



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 22, 2023

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission v.
Philadelphia Gas Works
Docket No. R-2023-3037933
I&E Reply Exceptions

Dear Secretary Chiavetta,

Attached for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) Replies to Exceptions in the above-referenced proceeding.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads 'Allison C. Kaster'.

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ACK/jfm
Enclosure

cc: Administrative Law Judge Eranda Vero (*via email*)
Administrative Law Judge Arlene D. Ashton (*via email*)
Pamela McNeal, Legal Assistant (*via email*)
Office of Special Assistants (*via email* – ra-OSA@pa.gov Word File)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
v.	:	Docket No. R-2023-3037933, <i>et al.</i>
	:	
Philadelphia Gas Works	:	
	:	
Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.	:	
	:	
v.	:	Docket No. C-2021-3029259
	:	
Philadelphia Gas Works	:	

**REPLY EXCEPTIONS
OF
THE BUREAU OF INVESTIGATION & ENFORCEMENT**

Allison C. Kaster
Deputy Chief Prosecutor
PA Attorney ID No. 93176

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Dated: September 22, 2023

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I. INTRODUCTION

On September 5, 2023, Administrative Law Judges Eranda Vero and Arlene Ashton (“ALJs”) issued a Recommended Decision (“RD”) in the above-captioned proceeding recommending an increase of \$22.3 million. Philadelphia Gas Works (“PGW”) filed Exceptions to the ALJs’ RD on September 15, 2023. In response, the Bureau of Investigation and Enforcement (“I&E”) files these timely Reply Exceptions, addressing PGW Exceptions Nos. 1, 2, 3, 8, 9, 11, and 12. For the reasons explained below, I&E respectfully requests the Commission deny PGW’s Exceptions and adopt the recommendations put forth in the RD.

II. REPLY EXCEPTIONS

From the outset it is important to remember that PGW is “subject to regulation and control by the Commission with the same force as if the service were rendered by a public utility.”¹ One of the fundamental tenants of utility regulation is that rates must be just and reasonable;² therefore, the Commission is charged with establishing overall rates that complies with this fundamental principle for PGW as it does for all other Commission regulated entities.³ However, throughout its Exceptions, PGW appears to interpret that its status as a municipal utility mandates that it is entitled to the full increase, leaving the parties and the ALJ little room to make recommendations to the contrary. This is simply inaccurate. Although it is undeniable that PGW’s rates are set a

¹ 66 Pa. C.S. § 2212(b).

² 66 Pa. C.S. § 1301.

³ *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00006042 (Order entered October 4, 2001); *Public Advocate v. Philadelphia Gas Commission*, 544 Pa. 129, 674 A.2d 1056 (1996).

bit differently through the cash flow method, the Commission retains “the discretion to determine the prudent and reasonable levels of PGW’s various categories of expenses and revenues, including PGW’s cash requirements.”⁴ PGW failed to demonstrate that its requested \$85.8 million revenue increase is just and reasonable; therefore, the ALJs appropriately recommended adjustments in the RD. Accordingly, I&E maintains that PGW’s Exceptions must be denied.

A. I&E Reply to PGW Exception No. 1: The ALJs recommended level of cash on hand and debt service coverage. (PGW Exceptions at 3-10; RD at 63-64).

In Exceptions, PGW argues that the RD’s recommended \$22.3 million rate increase will not produce sufficient debt service coverage levels or cash on hand to stay in good standing with the bond agencies.

PGW maintains that its requested 2.73x debt service coverage is “absolutely necessary” to provide cash to cover all items that are not included in the debt service coverage calculation (i.e., \$18 million City payment, pensions, OPEBs, and capital expenditures from internally generated funds).⁵ To be clear, there is no mandate that such recovery is necessary. The rating agencies recognize PGW’s need to satisfy its debt service coverage ratio at 1.5x; however, there is no indication that the coverage must be significantly higher to the level requested by PGW. For example, Moody’s Aaa range is greater than 2.00x and Aa range is greater than 1.70x but less than or equal to 2.00x, which highlights that PGW’s requested 2.73x debt service coverage is grossly inflated.⁶

⁴ *Pa. PUC v. PGW*, Docket No. R-00006042, p. 26 (Order entered October 4, 2001).

