



June 7, 2023

VIA Regular Mail and Email

Administrative Law Judge Marta Guhl
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107
mguhl@pa.gov

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works,
Docket No. R-2022-3034229, P-2022-3034264**

Judge Guhl:

Please find the attached **Joint Main Brief of The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and The Tenant Union Representative Network** in the above noted proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only. A hard copy is being mailed to Your Honor at the above listed address.

Respectfully Submitted,

John W. Sweet, Esq.
Counsel for CAUSE-PA

CC: *Athena DelVillar, sdelvillar@pa.gov
Secretary Chiavetta (Via Efile)
Certificate of Service*

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:		
	:		
v.	:	Docket No.	R-2022-3034229
	:		P- 2022-3034264
Philadelphia Gas Works	:		

Certificate of Service

I hereby certify that I have this day served copies of the **Joint Main Brief of The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and The Tenant Union Representative Network** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

VIA Email

Karen O. Moury, Esq.
Daniel Clearfield, Esq.
Deanne M. O’Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
dclearfield@eckertseamans.com
dodell@eckertseamans.com

Sharon Webb, Esq.
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov

Harrison Breitman, Esq.
Darryl Lawrence, Esq.
Christy Appleby, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
hbreitman@paoca.org
dlawrence@paoca.org
cappleby@paoca.org

Carrie Wright, Esq.
Erika L. McLain, Esq.
Bureau of Investigation and Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
PO Box 3265
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265
carwright@pa.gov
ermclain@pa.gov

Charis Mincavage, Esq.
Adelou A. Bakare, Esq.
McNees Wallace & Nurick, LLC
100 Pine Street, PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com

Robert W. Ballenger, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
rballenger@clsphila.org

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Craig Berry, Esq.
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
craig.berry@pgworks.com

Respectfully Submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



John W. Sweet, Esq., PA ID: 320182
118 Locust Street
Harrisburg, PA 17101
717-710-3839
pulp@pautilitylawproject.org

June 7, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	R-2022-3034229
v.	:	P-2022-3034264
	:	
Philadelphia Gas Works	:	

JOINT MAIN BRIEF OF THE
COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN
PENNSYLVANIA AND TENANT UNION REPRESENTATIVE NETWORK

COMMUNITY LEGAL SERVICES, INC.

***Counsel for Tenant Union Representative
Network***

Robert W. Ballenger, Esq., PA ID: 93434
Joline R. Price, Esq. PA ID: 315405

1424 Chestnut Street
Philadelphia, PA 19102

Telephone: 215-981-3700
Facsimile: 215-981-0434

THE PENNSYLVANIA UTILITY LAW PROJECT

***Counsel for the Coalition for Affordable
Utility Services and Energy Efficiency in
Pennsylvania***

John W. Sweet, Esq., PA ID: 320182
Elizabeth R. Marx, Esq., PA ID: 309014
Ria M. Pereira, Esq., PA ID: 316771
Lauren N. Berman, Esq., PA ID: 310116
118 Locust Street
Harrisburg, PA 17101

Tel.: 717-236-9486
Fax: 717-233-4088

Date: June 7, 2023

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PROCEDURAL HISTORY 2

III. BURDEN OF PROOF..... 8

IV. LEGAL STANDARD..... 10

V. STATEMENT OF THE CASE 11

VI. ARGUMENT 12

A. PGW’s WNA is Unlawfully Discriminatory and Creates Impermissible Intraclass Cost Shifting 12

B. PGW’s WNA Detrimentally Impacts Low Income Customers and the Effectiveness of PGW’s Customer Assistance Program. 17

C. PGW’s WNA Disincentivizes Energy Efficiency Programming. 20

D. PGW’s WNA Violates Cost Causation Principles..... 22

E. PGW Has Failed to Carry its Burden to Support Continuation of the WNA 23

F. A 25% Cap on WNA Charges Does Not Resolve Inherent Inequities in Operation and Application of the Alternative Rate Mechanism..... 24

G. Elimination of May from Calculation of the WNA Does Not Resolve Inherent Inequities in Operation and Application of the Alternative Rate Mechanism..... 25

H. OCA Proposed Modifications Lack Specificity 27

VII. CONCLUSION..... 28

APPENDIX A: Proposed Findings of Fact

APPENDIX B: Proposed Conclusions of Law

APPENDIX C: Proposed Ordering Paragraphs

TABLE OF AUTHORITIES

Cases

Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149 (Pa. Commw. Ct. 1990)..... 9
Bldg. Owners & Managers Ass'n v. Pa. PUC, 470 A.2d 1092 (Pa. Commw. Ct. 1984)..... 13
Brockway Glass Co. v. Pa. PUC, 437 A.2d 1067 (Pa. Commw. Ct. 1981)..... 9
City of Pittsburgh v. Pa. PUC, 112 A.2d 826 (Pa. Super. 1955). 10
Fried v. Pa. PUC, 30 A.2d 170 (1943)..... 12
Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Commw. Ct. 2006). 12, 13
NRG Energy, Inc. v. Pa. PUC, 233 A.3d 936 (order entered June 2, 2020)..... 9, 22
Pa. Elec. Co. v. Pa. PUC, 502 A.2d 130 (Pa. 1985). 10
Pa. PUC v. Pa. Gas & Water Co., 424 A.2d 1213 (Pa. 1980). 10
Pa. PUC v. Philadelphia Electric Co., 561 A.2d 1224 (Pa. 1989). 10
Phila. Suburban Water Co. v. Pa. PUC, 808 A.2d 1044 (Pa. Commw. Ct. 2002)..... 13
Popowsky v. PUC, 665 A.2d 808 (Pa. 1995)..... 10
Sharon Steel Corp. v. Pa. PUC, 468 A.2d 860, 862 (Pa. Commw. Ct. 1983). 9
U. S. Steel Corp. v. Pa. PUC, 390 A.2d 849 (Pa. Commw. Ct. 1978)..... 10, 12
Univ. of Pa. v. Pa. PUC, 485 A.2d 1217 (Pa. Commw. Ct. 1984). 10

Statutes

66 Pa. C.S. § 1301..... 10
66 Pa. C.S. § 1304..... 12
66 Pa. C.S. § 1308..... 9
66 Pa. C.S. § 1330..... 10
66 Pa. C.S. § 1502..... 13
66 Pa. C.S. § 315..... 9

Treatises

73B C.J.S. Public Utilities § 9. 12

Constitutional Provisions

52 Pa. Code § 69.3302. 11, 12, 13, 16, 17, 18, 20, 22, 23
52 Pa. Code §§ 69.3301. 11, 12, 22, 23

Pennsylvania Public Utility Commission Orders

Pa. PUC v. PECO Energy Co., R-2018-3000164, Final Order at 73 (entered Dec. 20, 2018).....22

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN), through their respective counsel at the Pennsylvania Utility Law Project (PULP) and Community Legal Services (CLS), jointly file this Main Brief in support of its positions, and the recommendations advanced by CAUSE-PA's expert witness, Harry S. Geller, Esq.

The current proceeding was initiated because of a rates spike experienced by Philadelphia Gas Works (PGW) customers in May and June of 2022 resulting from the application of PGW's Weather Normalization Adjustment clause (WNA). Mr. Geller reviewed the past performance of PGW's WNA and found that it consistently and increasingly levied additional charges on customers, causing them to pay increasingly more for gas service. He explained that PGW's WNA, as applied, was inequitable – resulting in disproportionate impacts for low income consumers as well as those who are able to reduce their usage through conservation or efficiency (as opposed to changes in weather). For these reasons, Mr. Geller recommended that the WNA be discontinued.

The record in this proceeding demonstrates that PGW's WNA produces unnecessary rate volatility and is discriminatory against customers within the same class – and likely between customers of different classes. The WNA detrimentally impacts low income customers and undermines the effectiveness of critical energy efficiency programming. A proper review of PGW's WNA pursuant to the Commission's Policy Statement demonstrates the ratemaking mechanism should no longer continue. None of the parties to this proceeding have identified changes to PGW's WNA that can successfully be implemented, at this time, to avoid the WNA's inequitable operation. Thus, CAUSE-PA and TURN hereby submit that the Public Utility Commission (Commission) should order PGW to discontinue its WNA.

