potential NPA pilot deployments for consistency with safety, reliability, and cost-effectiveness criteria. PGW's claims that a blanket or extreme approach to deploying NPAs without regard to safety, reliability,

and cost-effectiveness would not be reasonable or feasible are not responsive to the actual recommendations of Mr. Kleinginna. NPAs can and should be investigated with care in a transparent, collaborative fashion and deployed where appropriate to reduce PGW's cost of service and advance affordability. Given the serious affordability challenges facing PGW customers, the Commission should not miss this opportunity to direct PGW to do so.

## **V. REPORTING**

### **A. Introduction**

PGW's opposition to POWER's request for annual Comprehensive Pipeline Replacement Reports mischaracterizes Dr. Seavey's testimony and the nature of the recommendation. In attempting to explain why comprehensive reporting is unnecessary, PGW demonstrates exactly why such reports are needed. The Commission should exercise its statutory authority to require PGW to produce Comprehensive Pipeline Replacement Reports on an annual basis that contain, at a minimum, the seven categories of information identified by Dr. Seavey, to inform its enforcement of its ratemaking regulations in assessing the prudence of PGW's spending.<sup>103</sup>

PGW misconstrues POWER's recommendation as an attempt by POWER to usurp the regulatory role of the Commission by demanding duplicative reporting in a format that is most convenient to POWER.<sup>104</sup> It is concerning that PGW interprets advocacy for public participation and transparency in the regulatory process as attempts by intervenors to supplant the Commission.<sup>105</sup> Ratemaking proceedings are publicly litigated for a reason. Transparency and

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<sup>103</sup> 66 Pa. C.S. § 504; 52 Pa. Code §§ 69.2702, 2703.

<sup>104</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 99 (July 27, 2023).

<sup>105</sup> See POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 8:6–10 (July 7, 2023) (explaining that “[p]ublic participation is a necessary part of a healthy, functioning regulatory process” and that it is “a hallmark of public utility commission proceedings across the country.”).

opportunity for informed public participation are particularly important for PGW because it is municipally owned. POWER’s recommended reports will serve the Commission by providing necessary, organized data to inform its oversight of PGW’s spending, as well as facilitating meaningful public participation by providing members of the public—including intervenors and statutory advocates—with complete data upon which to base their positions and analyses. PGW’s baseline premise for this rate increase is that it is in dire financial straits and at risk of losing its favorable bond rating.<sup>106</sup> Transparency and coherent data reporting on its largest spending projects are essential for the Commission and intervenors to identify opportunities to control costs and for the Commission to engage in adequate oversight over PGW’s “management quality, efficiency, and effectiveness” rather than allowing the Company to run itself into the ground and receive bailout after bailout from its customers in the form of repeated rate increases.<sup>107</sup>

### **B. The Need for Comprehensive Pipeline Replacement Reporting**

Further, as Dr. Seavey has demonstrated and as PGW has admitted, all of the information that Dr. Seavey identified as necessary for a comprehensive report is *not* currently publicly available.<sup>108</sup> PGW has explained in detail the convoluted reporting processes that PGW currently undertakes regarding its pipeline replacement activity, and has acknowledged that cross-referencing the multiple reports it files with different regulators is functionally impossible because the data are not presented in “apples-to-apples” formats.<sup>109</sup> PGW erroneously states that

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<sup>106</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 12, 13, 19 (July 27, 2023).

<sup>107</sup> 52 Pa. Code §§ 69.2702, 2703.

<sup>108</sup> See PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 97 (July 27, 2023) (stating that “most” of the elements of Dr. Seavey’s recommended reports are filed today); POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 18:10–12 (July 7, 2023).

