

November 8, 2022

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

RE: Supplement No. 152 to the Gas Service Tariff – Pa. P.U.C. of Philadelphia Gas Works,
Docket No. R-2022-3034229

Petition of Philadelphia Gas Works for Approval on Less than Statutory Notice of Tariff
Supplement Revising Weather Normalization Adjustment
Docket No. P-2022-3034264

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Petition for Leave to Withdraw on behalf of Philadelphia Gas Works in the above-referenced matters.

Copies are being served in accordance with the Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

cc: Certificate of Service (with Enclosure)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Petition for Leave to Withdraw upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email only

Christy M. Appleby, Esq.
Aron J. Beatty, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
cappleby@paoca.org
abeatty@paoca.org

Carrie B. Wright, Esq.
Bureau of Investigation & Enforcement
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120
carwright@pa.gov

Sharon Webb, Esq.
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov

John W. Sweet, Esq.
Elizabeth R. Marx, Esq.
Ria M. Pereira, Esq.
Lauren M. Berman, Esq.
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org

Robert W. Ballenger, Esq.
Kinteshia Scott, Esq.
1424 Chestnut Street
Philadelphia, PA 19102
rballenger@clsphila.org
kscott@clsphila.org

Robert D. Knecht
Industrial Economics Incorporated
5 Plymouth Road
Lexington, MA 02421
rdk@indecon.com

Ron Nelson
Strategen Consulting, LLC
2150 Allston Way, Suite 400
Berkley, CA 94704
rnelson@strategen.com

Dated: November 8, 2022

Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2022-3034229
	:	P-2022-3034264
Philadelphia Gas Works	:	

NOTICE TO PLEAD

You are hereby notified that an Answer to a Petition for Leave to Withdraw is due within 10 days of service under 52 Pa. Code § 5.94(a), or within such time as may be directed by the presiding officer pursuant to 52 Pa. Code § 5.483. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Philadelphia Gas Works, and the Administrative Law Judge presiding over this matter.

Karen O. Moury

Karen O. Moury, Esquire

Date: November 8, 2022

Counsel for Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2022-3034229
	:	P-2022-3034264
Philadelphia Gas Works	:	

**PETITION OF PHILADELPHIA GAS WORKS
FOR LEAVE TO WITHDRAW**

TO: THE HONORABLE MARTA GUHL, ADMINISTRATIVE LAW JUDGE:

Pursuant to Section 5.94 of the Commission’s regulations, 52 Pa. Code § 5.94, Philadelphia Gas Works (“PGW” or “Company”) files this Petition for Leave to Withdraw (“Withdrawal Petition”), respectfully requesting leave to withdraw Supplement No. 152 to Gas Service Tariff – Pa. P.U.C. No. 2 and the Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment (“Cap Petition”) filed on August 2, 2022. As originally filed, Supplement No. 152 proposed to revise PGW’s Gas Service Tariff – Pa. P.U.C. No. 2, Page Nos. 149-150, effective October 1, 2022.

Through the proposed revision, PGW sought to add a control (“cap”) to its previously-approved Weather Normalization Adjustment (“WNA”), prior to the beginning of the WNA cycle beginning October 1, 2022,¹ so that customers would not be billed a WNA charge or credit

¹ The WNA cycle is the period of October 1 through May 31 of each year. Gas Service Tariff – Pa. P.U.C. No. 2, Page Nos. 149 and 150.

of greater than 25 percent of total delivery charges,² on any given bill. This proposal, which was filed shortly after PGW petitioned and received Commission approval to voluntarily refund WNA charges resulting from May 2022 usage, was designed to protect consumers in the event that the WNA produced an unusually large increase during the current heating season. Notably, since the anomaly that occurred with the May 2022 billing cycles, PGW has refunded the charges, conducted an internal investigation of the WNA, and filed for an October 1, 2022 proposed cap of future WNA charges/credits – all as protections for consumers. Despite PGW’s efforts to expeditiously implement this consumer protection in place as an interim solution during this heating season to protect ratepayers, the Office of Consumer Advocate (“OCA”) filed an Answer opposing this proposal. OCA Answer at 3.³

By Order entered on September 15, 2022, the Commission suspended Supplement No. 152 for investigation until April 1, 2023. Thereafter, PGW voluntarily extended the effective date to October 1, 2023 to accommodate the development of a procedural schedule.

Rather than litigating Supplement No. 152, PGW believes that the most effective long-term solution is for the Company to examine various aspects of the WNA to determine if additional or different controls should be included. This proceeding does not lend itself to that approach because the primary focus is on the 25% cap proposed by PGW. Therefore, through

² Total delivery charges as described therein include the Customer Charge plus the Distribution Charge, and if applicable, plus the Gas Adjustment Charge plus the Interruptible Revenue Credit (collectively “Delivery Charges”).

