

COMMONWEALTH OF PENNSYLVANIA



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June 7, 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 Main Brief 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

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 Main Brief, 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 7th day of June 2023.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-2022-3034229
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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 :

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Table of Contents

I. INTRODUCTION..... 1
 A. Summary of the Argument..... 1
 B. Procedural History 3
 C. Burden of Proof..... 7
II. ARGUMENT..... 10
 A. Introduction..... 10
 B. The Current WNA Shifts Unreasonable Risk To Residential Customers 12
 C. The WNA Produces Illegal Discrimination in Rates Among Residential Customers..... 15
 D. The Testimony Provided at the Public Input Hearings Supports Suspension of the WNA
 19
 E. PGW’s Proposed 25% Rate Cap Is Unreasonable..... 21
 F. The WNA Should Be Reconciled Annually If It Remains in Place 22
III. CONCLUSION 24

Appendix A: Findings of Fact

Appendix B: Conclusions of Law

Appendix C: Proposed Ordering Paragraphs

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Building Owners and Managers Assoc. v. Pa. Pub. Util. Comm'n</i> , 79 Pa. Commw. 598, 470 A.2d 1092 (Pa. Commw. 1984)	15, 16
<i>Burleson v. Pa. P.U.C.</i> , 501 Pa. 433, 461 A.2d 1234 (1983)	9
<i>Erie Resistor Corp. v. Unemployment Comp. Bd. of Review</i> , 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961)	9
<i>Lansberry v. Pa. P.U.C.</i> , 134 Pa. Commw. 218, 578 A.2d 600 (1990)	9
<i>Murphy v. Comm. Dept. of Public Welfare</i> , 85 Pa. Commw. 23, 480 A.2d 382 (1984)	9
<i>Norfolk & Western Ry. Co. v. Pa. P.U.C.</i> , 489 Pa. 109, 413 A.2d 1037 (1980)	9
<i>Philadelphia Suburban Water Co. v. Pa. P.U.C.</i> , 808 A.2d 1044 (Pa. Commw. 2002)	15, 16
<i>Se-Ling Hosiery, Inc. v. Margulies</i> , 364 Pa. 45, 70 A.2d 854 (1950)	9
<i>William Towne v. Great American Power</i> , LLC, 2013 Pa. PUC LEXIS 617 (Pa. P.U.C. October 18, 2013).....	7
Administrative Decisions	
<i>Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc.</i> 2014 Pa. PUC LEXIS 691 (Oct. 23, 2014)	9
<i>Pa. P.U.C. v. Equitable Gas Co.</i> , 1997 Pa. PUC LEXIS 139 (Oct. 8, 1997)	8
<i>Pa. P.U.C. v. Equitable Gas Co.</i> , 57 Pa. PUC 423, 1983 Pa. PUC LEXIS 33	8
<i>Pa. P.U.C. v. Philadelphia Gas Works</i> , Docket Nos. R-2022-3034229, P-2022-3034264, Order (September 15, 2022)	4, 8
<i>Pa. P.U.C. v. Philadelphia Gas Works</i> , Docket No. R-2017-2586783	14

<i>Petition for Emergency Order (Emergency Petition),</i> Docket No. P-2022-3033477 (Emergency Order entered June 30, 2022	3
<i>Petition of Philadelphia Gas Works for Emergency Order,</i> Docket No. P-2023-3040233 (Order entered April 28, 2023)	2
<i>Petition of Philadelphia Gas Works for Emergency Order,</i> Docket No. P-2022-3033477 (Emergency Order entered July 1, 2022).....	1
<i>Petition of Philadelphia Gas Works for Emergency Order,</i> Docket No. P-2022-3033477 (Ratification Order entered July 14, 2022).....	1
Statutes	
2 Pa. C.S. § 704.....	8
66 Pa. C.S. § 315(a)	7
66 Pa.C.S. § 1304.....	15, 16
Regulations	
52 Pa. Code § 5.302(b)	6
Other Authorities	
Weather Normalization Adjustment Report for Fiscal Year 2023 (Jan. 10, 2023), https://www.puc.pa.gov/pcdocs/1770259.pdf	14
Weather Normalization Adjustment Report for Fiscal Year 2021 (Jan. 4, 2022), https://www.puc.pa.gov/pcdocs/1729601.pdf	14
Weather Normalization Adjustment Report for Fiscal Year 2020 (June 8, 2021), https://www.puc.pa.gov/pcdocs/1706848.pdf	14
Weather Normalization Adjustment Report for Fiscal Year 2019 (Dec. 30, 2019), https://www.puc.pa.gov/pcdocs/1649264.pdf	14

I. INTRODUCTION

A. Summary of the Argument.

On June 30, 2022, Philadelphia Gas Works (PGW or 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 Weather Normalization Adjustment (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 can be thoroughly evaluated. That same day, Chairman Dutrieuille issued an Emergency Order granting PGW's requested relief.¹ The Commission ratified Chairman Dutrieuille's Order at its July 14, 2022 Public Meeting, and further ordered PGW to conduct an investigation into the failure of the WNA mechanism and provide a report on August 15, 2022 with its findings.²

On August 2, 2022, PGW filed the instant Petition and tariff supplement, requesting revisions to its WNA on an expedited basis (Petition). The Company's Petition requested that the Commission approve tariff modifications on less than the statutorily established sixty days' notice, which it asserts is designed to limit the harm that is possible due to operation of its WNA. Specifically, PGW sought to revise PGW's Gas Service Tariff – Pa. P.U.C. No. 2, Page Nos. 149-

¹ *Petition of Philadelphia Gas Works for Emergency Order*, Docket No. P-2022-3033477 (Emergency Order of Chairman Gladys Brown Dutrieuille entered July 1, 2022).

² *Petition of Philadelphia Gas Works for Emergency Order*, Docket No. P-2022-3033477 (Ratification Order entered July 14, 2022). The Company filed its Weather Normalization Adjustment Report at Docket P-2022-3033477 on August 12, 2022.

150, effective October 1, 2022, by adding a control cap to its WNA so that customers would not be billed a WNA charge or credit that is greater than 25% of total delivery charges, excluding the WNA, on any given bill. *See*, Petition at 1.

