December 6, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17121

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

Secretary Chiavetta:

Attached for electronic filing, please find the Joint Answer of The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN) to the Petition for Reconsideration filed by Philadelphia Gas Works on November 27, 2023 in the above-captioned proceeding.

Respectfully submitted,

/s/ Robert W. Ballenger
Robert W. Ballenger

On behalf of TURN

Cc. Office of Special Assistants (Via email: ra-OSA@pa.gov)
Service list

Encl.

Pennsylvania Public Utility Commission	:	R-2023-3037933
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

Certificate of Service

I hereby certify that I have this day served copies of the Answer of CAUSE-PA/TURN to PGW's Petition for Reconsideration upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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December 6, 2023

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	R-2023-3037933
v.	:	
	:	
Philadelphia Gas Works	:	

JOINT ANSWER OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA AND
TENANT UNION REPRESENTATIVE NETWORK
TO PHILADELPHIA GAS WORKS PETITION FOR RECONSIDERATION

THE PENNSYLVANIA UTILITY LAW PROJECT

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December 6, 2023

I. INTRODUCTION

On November 9, 2023, the Pennsylvania Public Utility Commission (PUC or Commission) issued its Opinion and Order approving an annual increase of $26,201,000 to Philadelphia Gas Works (PGW) *pro forma* revenue.[1] On November 27, 2023, PGW filed its Petition for Reconsideration of the Commission's Opinion and Order, raising two requests for the Commission to modify the annual revenue increase approved.

PGW's first request posits that the Commission's Opinion and Order mistakenly adjusted (reduced) PGW's allowable revenues by $17.08 million.[2] In total, PGW submits that correcting this error should authorize it to seek ratepayer revenues in an additional amount of $17.821 million.[3]

PGW's second request asks the Commission to reverse its decision to eliminate PGW's "blanket" inflation adjustment of 4.63%, which PGW proposed to apply to 20% of its expense categories.[4] PGW asserts that this adjustment, when combined with the Commission's approved expense normalization adjustments,[5] is erroneous.

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN), submit that the Commission should deny PGW's requests. Authorizing higher allowable revenues than approved in the Commission's Opinion and Order would upset the delicate balance the Commission established in approving just and reasonable rates for PGW and its customers. In particular, approval of PGW's reconsideration requests would increase authorized revenues by an additional $20.835

[1] Opinion and Order at 1-2.
[2] PGW Petition, ¶¶
[3] PGW Petition, Appendix A, at 2 (table).
[4] PGW Petition, ¶¶25.
[5] PGW Petition, ¶¶23-24.

million, resulting in significantly higher rates, and causing PGW to over-perform the financial metric outcomes the Commission explicitly approved.

For the low- and moderate-income PGW customers and users whose interests we represent in this proceeding, CAUSE-PA and TURN jointly submit that no additional revenue increase for PGW should be approved. PGW serves more low-income customers than any other jurisdictional gas utility and these customers already struggle to afford service even absent any rate increase.[6] Adding an additional increase on top of the substantial rate increase the Commission already approved, will produce additional hardship and payment difficulty for these already struggling customers. PGW's Petition for Reconsideration should be denied.[7]

II. OVERVIEW

PGW's Petition for Reconsideration focuses on two aspects of PGW's projected revenue requirements, to the exclusion of all others. In contrast, the Commission's review and final Opinion and Order does not focus solely on each category of potential expenditure or source of revenue, but rather reflects a broader investigation into the reasonableness of PGW's requested rate increase, taking into consideration not just PGW's purported needs, but also the ability of its customers to pay. In this proceeding, the Commission approved PGW's request to increase its rates and charges to customers in order to attain higher revenues, but at levels lower than originally proposed by PGW. As pertinent hereto, the Commission's Opinion examined the

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[6] CAUSE-PA/TURN MB at 8-13; Order at 185-186 (citing PGW 2017 Rate Case).

