

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held May 18, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission

R-2022-3034229

P-2022-3034264

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Interlocutory Review and Answer to Material Question (Petition) filed on April 27, 2023, by Philadelphia Gas Works (PGW or Company). On May 8, 2023, PGW and the Commission's Bureau of Investigation & Enforcement (I&E) each filed Briefs in support of the Petition. Also, on May 8, 2023, the Office of Consumer Advocate (OCA) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) each filed Briefs in opposition to the Petition.

The Petitioner seeks interlocutory review and answers in the affirmative by the Commission to the two Material Questions, stated as follows:

1. Does PGW’s fundamental right to due process regarding the continuation of the WNA [Weather Normalization Adjustment] clause support withdrawal of the Cap Petition and movement of WNA issues to the Base Rate Case? ¹
2. Does the continued litigation of WNA issues in two separate proceedings involve an unnecessary waste of valuable resources?

PGW Petition at 3.

For the reasons discussed more fully below, we shall deny the Petition, and decline to answer the Material Questions, in accordance with this Opinion and Order. *See*, 52 Pa. Code § 5.303(a)(3) (pertaining to Commission action on petition for interlocutory review and answer).

I. History of the Proceeding

This matter concerns the filing, pursuant to 66 Pa. C.S. § 1308(b), by PGW on August 2, 2022, of Supplement No. 152 to Gas Service Tariff – Pa. P.U.C. No. 2 (Tariff Supplement) to become effective October 1, 2022, and a Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment. The proposed Tariff Supplement would add a control cap to PGW’s Weather Normalization Adjustment (WNA) Clause so that PGW’s customers would not be billed a WNA charge or credit greater than twenty-five percent of the total delivery

¹ PGW filed a base rate case, in a separate proceeding, on February 27, 2023, at Docket No. R-2022-3037933 (BRC).

charge excluding the WNA. *See*, Prehearing Conference Order #3 issued March 31, 2023, at 1.

Pursuant to Section 1308(b) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(b), by Order entered September 15, 2022,² the Commission suspended the proceedings until April 1, 2023, and sent the matter to the Office of Administrative Law Judge (OALJ) for evidentiary hearings and a Recommended Decision. The matter was assigned to Administrative Law Judge (ALJ) Marta Guhl. *Id.*

The ALJ issued a Prehearing Conference Order on September 19, 2022, which scheduled evidentiary hearings during the week of November 4, 2022. The Prehearing Conference Order was issued September 19, 2022. PGW voluntarily extended the effective date of the proposed Tariff Supplement, on two occasions, to October 1, 2023, and October 5, 2023. Petition at 2, fn. 1.

On November 8, 2022, PGW filed a Petition for Leave to Withdraw its filings and a Motion to Hold the Procedural Schedule in Abeyance. The ALJ granted the request to hold the matter in abeyance. The OCA and CAUSE-PA objected to the Petition for Leave to Withdraw.³ *See*, Prehearing Conference Order #3 issued March 31, 2023, at 2.

On December 6, 2022, PGW transmitted a procedural schedule, agreed upon by the Parties, to the ALJ. Although no interim order was issued approving this

² *See, Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-2022-3034229 and P-2022-3034264 (Order entered September 15, 2022).

³ Other parties to the proceeding include I&E, the Office of Small Business Advocate (OSBA), Tenant Union Representative Network (TURN), and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG).

schedule, it designated February 14, 2023, as the date for PGW to file its Direct Testimony. I&E Br. at 3; PGW Br. at 6.

The ALJ found that the Petition for Leave to Withdraw and the Motion for Abeyance were moot, and the abeyance was lifted on February 22, 2023. The ALJ stated that counsel for PGW notified her that the Parties had agreed to a new procedural schedule in this matter that would render PGW's Petition for Leave to Withdraw moot. Prehearing Conference Order issued February 22, 2023, at 2, 3.

As noted, *supra*, PGW filed a Base Rate Case (BRC) on February 27, 2023, at Docket No. R-2022-3037933. As part of that proceeding, on April 3, 2023, PGW filed Supplemental Direct Testimony regarding a comprehensive review of its WNA. I&E Br. at 3.