II. PROCEDURAL HISTORY

On June 30, 2022, PGW filed a Petition for Emergency Order, seeking permission to suspend operation of the WNA then in effect in its approved Gas Service Tariff.¹ The basis of this request, which was granted by Chairman Brown Dutrieuille on July 1, 2022, and subsequently ratified by the Commission on July 14, 2022, was that PGW's WNA had produced an unprecedented \$12.6 million in customer charges, which PGW desired to return to ratepayers. In its July 14, 2022 Ratification Order, the Commission required PGW to file a report on its internal investigation of the operation of the WNA and provide parties 20 days to respond.²

On August 2, 2022, PGW filed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2 to become effective October 1, 2022, and a Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment (Petition), initiating the instant proceeding.³ The tariff supplement proposed changes to add a control cap to PGW's WNA so that its customers would not be billed a WNA charge or credit greater than 25% of total delivery charges excluding the WNA.

On August 12, 2022, PGW filed its report in the docket for its Emergency Petition, concluding that the spike in WNA charges imposed on consumers in May 2022 was attributable to "mid to late month warm weather" and was not caused by "misapplication of or error in applying the long-standing WNA formula."⁴ PGW's report gave several examples of how its proposed 25% cap on WNA credits and charges would work, if implemented.

¹ Petition of Philadelphia Gas Works for Emergency Order, PGW Petition, Docket No. P-2022-3033477 (filed June 30, 2022).

² Petition of Philadelphia Gas Works for Emergency Order, Ratification Order, Docket No. P-2022-3033477 (order entered July 14, 2022).

³ PGW Petition to Amend WNA, Docket Nos. R-2022-3034229, P-2022-3034264.

⁴ Petition of Philadelphia Gas Works for Emergency Order, WNA Adjustment Report, Docket No. P-2022-3033477 (filed August 12, 2022).

On August 22, 2022, the Office of Consumer Advocate (OCA) filed an Answer to PGW's Petition. The OCA stated that PGW did not provide evidence as to how it determined that a 25% cap was the appropriate level of protection for customers. The OCA also stated that the only reasonable approach is to suspend the WNA mechanism until a revised formula, free from its current defects, can be developed.⁵

On September 1, 2022, OCA filed its comments to PGW's report. On September 6, 2022, TURN and CAUSE-PA filed joint comments on PGW's report. In general, OCA, TURN and CAUSE-PA expressed their support for further inquiry into PGW's WNA, to ensure the rates produced are just and reasonable, and expressed doubt as to the ability of PGW's 25% cap to adequately result in just and reasonable rates.

On September 6, 2022, CAUSE-PA filed its Petition to Intervene in these proceedings. On September 7, 2022, TURN filed its Petition to Intervene in these proceedings. On September 15, 2022, PGW filed a letter expressing its lack of objection to separate Petitions to Intervene filed by TURN and CAUSE-PA. PGW's letter urged the Commission to narrow its review, and preclude OCA, TURN and CAUSE-PA from conducting a full review of PGW's proposed WNA, thereby limiting consideration solely to PGW's 25% cap. On September 13, 2022, TURN/CAUSE-PA and OCA each filed letters responsive to PGW's September 7, 2022 letter, questioning the appropriateness of PGW's letter and urging the Commission to ensure that review of PGW's WNA is not limited as proposed by PGW.

On September 15, 2022, the Commission entered an order initiating an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in PGW's proposed WNA tariff (including, but not limited to, PGW's proposed 25% cap), suspending the

⁵ OCA Answer, Docket Nos. R-2022-3034229, P-2022-3034264.

operation of PGW's proposed tariff, and referring this matter to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary to issue a Recommended Decision. On September 19, 2022, Administrative Law Judge (ALJ) Guhl issued a Prehearing Order proposing a procedural schedule that would result in Supplement No. 152 going into effect on April 1, 2023. To afford the parties and the Commission additional time to review the WNA filing, PGW provided to the ALJ a proposed procedural schedule and discovery modifications agreed upon by the parties, which would result in the effective date being extended to October 1, 2023.

Under that schedule, PGW's Direct Testimony was due on November 30, 2022. On November 8, 2022, PGW filed a Petition for Leave to Withdraw Supplement No. 152 and Motion to Hold Procedural Schedule in Abeyance. ALJ Guhl granted the motion to hold the matter in abeyance.⁶ On November 17, 2022, two Telephonic Public Input Hearings were held on this matter. Several PGW customers attended and voiced their concerns about the additional cost that PGW's WNA had added to their gas bills. These customers clearly indicated that their concerns about PGW's WNA were not limited to the May 2022 WNA rate spike, but also the unfairness of the consistently higher cost that the WNA added to their bill.

Since no ruling was issued on the Withdrawal Petition prior to November 30, 2022, PGW consulted with the parties regarding an extension of time to February 14, 2023, for the filing of Direct Testimony and requested that the procedural schedule be held in abeyance pending a ruling on the Withdrawal Petition. Per ALJ Guhl's request, PGW provided an agreed-upon further procedural schedule on December 6, 2022, with which the ALJ expressed no concerns.

⁶ See February 23, 2023 Prehearing Order, Docket Nos. R-2022-3034229, P-2022-3034264.

Pursuant to the agreed-upon procedural schedule, PGW was scheduled to submit direct testimony on or before February 14, 2023, but failed to do so.⁷ PGW did not file any Motions prior to the testimony due date to request a change in the schedule, nor did it make any other procedural filings that would have suspended litigation in this proceeding.⁸ OCA and CAUSE-PA each objected to PGW's failure to file direct testimony. In response, ALJ Guhl held an emergency telephonic conference on February 22, 2023, and ordered PGW to file its direct testimony by close of business February 23, 2023.⁹ PGW complied with ALJ Guhl's Order and served the Direct Testimony of Denise Adamucci on February 23, 2023.¹⁰ Ms. Adamucci's testimony supported implementation of PGW's proposed 25% cap on WNA charges/credits.

On March 23, 2023, counsel for the OCA requested a brief extension of time for the noncompany parties to file direct testimony from April 6 to April 13, 2023. No party objected to this request. On March 31, 2023, ALJ Guhl issued an order memorializing the change.¹¹ On April 13, 2023, CAUSE-PA and the OCA submitted direct testimony expressing concern about the disproportionate and disparate impact of the WNA on PGW's residential and low income customers.¹² CAUSE-PA's witness, Mr. Geller, examined PGW's WNA and found the mechanism, as a whole, to be inequitable because it consistently and increasingly levies additional charges on residential customers, which disproportionately impact low income households.¹³ Mr. Geller also examined PGW's proposed 25% cap and found that a customer with total bill charges (excluding WNA) of just \$36.96 would still face a maximum WNA charge of \$9.24, "an increase

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ PGW St. 1.

¹¹ See March 31 Prehearing Order, Docket Nos. R-2022-3034229, P-2022-3034264.

¹² See CAUSE-PA St. 1 at 3-15, OCA St. 1 at 9-22.

¹³ CAUSE-PA St. 1 at 3-15.

over actual, usage-based charges of 25%.”¹⁴ Mr. Geller submitted that PGW’s 25% cap would not alleviate the inherent inequities caused by the WNA and that it was not supported by any rationale other than simplicity.¹⁵ Mr. Geller recommended the Commission order PGW to cease operation of its WNA.¹⁶

OCA’s witness, Ron Nelson, recommended that PGW’s WNA be suspended “until and unless PGW comes up with a rate formula that corrects the documented failures, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock.”¹⁷ In the alternative, OCA’s witness submitted that *if* the Commission allowed PGW’s WNA to continue, it should change the adjustment from a monthly to an annual reconciliation period, add a 5% hard cap on WNA surcharges (but not credits), and utilize a 10-year estimate of normal heating degree days.¹⁸

On April 27, 2023, PGW filed a Petition for Emergency Order at Docket No. P-2023-3040233 proposing to exclude May 2023 usage from the WNA formula. In support of this request for emergency relief, PGW referred to the May 2022 usage anomaly and resulting June 2022 bills, as well as the findings of a consultant, Atrium Economics, LLC (Atrium), regarding May weather. According to PGW, there were concerns about continuing the WNA in May, since temperatures for that month have become unusually divergent from the current normal. Also on April 27, 2023, PGW filed a Petition for Interlocutory Review and Answer to Material Question. By that Petition, PGW sought to have WNA issues resolved in its base rate proceeding, rather than this WNA specific proceeding.

¹⁴ Id. at 14.

¹⁵ Id.

¹⁶ Id. at 14-15.

¹⁷ OCA St. 1 at 19.

¹⁸ Id.