[7] CAUSE-PA/TURN note that PGW's Petition for Reconsideration is unverified and so fails to satisfy the requirements of the Commission's regulations. *See* 52 Pa. Code § 1.36 (requiring verification); *see, e.g., PUC Bureau of Investigation. & Enf't. v. T.L. Trucking*, Docket No. C-2021-3023661 (May 12, 2022 Opinion and Order) (addressing unverified Petition for Reconsideration); Application of Veolia Water Pennsylvania, Inc. (f/k/a Suez Water Pennsylvania, Inc.) for Approval of Veolia Water Pennsylvania, Inc.s Acquisition of Certain Real Est. Located in Upper Allen Twp., Cumberland Cnty., Pennsylvania, Docket No. A-2022-3031706 (July 15, 2022 Opinion and Order) (same).

positions of all parties concerning adequacy of PGW's current and projected revenues, as well as the impact of proposed and approved rates on PGW's financial metrics.

As the Commission recognized:

> PGW's most important financial metrics are: (1) the bond debt service coverage (DSC) ratio; (2) the end of year days of cash on hand (DOC) and liquidity balance; (3) the debt to equity capitalization ratio; and (4) the bond rating agency requirements necessary to maintain a certain credit rating.[8]

In the totality of its review, the Commission undertook to examine PGW's projected financial needs and permit the recovery of revenues from PGW's rates adequate to cover reasonable and prudent operating expenses, depreciation allowances, and debt service while also generating sufficient margins to meet financial metrics, including internally generated funds (IGF) utilized for capital purposes. The Commission was guided by the Constitutionally-based, statutory standard: the Commission must properly balance the interests of PGW and its ratepayers in determining just and reasonable rates.[9]

In striking the appropriate balance, within the recognized zone of reasonableness applicable to utility ratemaking,[10] the Commission ruled on multiple exceptions to the Administrative Law Judges' (ALJ) Recommended Decision (RD), including each of PGW's 18 exceptions to the RD. Importantly, the Commission ruled specifically on PGW's exceptions regarding its financial performance metrics. Indeed, PGW took broad exception to the ALJs recommendations regarding DSC, DOC, debt to equity capitalization ratio and bond rating agency requirements.[11]

[8] Opinion and Order at 15-16, citing PGW St. 2 at 12.
[9] 66 Pa. C.S. 1301; *Popowsky v. PUC*, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995).
[10] See, e.g., Public Advocate v. Phila. Gas. Comm'n, 674 A.2d 1056 (Pa. 1996); Pa. Elec. Co. v. PUC, 502 A.2d 130 (Pa. 1985).
[11] See PGW Exceptions, Nos. 1-3.

On review of PGW's exceptions, the Commission held that "PGW's claimed DSC ratio and DOC balance would not produce just and reasonable rates" and so denied PGW's exception.[12] Additionally, the Commission approved an overall revenue requirement and revenue increase to attain a DSC ratio of 2.44x before (2.28x after) payment of the annual $18 million franchise fee to the City of Philadelphia and resulting in a DOC balance of $96,661,000 (approximately 54.1 days).[13] Likewise, the Commission rejected PGW's request to fund incremental capital expenditures via a "50-50" financing strategy as a means to improve PGW's debt to capital ratio.[14] Instead, as the Commission stated, "the adjustments we have made to the Company's revenue and expense claims, as discussed in this Opinion and Order, will result in a debt to total capital ratio for PGW of 61.08%."[15] Finally, the Commission found that the record indicates that PGW's credit rating is not at risk, as "there is no indication that the[] rating agencies are concerned about PGW's current or future ability to service its debt."[16]

As discussed more fully below, although PGW's requested bases for reconsideration do not address the specific financial outcomes approved by the Commission, granting PGW's Petition for Reconsideration would cause PGW to over-perform on each metric, in contravention of the Commission's determination. Indeed, approving PGW's requested adjustments would increase revenues in favor of PGW's financial goals, while requiring more payments from customers, despite the explicit balance the Commission ordered.[17] The associated higher rates would, of course, fall hardest on low-income customers leading to additional hardship and payment trouble. Finally, PGW's Petition for Reconsideration fails to satisfy the legal

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[12] Opinion and Order at 35.
[13] Opinion and Order at 41-42.
[14] Opinion and Order at 52.
[15] Id.
[16] Opinion and Order at 37.
[17] See, e.g, Opinion and Order at 51-52 (describing balancing of PGW's credit rating needs against burdens to customers).

requirements, presenting no new or novel arguments not previously considered by the Commission.