⁵ PGW Exceptions at 5.

⁶ RD at 21.

I&E highlighted that rating agencies have made it clear that debt service coverage ratios above the mandated 1.5x is satisfactory and strong enough to maintain PGW's current credit ratings. Specifically, I&E witness Patel noted that:

Moody's opines that the FY 2023 budget should result in financial metrics (debt service coverage ratio) remaining at least above 1.8 times, which is what Moody's expect generally going forward as PGW continues to maintain the balance between future revenue rate increases, debt issuances for capital and operating cost growth (I&E Exhibit No. 1, Schedule 3, p. 15).⁷

Similarly, witness Patel testified that recent reports from S&P Global and Fitch note that one of PGW's credit strengths is that it has an extremely strong coverage of fixed costs, robust liquidity and reserves (totaling \$236 million comprised of \$115 million in unrestricted cash and \$120 million of commercial paper) and a historically stable financial profile due to rate increases and budget adjustments.⁸ Given that there is no indication that these rating agencies are concerned about PGW's ability to service its debt, PGW's 2.73 debt service coverage claim is significantly overstated.

Oddly, in support of its rationale to reject the \$22.3 million recommended in the RD, PGW's Exceptions focus fairly singularly on the days of cash on hand metric.⁹ With respect to cash on hand, PGW claims that the RD's recommended 35 (as adjusted by PGW) and 42.16 (as allowed in the RD) days of cash is deficient given that its witness testified that the bond rating agencies have indicated that a cash balance between 90 and 150 days of cash is necessary to be viewed as "financially sound position and avoid

⁷ I&E St. No. 1, pp. 24-25.

⁸ I&E St. No. 1, pp. 25-26.

⁹ PGW Exceptions at 4-9.

downgrade.”¹⁰ This position is simply inaccurate. The RD’s analysis falls within Moody’s A rating range, which is 35 to 90 days of cash on hand.¹¹ Moreover, it is important to recognize that the ALJs recommendation does not include PGW’s \$120 million of commercial paper, which significantly boosts the number of days of cash on hand.¹² The rating agencies give PGW credit for available letters/lines of credit or capacity in a short-term debt program and PGW indicates that it can “issue short-term notes to address working capital requirements, capital projects, and other project costs” at a maximum level of \$120 million in 2022.¹³ In testimony, PGW correctly recognized that this \$120 million commercial paper program “provides a significant boost (80-90 days) to the cash and liquidity metric for PGW with all of the rating agencies, helping to maintain a solid credit rating.”¹⁴

PGW takes issue with the fact that the RD’s recommended revenue increase results in providing “one-third of the I&E/OCA recommendations which average 60” days of cash and further argues that a rate increase that produces 60 days of cash would require an increase of \$78 million.¹⁵ While I&E does not agree that 60 days of cash is a target that must be achieved, PGW’s argument highlights that there are a variety of ways the days of cash is simply a fall out and one of several financial metrics that is used under the cash flow method to determine an overall revenue requirement. For example, I&E’s

¹⁰ PGW Exceptions at 6.

¹¹ PGW Exceptions at 9.

¹² I&E MB at 12.

¹³ PGW St. No. 3-R, p. 5.

¹⁴ PGW St. No. 3-R, p. 5.

¹⁵ PGW Exceptions at 9.

recommended increase of approximately \$44.8 million resulted in 62.2 days of cash on hand, which is significantly less than the \$78 million PGW maintains is required under its analysis. Similarly, OCA's recommended increase of approximately \$16.5 million resulted in 57.41 days of cash on hand; however, the RD's higher revenue increase of \$22.5 million resulted in less days of cash as it produced 42 days of cash on hand.¹⁶

Moreover, PGW paints a dire picture that it will be immediately downgraded if it is not awarded a specific, and unsurprisingly much higher, number of days of cash on hand than what was recommended by the ALJs.¹⁷ Again, this is inaccurate. The record evidence demonstrates that PGW's credit rating is stable. Moody's rated PGW A3 with a stable outlook, which is an upper-medium grade obligation with lower credit risk.¹⁸ S&P gave PGW an A rating with a stable outlook, which is an investment grade and represents a strong capacity to meet financial obligations.¹⁹ Fitch has awarded PGW's bond an investment grade rating of A- with a stable outlook, which represents expectations of low default risk and strong capacity for payment of financial commitments.²⁰ Overall, OCA noted that "The Moody's rating is equivalent to an A- rating in the systems of the other two agencies. Thus, PGW averages a bit better than an A- rating."²¹ Even PGW has recognized that the rating agencies find the supportive regulatory environment, strong financial risk profile, coverage metrics, liquidity and reserves, debt service coverage,

¹⁶ PGW Exceptions at 9.

