



May 8, 2023

**VIA E-File**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

Re: Pa. PUC v. Philadelphia Gas Works, Docket No. R-2022-3034229, P-2022-3034264

Dear Secretary Chiavetta,

Enclosed for electronic filing, please find the **Brief of CAUSE-PA in Opposition to the Petition of Philadelphia Gas Works for Interlocutory Review and Answer to Material Question.**

Copies were served consistent with the attached Certificate of Service.

Respectfully Submitted,



Elizabeth R. Marx, Esq.  
*Counsel for CAUSE-PA*

[emarx@pautilitylawproject.org](mailto:emarx@pautilitylawproject.org)

CC: Certificate of Service

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission, et al.</b>	:	
	:	
v.	:	<b>Docket No. R-2022-3034229</b>
	:	<b>P-2022-3034264</b>
	:	
<b>Philadelphia Gas Works</b>	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of the **Brief in Opposition to the Petition of Philadelphia Gas Works for Interlocutory Review and Answer to Material Question** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code §1.54 in the manner and upon the persons listed below.

**VIA Email**

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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission, et al.</b>	:		
	:		
v.	:	<b>Docket No.</b>	<b>R-2022-3034229</b>
	:		<b>P-2022-3034264</b>
<b>Philadelphia Gas Works</b>	:		

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**BRIEF OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) IN OPPOSITION TO THE PETITION OF PHILADELPHIA GAS WORKS FOR INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION**

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Pursuant to Section 5.302 of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), and through its counsel at the Pennsylvania Utility Law Project, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) hereby files this Brief in Opposition to the Petition of Philadelphia Gas Works (PGW) for Interlocutory Review and Answer to Material Question (Interlocutory Petition).

Through its Interlocutory Petition, PGW seeks Commission review of and answers to material questions regarding the February 22, 2023 Prehearing Conference Order (PHO) of Administrative Law Judge Marta Guhl (ALJ Guhl), which rejected PGW’s Petition for Leave to Withdraw (Withdrawal Petition) as moot. CAUSE-PA opposes PGW’s untimely Petition for Interlocutory Review and urges the Commission to reject PGW’s attempt to further obfuscate and unnecessarily delay the Commission’s determination as to the justness and reasonableness of PGW’s Weather Normalization Adjustment charge (WNA).

## I. INTRODUCTION

PGW's Interlocutory Petition is untimely and fails to meet the standard for interlocutory review. PGW waited over two months after ALJ Guhl rejected PGW's Withdrawal Petition to file its request for interlocutory review and has not demonstrated that it will suffer substantial prejudice absent interlocutory intervention. If granted, PGW's late-filed request for interlocutory intervention would waste the parties' and the Commission's resources and undermine the development of a clear and cohesive record for the Commission to review the justness and reasonableness of PGW's WNA.

The Commission "does not routinely grant interlocutory review except upon a showing by the petitioner of extraordinary circumstances or compelling reasons."<sup>1</sup> To meet this standard, a petitioner must show that "harm would result which would not be reparable through normal avenues, that the relief sought should be granted now, rather than later, and that granting interlocutory review would prevent substantial prejudice or expedite the proceeding."<sup>2</sup>

PGW's Interlocutory Petition presents two material questions, asserting that interlocutory review is necessary to (1) protect PGW's due process rights, and (2) prevent "unnecessary waste." (Interlocutory Petition at 3). Even if the Commission were to find that PGW met the standard for interlocutory review, its answer to both material questions must be in the negative.

