



September 15, 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 Exceptions. 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	:	
	:	

**EXCEPTIONS OF POWER INTERFAITH**

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## I. INTRODUCTION

POWER Interfaith (“POWER”) respectfully submits these Exceptions to the Recommended Decision in the above-captioned proceeding (“Proceeding”) of the Pennsylvania Public Utility Commission (the “Commission”) regarding the \$85.2 million annual rate increase sought by Philadelphia Gas Works (“PGW”).<sup>1</sup>

## II. EXCEPTIONS

### **Exception 1. The ALJs Erred in Determining that The Commission Lacks Jurisdiction and Authority to Accept POWER’s NPA Proposal**

In this Proceeding, POWER submitted expert testimony from its witness Mark Kleinginna recommending that PGW address the affordability impacts of its infrastructure spending by examining the potential to lower its cost of service through implementing non-pipelines alternatives (“NPAs”) where doing so would be consistent with safety and reliability requirements and would be cost-effective.<sup>2</sup> NPAs are investments that function to reduce demand in a portion of the distribution grid and they can generate savings where the cost of reducing demand is less than the cost of capital expenditures that would be needed if demand were not reduced.<sup>3</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>4</sup>

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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> POWER Main Brief, 29.

<sup>3</sup> POWER Main Brief, 30.

<sup>4</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 5:15-19 (May 31, 2023).

Mr. Kleinginna recommended that PGW implement consideration of NPAs through two mechanisms: 1) considering opportunities for NPAs on a pilot basis through a collaborative working group that would develop screening criteria for potential pilots, as a learning mechanism to inform future planning changes; and 2) reporting regularly to the Commission on progress on NPA initiatives.<sup>5</sup>

In the Recommended Decision, the ALJs addressed the question of whether the Commission has jurisdiction and authority to consider POWER's non-pipeline alternatives ("NPA") proposal and to direct PGW to implement them.<sup>6</sup> The ALJs concluded that the Commission does not, because Pennsylvania has not passed legislation requiring gas utilities to consider NPAs.<sup>7</sup> For the reasons discussed below, this conclusion is misplaced.

As a starting point, it is important to clarify the nature of POWER's NPA proposals, which PGW has repeatedly mischaracterized. POWER's NPA proposal entails integrating consideration of potentially cost-effective alternatives to capital investments, in order to ensure that PGW's cost of service is not higher than it needs to be.<sup>8</sup> PGW claims that this proposal would "fundamentally alter the focus of its infrastructure planning" away from "safety and reliability."<sup>9</sup> However, POWER's NPA proposal entails no such shift in focus. Instead, the NPA proposal simply seeks to ensure that work required for safety and reliability be performed as cost-effectively as possible in order to reduce the cost burden on ratepayers. As Mr. Kleinginna confirmed, "I have never suggested that PGW should alter the focus of its planning away from

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<sup>5</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 26:18–23; 29:1–8 (May 31, 2023).

<sup>6</sup> Recommended Decision, 134

<sup>7</sup> Recommended Decision, 141.

<sup>8</sup> POWER Main Brief, 30-31.

<sup>9</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.").

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>10</sup> Importantly, 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.<sup>11</sup>

PGW has also mischaracterized POWER’s NPA proposal as requiring the forcing of customers to switch from gas service to other energy sources.<sup>12</sup> This claim is also inaccurate. Mr. Kleinginna’s NPA recommendations do not include *any* non-voluntary measures.<sup>13</sup> Mr. Kleinginna’s recommendations, instead, include consideration of the deployment of voluntary measures as a means of reducing the cost of gas service through reducing the volume of demand in particular portions of the distribution grid.<sup>14</sup>

Turning to the question of jurisdiction and authority, while it may be true that Pennsylvania has not adopted legislation specifically referencing and requiring NPAs, there is clear statutory and regulatory authority for the Commission to accept POWER’s NPA proposal. As a starting point, Section 1301 of the Public Utility Code provides the Commission with the authority to investigate all general rate increase filings to ensure that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity

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<sup>10</sup> POWER Interfaith Statement No. 1-SR, Surrebuttal Test. of Mark D. Kleinginna, at 13:1–5 (July 7, 2023).

<sup>11</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 28:4–19 (May 31, 2023).

<sup>12</sup> PGW Statement No. 10-R, Rebuttal Test. of Elliott S. Gold, at 15 (June 26, 2023) (stating that Mr. Kleinginna’s proposal regarding NPAs will “virtually force electrification in PGW’s service territory and the defacto abandonment of PGW’s utility operations, infrastructure, and assets[.]”); PGW Statement No. 10-RJ, Rejoinder Test. of Elliott S. Gold, at 1:22–2:3 (July 10, 2023).

<sup>13</sup> POWER Main Brief, 46.

