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June 7, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Supplement No. 152 to the 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 :

Enclosed for electronic filing please find Philadelphia Gas Works' Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

Enclosure

cc: Hon. Marta Guhl w/enc.
pmcneal@pa.gov w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the PGW's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: June 7, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Pursuant to 52 Pa. Code §§ 5.501 and 5.502, the Prehearing Conference Order of Administrative Law Judge (“ALJ”) Marta Guhl dated February 22, 2023, and the ALJ’s Briefing Order issued on June 5, 2023, Philadelphia Gas Works (“PGW” or “Company”) files this Main Brief. PGW respectfully requests that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) leave intact the Weather Normalization Adjustment (“WNA”) clause that is in PGW’s existing Commission-approved Tariff. To the extent that the Commission desires to implement a consumer protection in this case to prevent a recurrence of the anomaly that occurred with May 2022 usage causing customers to face unusually large WNA charges, PGW urges the Commission to take the single step of approving the removal of May from the WNA calculation. The testimony presented by PGW’s expert witness in this proceeding noting the warming weather trends for May that have been experienced in Philadelphia over the past ten years supports such a modification of PGW’s WNA.

Over twenty years ago, the Commission approved the implementation of a WNA by PGW. This clause is a type of decoupling mechanism that has enabled PGW to bill its customers at the level of revenues authorized by the PUC in the last base rate case regardless of the actual weather that is experienced in the Company’s Philadelphia service territory during the heating season. Before PGW implemented its WNA, it was continually battling to stave off financial crisis, including the filing of a request for extraordinary rate relief with the Commission. The WNA has strengthened PGW’s financial position in terms of access to the capital market, days of cash on hand and debt service coverage ratios; a satisfactory financial position is critical to the Company’s continued safe and adequate provision of natural gas service to ~500,000 customers in Philadelphia. Since PGW has no shareholders, and its ratepayers are the sole source of funds needed to operate the business, the WNA is crucial to maintaining PGW’s needed level of cash

flow, which, in turn is essential to ensuring that the Company's customers continuously receive essential gas utility service despite departures from normal weather levels during the winter in Philadelphia. In short, the evidence adduced by PGW demonstrates the value of the WNA to the Company's financial health, which in turn benefits ratepayers.

Existing tariff provisions, which have been approved by the Commission, are considered *prima facie* reasonable. Parties challenging an existing tariff provision of a public utility have a heavy burden of proving that application of the provision results in unjust and unreasonable rates. To prevail, it is incumbent upon the other parties in this proceeding to establish the need for their proposed modifications to the WNA, including its suspension or termination. Given the importance of the WNA to PGW's financial stability as a cash flow utility, and in view of the lack of evidentiary support for the other parties' proposals, the Commission should outright reject the efforts of the Office of Consumer Advocate ("OCA") and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") to suspend, pending modifications, or terminate the WNA.

For the same reasons, the PUC should decline to require the modifications to PGW's WNA advanced by OCA's witness, especially since the removal of May from the calculation makes them unnecessary and they would, in most instances, be the equivalent of terminating the WNA. Such a result is not in the public interest because it would place PGW's financial stability at risk, thereby harming its ratepayers through higher base rates that reflect the capital market's reaction to the loss of a mechanism that provides a level of certainty regarding the revenues that PGW will collect – considerations that the OCA witness appeared to not even consider.

PGW has operated with a WNA over 90 percent of the time the Company has been under the PUC's jurisdiction, meaning that operation without this mechanism would largely involve

treading into uncharted waters – for both PGW and the Commission. In view of the resulting harm to customers of a potential disruption in the provision of gas utility service due to PGW having insufficient cash to support its daily operations, it is imperative that this mechanism remain in place and provide the same level of financial stability that PGW, and in turn its ratepayers, have enjoyed for over twenty years.

It is important for the PUC to refrain from being drawn into the histrionic efforts of OCA and CAUSE-PA that call for the suspension or termination of the WNA due to a single anomaly in May 2022 over the course of twenty years. Likewise, this lone glitch in the formula – one for which PGW proactively sought and obtained emergency approval from the Commission to reverse the charges that had been assessed to customers – does not justify a complete overhaul or termination of the WNA.

Notably, in seeking to significantly modify or eliminate PGW’s WNA, the witnesses for OCA and CAUSE-PA are asking the PUC to abruptly depart from and move in the opposite direction of its recent trends of approving the implementation of such mechanisms by natural gas utilities. While PGW was the first natural gas utility in Pennsylvania to gain approval for a WNA, the Commission has since permitted two investor-owned utilities, Columbia Gas of Pennsylvania and UGI Utilities, Inc. – Gas Division, to implement WNAs – the most recent of which was approved less than one year ago.¹ The Commission has recognized the value of WNAs for the very reasons that PGW has pointed to in this case – financial stability for the utility so that it can focus on its infrastructure and the provision of natural gas services to its

¹ *Pa. Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. Public Utility Commission v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered September 15, 2022).

customers. And, currently, the PUC is evaluating a settlement proposal filed by National Fuel Gas Distribution Corporation in its pending base rate proceeding that provides for the implementation of a WNA, of which neither OCA nor CAUSE-PA opposed and the ALJ has recommended approval.² Of note, no witness in this proceeding has explained how, or even if, PGW's WNA is substantially different than the similar mechanisms that are in use by or proposed for other natural gas utilities in Pennsylvania. Likewise, the General Assembly is supportive of the implementation of decoupling mechanisms by utilities, as demonstrated through the passage of Act 58 of 2018, which added Section 1330 to the Public Utility Code. 66 Pa. C.S. § 1330. Eliminating PGW's WNA, or adopting "reforms" like a 5% cap advocated by OCA's witness which would have the same effect, are not justified and would fly in the face of the clear trend in Pennsylvania to allow more and more utilities to implement WNAs.

II. STATEMENT OF THE CASE

A. PGW

PGW is owned by the City of Philadelphia and provides public utility services as a city-owned natural gas distribution operation in the City of Philadelphia, consistent with Sections 102 and 2212 of the Public Utility Code. 66 Pa. C.S. §§ 102 (definitions) and 2212.³ PGW came under the jurisdiction of the Commission on July 1, 2000. Just and reasonable rates are determined for PGW using the cash flow method. As PGW is a city-owned utility with no shareholders, all the funds needed to run the Company come from ratepayers or from borrowing – the costs of which then must be paid by ratepayers. Therefore, rather than having its revenue

² *Pa. Public Utility Commission v. National Fuel Gas Distribution Corporation*, Docket No. R-2022-3035730 (Recommended Decision issued May 9, 2023, at pp. 1, 8 (footnote 4)-9, 29-32, Ordering Paragraph No. 1).

³ PGW St. No. 1 at 3.

requirement determined on the basis of a fair rate of return on a used and useful rate base that is applicable to other natural gas distribution companies (“NGDCs”), PGW’s rates are set by determining the appropriate levels of cash and other financial metrics to enable PGW to pay its bills and maintain access to the capital markets at reasonable rates.⁴

B. WNA

Traditionally, the base rates of NGDCs have been established on a “weather normalized” basis, i.e., rates are set to permit the company to earn at levels determined to be reasonable assuming that sales and revenues are at the levels the utility would experience if the level of experienced “Heating Degree Days” (“HDDs”) were at “normal” levels. Accordingly, when a year is colder or warmer than some determined normal level, the NGDC typically recovers more or less than the normalized amount, all other things being equal.⁵

A WNA mechanism is one way in which to balance out the effects of “abnormal” weather by permitting the utility to true-up its revenues when experienced HDDs in a given period are less than a determined normal level. Correspondingly, when experienced HDDs exceed normal levels, the utility adjusts its charges to provide credits to customers. The goal of the WNA design is to permit the utility to recover its authorized level of earnings that support its distribution system and, for a cash flow regulated utility, the company’s authorized level of cash and liquidity.⁶

PGW’s WNA is an automatic adjustment clause that adjusts billings to customers based upon the degree to which actual weather in its service territory varies from “normal” weather

⁴ PGW St. No. 1 at 3-4.

⁵ PGW St. No. 1 at 4.

⁶ PGW St. No. 1 at 4.

levels. Under the Commission-approved WNA, PGW applies the mechanism to customer usage from October 1 through May 31. As established by the Tariff, the charges or credits are calculated through a 20+ year old formula that considers historic normal HDDs and actual experienced HDDs for the billing cycle's usage.⁷

The Commission originally authorized PGW's WNA in 2002, when the WNA was approved as a three-year pilot in a settlement of the base rate case. *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-00017034 (Order entered August 8, 2002, Ordering Paragraph No. 5) ("*2002 Base Rate Case*"). The settling parties included PGW, the Office of Trial Staff ("OTS") - which was the predecessor of the Bureau of Investigation and Enforcement ("I&E"), the OCA, the Office of Small Business Advocate ("OSBA"), and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"). In the Recommended Decision ("R.D.") adopted by the Commission, the ALJ observed that the WNA "will provide more certainty in PGW's level of annual revenues." *2002 Base Rate Case* (Recommended Decision dated July 29, 2002, at 10-11). In addition, the R.D. referenced OCA's Statement in Support, which emphasized the "unique, immediate circumstances facing this municipally-owned utility." *Id.* (R.D. at 11). PGW was authorized to implement the WNA as soon as system modifications were completed. The WNA was implemented on December 1, 2002.⁸

PGW filed a report as required by settlement in the *2002 Base Rate Case* on May 4, 2006 ("2006 WNA Report"), which examined the performance of the WNA over the prior three years and its effect on reducing volatility of earnings. The 2006 WNA Report concluded that both the Company and its customers had benefited from the existence of the WNA over this period.

⁷ PGW St. No. 1 at 5.

⁸ PGW St. No. 1 at 5-6.