It is not a violation of PGW's due process rights to proceed with the Commission's investigation into PGW's WNA in this proceeding consistent with the Commission's September 15, 2022 Order referring this matter to the Office of Administrative Law Judge. At its core, due process requires notice and an opportunity to be heard. PGW has had ample notice of the intended

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<sup>1</sup> 52 Pa. Code § 5.302(a);

<sup>2</sup> Pa. PUC v. Westover Property Management Co., L.P., Pa. PUC Docket C-2022-3030251, P-2021-3030002, at 8 (order entered Nov. 22, 2022).

scope of this proceeding since the outset of the case, *including the potential that PGW may be ordered to discontinue the WNA as a result of this proceeding.*<sup>3</sup> PGW has also had a lengthy opportunity to present evidence in defense of its WNA over the last eight months, since the Commission issued its September 15, 2022 Order. Contrary to PGW’s claims, its untimely request to jettison this investigation and shoe-horn deeply complex WNA issues into its base rate proceeding will truncate the other parties’ due process rights – ultimately interfering with the Commission’s ability to reach a prompt and fully-informed decision.

PGW’s stated concern about potential administrative waste is also a misnomer and fails to account for the fact that any administrative waste associated with full litigation of this proceeding is of PGW’s own making. Indeed, PGW used multiple procedural vehicles to repeatedly delay resolution of this case – and then, on its own accord, inserted the issue into its base rate proceeding through late-filed testimony. Contrary to PGW’s assertion, granting PGW’s interlocutory request at this late phase, eight months into the proceeding, would cause substantial waste of the parties and the Commission’s resources, and would hamper the ability of the parties to present their case to the Commission and develop a cohesive record on this complex issue in either proceeding.

As discussed more thoroughly below, PGW’s arguments in support of its untimely Interlocutory Petition are inadequate to meet the Commission’s well-established standard for interlocutory review.<sup>4</sup> Even if the Commission were to find that PGW met the threshold for interlocutory review, which it has not, the answer to PGW’s material questions must be in the negative. As such, the Commission must reject PGW’s Interlocutory Petition.

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<sup>3</sup> In its September 15, 2022 Order, the Commission explicitly found that “consideration should be given to the reasonableness of PGW’s existing rates, rules, and regulations.” (September 15 Order at 2 & para. 4).

<sup>4</sup> *Id.* at 7-8.

## II. BACKGROUND

For the Commission to understand the superfluosity of PGW's Interlocutory Petition, it is important to start with a full recitation of the factual background that led us to this point.

On June 30, 2022, PGW filed a Petition for Emergency Order (Emergency Petition), Docket No. P-2022-3033477, with the Commission, requesting that the Commission approve tariff modifications designed to suspend operation of its Weather Normalization Adjustment (WNA) for May 2022 because application of the rate mechanism resulted in rate shock for customers – imposing charges in that month totaling more than \$11.3 million.

On July 1, 2022, the Office of Consumer Advocate (OCA) filed an Answer to the Emergency Petition supporting the suspension of the WNA and urging the Commission to open an investigation and suspend the WNA until it can be thoroughly evaluated. On the same date, Chairman Brown Dutrieuille issued an Emergency Order granting PGW's Emergency Petition. At its July 14, 2022 Public Meeting, the Commission ratified Chairman Brown Dutrieuille's Emergency Order, and ordered PGW to investigate the issue and file a report by August 15, 2022.

On August 2, 2022, PGW filed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2 to become effective October 1, 2022, along with a Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment. Through these filings, PGW proposed to add a control cap to its WNA so that its customers would not be billed a WNA charge or credit greater than 25% of total delivery charge, excluding the WNA.

On August 12, 2022, PGW filed its report in response to the Ratification Order explaining that, in May 2022, a mid to late month warm weather variance resulted in large WNA charges. However, PGW could not identify any misapplication or error in applying the WNA formula.

On August 22, 2022, the OCA filed an Answer to PGW's filings. The OCA stated that PGW did not provide evidence as to how it determined that a 25% cap was the appropriate level of protection for customers. The OCA also stated that the only reasonable approach is to suspend the WNA mechanism until a revised formula, free from its current defects, can be developed.