<sup>14</sup> POWER Main Brief, 46.

with [the] regulations or orders of the commission.”<sup>15</sup> The Commission has also expressly recognized that rate affordability is properly considered as part of setting just and reasonable rates under Section 1301.<sup>16</sup>

The Commission’s regulations provide further detail on how Section 1301’s requirement of just and reasonable rates is to be assessed for PGW specifically. Notably, the quality of PGW’s management is a central criterion. As 52 Pa. Code § 69.2703(a)(6) provides, “[i]n determining just and reasonable rate levels for PGW, the Commission will consider, among other relevant factors...PGW’s management quality, efficiency and effectiveness.”<sup>17</sup>

Section 1501 of the Public Utility Code provides the Commission with the authority to ensure that public utilities “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper[.]”<sup>18</sup>

Finally, Section 523 of the Public Utility Code provides further guidance on factors the Commission needs to consider in determining whether proposed rates are just and reasonable under Section 1301. Such factors include consideration of a utility’s “efficiency, effectiveness and adequacy of service”<sup>19</sup> and an electric or gas utility’s “[a]ction or failure to act to encourage

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<sup>15</sup> 66 Pa.C.S. § 1301(a). Even outside the rate case context, the Public Utility Code authorizes the Commission to, at any time, require a utility to provide a report on “any matter whatsoever about which the commission is authorized to inquire[.]” 66 Pa.C.S. § 504.

<sup>16</sup> *Pennsylvania Pub. Util. Comm'n Off. of Consumer Advoc. Off. of Small Bus. Advoc. Philadelphia Area Indus. Energy Users Grp. v. PECO Energy Co.*, No. C-2020-3022400, 2021 WL 2645922, at \*20 (Pa PUC June 22, 2021) (“While these ratemaking norms provide a rational and methodical way to analyze and determine the utility's cost of service, they also permit the consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability.”); *Pennsylvania PUC et. al v. Twin Lakes Util., Inc.*, Docket No. R-2019-3010958 (Order entered March 26, 2020) at 48, 80 (upholding recommended decision considering affordability as part of setting just and reasonable rates).

<sup>17</sup> 52 Pa. Code § 69.2703(a)(6).

<sup>18</sup> 66 Pa.C.S. § 1501.

<sup>19</sup> 66 Pa.C.S. § 523(a).

development of cost-effective energy supply alternatives such as conservation or load management[.]”<sup>20</sup>

As this discussion of the relevant statutory and regulatory authorities demonstrates, POWER’s NPA proposal, which addresses how PGW’s inadequate planning and management of its facilities impacts rate affordability, is well within the boundaries of matters that the Commission can and must consider in determining whether proposed rates are just and reasonable. As noted above, the Commission has held that analysis of the justness and reasonableness of rates under Section 1301 properly includes consideration of affordability,<sup>21</sup> and POWER’s NPA proposal is designed as a means of advancing rate affordability through ensuring that infrastructure spending is not higher than necessary. Additionally, 52 Pa. Code § 69.2703(a)(6), as noted above, requires that determination of just and reasonable rate levels include consideration of PGW’s management quality, efficiency, and effectiveness.<sup>22</sup>

Moreover, Sections 1501 and 523 require consideration, notably, of the efficiency of utility service and facilities, and such service and facilities cannot be considered efficiently managed if a utility’s rates are higher than they need to be due to a failure to appropriately examine cost-effective alternatives. Section 523 also requires Commission consideration of a gas utility’s “[a]ction or failure to act to encourage development of cost-effective energy supply alternatives such as conservation or load management[.]”<sup>23</sup> This provision also applies to

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<sup>20</sup> 66 Pa.C.S. § 523(b)(4).

<sup>21</sup> Pennsylvania Pub. Util. Comm'n Off. of Consumer Advoc. Off. of Small Bus. Advoc. Philadelphia Area Indus. Energy Users Grp. v. PECO Energy Co., No. C-2020-3022400, 2021 WL 2645922, at \*20 (Pa PUC June 22, 2021) (“While these ratemaking norms provide a rational and methodical way to analyze and determine the utility's cost of service, they also permit the consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service, gradualism, and rate affordability.”); Pennsylvania PUC et. al v. Twin Lakes Util., Inc., Docket No. R-2019-3010958 (Order entered March 26, 2020) at 48, 80 (upholding recommended decision considering affordability as part of setting just and reasonable rates).

<sup>22</sup> 52 Pa. Code § 69.2703(a)(6).

<sup>23</sup> 66 Pa.C.S. § 523(b)(4).



POWER's NPA recommendations, because POWER's expert testimony on NPAs shows that PGW has failed to appropriately consider conservation and load management tools as a means of reducing the cost of service.<sup>24</sup>

As the Commission has held, "in matters involving rates, the Commission's jurisdiction is very broad and is exercised liberally in the interest of full and fair review of the rate proposals and adjustments offered by the various stakeholders."<sup>25</sup> POWER's NPA proposal addresses core ratemaking factors, spelled out in the statutes and regulations discussed above, pertaining to cost of service, management quality, and adequacy and efficiency of service and facilities. As such, POWER's NPA proposal is well within the Commission's jurisdiction to consider and implement. It would be in the public interest for the Commission to give full and fair review to POWER's NPA proposal, particularly given the serious energy burden challenges affecting Philadelphia, as discussed in POWER's Main Brief.<sup>26</sup>

### **Exception 2. The ALJs Erred in Determining that POWER Did Not Submit Adequate Evidence in Support of its NPA Proposal**

The Recommended Decision also addressed the question of whether POWER submitted adequate evidence in support of its NPA proposal.<sup>27</sup> As the Recommended Decision explains, "[w]here a party such as POWER disagrees with proposed rates, it may submit evidence with suggested adjustments to the proposed rates."<sup>28</sup> However, the ALJs concluded that "none of the NPAs recommendations made by POWER were directly tied to specific expense or revenue

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<sup>24</sup> POWER Main Brief, 1; 30-31.