³ OCA is the only party that filed an Answer. Interventions were filed by the Bureau of Investigation and Enforcement (“I&E”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN”).

this Withdrawal Petition, PGW seeks to withdraw Supplement No. 152 and commits to the filing of a comprehensive WNA proposal by March 1, 2023, which is accompanied by Direct Testimony providing an explanation and rationale for the proposed components/controls.

It is PGW's understanding that OCA and some of the other parties intend to oppose PGW's Withdrawal Petition. These objections will again oppose PGW's efforts to ensure that its WNA operates in the manner intended to keep the Company revenue neutral as a result of variations in the weather, while protecting customers from paying unusually large weather-related charges. Based on the Answer filed by OCA to the Cap Petition, it is clear that possible outcomes sought by OCA in this proceeding include modifications to the structure of WNA and, potentially, an entire elimination of the WNA. OCA Answer at 3. Clearly, OCA is seeking to utilize this proceeding for its own purposes that far exceed the scope of PGW's proposed 25% cap designed to protect customers.

A more comprehensive review of PGW's WNA within this context is not an efficient use of Company, Commission or other parties' resources. Despite the measures taken by PGW to provide protections to customers, PGW's WNA is being singled out for litigation – *in the context of a proceeding initiated by PGW to protect its ratepayers* – without giving PGW a sufficient opportunity to develop a full record on the WNA. Particularly in view of PGW's commitment to protecting customers (as evidenced by its voluntary WNA refund) and to make a new WNA proposal by March 1, 2023, it is unreasonable for OCA and other parties to oppose the Withdrawal Petition.

In order for an investigation of the WNA to proceed efficiently and in a manner that is fair to PGW and its customers, while affording all parties due process, it is necessary to start with the filing of a WNA tariff by PGW, either within the context of a base rate case or as a

separate proceeding, which addresses the proposed components of the clause. In support hereof, PGW avers as follows:

I. BACKGROUND

1. PGW is owned by the City of Philadelphia and provides public utility services as a city natural gas distribution operation in the City of Philadelphia, consistent with Section 2212 of the Public Utility Code. 66 Pa.C.S. § 2212. PGW came under the Commission’s jurisdiction on July 1, 2000.

2. PGW’s WNA was originally authorized by the Commission in 2002 and has worked more or less as anticipated since then to preserve the Company’s financial stability as a cash flow utility, while also ensuring that customers are treated fairly with respect to weather-related charges. *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-00017034 (Order entered on August 8, 2002, Ordering Paragraph 5). The settling parties agreeing to implementation of the WNA were PGW, the Office of Trial Staff (the predecessor to I&E), OCA, OSBA and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”).

3. PGW’s WNA is an automatic adjustment clause that adjusts billings to customers based upon the degree to which actual weather in its service territory varies from “normal” weather levels, which, based on a settlement reached in PGW’s 2017 base rate case, is currently determined on the basis of a twenty year average of heating degree days (“HDDs”). *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2017-2586783 (Order entered November 8, 2017, at Pages 17-18 and Ordering Paragraph No. 3). The settling parties agreeing to the twenty year average as normal included PGW, I&E, OCA, OSBA, the Retail Energy Supply Association, PICGUG, CAUSE-PA, and TURN.

4. The Commission-approved WNA is applied to customer usage from October 1 through May 31. As established by the Tariff, the charges or credits are calculated on the basis of a formula that considers historic normal HDDs and actual experienced HDDs for the billing cycle's usage.

5. An anomaly occurred with the WNA for May 2022 usage, which produced unusually large charges to customers in many billing cycles with May usage. PGW determined that its customers should not bear these unprecedented charges, albeit correctly calculated. Therefore, PGW filed a Petition for Emergency Order on June 30, 2022 at Docket No. P-2022-3033477 seeking Commission approval to immediately revise its Tariff to reverse WNA charges that were applied to May 2022 usage billings, while customers would retain any credits related to the WNA for May usage. In addition, the Petition for Emergency Order explained that PGW had instituted an internal investigation into the WNA formula.

6. The Commission issued an Emergency Order on July 1, 2022 authorizing PGW to implement the proposed Tariff revision. The Emergency Order was ratified by Ratification Order at the Public Meeting held on July 14, 2022. The Ratification Order also directed that PGW submit a report of its findings as a result of investigation regarding the WNA by August 15, 2022.

7. On August 2, 2022, PGW filed Supplement No. 152 due to the unexpected WNA charges that had occurred with respect to some customers' May 2022 usage and PGW's desire to protect customers and minimize the possibility of a recurrence of a significant anomaly in future months covered by the WNA. The 25% cap was designed to be a temporary measure to provide reasonable protection to customers pending a more comprehensive review of the clause in a rate case or otherwise. To put this mechanism in place quickly at the onset of the next hearing season

commencing on October 1, 2022, PGW filed the Cap Petition requesting that the Commission approve the Tariff change on less than statutory notice, that is, at its Public Meeting of September 15, 2022.