Additionally, PGW filed a Stipulation entered into by OCA and OTS agreeing to a continuation of the WNA clause on a permanent basis.⁹

Based on a settlement reached in PGW’s 2017 base rate case, normal weather is currently determined on the basis of a twenty-year average of HDDs. *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2017-25867833 (Order entered November 8, 2017, at pages 17-18 and Ordering Paragraph No. 3) (“*2017 Base Rate Case*”). The settling parties agreeing to shift from the use of a thirty-year normal to the twenty-year normal included PGW, I&E, OCA, OSBA, the Retail Energy Supply Association, PICGUG, CAUSE-PA and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN”). No other changes have been made since 2002, other than the refund for May 2022 usage and the removal of May 2023 usage, as referenced below.

C. 2022 Emergency Relief

As a result of extremely warm weather experienced in Philadelphia during a portion of May 2022, usage by customers in May 2022 resulted in unusually large charges due to the application of the long-standing and Commission-approved WNA. PGW filed a Petition for Emergency Order at Docket No. P-2022-3033477 on June 30, 2022 asking for Commission authorization to reverse the charges resulting from application of the WNA to May 2022 usage. In the Petition, PGW also noted that it had initiated an internal investigation. By Emergency Order issued on July 1, 2022 and ratified by Order adopted on July 14, 2022 (“Ratification Order”), the Commission approved PGW’s request, which resulted in the refund of approximately \$12.6 million to customers. In addition, the Ratification Order directed PGW to submit the report regarding its internal investigation by August 15, 2022.

⁹ PGW St. No. 1 at 7; PGW Exhibit DA-2.

D. Cap Petition

Even before submission of the report on August 12, 2022 required by the Ratification Order, and in an effort to protect consumers from potentially unusually large increases due to application of the WNA during the current heating season, which began on October 1, 2022, PGW filed Supplement No. 152 to Gas Service Tariff – Pa. P.U.C. No. 2 (“Supplement No. 152”) and a Petition for Approval on Less than Statutory Notice of Supplement Revising Weather Normalization Adjustment (“Cap Petition”) on August 2, 2022. Supplement No. 152 and the Cap Petition proposed to revise PGW’s Gas Service Tariff – Pa. P.U.C. No. 2, Page Nos. 149-150, effective October 1, 2022 so that any increases resulting from application of the WNA would be capped at 25%.¹⁰

Despite PGW’s efforts to protect consumers during the current heating season, OCA and CAUSE-PA opposed the Cap Petition. By Order adopted on September 15, 2022, the Commission suspended Supplement No. 152 for investigation, thereby extending the effective date to April 1, 2023 (“Suspension Order”). As a result, the 25% cap did not go into effect on October 1, 2022 as requested by PGW. The matter was then assigned to ALJ Guhl to preside over the proceeding that was initiated by the filing of PGW’s Cap Petition and Supplement No. 152, which has been referred to as the WNA proceeding.¹¹

A prehearing conference was held on September 28, 2022. Parties participating in the prehearing conference included PGW, I&E, OCA, OSBA, CAUSE-PA and TURN.¹² At that

¹⁰ PGW Exhibit DA-1.

¹¹ PGW St. No. 1 at 2.

¹² PICGUG later intervened in the proceeding with the filing of a Petition to Intervene on December 15, 2022.

time, the parties were still developing a procedural schedule. During subsequent negotiations, PGW voluntarily extended the effective date of Supplement No. 152 from April 1, 2023 to October 1, 2023. PGW submitted the parties' proposed procedural schedule to ALJ Guhl by electronic mail ("e-mail") on October 3, 2022. That schedule called for the submission of direct testimony by PGW on November 30, 2022.¹³ No prehearing order was issued approving the procedural schedule.

On November 8, 2022, PGW filed a Petition for Leave to Withdraw ("Withdrawal Petition"), seeking leave to withdraw the Cap Petition and Supplement No. 152. Rather than litigating the proposed cap, PGW asserted that the most effective long-term solution was for the Company to examine various aspects of the WNA in the context of a base rate proceeding to determine if additional or different controls should be included. PGW contended that the WNA proceeding did not lend itself to that approach because the sole issue raised by the Cap Petition, in PGW's view, was the 25% cap on the WNA. Through the Withdrawal Petition, PGW offered to file a comprehensive WNA proposal by March 1, 2023, accompanied by direct testimony providing a rationale for the proposed components/controls.¹⁴ Also, on November 8, 2022, PGW filed a Motion to Hold Procedural Schedule in Abeyance ("Abeyance Motion").

On November 14, 2022, OCA and CAUSE-PA filed Answers to the Withdrawal Petition and to the Abeyance Motion. Although both parties opposed the Withdrawal Petition, they did not oppose PGW's Abeyance Motion. On November 18, 2022, OSBA filed a letter indicating that it was taking no position on either filing.

¹³ PGW St. No. 1 at 2.

¹⁴ Although PGW was contemplating the filing of a base rate case prior to March 1, 2023, a final decision had not yet been made.

As of November 28, 2022, the ALJ had not yet ruled on PGW's Withdrawal Petition or the Abeyance Motion. With PGW's direct testimony due on November 30, 2022 under the procedural schedule submitted on October 3, 2022, PGW contacted the ALJ by e-mail on November 28, 2022, again requesting that the procedural schedule be held in abeyance. The parties responded to the e-mail indicating that they had no opposition to PGW's request. By e-mail dated November 29, 2022, ALJ Guhl agreed to hold the procedural schedule in abeyance and directed PGW to give a status report by December 6, 2022. During further negotiations with the parties, PGW offered to extend the effective date from October 1, 2023 to October 5, 2023 to facilitate the development of a procedural schedule.¹⁵ By e-mail dated December 6, 2022, PGW transmitted the agreed upon schedule to ALJ Guhl. Again, no interim order was issued at that time to approve this procedural schedule.

On February 14, 2023, the date that was designated for the submission of the Company's direct testimony in the procedural schedule transmitted to ALJ Guhl via e-mail on December 6, 2022, PGW filed a letter at this docket, which was served on the ALJ and the parties, indicating that it did not intend to submit direct testimony.¹⁶ By that time, PGW's base rate case filing plans had been finalized and the letter indicated that PGW would address the WNA in detail in that proceeding.

By Prehearing Conference Order dated February 22, 2023, ALJ Guhl approved the procedural schedule submitted by PGW via e-mail on December 6, 2022, denied PGW's

¹⁵ With an October 1, 2023 effective date, the ALJ had advised the parties that the matter would need to be submitted for the August 24, 2023 Public Meeting. Extending the effective date by a few days enabled submission of the matter for the September 21, 2023 Public Meeting.

¹⁶ PGW St. No. 1 at 3.

Withdrawal Petition and lifted the abeyance. In Prehearing Order #2 served on the parties on February 23, 2023, the ALJ directed PGW to serve direct testimony on February 23, 2023.¹⁷

In accordance with this directive, PGW submitted the direct testimony of Denise Adamucci on February 23, 2023.¹⁸ Public input hearings were held on March 9, 2023. OCA served the direct testimony of Ron Nelson,¹⁹ and CAUSE-PA served the direct testimony of Harry S. Geller²⁰ on April 13, 2023. Ms. Adamucci responded to the testimony of Mr. Nelson and Mr. Geller through rebuttal testimony submitted by PGW on May 2, 2023.²¹ OCA and CAUSE-PA submitted the surrebuttal testimony of Mr. Nelson and Mr. Geller, respectively, on May 12, 2023,²² to which Ms. Adamucci responded on behalf of PGW via rejoinder testimony served on May 19, 2023.²³ An evidentiary hearing was held on May 24, 2023, at which time all the written pre-served testimony was admitted into the record, along with CAUSE-PA Hearing Exhibit 1.

E. 2023 Emergency Relief

On April 27, 2023, PGW filed a Petition for Emergency Order at Docket No. P-2023-3042033 seeking Commission approval to remove May 2023 from the WNA formula (“Emergency Petition”) in its Tariff. In the Emergency Petition, PGW expressed its concern

¹⁷ PGW St. No. 1 at 3.

¹⁸ PGW St. No. 1. This testimony was accompanied by PGW Exh. DA-1 through DA-3.

¹⁹ OCA St. 1. This testimony was accompanied by Schedule REN-1.

²⁰ CAUSE-PA St. 1. This testimony was accompanied by Appendices A and B.

²¹ PGW St. No. 1-R.

²² OCA St. 1-SR; CAUSE-PA St. 1-SR.

²³ PGW St. No. 1-RJ. This testimony was accompanied by PGW Exh. DA-4 and DA-5.

about the possibility of a recurrence in May 2023 of the May 2022 anomaly, from which customers would not be protected. This concern was largely based on the findings set forth in the expert report on PGW’s WNA that was submitted in the base rate case (as an exhibit to supplemental direct testimony) on April 3, 2023 and referenced here in the testimony of PGW witness Adamucci, regarding the warmer weather trends that have occurred in Philadelphia in May during the past ten years.²⁴ As noted in the Emergency Petition, the potential for a recurrence this year raised questions as to whether the inclusion of May “normal” weather data in the WNA formula continues to be reasonable.²⁵ An emergency order was necessary since PGW could not otherwise diverge from its existing Tariff, which includes May as part of the WNA reconciliation period. pg

On April 28, 2023, Vice Chairman Stephen M. DeFrank issued an Emergency Order (“2023 Emergency Order”), granting PGW’s Emergency Petition based on PGW’s experience in 2022 and its “ongoing efforts to address the potential for WNA anomalies.” 2023 Emergency Order at page 4²⁶. The 2023 Emergency Order referred to the recommendation made by PGW in the base rate case for the permanent removal of May from its WNA formula and acknowledged PGW’s expectation that the recommendation would be addressed in the base rate case. 2023 Emergency Order at page 2, footnote 3. In addition, the 2023 Emergency Order referenced the consultant’s report that PGW has submitted in the base rate case. 2023 Emergency Order at page 3, footnote 4.