The Company's Petition 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. Despite this, the Company did not propose any modifications to the WNA formula itself other than adding this circuit breaker that would cap charges (and credits) to no more than 25% of a customer's distribution bill. Petition at ¶22. While the Company asserted that application of the cap would be a "reasonable and prudent interim step," Petition at ¶ 22, it did not indicate that it is committed to a full re-evaluation of the WNA or its formula. In contrast to this statement, PGW argued that, with approval of its proposed 25% cap, "investigation beyond that which has already been undertaken is neither necessary nor required." Petition at ¶26. Limiting WNA charges to 25% of delivery charges, the OCA submits, does not change the underlying fact that PGW's WNA formula produces unjust, unreasonable, and discriminatory rates.

While PGW's proposal would cap the dollar amount of harm that customers could face in the future when the weather produces fewer heating degree days than PGW's WNA anticipates being "normal", the solution arrived at by PGW does not eliminate the harm or unreasonable rate discrimination and there is no showing that the 25% cap is related to the purpose of the WNA or itself is just and reasonable. Indeed, the Company was so concerned with the operation of its WNA that in April 2023, for the second year in a row, PGW sought and received Commission approval to suspend operation of the WNA for May on an emergency basis. *Petition of Philadelphia Gas Works for Emergency Order*, Docket No. P-2023-3040233 (Order entered April 28, 2023). The OCA submits that the requested relief by PGW to implement the 25% cap does not correct the

deficiencies and does nothing to ensure that PGW's rates are just, reasonable and not discriminatory, the WNA must be suspended in its entirety until or unless PGW can propose an alternative design that addresses its significant disparities.

B. Procedural History.

On August 2, 2022, PGW filed a Petition seeking approval of Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2, to become effective on October 1, 2022. The Company's Petition requested that the Commission approve tariff modifications on less than the statutorily established sixty days' notice, which it asserted was designed to limit the harm that is possible due to the operation of its WNA. PGW sought to revise its Gas Service Tariff by adding a control cap to its WNA so that customers would not be billed a WNA charge or credit that is greater than 25% of total delivery charges, excluding the WNA, on any given bill.

The introduction of Supplement No. 152 is the result of a large spike in the WNA 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 can be thoroughly evaluated.

On August 22, 2022, the OCA also filed an Answer to PGW's August 2, 2022 filing.

On September 15, 2022, the Commission ordered an investigation into the lawfulness, justness and reasonableness of Supplement No. 152. The Commission further ordered that the

investigation include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations.³ The Commission suspended the proceedings until April 1, 2023, and referred the matter to the Office of Administrative Law Judge. The matter was assigned to Administrative Law Judge Marta Guhl.

On September 6, 2022, the Tenant Union Representative Network (TURN) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed separate Petitions to Intervene. The Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance on September 27, 2022. The Office of Small Business Advocate (OSBA) filed its Notice of Intervention and Notice of Appearance on September 12, 2022.

A telephonic Prehearing Conference notice was issued on September 16, 2022, and a Prehearing Order was issued on September 19, 2022. The telephonic prehearing conference was held on September 28, 2022. The parties requested additional time to put together a procedural schedule. The parties submitted a procedural schedule to ALJ Guhl on October 5, 2022, and the ALJ approved the proposed schedule.

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 OCA and CAUSE-PA filed Answers objecting to the Petition for Leave to Withdraw. ALJ Guhl granted the request to hold the procedural schedule in abeyance. On December 6, 2022, PGW counsel identified that the parties had agreed to a new procedural schedule in light of the ALJ's granting of Motion to Hold the Procedural Schedule in Abeyance.

ALJ Guhl requested that public input hearing dates be set. The public input hearing was originally scheduled for December 14, 2022 and subsequently rescheduled for March 9, 2023.

³ *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-2022-3034229, P-2022-3034264, Order (September 15, 2022).

On December 15, 2022, Philadelphia Industrial and Commercial Gas Users Group (PICGUG) filed a Late-Filed Petition to Intervene.

The Direct Testimony PGW was originally scheduled to be submitted on February 14, 2023. An emergency telephonic prehearing conference was held with ALJ Guhl and the parties regarding the procedural schedule. On February 23, 2023, ALJ Guhl issued a Prehearing Order which directed PGW to submit its Direct Testimony by close of business on February 23, 2023. Subsequently, on February 23, 2023, PGW submitted the Direct Testimony of Denise Adamucci. Also on February 23, 2023, ALJ Guhl issued her Prehearing Order #2 which determined that the Petition to Withdraw had been rendered moot.

PGW submitted a Corrected Version of the Direct Testimony of Denise Adamucci on February 24, 2023.

Public Input Hearings were held at 10 a.m. and 6 p.m. on March 9, 2023 at which time 14 customers testified.

OCA and CAUSE-PA requested an extension of its Direct Testimony deadline from April 6, 2023 to April 13, 2023. On March 31, 2023, ALJ Guhl issued Prehearing Conference Order #3 which granted the requested extension. The OCA submitted the Direct Testimony of Ron Nelson on April 13, 2023.⁴ CAUSE-PA also submitted the Direct Testimony of Harry Geller on April 6, 2023.

⁴ Ron Nelson is a Senior Director at Strategen Consulting. Mr. Nelson has a Bachelor of Arts degree in Environmental Economics and a Minor in Mathematics from Western Washington University. He also has a Master of Science from Colorado State University in Agriculture and Resource Economics. While at Strategen, Mr. Nelson has worked with numerous consumer advocate offices on issues related to cost of service modeling, rate design, grid modernization, distributed energy resource valuation and integration, and performance-based regulation. Prior to working at Strategen, he worked for almost five years at the Minnesota Office of Attorney General, where he led the Office's work on cost of service, rate design, renewable energy program design, and performance. based regulation. Before that, he worked for two universities and the United States Geological Survey as an economic researcher.

On April 27, 2023, PGW filed its Petition for Emergency Order (April 27 Emergency Petition) at Docket No. P-2023-3040233. In the April 27 Emergency Petition, PGW sought the issuance of *ex parte* emergency relief by the following day, April 28, 2023 that would permit PGW to revise its Gas Service Tariff- Pa. P.U.C. No. 2, Page Nos. 149-150 to remove May 2023 from the Weather Normalization Adjustment (WNA) clause calculation. The OCA filed a Letter in Lieu of Answer on April 27, 2023 supporting the request. The Commission issued an Emergency Order approving the request.

