

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3037933
Office of Consumer Advocate	:	C-2023-3038846
Office of Small Business Advocate	:	C-2023-3038885
Philadelphia Industrial And Commercial Gas	:	C-2023-3039059
User Group	:	
Grays Ferry Cogeneration Partnership and	:	C-2023-3038727
Vicinity Energy Philadelphia, Inc.	:	
James M. Williford	:	C-2023-3039130
Grays Ferry Cogeneration Partnership and	:	C-2021-3029259
Vicinity Energy Philadelphia, Inc.	:	
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

RECOMMENDED DECISION ON REMAND

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision recommends that the Joint Petition for Settlement of this proceeding on remand be approved by the Commission in its entirety and without modification or correction. The Joint Petition for Approval of Settlement of Rate Proceeding is unopposed by any other party, supported by substantial evidence, and in the public interest.

HISTORY OF THE PROCEEDING

On February 27, 2023, PGW filed Supplement No. 159 to PGW’s Gas Service Tariff – PA. P.U.C. No. 2 (“Supplement No. 159”) and Supplement No. 105 to PGW’s Supplier Tariff – Pa. P.U.C. No. 1 (“Supplement No. 105”) seeking an increase in annual distribution revenues of \$85.8 million (10.3%) to become effective April 28, 2023, for a fully projected future test year starting on September 1, 2023 (“2023 Base Rate Case” or “2023 BRC”).

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. Five Formal complaints were filed by: the Office of Consumer Advocate (“OCA”) at Docket No. C-2023-3038846.; the Office of Small Business Advocate (“OSBA”) at Docket No. C-2023-3038885; the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) at Docket No. C-2023-3039059; Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (“GFCEP/VEPI”) at Docket No. C-2023-3038727; and James Williford at Docket No. at C-2023-3039130. In addition, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Tenant Union Representative Network (“TURN”), and POWER Interfaith (“POWER”) intervened.

After full litigation, Administrative Law Judges (“ALJs”) Eranda Vero and Arlene Ashton issued a Recommended Decision on September 5, 2023. Parties filed timely Exceptions and Reply Exceptions.

On November 9, 2023, the Commission entered an Order approving an overall revenue increase of \$26.2 million. Among other things, the Commission agreed with the Recommended Decision and approved PGW’s proposed allocated class cost of service study (“ACCOSS”), which allocated peak demand costs to interruptible transportation (“IT”) customers on the basis of their actual contribution to historic peak

demand. The Commission agreed with the ALJs that, “for cost allocation purposes, interruptible customers are not truly interruptible.” *Nov. 9, 2023, Order* at 137. The Commission determined that because Rate IT customers receive the equivalent of Firm service (by using PGW’s distribution system during peak periods), the costs incurred to be able to provide service during periods of peak demand should be allocated to Rate IT customers in the same manner as to Firm service customers, and that, for this reason, among others, Rate IT customers were substantially underpaying their costs to serve at present rates in effect at that time.

On January 18, 2024, the Commission issued another Opinion and Order addressing reconsideration and clarification requests. The Commission’s January 18, 2024 Order left its ruling on the allocation of peak demand costs to the Rate IT customers unchanged. See *Jan. 18, 2024, Order*, generally.

On February 14, 2024, PICGUG petitioned the Commonwealth Court of Pennsylvania for review of the Commission’s January 18, 2024 Order.

By Order dated August 1, 2025, the Commonwealth Court of Pennsylvania vacated the January 18, 2024 Order and remanded the matter to the Commission for further explanation and clarification regarding:

1. Whether treating Philadelphia Industrial Commercial Gas Users Group as technically “Firm” for purposes of rate allocation while, at the same time, requiring it to adhere to the obligations of interruptible customers under Philadelphia Gas Works’ (PGW) Tariff violates PGW’s Tariff and, thus, Section 1303 of the PUC Code;
2. How, under a cost causation analysis, Rate IT customers caused PGW’s distribution mains-related costs to be incurred;

3. Whether the Commission applied a new retrospective benefits or “value of service” principle to conclude that interruptible customers should pay for the benefits that they ultimately received from a utility service for purposes of rate allocation, and if so, whether that principle is consistent with cost causation principles or whether it is a new ratemaking principle that should replace or supplement cost causation as the operative ratemaking rationale in this unique situation, and
4. Whether employing a benefits principle can be squared with the Commission’s duty to impose only “just and reasonable” rates considering the interruptible nature of rate IT customers and their investment in systems to allow for interruptions in the event that PGW does call for a curtailment.