²⁴ PGW St. No. 1-R at 3-4; PGW St. No. 1-RJ at 5; *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2023-3037933, Statement No. 8-SD (Supplemental Direct Testimony of Ronald J. Amen), Exhibit RJA-2.

²⁵ PGW St. No. 1-R at 3-4.

²⁶ PGW St. No. 1-R at 4.

By Order adopted on May 18, 2023, the Commission ratified the 2023 Emergency Order (“2023 Ratification Order”). In the 2023 Ratification Order, the Commission described the background as involving two separate proceedings: (i) the WNA proceeding, where the “Commission initiated an investigation into PGW’s WNA in 2022 due to a weather anomaly experienced in May 2022 resulting in refunds,” which is currently ongoing; and (ii) PGW’s base rate filing “wherein technical information related to the WNA has been submitted by PGW.” Ratification Order at 2. As a result, PGW removed May 2023 from the WNA this year, and the current WNA will not be operational again until October 1, 2023.

III. APPLICABLE LEGAL STANDARDS

A. Just and Reasonable Rates

Section 1301 of the Public Utility Code (“Code”) requires a public utility’s rates to be just and reasonable. 66 Pa. C.S. § 1301. Just and reasonable rates are determined for PGW using the cash flow method. As PGW is a city owned utility with no shareholders, all the funds needed to run the Company come from ratepayers or from borrowing – the costs of which then must be paid by ratepayers. Therefore, rather than having its revenue requirement determined on the basis of a fair rate of return on a used and useful rate base that is applicable to other NGDCs, PGW’s rates are set by determining the appropriate levels of cash and other financial metrics to enable PGW to pay its bills and maintain access to the capital markets at reasonable rates. The Commission issued a Policy Statement more fully setting forth these criteria, as well as the financial and other considerations that are to be reviewed in setting PGW’s rates at just and reasonable levels.²⁷

²⁷ 52 Pa. Code §§ 69.2702, 2703.

B. Burden of Proof

Under Section 315(a) of the Code, PGW has the burden of proving that the Company's proposed modifications to its existing WNA mechanism are just and reasonable. 66 Pa. C.S. § 315(a). However, because PGW's WNA is already in its Commission-approved Tariff, it is the other parties' burden to demonstrate that the existing Tariff provision is somehow unreasonable – not PGW's burden to justify its continued existence. Tariff provisions approved by the Commission are *prima facie* reasonable. *See, e.g., Brockway Glass v. PUC*, 437 A.2d 1067 (Pa. Commw. Ct. 1981); *Zucker v. PUC*, 401 A.2d 1377 (Pa. Commw. Ct. 1979); *U.S. Steel Corporation v. PUC*, 390 A.2d 865 (Pa. Commw. Ct. 1978); *Deitch Company v. PUC*, 203 A.2d 515 (Pa. Super. Ct. 1964).

Parties challenging such provisions bear a heavy burden to prove that facts and circumstances have changed drastically so as to render application of the Tariff provision unreasonable. *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996). Code Section 315(a) cannot reasonably be read to place the burden of proof on PGW with respect to an issue the utility did not include in Tariff filing and which, frequently, the utility would oppose. *PUC v. Appalachian Utilities, Inc.*, Docket No. R-2015-2478098 (Order entered March 10, 2016 adopting the Recommended Decision dated February 19, 2016, at 20) 2016 Pa. PUC LEXIS 62. Therefore, the burden of proof must be on the party who proposes a change beyond that sought by the utility. Since OCA and CAUSE-PA are making proposals that would significantly modify, suspend or terminate the WNA, they were required to come forward with evidence challenging the assumption of reasonableness enjoyed by existing Tariff provisions.

C. Due Process

The bases of the right to procedural due process are found in: Section 1 of the Fourteenth Amendment to the United States Constitution; article I, sections 1, 9, and 11 of the Pennsylvania Constitution; and Section 504 of the Administrative Agency Law. *Evans v. Pa. Public Utility Commission*, 264 A.3d 833, 2021 WL 4451007 (reversing PUC decision for failure to afford parties due process); 2 Pa. C.S. § 504. Under the Administrative Agency Law, “[n]o adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.” 2 Pa. C.S. § 504. Further, a party has the right to “reasonable examination.” 2 Pa. C.S. § 505.

As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness. See *Popowsky v. Pa. PUC*, 805 A.2d 637, 642 (Pa. Cmwlth. 2002) (citations omitted). Entities engaged in proceedings before the Commission are entitled to due process, which requires that they be given a meaningful hearing and/or opportunity to adequately protect their interests. *Snyder Brothers, Inc. v. Pa. PUC*, 224 A.3d 450 (Pa. Cmwlth. 2020). In *Snyder Brothers*, the Commonwealth Court reversed a decision of the Commission on the basis that due process was violated because the entity was not provided a meaningful hearing or opportunity to adequately protect its interests.

In determining if a violation of procedural due process has occurred, courts consider whether due process is required and, if so, what type of process is due. “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Pa. Coal Mining Assn. v. Ins. Dep’t*, 370 A.2d 685, 691 (Pa. 1977). The type of process due is determined by considering the private interest at stake, the value of additional procedural safeguards, and the government's interest in proceeding without providing such procedures. *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976)). The fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

IV. **ARGUMENT**

A. **PGW'S Due Process Rights Will Be Violated If The Commission Significantly Modifies, Suspends Or Terminates Its WNA**

Any Commission action that significantly modifies, suspends or terminates PGW's WNA as part of this proceeding, in which the Company has been denied the opportunity to withdraw its proposal for the 2022-2023 WNA season, and to submit the report of its expert witness who studied all aspects of PGW's WNA, will violate PGW's fundamental rights to due process. This proceeding was initiated by PGW shortly after the Commission granted emergency relief allowing PGW to reverse charges resulting from application of the WNA that were imposed on customers in June 2022 bills as a result of May 2022 usage. To ensure that a variation from normal weather during the heating season of October 1, 2022 through May 31, 2023 did not result in an abnormally large increase in WNA charges to customers, PGW proposed to cap the charges (as well as the credits) at 25%. Because this proposal was suspended by the PUC for investigation, the consumer protection measure advanced by PGW was not implemented for the heating season that just ended on May 31, 2023.

When PGW filed a base rate case on February 27, 2023, which is the typical forum for consideration by the Commission of a natural gas utility's WNA,²⁸ the Company noted in the direct testimony submitted with the filing that it would be presenting a WNA proposal. Since the results of its consultant's review of the WNA were not yet available due to a lengthy request for

²⁸ See, e.g., *2002 Base Rate Case*; *2017 Base Rate Case*; *Pa. Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); Columbia's Supplement No. 350 to *Tariff Gas – Pa. P.U.C. No. 9*, Page Nos. 162-163.

proposal process (“RFP”) that PGW was required to undertake as a municipal entity and for time needed by the consultant to thoroughly review all the relevant data, PGW explained that it would supplement its direct testimony by April 3, 2023. PGW served supplemental direct testimony in the base rate case on April 3, 2023, which is currently the subject of a Motion to Strike filed by OCA on May 23, 2023, to which PGW filed an Answer on May 31, 2023.²⁹ Prior to the filing of this Main Brief, PGW was served with the ALJ’s Order dated June 7, 2023 granting OCA’s Motion, which PGW is currently reviewing and evaluating its options for further review.

Based on PGW’s understanding of off-the-record comments made by ALJ Guhl prior to the commencement of the hearing on May 24, 2023 regarding a decision that had already been made by the Office of Administrative Law Judge to consider WNA issues *only in this* proceeding, PGW sought to have the supplemental direct testimony served in the base rate case admitted into the record of this proceeding.³⁰ ALJ Guhl denied PGW’s motion.³¹ The combination of: (i) PGW being required to submit direct testimony on the same day that the Prehearing Order #2 was issued; (ii) the PUC subsequently expanding this proceeding to entail a full-blown investigation of the WNA despite the pendency of a base rate case and despite the fact that this proceeding was initiated by PGW in order to implement a consumer protection in the

²⁹ OCA’s Motion to Strike in the base rate case is based on its interpretation of the PUC’s May 18, 2023 Interlocutory Order that was issued in this WNA proceeding. Although the Interlocutory Order left the WNA proceeding intact, it is PGW’s position that the May 18, 2023 Interlocutory Order did not and legally could not have precluded PGW from also litigating WNA issues in the base rate case.

³⁰ The parties in this proceeding are all in PGW’s base rate case and therefore had been served with the supplemental direct testimony submitted in that case. In response, the other parties have filed direct testimony in the base rate case, and PGW would have no concerns about that testimony also being admitted into the record of this proceeding, along with PGW’s supplemental direct testimony.

³¹ Tr. 233-234.

2022-2023 WNA season which ended this past May 31;³² and (iii) the refusal of the ALJ to admit the expert witness' report on the WNA into the record of this proceeding, due process principles significantly limit the ability of the Commission to modify the WNA and preclude the suspension or termination of the WNA without additional proceedings to permit a full and complete record to be developed.

