

COMMONWEALTH OF PENNSYLVANIA



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November 14, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Supplement No. 152 to 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:

Attached for electronic filing please find the Office of Consumer Advocate's Answer in Opposition to the Petition of Philadelphia Gas Works for Leave to Withdraw in the above-referenced proceedings. 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 as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
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Enclosures:

cc: The Honorable Marta Guhl (**email only**)
Athena Delvillar, ALJ's Legal Assistant (**email only**: sdelvillar@pa.gov)
Certificate of Service

*337556

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v. : Docket No. R-2022-3034229
Supplement No. 152 to Gas Service Tariff – :
Pa. P.U.C. of Philadelphia Gas Works :

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer in Opposition to the Petition of PGW for Leave to Withdraw, 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 14th day of November 2022.

SERVICE BY E-MAIL ONLY

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Dated: November 14, 2022

*337552

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO THE
PETITION OF PHILADELPHIA GAS WORKS
FOR LEAVE TO WITHDRAW

The Office of Consumer Advocate (OCA) submits this Answer in Opposition to the Petition of Philadelphia Gas Works (PGW or Company) for Leave to Withdraw its Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2 (Supplement No. 152) and the Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment (Petition) in the above-referenced dockets for the following reasons:

I. INTRODUCTION AND BACKGROUND

On August 2, 2022, PGW filed a Petition seeking approval of Supplement No. 152 to Gas Service Tariff -Pa. P.U.C. No. 2, to become effective on October 1, 2022 (“25% WNA cap Petition”). The Company’s Petition requested that the Commission approve tariff modifications on less than the statutorily established sixty days’ notice, which it asserted are designed to limit the harm that is possible due to operation of its Weather Normalization Adjustment (WNA). Specifically, PGW sought to revise PGW’s Gas Service Tariff by adding a control cap to its WNA

so that customers would not be billed a WNA charge or credit that is greater than 25% of total delivery charges, excluding the WNA, on any given bill.

The introduction of Supplement No. 152 is the result of a large spike in the WNA charge in May 2022. On June 30, 2022, the Company filed a Petition for Emergency Order (Emergency Petition), Docket No. P-2022-3033477, with the Pennsylvania Public Utility Commission (Commission). The Company's Emergency Petition requested that the Commission approve tariff modifications designed to suspend operation of PGW's WNA for May 2022 because its application of the WNA during that month resulted in unintended rate shock for customers of more than \$11.3 Million. The OCA filed an Answer to PGW's Emergency Petition on July 1, 2022, supporting the suspension of the WNA, as applied to May 2022 bills, and urging the Commission to open an investigation and suspend the WNA until it could be thoroughly evaluated. As a part of the Emergency Petition that PGW filed, the Commission entered an *Emergency Ratification Order* and required that PGW complete an investigation report within thirty days. *Pa. PUC v. PGW*, Docket Nos. R-2022-3034229, P-2022-3034264, Emergency Ratification Order (July 14, 2022) (*Emergency Ratification Order*). The *Emergency Ratification Order* allowed PGW to immediately refund customers excess WNA charges from May 2022 and required PGW to complete an investigation report. *Id.* In its investigation report, PGW specifically referenced this filing (Supplement #152) as the corrective actions that the Company was planning to take in order to address the issue. *Report of PGW on Weather Normalization Adjustment Issue*, Docket No. P-2022-3033477, PGW Report (Aug. 12, 2022).

The Company's 25% WNA Cap Petition acknowledged that its application of the WNA resulted in unintended rate shock in May 2022 for customers in the amount of \$11.3 Million. Petition at ¶24. Despite this, the Company did not propose any modifications to the WNA formula

itself other than adding this circuit breaker that would cap charges (and credits) to no more than 25% of a customer's distribution bill. Petition at ¶22.

On September 15, 2022, the Commission ordered an investigation into the lawfulness, justness and reasonableness of Supplement No. 152. The Commission further ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations.¹ On September 19, 2022, Administrative Law Judge (ALJ) Marta Guhl issued a Prehearing Conference Order, ultimately establishing a procedural schedule that requires PGW file testimony in support of Supplement No. 152 on November 30, 2022.