Philadelphia Indus. & Com. Gas Users Grp. v. Pennsylvania Pub. Util. Comm'n, 342 A.3d 140 (Pa. Cmwlth. 2025).

On November 24, 2025, the above captioned matter was reassigned to the Commission’s Office of Administrative Law Judge (“OALJ”) for issuance of a Recommended Decision per Commonwealth Court August 1, 2025 Order.

A Prehearing Notice on Remand was issued, and a Prehearing Conference Order on Remand was entered on December 12, 2025, scheduling a telephonic prehearing conference in this matter for Monday, January 5, 2026.

At the joint request of the Parties, the prehearing conference on remand was rescheduled for January 22, 2026.

The prehearing conference was held as scheduled on January 22, 2026. Present through counsel were PGW, I&E, OCA, OSBA, PICGUG, TURN, CAUSE-PA, and GFCP/VEPI. The Commonwealth Court’s Order was discussed, and a schedule was

set for hearings and formal testimony by the parties. The actions taken at the prehearing conference were memorialized in a Prehearing Order on Remand dated February 18, 2026.

On March 19, 2026, PGW, OCA, OSBA, and PICGUG submitted direct testimony on remand in accordance with the litigation schedule established at the prehearing conference. On April 16, 2026, PGW and PICGUG submitted rebuttal testimony on remand. No party filed surrebuttal or rejoinder testimony.

Negotiations were conducted by the Parties in an effort to achieve a settlement of the issues in this proceeding prior to a hearing. By email dated May 4, 2026, counsel for PGW informed me that the Parties had reached a settlement and requested that the evidentiary hearings in this matter on remand be cancelled.

A Hearing Cancellation Notice dated May 5, 2026, informed the Parties that the in-person evidentiary hearings on remand scheduled for May 6-7, 2026, were cancelled.

On May 20, 2026, PGW, OCA, OSBA, and PICGUG (collectively, the “Joint Petitioners”) filed a Joint Petition for Settlement (“Joint Petition” or “Settlement”) of this proceeding on remand, along with accompanying Exhibit 1 – Agreed Upon Method of Allocating Peak Demand Costs of the Distribution Mail for Rate IT, the Joint Petitioners Statements in Support of the Settlement, and I&E, TURN, CAUSE-PA, and GFCEP/VEPI’s Letters in non-opposition to the Joint Petition for Settlement.

On May 20, 2026, the Parties also filed a Joint Stipulation for Admission of Testimony and Exhibits and Motion to Admit into the Record.

The record in this proceeding consists of the transcripts of the prehearing conference on remand, and the written testimonies and exhibits of the parties which were admitted into the record by Order dated June 11, 2026.

The record closed on June 11, 2026. This proceeding is now ready for ruling. For the reasons discussed below, the Settlement will be recommended for approval without modification.

SETTLEMENT TERMS

The Joint Petitioners submit that the Settlement should be approved as being in the public interest. The Joint Petition is an 8-page document, including signatory pages executed by a representative of each of the Joint Petitioners but excluding the accompanying Exhibit-1, the Statements in Support and the Letters of Non-opposition. The essential terms of the Settlement are set forth in Sections II, Paragraph 15, and Section IV, Paragraphs 18-25, which are quoted *verbatim* below.

II. TERMS AND CONDITIONS OF SETTLEMENT

* * *

A. ALLOCATION OF PEAK DEMAND COSTS

15. The Joint Petitioners agree to the following with respect to PGW's allocation of peak demand costs:

- i. In any PGW base rate case commenced on or before five years from the date of the Commission's Final Order on Remand in this Proceeding, PGW shall file a Cost of Service Study (COSS) that allocates peak demand costs of the distribution system for Rate IT using 50% actual, historical peak demand responsibility and 50% design

day responsibility.¹ No rate changes will occur as a result of this remand proceeding (Docket No. R-2023-3037933). All parties retain their rights to contest/defend other cost allocation and rate design treatment of Rate IT.

