

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

 @pa_oca
 /pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

December 7, 2023

Rosemary Chiavetta, Secretary
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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to Philadelphia Gas Works' Petition for Reconsideration in the above-referenced proceeding. As required under the Commission's regulations, the Office of Consumer Advocate's Answer is accompanied by a verification in accordance with 52 Pa. Code Section 1.36.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ David T. Evrard
David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
DEvrard@paoca.org

Enclosures:

cc: The Honorable Arlene Ashton (email only)
The Honorable Eranda Vero (email only)
Office of Special Assistants (email only: ra-OSA@pa.gov)
Paul Diskin, TUS (email only: pdiskin@pa.gov)
Certificate of Service

*4867-8757-5189

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Answer to PGW’s Petition for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7th day of December 2023.

SERVICE BY E-MAIL ONLY

Allison Kaster, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
akaster@pa.gov
Counsel for I&E

Sharon E. Webb, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
swebb@pa.gov
Counsel for OSBA

Daniel Clearfield, Esquire
Sarah Stoner, Esquire
Norman J. Kennard, Esquire
Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
sstoner@eckertseamans.com
nkennard@eckertseamans.com
kmoury@eckertseamans.com
Counsel for PGW

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street
44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com
Counsel for PGW

SERVICE BY E-MAIL ONLY (continued)

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
Counsel for "PICGUG"

Dennis A. Whitaker, Esquire
Kevin J. McKeon, Esquire
Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
dawhitaker@hmslegal.com
kjmckeon@hmslegal.com
tsstewart@hmslegal.com
*Counsel for Grays Ferry Cogeneration
Partnership & Vicinity Energy Philadelphia, Inc.*

John W. Sweet, Esquire
Elizabeth R. Marx, Esquire
Ria M. Pereira, Esquire
Lauren N. Berman, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Devin McDougall, Esquire
Clean Energy Program
Earthjustice
1617 John F. Kennedy Blvd.
Suite 2020
Philadelphia, PA 19103
dmcDougall@earthjustice.org
Counsel for POWER Interfaith

Robert W. Ballenger, Esquire
Joline R. Price, Esquire
Daniela E. Rakhlina-Powsner, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
rballenger@clsphila.org
jprice@clsphila.org
drakhlinapowsner@clsphila.org
Counsel for TURN

Rebecca Barker, Esquire
Earthjustice
311 S. Wacker Drive
Suite 1400
Chicago, IL 60606
rbarker@earthjustice.org
Counsel for POWER Interfaith

SERVICE BY USPS ONLY, POSTAGE PREPAID

James M. Williford
2730 W. Allegheny Avenue
Philadelphia, PA 19132

/s/ David T. Evrard
David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
DEvrard@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
HBreitman@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
DLawrence@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Dated: December 7, 2023
*4889-4272-6549

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	R-2023-3037933
Office of Consumer Advocate	:	
Office of Small Business Advocate	:	C-2023-3038846
Philadelphia Industrial And Commercial	:	C-2023-3038885
Gas User Group	:	C-2023-3039059
Grays Ferry Cogeneration Partnership and	:	
Vicinity Energy Philadelphia, Inc.	:	C-2023-3038727
James M. Williford	:	
v.	:	
	:	
Philadelphia Gas Works	:	
	:	

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO PGW’S PETITION FOR RECONSIDERATION

I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Answer in response to the Petition for Reconsideration (Petition) filed by the Philadelphia Gas Works (PGW or Company) on November 27, 2023, in the above-captioned base rate proceeding. PGW seeks reconsideration of the Public Utility Commission’s (PUC or Commission) November 9, 2023, Opinion and Order (*Order*) in the matter. In its Petition, PGW cites two alleged computational errors made by the Commission in determining PGW’s approved revenue increase and asserts that, if corrected, its granted revenue increase should be raised by more than \$20.8 million. Petition at 1. The Commission’s November 9 Order approved a revenue increase of \$26.2 million. PGW asserts that it should have been \$47 million with the alleged errors corrected. It is the OCA’s position that the