8. On August 12, 2022, consistent with the Ratification Order entered on July 14, 2022, PGW submitted a report of its investigation (“Investigation Report”) to the Commission. OCA filed Comments on September 1, 2022 and CAUSE-PA and TURN filed Comments on September 6, 2022. No further action has been taken on the Investigation Report.

9. On September 15, 2022, the Commission suspended Supplement No. 152 for investigation, thereby extending the effective date to April 1, 2023 (“Suspension Order”). Therefore, the 25% cap did not go into effect on October 1, 2022 as requested by PGW’s Cap Petition. The Suspension Order contained the standard language noting that as part of the investigation, consideration should also be given to the lawfulness, justness and reasonableness of PGW’s existing rates, rules and regulations. Suspension Order, Ordering Paragraph No. 4.

10. A Prehearing Conference was held on September 28, 2022. Prehearing memoranda were submitted by the parties prior to the Prehearing Conference. During development of a procedural schedule for the suspension and investigation of Supplement No. 152, PGW voluntarily extended the effective date to October 1, 2023.

11. On October 12, 2022, the Commission issued a Notice scheduling telephonic Public Input Hearings for November 17, 2022 at 10:00 a.m. and 6:00 p.m. By electronic mail dated November 1, 2022, ALJ Guhl asked PGW to indicate in this Withdrawal Petition whether the parties had reached a consensus about continuing to hold these hearings. The only party who has weighed in on that issue is TURN, which prefers to hold the hearings, as scheduled. PGW is amenable to that approach.

II. PURPOSE OF SEEKING LEAVE TO WITHDRAW

12. PGW seeks leave to withdraw Supplement No. 152, with the commitment to file a complete WNA proposal by March 1, 2023. Given the fact that the 25% cap did not go into effect during this winter heating season of October through May, PGW believes that the most efficient use of time and resources of the Company, the parties, and the Commission is to move forward with a WNA filing that addresses the proposed components of the adjustment clause.

13. Although the parties may argue about a lack of any consumer protections being in place at the outset of the 2023-2024 heating season, if the Withdrawal Petition is granted, the reason for that outcome is the opposition to the PGW 25% cap filing that was proposed to go into effect on October 1, 2022. Having that control in place while PGW's WNA is reviewed as part of the next rate case or a separate proceeding would have provided an automatic level of consumer protection in the interim.

14. Importantly, Supplement No. 152 and the Cap Petition would not currently be before the Commission if PGW had not sought to protect its customers from potential unusually large increases during the 2022-2023 winter heating season. However, because PGW took the proactive measure of proposing to implement a cap that would *protect* its customers, it is now facing a possible review of its entire WNA without having had an opportunity to submit a proposal addressing various key components of the clause. For example, this may include a review of items such as the methodology (*i.e.* the number of years to be used for determining “normal weather”), the months in which the WNA is in effect, or other specific aspects of the formula.

15. Litigation of this proceeding in its current procedural posture will likely result in a piecemeal approach to a review of the underlying long-standing WNA. Through a new filing, PGW would set forth a WNA proposal designed to most effectively protect customers while still

delivering the important protections for PGW's finances and cash flow, to which other parties would have an opportunity to respond. This proposal would not only draw on PGW's experience with the existing WNA, it would also benefit from a review of other natural gas utilities' WNA mechanisms that have been approved by the Commission or in other jurisdictions. For example, the Commission recently approved a WNA by UGI Utilities, Inc. ("UGI") in *Pa. P.U.C. v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered September 15, 2022).

16. The existing procedural schedule does not permit a sufficient opportunity, or even any basis, for PGW to address other components of the WNA until possibly the rebuttal phase of the proceeding. Rather, given PGW's current proposal, the Direct Testimony would be focused on the 25% cap. Expecting PGW to respond in Rebuttal Testimony to various proposals submitted by other parties that would otherwise modify the WNA, or completely eliminate the WNA, is unrealistic and an inefficient use of resources. This approach would not necessarily consider components of the WNA that PGW may examine in the context of a new filing. Additional time will allow PGW to assemble a proposal that considers input from potential expert witnesses on an effective WNA model going forward and that most effectively protects customers from negative impacts in the future.

17. Although PGW's WNA has largely worked as intended, two decades have passed since it was initially developed with only one change in 2017 to the formula to switch from utilizing thirty years to twenty years of historical weather data. Of particular note, Chairman Gladys Brown Dutrieuille issued a Statement in connection with the Commission's approval of UGI's WNA noting that the "decoupling of uncontrollable weather from revenues should stabilize UGI's cashflow, and in turn, allow UGI to focus on operational items within its control, namely infrastructure upgrades and repairs." This observation demonstrates the important

benefits to ratepayers, and a cashflow utility such as PGW, of a properly designed WNA. It is also consistent with the intent of the General Assembly, as conveyed by the passage of Act 58 of 2018, which added Section 1330 to the Public Utility Code and enabled utilities to seek PUC approval of alternative rates, including decoupling mechanisms. 66 Pa. Code § 1330.

