**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2023-3037933

Office of Consumer Advocate : C-2023-3038846

Office of Small Business Advocate : C-2023-3038885

Philadelphia Industrial And Commercial Gas : C-2023-3039059

User Group :

Grays Ferry Cogeneration Partnership and : C-2023-3038727

Vicinity Energy Philadelphia, Inc. :

James M. Williford : C-2023-3039130 :

v. :

:

Philadelphia Gas Works :

Grays Ferry Cogeneration Partnership and : C-2021-3029259

Vicinity Energy Philadelphia, Inc. : :

v. :

:

Philadelphia Gas Works :

**ORDER GRANTING THE MOTION TO STRIKE OF THE**

**OFFICE OF CONSUMER ADVOCATE**

Procedural Background

1. **Weather Normalization Adjustment Proceeding (WNA proceeding) -- Docket Nos. R-2022-3034229 and P-2022-3034264.**

On August 2, 2022, Philadelphia Gas Works (PGW or the Company) filed 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 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, the Commission suspended the Tariff Supplement until April 1, 2023, and instituted an investigation into the justness and reasonableness of the WNA. September 15, 2022, Order, at 2. The Commission’s September 15, 2022, Order 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.

The ALJ issued a Prehearing Conference Order on September 19, 2022, which scheduled evidentiary hearings during the week of November 4, 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 Office of Consumer Advocate (OCA) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) objected to the Petition for Leave to Withdraw. 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, designating February 14, 2023, as the date for PGW to file its Direct Testimony.

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. See Prehearing Conference Order issued February 22, 2023, at 2, 3.

PGW did not submit Direct Testimony by February 14, 2023. 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.

As directed, PGW submitted Direct Testimony on February 23, 2023.

On February 27, 2023, PGW filed a Base Rate Case (BRC) at Docket No. R-2023-3037933. In direct testimony submitted with the base rate case, PGW explained that it had contracted the services of an independent, third-party consultant to review its WNA process and formula, but that this review had not yet been completed. PGW noted its expectation to file supplemental testimony on WNA by April 3, 2023.[[1]](#footnote-2)

On April 13, 2023, the OCA and CAUSE-PA submitted Direct Testimony in the WNA proceeding. On May 2, 2023, PGW served the rebuttal testimony of Ms. Adamucci. On May 12, 2023, OCA and CAUSE-PA each served surrebuttal testimony. PGW served rejoinder testimony on May 19, 2023.

On April 27, 2023, PGW filed a Petition for Interlocutory Review and Answer to Material Question in the WNA proceedings. In its Petition, PGW sought interlocutory review and answers in the affirmative by the Commission to the following two Material Questions:

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?

2. Does the continued litigation of WNA issues in two separate proceedings involve an unnecessary waste of valuable resources?

PGW Petition for Interlocutory Review, at 3.

By Order entered May 18, 2023, the Commission denied PGW’s Petition for Interlocutory Review and declined to Answer the two Material Questions. In denying PGW’s Petition for Interlocutory Review, the Commission found that “the [WNA] proceeding is the proper forum to address the WNA issues.” Next, the Commission concluded that PGW is not prejudiced in any way, and its due process rights are not violated, by continuing to litigate the WNA issues in the WNA Proceeding. May 18, 2023, Order at 18. With respect to PGW’s argument that it is an unnecessary waste of resources to litigate WNA issues in separate proceedings, the Commission found that much of any wasting of resources were due to PGW’s own actions in raising the WNA issues in the BRC, and that the litigation of the WNA issues to the BRC at this time would waste resources and delay resolution of this important matter. *Id.,* at 19. Finally, the Commission found that PGW’s Petition was not timely filed in violation of the provisions of 52 Pa. Code § 5.302(a). The Commission noted that, “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.” May 18, 2023, Order at 19.

The Evidentiary Hearing in the WNA proceeding was held before ALJ Guhl on May 24, 2023, at which time all the pre-served written testimony was admitted into the record. At the close of the hearing, PGW orally moved that the supplemental direct testimony served in the base rate case on April 3, 2023, relating to its WNA be made part of the record in the WNA proceeding. PGW Answer to OCA’s Motion to Strike at 11. Further, PGW requested to reserve the right to designate by a date certain other testimony or exhibits in the base rate case that are relevant to the WNA. *Id.* ALJ Guhl denied PGW’s oral motion. *Id.*

Main Briefs are due in the WNA proceeding on June 7, 2023. Reply Briefs are due on June 16, 2023. The schedule calls for the Commission to adopt a final order at the September 21, 2023, Public Meeting. PGW Answer to OCA’s Motion to Strike at 12.