<sup>109</sup> See POWER Interfaith Statement No 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 17:16–18:8 (July 7, 2023) (summarizing the ways that PGW’s current reporting—as described by PGW Witness Robert Smith—is insufficient for an analyst taking a holistic view of pipeline replacement spending); PGW Statement No. 7-R,

its witness Robert K. Smith “refuted POWER’s inaccurate calculations, and perceived errors in PGW’s reports in detail.”<sup>110</sup> In fact, in her surrebuttal testimony, Dr. Seavey pointed out that even following the procedure that Mr. Smith described to cross-reference PGW’s reports and come to comprehensive conclusions, the resulting numbers still did not match those that Mr. Smith provided.<sup>111</sup> Further, PGW did not “refute” Dr. Seavey’s identification of errors in its AAOP, but rather conceded them.<sup>112</sup>

In opposing comprehensive reporting responsibilities for its enormous pipeline replacement spending—which has incurred rapidly increasing per-unit costs in recent years in addition to astronomical overall projected costs—PGW asks the Commission and its ratepayers to give it more money but opposes transparency measures relating to how those dollars are spent. PGW cannot have its cake and eat it too. PGW claims that its financial situation is precarious in order to justify its rate increase request, yet balks at providing the Commission the information it needs to assess the excessively high levels of spending that has put PGW in this position to begin with. The Commission should not accept this contention. Comprehensive Pipeline Replacement Reports filed on an annual basis at the Commission, where they are publicly accessible, will increase transparency, will provide the Commission with more information to help track and monitor PGW’s spending and progress on a massive public works project, and will provide stakeholders with the information they need to engage meaningfully at the Commission.

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Rebuttal Test. of Robert K. Smith, at 15:15–23 (June 26, 2023) (explaining the sources for the numerous discrepancies between data contained in PGW’s various reports on pipeline replacement activity).

<sup>110</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 98 (July 27, 2023).

<sup>111</sup> POWER Interfaith Statement No. 2-SR, Surrebuttal Test. of Dorie K. Seavey, PhD, at 4:1–5:3 (July 7, 2023).

<sup>112</sup> PGW Statement No. 7-R, Rebuttal Test. of Robert K. Smith, at 19:19–22 (June 26, 2023) (“Dr. Seavey’s comments regarding errors in the as-filed AAOP she referenced is accurate.”).

## VI. LOBBYING

While PGW's Main Brief defends the inclusion of its lobbying expenses in its revenue requirement,<sup>113</sup> it is important to emphasize that the legislature of Pennsylvania has unambiguously prohibited utilities from recovering lobbying expenses through rates.<sup>114</sup> PGW has requested the Commission waive this statutory provision, but has failed to establish any special circumstances that would merit the Commission doing so.<sup>115</sup> As support for its position, PGW invokes a discussion of rate case expenses from a 1984 case that does not discuss lobbying, citing the general rule that a public utility is entitled to recover expenses reasonably necessary to provide quality services to customers.<sup>116</sup> This case is irrelevant. As PGW has conceded, the legislature has explicitly decided that lobbying expenses are by default *not* reasonable to be included as an operating expense for ratemaking.<sup>117</sup>

PGW first offers a vague policy rationale for its request that the Commission depart from enforcing the Public Utility Code.<sup>118</sup> Under PGW's view, because it is municipally owned, any and all of its expenditures must be inherently beneficial to its customers, since it does not have shareholders.<sup>119</sup> As an initial matter, if the legislature wished to carve out an exception for municipally owned utilities, it could have done so in its construction of the applicable statute. Additionally, the Commission has already determined that PGW's status as a municipally owned

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<sup>113</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 22–23 (July 27, 2023).

<sup>114</sup> 66 Pa. C.S. § 1316.

<sup>115</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 22–23 (July 27, 2023).

<sup>116</sup> *Butler Township Water Co. v. Pennsylvania Pub. Util. Comm'n*, 473 A.2d 219, 221 (Pa. Commw. Ct. 1984). This case is not only inapposite but was decided prior to the 1986 passage of the current version of 66 Pa. C.S. § 1316.

<sup>117</sup> 66 Pa. C.S. § 1316; PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 23 (July 27, 2023).

<sup>118</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 23 (July 27, 2023).