Also on April 27, 2023, PGW filed its Petition for Interlocutory Review and Answer to a Material Question (Petition for Interlocutory Review). 52 Pa. Code § 5.302(b). PGW stated that its April 27, 2023 Petition was 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 argued that the Interim Order resulted 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. 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 for Interlocutory Review at ¶ 6. The OCA and CAUSE-PA filed Briefs opposing the Petition for Interlocutory Review on May 8, 2022. PGW and I&E filed Briefs in Support of the

Petition for Interlocutory Review. On May 18, 2023, the Commission issued its Order answering the material questions in the negative and denying the Petition for Interlocutory Review.

PGW submitted its Rebuttal Testimony of Denise Adamucci on May 2, 2023, and the OCA and CAUSE-PA submitted Surrebuttal Testimony of their respective witnesses, Ron Nelson and Harry Geller on May 12, 2023.

PGW submitted the Rejoinder Testimony of Denise Adamucci on May 22, 2023

Hearings were held on May 24, 2023 at which time the testimony was admitted into the record and cross-examination of witnesses Denise Adamucci and Ron Nelson was held.

C. Burden of Proof.

As the moving party requesting that the Commission allow PGW to initiate its WNA rate cap, PGW has the burden of proof in this proceeding. *See William Towne v. Great American Power, LLC*, 2013 Pa. PUC LEXIS 617, *4 (Pa. PUC October 18, 2013) (“While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.”) *citing Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Commw. Ct. 2001).

As set forth in Section 315(a) of the Public Utility Code (Code):

(a) Reasonableness of rates. – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a).

The Commission entered a Suspension Order in this proceeding on September 15, 2022, that suspended the Tariff Supplement and instituted an investigation into the justness and

reasonableness of the WNA. Indeed, the Commission has specifically ruled in a recent Order concerning the Company's request for Interlocutory Review that:

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.

Pa. PUC v. PGW, Docket Nos. R-2022-3034229, P-2022-3034264 (Order entered May 18, 2023 at 18).

The Pennsylvania Supreme Court has ruled that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. The Commission has determined as follows:

[t]here is no presumption of reasonableness, which attached to a utility's claim, at least none which survives the raising of credible issues regarding a utility's claims. A utility's burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims.

Pa. PUC v. Equitable Gas Co., 57 Pa. PUC 423, 444 (fn. 37), 1983 Pa. PUC LEXIS 33 (July 8, 1983).

Commission precedent further establishes that the Commission may place the burden of proof on the utility to support the validity of existing provisions. *See e.g., Pa PUC, et al. v. Equitable Gas Co.*, 1997 Pa. PUC LEXIS 139, *18-19 (Oct. 8, 1997). While this matter is not a base rate proceeding, PGW's WNA produces substantial and unreasonable rate discrimination in the rates that are charged to customers.

In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission. *See* 2 Pa. C.S. § 704. The term

“substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *See Norfolk & Western Ry. Co. v. Pa. PU*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm. Dept. of Public Welfare*, 85 Pa. Commw. 23, 480 A.2d 382 (1984). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.* Even where a party has established a prima facie case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983) (*Burleson*).

It is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” *Lansberry v. Pa. PUC*, 134 Pa. Commw. 218, 221-22, 578 A.2d 600, 602 (1990) (*Lansberry*). In other words, PGW’s evidence must be more convincing than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *See Lansberry* at 602. The utility’s burden of proof to establish the justness and reasonableness of every component of its request is an affirmative one and remains with PGW throughout the course of the proceeding. *See, Pa. PUC v. Columbia Gas of Pennsylvania, Inc.* 2014 Pa. PUC LEXIS 691, *11 (Oct. 23, 2014) (*Columbia Gas 2014*) (“The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual) which challenged the requested Rider. Instead, the utility's burden, to establish the justness and

reasonableness of every component of its request, is an affirmative one and remains with the public utility throughout the course of the proceeding.”).

Thus, PGW has the burden of proof to show that its proposed WNA produces just, reasonable, and non-discriminatory rates. The OCA submits that PGW has not met its burden of proof to show that its modified WNA meets the standards required by the Public Utility Code and Court and Commission precedent and must be rejected. The OCA further submits that PGW’s as filed WNA produces unjust, unreasonable, and discriminatory rates as currently implemented. This rate cannot and should not be left in place and the only appropriate response, based on the evidence in this proceeding, is for the Commission to order PGW to withdraw its WNA in its entirety.

II. ARGUMENT

A. Introduction.

The Company’s Petition outlined the failure of its WNA calculation and the problem that it seeks to have addressed, an implicit admission that its WNA produces unreasonable, discriminatory, and unjust rates as applied. Petition at ¶¶ 5-9. In May 2022, temperatures in Philadelphia were unusually warm and gas consumption was low. Due to the WNA, customers in specific PGW billing groups faced disproportionately high gas bills solely because of a high WNA charge. OCA St. 1 at 9. The impacts of those adjustments were so substantial that PGW eventually refunded the WNA charges for May 2022 usage. PGW St. 1 at 10-11.

In theory, PGW’s WNA is designed to stabilize its distribution revenues to adjust for weather-related usage fluctuations. See PGW St. 1 at 4-5. When there is warmer than average weather, and customers use less units of gas to heat their homes, PGW’s WNA should produce a charge to offset lost revenues at the rates anticipated to be needed to run the distribution system.

Conversely, when there is colder than average weather, customers use more units of gas than rates are designed for, and a credit is applied to customer bills for those excess revenues. In both cases, the purpose of PGW's WNA is to provide a revenue stream that is sufficient to ensure that PGW collects revenue close to the level expected from "normal" weather conditions as approved in a base rate proceeding.

For a subset of customers, PGW's WNA produced discriminatory and excessive charges for some May/June billing cycles. While many customers experienced minor rate impacts for the unseasonable warm weather, a customer on certain billing cycles experienced a rate shock. The Company charged customers with a May 7th to June 7th billing cycle an average WNA charge of \$3.95, yet it applied an average \$87.28 WNA charge to customers with billing cycles starting just five days later (May 12th to June 10th). OCA St. 1 at 9. Importantly, the \$87.28 was *only the average* paid on that billing cycle. Some individual customers experienced much higher WNA charges, such as one customer who testified at the public input hearing that he received a \$201.50 WNA charge, which was 80% of his natural gas bill. OCA St. 1 at 10; Tr. 63 (March 9, 2023 Public Input Hearing Transcript).