## Base Rate Case (BRC) – Docket No. R-2023-3037933

As mentioned above, on February 27, 2023, Philadelphia Gas Works (PGW) filed proposed Supplement No. 105 to PGW Gas Supplier Tariff Pa. P.U.C. No. 1 and proposed Supplement No. 159 to PGW Gas Service Tariff Pa. P.U.C. No. 2 to become effective April 28, 2023. The filing contains proposed changes in rates, rules, and regulations calculated to produce $85.8 million (10.3%) in additional annualrevenues, an increase in residential customer’s bills using 71 Mcf/year from $125.38 to $137.73/month (9.9%). Within the general rate increase filing, PGW filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year, so as to permit PGW to use a fully projected future test year beginning on September 1, 2023, in this proceeding.[[2]](#footnote-3)

On April 3, 2023, PGW served the supplemental direct testimony of Ms. Adamucci and PGW witness Ronald J. Amen on revisions to PGW’s WNA formula that should be implemented in future heating seasons.

By Order entered April 20, 2023, the proposed Tariffs were suspended by operation of law until November 28, 2023. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Tariffs. The Commission also ordered an investigation into the reasonableness of PGW’s existing rates, rules, and regulations.

A prehearing conference was held on April 28, 2023. At that time, OCA noted its concern regarding the timing of the service of PGW’s supplemental direct testimony but accepted the procedural schedule negotiated by the parties.

Following the Commission’s May 18, 2023, Order denying PGW’s Petition for Interlocutory Review in the WNA proceeding, by email dated May 22, 2023, OCA requested that a conference be held with all the parties to the BRC to address the potential implications of the May 18, 2023, Order to the issues raised in the BRC.

By email dated May 22, 2023, PGW objected to OCA’s request for a conference and instead suggested that the parties file a motion to argue that the Commission’s May 18, 2023, Order in the WNA proceeding limits PGW’s ability to raise issues and submit testimony regarding WNA issues in the BRC.

On May 23, 2023, OCA filed a Motion to Strike the supplemental direct testimony of PGW submitted on April 3, 2023. In particular, OCA argues that 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 the BRC and should be stricken from the record of this proceeding.

An informal telephonic conference was held on May 24, 2023, wherein the parties agreed that the due date for filing responses to OCA’s Motion to Strike would be May 31, 2023. The parties also agreed that the due date for non-Company direct testimony remain unchanged for May 31, 2023.

On May 31, 2023, PGW filed a timely Answer to OCA’s Motion to Strike. Also on May 31, 2023, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN) filed a Joint Answer to OCA’s Motion to Strike.

The Motion to Strike is ripe for disposition.

Disposition

In its Motion to Strike, OCA seeks to strike from the record in the present case, the supplemental direct testimony of PGW (PGW Statement No. 1-SD and PGW Statement No. 8-SD) relating to PGW’s WNA submitted on April 3, 2023, arguing that PGW WNA should not be considered in the context of the BRC. OCA grounds its argument in the Commission’s May 18, 2023, Order in the WNA proceeding in which the Commission stated,

…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.

May 18, 2023, Order in the WNA proceeding, at 18-19. (Emphasis added.)

Agreeing with the Commission that the proper forum to address the WNA issues is the separately instituted WNA proceeding, OCA argues that PGW’s April 3, 2023, supplemental direct testimony should be stricken as unduly repetitive pursuant to Section 5.483 of the Commission’s Rules of Practice and Procedure (52 Pa. Code § 5.483).

According to OCA, PGW’s attempt to litigate its WNA issues in both the WNA proceeding and in the BRC is an unnecessary waste of resources created by PGW itself. OCA’s Motion to Strike, ¶ 13, citing May 18, 2023, Order at 19. In support of this argument, OCA point out that, at the time that PGW filed its supplemental direct testimony about the WNA in its BRC, 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.