\$26.2 million revenue increase granted by the Commission is supported by the record, complies with the cash flow method of ratemaking, and results in constitutionally-required just and reasonable rates - whether or not computational errors were made.¹ Further, the OCA asserts that the arguments made by PGW in connection with the second alleged error were previously raised by the Company in its Exceptions to the Recommended Decision in this case and therefore do not satisfy the well-established standards for reconsideration set forth in *Duick v. Pennsylvania Gas and Water Company*, C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (1982), 1982 Pa. PUC LEXIS 4 (*Duick*)

II. ANSWER

A. Just and Reasonable Rates

The objective of every rate-setting proceeding conducted under the Public Utility Code is to establish rates that are “just and reasonable.” 66 Pa.C.S. § 1301. This is a process that necessarily involves judgment and discretion. It is not purely a mathematical exercise. Our Pennsylvania Supreme Court has explained the process as follows:

There is ample authority for the proposition that the power to fix “just and reasonable” rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both. *See Utah Power and Light Co. v. PSC*, 107 Utah 155, 190-191, 152 P.2d 542, 558 (1944). Accord, *State v. N. J. Bell Telephone Co.*, 30 N.J. 16, 152 A.2d 35 (1959).

¹ The two computational errors cited by PGW are: (1) that the Commission removed \$17.08 million from PGW’s revenue requirement two times when the amount should have been removed only once; and (2) that adjustments made to various categories of expense to normalize those amounts were improperly further reduced by the denial of a proposed inflation factor. PGW states that this second error reduced its revenue requirement by an additional \$2.89 million. Petition at 1, 11.

Pa. PUC v. Pennsylvania Gas and Water Co., 424 A.2d 1213, (Pa. 1980) (*Pa. Gas and Water*).

The OCA submits that while the instant proceeding does not involve a privately-owned utility with investors and the need to earn a rate of return on capital, the principle of balancing the interests between customers and their utility (PGW) applies equally.

The OCA maintains that in the instant case the Commission properly exercised its judgment and discretion to arrive at a revenue increase which it determined would satisfy the financial needs of PGW as well as set new rates for customers that were not unreasonably high. That increase was \$26.2 million. In reaching its decision, the Commission was presented with a wide range of potential outcomes, from a reduction to present rates proposed by the OSBA to an increase of \$16.5 million proposed by the OCA, an increase of \$44.8 million proposed by I&E, and the Company's proposed increase of \$85.2 million. OSBA St. 1 at 15; OCA St. 1-SR at 1; I&E St. 1-SR-Revised at 21; and PGW St. 1 at 2. The Commission settled upon an increase of \$26.2 million and explained the impact of this level of increase on PGW's financial metrics as follows:

As previously noted, based upon our findings regarding certain inputs to PGW's revenues and expenses, we are approving a revenue requirement of \$858,831,000 and a revenue increase of \$26,201,000. This results in a DSC ratio for PGW of 2.44x before the \$18 million City Payment, and 2.28x after the City Payment. We are of the opinion that this DSC ratio will not only meet PGW's legal requirements under its bond covenant but will also exceed the required bond covenant DSC ratio of 1.5x by a sufficiently large margin that will keep PGW financially stable throughout future events; while also producing just and reasonable rates for PGW's ratepayers. Additionally, this revenue increase and revenue requirement result in a year-end cash balance of \$96,661,000 and a DOC balance of approximately 54.1 days for the Company in the FPFTY. In our view, this DOC balance is more appropriate than that proposed by the Company, as it will be less burdensome for the Company's ratepayers, while still allowing PGW sufficient funds to address any financial difficulties that may arise; and to maintain its current credit ratings. We note that although the above-determined financial metrics, revenue increase, and revenue requirement are greater than the amounts recommended by the ALJs, they are still significantly less than the revenue requirement, revenue increase, and the associated financial metrics originally sought by the Company.