On April 28, 2023, Vice Chairman Stephen M. DeFrank signed an Emergency Order granting PGW's request to remove May 2023 from the WNA formula and authorizing PGW to submit a Tariff reflecting this change. The Commission entered its order, ratifying Vice Chairman DeFrank's Emergency Order on May 18, 2023. Also on May 18, 2023, the Commission denied PGW's Petition for Interlocutory Review and Answer to Material Question, finding that moving consideration of WNA issues to the base rate proceeding would waste resources and delay resolution.¹⁹

On May 2, 2023, PGW submitted Rebuttal Testimony of Ms. Adamucci.²⁰ Importantly, PGW's rebuttal testimony abandoned the proposed 25% cap, and generally submitted that any changes to the WNA should be considered in PGW's base rate proceeding.²¹

CAUSE-PA and OCA submitted Surrebuttal Testimony on May 12, 2023. In response to PGW's Rebuttal Testimony, Mr. Geller reiterated that PGW has a duty to charge just and reasonable rates and the WNA violates that "basic tenet," particularly because of its impact on low income customers.²² Mr. Geller asserted that 72% of PGW's estimated low income customers will "have no protection from the unjust and inequitable financial burden imposed by PGW's WNA."²³ Finally, Mr. Geller emphasized the importance of affordability, recognized by the Commission, in evaluating alternative rate designs.²⁴

OCA's witness, Mr. Nelson, maintained that PGW's WNA shifts risk to customers because bill outcomes differ with, and without, the WNA.²⁵ He also asserted that PGW's proposal,

¹⁹ May 18 Order Denying Petition at 19.

²⁰ PGW St. 1-R.

²¹ PGW St. 1-R at 5-6.

²² CAUSE-PA St. 1-SR at 2-3.

²³ *Id.* at 5.

²⁴ *Id.* at 4.

²⁵ OCA St. 1-SR at 4.

announced in Rebuttal Testimony, to eliminate May from the WNA was a recognition of the bill volatility risk the WNA shifted to customers.²⁶ Finally, he defended his alternative cap proposal, and contended that the proceeding was not limited to consideration of PGW's 25% cap proposal.²⁷

On May 19, 2023, PGW submitted Rejoinder Testimony of Ms. Adamucci, responding to the Surrebuttal Testimony of CAUSE-PA and OCA's witnesses. In general, PGW's witness maintained that the 25% cap *had* merit at the time it was proposed, but that PGW is no longer pursuing this option.²⁸ Finally, PGW's witness referenced a report by Atrium served in PGW's base rate proceeding, which has not been admitted into evidence in this proceeding or in the ongoing base rate proceeding,²⁹ to substantiate its proposal to eliminate May from the WNA, but to otherwise maintain it in place without modification.³⁰

On May 24, 2023, ALJ Guhl presided over telephonic evidentiary hearings regarding PGW's WNA and the testimony and exhibits submitted by PGW, OCA and CAUSE-PA were entered on the record.

III. BURDEN OF PROOF

In any rate case filed pursuant to section 1308 of the Public Utility Code, such as the current case filed by PGW, the burden of proof is on the public utility.³¹

Public Utility Code § 315(a) (66 Pa.C.S. § 315(a)) states that in any proceeding upon the motion of the Pennsylvania Public Utility 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. The public utility must satisfy its burden of proof by a preponderance of the evidence, which means

²⁶ Id. at 5.

²⁷ Id. at 6-7.

²⁸ PGW St. 1-RJ at 2.

²⁹ Id. at 8 (This report was subject to motion to strike which was granted June 7, 2023.); See June 7, 2023 Order Granting OCA Motion to Strike, Docket No. R-2023-3037933.

³⁰ PGW St. 1-RJ at 5.

³¹ 66 Pa.C.S. §§ 315(a), 1308(a).

only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.³²

PGW's witness, apparently on the advice of counsel, submits that non-PGW parties bear the burden of proving that PGW's existing WNA should be modified or discontinued.³³ This is clearly erroneous, as PGW's filing of Supplement No. 152 to its Gas Service Tariff proposes modifications to PGW's existing WNA, thereby imposing the burden on PGW to show that the proposed rate (i.e., the WNA) is just and reasonable.³⁴ Indeed, the Commission has explicitly ordered the WNA to be investigated to "determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained" in the Tariff supplement. Furthermore, the Commission's order requires that the parties consider the "lawfulness, justness, and reasonableness of the Philadelphia Gas Works' *existing rates, rules, and regulations*."³⁵ "By ordering an investigation into the propriety of existing and proposed rates on commission motion, the PUC clearly placed the burden of justifying those rates" upon PGW.³⁶

As the WNA constitutes a separate rate applicable to certain PGW customers, the utility bears the burden of proof to establish the justness and reasonableness of every element of its requested rate proposal.³⁷ However, as the Commonwealth Court has explained:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.³⁸

³² NRG Energy, Inc. v. Pa. PUC, 233 A.3d 936, 939 (Pa. Commw. Ct. 2020).

³³ PGW St. 1-RJ at 4.

³⁴ Brockway Glass Co. v. Pa. PUC, 437 A.2d 1067 (Pa. Commw. Ct. 1981).

³⁵ September 15, 2022 Order at ¶¶1,4 (emphasis added).

³⁶ Sharon Steel Corp. v. Pa. PUC, 468 A.2d 860, 862 (Pa. Commw. Ct. 1983).

³⁷ 66 Pa. C.S. §§ 315(a),1308(d).

³⁸ Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Commw. Ct. 1990).

Therefore, while the ultimate burden of proof does not shift from PGW, a party proposing an adjustment to PGW's claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.³⁹

Finally, the fact that PGW's WNA has been in operation for many years does not establish a binding presumption that it is reasonable and nondiscriminatory. It is well settled that a prior rate schedule is not *res judicata* on the question of discrimination or reasonableness.⁴⁰

IV. LEGAL STANDARD

Pursuant to section 1301 of the Public Utility Code, the Commission has a "duty to set 'just and reasonable' rates, reflecting a 'balance of consumer and investor interests.'"⁴¹ In determining just and reasonable rates, the PUC has discretion to determine the proper balance between interests of ratepayers and utilities.⁴² "[T]he PUC is obliged to consider broad public interests in the rate-making process."⁴³

On June 28, 2018, Governor Wolf signed into law Act 58 of 2018, which amended Chapter 13 of the Public Utility Code to add section 1330 authorizing the Commission to review and approve utility proposals for alternative ratemaking mechanisms.⁴⁴

In 2019, the Commission adopted a Distribution Rates Policy Statement implementing section 1330.⁴⁵ The Policy Statement enumerates factors for evaluation of alternative ratemaking

³⁹ See, e.g., Univ. of Pa. v. Pa. PUC, 485 A.2d 1217, 1226 (Pa. Commw. Ct. 1984).

⁴⁰ U. S. Steel Corp. v. Pa. PUC, 390 A.2d 849, 854 (Pa. Commw. Ct. 1978), citing City of Pittsburgh v. Pa. PUC, 112 A.2d 826 (Pa. Super. 1955).

⁴¹ Popowsky v. PUC, 665 A.2d 808, 811 (Pa. 1995); 66 Pa. C.S. § 1301.

⁴² Popowsky v. PUC, 665 A.2d 808, 811 (Pa. 1995) citing Pa. PUC v. Philadelphia Electric Co., 561 A.2d 1224, 1226 (Pa. 1989); Pa. PUC v. Pa. Gas & Water Co., 424 A.2d 1213, 1219 (Pa. 1980), cert. denied, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981).

⁴³ Popowsky v. PUC, 665 A.2d 808, 812 (Pa. 1995) citing Pa. Elec. Co. v. Pa. PUC, 502 A.2d 130, 134 (Pa. 1985).

⁴⁴ 66 Pa. C.S. § 1330.

⁴⁵ See 66 Pa. C.S. § 1330(d) ("No later than six months after the effective date of this subsection, the commission, by regulation or order, shall prescribe the specific procedures for the approval of an application to establish alternative rates.").

mechanisms, such as PGW’s WNA.⁴⁶ The Policy Statement, is intended to “promote the efficient use of electricity, natural gas and water through technologies and information,” and states that, “[A]n alternative rate design methodology should reflect the sound application of cost of service principles, establish a rate structure that is just and reasonable, and consider customer impacts.”⁴⁷ It sets forth fourteen factors to evaluate whether an alternative ratemaking mechanism is just and reasonable, including the effect on low income customers and customer assistance programs, the impact on energy efficiency programming, alignment with cost causation principals, and the prevention of improper cost shifting.⁴⁸ While PGW’s WNA addresses a single factor of the test, “How weather impacts utility revenue under the ratemaking mechanism and rate design,”⁴⁹ an evaluation of the remaining standards demonstrates that PGW’s WNA is not a just and reasonable alternative distribution ratemaking mechanism and should be discontinued.

V. STATEMENT OF THE CASE

PGW’s WNA is unjust and unreasonable and should be discontinued. PGW has failed to carry its burden to show that either its originally proposed 25% cap on the WNA charge or its proposal to exclude the month of May from operation of the WNA will result in just and reasonable rates and charges for PGW customers.