<sup>119</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 23 (July 27, 2023).

utility does not necessarily mean that lobbying expenses are allowable and has disallowed them in the past when presented with this same argument.<sup>120</sup>

PGW also argues that because some portion of the expenses they are requesting to recover goes toward lobbying related to LIHEAP, it should be recoverable.<sup>121</sup> PGW has not offered any factual support for this statement, such as a breakdown of its actual lobbying expenses with sufficient detail for the Commission to determine how much funding is going to that effort, nor has PGW offered any evidence of the alleged beneficial impact of their expenditure.<sup>122</sup> Further, in previous rate cases, the Commission found that PGW was not entitled to include lobbying within its *pro forma* expenses even if some of its lobbying activity may have focused on issues that benefited customers.<sup>123</sup> Not only has PGW offered no evidence to support passing these costs on to rate payers, but its own witness “acknowledged that disallowance would not affect the cash flow for PGW.”<sup>124</sup> If the expense is negligible to PGW, it does not follow that ratepayers should bear it in contravention of a statutory prohibition. Accordingly, the Commission should exclude PGW’s \$100,000 lobbying budget from its revenue requirement.

For the same reasons, the Commission should disallow the portion of PGW’s American Gas Association (“AGA”) membership dues that are allocable to lobbying. The AGA expressly states that for 2023, 3.4% of membership dues will go towards lobbying.<sup>125</sup> PGW has not even attempted to explain why this lobbying expense is not statutorily prohibited from being

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<sup>120</sup> Order, PA PUC Docket No. R-00006042, at 66 (Oct. 4, 2001). PGW failed to successfully argue that under 66 Pa C.S § 2212 (governing city natural gas utilities) they should be able to recover lobbying expenses.

<sup>121</sup> PGW, Main Brief, PA PUC Docket No. R-2023-3037933, at 23 (July 27, 2023).

<sup>122</sup> See OCA Statement No. 1-SR, Surrebuttal Test. of Dante Mugrace, at 8:10 (July 7, 2023).

<sup>123</sup> Order, PA PUC Docket No. R-00006042, at 64 (Oct. 4, 2001).

<sup>124</sup> OCA Statement No. 1-SR, Surrebuttal Test. of Dante Mugrace, at 8:16–21 (July 7, 2023); PGW Statement No. 2-R, Rebuttal Test. of Joseph F. Golden, at 32:3–4 (June 26, 2023).

<sup>125</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark Kleinginna, at 18:4–16 (July 7, 2023) (citing Exh. MDK-5, PGW Interrogatory Responses, Response to POWER-01-14, Attachment).



recoverable. Accordingly, the Commission should disallow recovery of the \$16,615 of PGW's 2023 AGA dues that are allocable to lobbying in addition to PGW's direct lobbying expenditures.

## VII. CONCLUSION

For the foregoing reasons, POWER respectfully requests that as a condition of any approved rate increase for PGW in this Proceeding, it should direct PGW to implement the recommendations of POWER's experts to mitigate the affordability impacts of that rate increase and reduce the need for rate increases in the future. Affordability is an integral part of just and reasonable rates, and PGW's failure to take reasonable steps to protect affordability and avoid overspending cannot be considered just and reasonable.

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Respectfully submitted,

/s/ Devin McDougall

Devin McDougall

PA Attorney ID No. 329855

Senior Attorney

Earthjustice

1617 John F. Kennedy Blvd., Suite 2020

Philadelphia, PA 19103

[dmcDougall@earthjustice.org](mailto:dmcDougall@earthjustice.org)

(917) 628-7411

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of this electronically-filed document upon the parties, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

