

COMMONWEALTH OF PENNSYLVANIA



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May 23, 2023

Via Electronic Mail Only

The Honorable Eranda Vero
The Honorable Arlene Ashton
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Re: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works
Docket No. R-2023-3037933

Dear Judge Vero and Judge Ashton:

Enclosed please find the Office of Consumer Advocate's Notice to Plead and Motion to Strike in the above-referenced proceeding. As required under the Commission's regulations, the Office of Consumer Advocate's Motion to Strike is accompanied by a verification in accordance with 52 Pa. Code § 1.36.

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

Respectfully submitted,

/s/ Mackenzie C. Battle
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Enclosures:

cc: PUC Secretary Rosemary Chiavetta (via e-filing only)
Certificate of Service

*346508

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v. : Docket No. R-2023-3037933
Philadelphia Gas Works :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Motion to Strike, 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 23rd day of May 2023.

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Dated: May 23, 2023
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2023-3037933
	:	
Philadelphia Gas Works	:	

NOTICE TO PLEAD

You are hereby advised to file a written response to the attached OCA's Motion to Strike in the above-captioned proceeding. If you do not file a written response to OCA's Petition, the Chief Administrative Law Judge may rule in favor of OCA on the attached Petition.

All pleadings, such as answers to petitions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

A copy should also be served on the undersigned counsel, the Administrative Law Judges and all other parties.

Respectfully submitted,

/s/ Mackenzie C. Battle

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Phone: (717) 783-5048
Dated: May 23, 2023
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Counsel for:
Patrick M. Cicero
Consumer Advocate

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2023-3037933
v.	:	
	:	
Philadelphia Gas Works	:	
	:	

MOTION TO STRIKE OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA), pursuant to 52 Pa. Code Section 5.103, files this Motion respectfully requesting presiding Administrative Law Judges Eranda Vero and Arlene Ashton (ALJs) to strike the supplemental direct testimony of Philadelphia Gas Works (PGW) submitted on April 3, 2023. In support of its Motion and the striking of testimony, the OCA submits as follows:

MOTION TO STRIKE

1. Regulations of the Commission at 52 Pa. Code Section 5.103 allow for the presentation of requests, by motion, for relief desired. A motion may be made, in writing, at any time.
2. The Presiding Officers have authority pursuant to 66 Pa. C.S. Section 331(d) and 52 Pa. Code Section 5.103(d) to rule upon this Motion.
3. The Presiding Officers have all necessary authority to control the receipt of evidence, rule on the admissibility of evidence, and otherwise regulate the conduct of this proceeding. 52 Pa. Code § 5.403 and § 5.483. The Presiding Officer may actively employ these powers to direct and focus the proceedings. 52 Pa. Code § 5.403(b).

4. This proceeding concerns the request for a rate increase filed by Philadelphia Gas Works (PGW) on February 27, 2023.
5. Separate from its base rate filing, PGW voluntarily commenced a proceeding on August 2, 2022 to address issues related to its Weather Normalization Adjustment (WNA). That proceeding is docketed at R-2022-3034229 (WNA proceeding).
6. The WNA Proceeding was initiated by PGW and suspended by the Commission to investigate *any* issues pertaining to the justness and reasonableness of the WNA. *Pa. PUC v. Philadelphia Gas Works*, R-2022-3034229, 18 (Order May 18, 2023) (*Order*).
7. Although PGW had already initiated the WNA proceeding, PGW also proposed to address issues related to its WNA in this base rate case.
8. On April 3, 2023, five weeks after its base rate filing and eight months after it initiated its WNA Proceeding, PGW supplemented its base rate case filing with two additional pieces of Direct Testimony, PGW Supplemental Direct Testimony Statement No. 1-SD of Denise Adamucci (PGW Statement No. 1-SD) and PGW Supplemental Direct Testimony Statement No. 8-SD of Ronald Amen¹ (PGW Statement No. 8-SD), solely to address issues with PGW's WNA.
9. The OCA argued in its Formal Complaint, Prehearing Memorandum, and at the Prehearing Conference in this proceeding that PGW's supplemental direct testimony on WNA issues should not be permitted in the base rate case proceeding because it was late-filed and because there was a separate, ongoing proceeding that had been initiated by PGW for the purpose of addressing the issues with its WNA. OCA Formal Complaint at 2; OCA Prehearing Memorandum at 5.

