



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

December 7, 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, et al. v.  
Philadelphia Gas Works  
Docket No. R-2023-3037933, et al.

Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v.  
Philadelphia Gas Works  
Docket Nos. C-2021-3029259  
**I&E Answer to Answer to Petition for Reconsideration**

Dear Secretary Chiavetta,

Attached for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) Answer to the Petition for Reconsideration of Philadelphia Gas Works 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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Bureau of Investigation and Enforcement  
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ACK/ac  
Enclosures

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](mailto:ra-OSA@pa.gov))  
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	:	

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**BUREAU OF INVESTIGATION & ENFORCEMENT  
ANSWER TO THE PETITION FOR RECONSIDERATION OF  
PHILADELPHIA GAS WORKS**

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Allison C. Kaster  
Deputy Chief Prosecutor  
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Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Dated: December 7, 2023

## **I. INTRODUCTION**

On February 27, 2023, PGW filed with the Pennsylvania Public Utility Commission (PUC or Commission) proposed Supplement No. 105 to PGW Gas Supplier Tariff Pa. P.U.C. No. 1 and proposed Supplement No. 159 to PGW Gas Service Tariff Pa. P.U.C. No. 2 to become effective April 28, 2023. The filing contained proposed changes in rates, rules, and regulations calculated to produce \$85.8 million (10.3%) in additional annual revenues. This request would increase an average residential customer's bills using 71 Mcf/year to from \$125.38 to \$137.73/month (9.9%). By order entered on April 20, 2023, the Commission suspended the proposed Tariffs until November 28, 2023. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Tariffs.

The matter was assigned to the Office of Administrative Law Judge, with Administrative Law Judges Eranda Vero and Arlene Ashton (the ALJs) presiding. On September 5, 2023, the ALJs issued a Recommended Decision (RD) recommending an increase of \$22.3 million. PGW filed Exceptions to the RD on September 15, 2023. In response, I&E filed Reply Exceptions on September 22, 2023.

On November 9, 2023, the Commission issued an Order authorizing PGW a rate increase of \$26.2 million. PGW filed a timely Petition for Reconsideration (Petition) on November 27, 2023, requesting reconsideration of the Commission's authorized \$26.2 million increase and approval of a \$47 million increase. PGW asserts that reconsideration is necessary to correct two alleged errors in the Order concerning the Commission's allowance for internally generated funds (IGF) and adjustments to specific expense categories.

Pursuant to 52 Pa. Code 5.572(e), I&E files this timely Answer requesting that the Commission deny the relief requested in PGW’s Petition.

## II. ANSWER

### A. The Commission’s Authorized \$26.2 Million Revenue Increase Results in Just and Reasonable Rates

In its Petition, PGW argues that the Commission erred in calculating the allowed \$26.2 million rate increase by double counting an adjustment to the allowance for internally generated funds.<sup>1</sup> To remedy this alleged error, PGW states that the rate increase should be revised to reflect an additional \$17.108 million.<sup>2</sup>

The standards for Commission reconsideration are well settled and governed by the factors discussed in *Duick v. Pa. Gas and Water Company (Duick)*.<sup>3</sup> In *Duick*, the Commission reasoned that, while a petition under Section 703(g) of the Code may raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”<sup>4</sup> Rather, such petitions succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.<sup>5</sup> *Duick* requires a two-step analysis.<sup>6</sup> The first step is to determine whether a party has offered new and novel arguments and the second step is to

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<sup>1</sup> PGW Petition at 3.

<sup>2</sup> PGW Petition at 5, 9.

<sup>3</sup> *Duick v. Pa. Gas and Water Company*, 56 Pa. P.U.C. 553 (1982).

<sup>4</sup> *Duick* at 559.

<sup>5</sup> *Duick* at 559.

<sup>6</sup> *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Order entered May 9, 2019).

evaluate those arguments to determine whether it is appropriate to modify the Commission's previous decision.<sup>7</sup> Here, the first step of *Duick* is satisfied as PGW raised new arguments concerning alleged errors in the Commission's Order; however, PGW failed to satisfy the second step as the Commission determined that \$26.2 million will result in just and reasonable rates.

PGW's focus on the Commission's tables obscures the Commission's primary obligation to develop just and reasonable rates in this proceeding. There is no statutory mandate that PGW is entitled to recover a specific IGF allowance, which is highlighted by the fact that I&E recommended that the entire \$53.2 million IGF claim be disallowed in this proceeding. However, the Commission has a statutory obligation to ensure that rates are just and reasonable and, based on its extensive analysis, the Commission determined that the authorized \$26.2 million fulfilled this mandate.

To aid its determination of just and reasonable rates, the Commission was presented with recommendations by the parties in this proceeding, ranging from PGW's full request of \$85.2 million to OCA's recommended \$16.5 million. When reviewing the record and extensive recommendations put forth by the parties, it is important to be mindful that the Commission has broad discretion in base rate cases. There is no single way to arrive at just and reasonable rates; rather, the Commission has opined that it "has broad discretion in determining whether rates are reasonable" and "is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates."<sup>8</sup> The Commission appropriately used its discretion when it significantly reduced PGW's requested increase

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<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996).

from the requested \$85.2 million to \$26.2. In arriving at the \$26.2 million increase, the Commission determined that the resulting 2.44x debt service coverage ratio will “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.”<sup>9</sup> Moreover, with respect to days of cash on hand, the Commission’s revenue increase results in approximately 54.1 days, which the Commission found to be “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.”<sup>10</sup>

PGW’s Petition fails to indicate what the resulting debt service coverage and days of cash on hand will be if its request to increase its allowance by an additional \$17.108 million is granted; however, it is clear that an upward adjustment will significantly impact these financial metrics. Providing this additional revenue will upset the careful balance the Commission struck when finding that the \$26.2 million increase more than satisfied the 1.5x DSC obligation, resulted in sufficient days of cash on hand and moderated the rate impact for PGW customers. Therefore, PGW’s request must be denied.