On November 8, 2022, pursuant to Section 5.94 of the Commission's regulations, PGW filed for leave to withdraw Supplement No. 152.² Petition at 1. PGW proposes to withdraw Supplement No. 152 and to provide a new proposal by March 1, 2023. Petition at ¶ 12. On November 9, 2022, ALJ Guhl directed the parties to file Answers on November 14, 2022.

For the reasons set forth below, the OCA opposes PGW's Petition to Withdraw. PGW offers no rationale for withdrawing Supplement No. 152 at this late date that could not have been offered in September after the Commission issued its Suspension Order. PGW essentially asserts that the 25% WNA Cap Petition is moot because they did not get the relief they requested – the imposition of the 25% cap effective from October 2022 through May 2023, but ignores that in suspending the proposed tariff, the Commission opened the WNA as a whole to an investigation to determine whether it produces just and reasonable rates. Indeed, the position of the OCA

¹ Pa. PUC v. Philadelphia Gas Works, Docket Nos. R-2022-3034229, P-2022-3034264 (Order entered September 15, 2022) (*September 15 Order*).

² Concurrent with the Petition for Leave to Withdraw, PGW also filed a Motion for Abeyance of the Procedural Schedule (Motion). The OCA will file separately an Answer to the Motion. As will be noted in the OCA's Answer, the OCA does not oppose an abeyance of the procedural schedule pending resolution of this Petition for Leave to Withdraw.

throughout the various iterations of PGW's filings has been that the Commission should investigate why PGW's WNA produced such unjust, unreasonable, and potentially discriminatory rates.

The parties have moved forward in this proceeding, retained expert witnesses, and conducted discovery concerning the Company's WNA. The WNA has been shown to produce unreasonable and discriminatory charges. It is not in the public interest to delay investigation into the WNA and for the reasons outlined more fully herein, PGW's Petition should be denied.

II. ANSWER

A. Granting PGW's Petition to Terminate the Current Investigation of the WNA is Not in the Public Interest.

From the outset of this proceeding, and the Emergency Petition before it, the OCA has sought to protect ratepayers from an unjust, unreasonable, and discriminatory WNA tariff that produced excessive charges for some – though not all – PGW customers in May 2022. The current proceeding before the Commission provides an opportunity for PGW and all parties to examine the WNA and make changes to prevent the May 2022 billing spike from occurring in the future. The OCA submits that delaying a review of the WNA to some unknown and point in the future will neither benefit customers nor is it in the public interest.

PGW argues that the withdrawal of Supplement No. 152 will allow the Company to provide a more “complete” WNA proposal by March 1, 2023. Petition at ¶ 12. PGW argues that because the proposed 25% cap did not go into effect during the current winter heating season that “the most efficient use of resources of the Company, the parties, and the Commission is to move forward with a WNA filing that addresses the components of the adjustment clause.” *Id.* PGW argues that litigation of the proceeding as a part of the “current procedural posture” will result in a piecemeal approach to the review of the WNA. Petition at ¶ 15.

Contrary to PGW's assertions, the current proceeding provides the most appropriate setting to review PGW's WNA. PGW has provided no explanation in its Petition as to why it should take the Company an additional four months (from the date of the current filing until March 1, 2023) to develop a new proposal to correct flaws contained in the current WNA formula. In fact, in filing after filing, PGW has said that it is already investigating what went wrong with the WNA. *Petition for Emergency Order*, Docket No. P-2022-3033477, Emergency Petition at ¶ 6 (June 30, 2022)(*Emergency Petition*); *Report of PGW on Weather Normalization Adjustment Issue*, Docket No. P-2022-3033477, PGW Report at 1-14 (Aug. 12, 2022). PGW does not provide an explanation of what new facts or investigation would take place between now and any new filing. Nor does PGW explain why it has not developed an alternative proposal since the Commission issued its September 15 Order that suspended the proposed modification. It may be convenient for PGW to withdraw this petition, but it is not in the public interest as established by the Commission.