¹⁷ PGW Exceptions at 9.

¹⁸ I&E St. No. 1, p. 17.

¹⁹ I&E St. No. 1, p. 17.

²⁰ I&E St. No. 1, p. 17.

²¹ OCA St. No. 2, p. 5.

main pipeline replacement program, strong revenue source, and lower leverage ratio to be a positive credit attribute.²² OCA and I&E reviewed the recent reports from the rating agencies and found no evidence that PGW needs to improve its credit rating or is at risk for downgrade.²³

Accordingly, I&E respectfully requests that PGW Reply Exception No. 1 be denied.

B. I&E Reply to PGW Exception No. 2: The RD's rate case tables should not be corrected to remove the non-cash items identified by PGW. (PGW Exceptions at 10-11; RD at Rate Case Table I(B)).

In Exceptions, PGW argues that if the Commission elects to accept the RD's recommended financial metrics, it must correct an error in the RD's rate case tables that attributed cash to PGW for non-cash expense adjustments. Specifically, PGW points to the amortization of pandemic expense (\$3,260,000) and pension expense of (\$8,670,000) in the calculation of ending cash balance of \$75,316,000 as shown in the Cash Flow Statement.²⁴ PGW argues that the recommended rate increase should be adjusted by \$11.9 million in order to actually produce the \$75.3 million that the ALJs thought they were awarding.²⁵

I&E disagrees that PGW's correction to the rate case tables at this late stage is appropriate. I&E and other parties followed PGW's spreadsheet model where it included the total claims for accounts and adjusted those claims when required. Similarly, the

²² PGW St. No. 4, pp. 21-22.

²³ I&E St. No. 1, pp 19-20; OCA St. No. 2, p. 7.

²⁴ PGW Exceptions at 10-11; RD Rate Case Table I(B).

²⁵ PGW Exceptions at 11.

ALJs relied on PGW's own financial model (i.e., financial calculations, metrics, and financial statements such as the Statement of Income, Cash Flow Statement, etc. provided in PGW Exhibit JFG-1 as modified in PGW's rebuttal testimony) when calculating its recommendation in the RD rate case tables. In the FPFTY proforma Statement of Income, PGW included pandemic expense amortization of \$10,162,000 and pension expense of \$44,759,000 and projected the net income of \$165,311,000 (Table I, line 54) and this net income of \$165,311,000 is shown as one of the sources of cash flow as the starting point (Table I(B), line 1) that results in PGW's FPFTY claim for ending cash balance of \$113,769,000 (Table I(B), line 25). Following PGW's FPFTY proforma calculation model, I&E and the ALJ correctly calculated the ending cash balance allowance of \$75,316,000 (Table I(B), line 25) after considering all O&M expense adjustments as shown in the Statement of Income (Table I, column D) that results in a net income allowance of \$126,858,000 (Table I, line 54). This net income allowance of \$126,858,000 is considered as one of the sources of cash flow as the starting point (Table I(B), line 1) that results in the ending cash balance allowance of \$75,316,000 (Table I(B), line 25).

In short, PGW's attempt to adjust the pandemic expense amortization and the pension adjustment from the ending cash balance allowance, which would provide an additional \$11.9 million in revenue, is improper because the parties and the ALJs used PGW's revenue requirement model and followed the rationale used by PGW throughout this entire litigated proceeding. PGW had an opportunity to correct its model at any point during this case. Had it done so, parties would have had an opportunity to evaluate the

reasonableness of the correction and, if warranted, would have been updated their respective testimony schedules and the correction would have been subsequently captured in the RD rate case tables. However, a self-serving correction to the tune of \$11.9 million should not be permitted at this late stage of the proceeding.

Accordingly, I&E respectfully requests that PGW Exception No. 2 be rejected.