PGW did not submit Direct Testimony by February 14, 2023.⁴ In the ALJ's Prehearing Conference Order issued February 22, 2023, the ALJ approved the procedural schedule that was submitted on December 6, 2022, which included February 14, 2023, as the date for PGW to file its Direct Testimony. Prehearing Conference Order issued February 22, 2023, at 4. Following an emergency telephonic conference on February 22, 2023, the ALJ issued a subsequent Prehearing Order #2 on February 23, 2023, that ordered PGW to submit its Direct Testimony by close of business on February 23, 2023. Prehearing Order #2 issued February 23, 2023, at 2.

⁴ In a letter to the ALJ dated February 14, 2023, PGW stated that it would not be filing Direct Testimony at this time, noting its Petition for Leave to Withdraw and Motion to Hold Procedural Schedule in Abeyance that were filed on November 8, 2022. PGW further stated that it would include detailed testimony on the WNA as part of the BRC, and that it would also be filing a motion seeking to consolidate this proceeding regarding the WNA issues with the BRC.

As directed, PGW submitted Direct Testimony on February 23, 2023. Telephonic Public Input Hearings were conducted on March 9, 2023. The OCA and CAUSE-PA submitted Direct Testimony on April 13, 2023. PGW subsequently submitted Rebuttal Testimony on May 2, 2023. No other Parties submitted Rebuttal Testimony. Evidentiary hearings in this proceeding are scheduled to be conducted telephonically on May 23-25, 2023.

As noted, *supra*, PGW filed the instant Petition on April 27, 2023.⁵ On May 8, 2023, PGW and I&E filed Briefs in support of the Petition, and OCA and CAUSE-PA filed Briefs in opposition to the Petition.

II. Discussion

A. Legal Standards

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlt. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

⁵ Also, on April 27, 2023, PGW filed a Petition for Emergency Order at Docket No. P-2023-3040233, seeking an *ex parte* Emergency Order permitting PGW to revise its Gas Service Tariff – Pa. P.U.C. No 2, page Nos. 149-150 (Tariff), effective May 1, 2023. Specifically, this proposed revision to PGW’s Tariff would eliminate all May 2023 usage for residential and commercial customers from the formula used for its currently approved WNA. On April 28, 2023, Vice Chairman DeFrank issued an Emergency Order, pursuant to 52 Pa. Code §§ 3.1-3.3, granting PGW’s Petition for Emergency Order. Pursuant to 52 Pa. Code § 3.3, ratification of the Emergency Order will be considered at the Commission’s Public Meeting of May 18, 2023.

During the course of a proceeding and pursuant to the provisions of 52 Pa. Code § 5.302, a party may file a timely petition seeking interlocutory review and answer to a material question which has arisen or is likely to arise. The standards for interlocutory review are well established. *See* 52 Pa. Code § 5.302(a). Section 5.302(a) of the Commission’s Regulations requires that the petitioning party “state . . . the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.” 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. *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985) (*Knights Limousine*).

The Commission has stated that it does not routinely grant interlocutory review except upon a showing by the petitioner of extraordinary circumstances or compelling reasons. Such a showing may be made by a petitioner by establishing that, without such interlocutory review, some 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. *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639 and R-2009-2139884 (Order entered April 15, 2010). Therefore, for a Section 5.302(a) petition for interlocutory review to be properly before the Commission for consideration, the pertinent consideration is whether the asserted reasons establish that interlocutory review is *necessary* under the circumstances.

Based on the Commission's determination whether interlocutory review is necessary to either prevent the alleged substantial prejudice or expedite the proceeding, the Commission will then either:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

52 Pa. Code § 5.303(a).

Generally, Petitions for Interlocutory Review are not favored, as the preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission with a full opportunity to develop the record, brief issues, and present arguments at each stage. *Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009) (*PGW USECP*) at 3.