On September 1, 2022, the OCA filed Comments in response to PGW's investigation explaining that a 25% cap may not be sufficient to protect PGW's customers from future rate shock and recommending suspension of the WNA pending an investigation by the Commission and a revision of the WNA formula.

On September 6, 2022, CAUSE-PA and Tenant Union Representative Network (TURN) each individually filed Petitions to Intervene in the instant proceeding, requesting full intervenor status as an active party to the proceeding. Also on September 6, 2022, CAUSE-PA and TURN filed Joint Comments at this docket supporting OCA's recommendation that the Commission suspend PGW's WNA to prevent further harm to consumers until the Commission's investigation is complete. In its Joint Comments, CAUSE-PA and TURN noted deep concerns that PGW's WNA is producing unjust and unreasonable charges, especially as applied to low income consumers, and explained that PGW's proposed 25% cap "does not equitably resolve issues inherent in PGW's WNA – nor does it alleviate the heavy burden the charge has on low income consumers." (CAUSE-PA/TURN Joint Cmts. at 3). CAUSE-PA and TURN explicitly argued that, as part of its investigation, the Commission should "*determine whether permanent elimination of the WNA may be appropriate.*" (CAUSE-PA/TURN Joint Cmts. at 4 (emphasis added)).

On September 9, 2022, PGW filed a letter indicating that it did not oppose CAUSE-PA's intervention, but nevertheless requested that the Commission preliminarily narrow the issues to be considered by the Commission in this proceeding to only consider PGW's proposed 25% cap,



arguing that the justness and reasonableness of its WNA is otherwise outside the scope of this proceeding. On September 13, 2022, CAUSE-PA and TURN filed a joint letter in response to PGW's September 9, 2022 letter, expressing appreciation for PGW's non-objection to their intervention, but pointing out that PGW's letter sought to unduly narrow the proceeding to consideration of the 25% cap.

On September 15, 2022, the Commission issued an Order suspending the proceedings until April 1, 2023, and sent the matter to the Office of Administrative Law Judge for evidentiary hearings and a Recommended Decision.<sup>5</sup> In this Order, the Commission not only ordered a review of PGW's proposed tariff filing, but also explicitly ordered that consideration should be given to the reasonableness of PGW's existing rates, rules, and regulations. (September 15 Order at 2). In short, the Commission plainly refused to foreclose consideration of the justness and reasonableness of PGW's existing WNA mechanism in the context of this proceeding.

On November 8, 2022, PGW filed a Petition for Leave to Withdraw (Withdrawal Petition), 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. Also on November 8, 2022, PGW filed a Motion to Hold Procedural Schedule in Abeyance, requesting that the litigation schedule in this proceeding be held in abeyance pending a decision on its Withdrawal Petition. The ALJ granted the request to hold the matter in abeyance. (PHO at 2). On December 6, 2022, the parties notified the ALJ that a new procedural schedule had been mutually agreed upon. (Id.)

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<sup>5</sup> S&I Order at 2.

On November 17, 2022, two Telephonic Public Input Hearings were held on this matter. Several PGW customers attended and voiced their concerns about the additional cost that PGW's WNA had added to their gas bills.<sup>6</sup> These customers clearly indicated that their concerns about PGW's WNA were not limited to the May 2022 WNA rate spike, but also the unfairness of the consistently higher cost that the WNA added to their bill.<sup>7</sup>

Pursuant to the agreed-to procedural schedule, PGW was scheduled to submit direct testimony on or before February 14, 2023, but failed to do so. (PHO No. 2 at 2-3). PGW did not file any Motions prior to the testimony due date to request a change in the schedule, nor did it make any other procedural filings that would have suspended litigation in this proceeding. (Id.) OCA and CAUSE-PA each objected to PGW's failure to file direct testimony. In response, ALJ Guhl held an emergency telephonic conference on February 22, 2023, and ordered PGW to file its direct testimony by close of business February 23, 2023. (Id.) PGW complied with ALJ Guhl's Order and served the Direct Testimony of Denise Adamucci (PGW St. 1) on February 23, 2023.