C. I&E Reply to PGW Exception No. 3: The ALJs correctly adjusted PGW's IGF claim. (PGW Exceptions at 11-19; RD at 63-64).

In exceptions, PGW claims that the recommendation to disallow \$38.5 million of its IGF claim was in error and maintains that it is entitled to recovery of the full \$53.2 million claimed.²⁶

PGW first takes issue with RD claiming that the ALJs failed to specify how they arrived at the \$38.5 million disallowance.²⁷ However, it then provided several references in the RD where the issue was discussed.²⁸ I&E recognizes that there is not a detailed analysis of the how the \$38.5 million disallowance was calculated but it is clear that there were different recommendations for the ALJs to consider. These recommendations ranged from I&E's disallowance of the entire \$53.2 million to OCA's proposed disallowance of \$17.1 million to PGW's recommendation that the full \$53.2 million be included in rates. Accordingly, the record is clear that there is a wide range for the ALJs and Commission to consider.

²⁶ PGW Exceptions at 11.

²⁷ PGW Exceptions at 12-14.

²⁸ PGW Exceptions at 12.

One reason for I&E's recommended disallowance is because capital expenditures outside the DSIC should be tied to identified projects in the FPFTY in order to be included in rates, which PGW failed to do. PGW's Exceptions argue that I&E's recommended disallowance is unwarranted because PGW, the Philadelphia Gas Commission and City Council track and approve all capital expenditures in the annual budget.²⁹ However, in this rate case, the IGF spending was not tied to identified projects in the FPFTY, which raises concerns over the fact that there is no oversight or restrictions over the IGF funds.³⁰ PGW states that its annual budgets were available to the parties to review, but this argument ignores the fact that PGW has the burden of proving its claims in this rate proceeding. It failed to do so with respect to these funds. PGW asserts that there is "no statute or PUC regulation that requires that the Commission or I&E review and approve all of a utility's capital expenditures;"³¹ however, this argument ignores the fact that there is a clear statutory mandate that rates must be just and reasonable. I&E correctly argued that rate recovery of \$53.2 million for undefined capital projects violated this basic statutory principle.

PGW's Exceptions also take issue with the fact that I&E recommended that it rethink its financing strategy. PGW states that it uses IGF to maintain PGW's capital structure at "reasonable levels;"³² but I&E does not believe that PGW's desired financing strategy to achieve a capital structure comprised of 50% IGF and 50% debt is

²⁹ PGW Exceptions at 16.

³⁰ I&E St. No. 1, p. 29.

³¹ PGW Exceptions at 17.

³² PGW Exceptions at 15.

reasonable.³³ I&E understands PGW's desire to reduce its reliance on long term debt to finance infrastructure improvements; however, it is clear that this financing strategy is burdensome for ratepayers. PGW laments that its debt to total capitalization is higher than other municipals utilities with a 50%/50% debt to equity ratio.³⁴ PGW's position fails to acknowledge that this Commission investigated PGW's pipeline replacement program in 2015 and released a Staff Report indicating that, "As a municipally owned utility, it is Staff's opinion that PGW can operate with a longer-term debt-to-capital ratio perhaps as high as 70%."³⁵ Currently, PGW's debt ratio continues to trend much lower than 70% at both present and proposed rates.³⁶ Even with no rate increase, PGW's level of debt slowly trends downward from the FPFTY of 62.69% through fiscal year 2026-27 at 53.26%.³⁷ While the Staff Report was released in the context of accelerating PGW's main replacement program, it demonstrates that the Commission has recommended issuing debt is an appropriate option to finance capital expenditures rather than rate recovery.

In Exceptions, PGW attempts to demonstrate that its financing strategy is cheaper for ratepayers because it highlights that there are costs associated with debt.³⁸ I&E does not dispute this basic concept; however, it does not follow that financing capital expenditures with cash is appropriate from a ratemaking perspective. Financing capital

³³ PGW St. No. 2, p. 20.

³⁴ PGW Exceptions at 15.

³⁵ Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program, April 21, 2015, p. 6.

³⁶ PGW Exhibit JFG-1- Balance Sheet, line 45; JFG-2- Balance Sheet, line 45.

³⁷ PGW Exhibit JFG-1- Balance Sheet, line 45.