B. PGW's Petition

PGW states that it filed the Petition, pursuant to 52 Pa. Code § 5.302, because the Interim Order issued by the ALJ on February 23, 2023, denied PGW's

Petition for Leave to Withdraw as moot.⁶ PGW argues that it will be substantially prejudiced in ways that cannot be satisfactorily cured through the normal Commission review process because the Interim Order results in the litigation of WNA issues in two separate proceedings. PGW avers that the prejudice resulting from the Interim Order is two-fold: (1) it is a waste of valuable resources to require litigation of WNA issues in a proceeding that PGW filed for a limited-time consumer protection purpose, which has been rendered obsolete, at the same time WNA issues are being addressed in PGW's pending BRC; and (2) this proceeding does not provide a proper forum or afford due process to PGW for the adjudication of broader WNA issues. Petition at 1.

PGW contends that the Interim Order contains no explanation for the ALJ's view that the Petition for Leave to Withdraw was moot. PGW further states that it appears that the reason for the ALJ's conclusion is related to PGW's voluntary extensions of the effective date of the proposed Tariff Supplement. However, PGW argues that the extensions of the effective date merely enabled the development of procedural schedules that afforded sufficient time for litigation and did not render the Petition for Leave to Withdraw moot. *Id.* at 2.

Furthermore, PGW argues that due to the filing of its BRC, it is an unnecessary waste of valuable resources to litigate WNA issues in separate proceedings. PGW also avers that other Parties have submitted testimony in this proceeding that raises the possible termination of the WNA, which should be reviewed in the context of PGW's overall revenue requirements. PGW submits that a decision on the continuation of the WNA must rely on an evidentiary record consisting of PGW's finances and the impact of

⁶ As discussed above, we note that the Prehearing Conference Order issued by the ALJ on February 22, 2023 (Interim Order), denied PGW's Petition for Leave to Withdraw as moot, and appears to be the Interim Order that is the subject of PGW's Petition. The Prehearing Order #2 issued on February 23, 2023, directed PGW to file its Direct Testimony by February 23, 2023. In its Brief in Support of Interlocutory Review, PGW corrects its reference to the February 22, 2023, Prehearing Conference Order.

the WNA to the Company's overall operations, which are available in the pending BRC. PGW states that termination of the instant proceeding and addressing WNA issues in the BRC will afford sufficient due process to PGW and efficiently utilize the litigation resources of the Parties and the Commission. PGW proposes to terminate the instant proceeding, have the evidence submitted in the instant proceeding admitted into the record of the BRC, and address all WNA issues in that proceeding. *Id.* 2-3.

PGW contends that the Interim Order raises the following material questions for the Commission's review and suggests that the answer to these questions is yes:

- 1) Does PGW's fundamental right to 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?
- 2) Does the continued litigation of WNA issues in two separate proceedings involve an unnecessary waste of valuable resources?

Id. at 3.

C. Positions of the Parties

1. PGW

PGW argues that the Commission should grant its Petition, stating that if the Interim Order remains intact, PGW will be required to unnecessarily expend valuable resources to litigate a proceeding that was initiated for a limited consumer protection purpose that has become obsolete and will be deprived of fundamental due process because a thorough and comprehensive review of its WNA will not be possible in this limited proceeding. PGW submits that if it is permitted to withdraw its Tariff

Supplement, the controversy created by that filing will not remain before the Commission and the Parties can pursue other issues in connection with the WNA in the BRC. PGW Br. at 8-9.

Absent interlocutory review, PGW avers that it will be required to litigate a proceeding that was initiated for a limited purpose that has become obsolete. PGW argues that since it no longer has an interest in implementing the proposed twenty-five percent cap under the Tariff Supplement, continued litigation in this proceeding would be a waste of valuable resources. PGW submits that because it is a cash flow utility with no shareholders, its ratepayers are the ones who would be harmed by duplicative litigation. PGW contends that requiring it to litigate this proceeding is contrary to the public interest since it will waste significant resources of PGW, the Commission, and the Parties. *Id.* at 9-10.