PGW’s WNA, if allowed to continue, will produce inequitable charges among and between customers experiencing the same weather variations, due to baseload inaccuracies and customer billing cycles – ultimately resulting in disproportionately detrimental impacts on PGW’s low income customers and undermining energy efficiency and conservation. This is a violation of the

⁴⁶ 52 Pa. Code §§ 69.3301-.3302.

⁴⁷ Id.

⁴⁸ 52 Pa. Code § 69.3302(a).

⁴⁹ 52 Pa. Code § 69.3302(a)(9).

fundamental principle confirming the utility's duty to serve all members of the public fairly and without unreasonable discrimination.⁵⁰

On the record of these proceedings, there has been no proposal for a reform or adjustment to PGW's WNA that is adequately specific or comprehensive to avoid the unfairness inherent in PGW's proposed alternative rate structure. Furthermore, the evidence of record strongly weighs against further approval of the WNA when analyzed pursuant to the Commission's Policy Statement regarding alternative ratemaking mechanisms.⁵¹ For these reasons, neither PGW's nor OCA's proposed changes to the WNA should be approved and PGW's WNA should be discontinued.

VI. ARGUMENT

A. PGW's WNA is Unlawfully Discriminatory and Creates Impermissible Intraclass Cost Shifting⁵²

The Public Utility Code recognizes that classification of customers based on a variety of circumstances can justify the establishment of different rates and charges.⁵³ Indeed, the Commonwealth Court has held that customer classifications and attending rate differences may be justified by a variety of considerations, including quantity of service used, nature of use, time of use, pattern of use, differences of conditions of service, public purpose costs, or cost of service.⁵⁴ However, the Public Utility Code does not permit, and in fact prohibits, the establishment of rates or charges which subject any person to unreasonable prejudice or disadvantage.⁵⁵ Likewise,

⁵⁰ See generally, Fried v. Pa. PUC, 30 A.2d 170, 172 (1943); 73B C.J.S. Public Utilities § 9.

⁵¹ 52 Pa. Code §§ 69.3301-3302.

⁵² See 52 Pa. Code § 69.3302(a)(4) (*How the ratemaking mechanism and rate design limit or eliminate interclass and intraclass cost shifting.*).

⁵³ 66 Pa. C.S. § 1304.

⁵⁴ U.S. Steel Corp. v. Pa. PUC, 390 A.2d 849 (Pa. Commw. Ct. 1978); Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Commw. Ct. 2006).

⁵⁵ 66 Pa. C.S. § 1304.

although the Public Utility Code permits reasonable classifications of service, it prohibits maintaining an unreasonable difference in service that subjects any person to unreasonable prejudice or disadvantage.⁵⁶ Finally, the Public Utility Code prohibits any unreasonable difference as to rates between different classes of service, thereby ensuring that “rates of one class of service shall not be unreasonably prejudicial and disadvantageous to a patron in any other class of service.”⁵⁷ The Commonwealth Court has held, “In order for a rate differential to survive a challenge brought under 66 Pa. Cons. Stat. § 1304, the utility must show that the differential can be justified by the difference in costs required to deliver service.”⁵⁸

CAUSE-PA and TURN submit that PGW’s WNA operates in such a manner as to unreasonably prejudice or disadvantage some customers over others within the same customer class, based on the arbitrary dates of customers’ billing cycles and the underlying assumptions of baseload. These are not reasonable conditions with which to justify imposition of discriminatory rates.

Furthermore, absent any analysis or justification by PGW, its exclusion of non-heating customers as well as Interruptible Transportation (IT) customers, may constitute unlawful discrimination in rates. Notably, the Commission’s Policy Statement requires consideration of whether an alternative rate design “limit(s) or eliminate(s) interclass and intraclass cost shifting” - though PGW’s WNA may exacerbate intraclass cost shifting.⁵⁹ PGW has not advanced any evidence in this proceeding to justify its exclusion of these and other customers from the WNA.

⁵⁶ 66 Pa. C.S. § 1502.

⁵⁷ Bldg. Owners & Managers Ass’n v. Pa. PUC, 470 A.2d 1092, 1095–96 (Pa. Commw. Ct. 1984).

⁵⁸ Lloyd v. Pa. PUC, 904 A.2d 1010, 1016 (Pa. Commw. Ct. 2006); see also Phila. Suburban Water Co. v. Pa. PUC, 808 A.2d 1044, 1060 (Pa. Commw. Ct. 2002).

⁵⁹ 52 Pa. Code § 69.3302(a)(4).

As such, the WNA must not be maintained unless and until PGW produces evidence that the WNA does not discriminate against heating customers within and among PGW’s customer classes.

As shown in OCA testimony, based on the weather in a single month, May 2022, PGW’s WNA wreaked financial havoc on some customers’ bills, while imposing minor charges on others. Indeed, average charges for customers by billing cycle for that short period ranged from \$2.19 to \$87.28.⁶⁰ As OCA’s witness explained, the depiction of these charges on an average basis among billing cycle “mask[s] the extreme impacts of the WNA.”⁶¹ Indeed, a member of the public testified that the WNA resulted in a \$201.50 charge on her June bill, constituting nearly 80% of the total.⁶²

A limited focus on how the WNA operated in May 2022, treating it as an “anomaly” as PGW would like to do,⁶³ would allow the rate discrimination in other months to continue without resolution. Although PGW’s witness claimed PGW “did not identify problems in other months,”⁶⁴ OCA’s analysis demonstrates that limiting the review to May is inadequate. OCA’s expert witness testified that the WNA’s inequitable impacts were not limited to a single billing month, but are pervasive across the heating season – resulting in PGW recovering as little as \$32 from some customers and as much as \$120 from others, on average, by billing cycle.⁶⁵ All PGW customers experience the same weather patterns, on average, in Philadelphia during the heating season,⁶⁶ and so the dramatically different WNA charges among them support a conclusion that both the rates and the service (i.e., billing function) associated with PGW’s WNA prejudice and disadvantage a

⁶⁰ OCA St. 1 at 10.

⁶¹ Id.

⁶² March 9, 2023 Hrg. Tr. at 63; see also OCA St. 1 at 10.

⁶³ See PGW St. 1-R at 4-5 (averring that “the sole issue in this case is whether the 25% cap should be implemented” to prevent future drastic billing inequities).

⁶⁴ May 24, 2023 Hrg. Tr. at 18.

⁶⁵ OCA St. 1 at 13-14.

⁶⁶ Id. at 13.

large number of customers to significant degree. Contrary to PGW’s suggestion that the WNA is a “neutral factor” for customers and PGW,⁶⁷ OCA’s witness correctly observes that the WNA, as currently structured, “increases WNA charge volatility and exposes customers to discriminatory risks beyond their control.”⁶⁸

Although a specific analysis has not been performed to determine all factors that cause WNA volatility, the record supports there are at least two significant flaws that contribute to the WNA’s discriminatory impacts.

Primarily, as shown by May 2022’s extreme variation in WNA charges, application of the WNA by billing cycle contributes to volatility and inequity in rates and charges – causing charges to vary substantially among customers with different billing cycles but experiencing the same weather trends.⁶⁹

Additionally, PGW’s baseload determinations appear likely to inaccurately estimate the actual heat load to which the WNA applies. During the evidentiary hearings, PGW described the baseload as the monthly usage for each customer for July and August.⁷⁰ However, PGW acknowledged that baseload could reflect higher or lower usage than is typical for the customer based on their behavior – such as having house guests, taking vacations, adoption of baseload conservation measures or practices.⁷¹ Additionally, PGW utilizes class average baseload for customers without prior July and August load, without regard to the variability of usage within the class.⁷² Accordingly, the heating load may be under- or over-stated due to miscalculation of

⁶⁷ PGW St. 1 at 14.

⁶⁸ OCA St. 1 at 14.

⁶⁹ Id. at 13-14.

⁷⁰ May 24, 2023 Hrg. Tr. at 31-34.

⁷¹ Id. at 32-33.