- ii. In any PGW base rate case commenced on or before five years from the date of the Commission’s Final Order on Remand in this Proceeding, the parties shall not challenge PGW’s allocation of peak demand costs in its filed COSS as set forth above, unless and until the Commission or a court directs otherwise.
- iii. In any PGW base rate case commenced after five years from the date of the Commission’s Final Order on Remand in this Proceeding, PGW is under no obligation to submit a COSS with the allocation provided above and all parties shall have the right to challenge and propose their own alternative allocations.
- iv. The parties to the remand proceeding will petition the Commission to resolve this remand proceeding as soon as practicable on this basis and report the same to the Commonwealth Court in a manner determined to be appropriate by the signatory parties to this settlement.
- v. The terms agreed upon in Subparagraph Nos. i–iii and as depicted in Exhibit 1 to this settlement cannot be used as precedent in any future proceeding except as provided therein.

* * *

IV. ADDITIONAL TERMS AND CONDITIONS

18. The Commission’s approval of the Settlement shall not be construed as approval of any Joint Petitioner’s position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. This Settlement may not be cited as precedent in any future proceeding, except to the extent set forth in the Settlement.

19. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and

¹ The method of doing this will be reflected in an Exhibit 1 to this Settlement. (Original Footnote No. 7).

does not necessarily represent the position(s) that would be advanced by any party in this or any other proceeding, if it were fully litigated.

20. This Settlement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

21. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all parties within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, with the exception of this paragraph, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw from the Settlement as provided above, each of the Joint Petitioners reserves their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

22. All Joint Petitioners support the Settlement, and have agreed to make all reasonable and good faith efforts to obtain approval of the Settlement by the ALJ and the Commission without modification. The Parties agree that such good faith efforts do not include opposing or responding to comments or oppositions to the Settlement. The Joint Petitioners acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated this proceeding on remand.

23. If the ALJ, in the Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners

agree to waive the filing of Exceptions with respect to any issues addressed by the Settlement. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to: (a) any modifications to the terms and conditions of this Settlement; or (b) any additional matters proposed by the ALJ in the Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

24. Each term and condition set forth in this Joint Petition, whether or not set out in a numbered paragraph, shown in a table or other graphic presentation, bolded, italicized or otherwise emphasized, or set forth in the body, a footnote, parenthetical, or appendix, is a material consideration to the entry into this Settlement by the Joint Petitioners.

25. This Settlement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

DISCUSSION

Applicable Legal Standard

The Commission encourages parties in contested on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231. Settlements eliminate the time, effort, and expense the parties must expend litigating a case and at the same time conserves administrative resources. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for

contested matters. *Pa. Pub. Util. Comm'n v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Opinion and Order entered July 14, 2011), at 11; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered Apr. 1, 1996). Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Pub. Util. Comm'n v. Allied Util. Servs., Inc.*, Docket Nos. R-2015-2479955, *et al.* (Opinion and Order entered Apr. 7, 2016, adopting the Recommended Decision dated Feb. 26, 2016), at 8.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *See, e.g., Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered Oct. 4, 2004, adopting the Recommended Decision dated Aug. 30, 2004).

Analysis

In PGW’s 2023 Base Rate Case, PGW presented an ACCOSS which allocated distribution mains costs to each customer class utilizing an average and excess demand (“AED”) method wherein 50% of the costs were allocated based on the average daily usage of the class and 50% of the costs were allocated based on actual peak day usage in excess of average daily usage of the class. In PGW’s ACCOSS, the excess usage of interruptible transportation customers served under Rate IT was determined based on their actual contribution to historic peak demand.

For its part, PICGUG argued that the excess demand of interruptible customers should be set to zero in the ACCOSS because interruptible customers are

technically interruptible. In response to PICGUG's claim, PGW explained that the interruptible customer class should be treated the same as firm customers in the ACCOSS because they have not been interrupted for over 20 years.

The Commission approved PGW's ACCOSS, which included the excess demand of interruptible customers in the allocation of distribution mains under the AED method. *See Nov. 9 Order* at 137-139. However, the Commonwealth Court of Pennsylvania issued an Order which vacated and remanded the Commission's *Jan. 18, 2024 Order* for further explanation and clarification regarding four questions, listed *supra* at 4.

According to the Joint Petitioners, the Settlement is in the public interest for the following additional reasons:

A. The Settlement Provides a Reasonable Resolution. The Settlement represents a balanced compromise of the settling parties in this proceeding and is a reasonable resolution of the issue of allocating peak demand costs of the distribution system for Rate IT.

B. Certainty in allocation with Opportunity to Re-Evaluate After Five Years. The Settlement proposes a compromise resolution of the issue of allocating peak demand costs of the distribution system for Rate IT for a period of five years, which provides the Joint Petitioners with an opportunity to revisit the compromise reached here after that period.