Furthermore, PGW submits that if the Interim Order remains intact, it would face the proposal of other Parties reviewing the entire WNA in a limited proceeding without the opportunity to submit a full proposal addressing various key components of it, depriving PGW of its fundamental rights of due process. To that end, PGW argues that it was given less than eight hours to submit Direct Testimony in this proceeding, which is problematic given the recommendations of OCA and CAUSE-PA to suspend or terminate the WNA. PGW claims that the only way to cure this departure from due process is to extend the procedural schedule to give PGW an opportunity to address the importance of the WNA to its financial stability and overall natural gas operations, which is unnecessary due to the pendency of the BRC. *Id.* at 10-11.

According to PGW, the Commission should grant its Petition for Leave to Withdraw for two reasons. First, PGW no longer desires to implement the twenty-five percent cap which is the only measure proposed by the Tariff Supplement filing, and the Tariff Supplement has not gone into effect and is obsolete because it was suspended for

investigation. Second, PGW's pending BRC, in which financial and rate-related issues have been raised, presents an opportunity to consider a wide range of WNA issues. PGW contends that no party is prejudiced by a withdrawal of the Tariff Supplement because the WNA issues are being litigated in the BRC in a similar timeframe. *Id.* at 12-15.

2. I&E

I&E supports PGW's Petition and states that there are compelling reasons to grant PGW's Petition and answer the Material Questions in the affirmative. Initially, I&E argues that PGW has been functionally prohibited from bringing a case-in-chief on the WNA issues due to procedural hurdles occurring in this matter. I&E states that PGW, in its Motion to Hold in Abeyance the Procedural Schedule submitted on November 8, 2022, requested that the litigation schedule established for this proceeding in the ALJ's Prehearing Conference Order issued September 19, 2022, be held in abeyance pending a decision on PGW's Petition for Leave to Withdraw. I&E submits that its understanding is that while the Petition for Leave to Withdraw was pending, PGW agreed to an extended procedural schedule which was presented to the ALJ on December 6, 2022.⁷ Specifically, I&E states that this extended procedural schedule provided for PGW to file its Direct Testimony on February 14, 2023; however, this proposed schedule was not memorialized by the ALJ until the issuance of a Prehearing Conference Order on February 22, 2023. I&E contends that the practical result of the Prehearing Conference Order issued February 22, 2023, was that PGW's Petition for Leave to Withdraw was deemed moot and PGW's Direct Testimony was due on February 14, 2023, which was eight days in the past. I&E Br. at 7-9.

⁷ I&E avers that this proposed procedural schedule was to be utilized if the Petition for Leave to Withdraw was not granted.

I&E avers that the ALJ sent an e-mail at 2:35 p.m. on February 22, 2023, requesting an emergency telephonic conference at 3:30 p.m. that same day. After the emergency telephonic conference,⁸ I&E avers that the ALJ issued a subsequent Prehearing Conference Order #2 on February 23, 2023, directing PGW to serve its Direct Testimony by close of business on February 23, 2023, depriving PGW of due process by giving it less than one full day to prepare its case-in-chief. I&E also submits that the due process rights of the other Parties were infringed upon because the due date for their Direct Testimony remained the same, depriving them of nine days to prepare their direct cases based upon PGW's Direct Testimony; however, the ALJ ultimately modified the procedural schedule at the OCA's request, providing for an additional week for the other Parties to submit Direct Testimony. *Id.* 9-10.

In addition, I&E contends that critical evidence regarding PGW's WNA was unable to be included in this case because of issues of timing and data collection that were beyond PGW's control, including the need to contract for an independent, third-party consultant to review and analyze the WNA formula and make recommendations on improving accuracy and removing volatility, issuing a request for proposal for the consultant contract, and using the most current data available. I&E argues that denying PGW's Petition will functionally deny PGW the right to include the results of the WNA investigation in this case and will deprive the Parties and the Commission of critical information necessary to evaluate PGW's WNA. I&E supports the full resolution of the WNA issues in PGW's BRC. *Id.* at 10-11.