The WNA formula contained in PGW's tariff can no longer be deemed to produce just and reasonable rates. Further, the WNA formula has produced unreasonably discriminatory results among residential customers, as those on certain billing cycles were unaffected by its operation while others experienced significant harm.

On April 28, 2023, the Company filed yet another Emergency Petition to address the same situation from impacting customers in May 2023. The fact that customers have been and will continue to be exposed to the same "anomaly" in future months is itself evidence that the current

mechanism is flawed. The OCA submits that the only reasonable approach is to suspend the WNA mechanism until a revised formula, free from its current defects, can be developed.

The instant proposal – to place a 25% cap – does not correct any of the defects manifest in the May 2022 and April 2023 Emergency Petitions filed by PGW. PGW has provided no evidence as to how it determined that a 25% cap was the appropriate level of protection for customers. The Company recognized that the May 2022 bill “anomaly” may happen again. See, Tariff filing at 9 (response to Section 53.52(a)(7)). PGW did not, however, conduct any studies to determine that the WNA mechanism will produce just and reasonable rates if a 25% cap is applied. See, Tariff filing at 10 (response to Section 53.52(a)(8)).

B. The Current WNA Shifts Unreasonable Risk To Residential Customers.

The WNA is a form of revenue decoupling that has shifted risk on residential consumers. OCA witness Nelson explained that decoupling mechanisms address utility throughput (volume of sales) by ensuring that revenue recovery does not depend on variations in energy consumption and/or weather. OCA St. 1 at 5.

OCA witness Nelson testified about the principles behind the WNA, and how it should work in theory, as follows:

The WNA is designed to balance out the effects of so called “abnormal” weather by permitting PGW to true-up its revenues: if temperatures are warmer than expected, the utility recovers additional revenue from customers to make up the deficit, and when temperatures are colder than expected, the utility returns excess to customers. PGW’s WNA acts as a limited decoupling mechanism by normalizing gas consumption in accordance with an approved temperature forecast, known as Normal Heating Degree Days (“NHDD”). The heating season stretches from October to May and the forecast assumes no heating in the summer months (June through September). A predetermined formula assesses the difference in actual usage from normalized usage by comparing temperature readings, known as Actual Heating Degree Days (“AHDD”), with NHDD. The delta (i.e., difference) in usage, multiplied by the

distribution delivery charge, is applied as a charge, or reimbursement, to customer rates, effectively reconciling revenues. The intent of PGW's WNA, like revenue decoupling, is to share weather risk between the utility and its customers, ultimately stabilizing revenues for the utility.

OCA St. 1 at 7-8.

While the WNA could work to both the customer and utility benefit in theory, in practice PGW's WNA has benefitted the Company to the detriment of consumers. Mr. Nelson explained:

The fact that PGW adjusts rates monthly under the WNA increased the variance in differences between NHDD and AHDD, raising customer exposure to bill volatility. While weather abnormalities could cause WNA charges in any month, risks are magnified in the shoulder months of October and May because the WNA does not model any NHDDs between June and October, effectively shortening customers' WNA bill cycles in May and October. All customers paid more since May AHDD were lower than NHDD, as displayed in Figure 1. However, the heat wave stretched over several weeks starting on May 10th. Until the 10th, the month of May was colder than expected. As a result, customers whose billing cycles coincided with the beginning of the heat wave in May were more greatly impacted than others.

Table 1: May 2022 NHDD and AHDD

	NHDD	AHDD
May 1-May 9	37	53
May 10- May 31	53	3
Total (May 1 – May 31)	90	56

OCA St. 1 at 12 (footnote omitted). Indeed, over time, the WNA appears to only work for the benefit of PGW and not its customers. The Company's own annual reports to the Public Utility

Commission demonstrate that for the four-year period from FY2019-FY2022 the net charges to customers range from \$1.5 million (FY2019) to \$23.1 million (FY2022).⁵

OCA witness Nelson explained that the design of the existing WNA shifts risk onto residential consumers, as follows:

Q. Can you provide an example of the WNA shifting risk from PGW to its ratepayers?

A. Yes. This very proceeding is the result of an excessive risk shift from the Company to its customers. According to PGW, the mechanism worked as it was supposed to when it levied extreme and inconsistent bill increases upon customers after abnormally warm May 2022 weather. The risk of monthly bill volatility was imposed upon customers in order to secure revenue stability for the Company. As I demonstrated in my direct testimony, the extreme level of bill volatility would not have occurred if the mechanism were reconciled annually. The way the WNA is designed very clearly shifts financial risk from the Company to its customers.

OCA St. 1-SR at 5.

CAUSE-PA witness Harry Geller further detailed how the WNA risk shifting is particularly harmful to low-income consumers in Philadelphia. As explained by Mr. Geller, nearly one-quarter of PGW's customer base has been *confirmed* low-income. CAUSE-PA St. 1 at 6. For those customers, Mr. Gellar explained that unexpected and sudden rate shocks as seen by the operation of the WNA are exceedingly difficult to absorb. *See*, CAUSE-PA St. 1 at 7-11. Mr.

⁵ *See, Pa. PUC v. PGW*, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2019 (Dec. 30, 2019), <https://www.puc.pa.gov/pcdocs/1649264.pdf> ;

Pa. PUC v. PGW, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2020 (June 8, 2021), <https://www.puc.pa.gov/pcdocs/1706848.pdf> ;

Pa. PUC v. PGW, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2021 (Jan. 4, 2022), <https://www.puc.pa.gov/pcdocs/1729601.pdf> ;

Pa. PUC v. PGW, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2022 (Jan. 10, 2023), <https://www.puc.pa.gov/pcdocs/1770259.pdf>

Geller succinctly concluded that, “It is clear from a review of the operation of PGW’s WNA that it is not serving its intended purpose to balance the risk of abnormal weather - and instead consistently produces higher bills for residential customers without any articulable benefit.” CAUSE-PA St. 1-SR at 3.

C. The WNA Produces Illegal Discrimination in Rates Among Residential Customers.

The WNA mechanism has produced discriminatory rates. As the company has acknowledged, the magnitude of the May 2022 WNA charged to residential customers was tied directly to a customer’s billing cycle. That is, while all PGW customers experienced the same warmer than average weather in May 2022, the impact of the WNA charge varied depending on where those warmer days fell in a customer’s billing cycle.