C. Substantial Litigation and Associated Costs Will Be Avoided. The Settlement amicably and expeditiously resolves all issues in the proceeding. The administrative burden and costs to litigate these matters to conclusion would have been significant.

D. The Settlement Is Consistent with Commission Policies Promoting Negotiated Settlements. The Joint Petitioners arrived at the Settlement after submitting testimony into the

record and having in-depth discussions. The Settlement constitutes reasonably negotiated compromises on the issues addressed. Thus, the Settlement is consistent with the Commission's rules and practices encouraging settlements (52 Pa. Code §§ 5.231, 69.391, 69.401–69.406) and is supported by a substantial record.

E. Reporting the settlement to the Commonwealth Court. The parties have agreed to notify the Commonwealth Court of the settlement of this remand proceeding in a manner the signatory parties deem appropriate. After the settlement is approved, the parties, in conjunction with the Commission, will provide any notices deemed to be required to ensure the remand proceeding is fully resolved.

Joint Petition, Section III.

The individual parties that make up the Joint Petitioners offer further arguments of why the Settlement is in the public interest in statements of support attached to the Joint Petition. In particular, PGW supports the proposed Settlement terms as a reasonable resolution of the issues raised by PICGUG's appeal and this remand proceeding. For the next five years, PGW commits to submitting an ACCOSS that equally weights the Rate IT class's design day demand contribution (i.e., zero) and the Rate IT class's contribution to actual peak demand, and the Joint Petitioners will not challenge that specific allocation. According to PGW, this commitment recognizes the two critical facts developed in the proceeding: that PGW assumes that the Rate IT class is interrupted on the design day, but that on any peak day other than the design day the Rate IT class has always received service and, thus, contributes to the costs that PGW incurs. In PGW's view this Settlement gives consideration to the evidence showing that PGW considers both design day and actual peak day when making replacement decisions. PGW St. in Supp. at 12.

The Settlement also recognizes that rates should not change as a result of this proceeding because the modification to the ACCOSS to reflect this revised allocation

of peak demand costs would still find the Rate IT class revenues to be below their cost to serve. PGW explained that, even under an ACCOSS that allocated peak demand on the basis of design day, it would have taken an increase of 78% to move the Rate IT class to full cost of service, as opposed to the 162% rate increase that would have been needed based on the results of PGW's "as filed" (and Commission-accepted) ACCOSS. As a result, PGW argues that no rate adjustments were either necessary or appropriate as a result of this compromise. *Id.* at 12. Lastly, PGW finds it beneficial that the Settlement resolves the allocation of system costs to Rate IT for the next several years, thereby saving the costs of litigating this issue in this case as well as in future base rate proceedings. *Id.* at 13.

For its part, OCA begins its Statement in Support by explaining that, if PGW's ACCOSS was modified to eliminate the allocation of peak-related excess demand costs to Rate IT customers as recommended by PICGUG, the cost of service for the Rate IT class would have been \$22.8 million. OCA St. in Supp. at 5. However, this cost of service was based on the \$85.8 million increase initially requested by PGW, while the actual increase authorized by the Commission was \$26.2 million. As such, OCA reasons that, if the cost of service of the Rate IT class was proportionately reduced to reflect the actual increase authorized by the Commission, the cost of service of the Rate IT class would be reduced to \$20.2 million. *Id.* In PGW's 2023 BRC, revenues at present rates for the Rate IT class were \$12.8 million, and PGW proposed to increase the rates of Interruptible customers by \$3.7 million to \$16.5 million. The actual increase assigned to Interruptible customers in the 2023 BRC was \$1.2 million, increasing Interruptible revenues to \$13.9 million, which is significantly less than the cost of service of \$20.2 million. *Id.* Based on the above, OCA points out that no reduction to Rate IT would have been appropriate in PGW's 2023 BRC. OCA St. in Supp. at 5-6.