Next, I&E avers that PGW operates on a cashflow basis and has no shareholders to absorb any potential revenue shortfalls; therefore, litigating PGW's WNA in two proceedings will result in PGW ratepayers bearing the costs associated with two

⁸ I&E states that, to the best of its knowledge, the emergency telephonic conference was not transcribed. *Id.* at 9.

filings, which will be costly and unnecessary. In addition, I&E argues that a BRC is the traditional and appropriate forum to evaluate WNA issues because PGW's WNA is one component of its rates which would have to be evaluated as part of its BRC in order to determine if PGW's rates are just and reasonable. Before PGW filed its BRC in February 2023, I&E submits that the WNA may have been appropriately reviewed in the instant proceeding; however, I&E contends that now that the BRC is ongoing, a broader review, including the WNA issues, should occur in the BRC proceeding. Also, I&E argues that the Tariff Supplement proposing a cap on the WNA was initiated to protect customers against unusually large increases during the 2022 heating season which has passed, but now a situation has been created that would burden PGW ratepayers with the costs to litigate the WNA in more than one proceeding and waste resources. *Id.* at 4-5, 12-13.

3. OCA

OCA opposes PGW's Petition and contends that the Material Questions should be answered in the negative. OCA argues that PGW's actions to delay testimony in this proceeding, while simultaneously filing testimony in the BRC, have caused the "so-called 'harms' from which it now seeks relief." OCA states that the WNA should continue to be addressed in this proceeding, which is the proceeding that was established to address the Commission's investigation into the failure of the WNA in May 2022. OCA Br. at 3-4.

OCA avers that, contrary to PGW's claims in its Petition, this proceeding is the forum identified by PGW as the appropriate forum to provide WNA protections to prevent unintended price spikes. OCA argues that PGW ignores that in suspending the Tariff Supplement, the Commission opened the WNA in its entirety to an investigation to determine whether it produces just and reasonable rates. Therefore, OCA contends that the purpose of this proceeding is to review the Tariff Supplement to examine the

reasonableness of the WNA formula, and to investigate whether the twenty-five percent cap and the WNA are reasonable. OCA submits that this is the proceeding by which the Commission intended for all aspects of the WNA to be evaluated, that PGW has been on notice since at least September 2022 of this fact, and that PGW has provided no basis to shift these issues to the BRC. *Id.* at 5-6.

Furthermore, OCA disagrees with PGW's claims that due to the existence of the BRC, it is an unnecessary waste of resources to litigate WNA issues in separate proceedings. Rather, OCA contends that the waste of resources here is due to PGW confusing the process by raising the WNA issues in the BRC instead of meeting the procedural timeline established in this proceeding. OCA states that it is in the public interest for the Commission to separately investigate the WNA, and that delaying a review of the WNA to the BRC will neither benefit customers nor is in the public interest. *Id.* at 6-7.

Next, OCA submits that PGW's due process rights would not be violated by continuing the instant proceeding. OCA contends that PGW has had notice of the issues in this proceeding and an opportunity to respond to those issues through Rebuttal and Rejoinder Testimony, cross-examination in hearings, and through briefs. OCA states that the delays in the procedural process have been due to PGW's own making and request. *Id.* at 7-8.

Moreover, OCA argues that consolidation of the proceedings into the BRC would cause further harm to customers by delaying the resolution of the WNA issues by extending the suspension for nearly two months, until November 28, 2023, into the next WNA cycle. OCA submits that the current proceeding allows for resolution of this matter in time for the 2023/2024 WNA application period, and that this proceeding is the only avenue that ensures resolution by October 1, 2023. *Id.* at 8.

Finally, OCA argues that PGW's Petition should be denied as untimely. OCA points out that the PGW's Petition was filed in response to the Interim Order issued on February 22, 2023, and that PGW filed its BRC on February 27, 2023, and Supplemental Direct Testimony regarding the WNA in the BRC on April 3, 2023. OCA notes that PGW waited over two months to file the Petition without providing any basis for the delay in its actions. In that time, OCA describes that further substantial resources have been and continue to be allocated to this proceeding, including extensive discovery conducted by the Parties, the filing of Direct Testimony by several Parties, the participation of customers at Public Input Hearings, and the upcoming filing of Surrebuttal Testimony and evidentiary hearings. OCA posits that the Petition should be denied as untimely due to the resources that have already been expended on this matter. *Id.* at 8-9.