On February 27, 2023, 4 days after filing its direct testimony in this proceeding, PGW filed a base rate case at docket R-2023-3037933 seeking an increase in distribution revenues of \$85.8 million. PGW did not file any testimony or proposals regarding its WNA, though it stated an intent to introduce supplemental testimony regarding its WNA at a later, then-unspecified date.

On March 23, 2023, counsel for the OCA requested a brief extension of time for the non-company parties to file direct testimony from April 6 to April 13, 2023. No party objected to this request. On March 31, 2023, ALJ Guhl issued an order memorializing the change. (PHO No. 3).

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<sup>6</sup> See Public Input Hearing Transcript, Testimony of: Russell Semen, Morgan Byrne, David Augenbraun, Linnea Bond, Emily Abendroth, Pamela Darville, Walter Tso, Steven Greenspan, Russell Zerbo, Julie Greenberg.

<sup>7</sup> Id.

On April 4, 2023, over a month after its initial base rate case was filed, PGW served late-filed supplemental direct testimony regarding its WNA at its base rate case docket.

On April 13, 2023, CAUSE-PA and the OCA submitted direct testimony expressing concern about the disproportionate and disparate impact of the WNA on PGW’s residential and low income customers. (CAUSE-PA St 1 at 3-15, OCA St. 1 at 9-22 )

On April 27, 2023, PGW filed the instant Interlocutory Petition.

### III. LEGAL STANDARDS

Section 5.302 provides that, to effectuate a request for interlocutory review, “a party may file a *timely* petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise.”<sup>8</sup>

The standards for interlocutory review are well established and stringent. The Commission has repeatedly found: “The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process.”<sup>9</sup> To meet this standard, a petitioner must demonstrate “compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.”<sup>10</sup> As the Petitioner, PGW bears the burden of establishing compelling reasons for the Commission to approve a request for interlocutory review.<sup>11</sup> Importantly, whether a ruling by an Administrative Law Judge was

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<sup>8</sup> 52 Pa. Code § 5.302(a) (emphasis added).

<sup>9</sup> Evans v. FirstEnergy Solutions Corporation, Docket No. P-2014-2421556 (Order entered January 26, 2015), at 6; Joint Application of Bell Atlantic Corp. and GTE Corp., Docket No. A-310200F0002 (Order entered June 14, 1999).

<sup>10</sup> 52 Pa. Code § 5.302(a).

<sup>11</sup> Pa. PUC v. Westover Property Management Co., L.P., Pa. PUC Docket C-2022-3030251, P-2021-3030002, at 12 (order entered Nov. 22, 2022).

“correct” is not determinative of whether a petitioner has fulfilled the regulatory requirements for interlocutory review and answer to a material question.<sup>12</sup>

#### **IV. DISCUSSION**

##### **A. PGW’s Interlocutory Petition was not timely filed and fails to meet the requirements for interlocutory review.**

Section 5.302 is explicit: Petitions for interlocutory review must be *timely* filed.<sup>13</sup> The process for requesting interlocutory review is designed for speed and efficiency to minimize disruption in the course of ongoing litigation, as petitions are limited to just three pages in length and the other parties must file limited responsive briefs within 10 days.<sup>14</sup>

Rather than seeking prompt, timely review of ALJ Guhl’s Prehearing Conference Order, PGW waited until April 27, 2023 to make its three-page filing - over two months after ALJ Guhl denied PGW’s Petition to Withdraw as moot. In the interim, the other parties to the proceeding expended considerable time and expense to continue litigation of the case. Indeed, in the weeks that followed ALJ Guhl’s Prehearing Conference Order, CAUSE-PA and OCA continued to engage in discovery and served their respective expert testimony on April 13, 2023, six weeks after ALJ Guhl denied PGW’s Petition to Withdraw. Given the likely timeframe for a decision on PGW’s Interlocutory Petition, CAUSE-PA and the other parties will expend even more resources in the near term to exchange further discovery, draft Surrebuttal testimony, and prepare for and attend multiple days of hearings scheduled for March 23 through March 25, 2023.