OCA supports the Settlement because it resolves the key disagreement amongst the parties – whether the excess usage of Rate IT customers should be based on

actual contribution to historic peak demand given that Rate IT customers have not been interrupted for decades, or set to zero based on design day demand as Rate IT customers are technically interruptible (and hence do not theoretically utilize the system at peak times according to design day due to PGW's ability to interrupt PICGUG). OCA notes that the Settlement essentially splits the difference by requiring PGW to file a ACCOSS that allocates peak demand costs of the distribution system for Rate IT using 50% actual, historical peak demand responsibility and 50% design day responsibility in any PGW base rate case commenced on or before five years from the date of the Commission's Final Order on Remand in this proceeding. Additionally, as part of this Settlement, the Joint Petitioners agree to not challenge PGW's proposed ACCOSS during this time-period. Important to OCA, these Settlement provisions time-limit this agreement to five years, instead of implementing these terms in perpetuity. OCA St. in Supp. at 7.

Additionally, OCA supports the Settlement because it provides that "no rate changes will occur as a result of this remand proceeding." Settlement ¶ 15(i). According to OCA, this provision resolves a concern of the OCA that no immediate rate increase results from this proceeding. OCA St. in Supp. at 7.

According to OSBA, the Settlement represents a reasonable compromise that is in the best interests of Small Business customers. In its Statement in Support, OSBA notes that the Settlement does not fully incorporate PICGUG's position on the allocation of system costs and retains a level of treatment favorable to PGW's and OSBA's position in the 2023 Base Rate Case. OSBA supports the Settlement because all parties retain the right to contest all other aspects of cost allocation in future rate cases, and PGW is only obligated to take this narrow cost allocation approach in any base rate case that occurs in the next five years. Finally, because Rate IT is under-recovering its costs overall, OSBA argues that the Settlement's cost allocation approach is counterbalanced by issues of revenue allocation and rate gradualism. OSBA St. in Supp. at 3.

Finally, in its Statement in Support PICGUG avers that the Joint Petition satisfies its concerns regarding the method in which peak demand costs will be allocated to Rate IT in PGW's ACCOSS. In particular, PICGUG supports the provisions of the Settlement at Paragraph 15(i) which commit PGW to filing an ACCOSS that effectively "splits the difference" between the parties' position by using 50% actual, historical peak demand responsibility and 50% design day responsibility. In addition, the Settlement implements this provision for five years. This, according to PICGUG, provides Rate IT customers with certainty over a set period of time with respect to how peak demand costs will be allocated to Rate IT in any ACCOSS filed by PGW for the next five years. Moreover, PICGUG supports the Settlement because it ensures that its provisions cannot be used as precedent for other issues that may arise in future PGW proceedings. PICGUG St. in Supp. at 4.

Recommendation

As noted by the Joint Petitioners, the key issue in this proceeding is how peak demand costs will be allocated to Rate IT in PGW's ACCOSS. In resolving this issue, the Settlement presents a compromise of the Parties' positions by confirming that PGW shall file an ACCOSS that uses 50% actual, historical peak demand responsibility and 50% design day responsibility. The Settlement imposes a five-year time limitation on this obligation, which provides both certainty as to the manner in which peak demand costs of the distribution system will be allocated to the PGW's interruptible transportation customers in the next five years, and freedom to the Parties to challenge and propose their own alternative allocations outside of that time period. Importantly, no rate changes will occur as a result of this remand proceeding.

I note that the Settlement was reached after extensive appellate litigation and submission of written testimony on remand by the active parties, and after a series of negotiations and discussions concerning the central issue in this remand proceeding. It

therefore represents a reasonable resolution of this remaining issue in the instant remand proceeding while properly considering the interests of ratepayers and other stakeholders. At the same time, the Settlement promotes judicial economy by saving the Settling Parties, the Commission, and the Courts judicial resources due to continued litigation and further potential appeals as it resolves all issues before the Commission and the Commonwealth Court. With none of the parties in this proceeding opposing it, the Settlement represents a unanimous and reasonable compromise that was achieved by addressing the dispute in a fair and time-limited manner between all Joint Petitioners.

For the reasons stated above, I find that the Settlement is in the public interest and recommend that the Commission approve it without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties to this proceeding. 66 Pa.C.S. §§ 501, 1308(d).

2. The Commission encourages parties in contested, on-the-record proceedings to settle cases. *See* 52 Pa. Code § 5.231.

3. The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *See Pa. Pub. Util. Comm'n v. Allied Util. Servs., Inc.*, Docket Nos. R-2015-2479955, *et al.* (Opinion and Order entered Apr. 7, 2016, adopting the Recommended Decision dated Feb. 26, 2016), at 8.

4. The Joint Petition is in the public interest and is consistent with the Commission's rules and practices encouraging negotiated settlements.