PGW argues that it has met the legal standard established by the Commission for the withdrawal of Supplement 152 at this time. Petition at 21; *Petition of DRIVE for a Declaratory Order Regarding the Expansion of its Community Broadband Network*, Docket No. P-2021-3025296, Order at 35-38 (July 14, 2022) (*DRIVE Order*). As recognized by PGW, however, if the controversy at issue remains, withdrawal is typically not viewed as being in the public interest. Petition at 21, *citing, DRIVE Order* at 35-38.

As explained in the *DRIVE Order*, the Commission must evaluate whether the withdrawal of the current Petition is in the public interest and whether there is still a contested activity to be addressed. Order at 11, 33. The Commission's *DRIVE Order* provided:

[t]his includes discerning whether the matter presented for declaration is moot, as asserted by DRIVE, which would militate in favor of granting the Withdrawal Petition, or if, as asserted by the RLECs, a controversy or lack of clarity continues to exist, the resolution of which would benefit the public interest and, therefore,

would militate against permitting withdrawal of the underlying Declaratory Petition.

DRIVE Order at 11. Here, the fact that the flawed WNA formula continues to be in operation “militates against” permitting withdrawal.

PGW argues that “[g]ranting 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.” Petition at ¶ 24. PGW further argues that because PGW is proposing to withdraw its 25% cap proposal that the contested activity will no longer remain. Petition at 24. The OCA does not agree. PGW’s definition of the “contested activity” in this proceeding is too limited.

The purpose of this proceeding is to review Supplement No. 152 containing PGW’s proposal to implement a 25% cap on WNA Charges, and to examine the reasonableness of the existing WNA formula. The *September 15 Order* opened this investigation into the lawfulness, justness and reasonableness of Supplement No. 152, and further ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations. *September 15 Order* at 2-3. This is the proceeding by which the Commission intended for the full WNA to be evaluated. There is no basis to allow PGW’s withdraw.

The Commission’s *September 15 Order* placed the full operation of PGW’s proposed and existing WNA rates within the scope of the investigation of this proceeding. The Commission’s headline in its press release regarding this proceeding amplified this purpose, stating, “PUC Proceedings Will Investigate and Analyze PGW’s Request to Modify WNA **and Consider Reasonableness of PGW’s Existing Rates**”. See, <https://www.puc.pa.gov/press-release/2022/puc-suspends-proposed-modification-of-weather-normalization-adjustment-used->

[by-philadelphia-gas-works](#) (emphasis added). In explaining the Commission’s purpose in the *September 15 Order*, the press release further explained, “Per today’s PUC order, the Commission will investigate PGW’s proposed changes to the WNA. While today’s action leaves PGW’s original WNA in place, the PUC order also calls **for broader consideration of the reasonableness of PGW’s existing rates**, rules, and regulations as part of this investigation.” *Id.* (emphasis added). The OCA submits that the purpose of this proceeding is clearly to review all aspects of the WNA.

PGW also argues that no party would be prejudiced by the withdrawal and that if parties believe that the current WNA Tariff is unjust and unreasonable, they can file a complaint against the tariff. The Commission, however, has held that duplicative proceedings are not appropriate where a pending investigation is ongoing, as follows:

Duplicative pleadings are not required and should not be encouraged. This is a reason why a party whose initial pleading is contested cannot unilaterally withdraw. Once the Commission’s jurisdiction is invoked, the public interest may be greater than an individual petitioner’s interest.

DRIVE Order at 37. As the *DRIVE Order* states, duplicative pleadings are not required and should not be encouraged. *DRIVE Order* at 37. The Company’s assertion that parties are free to file a separate complaint against the WNA at this time is without merit, and the public interest in adjudicating a proper resolution of PGW’s WNA tariff is greater than PGW’s private interest in deferring disposition of these issues to sometime in the future.

If this proceeding is terminated, there is no other proceeding that will be reviewing the WNA or addressing the problems that occurred. As a part of the Emergency Petition that PGW filed, the Commission entered an *Emergency Ratification Order* and required that PGW complete

an investigation report within thirty days.³ The *Emergency Ratification Order* allowed PGW to immediately refund customers excess WNA charges from May 2022 and required PGW to complete an investigation report. *Id.* In its investigation report, PGW specifically referenced this filing (Supplement #152) as the corrective actions that the Company was planning to take in order to address the issue. *Report of PGW on Weather Normalization Adjustment Issue*, Docket No. P-2022-3033477, (PGW Report filed Aug. 12, 2022).