B. PGW's WNA Is Critical to Its Continued Provision of Natural Gas Utility Service to Approximately 500,000 Customers in Philadelphia

Through the unrefuted testimony of Ms. Adamucci, PGW has demonstrated the importance of the WNA to PGW's financial health and stability, which in turn benefits ratepayers.³³ Particularly given PGW's responsibility to safely and adequately provide natural gas service to approximately 500,000 customers, PGW witness Adamucci stated that "the Company needs the financial certainty of collecting Commission-authorized revenues even when Philadelphia experiences abnormally warmer weather."³⁴ As Ms. Adamucci further testified, the WNA "has been instrumental in helping PGW to become a financially stable and strong Company, while assuring that weather related charges to customers were fair and reasonable."³⁵

³² The May 18, 2023 Interlocutory Order in this WNA proceeding stated for the first time that the WNA Suspension Order had "instituted an investigation into the justness and reasonableness of the WNA." Interlocutory Order at 18. In fact, however, the WNA Suspension Order only suspended for investigation the proposed 25% cap and contained the standard language that is included in all suspension orders indicating that it "appears that consideration should be given to the reasonableness of PGW's existing rates, rules, and regulations." WNA Rate Suspension Order at page 2; Ordering Paragraph Nos. 2 and 4.

³³ PGW St. No. 1 at 2, 5-10; Tr. 185-186.

³⁴ PGW St. No. 1-R at 2.

³⁵ PGW St. No. 1 at 10.

1. Rationale for Original Implementation of WNA

Prior to implementation of the WNA, PGW had experienced years in which warmer than normal weather severely reduced the Company's cash flow and debt service coverages, which negatively affected PGW's bond rating and created a consistent need to request additional rate relief to stave off financial crisis. As a result of experiencing a number of winters in which abnormal weather caused severe shortfalls in earnings and liquidity, the establishment of a WNA was a crucial requirement if the Company was to return to and maintain financial health in the long term. Those experiences led to the WNA being proposed and approved in the *2002 Base Rate Case* as a three-year pilot, and explain why the WNA was permitted to continue on a permanent basis.³⁶

Indeed, witnesses for other parties in the *2002 Base Rate Case* were supportive of the implementation of a WNA by PGW, with the witness for then OTS agreeing that a WNA clause would be reasonable since PGW's rates are established using the cash flow method of ratemaking.³⁷ Similarly, OCA's witness described PGW as being "unique" among NGDCs in Pennsylvania since it is a municipal utility and operates on a cash flow basis according to statute with no source of equity financing in the sense of a traditional investor-owned utility.³⁸

The WNA implemented by PGW in 2002 has remained in place since that time, with the only modification (other than the 2022 reversal of charges and 2023 removal of May from the formula) being made in PGW's *2017 Base Rate Case*. In that case, PGW had originally

³⁶ PGW St. No. 1 at 6-7; PGW Exhibit DA-2.

³⁷ PGW St. No. 1 at 7; *2002 Base Rate Case*, OTS St. 4 at 10 (Direct Testimony of Paul Metro).

³⁸ PGW St. No. 1 at 7; *2002 Base Rate Case*, OCA St. 3 at 3-4 (Direct Testimony of Thomas Catlin).

proposed moving from a thirty-year average of HDDs to a ten-year average for the purposes of determining pro forma revenues in the base rate case as well as for WNA purposes. Through a settlement of that case, the parties agreed to the use of a twenty-year average of HDDs for both purposes. *2017 Base Rate Case* at 17-18 and Ordering Paragraph No. 3.

2. Continuing Need for WNA

As PGW stated over 20 years ago, and as still holds true today, the WNA: (i) stabilizes cash flow from year-to-year; (ii) reduces the need for short-term borrowing from year-to-year; (iii) positively affects PGW’s credit rating; and (iv) reduces the need for costly base rate proceedings (which could even include extraordinary rate requests if actual revenues diverged dramatically and quickly from normal levels).³⁹ As the other parties and the Commission have recognized in the past, a WNA-type clause is particularly appropriate for a municipally owned utility because under the cash flow method of ratemaking, ratepayers provide revenues to cover the entire costs of service – but only the cost of service.⁴⁰ The WNA minimizes the degree to which shortfalls or windfalls occur. For a municipal utility that utilizes a WNA, ratepayers are assigned the same responsibilities or obtain the same benefits that they would without a WNA.⁴¹

Ms. Adamucci explained that “[w]hat is important concerning the WNA and the revenues that it produces is the effect that it has on the number of days of cash on hand and the debt service ratio.”⁴² She further noted that she had consulted with Joseph F. Golden, Jr., who is

³⁹ PGW St. No. 1-R at 20; *2002 Base Rate Case*, PGW St. 2 at 3 (Direct Testimony of Craig White).

⁴⁰ PGW St. No. 1-R at 20.

⁴¹ PGW St. No. 1 at 6-7; PGW St. No. 1-R at 20.

⁴² PGW St. No. 1-R at 17.

PGW’s Executive Vice President and Acting Chief Financial Officer, regarding those metrics. From January 2021 through May 2022, PGW has billed approximately \$60 million in WNA charges since the last rate case. “Without this revenue, PGW’s number of cash days on hand would be down from 16.9 days at the end of the [Fully Projected Future Test Year] to *negative* 14.8 days. This would be a totally unacceptable financial result.”⁴³

Because the existing WNA has eliminated the effect of abnormal weather on earnings and cash flow, it has had a very positive effect upon the way in which PGW has been viewed by the financial community. Weather-related reductions in earnings and cash flow prior to implementation of the WNA threatened PGW’s ability to successfully issue additional long-term debt, the Company’s only available source of external capital. The rating agencies have clearly indicated their reliance upon the WNA to operate as a risk-mitigating tool, which has resulted in PGW achieving higher credit ratings.⁴⁴ Of note, absent the WNA, PGW would need to seek Commission approval for significantly higher base rates to guard against financial risks that might occur due abnormal weather in its service territory.⁴⁵

The safe and adequate operation of a natural gas company for ~500,000 customers is a critical statutory function performed by PGW that requires a supporting level of revenues as determined by the Commission. Once the Commission determines the revenues that are needed and authorizes their collection through rates imposed on customers (in a base rate case), it is imperative that PGW be given the opportunity to collect this level of revenues so that it can

⁴³ PGW St. No. 1-R at 17.

⁴⁴ PGW St. No. 1 at 9-10; <https://www.fitchratings.com/research/us-public-finance/fitch-upgrades-philadelphia-pa-gas-works-revs-to-a-outlook-stable-17-02-2022>

⁴⁵ PGW St. No. 1 at 10; PGW St. No. 1-R at 20.

fulfill the obligations of ensuring that customers in Philadelphia continue to receive safe and adequate natural gas service. 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.⁴⁶ If PGW were not able to adjust billings through the WNA to reflect warmer weather during the heating season, its natural gas operations would be jeopardized, directly harming customers. Also, PGW would be required to more frequently seek rate relief from the Commission, potentially on an emergency basis, which again would need to be paid by the Company's customers.⁴⁷

C. PGW Has Supported Its Proposed Changes to the WNA

1. Twenty Five Percent Cap

As part of this proceeding, PGW has offered two proposed modifications to its WNA. PGW submitted the first proposal with the Cap Petition and Supplement No. 152 filed on August 2, 2022, which would have prevented customers from being billed a WNA charge or credit greater than 25% of total delivery charges on any given bill. As explained by Ms. Adamucci, this proposal was designed as a simple solution that could be quickly implemented to protect consumers in the event that the WNA, due to abnormal weather, produced an unusually large increase during the heating season that just ended on May 31, 2023.⁴⁸ Because of the PUC's suspension of the Tariff, the 25% cap proposal became moot, and PGW's subsequent filing of a

⁴⁶ PGW St. No. 1-R at 9.

⁴⁷ PGW St. No. 1-RJ at 2.

⁴⁸ PGW St. No. 1 at 11-14.

base rate case further rendered this proceeding unnecessary. However, PGW's efforts to withdraw Supplement No. 152 and the Cap Petition were not successful.

During the proceeding, PGW noted that it no longer desires to implement the proposed 25% cap since it was intended as a quick solution to protect customers during the heating season that ended on May 31, 2023.⁴⁹ Nonetheless, PGW offered data in support of the proposed cap, which was shared with the parties through discovery and was admitted into the record as PGW Exhibit DA-4.⁵⁰ Additionally, since originally suggesting the 25% cap, PGW retained a consultant to review its WNA and made specific recommendations regarding this mechanism in testimony submitted in the pending base rate case. A cap is not among those recommendations.⁵¹ Indeed, in Ms. Adamucci's direct testimony in this case, she acknowledged that to a degree, a cap is inconsistent with the whole purpose of the WNA. As she explained, without the 25% proposed cap, the WNA would work as intended to provide revenue neutrality and financial stability to PGW from the standpoint of weather trends in Philadelphia that are beyond the control of the Company.⁵²

2. Removal of May

The second modification proposed by PGW in this case is the removal of May from the WNA formula to prevent any potential recurrence in the future. Based upon the results of a comprehensive study performed by PGW's consultant in the base rate case, Ms. Adamucci testified that it became clear that the exclusion of May would address any issue in the existing

⁴⁹ PGW St. No. 1-R at 4-5; PGW St. No. 1-RJ at 10.

⁵⁰ PGW St. No. 1-RJ at 10-11.

⁵¹ PGW St. No. 1-RJ at 11.

⁵² PGW St. No. 1 at 13.

formula caused by the warming weather trends in Philadelphia over recent years.⁵³ If any changes are made to the WNA in the context of this proceeding, the removal of May from the formula makes sense and will address potential customer impacts since May usage has resulted in the issuance of emergency orders by the Commission (at the request of PGW) in the last two years.⁵⁴ The inclusion of May in PGW’s WNA calculation is problematic due to the warmer weather trends that have occurred in Philadelphia over the past ten years. Ms. Adamucci concluded that the evidence is clear – “to the extent that the WNA is producing concerning results, those results are focused on May.”⁵⁵

Therefore, it would be reasonable to eliminate May from the WNA formula. For the reason expressed by Ms. Adamucci, and because PGW has sought and obtained emergency relief from the PUC to remove May in each of the last two years, the permanent removal of May will protect ratepayers from future anomalies that may occur due to a recurrence of the warmer May weather in Philadelphia in future years. Indeed, removing May from the formula renders unnecessary the modifications to the WNA proposed by OCA.⁵⁶ When the month that produced the only anomaly in application of PGW’s WNA during a 20-year history is removed from the equation, no need exists to examine other features of the WNA that have worked as designed and certainly, no reason to make changes or modifications beyond that proposed by PGW.