Section 1304 of the Public Utility Code prohibits unreasonable discrimination in rates and states:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, **or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.** No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa.C.S. § 1304 (emphasis added).

In considering challenges to rates under Section 1304, the Commonwealth Court has interpreted rate discrimination as follows:

[W]e reiterate that mere variation in rates among classes of customers does not violate the Public Utility Code. The requirement is merely that rates of one class of service shall not be *unreasonably prejudicial* and disadvantageous to a patron in any other class of service. Thus, for a rate to be found unlawfully preferential, there must be both an advantage to one and a resulting injury to another.

Building Owners and Managers Assoc. v. Pa. Pub. Util. Comm'n, 79 Pa. Commw. 598, 605, 470 A.2d 1092, 1095-1096 (Pa. Commw. 1984) (emphasis added, internal citations omitted) and *Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044, 1059-1060 (Pa. Commw. 2002). Here, residential customers have been unreasonably disadvantaged depending on the billing cycle into which they happen to be placed. At the same time, residential customers in certain billing cycles have been unreasonably advantaged through lower weather adjusted charges. While the case law has explored rate discrimination between rate classes, its reasoning is equally valid in the case of rate discrimination within a rate class. It should go without saying that all residential customers in Philadelphia experienced the same weather. Yet, as explained above, the impact of that weather through WNA charges has been highly discriminatory in violation of Section 1304 due to PGW's designation of billing cycles that cannot be reasonably said to relate to cost causation in terms of WNA revenue.

OCA witness Nelson explained the magnitude of rate discrimination experienced in May 2022, as follows:

Q. Were PGW's customers equally impacted by the May 2022 event?

A. No. Many customers experienced minor rate impacts for the unseasonable warm weather, but a subset of customers was significantly impacted. A customer's billing cycle determined whether they experienced a rate shock. As evidenced in Figure 1,⁶ the Company charged customers with a May 7th to June 7th billing cycle an average WNA charge of \$3.95, yet it applied an average \$87.28 WNA charge to customers with billing cycles starting just five days later (May 12th to June 10th).

OCA St. 1 at 9.

⁶ Weather Normalization Adjustment Report to the Pennsylvania Public Utility Commission. August 12, 2022, page 11

In its August 12th Report to the Commission filed at Docket No. P-2022-3033477, the Company included the following table showing the impact of the WNA varied significantly depending on which of the seven billing periods a customer was billed.

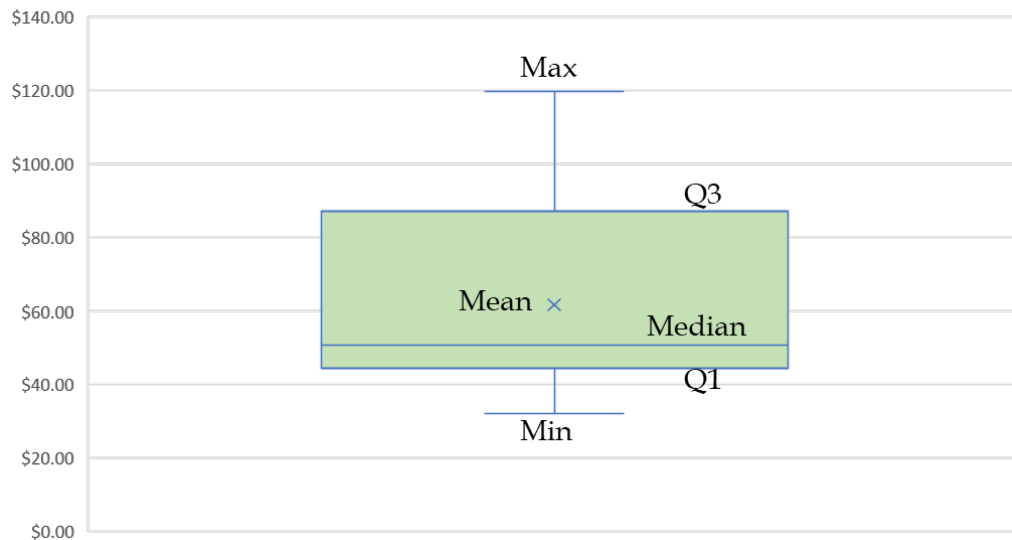
Table 4. May 2022 Residential Customer Impact by HDD Period

Heating Degree Day Period	NHDD	AHDD	Total WNA Charges	Average WNA Charge
5/6/22 – 6/6/22	68	44	\$53,386.72	\$2.19
5/7/22 – 6/7/22	63	35	\$83,765.64	\$3.95
5/10/22 – 6/8/22	53	3	\$860,550.81	\$50.05
5/11/22 – 6/9/22	50	2	\$1,020,933.48	\$53.86
5/12/22 – 6/10/22	47	1	\$1,924,011.72	\$87.28
5/24/22 – 6/22/22	8	1	\$102,765.92	\$4.71
5/25/22 – 6/23/22	7	1	\$80,589.03	\$3.38

OCA St. 1 at 10 (citing, Report of Philadelphia Gas Works on Weather Normalization Adjustment, Docket P-2022-3033477 at 11, Table 4).

As OCA witness Nelson explained, all customers are in Philadelphia and experience the same weather and the same overall delta between NHDD and AHDD. OCA St. 1 at 13. Despite experiencing the same weather, WNA charges varied widely based on billing cycle. *Id.* Mr. Nelson explained that the WNA formula recovered \$32 from some customers and nearly \$120 from others simply because of their billing cycle. Figure 2 in Mr. Nelson’s testimony is shown below, where the blue line at the bottom of the box in Figure 2 denotes the first quartile of average charges, the blue line dividing the green box denotes the median, and the top of the box denotes the third quartile. The wide gaps between the median, quartile three, and the peak average charge (denoted by the blue horizontal line at about \$120), highlight the volatility of WNA charges:

*Figure 1: Average Residential WNA Charges by
Billing Group 2021-2022 Heating Season⁷*



OCA St. 1 at 13-14. Thus, while all customers experienced the same weather during the month of May, only some customers bore the brunt of excessively high WNA charges because of the way the WNA formula works.⁸

In fact, individual customers faced greater WNA charges in June than others experienced over a full year. OCA St. 1 at 10. At the March 9th Public Input Hearing, witness Morgan Byrne testified to receiving a \$255.30 bill in June. Tr. at 63. Mr. Byrne’s WNA charge totaled \$201.51,

⁷ The chart represents the range of average customer WNA charges by cycle. The blue line segments that extend from the green box denote the minimum and maximum average charges, roughly \$32 and \$120 respectively. The bottom and top horizontal lines of the box denote the first quartile and third quartile of customer charges. The horizontal line in the box denotes the median bill and the “X” denotes the mean bill. See, OCA St. 1 at 14.