Order at 41.

This explanation by the Commission clearly demonstrates that it engaged in the type of weighing and balancing of interests contemplated by our Supreme Court in *Pa. Gas and Water*. In its effort to arrive at just and reasonable rates, it considered the interests of both PGW and PGW's customers. In the Commission's view a Debt Service Coverage ratio of 2.44x (before City Payment), a year-end cash balance of \$96.66 million and a Days Cash On-Hand balance of 54.1 days are adequate to keep PGW "financially stable throughout future events," and allows "PGW sufficient funds to address any financial difficulties that may arise (and maintain its current credit ratings)." All of this was done with the desire of "producing just and reasonable rates for PGW's ratepayers" and setting rates that will be "less burdensome for the Company's ratepayers."

The Commission's determination is further buttressed by the testimony of various witnesses testifying on PGW's financial metrics. For instance, I&E witness Patel in commenting on PGW's debt to capitalization goal stated:

[A] debt to total capital goal of 60% (PGW Statement No. 3, p. 14, lines 17-19) is unreasonable and too financially burdensome to ratepayers considering PGW is a municipally owned utility and has no investors to provide equity financing.

I&E St. 1-SR-Revised at 21.

OCA witness Griffing, commenting on achieving a better bond rating stated:

I believe the takeaway is that the cost to PGW ratepayers in higher rates from striving to attain a better bond rating can exceed the benefit. Therefore, it is better to have a smaller rate increase, which leaves money in the pockets of the ratepayers, than to spend large sums in pursuit of an improved bond rating. That is especially true when there is no guarantee that better values in a few metrics will lead to an improved bond rating. Credit ratings are as much an art as they are a science.

OCA St. 2 at 10

OSBA witness Knecht, commenting on increasing rates to reduce debt, said:

Reducing the debt has the direct benefit of reducing the annual interest costs incurred by PGW. However, for every dollar contributed by ratepayers, the ratepayers will only get back a few pennies every year in reduced *interest costs*. Thus, reducing debt now represents a significant economic transfer from current ratepayers to future ratepayers. In addition, because (even now) PGW's debt costs are relatively low compared to the cost of capital of its customers (particularly small business customers), ratepayers are likely to be, in total, economically worse off if rates are increased to reduce PGW's debt financing.

OSBA St. 1 Revised at 10-11. Each of these witnesses encouraged the Commission to engage in the type of balancing of interests intended by the decision in *Pa. Gas and Water*.

Granting PGW's request to correct certain alleged computational errors that were made in the Commission's Order, will unquestionably disturb the careful balancing in which the Commission engaged in establishing its findings based upon the evidence presented. The Commission determined what it deemed to be appropriate financial metrics for PGW at the \$26.2 million level. Increasing PGW's revenue increase by the requested \$21 million will inevitably skew those metrics upward and the just and reasonable rates settled upon by the Commission will, for all intents and purposes, be nullified, to the detriment of PGW's customers. As *Pa. Gas and Water* teaches, ratemaking is not merely a mathematical formulation. Correcting any alleged math errors may be satisfying from a theoretical standpoint, but in the context of ratemaking, if revised calculations produce a result that is in tension with just and reasonable rates (the statutory standard), the former must give way to the latter.

Further instruction is provided by the landmark U.S. Supreme Court case *FPC v. Hope Natural Gas*, 320 U.S. 591 (1944) (*Hope*) where the Court observed that, "Under the statutory standard of 'just and reasonable,' it is the result reached, not the method employed, which is controlling." *Hope* at 602. Here, the Commission reached what it determined to be a just and reasonable result at a revenue increase of \$26.2 million. A significant departure from that amount, as PGW proposes in its Petition, can only yield rates the justness and reasonableness of which is

suspect. Correction of the computational errors asserted by PGW may amount to fine-tuning “the method employed,” but doing so must not take precedence over a just and reasonable result.