⁵³ PGW St. No. 1-R at 3-4; PGW St. No. 1-RJ at 5; Tr. 159, 161-162, 182, 184.

⁵⁴ *Petition of Philadelphia Gas Works for Emergency Order*, Docket No. P-2022-3033047 (Emergency Order entered July 1, 2022; Ratification Order entered July 14, 2022); *Petition of Philadelphia Gas Works for Emergency Order*, Docket No. P-2023-3040233 (Emergency Order entered April 28, 2023; Ratification Order entered May 18, 2023).

⁵⁵ PGW St. No. 1-RJ at 5.

⁵⁶ Tr. 159-161.

D. OCA and CAUSE-PA Have Not Carried the Heavy Burden Placed on Proponents of Changes to Existing Tariff Provisions

Because PGW's WNA is already in its Commission-approved Tariff, it is the other parties' burden to demonstrate that the Tariff provision is somehow unreasonable – not PGW's burden to justify its continued existence. Tariff provisions approved by the Commission are *prima facie* reasonable, and parties challenging such provisions bear a heavy burden to prove that facts and circumstances have changed drastically so as to render application of the Tariff provision unreasonable. *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996). Certainly, neither OCA nor CAUSE-PA has met that heavy burden; their argument against the WNA is simply that it (sometimes) raises rates for customers, which would not occur automatically without the WNA. Importantly, however, the WNA was designed to not raise rates above the level that the Commission has already approved. Moreover, the anomaly that occurred with the WNA in May 2022, and the potential of which PGW avoided this year by seeking and receiving emergency relief to exclude May 2023 usage from the formula, cannot be viewed as a “drastic” change rendering application of the provision unreasonable, particularly since the WNA has not been applied to customers in May since 2021.⁵⁷

Testifying for OCA, Mr. Nelson identified two alleged problems with PGW's long-term WNA formula. He found that customers on different billing cycles faced higher bills than others. Mr. Nelson further suggested that the WNA has no consumer protection against the bill impacts that occurred in May 2022.⁵⁸ According to Mr. Nelson, PGW's WNA shifts risks from

⁵⁷ PGW St. No. 1-RJ at 4-5.

⁵⁸ OCA St. 1 at 12.

the utility to the customers.⁵⁹ Based upon these allegations, OCA witness Nelson proposed: (i) an annual, rather than monthly, reconciliation period;⁶⁰ (ii) a 5% cap on WNA charges for under-recoveries, with full refunds during periods of over-recovery;⁶¹ and (iii) the use of a 10-year weather average to better reflect climate trends that the WNA seeks to address.⁶² Pending the implementation of such modifications, Mr. Nelson recommended that PGW be required to suspend use of the WNA.⁶³

In testimony submitted on behalf of CAUSE-PA, Mr. Geller recommended that the Commission “order PGW to cease operation of its WNA.”⁶⁴ Mr. Geller’s recommendation was based upon his concern about the impact of WNAs throughout Pennsylvania on low-income customers. Like Mr. Nelson, he also claimed that PGW is shifting the financial risk of warming weather to customers.⁶⁵

1. No Risk Shifting

The OCA and CAUSE-PA recommendations set forth in the testimony of Mr. Nelson and Mr. Geller should be rejected outright because as Ms. Adamucci explained, both witnesses “have made fundamental errors in their testimony by inappropriately referring to PGW’s WNA as

⁵⁹ OCA St. 1 at 5, 7.

⁶⁰ OCA St. 1 at 12-16, 20-22.

⁶¹ OCA St. 1 at 20.

⁶² OCA St. 1 at 20-22.

⁶³ OCA St. 1 at 20; Tr. 214-215.

⁶⁴ CAUSE-PA St. 1 at 15.

⁶⁵ CAUSE-PA St. 1 at 3, 5.

involving a shifting of risk from the utility to consumers.”⁶⁶ First, the WNA provides revenue neutrality, not increased revenues. As such, the WNA is not enabling PGW to recover more revenues than were authorized in the last base rate case by the Commission. Since the WNA does nothing more than reconcile actual weather experience with projected weather experience, and to either credit or charge the ratepayer for the difference, there is no risk shifting.⁶⁷ Second, the WNA is particularly reasonable for a municipal utility like PGW. Because PGW is a municipally owned cash flow utility without investors or shareholders, and instead relies solely on revenues received from consumers to sustain its natural gas operations, there is nowhere else to go for the funds. Ms. Adamucci testified that “[w]eather-related risks are either managed on the front end through a WNA or on the back end through rate increases, including emergency rate relief.”⁶⁸

Moreover, Mr. Nelson continually suggested that the WNA was shifting “risk” away from PGW’s “shareholders” and onto customers.⁶⁹ This testimony demonstrates a persistent failure to understand, or at the very least acknowledge, PGW’s status as a municipally owned cash flow utility with no profit margin and no shareholders. While the risk-shifting concept may be relevant in reviewing the WNA of an investor-owned utility, it has no place in this proceeding. Simply stated, as Ms. Adamucci clearly explained, “PGW does not have access to funds other than those that are provided by ratepayers.”⁷⁰ It is imperative for the Commission to

⁶⁶ PGW St. 1-R at 7.

⁶⁷ PGW St. 1-R at 8.

⁶⁸ PGW St. No. 1-R at 8.

⁶⁹ Tr. 207.⁷⁰ PGW St. 1-RJ at 3.

⁷⁰ PGW St. 1-RJ at 3.

recognize the fundamental error in the witnesses' assumptions in this regard and to continue to support the WNA as providing PGW a cash balance that is critical to the safe and adequate provision of natural gas utility service to ~500,000 customers in Philadelphia.

Mr. Nelson's concern that customers in different billing cycles sometimes receive different WNA charges is also without merit. As noted by Ms. Adamucci, the WNA has been charged on a bill cycle basis since its implementation.⁷¹ In fact, customers in different billing cycles are *always* potentially subject to being billed at different levels. Whenever there are changes in PGW's base rates, its gas cost rate ("GCR"), or any of its other clauses, those changes will affect different billing cycles differently, depending upon the number of days of changed rates that are included in a particular cycle. For example, if the GCR is reduced by \$1.00 starting September 1 in a particular year, that \$1.00 reduction will affect different cycles for September differently. A cycle that starts in August, for example, will have less days providing the lower GCR than a cycle that starts on September 2. That does not make the GCR charge unreasonable.

2. No Justification for Suspension or Elimination of WNA

Besides the recommendations of the other parties being fundamentally flawed due to their reliance on the erroneous underlying risk-shifting concepts, which is reason enough to reject them, neither OCA nor CAUSE-PA have provided justification for their proposals relating to the suspension or elimination of the WNA. In view of how the WNA fairly operates to both charge and credit customers depending on the weather, and its importance to maintaining PGW's financial stability, as well as the fact that several other natural gas distribution companies have

⁷¹ PGW St. 1-R at 11.

similar clauses, it would be grossly unreasonable and unworkable to eliminate or suspend PGW's WNA as suggested by the opposing parties.⁷²

For instance, Mr. Nelson has not presented sufficient evidence to support suspension of the WNA, which has been in place for over twenty years with minimal changes. Further, Mr. Nelson irresponsibly provided no financial analysis of the impact of his 5% cap on PGW and its ratepayers. In addition, he has not pointed to any differences between PGW's WNA and the WNAs of other NGDCs that have been approved by the Commission or are currently pending before the Commission. Likewise, Mr. Geller presented no evidence in support of his proposal to terminate the WNA due to its impact on low-income customers. As the WNA is only permitting PGW to bill customers at the level authorized by the Commission in the last base rate case, this is not the appropriate forum to adjudicate issues regarding utility service to low-income customers, which need to be addressed on a statewide basis.

The sole anomaly that occurred with the WNA in May 2022, which produced unusually large charges to customers in many billing cycles with May usage, was the result of warmer than normal weather in PGW's service territory. One glitch with the WNA in a 20-year history does not provide a basis upon which to suspend, terminate or significantly modify the clause. As explained by Ms. Adamucci, "[i]n advancing proposals to suspend or eliminate the WNA – because of one instance in 2022 when the mechanism did not operate as intended (in comparison to a 20-year period in which it did operate as intended), which PGW promptly identified and voluntarily rectified" – OCA and CAUSE-PA are willfully overlooking the overall importance of PGW's WNA to its operations.⁷³

⁷² PGW St. No. 1-R at 2.

⁷³ PGW St. No. 1-R at 19-20.

Notably, the testimony submitted by OCA and CAUSE-PA reflects an effort to urge the PUC to move in an opposite direction of current trends supporting the implementation of WNAs by other utilities, including both Commission and legislative support. For instance, in most recently approving such a WNA mechanism in September 2022, Chairman Gladys Brown Dutrieuille issued a statement noting that the “decoupling of uncontrollable weather from revenues should stabilize UGI’s cashflow, and in turn, allow UGI to focus on operational items within its control, namely infrastructure upgrades and repairs.” *Pa. Public Utility Commission v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered September 15, 2022; Brown Dutrieuille Statement).