Next, OCA argues that limiting the discussion of PGW’s WNA’s issues to the WNA proceeding serves the public interest as well as that of the parties in the BRC. OCA notes that the WNA proceeding is on track to reach a timely resolution by October 1, 2023, which is earlier than the anticipated resolution of the BRC. 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. OCA’s Motion to Strike, ¶ 16, citing May 18, 2023, Order at 18.

In their Joint Answer to OCA’s Motion to Strike, CAUSE-PA and TURN agree with OCA that PGW’s supplemental direct testimony regarding its WNA charge in the BRC should be stricken so that all WNA issues may be properly considered in the proceeding commenced to address them. However, CAUSE-PA and TURN submit that PGW’s WNA testimony should be stricken without consideration of whether such testimony is “unduly repetitive.” Joint Answer ¶ 17. According to CAUSE-PA and TURN, the Commission’s determination that WNA issues must be fully and finally considered in the WNA Proceeding is premised on multiple considerations, namely: the propriety of that forum; the breadth and scope of review available in that forum; the review ongoing therein; the need for timely resolution of WNA issues; the lack of prejudice to PGW; and the avoidance of waste and delay. They further maintain that the submission of testimony in the BRC regarding WNA issues, regardless of whether it is repetitive, would circumvent the Commission’s Order concluding WNA issues are properly addressed in the WNA Proceeding at Dockets R-2022-3034229 and P-2022-3034264.

In its 32-page Answer to OCA’s Motion to Strike, PGW argues that: 1) due process principles require consideration of PGW’s supplemental direct testimony submitted on April 3, 2023; and 2) OCA’s Motion Does Not Fulfill Its Burden of Showing that PGW’s Supplemental Direct Testimony Should Be Excluded From the Record.

In its Answer, PGW argues that the Base Rate Suspension Order places all PGW Tariff provisions at issue, and since the WNA is a Tariff provision, PGW has a legal right to enter testimony into the record to defend the existing mechanism, as well as proposed modifications. PGW Answer 19-20. (Emphasis in the original). According to PGW, the fact that a separate WNA proceeding is pending and may be decided before the base rate case is resolved has no bearing on PGW’s right to litigate WNA issues in this base rate proceeding. Regardless of what the Commission does in the WNA proceeding, PGW’s litigation should not be limited in any way regarding WNA issues in the base rate case. PGW Answer at 20-21.

PGW agrees with OCA’s, CAUSE-PA’s and TURN’s interpretation of the Commission May 18, 2023, Order as expressing a clear intention that “a complete review of PGW’s WNA should occur in the WNA proceeding.”PGW Answer at 12, referring to the Commission’s May 18, 2023, Order, pages 2 and 17-18. (Emphasis added).However, PGW argues thatthe Commission May 18, 2023, Order did not find that WNA-related issues may *only* be addressed in the WNA proceeding. Specifically, PGW argues that the Commission did not limit – and legally could not have limited – PGW’s ability to also litigate WNA issues in the base rate case. PGW Answer at 12. (Emphasis in the original).

We disagree. The Commission’s instruction that a complete review of PGW’s WNA should occur in the WNA proceeding poses in and of itself a clear limitation of PGW’s ability to litigation WNA issues in other ongoing cases. A complete review of all PGW’s WNA issues leaves no room for additional review of supplementary issues pertaining to PGW’s WNA in any other cases running simultaneously with the WNA proceeding, while that proceeding is pending. As for the legality of the Commission’s limitation of PGW’s ability to litigate WNA issues in the base rate case, we note that the Commission routinely exercises its authority to dismiss issues, and even cases, based on the pendency of a prior proceeding. See 52 Pa. Code § 5.101(a)(6). The exercise of this authority serves the interest of judicial and administrative economy and avoids incoherent and/or contradicting decision-making on the part of the Commission.

In its Answer, PGW avers that, to its knowledge, the Commission has not previously barred a public utility from litigating issues in a base rate case that are in its Tariff and directly impact the rates paid by customers. PGW Answer at 21. We find PGW’s knowledge of Commission caselaw to be incomplete. In *Pa. Pub. Util. Comm’n v. PPL Electric Utilities Corporation*, Docket R-2015-2469276, ALJ Susan Colwell granted a motion in limine to strike testimony in a base rate proceeding, rejecting the notion that *any* issue impacting rates can be raised in a 1308 base rate proceeding.[[3]](#footnote-4) ALJ Colwell struck testimony regarding proposals to undertake a cost-benefit analysis of providing usage data to customers, requiring performance metrics to ensure that distribution facilities are performing adequately and providing maximum benefits of grid modernization investments and reporting on integrated Volt/VAR Control projects. She pointed to other Commission proceedings related to data transfer, smart meters and others in which these issues could be more fully explored in their proper context. She also pointed out that the challenges raised could also be effectively pursued in complaint proceedings. Therefore, evidence on the proposals was excluded from the rate proceeding.[[4]](#footnote-5)