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<sup>12</sup> Saucon Creek Assoc., Inc. v. Borough of Hellertown, 69 Pa. PUC 467, Docket No. C-00882119 (order entered April 28, 1989).

<sup>13</sup> 52 Pa. Code § 5.302(a).

<sup>14</sup> 52 Pa. Code § 5.302(a).

If PGW wished to challenge ALJ Guhl's Prehearing Conference Order, it should have done so in a timely manner consistent with section 5.302 before the parties expended substantial time, money, and resources to continue litigation of the issue. As discussed more thoroughly in sections (b) and (c), granting PGW's untimely Interlocutory Petition would result in substantial prejudice to the other parties and would cause considerable waste of the other parties' and the Commission's resources. As such, CAUSE-PA submits that PGW's Interlocutory Petition must be denied.

**B. PGW has had clear notice as to the scope of issues and an extensive opportunity to be heard regarding the justness and reasonableness of its WNA through the course of this proceeding, and it will not be prejudiced if the Commission rejects its Interlocutory Petition.**

PGW claims that its due process rights will be violated if its Interlocutory Petition is denied. PGW's due process claims are premised on the assertion that it only recently learned that the parties would propose to eliminate the WNA charge, and that such a determination must therefore be considered in the context of its recently filed base rate proceeding where PGW's overall operations will be explored. (Interlocutory Petition at 2-3, paras. 4 & 6).

From the start of this proceeding, CAUSE-PA has been clear in its position that the scope of this proceeding necessarily includes an investigation into "*whether permanent elimination of the WNA may be appropriate.*" (CAUSE-PA/TURN Joint Comments at 4 (emphasis added); see also CAUSE-PA Pet'n to Intervene at para. 7; Joint Letter of the Low Income Advocates in Response to PGW's Sept. 9, 2022 Letter; CAUSE-PA Prehearing Memo at 5-6)<sup>15</sup>. We clearly stated this position in multiple filings at this docket from the very start of the proceeding and specifically responded to PGW's September 9 Letter filed at this docket which attempted to

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<sup>15</sup> In our Prehearing Memorandum, filed on September 27, 2022, CAUSE-PA identified four explicit issues it intended to explore through the course of the proceeding, including: "**Whether PGW[] should be allowed to continue to apply its WNA to residential bills.**" CAUSE-PA Prehearing Memorandum at 6. PGW did not raise any objection to the scope of issues CAUSE-PA identified in its Prehearing Memorandum.

artificially narrow the scope of this proceeding to only consider the justness and reasonableness of PGW’s proposed 25% cap. (See PGW September 9 Letter; see also Joint Letter of the Low Income Advocates in Response to PGW’s Sept. 9, 2022 Letter).<sup>16</sup>

Despite having more than adequate notice of the parties’ intent to explore all aspects of PGW’s WNA, the primary basis of PGW’s untimely request for interlocutory review was its *recent* realization that this proceeding could result in “possible termination of the WNA (in its entirety).” (Interlocutory Petition at 2, para. 4). PGW claims that this possibility only became clear when the parties filed direct testimony on April 13, 2023. (Interlocutory Petition at 2-3). But the fact the parties may propose the elimination of PGW’s WNA is not a new or novel revelation – it was explicit and clearly articulated possibility from the very start of litigation in this proceeding.