III. PGW'S FIRST REQUEST FOR RECONSIDERATION SHOULD BE DENIED.

PGW contends that "In making a $17.08 million adjustment to PGW's rate allowance for [IFG] to reflect a lower construction budget allowance, the Commission mistakenly reduced PGW's allowed revenue requirement by $34.16 million, or twice the $17.08 million it intended."[18] PGW speculates that the Commission's error is derived from its failure to account for "the nature of a construction budget for a cash flow company, such as PGW."[19] Finally, PGW baldly asserts that "The Commission's Table I clearly shows a reduction in revenue requirement and rate increase of $34.2 million, rather than the $17.08 million that the Commission determined to be reasonable,"[20] then proceeds to present its own mathematical depiction, ostensibly supporting its allegation.

Preliminarily, it must be observed that the Commission's Table I does not clearly depict a $34.2 million reduction associated with IGF. Rather, the Commission's Table I clearly shows two revenue adjustments: a downward adjustment to line 4 ("Revenue Enhancement") of $58,961,000 and an upward adjustment to line 7 ("Appropriation for Uncollectible Reserve") of $2,358,000. The depiction of a $34.2 million reduction associated with IGF appears in Appendix A to PGW's Petition for Reconsideration, a presentation of PGW's own calculations and estimations.

From a broader perspective, while PGW claims that the Commission's error reduced its total allowable revenues by $17 million too much, it wholly ignores the associated impact that

[18] Petition ¶4.
[19] Petition ¶15.
[20] Petition ¶18.

allowing an additional $17 million in revenues would have. The revenue adjustments, like the expense adjustments, are some of the many assumptions reflected in Table I to the Commission's Opinion and Order used to determine the financial performance PGW can be expected to attain based on the *overall* revenues allowed. PGW fails to address the important baseline concern regarding whether, even if the Commission had inadvertently duplicated an adjustment, increased overall allowable revenues would produce just and reasonable rates. CAUSE-PA/TURN respectfully assert that such an increase would not produce just and reasonable rates, especially in light of the impact that such an increase would have on Philadelphia's sizeable low-income population.

Importantly, as discussed more fully above, the Commission specifically assessed the combined impact of all adjustments entered into Table I, determining that they produced appropriate performance of PGW financial metrics. The Commission painstakingly reviewed the impact of its revenue adjustments to evaluate PGW's requested and approved DSC, DOC, debt to capital ratio and impact on bond rating agency requirements. Clearly, if the Commission were to include an additional $17 million (or more, including by granting PGW's second request for reconsideration, discussed below) in PGW's allowable revenues, PGW would over-perform on these financial metrics at the expense of its customers. Indeed, as PGW is no doubt aware, authorizing more revenues in the forecast rate model would relatedly project more advantageous (to PGW) financial outcomes in each metric. Importantly, PGW presents no new or novel arguments for why it should be entitled to financial performance above the levels set by the Commission, as required to meet the standard imposed upon Petitions for Reconsideration.[21]

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[21] See Duick v. Pa. Gas & Water Co., 56 Pa. PUC 553 (1985) (prohibiting review and reconsideration of questions previously considered; instead stating "we expect to see…new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.")

Indeed, PGW presents no arguments whatsoever regarding the impact of higher revenues on its financial performance metrics.