The OCA/CAUSE-PA new-found opposition to the WNA is also inconsistent with the clear endorsement of such clauses by the General Assembly, which in 2018 added Section 1330 to the Public Utility Code. Section 1330 of the Code explicitly authorizes the PUC to approve “decoupling mechanisms” for energy utilities. 66 Pa. C.S. § 1330. WNA clauses are a form of decoupling mechanism that decouples a utility’s revenues from the effects of weather.⁷⁴ In addition, OCA’s perfunctory proposal to suspend PGW’s WNA overlooks decades of proceedings in which the PUC and all parties (including OCA and CAUSE-PA) made no challenge to PGW’s WNA, because the mechanism was working largely as intended, and fulfilling the important purpose of ensuring that PGW collects the revenues that the Commission has determined in its base rate case to be necessary to sustain its safe and reliable operation as a natural gas utility.⁷⁵

⁷⁴ PGW St. No. 1 at 9; PGW St. 1-R at 6-7, 12, 15; PGW St. No. 1-RJ at 3.

⁷⁵ PGW St. No. 1-R at 12-13.

3. No Justification for OCA’s Proposed Modifications to WNA

a. Annual Reconciliation

As to Mr. Nelson’s proposal to move from a monthly to an annual reconciliation period, he failed to consider the impact on PGW’s cash flow. Ms. Adamucci testified that such an adjustment to the WNA would cause liquidity issues for PGW and explained that operating on a cash flow basis requires PGW to continually have sufficient cash on hand throughout the year to support the safe and adequate provision of natural gas service, not to receive dollars in a subsequent year, months after needing them. As she further noted, a method that annually reconciles PGW’s revenues to reflect variations in weather from the normal patterns would fail to recognize the ongoing need for cash to maintain its operations.⁷⁶

In addition, it is clear that Mr. Nelson has not fully developed this proposal, as when he was asked during cross-examination by OSBA’s counsel about how the reconciliation process would work, he conceded that he had not “worked out the specifics of it.”⁷⁷ He further noted that he had not made a specific recommendation and that the reconciliation could be done “annually or through seasonal or through the heating season.”⁷⁸ Without specifics, it is unclear how the PUC would adopt OCA’s proposal. Mr. Nelson also acknowledged that moving from a monthly to annual reconciliation period would involve a longer lag between when the variances occur and when they are recovered.⁷⁹ This recognition underscores the point made by Ms. Adamucci regarding the proposal causing liquidity issues for PGW.

⁷⁶ PGW St. 1-R at 13.

⁷⁷ Tr. 218.

⁷⁸ Tr. 218.

⁷⁹ Tr. 218.

Further, Ms. Adamucci testified that in reviewing financial statements and the historic annual WNA billings and credits, PGW “determined that a hypothetical move from a monthly to an annual reconciliation lends the potential for the Company’s accounts receivable balance to grow year after year in a warmer than normal year.”⁸⁰ As PGW witness Adamucci explained, this working capital increase would require PGW to have additional funding available to support its growth, which would decrease cash on hand and likely be viewed negatively by the bond rating agencies. Ms. Adamucci concluded that “PGW customers are the ones who would pay for such results.”⁸¹

Another possible consequence of moving to annual reconciliation, which again Mr. Nelson appears not to have considered since it is unclear how the charge would be reconciled over time, is that WNA charges would be collected across a multi-year span. Ms. Adamucci testified that this outcome “could have impacts on PGW rate case filings, as well as customers paying a charge not linked to their billing cycle usage during a current season.”⁸² Accordingly, in suggesting a move to annual reconciliation, “Mr. Nelson has failed to acknowledge that customers could end up facing higher rates in a subsequent year due to a large amount of weather-related reconciliation being necessary, coupled with colder than normal weather which would require increased bills that are not reconciled until a future period.”⁸³ Even when given an opportunity on cross-examination by OSBA’s counsel to refute this assertion, Mr. Nelson

⁸⁰ PGW St. No. 1-RJ at 9.

⁸¹ PGW St. No. 1-RJ at 9.

⁸² PGW St. No. 1-RJ at 10.

⁸³ PGW St. No. 1-RJ at 10..

continued to simply discount this reality by discussing unknown caps on what he vaguely referred to as “[t]he other mechanism.”⁸⁴

b. Five Percent Cap

Regarding his recommendation for a 5% cap on WNA charges, Mr. Nelson offers no evidence as to how it might impact PGW, only speculating, without supporting data, that the impact would be “minimal”⁸⁵ and that a “5% cap is *unlikely* to financially challenge PGW.”⁸⁶ Such nonchalance about PGW’s financial health ignores history and the importance of a healthy PGW for its ratepayers and the City. To the extent that a cap continues to be considered as part of the solution to protect consumers from unanticipated WNA charges caused by weather variations, it is important that it be sufficiently high to ensure that PGW collects the level of revenues that the Commission has determined are needed to support its operations. With respect to Mr. Nelson’s 5% proposed cap, Ms. Adamucci described it as “nullifying the financial benefit of a WNA”⁸⁷ as it would “impact PGW’s financial stability in much the same way as would elimination of the mechanism.”⁸⁸

That Mr. Nelson conducted no analysis of his proposal to determine whether his conjecture was borne about by evidence is sufficient to reject it out of hand as not meeting the burden of proving its reasonableness. In addition, no justification exists to use a method for charging customers, as suggested by Mr. Nelson, which is different than that used for crediting

⁸⁴ Tr. 219.

⁸⁵ OCA St. 1 at 21.

⁸⁶ OCA St. 1 at 22 (emphasis supplied).

⁸⁷ PGW St. No. 1-RJ at 11.

⁸⁸ PGW St. No. 1-RJ at 12.

customers. As Ms. Adamucci explained, “the purpose of the WNA is not for PGW to collect more money than the Commission has authorized, but rather to ensure weather-sensitive revenue neutrality. Implementation of the WNA should result in PGW billing the revenues that have been determined by the Commission as necessary to provide safe and adequate operations as a natural gas utility – no more or no less.”⁸⁹

c. Ten-Year Average Weather

With respect to Mr. Nelson’s recommendation that the NHDD averaging calculations use a 10-year weather average to better reflect climate trends that the WNA is designed to address, rather than the 20-year average currently used by the formula, Mr. Nelson offered no statistical data in support of this proposal. The lack of data is particularly noteworthy given the agreement by OCA and other parties in the *2017 Base Rate Case* to use 20-year average data, rather than the 30-year data that was then in use (or the 10-year average originally proposed therein by PGW).⁹⁰ As noted by Ms. Adamucci, the consultants engaged by PGW to submit testimony in the current base rate case observed that the use of a 10-year average would have resulted in higher WNA increases for May 2022 than were experienced. She further explained that any change in the average data would have to be applied both to the WNA calculation *and* the determination of PGW’s average Fully Projected Future Test Year revenues, an issue that cannot be addressed in this proceeding.⁹¹

⁸⁹ PGW St. 1-R at 14.

⁹⁰ *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2017-25867833 (Order entered November 8, 2017, at pages 17-18 and Ordering Paragraph No. 3) (“*2017 Base Rate Case*”).

⁹¹ PGW St. 1-R at 14-15.

4. Base Rate Case Issues

The proposals advanced by OCA and CAUSE-PA regarding PGW's WNA are traditional base rate case issues that should not be considered in this limited rate proceeding. PGW initiated this case to propose a 25% cap on delivery charges due to application of the WNA shortly after the PUC granted the Company's request for emergency relief allowing it to reverse the charges that resulted from application of the WNA to May 2022 usage. At that time, no base rate case was pending and PGW had not yet made a decision as to when the next base rate case would be filed. However, while this proceeding was still pending, and only Ms. Adamucci's direct testimony had been circulated, PGW filed its base rate case on February 27, 2023.⁹² That filing presents an ideal opportunity for PGW, the other parties and the Commission to comprehensively address the 20+ year old WNA in PGW's current PUC-approved Tariff – with the benefit of the thorough report provided by the expert retained by PGW to study its WNA. Therefore, the major modifications proposed by the other parties in this proceeding, including the suspension or termination of the WNA, are best pursued in the base rate case.

As Ms. Adamucci testified, PGW's pending base rate case is the appropriate forum to conduct a comprehensive review of the WNA, where the impact of the WNA and any proposed modifications on PGW's revenues and its customers' rates can be considered. In that proceeding, all information needed to examine PGW's overall financial situation is readily available, and a determination can be made based on record evidence as to whether the WNA should continue, and if so, whether or how it should be modified. The express purpose of the base rate case is to review PGW's proposed rate increase to determine whether it is just and

⁹² PGW filed its 30-day confidential notice regarding the filing of a base rate case on or about January 28, 2023, well before its direct testimony in this proceeding was due under the proposed schedule developed by the parties.

reasonable, and therefore warranted to enable PGW to continue providing safe and adequate natural gas utility service.⁹³

A key part of that proceeding will be a determination of what a “normal” level of revenues should be for the Fully Projected Future Test Year. It is this “normal” level of revenues that will then be subsequently reconciled through the WNA. In the base rate case, PGW proposed to continue to use a twenty-year average of degree days to determine “normal” revenues. If there is a change in that “normal level,” as the OCA witness has suggested in his “alternative” recommendation in this case, that change has to occur both in PGW’s base rate proceeding and in the WNA calculation. The only proceeding in which both changes can be made is the base rate case.⁹⁴ Therefore, a full review of the WNA provision in PGW’s Tariff can only take place in the base rate case, and its continuation or modifications unrelated to the 25% cap should not be entertained in this limited proceeding.

PGW acknowledges, however, that the PUC has indicated in the May 18, 2023 Interlocutory Order that it expects a full review of the WNA in this proceeding. PGW respectfully submits that this directive should be limited to reviewing whether PGW's WNA mechanism continues to be just and reasonable, which the overwhelming weight of evidence here clearly demonstrates. To recognize the interrelated nature of base rates and the WNA clause any modifications – beyond the 25% cap or the removal of May from the formula – all other proposed adjustments should not be entertained in this limited proceeding and should be transferred or referred to the base rate case.

⁹³ PGW St. 1-R at 5-6.