Accordingly, PGW’s request for reconsideration on this issue must be denied in order to maintain the careful balancing of interests between PGW and its ratepayers, as the Commission’s *Order* currently provides.

B. *Duick* Standards And PGW’s Request for Correction of Expense Category Adjustments

In addition to the arguments made above, with respect to correcting the alleged computational errors associated with the expense normalization adjustments and the denial of an inflation factor for those expense categories (the \$2.89 million), the OCA submits that correcting these supposed computational errors should be denied because they were raised by PGW in its Exceptions to the Recommended Decision in this case and thus have already been considered and disposed of by the Commission.

In *Duick*, the Commission stated that what it expects to see raised in petitions for reconsideration are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Further, a petition for reconsideration can be brought before the Commission when there is newly discovered evidence or a change in circumstances. *Duick* at 559. The OCA maintains that what is presented here by PGW does not amount to new or novel arguments, new evidence or changed circumstances.

In PGW’s Petition, it requests reconsideration of the Commission’s decision to “double adjust” seven PGW expense categories where the Commission first used a three-year average to arrive at a “normalized” amount for each category and then further reduced the normalized amount by removing an inflation adjustment PGW proposed for those categories. Petition at 10.

In its Exception No. 7 to the Recommended Decision, PGW stated the following:

The [Recommended Decision] combined the normalization adjustment with an inflation adjustment ... which unreasonably and unfairly reduces the same PGW expense claims. By applying both normalization adjustments and inflation adjustments to the same expense categories the [Recommended Decision] clearly double counts. The combined impact of those adjustments will deny PGW the opportunity to recover its anticipated costs in the FPFTY. If the claim is normalized, it is a “normal” expense and there is no need to adjust the expense claim for inflation. Likewise, if the claim is adjusted to remove increases projected for inflation, there is no need to further adjust the expense claim based on historic costs and averages. If the Commission is inclined to make these adjustments, either one or the other adjustment can be implemented – but not both.

PGW Exceptions at 24-25.

This argument regarding what PGW terms a “double adjustment” was acknowledged by the Commission in its Order where it stated:

PGW also maintains that the ALJs applied both a normalization adjustment and removed the inflation adjustment which unreasonably and unfairly reduces the same PGW expense claims. PGW Exc. at 24-25.

Order at 94. Upon considering this and other arguments put forward by PGW in its Exception No. 7, the Commission, in its disposition of the Exception No. 7 arguments, determined that PGW’s Exception should be denied. *Order* at 95.

Thus, the argument PGW makes for correcting the double adjusting of the various expense categories it identified in its Petition, has been raised, considered and denied by the Commission in its Order. There is nothing under the *Duick* standards for reconsideration (*i.e.*, new and novel arguments not previously heard, or considerations that have been overlooked or not addressed by the Commission) that warrants the Commission granting PGW’s request to adjust its revenue increase to account for the double adjusting of these expense categories.

III. CONCLUSION

PGW's alleged mathematical errors and proposed remedies, if accepted, would disrupt the careful balancing of interests that the Commission engaged in when arriving at the authorized revenue increase of \$26.2 million. As discussed herein, the Commission's *Order* is supported by the record, complies with the cash flow method of ratemaking and is in accord with the foundational principle that rates must be just and reasonable. Accordingly, the Office of Consumer Advocate respectfully requests the Commission to deny PGW's Petition.

Respectfully submitted,

/s/ David T. Evrard

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. 33870

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Dated: December 7, 2023

Counsel for:
Patrick M. Cicero
Consumer Advocate


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's Answer to Philadelphia Gas Works' Petition for Reconsideration, are true and correct (or are true and correct to the best 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).

Dated: December 7, 2023

Signature:  _____
Patrick M. Cicero
Consumer Advocate

Address: Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923