4. CAUSE-PA

CAUSE-PA opposes PGW's Petition. First, CAUSE-PA argues that PGW's Petition was not timely filed and fails to meet the requirements for interlocutory review. CAUSE-PA states that rather than seeking prompt, timely review of the Interim Order, PGW waited over two months to make its three-page filing regarding the ALJ's denial of PGW's Petition for Leave to Withdraw as moot. During that time, CAUSE-PA avers that the other Parties expended considerable time and expense to continue litigation of the case by engaging in discovery and submitting expert testimony, and will continue to expend resources on further discovery, Surrebuttal Testimony, and evidentiary hearings. CAUSE-PA submits that PGW should have challenged the Interim Order in a timely manner consistent with 52 Pa. Code § 5.302 before the Parties expended substantial time, money, and resources to continue litigation of the issue. CAUSE-PA Br. at 9-10.

Next, CAUSE-PA contends that PGW has had clear notice regarding the scope of issues and an extensive opportunity to be heard regarding the justness and reasonableness of its WNA throughout this proceeding. CAUSE-PA argues that PGW has known for over eight months that the scope of the proceeding would include investigation into the justness and reasonableness of the WNA, and that the Parties may advocate for elimination of the charge. CAUSE-PA points out that PGW did not file any pleadings to narrow the scope of this proceeding following the Commission's issuance of its suspension and investigation Order on September 15, 2022. Moreover, CAUSE-PA avers that inserting the WNA issues into the BRC would infringe on the due process rights of the other Parties because those parties, who have diligently litigated the WNA issue here, would be limited in developing a cohesive record in a short time regarding the WNA in the BRC. CAUSE-PA maintains that this proceeding is well underway, with evidentiary hearings a few weeks away, and is the appropriate forum for reviewing the WNA. *Id.* at 11-12.

In addition, CAUSE-PA avers that the untimeliness of PGW's Petition will impact the other Parties' ability to address this issue in the BRC because Direct Testimony in that case is due on May 31, 2023. CAUSE-PA states that the two-month delay in filing the Petition will substantially prejudice the ability of the Parties to address WNA issues in the BRC because the WNA testimony in that case was filed by PGW on April 4, 2023, a month later than the initial BRC filing. CAUSE-PA argues that including the WNA issue, which has already been the subject of eight months of litigation in the instant proceeding, in an already-compressed litigation schedule in the BRC would make it more complex. CAUSE-PA submits that if PGW's goal was to comprehensively address the WNA issues in the BRC, then it should have filed this Petition sooner and provided its WNA testimony earlier in the BRC to give the Parties adequate time rather than submitting them months later and expecting the Parties to litigate the issues in a rushed manner. CAUSE-PA contends that PGW's Petition should

be rejected because PGW did not satisfy the standard for interlocutory review that it will suffer substantial prejudice if review is denied. *Id.* at 12-13.

Finally, CAUSE-PA argues that granting PGW's Petition would waste the Commission's and the Parties' resources and would not expedite resolution of PGW's WNA. CAUSE-PA submits that the Parties and the Commission have already invested substantial resources into this proceeding, which is the appropriate forum to address the WNA issues. CAUSE-PA avers that shifting litigation of the WNA from this focused proceeding, which is approaching the final stages of litigation, to the BRC will cause unnecessary waste of the Parties' limited resources and will impinge on the ability of the Parties to develop a cohesive record on this issue. CAUSE-PA further submits that moving the WNA issues to the BRC would not expedite the conduct of the proceeding. To that end, CAUSE-PA contends that it is critical that a decision on the WNA issues is reached as soon as possible, and before the start of the 2023/2024 heating season; therefore, the WNA issues should not be moved to the BRC. *Id.* at 13-15.

5. Other Parties

OSBA, TURN, and PICGUG did not file Briefs in response to the Petition.

D. Disposition

In summary, PGW argues that absent interlocutory review it will be substantially prejudiced in ways that cannot be cured through the normal Commission review process because valuable resources will be wasted by litigating WNA issues in this proceeding and, at the same time, in the BRC. We disagree. Upon review, we find that there are no compelling reasons for interlocutory review. Therefore, we will not grant interlocutory review and we will decline to answer the Material Questions.