⁹⁴ PGW St. 1-R at 5-6.

V. CONCLUSION

Based upon the foregoing, Philadelphia Gas Works respectfully requests that the Commission leave intact the Weather Normalization Adjustment clause that is in PGW's current Commission-approved Tariff, or in the alternative, approve a change that results in the removal of the month of May from the WNA formula.

Respectfully submitted,

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Date: June 7, 2023

Attorneys for Philadelphia Gas Works

Appendix A
Proposed Findings of Fact

PROPOSED FINDINGS OF FACT

1. Philadelphia Gas Works (“PGW” or “Company”) is owned by the City of Philadelphia and provides public utility services as a city-owned natural gas distribution operation in the City of Philadelphia. PGW St. No. 1 at 3.
2. As a city-owned utility, PGW has no shareholders and all the funds needed to run the Company come from ratepayers or from borrowing – the costs of which then must be paid by ratepayers. PGW St. No. 1 at 3.
3. PGW’s rates are set by determining the appropriate levels of cash and other financial metrics to enable PGW to pay its bills and maintain access to the capital markets at reasonable rates. PGW St. No. 1 at 3-4.
4. Traditionally, the base rates of natural gas utilities have been established on a “weather normalized” basis, i.e., rates are set to permit the utility to earn at levels determined to be reasonable assuming that sales and revenues are at the levels the utility would experience if the level of experienced Heating Degree Days (“HDDs”) were at “normal” levels. PGW St. No. 1 at 4.
5. A Weather Normalization Adjustment (“WNA”) mechanism is one way in which to balance out the effects of “abnormal” weather by permitting the utility to true-up its revenues when experienced HDDs in a given period are less than a determined normal level. Correspondingly, when experienced HDDs exceed normal levels, the utility adjusts its charges to provide a credit to customers. PGW St. No. 1 at 4.
6. The goal of WNA design is to permit the utility to recover its authorized level of earnings that supports its distribution system, and for a cash flow regulated utility, the company’s authorized level of cash and liquidity. PGW St. No. 1 at 4.
7. The Commission originally authorized PGW’s WNA in 2002 when the WNA was approved as a three-year pilot in a settlement of the base rate case. *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-00017034 (Order entered August 8, 2002, Ordering Paragraph No. 5) (“2002 Base Rate Case”). PGW St. No. 1 at 5.
8. Other parties in the *2002 Base Rate Case* recognized the value of the WNA clause to PGW’s operations. The witness for then Office of Trial Staff Office of Trial Staff (“OTS”) – the predecessor of the Bureau of Investigation and Enforcement (“I&E”), testified that it would be reasonable since PGW’s rates are established using the cash flow method of ratemaking. Similarly, the witness for the Office of Consumer Advocate (“OCA”) described PGW as being “unique” among natural gas utilities in Pennsylvania since it is a municipal utility and operates on a cash flow basis according to statute with no source of equity financing in the sense of a traditional investor-owned utility. PGW St. No. 1 at 7.

9. By the Order entered August 8, 2002 in the *2002 Base Rate Case*, the Commission authorized PGW to implement the WNA as soon as system modifications were completed. The WNA was implemented on December 1, 2002. PGW St. No. 1 at 6.
10. PGW filed a report as required by settlement in the *2002 Base Rate Case* on May 4, 2006 (“2006 WNA Report”), which examined the performance of the WNA over the prior three years and its effect on reducing volatility of earnings. PGW St. No. 1 at 7; PGW Exhibit DA-2.
11. With the 2006 WNA Report, PGW filed a Stipulation entered into by the Company, OCA and OTS, agreeing to continuation of the WNA clause on a permanent basis. PGW St. No. 1 at 5-7; PGW Exhibit DA-2.
12. Prior to implementation of the WNA, PGW had experienced years in which warmer than normal weather severely reduced the Company’s cash flow and debt service coverages, which negatively affected PGW’s bond rating and created a consistent need to request additional relief to stave off financial crisis. PGW St. No. 1 at 6.
13. As a result of experiencing a number of winters in which abnormal weather caused severe shortfalls in earnings and liquidity, the establishment of a WNA was a crucial requirement if the Company was to return to financial health in the long term. PGW St. No. 1 at 6.
14. PGW’s WNA is an automatic adjustment clause that adjusts billings to customers based upon the degree to which actual weather in its service territory varies from “normal” weather levels. Under the Commission-approved WNA, PGW applies the mechanism to customer usage from October 1 through May 31. PGW St. No. 1 at 5.
15. PGW’s WNA: (i) stabilizes cash flow from year-to-year; (ii) reduces the need for short-term borrowing from year-to-year; (iii) positively affects PGW’s credit rating; and (iv) reduces the need for costly base rate proceedings. PGW St. No. 1 at 6; PGW St. No. 1-RJ at 12-13.
16. In 2017, PGW’s WNA was modified as under the settlement in its base rate case approved by the Commission. *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2017-25867833 (Order entered November 8, 2017, at pages 17-18 and Ordering Paragraph No. 3) (“*2017 Base Rate Case*”). That modification resulted in a shift from the use of a thirty year average of HDDs to the use of a twenty year average of HDDs to determine normal weather. No other changes (except temporary ones authorized by the PUC at PGW’s request) have been made to the WNA formula since 2002. PGW St. No. 1 at 8.
17. The Commission approved a WNA for Columbia Gas of Pennsylvania, Inc. in May 2013, which remains in its Tariff today. PGW St. No. 1 at 8.
18. In September 2022, the Commission approved a WNA for UGI Utilities, Inc. PGW St. No. 1 at 8.

19. Pending before the Commission is a WNA for Natural Fuel Gas Distribution Corporation that is part of a Settlement of which the Administrative Law Judge has recommended approval. *Pa. Public Utility Commission v. National Fuel Gas Distribution Corporation*, Docket No. R-2022-3035730 (Recommended Decision issued May 9, 2023, at pp. 1, 8 (footnote 4)-9, 29-32, Ordering Paragraph No. 1.
20. The continuation of PGW's WNA is necessary for the continued financial health of the Company and to support the provision of safe and adequate natural gas service to approximately 500,000 customers in Philadelphia. PGW St. No. 1-RJ at 12-13; PGW St. No. 1-R at 19-20.
21. Because PGW's existing WNA has eliminated the effect of abnormal weather on earnings and cash flow, it has had a very positive effect upon the way in which PGW has been viewed by the financial community. PGW St. No. 1 at 9.
22. Rating agencies have expressly indicated their reliance upon the WNA to operate as a risk-mitigating tool, which has resulted in PGW achieving higher credit ratings. PGW St. No. 1 at 10.
23. Without the WNA, PGW would need to seek Commission approval for significantly higher base rates to guard against financial risks that might occur due to abnormal weather in its service territory. PGW St. No. 1 at 10.
24. The WNA has worked largely as intended over the past two decades. PGW St. No. 1 at 10.
25. The WNA has been instrumental in helping PGW to become a financially stable and strong Company, while assuring that weather related charges to customers were fair and reasonable. PGW St. No. 1 at 10.
26. The WNA is extremely important to PGW's financial stability, which in turn benefits ratepayers. PGW St. No. 1 at 10.
27. A WNA-type clause is particularly appropriate for a municipally owned utility because under the cash flow method of ratemaking, ratepayers provide revenues to cover the entire costs of service – but only the cost of service. PGW St. No. 1 at 6-7; PGW St. No. 1-R at 20.
28. The WNA minimizes the degree to which shortfalls or windfalls occur. For a municipal utility that utilizes a WNA, ratepayers are assigned the same responsibilities or obtain the same benefits that they would without a WNA. PGW St. No. 1 at 6-7; PGW St. No. 1-R at 20.
29. 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. No. 1-R at 9.

30. If PGW were not able to adjust billings through the WNA to reflect warmer weather during the heating season, its natural gas operations would be jeopardized, directly harming customers. PGW St. No. 1-RJ at 2.
31. Without the WNA, PGW would be required to more frequently seek base rate relief from the Commission, potentially on an emergency basis, which again would need to be paid by the Company's customers. PGW St. No. 1-RJ at 2.
32. From January 2021 through May 2022, PGW has billed approximately \$60 million in WNA charges since its last base rate case. Without this revenue, PGW's number of days of cash on hand would be down from 16.9 days at the end of the Fully Projected Future Test Year to negative 14.8 days, which would be an unacceptable financial result. PGW St. No. 1-R at 17.
33. As a result of extremely warm weather experienced in Philadelphia during a portion of May 2022, usage by customers in May 2022 resulted in unusually large charges due to the application of the long-standing and Commission-approved WNA. PGW St. No. 1 at 10.
34. PGW determined that its customers should not bear these charges although they had been correctly calculated pursuant to the formula in PGW's Tariff. PGW St. No. 1 at 10.
35. PGW filed a Petition for Emergency Order at Docket No. P-2022-3033477 on June 30, 2022 asking for Commission authorization to reverse the charges resulting from application of the WNA to May 2022 usage. PGW did not seek to reverse the WNA credits for May usage. PGW St. No. 1 at 10-11.
36. In the Petition for Emergency Order, PGW noted that it had initiated an internal investigation into the WNA formula. PGW St. No. 1 at 11.
37. By Emergency Order issued on July 1, 2022 and ratified by Order adopted on July 14, 2022 ("Ratification Order"), the Commission approved PGW's request, which resulted in the refund of approximately \$12.6 million to customers. PGW St. No. 1 at 11.
38. In addition, the Ratification Order directed PGW to submit the report regarding its internal investigation by August 15, 2022 ("2022 WNA Report"). PGW St. No. 1 at 11.
39. PGW filed the 2022 WNA Report on August 12, 2022. PGW St. No. 1 at 11; PGW Exhibit DA-3.
40. On August 2, 2022, PGW initiated this proceeding through the filing of Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2 ("Supplement No. 152") and a Petition for Approval on Less than Statutory Notice of Supplement Revising Weather Normalization Adjustment ("Cap Petition").
41. As filed, Supplement No. 152 proposed to add a control, or cap, to its WNA prior to the beginning of the WNA cycle beginning on October 1, 2022. PGW St. No. 1 at 12.

