

COMMONWEALTH OF PENNSYLVANIA



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May 8, 2023

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 Brief in Response to PGW's Petition for Interlocutory Review and Answer to Material Question in the above-referenced proceedings.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Certificate of Service

*345708

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 Brief in Response to PGW's Petition for Interlocutory Review and Answer to Material Question, 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 8th day of May 2023.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

OFFICE OF CONSUMER ADVOCATE'S
BRIEF IN RESPONSE TO PHILADELPHIA GAS WORKS
PETITION FOR INTERLOCUTORY REVIEW AND
ANSWER TO MATERIAL QUESTION

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.302(b), the Office of Consumer Advocate (OCA) hereby files this Brief in opposition to Philadelphia Gas Works' (PGW or Company) Petition for Interlocutory Review and Answer to a Material Question (Petition for Interlocutory Review) filed on April 27, 2023. 52 Pa. Code § 5.302(b). PGW states that its April 27, 2023 Petition is in response to Administrative Law Judge (ALJ) Marta Guhl's February 23, 2023 Order (Interim Order). The Interim Order denied PGW's Petition for Leave to Withdraw, filed on November 8, 2022, as moot. In its Petition for Interlocutory Order, PGW argues that the Interim Order results in the litigation of PGW's Weather Normalization Adjustment (WNA) issues in two separate proceedings – the instant proceeding (the WNA Proceeding) and PGW's pending base rate proceeding at Docket No. R-2023-3037933. Petition at 1.

The WNA Proceeding stems from 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.*

Of critical importance to this Petition for Interlocutory Review, in its investigation report, PGW specifically referenced this WNA Proceeding **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). In its Petition initiating this proceeding, the Company 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. The Company proposed to cap WNA charges (and credits) to no more than 25% of a customer’s distribution bill. Petition at ¶22. PGW stated that, with approval of its proposed 25% cap, “investigation beyond that which has already been undertaken is neither necessary nor required.” Petition at ¶26.

PGW **now** argues that the Company will be prejudiced “in ways that cannot be satisfactorily cured through the normal review process” if this proceeding moves forward. Petition at 1. PGW further argues that that the prejudice will be twofold: (1) a waste of resources by litigating the WNA “in a proceeding that PGW filed for a limited-time consumer protection purpose, which has been rendered obsolete” at the same time that the Company has raised issues related to the WNA in the pending base proceeding and (2) that the instant proceeding does not provide a “proper forum” or afford “requisite due process” to address broader WNA issues. Petition at 1. PGW proposes to terminate the instant proceeding and to move all the evidence presented in the instant proceeding to the base rate proceeding. Petition at ¶ 5.

Specifically, PGW asked the Commission to grant interlocutory review and answer the following questions in the affirmative:

(a) Does PGW’s fundamental due process regarding the continuation of the WNA clause support withdrawal of the Cap Petition and movement of WNA issues to the Base Rate Case?

(b) Does the continued litigation of WNA issues in two separate proceedings involve an unnecessary waste of valuable resources?

Petition at ¶ 6.

PGW’s WNA does not produce just and reasonable results. The Company has recognized the failure of its WNA through another Emergency Petition to, once again, suspend operation of the WNA to prevent customers from paying the WNA. *Petition of PGW for Emergency Order*, Docket No. P-2023-3040233, Emergency Order (April 28, 2023). Here, testimony has been filed by the parties and Public Input Hearings have been held with significant testimony received. A record has been developed upon which the Commission can take action. The OCA submits that PGW’s request should be denied and that PGW’s material questions should be answered in the negative.

II. ARGUMENT

A. Overview

PGW has raised two interrelated issues in its Petition for Interlocutory Order. First, PGW claims that the existing proceeding does not provide the requisite forum to address broader WNA issues and that addressing the WNA issues in this proceeding and in the base rate proceeding would be a waste of resources. Petition at 1. Second, PGW argues that its fundamental due process rights are not supported by continuing to litigate in this proceeding. Petition at 1. The OCA submits that PGW actions in delaying testimony in this proceeding, while simultaneously filing testimony in its base rate proceeding, have caused these so-called “harms” from which it now seeks relief. The WNA should continue to be addressed within this proceeding – the proceeding that was established

to address the Commission's investigation into the failure of the WNA in May 2022. PGW will be provided due process, notice and opportunity to be heard through the existing proceeding.

B. The Existing Proceeding is the Appropriate Forum to Address the WNA.

PGW claims that the existing proceeding does not provide the requisite forum to address broader WNA issues and that the base rate proceeding is more appropriate. Petition at 1. To the contrary, the existing proceeding is the forum identified by PGW as the appropriate forum to provide WNA protections to prevent unintended price spikes.

As a result of that stated corrective action, on August 2, 2022, PGW filed the Petition in this case, Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment and Supplement No. 152 to Gas Service Tariff – Pa. P.U.C. No. 2 (Supplement No. 152), effective October 1, 2022. Petition at ¶ 1. In its Petition, PGW proposed a 25% WNA cap. *Id.* As PGW acknowledges in its Petition for Interlocutory Order, the OCA, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Tenant Union Representative Network and Action Alliance (TURN *et al.*) have identified strong concerns with the WNA Cap Petition. Petition at ¶¶ 2, 7. On September 15, 2022, the Commission ordered an investigation into the lawfulness, justness and reasonableness of Supplement No. 152. Moreover, the Commission further ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works' existing rates, rules, and regulations.¹ PGW ignores that in suspending the proposed tariff, the Commission **opened the WNA in its entirety** to an investigation to determine whether it produces just and reasonable rates. Indeed, the position of the OCA throughout the various iterations of PGW's filings has been that the Commission should investigate why PGW's WNA produced such unjust,

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

unreasonable, and potentially discriminatory rates, and that the Commission should suspend the WNA in its entirety until or unless PGW can show that it is just and reasonable.