CAUSE-PA/TURN submit that, taken as a whole, the Commission's approved allowable revenues for PGW are within the zone of reasonableness afforded to PUC rate determinations and should not be disturbed. PGW has not shown that the Commission erred in arriving at the total allowable revenues, which the Commission explicitly established relative to specific PGW financial metrics, as described in the Order. Increasing PGW's allowable revenues would disturb the just and reasonable rates set by the Commission, upsetting the balance between PGW's customers' ability to pay and PGW's financial needs.

IV. PGW'S SECOND REQUEST FOR RECONSIDERATION SHOULD BE DENIED.

As discussed above, additional adjustments to PGW's allowable revenues would disturb the balance in just and reasonable rates struck by the Commission's Opinion and Order. As a result, CAUSE-PA/TURN submit that PGW's second basis for reconsideration, which would increase allowable revenues by $3,014,000, should be denied for the same reasons articulated above.

Additionally, although PGW acknowledges the legal standard for reconsideration, its second basis for reconsideration fails to meet that standard. As PGW acknowledges, the standard for granting a Petition for Reconsideration is articulated in Duick, and so is not met absent new or novel arguments not previously presented. Yet PGW simply repackages its exceptions to the ALJ's recommended decision, presenting nothing new and novel for the Commission's consideration. This constitutes a separate and distinct basis for denying PGW's second reconsideration request.[22]

[22] PUC v. PECO Energy Co., Docket No. M-00960820 (February 12, 1999 Opinion and Order) (finding petitioners failed to raise new or novel arguments not previously considered by the Pennsylvania Public Utility Commission in

As the Commission is aware, PGW excepted to the ALJ's recommended normalization of operating expenses in its Exception No. 7. Likewise, PGW filed Exception No. 8 arguing that the Commission should not approve the ALJ's recommended decision to remove its generic 4.63% inflation adjustment (applied to 20% of PGW's operating expenses). Indeed, PGW argued in its exceptions that the normalization and inflation adjustments, combined, constituted a double-counting.[23] Considering the ALJ's recommended decision and reply exceptions of other parties, the Commission denied PGW's Exception No. 7.[24] Likewise, the Commission considered the ALJ's recommendation as well as the reply exceptions of other parties and denied PGW's Exception No. 8.[25]

PGW's second basis for reconsideration questions only the exclusion of PGW's blanket inflation adjustment of 4.63%. In attempting to craft a new or novel argument, PGW contends elimination of the 4.63% inflation adjustment, in connection with the normalization adjustment, deprives PGW of sufficient revenues to cover projected expenses. This argument is identical to the double-counting argument PGW made in its exceptions and so fails to meet the new or novel requirement. Both the normalization adjustments and the inflation adjustment were recommended for approval by the ALJs and depicted as stand-alone adjustments in the ALJ's recommended decision.[26] PGW took specific objection to both adjustments and the Commission considered and ruled on each of them. Consistent with its rulings on PGW exceptions, the Commission then adopted the expense and inflation adjustments separately as shown in its Opinion and Order.[27]

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the petition for reconsideration so did not meet the established standard to warrant that the Commission reopen the proceeding.).

[23] PGW Exceptions at 24-25.

[24] Opinion and Order at 95.

[25] Opinion and Order at 72.

[26] Recommended Decision, Table I, Lines 18-24 (normalization) and 34 (inflation).

[27] Opinion and Order, Table I, Lines 18-24 (normalization) and 34 (inflation).

PGW's attempt to connect these two adjustments, for purposes of reconsideration, simply preferences one of the adjustments over the other and does not constitute a new and novel argument. As a consequence, PGW's request for reconsideration fails to satisfy the requirements of Duick and should be denied.

V. CONCLUSION

For the foregoing reasons, CAUSE-PA/TURN respectfully request that the Commission deny PGW's Petition for Reconsideration.

Respectfully Submitted,

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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VERIFICATION

I, Robert W. Ballenger, hereby state that the facts set forth in the Answer of CAUSE-PA and TURN to PGW's Petition for Reconsideration are true and correct (or are true and correct to the extent of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Robert W. Ballenger

December 6, 2023 *Counsel for TURN*