Contrary to PGW's averments, it is not in the public interest to grant the Petition to Withdraw. The public interest supports continuation of the existing proceeding in a timely manner to allow for the WNA to be reviewed. The current proceeding allows for resolution of the matter in time for the 2023-2024 WNA application period. This proceeding is the only avenue that ensures resolution by October 1, 2023. While PGW commits to file another WNA modification proposal by March 1, 2023, it is unlikely that any revisions to the WNA will be in effect for the 2023-2024 winter.

B. The Current Proceeding Provides the Most Efficient Forum to Address WNA Issues.

PGW argues that the WNA has largely operated "as intended" for the last twenty years. Petition at ¶ 17. At the outset, the OCA submits that this statement by PGW deserves further scrutiny as it is not axiomatic that the WNA tariff has operated as intended for twenty years. Even if true, the incident in May 2022 that resulted in the Emergency Petition and a subset of customers being charged an additional \$11.3 million due to the operation of the WNA certainly was not intended and the public interest is served in determining why this occurred and to ensure that it will not occur again. It is important, that the current investigation be completed to ensure that the formula is operating correctly on a regular basis moving forward.

³ *Pa. PUC v. PGW*, Docket Nos. R-2022-3034229, P-2022-3034264 (Emergency Ratification Order entered July 14, 2022) (*Emergency Ratification Order*).

The proposed Supplement No. 152 has been suspended until October 1, 2023. The OCA submits that the current proceeding allows sufficient time to adjust the procedural schedule if the Company or other parties need additional time for the submission of testimony. The Company has filed a companion Motion requesting that the procedural schedule be suspended pending resolution of this Petition. The OCA is not opposed to suspending the procedural schedule at this time for a short duration so as to allow PGW additional time to develop its position on its case in chief. PGW's testimony is currently scheduled to be submitted on November 30, 2022. The Company argues in its Petition that it may have insufficient time to respond to parties Direct Testimony. Petition at ¶ 16. Revising the procedural schedule would allow PGW the opportunity to address this concern.

In its Petition, PGW argues that as part of the OCA's Answer, the OCA identified the potential that the OCA would seek modifications to the WNA or elimination of the WNA. Petition at 3. PGW also asserts that the OCA "is seeking to utilize this proceeding for its own purposes that far exceed the scope of PGW's proposed 25% cap." Petition at 3. PGW's assertions are unnecessary, inflammatory, unfounded, and inaccurate. The OCA has no agenda or interest in this proceeding other than protecting ratepayers from excessive and discriminatory charges – something PGW has acknowledged as possible under its existing WNA. At this time, the OCA has retained a witness to review the WNA and has not completed discovery and is still reviewing what its recommendations will be in this proceeding. Due to the significant rate impact of the effect of the WNA that occurred in May of 2022, prudence requires that the WNA be examined to determine what modifications or consumer protections may be needed to protect the interests of ratepayers.

The process for the parties' evaluation of the WNA and the scope of the proceeding, however, will not change in a new proceeding. Delay until March 1, 2023 will only serve to shorten the time for review and appropriate evaluation of the proposal or result in a delay of the implementation of any changes until 2024. The OCA submits that neither result is in the public interest. This proceeding is the appropriate forum in which to address the lawfulness, justness, and reasonableness of PGW's WNA. PGW's request for leave to withdraw should be denied.

III. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate submits that it is not in the public interest to permit PGW to withdraw its Petition. The OCA respectfully requests that PGW's Petition for Leave to Withdraw be denied.

Respectfully Submitted,

/s/ Christy M. Appleby
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DATE: November 14, 2022

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-2022-3034229
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Pa. P.U.C. of Philadelphia Gas Works	:	
	:	
Petition of Philadelphia Gas Works for	:	
Approval on Less than Statutory Notice	:	Docket No. P-2022-3034264
of Tariff Supplement Revising Weather	:	
Normalization Adjustment	:	

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's Answer in Opposition to the Petition of Philadelphia Gas Works for Leave to Withdraw, 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: November 14, 2022
*337521

Signature: 
Patrick M. Cicero
Consumer Advocate

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