¹ PGW filed a corrected version of Supplemental Direct Testimony Statement No. 8-SD on April 4, 2023.

10. On April 27, 2023, PGW filed a Petition for Interlocutory Review and Answer to Material Question asserting that its due process rights were violated because it will be substantially prejudiced due to having to litigate the WNA in two proceedings – the WNA Proceeding and this base rate case. *Pa. PUC v. Philadelphia Gas Works*, R-2022-3034229, PGW Petition for Interlocutory Review and Answer to Material Question at 1. There PGW stated that termination of the WNA Proceeding was appropriate and addressing WNA issues in this case will afford sufficient due process to PGW and efficiently utilize the litigation resources of the Parties and the Commission.
11. On May 18, 2023, the Public Utility Commission (Commission) issued an Order in the WNA proceeding finding that “the [WNA proceeding] is the proper forum to address the WNA issues” rather than the base rate case and finding that “moving litigation of the WNA issues to the BRC at this time would waste resources and delay resolution of this important matter.” *Order* at 18-19. Further, the Commission found that “it would be difficult for the Parties to address WNA issues in the BRC under its compressed litigation schedule.” *Order* at 18.
12. The OCA agrees with the Commission that the proper forum to address the WNA issues is the separately instituted WNA proceeding and, as such, bases this Motion on Section 5.483 of the Commission’s Rules of Practice and Procedure (52 Pa. Code § 5.483), which directs that, in a proceeding such as the instant rate proceeding, the presiding officer will have the authority to exclude irrelevant, immaterial, or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding. 52 Pa. Code § 5.483. Section 5.438 serves to promote efficiency in Commission proceedings.

13. As the Commission noted, it is an unnecessary waste of resources to litigate PGW's WNA issues in both the WNA proceeding and in the rate case, and PGW itself created this inefficiency by raising WNA issues in the base rate case. *Order* at 19. Specifically, the Commission found:

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 [Base Rate Case]. Furthermore, any consolidation of the proceedings into the [Base Rate Case] 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 [Base Rate Case] at this time would waste resources and delay resolution of this important matter.

Id.

14. The Commission in the WNA proceeding found that proceeding to be the proper forum to address WNA issues, rather than the base rate case. *Order* at 18. Limiting discussion of PGW's WNA issues to the WNA proceeding will serve to preserve judicial resources, as the matter will be decided and ruled upon in one case, not two.

15. At the time that PGW filed its supplemental direct testimony about the WNA in its base rate case, the WNA proceeding was well underway. PGW had filed direct testimony and the parties had already conducted extensive discovery and had public input hearings in the WNA proceeding.

16. The WNA proceeding is on track to reach a timely resolution by October 1, 2023, which is earlier than the anticipated resolution of the base rate case. *Order* at 18. The final Order in the WNA proceeding will bind the parties in the base rate case as well, thus, there is no reason to litigate the WNA issues in both proceedings.

17. PGW's WNA testimony in the base rate case is unduly repetitive and should be stricken by the ALJs so that all WNA issues may be properly considered in the WNA proceeding.
18. Therefore, PGW Statement No. 1-SD and PGW Statement No. 8-SD relating to PGW's WNA filed on April 3, 2023 should not be considered in the context of this proceeding, the base rate case, and should be stricken from the record of this proceeding.

CONCLUSION

The OCA respectfully requests that Administrative Law Judge Vero and Administrative Law Judge Ashton grant this Motion and issue an Order striking PGW’s supplemental direct testimony on WNA issues in this proceeding.

Respectfully submitted,

/s/ Mackenzie C. Battle
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DATED: May 23, 2023


BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2023-3037933
	:	
Philadelphia Gas Works	:	

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate’s Motion to Strike, 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: May 23, 2023
*346511

Signature:  _____
Patrick M. Cicero
Consumer Advocate

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