³⁸ PGW Exceptions at 15-16.

improvements with long-term debt, rather than cash, better matches the recovery of the expenditure with the useful life of the asset.³⁹ This is important as it spreads the cost recovery out over the life of the asset and causes all ratepayers who benefit from improvement to be responsible for its financing, not just the ratepayers at the time the assets are placed into service.⁴⁰

Accordingly, I&E respectfully requests that the Commission deny PGW Exception No 3.

D. I&E Reply to PGW Exception No. 8: The ALJs correctly denied PGW's inflation factor. (PGW Exceptions at 25-26; RD at 42-45).

In Exceptions, PGW claims that the RD's denial of the 4.63% inflation adjustment to specific expenses was in error as it is a reasonable projection of how prices will increase in the FPFTY for a handful of expense items.⁴¹ However, the ALJs correctly recommended that the \$2.89 million inflation adjustment be denied because PGW failed its burden to prove the reasonableness and prudence of its ratemaking claims.⁴²

PGW contends that its 4.63% inflation claim is supported by Commission precedent as it is targeted to a few, specific expenses.⁴³ The ALJs reviewed the cases cited by PGW, OCA and I&E and determined just the opposite. Specifically, the ALJs recognized that a targeted inflation factor was approved in *PECO Gas 2021* because the

³⁹ I&E St. No. 1, pp. 7-8.

⁴⁰ I&E St. No. 1, p. 8.

⁴¹ PGW Exceptions at 25.

⁴² RD at 44-45.

⁴³ PGW Exceptions at 26.

inflation adjustment was applied to a single expense.⁴⁴ However, the ALJs found that PGW's approach was not nearly as targeted as approved in *PECO Gas* because PGW applied the 4.63% adjustment to approximately 20% of its total operating expenses.⁴⁵ Far from the narrow approach approved in *PECO Gas 2021*, PGW applied its inflation adjustment to expenses for gas processing, field operations, collection, customer service, account management, marketing and administrative and general. Accordingly, the ALJs correctly concluded that PGW's request was more in line with the recent *Aqua* order, where the Commission disallowed Aqua's request to apply a blanket inflation adjustment to 22% of its operating expenses.⁴⁶

In further support of its argument, PGW asks the Commission to take administrative notice of the fact that inflation is substantial and that the price of goods and services are expected to increase.⁴⁷ I&E submits that this argument fails to support a blanket request to increase approximately 20% of its operating expenses by 4.63% given that PGW has the burden to of proving that its ratemaking claims are prudent and reasonable. A high-level argument that all costs are going up cannot justify rate recovery from PGW customers. Therefore, the ALJs correctly concluded that "PGW has failed to carry its burden of proving whether and to what level the expenses in question will increase or decrease in the future."⁴⁸ Additionally, it fails to recognize that PGW has the option to request a rate increase at any time it no longer sufficiently recovers its operating

⁴⁴ RD at 44.

⁴⁵ RD at 44.

⁴⁶ RD at 44.

⁴⁷ PGW Exceptions at 26.

⁴⁸ RD at 44-45.

expenses through rates. In short, PGW has appropriate regulatory tools at its disposal to address increasing costs, but it should not be permitted to do so by padding a significant portion of its operating expenses by an additional 4.63%.

Accordingly, I&E respectfully requests that the Commission deny PGW Exception No. 8 and adopt the ALJs' recommendation to deny PGW's requested inflation adjustment.

E. I&E Reply to PGW Exception No. 9: The ALJs correctly amortized PGW's COVID-19 expenses over a 53-month period. (PGW Exceptions at 26; RD at 39-42).

In its Exceptions, PGW argues that the ALJ recommended 53-month amortization period for its COVID-19 claim is unreasonable because it has been filing base rate cases every three years; therefore, a 36-month recovery period is appropriate.⁴⁹

In support of its shorter recovery period, PGW highlights that it filed rate cases in 2017, 2020 and 2023. Although this is true, the ALJs properly recognized that “[t]wo filing intervals (2017 to 2020 and 2020 to 2023) are hardly indicative of a historical pattern or reliable average.”⁵⁰ Therefore, the ALJs appropriately looked to a third filing interval to obtain a more accurate understanding of PGW's filing history and it told a much different story than PGW's claimed three-year filing cycle. Unsurprisingly, the filing interval that PGW wants the Commission to ignore is the 86-month period between its 2017 filing and its 2009 filing.⁵¹ In summary, the three filing intervals relied upon by the ALJs are 86 months (December 2009 to February 2017), 36 months (February 2017 to February 2020) and 36 months (February 2020 to February 2023), which result in the

⁴⁹ PGW Exceptions at 26.