<sup>25</sup> 2020 PGW BRC Opinion and Order, 90.

<sup>26</sup> POWER Main Brief, 1, quoting MDK-2, PGW, Business Diversification Study, at 8 ("Philadelphian households on average spend around 6.7% of their income on energy, about double the national average, making Philadelphia one of the most energy-burdened cities in the United States.")

<sup>27</sup> Recommended Decision, 140.

<sup>28</sup> Recommended Decision, 140.

adjustments” and that POWER “provides no estimates of cost or expense of adopting the recommendation, nor does it provide any estimate of the financial value, if any, that would be garnered from implementation of the recommendations or the anticipated timing of receipt of any such value.”<sup>29</sup>

However, POWER’s witness Mr. Kleinginna did identify a specific set of costs that his NPA recommendations were concerned with, namely, PGW’s infrastructure costs, which constitute a major category of PGW’s spending. As Mr. Kleinginna noted, “According to PGW’s 2024 Capital Budget Forecast, it will spend \$22,456,000 on gas processing and \$140,734,000 on mains in the 2024 fiscal year.”<sup>30</sup> Moreover, the estimated total cost of PGW’s pipeline replacement program is extremely high. As POWER witness Dr. Dorie K. Seavey estimates, it will reach \$6 to \$8 billion by 2058,<sup>31</sup> which would make it one of the largest expenditures ever undertaken by the City of Philadelphia.<sup>32</sup>

Mr. Kleinginna concluded that given these high levels of expenditures and Philadelphia’s serious energy affordability challenges, it would not be just and reasonable for PGW to continue to fail to consider infrastructure cost reduction opportunities from NPAs.<sup>33</sup> Mr. Kleinginna provided an illustrative quantitative analysis of the cost savings accrued from PGW’s existing energy efficiency programs.<sup>34</sup> To take one example, Mr. Kleinginna found that smart thermostats generate savings at a cost of about \$0.89 per MCF, which is a 93% savings from the cost of

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<sup>29</sup> Recommended Decision, 140.

<sup>30</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 4:12-19 (May 31, 2023).

<sup>31</sup> POWER Interfaith Statement No. 2, Direct Test. of Dorie K. Seavey, PhD, at 2:13-15 (May 31, 2023) (citing Exh. DKS-2, Dorie Seavey, Philadelphia’s Gas Pipe Replacement Plan, at 25 (Mar. 2023)).

<sup>32</sup> POWER Interfaith Statement No. 2, Direct Test. of Dorie K. Seavey, PhD, at 22:17-20 (May 31, 2023)

<sup>33</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 5:15-19 (May 31, 2023).

<sup>34</sup> POWER Main Brief, 38.

delivered gas.<sup>35</sup> Additionally, residential equipment rebates could produce savings at a cost of about \$3.10 per MCF, which is a 77% savings from the cost of delivered gas.<sup>36</sup>

Developing more precise estimates of the savings possible from NPA deployment would require significant amounts of location-specific data, which is why Mr. Kleinginna recommended a collaborative working group approach to study specific potential NPA opportunities at specific locations in PGW's distribution grid.<sup>37</sup> Importantly, Mr. Kleinginna recommended that the working group carefully screen potential NPA projects for cost-effectiveness, to ensure that only cost-effective projects that will generate savings move forward.<sup>38</sup> While the precise amount of savings possible from NPA deployment may not be established at this juncture, Mr. Kleinginna's testimony carries its burden of showing that this area is worthy of further investigation to ensure that PGW's infrastructure spending is not higher than it needs to be, and Mr. Kleinginna's recommendation of a collaborative working group and reporting process to do so should be adopted.

### **III. CONCLUSION**

For the foregoing reasons, POWER respectfully requests that the Commission grant these Exceptions and modify the ALJs' Recommended Decision as set forth herein.

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<sup>35</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 24:1-6 (May 31, 2023). As the U.S. Energy Information Administration has noted, MCF and MMBTUs are nearly equivalent: "One thousand cubic feet (Mcf) of natural gas equals 1.036 MMBtu." U.S. Energy Info. Admin., Frequently Asked Questions, <https://www.eia.gov/tools/faqs/faq.php?id=45&t=8>.

<sup>36</sup> POWER Interfaith Statement No. 1, Direct Test. of Mark D. Kleinginna (Corrected), at 24:3-4 (May 31, 2023).

<sup>37</sup> POWER Main Brief, 37.

<sup>38</sup> POWER Main Brief, 32.

September 15, 2023

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="http://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: September 15, 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