⁷² Id. at 35-37; 69:

customer baseload, resulting in inequitable application of the WNA. As CAUSE-PA witness Harry Geller explained, such variations could have a discriminatory impact in application of the WNA - punishing customers who reduce their usage through adoption of energy efficiency and conservation measures.⁷³ This result runs contrary to the Commission's Policy Statement, which requires consideration of how an alternative ratemaking mechanism limits or eliminates disincentives for the promotion of efficiency programs or impacts incentives to employ efficiency measures.⁷⁴

Troublingly, PGW has not conducted any analysis of whether the WNA is properly limited to heating customers within the General Service (GS), Municipal Service (MS) and Philadelphia Housing Authority (PHA) classes. During the evidentiary hearings, PGW's witness admitted that she did not know whether non-heating GS or MS customers had higher winter loads.⁷⁵ Likewise, PGW was unaware of whether customers in the IT class also had higher winter loads.⁷⁶ The only meaningful explanation PGW could provide for why these customers are not charged the WNA was that the mechanism had been in place for 20 years.⁷⁷ Accordingly, while it is clear that PGW's WNA unreasonably discriminates between customers of the same class to whom it applies, it also appears likely that the WNA unreasonably discriminates between customers based on whether the customer is designated as a heating or non-heating customer, or included or excluded from the classes to which WNA applies.

And so, if there's significant variability, using the class average becomes less and less reasonable as that variability increases. And you do see, you know, depending on how specific your classes are defined, you can see quite significant variability.

⁷³ CAUSE-PA St. 1 at 10-11; CAUSE-PA St. 1-SR at 3.

⁷⁴ 52 Pa. Code § 69.3302(5)-(6).

⁷⁵ May 24, 2023 Hrg. Tr. at 25, 27.

⁷⁶ *Id.* at 27-28.

⁷⁷ *Id.* at 28.

In addressing the discriminatory nature of the WNA, it is important to consider, as CAUSE-PA’s witness observed, the annual WNA charges and credits assessed to PGW customers have increased dramatically, shifting the financial risk of increasingly warm weather from PGW to its customers.⁷⁸ As a result, if permitted to continue, the overall increase in WNA charges billed to customers over time, together with the billing cycle volatility, will contribute to *even more rate discrimination* in future heating seasons. In contrast, however, the WNA will fail to respond to potential cost changes (savings) to PGW associated with reduced throughput, because the WNA operates in isolation and without review of PGW’s wholistic revenue needs.⁷⁹ Notably, these facts run contrary to multiple factors in the Commission’s Policy Statement regarding the impact of an alternative rate mechanism on capacity utilization, anticipated consumption levels, and energy efficiency adoption.⁸⁰

B. PGW’s WNA Detrimently Impacts Low Income Customers and the Effectiveness of PGW’s Customer Assistance Program.⁸¹

Taking account of the extent to which PGW customers can bear volatility risk requires a particularized consideration of the impact of the WNA on low-income customers. Contrary to PGW’s suggestion that the focus of this proceeding should be limited and supported solely on the basis of the WNA’s beneficial revenue impacts to PGW,⁸² the imposition of WNA charges on

⁷⁸ CAUSE-PA St. 1 at 4.

⁷⁹ May 24, 2023 Hrg. Tr. at 65.

⁸⁰ 52 Pa. Code § 69.3302(a)(2), (3), (6).

⁸¹ 52 Pa. Code § 69.3302(a)(7) (*How the ratemaking mechanism and rate design impact low-income customers and support consumer assistance programs.*).

⁸² See, e.g. PGW St. 1 at 14 (“Any [WNA] modification would have to not fundamentally or materially harm the essential benefit of the WNA – to make weather variations a neutral factor to both customers and PGW.”); PGW St. 1-R at 9 (“When the weather significantly varies from the normal levels that the Commission has used to calculate PGW’s anticipated revenues and authorize a specific amount of rate relief, the WNA properly adjusts the charges imposed by PGW to produce the revenue levels determined by the Commission.”); PGW St. 1-RJ at 7 (“Therefore, in its efforts to ensure sufficient revenues to support its day-to-day operations, not to mention the consumer protection proposal the Company filed to initiate this proceeding and the emergency relief request discussed above, PGW is completely focused on any potential negative impact of the WNA on its customers.”).

those most vulnerable customers is a vital consideration. Indeed, the impact of extraordinarily high WNA charges on low income customer bills are far more likely to place them in jeopardy of serious financial and physical harm.⁸³ As Mr. Geller concludes:

Excessive charges levied through PGW's WNA necessarily fall hardest on low income families – exacerbating existing disparities in payment trouble and termination rates across low income customer groups. It is unjust and unreasonable to require struggling low income customers to use their limited resources to pay for gas they did not use.⁸⁴

It is important to reiterate the emphasis that the Commission has placed on affordability in this context. As Mr. Geller explained:

In launching the most recent statewide inquiry into alternative rate design, which culminated in the adoption of formal Commission policy, then-Commissioner David W. Sweet highlighted the critical importance of considering the rate impact on all consumers, “especially those who are considered low-income or income challenged. Because these segments of the population are most vulnerable and are affected by even the slightest of rate changes, a careful approach must be taken in making any rate methodology changes.”⁸⁵

This emphasis on consideration of impacts to low income customers is reflected in the Commission's final Policy Statement, which requires consideration of the impact an alternative ratemaking mechanism would have on low income customers and support for customer assistance programs.⁸⁶ In direct contravention of these factors, PGW's WNA is both detrimental to low income customers and increases costs for PGW's CRP.

Because the majority (72%) of PGW's estimated low income customers are not participants in its Customer Responsibility Program (CRP), a significant number of low income customers are subjected to the risk of unjust and inequitable imposition of rates and charges via PGW's WNA.⁸⁷

⁸³ CAUSE-PA St. 1 at 7-11.

⁸⁴ *Id.* at 11.

⁸⁵ CAUSE-PA St. 1-SR at 4, *citing* Fixed Utility Distribution Rates Policy Statement, Docket M-2015-2518883, March 2, 2017, Stmt. Of Comm'r Sweet at 1.

⁸⁶ 52 Pa. Code § 69.3302(a)(7).

⁸⁷ CAUSE-PA St. 1-SR at 5.

Mr. Geller explained that “PGW’s WNA has resulted in consistently (and increasingly) higher charges for consumers year-over-year,” to the tune of \$43.5 million over the past five years, with the annual charges growing year-over-year.⁸⁸ He explained that these charges fall hardest on low income customers, requiring them to pay a disproportionate percentage of their income and that, “Every dollar of added cost from the WNA disproportionately impacts low income customers’ ability to afford basic necessities.”⁸⁹ He stated:

In short, PGW’s WNA is serving to unjustly inflate combined household energy burdens, exacerbating existing disparities in energy burdens experienced by low income communities and communities of color.⁹⁰

The WNA also limits the effectiveness of PGW’s customer assistance program, also known as the Customer Responsibility Program (CRP). CRP customers are not exempt from the WNA. In testimony, Mr. Geller explained that, while some CRP participants whose bills are calculated based on a percentage of their income are insulated from the WNA charges, others who pay according to their average bill amount are levied the full WNA charge.⁹¹ He also noted that, for CRP percentage of income customers, the cost of the WNA charge is passed on through the universal service rider and born by other ratepayers, compounding their own WNA charges and driving up the cost of the CRP program.⁹²

Energy unaffordability is especially acute in the city of Philadelphia, where the poverty rate is nearly double the statewide poverty rate, with 22.8% of residents living in poverty, including 34.2% of children and 21.2% of senior citizens.⁹³ The inability to afford home energy services has a profound impact on families – causing many to forego food, medicine, and other basic necessities

⁸⁸ CAUSE-PA St. 1 at 4-5.

⁸⁹ Id. at 5-8.

⁹⁰ Id. at 9.

⁹¹ Id. at 11-12.

⁹² Id. at 12.

⁹³ Id. at 7-8.

in order to maintain energy services to their home.⁹⁴ As Mr. Geller explained in testimony, “Considering the disproportionately high rate of poverty in the city of Philadelphia, it is imperative that all necessary measures be taken to alleviate energy insecurity and limit unnecessary additional costs such as the WNA charge.”⁹⁵

C. PGW’s WNA Disincentivizes Energy Efficiency Programming.⁹⁶

In his direct testimony, CAUSE-PA witness Mr. Geller submitted unrefuted testimony regarding the detrimental impact of PGW’s WNA on the effectiveness of energy efficiency programming.⁹⁷ He explained that, “The WNA also appears to have a perverse impact on energy efficiency and conservation efforts – imposing larger WNA charges on consumers who are able to reduce consumption through installation of energy efficiency measures.”⁹⁸ He noted that the WNA “has a particularly unjust impact on PGW’s low income customers who are able to substantially reduce high consumption through participation in the Low Income Usage Reduction Program (LIURP).”⁹⁹

While a warmer than normal month may cause a customer to reduce their usage, a household may have additional reduced usage due to recently adopted energy efficiency measures. PGW has not explained how or whether its WNA mechanism accounts for consumer adoption of energy efficiency measures in assessing WNA charges due to decreased usage, nor has it explained why its WNA results in disproportionately higher charges for some consumers. I am concerned that PGW’s WNA not only erodes the bill savings achievable through careful energy efficiency and conservation, but may also impose disproportionately high WNA charges for households that have significantly reduced their consumption for reasons other than changing weather – such as installation of energy efficient equipment.¹⁰⁰

⁹⁴ Id. at 8.