18. An approach that contains PGW's proposals regarding a future WNA, to which the parties have an opportunity to respond, would promote the development of a mechanism that takes into consideration the needs of PGW as a city owned natural gas utility utilizing the cashflow method for setting rates, as well as its customers, and more recent developments.

19. No party is prejudiced by a withdrawal of the pending filings since they will be replaced by a WNA proposal, which will be considered under a roughly similar timeframe to the current filings. Moreover, if a party believes that PGW's existing, Commission-approved WNA Tariff is unjust and unreasonable they can file a complaint against the Tariff.

III. APPLICABLE LEGAL STANDARDS

20. A party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal, to which any party may object within 10 days of service. 52 Pa. Code § 5.94(a).

21. In prior decisions involving the withdrawal of contested proceedings, when a withdrawal is opposed, Commission decisions have hinged on whether the contested activity continues after withdrawal. If the controversy will remain, withdrawal is typically not viewed as being in the public interest. *See Petition of DRIVE for a Declaratory Order Regarding the Expansion of its Community Broadband Network*, Docket No. P-2021-3025296 (Order entered July 14, 2022, at 35-38).

IV. REASONS FOR GRANTING REQUESTED RELIEF

22. PGW's Petition for Leave to Withdraw should be granted to allow for a proactive review by PGW of the various aspects of its WNA and the submission of a proposal by March 1, 2023 that explains the proposed components. The piecemeal litigation of PGW's WNA is not likely to produce the most effective mechanism to protect customers from any negative impacts resulting from a WNA, which performs as intended to keep PGW's revenues neutral, so as to preserve its financial stability and help to avoid distribution rate increases that reflect the volatility of the weather.

23. Given PGW's efforts to protect consumers via the 25% cap, PGW submits that the anticipated opposition of OCA and other parties to this Petition is unreasonable. Notably, the filing of PGW's proposal to cap the WNA shortly followed the Company's voluntary refund of May usage WNA charges. Despite these measures taken by PGW to provide protections to customers, PGW's WNA is being singled out for litigation – *in the context of a proceeding initiated by PGW to protect its ratepayers* – without giving PGW a sufficient opportunity to develop a full record on the WNA.

24. Moreover, the controversy concerning PGW's 25% cap proposal *will not remain* if the Petition for Leave to Withdraw is granted. This proposal, filed in advance of PGW's August 12, 2022 Investigation Report, was intended as an interim solution to go into effect on October 1, 2022 and minimize the possibility of a recurrence of the anomaly that occurred in May 2022 during the current winter heating season. Granting a withdrawal of PGW's Petition means that the 25% cap proposal, which the Commission did not approve for implementation on October 1, 2022, is no longer under consideration as an isolated WNA change.

25. Since PGW is committing in this Petition to the filing of a WNA proposal by March 1, 2023, regarding which all parties will have the opportunity to review and present their positions, any other potential controversies concerning PGW's WNA can be litigated at that time. Requiring PGW to litigate this proceeding is contrary to the public interest since it will unnecessarily consume significant Company resources that its ratepayers will ultimately absorb, as well as the resources of other parties and the Commission. Further, such an approach will not result in a going forward WNA that fully considers all factors.

26. Given that no cap is in place and the continuing concerns of PGW as to the possibility of a recurrence of the anomaly that occurred in May 2022, PGW remains vigilant about monitoring the effects of the WNA on its customers' bills. Further, PGW intends to heed the advice of Chairman Gladys Brown Dutrieuille in her Statement regarding approval of UGI's WNA "to ensure it does not result in any significant rate shock."

IV. CONCLUSION

WHEREFORE, Philadelphia Gas Works respectfully requests that the Pennsylvania Public Utility Commission grant its Petition for Leave to Withdraw, which includes a commitment to file a comprehensive WNA proposal by March 1, 2023.

Respectfully submitted,

Craig Berry (Attorney ID # 328527)
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122
Phone 215.684.6049
Fax 215.684.6798
Craig.berry@pgworks.com

Daniel Clearfield (Attorney ID # 26183)
Karen O. Moury (Attorney ID # 36879)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
Phone 717.237.6036
Fax 717.237.6019
dclearfield@eckertseamans.com
kmoury@eckertseamans.com

Lauren M. Burge (Attorney ID # 311570)
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
Phone 412.566.2146
Fax 412.566.6099
lburge@eckertseamans.com

Attorneys for Philadelphia Gas Works

Date: November 8, 2022