As discussed, *supra*, 52 Pa. Code §§ 5.302 and 5.303 provide the standards governing the interlocutory review requested here. Furthermore, the Commission does not routinely grant interlocutory review except upon a showing by the petitioner of extraordinary circumstances or compelling reasons. *See, Knights Limousine*. To that end, the Commission has determined that such a showing may be accomplished by a petitioner proving that without interlocutory review some 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.” *Id.*

First, we find that the instant proceeding is the proper forum to address the WNA issues. In fact, this proceeding was initiated by PGW with respect to its WNA when it filed its Tariff Supplement in August 2022. Contrary to PGW’s claims, this proceeding is not limited and obsolete. Rather, in our Order entered September 15, 2022, in this proceeding, we suspended the Tariff Supplement and instituted an investigation into the justness and reasonableness of the WNA. Moreover, this proceeding is well underway and will provide for the timely resolution of this matter by October 1, 2023, which is earlier than the anticipated resolution of the BRC. In addition, due to the timing of the filing of this Petition and the procedural schedule in the BRC, it would be difficult for the Parties to address WNA issues in the BRC under its compressed litigation schedule.

Next, we conclude that PGW’s due process rights would not be violated by continuing this proceeding. PGW has had adequate notice of the issues in this proceeding and has had, and will continue to have, an opportunity to respond to those issues through testimony, at the evidentiary hearing, and in briefs. As discussed, *supra*, PGW has known since September 2022 that the scope of this proceeding included the investigation into the justness and reasonableness of the WNA. Therefore, PGW is not prejudiced in any way by continuing to litigate the WNA issues in this proceeding.

With respect to PGW's argument that it is an unnecessary waste of resources to litigate WNA issues in separate proceedings, we agree with OCA and CAUSE-PA that much of any wasting of resources here is due to PGW's own actions in raising the WNA issues in the BRC. Furthermore, any consolidation of the proceedings into the BRC at this time is not in the public interest and could cause further harm to PGW's customers because doing so would delay the resolution of the WNA issues for several more months. Moreover, the Parties and the Commission have already invested substantial resources into this proceeding, which is nearing the final stages of litigation; therefore, moving the litigation of the WNA issues to the BRC at this time would waste resources and delay resolution of this important matter.

Finally, we note that PGW's Petition was not timely filed. Interlocutory petitions are to be timely filed. 52 Pa. Code § 5.302(a). PGW filed its Petition over two months after the ALJ denied its Petition for Leave to Withdraw as moot. The ALJ's Prehearing Conference Order that PGW is challenging was issued on February 22, 2023. Also, PGW filed its BRC on February 27, 2023, and Supplemental Direct Testimony regarding the WNA in the BRC on April 3, 2023. Yet, PGW waited until April 27, 2023, to file the Petition without any explanation for the delay. During that time, litigation in this proceeding continued moving forward, including the Parties' engagement in extensive discovery, the filing of expert testimony by several Parties, and the participation of customers in Public Input Hearings. To the extent PGW wished to challenge the ruling in the Prehearing Conference Order issued February 22, 2023, it should have done so in a more-timely manner, rather than allowing significant litigation to continue and waiting until April 27, 2023, to file its Petition.

For the reasons set forth above, we find that there are no compelling reasons for interlocutory review. Accordingly, we will not grant interlocutory review and we will decline to answer the Material Questions.

III. Conclusion

Based on our review of the Petition, the positions of the Parties, and the applicable law, we find that we shall deny the Petition and decline to answer the Material Questions; **THEREFORE,**

IT IS ORDERED:

1. That The Petition for Interlocutory Review and Answer to Material Question filed on April 27, 2023, by Philadelphia Gas Works is denied.

2. That, with regard to the Petition for Interlocutory Review and Answer to Material Question filed on April 27, 2023, by Philadelphia Gas Works, we decline to answer the following Material Questions:

- (a) Does PGW's fundamental right to due process regarding the continuation of the WNA [Weather Normalization Adjustment] 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?

3. That this matter is returned to the Office of Administrative Law
Judge.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 18, 2023

ORDER ENTERED: May 18, 2023