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. While the investigation includes whether the 25% cap is reasonable, it also includes whether the WNA is reasonable. 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. PGW has provided no basis to shift these issues, in a proceeding that has a well-developed record to the pending base rate proceeding.

PGW argues that "a review of the Direct Testimony submitted by other parties in the instant proceeding makes it clear that a possible termination of the WNA (in its entirety) has been raised, which needs to be reviewed in the context of PGW's overall revenue requirements." Petition at ¶ 4. What PGW fails to acknowledge is that this is not the first time that the scope of this proceeding has been raised. PGW has been on notice since the Commission's investigation order on September 15, 2022. 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, and that PGW has been on notice since at least September 2022 of this fact.

In its Petition, PGW argues that in view of the base rate proceeding filed on February 27, 2023 at Docket No. R-2023-3037933, “it is an unnecessary waste of valuable resources to litigate WNA issues in separate proceedings.” Petition at ¶4. The OCA does not agree. The “waste of resources” is not the result of this proceeding moving forward, but instead due to PGW confusing the process by raising the WNA issue in the base rate proceeding rather than meeting the procedural timeline that was established in this proceeding. The OCA submits that it remains in the public interest for the Commission to separately investigate the WNA. PGW elected to submit Supplemental Direct Testimony on the WNA in the base rate proceeding. In this proceeding, ALJ Guhl required PGW in accord with the litigation schedule that PGW agreed to.

PGW argues that “a decision on the continuation of the WNA necessitates reliance on an evidentiary record consisting of PGW’s finances and the importance of the WNA to the Company’s overall operations, which are available in the BRC [base rate proceeding.]” PGW submitted its Direct Testimony in this proceeding on February 22, 2023, just five days before filing its base rate proceeding. PGW could have presented in this case any information that it deemed necessary to support its burden to justify the just and reasonableness of the existing WNA.

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 the base rate proceeding and further delay the issue will neither benefit customers nor is it in the public interest.

The OCA submits that PGW’s request to close the existing Commission investigation of the WNA and to move the evidentiary record into the base rate proceeding should be denied. PGW’s material question on the matter should be answered in the negative.

C. PGW will be Provided Due Process Through the Existing Proceeding.

PGW asks in its second material question to the Commission whether the “fundamental due process regarding the continuation of the WNA clause support withdrawal of the Cap Petition and movement of WNA issues to the Base Rate Case.” Petition at ¶ 6. The OCA submits that PGW’s due process rights would not be violated by continuing the instant proceeding. Due process requires notice and opportunity to be heard. PGW has been provided with both in this proceeding. Due process ultimately requires the Commission to afford parties the essential elements of a hearing. *Barasch v. Pa. Pub. Util. Comm’n*, 546 A.2d 1296, 1307 (Pa. Commw. Ct. 1988). Moreover, procedural due process requires “‘an *opportunity*...granted at a meaningful time and in a meaningful manner,’...‘for [a] hearing appropriate to the nature of the case.’” *Id.*

PGW has had notice of the issues in this proceeding through the Commission’s Order and the parties’ answers to the Petition. In addition, PGW has had the opportunity to respond through its Rebuttal Testimony. PGW will have a further opportunity to respond through Rejoinder

Testimony, the availability of the option for cross-examination in hearings, and through briefs. Delays in the procedural process have been due to PGW's own making and requests. PGW elected to delay submission of its testimony until February in this proceeding when the testimony was originally scheduled for November 2022. PGW elected to raise an alternative witness and proposal regarding the WNA in its base rate proceeding.

Consolidation of the proceedings into the base rate proceeding would cause further harm to customers by delaying the resolution of the WNA issues by extending the suspension date for nearly two months, from October 1, 2023 until November 28, 2023 into the next WNA cycle. The October 1, 2023 suspension date is important to the consideration of this issue because the WNA operates from October 1, 2023 until May 30, 2023. Extension of the date until November 28, 2023 will allow the 2023-2024 WNA cycle to continue for at least an additional month. Customers have already waited a year for resolution of the WNA issue and should not have to wait any longer than necessary.

The public interest supports continuation of the existing proceeding 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.

D. PGW's Petition is Untimely.

PGW's Petition should be denied as untimely. PGW states that its Petition is being filed in response to the Interim Order issued by Administrative Law Judge Marta Guhl on February 23, 2023, which denied PGW's Petition for Leave to Withdraw. Petition at 1. PGW subsequently filed its base rate proceeding on February 27, 2023, and Supplemental Direct Testimony in its rate case regarding the WNA on April 3, 2023. PGW waited *over two months* to file its Petition for

Interlocutory Review. PGW alleges such harm from the Interim Order, that its due process rights have been violated and resources will be wasted by the ALJ's actions, yet PGW did not take any action in that time. PGW provides no basis for the delay in its own actions.

In that time, further substantial resources have already been allocated to this proceeding. Extensive discovery has been initiated by the parties, including by PGW on the OCA. The Company has submitted its Direct Testimony of Denise Adamucci in this proceeding, and the OCA and CAUSE-PA submitted the Direct Testimony of their respective witnesses, Ron Nelson and Harry Geller. Rebuttal Testimony was submitted by Denise Adamucci. Surrebuttal Testimony is due on May 12, 2023, and hearings will be held on May 23-25, 2023. Customers also testified on March 6, 2023 at the Public Input Hearings.

Given the resources that have been expended on this matter in this proceeding, the OCA submits that PGW's Petition for Interlocutory must also be denied as untimely.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate respectfully requests that PGW's Petition for Interlocutory Review be denied and the material questions answered in the negative.

Respectfully Submitted,

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