⁹⁵ Id.

⁹⁶ 52 Pa. Code § 69.3302(a)(5) (*How the ratemaking mechanism and rate design limit or eliminate disincentives for the promotion of efficiency programs.*); see also § 69.3302(a)(6) (*How the ratemaking mechanism and rate design impact customer incentives to employ efficiency measures and distributed energy resources.*).

⁹⁷ CAUSE-PA St. 1 at 11.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id.

Under cross examination, PGW witness Denise Adamucci was presented with hypothetical situations where a customer’s summer hot water usage fluctuated drastically due to life events such as house guests using additional water or the customer not using water because they are on vacation.¹⁰¹ She was asked whether PGW could discern those activities in determining customer baseload.¹⁰² She admitted that PGW would have no way to know whether changes in hot water usage affected baseload calculations and so the heat load subject to the WNA could be affected by such fluctuations.¹⁰³ She added that PGW recalculates baseload annually.¹⁰⁴ As a result, a variation in a customer’s baseload calculation in one year could produce significantly different WNA charges than the customer may experience in other years, without regard to differences in the weather. Similarly, as Mr. Geller explained in his direct testimony, a household may be punished for having reduced usage due to recently adopted energy efficiency measures, “undermining critical efficiency goals and denying families the ability to reduce energy costs through careful conservation and installation of efficiency measures.”¹⁰⁵ He explained:

Assessing a higher WNA charge on customers that have expended time and resources to adopt energy efficient appliances and home efficiency upgrades is fundamentally unfair and is uniquely harmful to low income consumers who rely on the ability to reduce consumption as a strategy to maintain service in their home.¹⁰⁶

Not only are these results inequitable but they run contrary to the explicit purpose of the Commission’s Distribution Rates Policy Statement to promote energy efficiency – as well as the explicit factors requiring consideration of whether an alternative rate mechanism promotes

¹⁰¹ May 24, 2023 Hrg. Tr. at 32-33.

¹⁰² Id. at 32-33.

¹⁰³ Id.

¹⁰⁴ Id. at 33.

¹⁰⁵ CAUSE-PA St. 1-SR at 3.

¹⁰⁶ Id.

efficiency programs, incentivizes customers to adopt efficiency measures, and supports low-income customers.¹⁰⁷

D. PGW’s WNA Violates Cost Causation Principles.¹⁰⁸

An alternative rate design methodology should reflect the sound application of cost of service principles.¹⁰⁹ The principle of cost causation “requires that the cost of supplying public utility services is allocated to those who cause the costs to be incurred.”¹¹⁰ In contrast, PGW asserts that its WNA is designed to allow the utility to collect its approved level of revenue regardless of weather variations.¹¹¹ When weather variations cause customers to use less gas, those customers are levied a surcharge to make up for PGW’s lost revenue due to the decreased usage.¹¹² As CAUSE-PA witness Harry Geller explained that “PGW’s WNA has resulted in consistently (and increasingly) higher charges for consumers year-over-year.”¹¹³ He further explained that “It is unjust and unreasonable to require struggling low income customers to use their limited resources to pay for gas they did not use.”¹¹⁴ OCA witness Nelson also explained in his testimony that, “While customers that consume more should pay proportionally more, the short reconciliation cycle exposes customers to undue volatility risk that is unrelated to cost causation for the distribution system.”¹¹⁵

¹⁰⁷ 52 Pa. Code § 69.3301, 3302(a)(5)-(7).

¹⁰⁸ 52 Pa. Code § 69.3302(a)(1) (*How the ratemaking mechanism and rate design align revenues with cost causation principles as to both fixed and variable costs.*).

¹⁰⁹ *Id.*

¹¹⁰ Pa. PUC v. PECO Energy Co., R-2018-3000164, Final Order at 73 (entered Dec. 20, 2018), aff’d NRG Energy, Inc. v. Pa. PUC, 233 A.3d 936 (Pa. Commw. Ct. 2020).

¹¹¹ PGW St. 1-R at 2, 9.

¹¹² CAUSE-PA St. 1 at 3-4.

¹¹³ CAUSE-PA St. 1 at 11.

¹¹⁴ *Id.*

¹¹⁵ OCA St. 1 at 15.

OCA's witness demonstrated how PGW's WNA distorts and magnifies billing disparity between customers. Indeed, as Mr. Nelson explained, the WNA mechanism "acts as a multiplier," disproportionately impacting higher users and without associated cost causation.¹¹⁶ Furthermore, as discussed above, given that all PGW customers experience, on average, the same weather trends, the documented bill volatility defies cost causation. After all, in such instances, the weather is not causing costs to vary between customers – such variance is based on the arbitrary billing cycles into which customers fall. This violates the principle of cost causation because PGW customers are being charged for costs that they did not cause and is contrary to the Commission's Distribution Rates Policy Statement.¹¹⁷

E. PGW Has Failed to Carry its Burden to Support Continuation of the WNA.

This proceeding authorizes and directs the investigation into the "lawfulness, justness, and reasonableness" of PGW's proposed WNA, without limitation, and authorizes the consideration of the "lawfulness, justness, and reasonableness" of existing PGW rates, rules, and regulations. Pursuant to the analysis conducted by witnesses for OCA and CAUSE-PA, PGW's WNA, is unlawful, unjust, and unreasonable. Moreover, PGW fails to present any evidence to support a contrary conclusion. Although PGW provides a lengthy explanation of the intention of the WNA when implemented many years ago, and the purposes for which it was established,¹¹⁸ PGW does not squarely respond regarding the WNA's discrimination, in operation. Indeed, the sole evidence proffered by PGW for continuing the WNA in its present form (subject to a 25% cap or omitting the month of May, discussed below) is its testimony regarding the importance of cash flow and

¹¹⁶ *Id.*

¹¹⁷ 52 Pa. Code §§ 69.3301, .3302(1).

¹¹⁸ PGW St. 1 at 5-10.

revenue neutrality to municipally-owned PGW.¹¹⁹ As PGW’s witness summarized: “[T]he WNA continues to be an important force to PGW’s financial health and stability, which, because we’re municipally-owned, also benefits our ratepayers.”¹²⁰ This argument focuses solely on the benefits of the WNA to PGW’s cash flow but ignores the disparate and detrimental impacts that the alternative rate mechanism has on consumers and, specifically, PGW’s low income customers.¹²¹

PGW presents no rationale or legal basis to continue in place an unlawfully discriminatory rate, which unreasonably prejudices and disadvantages customers within the same class, and likely between different classes. The inapplicability of the WNA to customer classes based on the presumption, without supporting evidence, that their usage does not increase during the winter unfairly discriminates against heating customers to whom the WNA applies. Likewise, the use of potentially flawed baseload calculations and reliance upon billing cycles creates volatility without cost causation, producing bills which prejudice and disadvantage some customers arbitrarily. PGW’s desire for reliable cash flow and revenue neutrality does not override the fundamental principles of law that prevent customers from facing discriminatory rates. For these reasons, PGW’s WNA should be discontinued.

F. A 25% Cap on WNA Charges Does Not Resolve Inherent Inequities in Operation and Application of the Alternative Rate Mechanism.

Although, as set forth in PGW’s Rebuttal and Rejoinder Testimonies, PGW has no interest in pursuing the 25% cap,¹²² it remains a proposal on the record of this proceeding.¹²³ PGW originally supported a 25% cap as accomplishing two objectives: (1) preserving the Company’s

¹¹⁹ PGW St. 1-R at 8-9; PGW St. 1-RJ at 2-3.

¹²⁰ May 24, 2023 Hrg. Tr. at 42-43.

¹²¹ CAUSE-PA St. 1-SR at 2-3.

¹²² PGW St. 1-R at 4; PGW St. 1-SR at 10.