**B. The Commission Properly Adjusted the Seven Identified Expense Categories**

PGW argues that the Commission improperly made “double adjustments” to seven expense categories, first because the Commission normalized the expenses over a three-year period and next reduced the average by removing PGW’s inflation adjustment.<sup>11</sup> To correct

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<sup>9</sup> Order at 41.

<sup>10</sup> Order at 41.

<sup>11</sup> PGW Petition at 10.

this alleged error, PGW requests that the Commission reconsider the \$2.89 million associated with the inflation adjustment.<sup>12</sup> PGW's argument purposefully misconstrues the ratemaking process and fails to satisfy *Duick* as it simply rehashes PGW's request for its inflation factor, which was expressly disallowed by the Commission.

One of the fundamental principles of ratemaking is that a utility is entitled to recover its reasonable and prudent operating expenses.<sup>13</sup> Expenses that are unjust, unreasonable, or imprudently incurred must be reduced to reasonable levels. Here, in its evaluation of the prudence of PGW's expense claims, the Commission appropriately determined that the claims were artificially high because PGW applied a blanket 4.63% inflation adjustment to seven expense categories, which increased its overall expense claim by \$2.89 million. The Commission correctly found PGW's generic inflation adjustment to be unreasonable because "an inflation adjustment cannot be applied broadly and does not meet the 'known and reasonable' standard for increasing each FTY expense claim in the FPFTY."<sup>14</sup> Therefore, the Commission properly disallowed PGW's \$2.89 million claim.

Once the Commission determined the reasonable level of expenses, it then recognized that the expenses should be normalized to ensure that no overcollection occurs.<sup>15</sup> Normalization is an important ratemaking tool that spreads out expenses that recur at irregular intervals over a specific time period to determine the "normal" test year allowance.<sup>16</sup> As highlighted by the OCA, given the ability to utilize a FPFTY, all expense

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<sup>12</sup> PGW Petition at 11, Appendix A.

<sup>13</sup> *UGI Corp. v. Pa. P.U.C.*, 410 A.2d 923, 932 (Pa. Cmwlth. 1980); *Pa. PUC v. Wellsboro Electric Co.*, Docket No. R-2019-3008208, p. 12 (Order entered April 29, 2020) (citing *Western Pa. Water Co. v. Pa. PUC*, 422 A.2d 906 (Pa. Cmwlth. 1980); *Popowsky v. Pa. PUC*, 674 A.2d 1149, 1153-54 (Pa. Cmwlth. 1996))

<sup>14</sup> Order at 72.

<sup>15</sup> Order at 95.

<sup>16</sup> I&E St. No. 2, pp. 8-9.

projections are estimates and normalization is a ratemaking tool to best project future expenses and prevent overcollection.<sup>17</sup> It is clear that the level of expense recovery and the time period over which it is recovered are two different and important adjustments and both must be reasonable to be included in rates.

PGW erroneously claims that these adjustments are an improper “double adjustment” because it “unreasonably reduces PGW’s expense claims twice for the same purpose.”<sup>18</sup> As discussed above, this argument wholly mischaracterizes the ratemaking process. The Commission first adjusted PGW’s claimed expenses to a reasonable level by removing the inflation adjustment and then adjusted the time period over which the expenses are recovered by normalizing the cost over three years. These adjustments are in no way duplicative and both are necessary to ensure a reasonable and prudent level of expense recovery in rates.

Aside from being technically flawed from a ratemaking perspective, PGW’s argument for reconsideration must be rejected from an evidentiary standpoint. PGW’s Petition fails the *Duick* standard as it did not raise new or novel arguments not previously advanced in this proceeding. In fact, PGW raised this “double adjustment” issue in Exceptions, which was rejected by the Commission. The Order notes that “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.”<sup>19</sup> However, in its Order, the Commission denied PGW’s Exceptions and found that PGW’s requested inflation adjustment was unreasonable and that normalizing the expenses was proper. PGW is making

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<sup>17</sup> Order at 94.

<sup>18</sup> PGW Petition at 11.

<sup>19</sup> PGW Exc. At 24-25; Order at 94-95.

identical arguments in the instant Petition and PGW has not presented any new or novel arguments that warrant reconsideration. Therefore, PGW's request to reconsider the ratemaking treatment of these expenses must be denied.

### **III. CONCLUSION**

For the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the relief requested in PGW's Petition for Reconsideration be denied.

Respectfully submitted,



Allison C. Kaster  
Deputy Chief Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 93176

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
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	:	
v.	:	Docket No. C-2021-3029259
	:	
Philadelphia Gas Works	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Answer to Petition for Reconsideration** dated December 7, 2023 in the manner and upon the persons listed below.

**Served via Electronic Mail Only**

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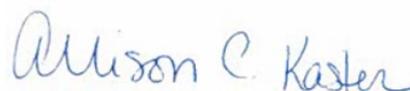
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