<p>Darryl A. Lawrence, Esq. David Evrard, Esq. Harrison W. Breitman, Esq. Office of Consumer Advocate Forum Place, 5<sup>th</sup> Floor 555 Walnut Street Harrisburg, PA 17101-1923 <a href="mailto:dlawrence@paoca.org">dlawrence@paoca.org</a> <a href="mailto:devrard@paoca.org">devrard@paoca.org</a> <a href="mailto:HBreitman@paoca.org">HBreitman@paoca.org</a></p> <p><i>Representing the Office of Consumer Advocate</i></p>	<p>Dennis A. Whitaker, Esq. Kevin J. McKeon, Esq. Todd S. Stewart, Esq. Hawke McKeon &amp; Sniscak LLP 100 N 10<sup>th</sup> Street Harrisburg, PA 17101 <a href="mailto:dawhitaker@hmslegal.com">dawhitaker@hmslegal.com</a> <a href="mailto:kjmckeon@hmslegal.com">kjmckeon@hmslegal.com</a> <a href="mailto:tsstewart@hmslegal.com">tsstewart@hmslegal.com</a></p> <p><i>Representing Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.</i></p>
<p>Sharon E. Webb, Esq. Nakea S. Hurdle, Esq. Nazaarah Sabree, Esq. Office of Small Business Advocate Forum Place, 1<sup>st</sup> Floor 555 Walnut Street Harrisburg, PA 17101 <a href="mailto:swebb@pa.gov">swebb@pa.gov</a> <a href="mailto:nhurdle@pa.gov">nhurdle@pa.gov</a> <a href="mailto:ra-sba@pa.gov">ra-sba@pa.gov</a></p> <p><i>Representing the Office of Small Business Advocate</i></p>	<p>Craig W. Berry, Esq. Philadelphia Gas Works 800 W. Montgomery Avenue Philadelphia, PA 19122 <a href="mailto:craig.berry@pgworks.com">craig.berry@pgworks.com</a></p> <p><i>Representing Philadelphia Gas Works</i></p>
<p>Allison C. Kaster, Esq. Deputy Chief Prosecutor Bureau of Investigation &amp; Enforcement Pennsylvania Public Utility Commission Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120 <a href="mailto:akaster@pa.gov">akaster@pa.gov</a></p> <p><i>Representing BIE</i></p>	<p>Daniel Clearfield, Esquire Norman Kennard, Esquire Sarah Stoner, Esquire Eckert Seamans Cherin &amp; Mellott, LLC 213 Market Street, 8th Floor Harrisburg, PA 17101 <a href="mailto:dclearfield@eckertseamans.com">dclearfield@eckertseamans.com</a> <a href="mailto:nkennard@eckertseamans.com">nkennard@eckertseamans.com</a> <a href="mailto:sstoner@eckertseamans.com">sstoner@eckertseamans.com</a></p> <p><i>Representing Philadelphia Gas Works</i></p>

<p>Charis Mincavage, Esq.  Mcnees Wallace &amp; Nurick  100 Pine Street  PO Box 1166  Harrisburg, PA 17108  <a href="mailto:cmincavage@mwn.com">cmincavage@mwn.com</a></p> <p><i>Representing Philadelphia Industrial and Commercial Gas Users Group (PICGUG)</i></p>	<p>John Sweet, Esq.  Elizabeth R. Marx, Esq.  Ria Pereira, Esq.  Lauren Berman, Esq.  PA Utility Law Project  118 Locust Street  Harrisburg, PA 17101  <a href="mailto:jsweet@pautilitylawproject.org">jsweet@pautilitylawproject.org</a>  <a href="mailto:emarx@pautilitylawproject.org">emarx@pautilitylawproject.org</a>  <a href="mailto:rpereira@pautilitylawproject.org">rpereira@pautilitylawproject.org</a>  <a href="mailto:pulp@palegalaid.net">pulp@palegalaid.net</a></p> <p><i>Representing CAUSE-PA</i></p>
<p>Robert W. Ballenger, Esq.  Joline R. Price, Esq.  Daniela E. Rakhlina-Powsner, Esq.  Community Legal Services, Inc.  1424 Chestnut Street  Philadelphia, PA 19102  <a href="mailto:rballenger@clsphila.org">rballenger@clsphila.org</a>  <a href="mailto:jprice@clsphila.org">jprice@clsphila.org</a>  <a href="mailto:drakhlina@clsphila.org">drakhlina@clsphila.org</a></p> <p><i>Representing TURN</i></p>	

Dated: August 7, 2023

/s/ Devin McDougall  
Devin McDougall  
PA Attorney ID No. 329855  
Senior Attorney  
Earthjustice  
1617 John F. Kennedy Blvd., Suite 2020  
Philadelphia, PA 19103  
[dmcdougall@earthjustice.org](mailto:dmcdougall@earthjustice.org)  
(917) 628-7411