Testimony was also stricken from base rate proceedings in *Pa. Pub. Util. Comm’n v. Metropolitan Edison Company*, Docket No. R-2016-253734, for the same reason. In that case, the Environmental Defense Fund (EDF) submitted written testimony on the subjects of access to energy usage data, voltage optimization and integrated resource planning. ALJ Mary Long found that, not only were those matters more directly related to other types of Commission proceedings where they could be more fully explored in the proper context, but also found that EDF did not explain why those other types of proceedings were inadequate to address the issues raised.[[5]](#footnote-6)

In the same matter, *PA PUC v Metropolitan Edison Company*, Docket No. R-2016-253734, ALJ Long also rejected OCA’s proposal for inclusion of the Adjusted Deferred Income Tax (ADIT) in the Companies’ DSIC Rider Petition under Act 40.

The ALJ concluded that the OCA did not present a compelling reason for deciding an issue regarding the calculation of a DSIC in the base rate proceeding, rather than in the ongoing DSIC proceeding, where the calculation of the DSIC can be considered in the context of all of the issues directly related to the DSIC. The ALJ reasoned that the OCA did not claim that it would be prejudiced by resolution of the contested issue in the DSIC proceeding or that the DSIC proceeding was not otherwise an adequate forum.

The ALJ concluded that while the language in Section 1308 of the Code that is used to institute an investigation of a general rate increase request includes “consideration of the lawfulness, justness, and reasonableness” of the Companies’ “existing rates, rules and regulations,” OCA’s interpretation does not serve judicial or administrative economy. The ALJ found that the OCA’s interpretation was more likely to result in “piecemeal DSIC decision-making by the Commission,” particularly when there is an ongoing proceeding in which the OCA’s proposal can be properly considered. The ALJ stated that ALJ Cheskis has not yet issued a Recommended Decision in the DSIC proceeding. The ALJ observed that approvals of the DSIC Riders were conditioned on the Companies’ refunding ratepayers if the final approval of the DSIC riders resulted in a change to the DSIC rate and determined that it would not serve ratepayers or administrative economy to possibly require the Companies to recalculate their revenue collections for DSIC twice within a short period of time at two separate dockets. R.D. at 95, 96.

*Pa. Pub. Util. Comm’n v. Metropolitan Edison Company*, Docket No. R-2016-253734, Opinion and Order entered January 17, 2017, at 34-35.

Next, PGW points out that, although PGW’s rebuttal and rejoinder testimony in the WNA proceeding make references to the consultant’s report (submitted in the BRC as PGW’s supplemental direct testimony submitted on April 3, 2023) and note support for the recommendation to remove May from the WNA formula, the report is not a part of the WNA record. PGW argues that refusing the Company the opportunity to submit evidence in this base rate proceeding relating to the WNA in its Tariff would mean that the report would not be considered in *either* proceeding. According to PGW, this violates fundamental principles of due process. We disagree. Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm’n,* 479 A.2d 10 (Pa. Cmwlth. 1984). We find that the WNA proceeding more than satisfies the due process requirements. The WNA Suspension Order entered September 15, 2022, notified PGW and the non-Company parties in that proceeding that the Commission had instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2. WNA Suspension Order, Ordering Paragraph # 1. Further the Commission ordered that “this investigation shall include consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works’ existing rates, rules, and regulations. WNA Suspension Order, Ordering Paragraph # 4. These provisions satisfied the due process notice requirement notifying the parties that the Commission had instituted an investigation into the justness and reasonableness of PGW’s WNA. The procedural history of the WNA proceeding indicates that PGW and the other parties were given not only a meaningful hearing but also a meaningful opportunity to adequately protect their interests through discovery, testimony, cross examination, and further into the future through briefs and exceptions. *Snyder Brothers, Inc. v. Pa. PUC*, 224 A.3d 450 (Pa. Cmwlth. 2020).