¹²³ See, e.g., May 24, 2023 Hrg. Tr. at 40-41.

financial health, and (2) “protect[ing] customers, to the extent possible, from unusually large increases resulting from abnormal weather occurring in Philadelphia during the winter heating season.”¹²⁴ PGW described its proposed 25% cap as “a quick solution to protect consumers in the event that the WNA, due to abnormal weather, produced an unusually large increase during the current heating season.”¹²⁵ As proposed by PGW, the 25% cap would apply both to charges and credits.¹²⁶

OCA’s witness asserts that the 25% cap fails to address the underlying problems with the WNA, and “indicates that the underlying WNA methodology results in extremely volatile charges – over 25%! – which should be addressed at their root.”¹²⁷ Mr. Geller, on behalf of CAUSE-PA, submits that the 25% cap will not resolve the inherent inequity in the WNA, and that PGW has not produced any data supporting the operation of the 25% cap to permit an analysis of the scope of rate discrimination that would continue if it were implemented.¹²⁸

Ultimately, as of the filing of this brief, no party is supporting the implementation of a 25% cap.¹²⁹ Such a cap would fail to resolve the underlying issues with the WNA, which result from the mechanism’s reliance upon billing cycles, which arbitrarily produce discriminatory rates and charges. The 25% cap is not a viable solution to the structural flaws of the WNA.

G. Elimination of May from Calculation of the WNA Does Not Resolve Inherent Inequities in Operation and Application of the Alternative Rate Mechanism.

PGW filed a Petition for Emergency Order on April 27, 2023, requesting permission to exclude May 2023 from the WNA, and referencing an analysis performed by its consultant,

¹²⁴ PGW St. 1 at 8.

¹²⁵ *Id.* at 12.

¹²⁶ *Id.* at 13.

¹²⁷ OCA St. 1 at 17.

¹²⁸ CAUSE-PA St. 1 at 14.

¹²⁹ PGW St. 1-RJ at 10.

Atrium.¹³⁰ As PGW describes it, Atrium concluded that temperatures for the month of May “have become unusually divergent from the current normal.”¹³¹ PGW’s petition was granted by Emergency Order, which has subsequently been ratified. In Rejoinder Testimony, PGW submits as follows:

The evidence appears clear: to the extent that the WNA is producing concerning results, those results are focused on May. Elimination of May in the formula, therefore, would be reasonable. PGW would support an Order permanently removing May from the formula in this proceeding.¹³²

Accordingly, although PGW has not explicitly proposed elimination of May from the WNA as a solution to the WNA’s structural flaws, and maintained as late as its Rebuttal Testimony that the sole issue in this proceeding is its proposed 25% cap,¹³³ CAUSE-PA and TURN submit that the elimination of May does not address the core inequities of PGW’s WNA.

As a threshold matter, PGW’s testimony regarding clear evidence in support of eliminating May from the WNA is hollow. Atrium’s report was not admitted to the record in this proceeding, so the only evidence supporting PGW’s position is the conclusory testimony of Ms. Adamucci, which makes only passing reference to the report.¹³⁴

Nevertheless, putting aside PGW’s lack of evidentiary record support for its proposal, CAUSE-PA and TURN submit that simply removing the month of May from the WNA does not rectify the inequities with PGW’s WNA. As discussed above, OCA’s witness documented significant rate volatility in the WNA throughout the heating season. OCA’s witness provided an example to show how the WNA disproportionately impacts customers based on usage,

¹³⁰ Atrium’s report has not been admitted into evidence in this proceeding.

¹³¹ PGW St. 1-R at 3.

¹³² PGW St. 1-RJ at 5.

¹³³ PGW St. 1-R at 5.

¹³⁴ See, e.g., May 24, 2023 Hrg. Tr. at 17 (“This is a proposal that we made in our case based on the evaluation of our consultant.”).

demonstrating “volatility that is unrelated to cost causation for the distribution system.”¹³⁵ Even a slight deviation in normal usage, OCA submitted, could generate significant financial consequences to customers under the WNA.¹³⁶

Although this risk is particularly heightened during the shoulder months (October and May), it remains throughout the heating season. Particularly with warming weather trends, the risk is not contained to May and so the elimination of May cannot ensure that customers will not experience rate volatility and significant rate discrimination in any month to which the WNA applies. Elimination of May is not a solution to the structural flaws with the WNA and does not resolve its discriminatory treatment of customers based on billing cycle and baseload determinations.

H. OCA Proposed Modifications Lack Specificity

OCA’s witness proposes, as an alternative to discontinuing the WNA, that PGW adopt an annual, rather than monthly, reconciliation cycle for the WNA and implement a 5% cap on charges (but not credits). Additionally, OCA recommends that PGW utilize a ten year average of Heating Degree Days (HDD) to calculate normal usage.¹³⁷ While CAUSE-PA and TURN acknowledge that OCA’s proposal is intended to largely eliminate the rate volatility customers are currently experiencing due to the monthly reconciliation tied to billing cycles, they nonetheless submit that OCA’s proposal would require further development to be workable.

As discussed during the evidentiary hearings, OCA’s witness’s proposal to utilize an annual reconciliation mechanism would require development of an adjustment that applies at the class level, potentially as a class per decatherm charge as opposed to a customer specific charge.¹³⁸

¹³⁵ OCA St. 1 at 15-16.

¹³⁶ Id.

¹³⁷ OCA St. 1 at 20.

¹³⁸ May 24, 2023 Hrg. Tr. at 74.

When asked how that mechanism would work, OCA's witness responded, "I haven't worked out the specifics of it."¹³⁹ Additionally, OCA's witness acknowledged that he had not specifically determined when the adjustment would apply, but that it could be structured to work "annually, seasonally or through the heating season...[or] you can carry it through the summer as well."¹⁴⁰ By including a 5% cap, OCA's witness explained that the proposed annual reconciliation would avoid adversely harming customers.¹⁴¹

Although CAUSE-PA and TURN appreciate OCA's identification of potential changes to PGW's WNA that could avoid volatility and protect customers from discriminatory charges, implementation of an annual reconciliation mechanism is not an adequately developed proposal. The manner in which the adjustment would be calculated, and how it would apply in practice, have not been identified. As a result, CAUSE-PA and TURN submit that OCA's proposed changes to the WNA lack specificity and cannot be implemented. For these reasons, CAUSE-PA and TURN maintain that the WNA should be discontinued, as this is the only position supported by the record in this proceeding.

VII. CONCLUSION

As set forth herein, PGW has failed to carry its burden of proving that its WNA can produce just and reasonable rates for customers. To the contrary, CAUSE-PA and TURN have demonstrated that PGW's WNA produces unnecessary rate volatility for a subset of PGW customers, and is discriminatory against customers within the same class, and likely between customers of different classes. A proper review of PGW's WNA pursuant to the Commission's Policy Statement demonstrates the ratemaking mechanism should no longer continue in place.

¹³⁹ Id.

¹⁴⁰ Id. at 75-76.

¹⁴¹ Id. at 76.

None of the parties to this proceeding have identified changes to PGW's WNA that can successfully be implemented, at this time, to avoid the WNA's inequitable operation. The Commission should require PGW's WNA to be discontinued and should require PGW to make appropriate changes to its tariff to remove references to the WNA.

Respectfully Submitted,

Counsel for TURN



Robert W. Ballenger, Esq., PA ID: 93434
Joline R. Price, Esq. PA ID: 315405

COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102

Tel.: 215-981-3700
Fax: 215-981-0434

Counsel for CAUSE-PA



John W. Sweet, Esq., PA ID: 320182
Elizabeth R. Marx, Esq., PA ID: 309014
Ria M. Pereira, Esq., PA ID: 316771
Lauren N. Berman, Esq., PA ID: 310116

PENNSYLVANIA UTILITY LAW PROJECT
118 Locust Street
Harrisburg, PA 17101

Tel.: 717-710-3825
Fax: 717-233-4088

Date: June 7, 2023

APPENDIX A: PROPOSED FINDINGS OF FACT

1. PGW's Weather Normalization Adjustment clause (WNA) is an automatic bill adjustment applied from October 1 through May 31 each year. It adjusts customer bills based upon the degree to which actual weather in the service territory varies from "normal" temperatures. CAUSE-PA St. 1 at 3-4.
2. For purposes of determining heating load due to weather that varies from "normal" temperatures, PGW calculates "baseload" for each customer. May 24, 2023 Hrg. Tr. at 31.
3. Baseload is typically the monthly usage for each heating customer for July and August. May 24, 2023 Hrg. Tr. at 31.
4. For heating customers without July and August usage, PGW uses class average baseload, without regard to variability within the class. May 24, 2003 Hrg. Tr. at 35-37.
5. July and August usage could reflect higher or lower usage than typical for the customer based on usage, or lack of usage, due to customer behavior. May 24, 2023 Hrg. Tr. at 32-33.
6. Baseload is recalculated each year for heating customers. May 24, 2023 Hrg. Tr. at 33.
7. PGW is unaware of whether non-heating General Service (GS), non-heating Municipal Service (MS) or Interruptible Transmission customers have higher winter heating loads. May 24, 2023 Hrg. Tr. at 25-28.
8. PGW's WNA was originally authorized in 2002. PGW St. 1 at 5.
9. All customers in PGW service territory experience the same weather and the same delta between normal and actual heating degree days. OCA St. 1 at 13.
10. Over the past 5 consecutive Fiscal Years (September 1 – August 31), PGW's WNA has consistently (and increasingly) resulted in higher charges for customers, year-over-year. CAUSE-PA St. 1 at 4.
11. In May 2022, temperatures in Philadelphia were unusually warm and gas consumption was low. Due to the WNA, some customers in particular billing groups faced disproportionately high gas bills solely because of a high WNA charge. OCA St. 1 at 9.
12. The extent to which customers experienced significant rate shock due to the WNA was specific to the billing cycle, with customers in some cycles having an average WNA charge of \$3.95 and others having an average charge of \$87.28. OCA St. 1 at 9 (citing Weather Normalization Adjustment Report to the Pa. PUC, August 12, 2022, at 11).
13. One witness testified to receiving a \$255.30 bill PGW bill in June, of which nearly 80% (\$201.51) was attributable to the WNA. March 9, 2023 Hrg. Tr. at 63; OCA St. 1 at 10.