PGW has known for over eight months that the scope of the proceeding would include investigation into the justness and reasonableness of its underlying WNA, and that the parties may advocate for elimination of the charge. Indeed, the Commission issued a suspension and

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<sup>16</sup> In relevant part, we explained:

PGW argues, in essence, that the Commission is limited to an up or down vote on this proposal: Either the Commission accepts PGW’s proposal, or the WNA must continue unchanged. PGW asserts that any other modification of its WNA would impinge on PGW’s due process rights and, thus, would require initiation of a separate proceeding. PGW provides no support for this proposition, which is counter to the Commission’s statutory obligation to ensure that every rate and charge imposed by PGW is just and reasonable. 66 Pa. C.S. § 1301.

...

PGW’s proposal to cap its WNA credits and charges at 25% necessarily raises the question of whether a different cap, ***elimination of the WNA***, or some other modification to the WNA is the most appropriate way to ensure that customers do not experience unjust and unreasonable rates, such as those WNA charges PGW billed for May 2022.

...

PGW’s Letter ostensibly amounts to a procedurally defective motion *in limine*, which deprives the Low Income Advocates of the right and opportunity to file a formal response. While the Commission has discretion to waive procedural defects, that discretion is limited to “an error or defect of procedure which does not affect the substantive rights of the parties.”<sup>2</sup> PGW’s attempt to limit the scope of this proceeding by filing an informal letter with the Commission would substantially affect the substantive rights of the Low Income Advocates and should be denied.

(Joint Letter of the Low Income Advocates at 2 (emphasis added)). PGW never made any subsequent filing seeking to limit the scope of the instant proceeding.

investigation Order on September 15, 2022 – *after* PGW filed its September 9 Letter seeking to narrow the scope of the proceeding – explicitly including “consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works’ *existing* rates, rules, and regulations” within the scope of its ordered investigation. (Order at 2 & para. 4 (emphasis added)). Apart from its extrajudicial September 9 Letter, PGW did not file any motion or petition in the proceeding seeking to formally narrow the scope of this proceeding.

In reviewing PGW’s due process claims, it is important to recognize that PGW’s requested relief to insert the WNA issue into its active base rate proceeding will infringe on the due process rights of CAUSE-PA and the other parties to this proceeding that have diligently litigated the matter in accordance with all Orders issued to date in this proceeding. As the Commission knows, there are a plethora of critical and complex issues in a base rate proceeding that must be investigated within a short period of time. Granting PGW’s request to jettison the focused investigation of PGW’s WNA in this stand-alone proceeding in favor of litigating the issue as part of PGW’s base rate proceeding would truncate the ability of the parties to develop a cohesive record regarding PGW’s WNA – obfuscating the Commission’s review of this complex and detailed matter. The instant proceeding to investigate the justness and reasonableness of PGW’s WNA is already well underway – with final hearings just two weeks away – and is the appropriate forum for determining whether and/or how PGW’s WNA should continue.

Furthermore, the untimeliness of PGW’s Interlocutory Petition will impact the parties’ ability to address in the rate case as well because direct testimony is due May 31, 2023. The two month delay in filing the interlocutory petition will substantially prejudice the ability of the parties to address the WNA in the rate case, especially since the WNA testimony that PGW intends the parties to address was filed April 4, 2023, over a month later than the initial base rate filing. Thus,

the already compressed litigation schedule in the base rate case would be made even more complex by inserting a subject that already been the subject of eight months of litigation, to be addressed in a shortened time frame. If it was PGW's goal to comprehensively address the WNA issues in the base rate case it should have timely filed its Interlocutory Petition and provided its WNA testimony in its initial base rate filing to give the parties adequate time rather than submitting them months later and expecting the parties to litigate the issues in a rushed manner.

Ultimately, PGW has had both notice and an opportunity to be heard through the course of this proceeding and was clearly apprised from the outset of the case that the Commission intended the parties to investigate all aspects of PGW's WNA – including whether and to what extent the WNA should be allowed to continue. As such, CAUSE-PA submits that the Commission must reject PGW's Interlocutory Petition, as it fails to meet the standard for interlocutory review – which requires the petitioner to demonstrate that it will suffer substantial prejudice if review is denied. To the contrary, if the Commission were to grant PGW's Interlocutory Petition, it would result in substantial prejudice to CAUSE-PA and the other parties to this proceeding.