It is the exclusion of the consultant’s report from the record in the WNA proceeding that has PGW allege a due process violation in the present BRC if OCA’s Motion to Strike is granted. However, it was not a Commission order but PGW’s decision to enter the report as a part of its April 3, 2023, supplemental direct testimony to the BRC instead of filing it as a supplemental to its February 23, 2023, direct testimony in the WNA proceeding. That unilateral decision on the part of PGW to unnecessarily separate WNA issues into two different proceedings that have come to run simultaneously will not only waste judicial and administrative resources but may also lead to two separate and different decisions that the Commission, PGW and the parties will have to reconcile in the future. See PGW Answer at 20-21.

PGW’s second argument against OCA’s Motion to Strike is that the Motion does not fulfill its burden of showing that PGW’s supplemental direct testimony should be excluded from the BRC record. PGW argues that OCA’s Motion to Strike fails to offer any support of the claim that the testimony proffered in the BRC as PGW’s supplemental direct testimony is “unduly repetitive” of the testimony admitted in the WNA proceeding. PGW Answer at 25. In fact, PGW points out that its supplemental direct testimony submitted on April 3, 2023, in the BRC is not in the WNA record, and is, therefore, not repetitive. *Id.* Additionally, PGW argues that the stated purpose of the rule permitting ALJs to exclude unduly repetitive evidence is to prevent a party from submitting evidence in the same proceeding that is repetitive of the evidence that has already been presented. PGW Answer at 25*, citing* 52 Pa. Code § 5.483 (Emphasis in the original). Because OCA’s Motion to Strike discusses the submission of evidence on PGW’s WNA in two different proceedings, PGW maintains that this rule is inapplicable. PGW Answer at 25.

We disagree with PGW’s interpretation of the provisions of 52 Pa. Code § 5.483 against “unduly repetitive” evidence as applying solely to prevent a party from submitting repetitive evidence in the same proceeding. The language of section 5.483 contains no such limitation, and PGW failed to cite any caselaw where its provisions have been interpreted to apply exclusively to evidence provided in the same proceeding. On the contrary, the provisions of section 5.483, along with those of section 5.101(a)(6) on the pendency of prior proceedings, may be applied in conjunction to serve the principles of judicial economy. We further find that PGW’s narrow reading of OCA’s Motion to Strike overlooks the main arguments of that Motion which are that, in accordance with the Commission May 18, 2023, Order, the proper forum to address the WNA issues is the separately instituted WNA proceeding, and that it is an unnecessary waste of resources to litigate PGW’s WNA issues in both the WNA proceeding and in the BRC. See OCA’s Motion to Strike, ¶¶ 12-13. Allowing PGW supplemental direct testimony to become part of the record of the BRC will enable not only the unnecessary litigation of PGW’s WNA issues in both the WNA proceeding and the BRC but will also go against the Commission’s conclusion that the WNA proceeding is the proper forum for addressing all PGW WNA issues.

Next, PGW argues that OCA’s Motion improperly relies on the “standard language” in the WNA Suspension Order to support its view that PGW should be barred from pursuing WNA issues in the base rate case. PGW Answer at 27. PGW takes issue with OCA’s description of the WNA Suspension Order as calling for an investigation of issues “pertaining to the justness and reasonableness of the WNA.” *Id.* According to PGW, the WNA Suspension Order did not do that; “it simply used the standard language suggesting that provisions of PGW’s existing Tariff should be considered.” *Id.* PGW further argues that only in its May 18, 2023, Order did the Commission go further and state that this language meant that a full review of the WNA should occur. PGW proceeds by noting that the BRC Suspension Order contained the exact language on page 2 and in Ordering Paragraphs 1 and 4. *Id.* Based on the foregoing, PGW reasons that the Commission’s inclusion of the standard language in the WNA Suspension Order relating to the scope of the proceeding is equally applicable to the scope of the base rate case, including the justness and reasonableness of PGW’s existing rates, rules and regulations. *Id.*