⁵⁰ RD at 41.

⁵¹ I&E MB at 20.

recommended 52-month amortization period. The ALJs correctly determined that these three filing intervals better represent PGW’s historical filing pattern and should be utilized to determine the appropriate recovery period.

PGW states that the 53-month amortization period “reduces the FPFTY allowance by \$3.26 million.”⁵² While the recommendation does reduce the amount *recovered in the FPFTY*, it must be made clear that PGW will fully recover its COVID-19 expenses. However, instead of more cost recovery in the FPFTY, it will recover the expense over a longer period of time (52 months in lieu of PGW’s claimed 36 months). As aptly summarized by the ALJs, “Although this is a longer period than the one recommended by PGW, it carries no uncertainty as to recovery.”⁵³

Accordingly, I&E respectfully requests that the Commission deny PGW Exception No. 9 and adopt the ALJs’ recommendation to amortize PGW’s COVID-19 expenses over 52 months.

F. I&E Reply to PGW Exception No. 11: The ALJs properly disallowed PGW’s request to amortize rate case expense and properly recommended that the expense be normalized over 52-months. (PGW Exceptions at 27; RD at 36-39).

PGW improperly requests that its current rate case expense be amortized and that it be permitted to recover \$177,000 of its unrecovered rate case expense from the 2020 base rate case. The ALJs thoroughly explained why amortizing rate case expense is inappropriate and correctly denied PGW’s request.

⁵² PGW Exceptions at 26.

⁵³ RD at 41.

As explained in I&E’s Main Brief, operating expenses that recur at irregular intervals are normalized for ratemaking purposes in order to determine a “normal” annual test year allowance; whereas, expenses that are non-recurring or infrequently recurring are traditionally amortized for ratemaking purposes.⁵⁴ This distinction in the ratemaking treatment is important because unrecovered normalized expense would be disallowed in a subsequent base rate case while an amortized expense allowance can be recovered in a later rate case if there is a remaining unamortized balance, which is what PGW is attempting to do with the \$177,000 remaining from its 2020 rate case. As succinctly stated by the ALJs, rate case expense most certainly satisfies the definition of normalization “as it is claimed in virtually every rate case filing and is not an unusual or infrequently reoccurring expense.”⁵⁵ This determination is in line with longstanding Commission precedent that has consistently recognized that rate case expense must be normalized, not amortized, for ratemaking purposes.⁵⁶ Moreover, it is consistent with the prior ratemaking treatment for this utility given that in PGW’s 2001 rate case the Commission correctly determined that PGW’s rate case expense should be normalized.⁵⁷

In support of its claimed recovery of \$177,000 of the unrecovered 2020 rate case expense, PGW continues to argue in Exceptions that it is entitled to “full recovery of legitimately incurred (and previously authorized) unamortized rate case expenses” and

⁵⁴ I&E MB p. 17.

⁵⁵ RD at 39.

⁵⁶ *Pa. PUC v. PECO*, 56 PA PUC 155, 176 (1982) (citing *Pa. PUC v. NFG Dist. Corp.*, 54 PA PUC 188 (1980); *Pa. PUC v. Butler Twp. Water Co.*, 54 PA PUC 571 (1980); *Pa. PUC v. West Penn Power Co.*, 73 PA PUC 454, 492 (1990); *Pa. PUC v. Lemont Water Co.*, 81 PA PUC 392, 404 (1994).