⁸ While it could be argued that, over time, weather variations would “even out” such that customers on different billing cycles would have similar outcomes, individual customers would still be harmed. Customer usage varies greatly from year to year, as individuals needs change over time. In addition, customers are highly mobile, and for many customers the harm of the WNA would not be offset in future years and decades as they move within and outside the PGW service territory over their lives.

nearly 80 percent of his total bill and exponentially more than customers on different billing cycles. Tr. at 63; OCA St. 1 at 10.

The OCA submits that the evidence from this proceeding demonstrates that the WNA violates the prohibition against unreasonable discrimination in rates and must be suspended.

D. The Testimony Provided at the Public Input Hearings Supports Suspension of the WNA.

Public Input Hearings were held on March 9, 2023 in this proceedings. The testimony provided at the hearings support a finding that the WNA is producing unjust, unreasonable, and unduly discriminatory rates. Customers were shocked by the magnitude of the WNA in 2022. One customer explained that she received a gas bill with a \$201.51 WNA charge in June 2022. Tr. 63. This customer described the WNA as “exorbitant.” Tr. 63. Another customer detailed their surprise in receiving a \$49.05 WNA charge in January 2023. Tr. 67. According to this customer, the WNA “hardly seems ethical.” Tr. 67. That customer further noted, that he had been charged \$63.36 “for not using gas” in January and February 2023, causing him to conclude that, “something is seriously wrong if the only way PGW can balance its budget is to charge customers for gas they are not receiving or using.” Tr. 70-71. Another customer succinctly captured this issue, testifying that “PGW, not ratepayers, should bear the risk of planning for climate change.” Tr. 79. Still another customer testified that “the weather normalization adjustment rewards PGW for poor planning” and for “doing nothing to address declining gas sales.” Tr. 84. A retired scientist also testified that he was “concerned about unexpected, excessive WNA charges in the future.” Tr. 99.

Customers also expressed confusion at the Public Input Hearing as to why the WNA was so different from customer to customer. One customer testified that, despite reporting in the Philadelphia Inquirer regarding large WNA charges, they were not harmed. Tr. 53. That customer continued to explain that customers experiencing the same weather were, in fact, harmed, and this

was “perplexing.” Tr. 53. Another customer testified that they were not charged an “inflated” WNA in the Spring of 2022, concluding that “it appears that the program has an arbitrariness that results in unfair billing.” Tr. 68. Still another customer testified that while she did not get charged “the extreme version of the WNA charge that happened to others in May of 2022, the existing WNA charge impacts my household and heightens our anxiety about the unpredictability regarding the likely size of our gas utility bill in any given month.” Tr. 86.

Customers also expressed concern that the WNA seems one-sided, resulting in charges far more often than providing a credit. One customer examined approximately ten years of his bills and noted that only two of the years provided credits to their bill, while eight were charges. Tr. 56. This customer concluded that the WNA as implemented is a “dubious process.” Tr. 57. Another looked at two years of billings, which he testified shows “a consistent pattern, that the surcharges were greater than the credits.” Tr. 70. One customer further testified that in December 2022 they were billed \$293.57 for using 153 ccf of gas, yet in January 2023 they used only 135 ccf of gas and were billed \$305.60. Tr. 69.

Testimony was also provided on the impact of shifting weather-related risk onto ratepayers, particularly low-income customers. One customer testified on behalf of Physicians for Social Responsibility Pennsylvania, stating that low-income customers are ill-equipped to handle the WNA charge. Tr. 74-75. The customer testified that “PGW should not shift the risk of climate change onto Philadelphia residents because PGW has the resources to plan for that risk.” Tr. 75. Another customer testified that “PGW is charging folks who can least afford it, through no fault of their own, the cost of experiencing warmer winters.” Another customer also testified that the WNA “helps utilities stabilize their corporate finances but creates havoc for many of their customers.” Tr. 100.

The OCA submits that many customers of Philadelphia have a full understanding of the impact that the WNA is having on gas affordability. Customers testified as to the arbitrariness of the WNA, how it produces rate shock, and how it shifts risks that could be handled by PGW onto ratepayers, many of whom are low-income, and how it discriminated in a seemingly arbitrary fashion depending on the luck of your billing cycle.

E. PGW's Proposed 25% Rate Cap Is Unreasonable.

Putting a 25% cap on the hardship caused to customers in billing groups 3-5 (those in bold in the chart above) may mitigate the harm to those customers but would not remove the harm that they faced compared to similarly situated residential customers who just so happen to fall in another billing group. The disparate treatment of customers in this manner is a clear flaw in the WNA calculation. The proposed 25% cap does not address this issue.

OCA witness Nelson testified that a 25% cap on a surcharge is not reasonable, as a 25% increase would nevertheless constitute rate shock. OCA St. 1 at 17. Mr. Nelson explained that the proposed 25% cap is both unreasonable and inconsistent with surcharge cap mechanisms in other jurisdictions, as follows:

As for customer protection, a 25% cap on charges cannot reasonably be called a protection against rate shock, as a 25% increase would itself be rate shock. The proposal does not sufficiently limit the ratepayer impacts – and therefore risk – of the WNA. Approved caps in other jurisdictions are much smaller than 25%. In fact, in many cases, when revenues vary too widely from baseline, the decoupling mechanism is subject to a review. A 25% cap is such a significant deviation from the baseline that the decoupling mechanism as a whole must be reevaluated.

OCA St. 1 at 17-18 (citation omitted).

In addition, the Company has not adequately addressed the cost recovery of implementing the billing system changes needed to implement the 25% cap. While PGW acknowledged that

billing system changes will be necessary (Petition at 1-2), the Company has not estimated the cost of such changes. It is the OCA's view that costs should not be incurred now to provide interim relief that will not cure the problem. The better approach is, as Mr. Nelson recommended, that the WNA be suspended until such time as the documented failures can be corrected, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock. OCA St. 1 at 20.