We note several errors in PGW’s argument. First, PGW attempts to minimize the importance of the provisions carefully included in the Commission’s suspension orders, describing them merely as “standard language” or “template language.” See PGW Answer at 6, 8, 13, 27, 28. It proceeds to erroneously state that the BRC Suspension Order and WNA Suspension Order contained the exact language in Ordering Paragraphs 1 and 4. However, that is not the case. As mentioned above, in the WNA Suspension Order entered September 15, 2022, the Commission instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2.[[6]](#footnote-7) WNA Suspension Order, Ordering Paragraph # 1. Further the Commission ordered that “this investigation shall include consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works’ existing rates, rules, and regulations. WNA Suspension Order, Ordering Paragraph # 4. On the other hand, in the BRC Suspension Order entered April 20, 2023, the Commission instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 105 to PGW Gas Supplier Tariff Pa. P.U.C. No. 1 and proposed Supplement No. 159 to PGW Gas Service Tariff Pa. P.U.C. No. 2.[[7]](#footnote-8) BRC Suspension Order, Ordering Paragraph # 1. Further the Commission ordered that “this investigation shall include consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works’ existing rates, rules, and regulations. BRC Suspension Order, Ordering Paragraph # 4. While in its Answer, PGW acknowledges that BRC Suspension Order, Ordering Paragraphs Nos. 1 and 4, place all PGW Tariff provisions at issue (see, PGW Answer at 19-20 (Emphasis in the original)), it fails to reach the same conclusion with regard to WNA Suspension Order, Ordering Paragraphs Nos. 1 and 4 – that they placed all PGW WNA provisions at issue. The inconsistency is unexplained and belies PGW’s claim that only in the May 18, 2023, Order the Commission stated for the first time that a full review of the WNA should occur. We find that claim to be specious.

In conclusion, we find that the Commission has determined that WNA issues must be addressed in the WNA proceeding without limitation, noting explicitly that the scope of review in the WNA proceeding was ordered from the start to broadly encompass all aspects of review of PGW’s WNA – including the overall justness and reasonableness of the charge. Section 5.438 of Commission regulations serves to promote efficiency in Commission proceedings, and limiting discussion of PGW’s WNA issues to the WNA proceeding will serve to preserve judicial and administrative resources, as the matter will be decided and ruled upon in one case, not two. Consequently, we shall grant OCA’s Motion to Strike from the record PGW’s supplemental direct testimony and accompanying exhibits submitted on April 3, 2023, along with any non-Company direct testimony and accompanying exhibits purporting to address PGW’s supplemental direct testimony.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Strike filed by the Office of Consumer Advocate on May 23, 2023, is granted.

2. That the Supplemental Direct Testimony and accompanying exhibits filed by Philadelphia Gas Work on April 3, 2023, at Docket No. R-2023-3037933, shall be stricken and not become part of the record in the present rate case proceeding.

3. That the portion of non-Company Direct Testimony and accompanying exhibits filed on May 31, 2023, at Docket No. R-2023-3037933, purporting to address PGW’s Supplemental Direct Testimony shall be stricken and not become part of the record in the present rate case proceeding.

Date: June 6, 2023 \_ \_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_

Eranda Vero

Administrative Law Judge

\_ \_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_

Arlene Ashton

Administrative Law Judge

**R-2023-3037933 – PENNSYLVANIA PUBLIC UTILITY COMMISSION v. PHILADELPHIA GAS WORKS**

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1. PGW Statement No. 1 (2023 Base Rate Case), at 10-12. [↑](#footnote-ref-2)
2. The Petition for Waiver is not separately docketed and shall be considered within the proceeding before the Office of Administrative Law Judge. [↑](#footnote-ref-3)
3. See Prehearing Order dated July 14, 2015, at Docket R-2015-2469276. [↑](#footnote-ref-4)
4. Sixth Prehearing Order dated July 14, 2015. [↑](#footnote-ref-5)
5. Interim Order on Motion to Strike and Motion to Compel issued August 25, 2016 (striking EDF written testimony of Michael Murray and Paul Alvarez). [↑](#footnote-ref-6)
6. The proposed Tariff Supplement would add a control cap to PGW’s Weather Normalization Adjustment Clause so that PGW’s customers would not be billed a WNA charge or credit greater than twenty-five percent of the total delivery charge excluding the WNA. See, Prehearing Conference Order #3 issued March 31, 2023, at 1. [↑](#footnote-ref-7)
7. The filing contains proposed changes in rates, rules, and regulations calculated to produce $85.8 million (10.3%) in additional annualrevenues, an increase in residential customer’s bills using 71 Mcf/year from $125.38 to $137.73/month (9.9%). [↑](#footnote-ref-8)