42. The purpose of PGW's proposal was to prevent customers from being billed a WNA charge or credit greater than 25 percent of total delivery charges on any given bill. Total delivery charges include the Customer Charge plus the Distribution Charge (including the Distribution System Improvement Charge), and if applicable, the Gas Adjustment Charge (including the Interruptible Revenue Credit). PGW St. No. 1 at 12.
43. PGW's proposal in Supplement No. 152 and the Cap Petition was designed as quick and simple solution to protect consumers in the event that the WNA, due to abnormal weather, produced an unusually large increase during the heating season that just ended on May 31, 2023. PGW St. No. 1 at 12-13.
44. By Order entered September 15, 2022, the Commission suspended Supplement No. 152 for investigation and the 25 percent cap did not go into effect. PGW St. No. 1 at 12.
45. PGW filed a base rate case at Docket No. R-2023-3037933 on February 27, 2023. In the rate case, PGW has sought to remove May from the formula so as prevent any potential recurrence in the future. PGW St. No. 1-R at 3, 5-6; PGW St. No. 1-RJ at 5.
46. 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 due to the May 2022 anomaly and the findings of PGW's consultant submitted in the base rate case regarding the removal of May since temperatures for that month over the past 10 years have become unusually divergent from the current normal. PGW St. No. 1-R at 3.
47. Since the twenty five percent cap was not implemented during the recent heating season that ended on May 31, 2023, PGW's proposal is moot. PGW St. No. 1-RJ at 10.
48. The exclusion of May from the WNA formula would address the warming weather trends in Philadelphia over recent years. PGW St. No. 1-RJ at 5.
49. The removal of May from the WNA formula makes any other modifications unnecessary. PGW St. No. 1-R at 3-4; PGW St. No. 1-RJ at 5; Tr. 159, 161-162, 182, 184.
50. A shift from a monthly to an annual reconciliation period for the WNA would cause liquidity issues for PGW. PGW St. No. 1-R at 13.
51. Operating on a cash flow basis requires PGW to continually have sufficient cash on hand throughout the year to support the safe and adequate provision of natural gas service. PGW St. No. 1-R at 13.
52. A reconciliation method that annually reconciles PGW's revenues to reflect variations in weather from the normal patterns would fail to recognize the ongoing need for cash to maintain its operations. PGW St. No. 1-R at 13.
53. OCA's witness did not fully develop his proposed reconciliation method. Tr. 218.

54. Moving to an annual reconciliation method lends the potential for PGW's accounts receivable balance to grow year after year in a warmer than normal year. PGW St. No. 1-RJ at 9.
55. A possible consequence of moving to annual reconciliation is that WNA charges would be collected across a multi-year span, with customers facing higher rates in a subsequent year due to a large amount of weather-related reconciliation being necessary, coupled with colder than normal weather which would require increased bills that are not reconciled until a future period. PGW St. No. 1-RJ at 10.
56. The witness for OCA offered no data in support of his recommendation of a five percent cap on WNA charges. OCA St. 1 at 21-22.
57. A five percent cap on WNA charges would nullify the financial benefit of a WNA because it would impact PGW's financial stability in much the same way as would elimination of the mechanism. PGW St. No. 1-RJ at 11.
58. The witness for OCA offered no data in support of his recommendation that the WNA formula use a 10-year weather average to better reflect climate trends that the WNA is designed to address. PGW St. 1-R at 14-15.
59. The use of a 10-year weather average would have resulted in higher WNA increases in May 2022 than were experienced. PGW St. 1-R at 14-15.
60. Any change in the average weather data would have to be applied both to the WNA calculation *and* the determination of PGW's average Fully Projected Future Test Year revenues, an issue that cannot be addressed in this proceeding. PGW St. 1-R at 14-15.
61. The witness for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") presented no evidence in support of his proposal to terminate the WNA due to its impact on low-income customers since PGW's WNA is designed only to achieve revenue neutrality, meaning that PGW will have the opportunity to recover the Commission-approved cost of service. PGW St. 1-R at 18-19.
62. As the WNA only permits PGW to bill customers at the level authorized by the Commission in the last base rate case, this is not the appropriate forum to adjudicate issues regarding utility service to low-income customers, which need to be addressed on a statewide basis. PGW St. 1-RJ at 13-14.
63. The risk shifting concept relied on by the OCA and CAUSE-PA witnesses in evaluating PGW's WNA is fundamentally flawed in this scenario where PGW does not have any shareholders who may absorb more of the risk of weather such as might be possible for investor-owned utilities. Because PGW is a municipally owned cash flow utility, it has no shareholders and its ratepayers are the only source of funds. PGW St. 1-R at 6-9.

64. The proposals advanced by witnesses presented by OCA and CAUSE-PA to modify; suspend, pending modifications; or terminate the WNA are not supported by the evidentiary record. PGW St. No. 1-R; PGW St. No. 1-RJ.

Appendix B
Proposed Conclusions of Law

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 1301, 1308(b).
2. Section 1301 of the Public Utility Code (“Code”) requires a public utility’s rates to be just and reasonable. 66 Pa. C.S. § 1301.
3. Just and reasonable rates are determined for Philadelphia Gas Works (“PGW”) using the cash flow method. 66 Pa. C.S. § 2212; 52 Pa. Code §§ 69.2701-2703.
4. Under Section 315(a) of the Code, a public utility has the burden of proving that its proposed modifications to its existing rates, rules and regulations are just and reasonable. 66 Pa. C.S. § 315(a).
5. PGW has the burden of proving that the proposed twenty five percent cap on changes to delivery charges resulting from application of the Weather Normalization Adjustment (“WNA”) clause is just and reasonable. 66 Pa. C.S. § 315(a).
6. PGW has the burden of proving that the exclusion of the month of May from the WNA formula is just and reasonable. 66 Pa. C.S. § 315(a).
7. Tariff provisions approved by the Commission are *prima facie* reasonable. *See, e.g., Brockway Glass v. PUC*, 437 A.2d 1067 (Pa. Commw. Ct. 1981); *Zucker v. PUC*, 401 A.2d 1377 (Pa. Commw. Ct. 1979); *U.S. Steel Corporation v. PUC*, 390 A.2d 865 (Pa. Commw. Ct. 1978); *Deitch Company v. PUC*, 203 A.2d 515 (Pa. Super. Ct. 1964).
8. Parties challenging such provisions bear a heavy burden to prove that facts and circumstances have changed drastically so as to render application of the tariff provision unreasonable. *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996).
9. The Office of Consumer Advocate (“OCA”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) have the burden of proving that their proposals to modify, suspend or terminate the WNA are just and reasonable. *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996).
10. PGW carried its burden of proof that its proposed modifications to the WNA are just and reasonable. Finding of Fact Nos. 41-49.
11. OCA and CAUSE-PA did not demonstrate that their proposals to suspend or eliminate the WNA are just and reasonable. Finding of Fact Nos. 5-32, 61-64.
12. OCA did not demonstrate that its proposals to modify PGW’s WNA are just and reasonable. Finding of Fact Nos. 5-60.

13. The bases of the right to procedural due process are found in: Section 1 of the Fourteenth Amendment to the United States Constitution; article I, sections 1, 9, and 11 of the Pennsylvania Constitution; and Section 504 of the Administrative Agency Law. *Evans v. Pa. Public Utility Commission*, 264 A.3d 833, 2021 WL 4451007 (reversing PUC decision for failure to afford parties due process); 2 Pa. C.S. § 504.
14. Under the Administrative Agency Law, “[n]o adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.” 2 Pa. C.S. § 504. Further, a party has the right to “reasonable examination.” 2 Pa.C.S. § 505.
15. As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness. See *Popowsky v. Pa. PUC*, 805 A.2d 637, 642 (Pa. Cmwlth. 2002) (citations omitted).
16. Entities engaged in proceedings before the Commission are entitled to due process, which requires that they be given a meaningful hearing and/or opportunity to adequately protect their interests. *Snyder Brothers, Inc. v. Pa. PUC*, 224 A.3d 450 (Pa. Cmwlth. 2020).
17. In determining if a violation of procedural due process has occurred, courts consider whether due process is required and, if so, what type of process is due. “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Pa. Coal Mining Assn. v. Ins. Dep’t*, 370 A.2d 685, 691 (Pa. 1977).
18. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass’n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).
19. Any Commission action that significantly modifies, suspends or terminates PGW’s WNA as part of this proceeding, in which the Company has been denied the opportunity to withdraw its proposal for the 2022-2023 WNA season, and to submit the report of its expert witness who studied all aspects of PGW’s WNA, will violate PGW’s fundamental rights to due process.
20. The Commission has approved the implementation of WNAs by other natural gas utilities. *Pa. Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. Public Utility Commission v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered September 15, 2022).
21. Section 1330 of the Public Utility Code expressly authorizes the implementation of decoupling mechanisms by energy companies. 66 Pa. C.S. § 1330.

Appendix C

Proposed Ordering Paragraphs

PROPOSED ORDERING PARAGRAPHS

ORDER

THEREFORE,

IT IS ORDERED:

1. That Supplement No. 152 to Gas Service Tariff – Pa. P.U.C. No. 2 and Petition for Approval on Less than Statutory Notice of Supplement Revising Weather Normalization Adjustment filed by Philadelphia Gas Works on August 2, 2022 is dismissed as moot.
2. The Secretary shall mark this docket closed.