F. The WNA Should Be Reconciled Annually If It Remains in Place.

While the OCA urges the Commission to require PGW to withdraw or suspend the WNA at this time, if the WNA is allowed to remain in place it must be modified to reduce volatility. Currently, the WNA is reconciled monthly. OCA witness Nelson testified that the volatility inherent in a monthly reconciliation can be mitigated if it is trued up on an annual basis. Mr. Nelson explained:

Does the WNA's monthly reconciliation appropriately balance risk between customers and the Company, as emphasized in Section II?

A. No. Customers are far more exposed to bill volatility under shorter true-up periods. Per the Regulatory Assistance Project (RAP), this adjustment frequency benefits the utility since it regularly limits the divergence between actual and allowed revenues, while providing little benefit to customers facing higher bill volatility. Conversely, an annual true-up "has the benefits of smoothing out shorter-term volatility and tend to result in small adjustments." Monthly true-ups are considered the "lower limits" to decoupling. By using the shortest possible reconciliation period, PGW disproportionately benefits from frequent adjustments. Risk mitigation, and thus decoupling benefits, are skewed in the utility's favor. It is inequitable for customers to fund lost utility revenues when the WNA structure can result in such extreme price increases.

OCA St. 1 at 16 (citations omitted).

As an alternative, the WNA could be reconciled annually with a 5% cap. Mr. Nelson explained that the Company can track the revenue deficit (or surplus) monthly, apply a carrying

charge to reflect the time value of money, and roll the balance to subsequent months. These charges would be recovered through rates in the following fiscal year. The monthly carrying charge should be comparable to the Company's cost of debt in order to minimize Company risk. OCA St. 1 at 20.

As Mr. Nelson testified, an annual reconciliation more fairly balances the risks associated with weather-related revenue impacts between the Company and customers. OCA witness Nelson explained:

Extending the true-up period to an annual reconciliation would shift some customer risk to the utility and create a more equitable balance. In accordance to my recommendations, customers would be exposed to far less volatility than they are currently under monthly billing adjustments. Although the utility would bear slightly more risk, the utility will continue to recover charges using the same formula in place and would up ultimately recover the normalized gas usage cost, up to a 5% cap. The delay in adjustment recovery, from monthly to annually, does not impact the value of the recovery charge, since the carrying charge factors a rate comparable to the utility's cost of debt.

OCA St. 1 at 21. Lastly, if the WNA mechanism remains in place, the Company should modify its calculation to include ten years of historic weather data, rather than the current twenty-year period, to establish normal heating degree days. OCA St. 1 at 20. The utilization of ten years of historic data better reflects the climate trends that the WNA is designed to address.

III. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate submits that PGW's Weather Normalization Adjustment should be suspended at this time. The Weather Normalization Adjustment should not be reinstated by the Commission until PGW can demonstrate that the rates produced will be just, reasonable, non-discriminatory, and that rate shock will not occur by operation of the rate mechanism.

Respectfully submitted,

/s/ Aron J. Beatty

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FINDINGS OF FACT

1. The WNA is designed to balance out the effects of so called “abnormal” weather by permitting PGW to true-up its revenues: if temperatures are warmer than expected, the utility recovers additional revenue from customers to make up the deficit, and when temperatures are colder than expected, the utility returns excess to customers. OCA St. 1 at 7-8.
2. PGW’s WNA acts as a limited decoupling mechanism by normalizing gas consumption in accordance with an approved temperature forecast, known as Normal Heating Degree Days (“NHDD”). The heating season stretches from October to May and the forecast assumes no heating in the summer months (June through September). OCA St. 1 at 7-8.
3. A predetermined formula assesses the difference in actual usage from normalized usage by comparing temperature readings, known as Actual Heating Degree Days (“AHDD”), with NHDD. The delta (i.e., difference) in usage, multiplied by the distribution delivery charge, is applied as a charge, or reimbursement, to customer rates, effectively reconciling revenues. OCA St. 1 at 7-8.
4. In May 2022, temperatures in Philadelphia were unusually warm and gas consumption was low. OCA St. 1 at 9.
5. Due to the WNA, customers in specific PGW billing groups faced disproportionately high gas bills solely because of a high WNA charge. OCA St. 1 at 9.
6. The design of the existing WNA shifts risk onto residential consumers. OCA St. 1SR at 5.
7. According to PGW, the mechanism worked as it was supposed to when it levied extreme and inconsistent bill increases upon customers after abnormally warm May 2022 weather. OCA St. 1-SR at 5.
8. The risk of monthly bill volatility was imposed upon customers to secure revenue stability for PGW. OCA St. 1-SR at 5.
9. The way the WNA is designed shifts financial risk from the Company to its customers. OCA St. 1-SR at 5.
10. In its August 12th Report to the Commission filed at Docket No. P-2022-3033477, the Company included a table showing the impact of the WNA varied significantly depending on which of the seven billing periods a customer was billed. OCA St. 1 at 10 (citing, Report of Philadelphia Gas Works on Weather Normalization Adjustment, Docket P-2022-3033477 at 11, Table 4).
11. On June 30, 2022, Philadelphia Gas Works (PGW or Company) filed a Petition for Emergency Order (Emergency Petition), Docket No. P-2022-3033477, with the Pennsylvania Public Utility Commission (Commission).

12. The Company's Emergency Petition requested that the Commission approve tariff modifications designed to suspend operation of PGW's Weather Normalization Adjustment (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.
13. All customers are in Philadelphia and experience the same weather and the same overall delta between NHDD and AHDD. OCA St. 1 at 13.
14. Despite experiencing the same weather, WNA charges varied widely based on billing cycle. *Id.*
15. On August 2, 2022, PGW filed the Petition and tariff supplement in this docket, requesting revisions to its WNA on an expedited basis.
16. The Company's Petition requested that the Commission approve tariff modifications on less than the statutorily established sixty days' notice, which it asserts is designed to limit the harm that is possible due to operation of its WNA.
17. PGW sought to revise PGW's Gas Service Tariff – Pa. P.U.C. No. 2, Page Nos. 149-150, effective October 1, 2022, by adding a control cap to its WNA so that customers would not be billed a WNA charge or credit that is greater than 25% of total delivery charges, excluding the WNA, on any given bill. *See*, Petition at 1.
18. The Company's Petition 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.
19. The impacts of those adjustments were so substantial that PGW eventually refunded the WNA charges for May 2022 usage. PGW St. 1 at 10-11.
20. The Company charged customers with a May 7th to June 7th billing cycle an average WNA charge of \$3.95, yet it applied an average \$87.28 WNA charge to customers with billing cycles starting just five days later (May 12th to June 10th). OCA St. 1 at 9.
21. The \$87.28 was only the average paid on that billing cycle. OCA St. 1 at 10.
22. Some individual customers faced greater WNA charges in June than others experienced over a full year. OCA St. 1 at 10.
23. At the March 9th Public Input Hearing, witness Morgan Byrne testified to receiving a \$255.30 bill in June. Tr. at 63.
24. Mr. Byrne's WNA charge totaled \$201.51, nearly 80 percent of his total bill and exponentially more than customers on different billing cycles. Tr. at 63; OCA St. 1 at 10.