14. PGW's monthly reconciliation increases WNA charge volatility and exposes customers to discriminatory risks beyond their control and unrelated to cost causation for the distribution system. OCA St. 1 at 14-15.
15. WNA charge volatility exacerbates energy insecurity for low income customers, who cannot afford to pay for gas they did not use. CAUSE-PA St. 1 at 10.
16. Energy unaffordability is especially acute in the city of Philadelphia, where the poverty rate is nearly double the statewide poverty rate, with 22.8% of residents living in poverty, including 34.2% of children and 21.2% of senior citizens. CAUSE-PA St. 1 at 7-8.
17. Energy unaffordability has a profound impact on families, causing many low income customers to forego food, medicine, and other basic necessities in order to maintain energy services to their home. CAUSE-PA St. 1 at 8.
18. 72% of PGW's estimated low-income customers have no protection from the financial burden imposed by the WNA. CAUSE-PA St. 1-SR at 5.
19. Excessive WNA charges necessarily fall the hardest on low income families, exacerbating existing disparities in payment trouble and termination rates across low income customer groups. CAUSE-PA St. 1 at 11.
20. For customers enrolled in PGW's customer assistance program, CRP, participants receiving a percentage of income rate, the cost of the WNA charge is passed on through the universal service rider and born by other ratepayers, compounding their own WNA charges and driving up the cost of the CRP program. CAUSE-PA St. 1 at 12.
21. PGW's WNA can impose larger WNA charges on consumers who are able to reduce consumption through installation of energy efficiency measures. CAUSE-PA St. 1 at 11.
22. A household may have additional reduced usage due to recently adopted energy efficiency measures. CAUSE-PA St. 1 at 11.
23. PGW has not explained how or whether its WNA mechanism accounts for consumer adoption of energy efficiency measures in assessing WNA charges due to decreased usage. CAUSE-PA St. 1 at 11.
24. PGW proposed to put in place a 25% CAP on WNA charges and credits. PGW St. 1 at 10-11; Supplement No. 152 to Gas Service Tariff – Pa. P.U.C. No. 2 (Tariff Supplement No. 152).
25. The proposed 25% cap would not remediate the financial strain or inherent inequity created by the WNA. CAUSE-PA St. 1 at 14.
26. Under PGW's proposed cap a customer with a total bill (excluding WNA) of \$36.96 would still face a maximum WNA charge of \$9.24. CAUSE-PA St. 1 at 13-14.
27. PGW's 25% would not resolve discriminatory impacts due to billing cycle nor appropriately protect consumers against extreme bill impacts. OCA St. 1 at 16.

28. The underlying WNA methodology would continue to result in volatile charges and the 25% cap would still result in rate shock. OCA St. 1 at 17.
29. PGW has abandoned its proposed 25% cap. PGW St. 1-R at 5-6.
30. OCA proposed that PGW transition the WNA to an annual reconciliation mechanism, place a 5% cap on charges (but not credits), and utilize a 10-year estimate of normal heating degree days. OCA St. 1 at 19.
31. OCA's proposed transition requires additional specifics to be worked out before it could be implemented. May 24, 2023 Hrg. Tr. at 20.
32. PGW submits that it "would support an Order permanently removing May from the formula in this proceeding." PGW St. 1-RJ at 5.
33. Elimination of May from the formula would not resolve structural flaws with the WNA because even a slight deviation in normal usage could generate significant financial consequences to customers under the WNA. OCA St. 1 at 15-16.

APPENDIX B: PROPOSED CONCLUSIONS OF LAW

1. In any rate case filed pursuant to section 1308 of the Public Utility Code, the burden of proof is on the public utility. 66 Pa.C.S. §§ 315(a).
2. The public utility must satisfy its burden of proof by a preponderance of the evidence, NRG Energy, Inc. v. Pa. PUC, 233 A.3d 936, 939 (Pa. Commw. Ct. 2020).
3. The Public Utility Code recognizes that classifications of customers based on a variety of circumstances can justify the establishment of different rates and charges. 66 Pa. C.S § 1304.
4. Pursuant to section 1301 of the Public Utility Code, the Commission has a “duty to set ‘just and reasonable’ rates, reflecting a ‘balance of consumer and investor interests.’” Popowsky v. PUC, 665 A.2d 808, 811 (Pa. 1995); 66 Pa. C.S. § 1301.
5. The Commission’s Distribution Rate Policy Statement is intended to “promote the efficient use of electricity, natural gas and water through technologies and information.” 52 Pa Code § 69.3301.
6. An evaluation under the fourteen factors set forth in the Distribution Rate Policy Statement demonstrates that PGW’s WNA is not a just and reasonable alternative distribution ratemaking mechanism and should be discontinued. 52 Pa Code § 69.3302.
7. “[A]n alternative rate design methodology should reflect the sound application of cost of service principles, establish a rate structure that is just and reasonable, and consider customer impacts.” 52 Pa Code § 69.3301.
8. The Public Utility Code prohibits the establishment of rates or charges which subject any person to unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1304.
9. The Public Utility Code prohibits maintaining an unreasonable difference in service that subjects any person to unreasonable prejudice or disadvantage. 66 Pa. C.S. § 1502.
10. The Public Utility Code prohibits rates for one class of service being unreasonably prejudicial and disadvantageous to a patron in another class of service. Bldg. Owners & Managers Ass’n v. Pa. PUC, 470 A.2d 1092, 1095–96 (Pa. Commw. Ct. 1984).
11. The Commission’s September 15, 2022 Order, at ¶¶ 1 and 4, placed the burden on PGW to justify its existing WNA rates and charges, as well as any modification it proposed to them. See Sharon Steel Corp. v. Pa. PUC, 468 A.2d 860, 862 (Pa. Commw. Ct. 1983).
12. As the proponent of Tariff Supplement No. 152, PGW bears the burden of showing that each aspect of its rate proposal is just and reasonable and satisfies all applicable law. See, e.g., Brockway Glass Co. v. Pa. PUC, 437 A.2d 1067 (Pa. Commw. Ct. 1981).

13. PGW has failed to carry its burden of proof, whereas OCA and CAUSE-PA have put forward evidence demonstrating the unreasonableness of permitting PGW's WNA to remain in effect (See, e.g., Univ. of Pa. v. Pa. PUC, 485 A.2d 1217, 1226 (Pa. Commw. Ct. 1984)), because:
- a. PGW's WNA is structurally flawed, causing customers in certain billing cycles to experience extreme rate volatility, despite experiencing the same weather conditions, and thus unreasonably discriminates, prejudicing or disadvantaging certain customer groups arbitrarily.
 - b. PGW's baseload assumptions for heating customers may not fully or correctly capture actual "baseload" due to customer behavior and/or class variability, contributing to discrimination within and between customer classes.
 - c. PGW has not conducted an investigation into the winter usage patterns of nonheating General Service, Municipal Service, or Interruptible Transmission customers sufficient to conclude that its WNA does not unreasonably discriminate in favor of those customers to the detriment of heating customers to whom the WNA applies.
 - d. PGW's WNA detrimentally impacts its low income customers and its customer assistance programs, including CRP and LIURP.
 - e. PGW's WNA disincentivizes energy efficiency adoption and does not support energy efficiency programming.
 - f. PGW's WNA violates cost causation principles.

APPENDIX C: PROPOSED ORDERING PARAGRAPHS

It is hereby ORDERED THAT:

1. PGW's Petition for Approval of Tariff Supplement No. 152 is denied.
2. PGW's WNA is discontinued effective immediately.
3. PGW will file a compliance tariff reflecting the removal of its WNA and any references thereto within 60 days of this Order.