⁵⁷ *Pa. PUC v. PGW*, Docket No. R-00006042, pp. 51-53 (Order entered October 4, 2001).

that to find otherwise is “an improper collateral attack on a prior Commission order.”⁵⁸ PGW’s repetition of this argument is entirely unsupported and without merit. PGW fails to cite where in the Commission’s Order it was authorized to amortize its 2020 rate case expense claim. PGW’s 2020 base rate case was settled through a black box settlement, which means that there was no line-by-line identification of individual expenses that PGW was authorized to recover. In order to for the 2020 rate case expense to be amortized and recovered in this proceeding, amortization of the 2020 rate case expense would have to have been negotiated between the parties, pulled out of the “black box” and expressly stated in the 2020 settlement, and approved by the Commission in its Order. None of those things occurred as evidenced by the fact that the 2020 settlement and Commission Order are silent with respect to rate case expense, which means that such recovery was included in the black box revenue requirement contained in the settlement. Accordingly, PGW was not authorized to amortize the 2020 rate case expense and it should not have expected to do so given that the Commission previously determined that it should normalize this claim, just like all other regulated utilities, in its 2001 base rate proceeding.⁵⁹

Accordingly, I&E respectfully requests that the Commission deny PGW Exception No. 11 and adopt the ALJs’ recommendation to disallow PGW’s request to amortize its current rate case expense and recover \$177,000 of unamortized rate case expense from its prior rate case.

⁵⁸ PGW Exceptions at 27.

⁵⁹ *Pa. PUC v. PGW*, Docket No. R-00006042, pp. 51-53 (Order entered October 4, 2001).

G. I&E Reply to PGW Exception No. 12: The ALJs properly disallowed PGW’s request to recover its lobbying expense claim. (PGW Exceptions at 27-28; RD at 34-36).

In its Exceptions, PGW argues that the ALJs improperly disallowed PGW’s \$100,000 lobbying expense claim. PGW argues that such expenses are reasonable and that, as a municipal utility, PGW “has an obligation to maintain lines of communication with other parts of government.”⁶⁰

The ALJs were unmoved by this argument and appropriately recommended that the claim should be rejected. First, Section 1316 of the Public Utility Code prohibits public utilities from recovering expenses for political advertising in rates.⁶¹ This section defines political advertising as money spent for lobbying unless it is spent for appearances before regulatory or other governmental bodies in connection with a public utility’s existing or proposed operations.⁶² Second, this Commission has denied lobbying expense recovery in two prior PGW rate cases and the ALJs appropriately concluded that it should be similarly disallowed in this proceeding. In *PGW 2001*, the ALJ noted the Commission’s longstanding history of disallowing this expense because “lobbying expenses do not have a direct ratepayer benefit and as such cannot be included in rates.”⁶³ Importantly, the Commission also rejected the argument that PGW’s status as a municipal utility should permit it to recover lobbying expenses and concluded that “we do not view the recovery of lobbying expense as being required by Section 2212’s mandate that the

⁶⁰ PGW Exceptions at 27.

⁶¹ 66 Pa. C.S. § 1316.

⁶² 66 Pa. C.S. § 1316(d).

⁶³ *Pa. PUC v. PGW*, Docket No. R-00006042, p. 64 (Order entered October 4, 2001).

Commission adheres to the prior ratemaking method. Rather, we are free to examine both the reasonableness of the amount and the category of O&M expense being claimed by PGW.”⁶⁴ Moreover, the ALJs found *PGW 2006* to be instructive and determined that there are no “special circumstances” in this case that warrant a waiver under Section 2212(c) of the Code to permit such recovery.⁶⁵

The ALJs reviewed the evidence and law and appropriately concluded that the \$100,000 lobbying expense claim should be disallowed. Accordingly, I&E respectfully requests that the Commission deny PGW Exception No. 12.

III. CONCLUSION

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that PGW’s Exceptions be denied and the Recommended Decision of Administrative Law Judge Eranda Vero and Arlene Ashton be adopted by the Commission.

Respectfully submitted,



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⁶⁴ *Pa. PUC v. PGW*, Docket No. R-00006042, p. 66 (Order entered October 4, 2001).

⁶⁵ RD at 35-36; *Pa. PUC v. PGW*, Docket No. R-00061931, p. 56 (Order entered September 28, 2007).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated September 22, 2023 in the manner and upon the persons listed below.

Served via Electronic Mail Only

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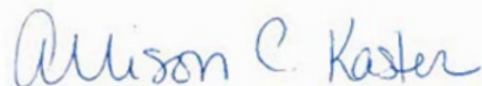
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