25. The Company recognized that the May 2022 bill “anomaly” may happen again. See, Tariff filing at 9 (response to Section 53.52(a)(7)).

26. PGW did not conduct any studies to determine that the WNA mechanism will produce just and reasonable rates if a 25% cap is applied. See, Tariff filing at 10 (response to Section 53.52(a)(8)).

27. On April 28, 2023, the Company filed another Emergency Petition to address the same situation from impacting customers in May 2023.

28. Nearly one-quarter of PGW’s customer base has been *confirmed* low-income. CAUSE-PA St. 1 at 6.

29. For those confirmed low-income customers, unexpected and sudden rate shocks as seen by the operation of the WNA are exceedingly difficult to absorb. CAUSE-PA St. 1 at 7-11.

30. Currently, the WNA is reconciled monthly. OCA St. 1 at 16.

CONCLUSIONS OF LAW

1. The Public Utility Commission has jurisdiction over the parties and the subject matter of this proceeding by virtue of the Public Utility Code, 66 Pa. C.S. § 101, *et seq.*
2. Rates charged by public utilities must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa. C.S. §§ 1301, 1304.
3. Based on the evidence presented in this proceeding, PGW's WNA produces unjust and unreasonable rates in violation of 66 Pa. C.S. § 1301 and § 1304 and therefore is unlawful.
4. Based on the evidence presented in this proceeding, PGW's WNA produces discriminatory rates because similarly situated customers with similar usage in the same service territory pay different rates based solely on the billing cycle in which they were placed and it is therefore unlawful.
5. PGW failed to meet its burden of proof that its proposed 25% WNA Cap would correct the unreasonable, unjust, or discriminatory nature of its WNA.
6. The Commonwealth Court has interpreted rate discrimination as that the requirement is that rates of one class of service shall not be unreasonably prejudicial and disadvantageous to a patron in any other class of service. *Building Owners and Managers Assoc. v. Pa. Pub. Util. Comm'n*, 79 Pa. Commw. 598, 605, 470 A.2d 1092, 1095-1096 (Pa. Commw. 1984) (emphasis added, internal citations omitted) and *Philadelphia Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044, 1059-1060 (Pa. Commw. 2002).
7. For a rate to be found unlawfully preferential, there must be both an advantage to one and a resulting injury to another. *Id.*
8. As the moving party requesting that the Commission allow PGW to initiate its WNA rate cap, PGW has the burden of proof in this proceeding. *See William Towne v. Great American Power, LLC*, 2013 Pa. PUC LEXIS 617, *4 (Pa. PUC October 18, 2013) ("While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.") *citing Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Commw. Ct. 2001).
9. Pursuant to Section 315(a) of the Public Utility Code, in any proceeding involving a proposed or existing rate of the public utility, "the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." 66 Pa. C.S. § 315(a).
10. The Commission entered a Suspension Order in this proceeding on September 15, 2022, that suspended the Tariff Supplement and instituted an investigation into the justness and reasonableness of the WNA. *Pa. PUC v. PGW*, Docket Nos. R-2022-3034229, P-2022-3034264, Suspension Order (Sept. 15, 2022).

11. The Commission determined in response to the Company's Petition for Interlocutory Order that "the instant proceeding is the proper forum to address the WNA issues." *Pa. PUC v. PGW*, Docket Nos. R-2022-3034229, P-2022-3034264, Order at 18 (May 18, 2023).
12. The Commission has determined that "[t]here is no presumption of reasonableness, which attached to a utility's claim, at least none which survives credible issues regarding a utility's claims." *Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 444 (fn. 37), 1983 Pa. PUC LEXIS 33 (July 8, 1983).
13. The Commission may place the burden of proof on the utility to support the validity of existing provisions. *See e.g., Pa PUC, et al. v. Equitable Gas Co.*, 1997 Pa. PUC LEXIS 139, *18-19 (Oct. 8, 1997).
14. In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission. *See* 2 Pa. C.S. § 704.
15. The term "substantial evidence" has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *See Norfolk & Western Ry. Co. v. Pa. PU*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm. Dept. of Public Welfare*, 85 Pa. Commw. 23, 480 A.2d 382 (1984).
16. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.*
17. Even where a party has established a prima facie case, the party with the burden must establish "the elements of that cause of action to prevail, precluding all reasonable inferences to the contrary." *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983).
18. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlt. 1990).
19. PGW's evidence must be more convincing than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
20. The utility's burden of proof to establish the justness and reasonableness of every component of its request is an affirmative one and remains with PGW throughout the course of the proceeding. *See, Pa. PUC v. Columbia Gas of Pennsylvania, Inc.* 2014 Pa. PUC LEXIS 691, *11 (Oct. 23, 2014) (*Columbia Gas 2014*).

PROPOSED ORDERING PARAGRAPHS

IT IS HEREBY ORDERED:

1. That Philadelphia Gas Works' proposed Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2, including the 25% cap on its Weather Normalization Adjustment Charge, is denied.
2. That Philadelphia Gas Works' WNA shall be suspended until such time as the documented failures can be corrected, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock, with prejudice.
2. That the Commission's investigation at Docket No. R-2022-3034229 regarding PGW's current WNA tariff at Supplement No. 2 to Gas Service Tariff- Pa. P.U.C. No. 2, Page Nos. 149-152 and PGW's Petition of Philadelphia Gas Works for Approval On Less Than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment at Docket No. P-2022-3034264 will be marked closed.

DATE: _____

Administrative Law Judge Marta Guhl