**C. PGW's Interlocutory Petition, if granted, would unnecessarily waste the parties' and the Commission's resources, and would not expedite resolution of PGW's WNA.**

PGW asserts that, in addition to harming its due process rights, its Interlocutory Petition should be granted because continued litigation of the WNA issues in this proceeding would “involve an unnecessary waste of valuable resources.” (Interlocutory Petition at 3).

CAUSE-PA submits that the opposite is true. The parties and the Commission have already invested substantial resources into the current proceeding, including multiple rounds of discovery and expert testimony – as well as lengthy public input hearings, and final hearings are just two weeks away. We agree that the parties should not have to litigate PGW's WNA issues across two



proceedings. However, we assert that this docket is the appropriate forum through which to address PGW's WNA – not PGW's currently active base rate case. This is especially true given PGW did not include testimony on its WNA in its initial rate case filing. PGW waited over a month after filing its initial base rate case to introduce testimony on the issue in that proceeding shortly after submitting direct testimony in this case. The fact PGW's WNA is now at bar in two active proceedings is a reality of PGW's own making, and cannot be construed as prejudicial to PGW.

Requiring the parties to shift litigation of PGW's WNA from this focused proceeding (which is in the final stages of litigation) to PGW's base rate proceeding will cause substantial unnecessary waste of the parties' limited resources and will impinge on the ability of the parties to develop a cohesive record on this complex issue. As explained in section (a), PGW waited over two months to seek review of ALJ Guhl's decision to dismiss PGW's Withdrawal Petition. In the interim, the other parties proceeded with litigation pursuant to ALJ Guhl's Prehearing Conference Order. In that time, both CAUSE-PA and OCA engaged in diligent discovery and deployed substantial resources to develop expert testimony in response to PGW's direct testimony. As it stands, surrebuttal testimony in this proceeding is due in just 4 days from the filing date of this Brief, and final hearings are scheduled to begin in just two weeks. (PHO at para. 7). It is unlikely the Commission will issue an order on PGW's Interlocutory Petition prior to the conclusion of formal hearings in this matter. For all of these reasons, granting PGW's Interlocutory Petition would result in substantial waste of the parties' and the Commission's resources.

Importantly, moving the WNA to PGW's base rate proceeding would not "expedite the conduct of the proceeding" consistent with the standards articulated in section 5.302(a). A final order in this proceeding is targeted for the Commission's September 21, 2023 Public Meeting, and the suspension period is set to end October 5, 2023. (PHO at para. 7). In comparison, the

suspension period for PGW’s base rate case does not expire until November 28, 2023 – nearly two months after a decision is reached in this proceeding.<sup>17</sup> It is critical that the Commission proceed with litigation of this proceeding to reach a decision as soon as possible – and before the start of the 2023/2024 heating season. Failure to do so could result in the continued application of potentially unjust and unreasonable rates through PGW’s WNA. If shunted to PGW’s base rate case, the WNA could remain operational until the end of November – subjecting PGW’s customers to ongoing unjust and unreasonable rates.

Jettisoning the current proceeding in favor of litigating the WNA in the context of PGW’s base rate proceeding will not “expedite the proceeding” – it will prolong a final decision on PGW’s WNA, resulting in substantial waste of the parties’ and the Commission’s resources. As such, CAUSE-PA submits that PGW’s Interlocutory Petition fails to meet the standards for interlocutory review in section 5.302(a) and must be rejected.

## V. CONCLUSION

PGW’s untimely request for interlocutory review must be denied, as it fails to meet the stringent standards for interlocutory review.

Respectfully submitted,  
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<sup>17</sup> Pa. PUC v. PGW, Order (S&I), Docket No. R-2023-3037933, at 2 (order entered April 20, 2023).