

COMMONWEALTH OF PENNSYLVANIA



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June 16, 2023

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

Re: Pennsylvania Public Utility Commission
v.
Supplement No. 152 to Gas Service Tariff –
Pa. P.U.C. of Philadelphia Gas Works
Docket No. R-2022-3034229

Petition of Philadelphia Gas Works for
Approval on Less than Statutory Notice
of Tariff Supplement Revising Weather
Normalization Adjustment
Docket No. P-2022-3034264

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceedings.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
v. : Docket No. R-2022-3034229
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Pa. P.U.C. of Philadelphia Gas Works :

Petition of Philadelphia Gas Works for :
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of Tariff Supplement Revising Weather :
Normalization Adjustment :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of June 2023.

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BEFORE THE
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REPLY BRIEF
OF THE
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I. Introduction.

PGW's Weather Normalization Adjustment (WNA) is broken. The Company has found it necessary to file emergency petitions in both 2022 and 2023 to cover the flaws in the design of its WNA. Customers have been subject to excessive WNA charges. Certain subsets of customers have experienced massive WNA charges while other similarly situated customers have not. These are the facts that are in evidence and cannot be disputed.

While other utilities have utilized decoupling mechanisms to address weather variability, the OCA is not aware of customers in any other Pennsylvania gas utility being exposed to WNA-type charges of the magnitude that PGW has charged its customers. To remedy this situation, the WNA as it currently exists should be suspended. PGW has a pending base rate proceeding, and the Commission will establish just and reasonable rates in that proceeding that will ensure the continued financial viability of the Company. The WNA rate mechanism produces unjust, unreasonable and discriminatory rates and must be suspended.

II. The Weight of the Evidence Favors Suspension of the WNA.

In its Brief, PGW argues that the parties supporting suspension of the WNA face a "heavy burden" to "demonstrate that the tariff provision is somehow unreasonable." PGW M.B. at 25. The Company argues that existing tariff provisions are *prima facie* reasonable and that the parties challenging the existing tariff must prove that the facts and circumstances have changed drastically so as to render application of the tariff unreasonable. PGW M.B. at 25 (citing *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910(Pa. Commw. Dec. 20, 1996)). While the OCA addressed the burden of proof in its Main Brief and does not agree with the Company's legal analysis, it is clear that the evidence weighs in favor of suspending the WNA. *See* OCA M.B. at 7-10.

The purpose of this proceeding is to investigate the WNA and ensure that the mechanism complies with the law. As the Commission stated in this docket, “in our Order entered September 15, 2022, in this proceeding, we suspended the Tariff Supplement and instituted an investigation into the justness and reasonableness of the WNA.” *Pa. PUC v. PGW*, Docket Nos. R-2022-3034229, P-2022-3034264, Order at 18 (May 18, 2023) (the “*May 18 Order*”). Here, the following facts are not in dispute:

- PGW charged residential customers WNA charges that were over \$200 for one month in 2022. OCA St. 1 at 10; Tr. 63.
- PGW’s WNA produced charges that were, on average, \$3.95 for May 2022 for billing cycle May 7th to June 7th. At the same time, the average WNA charge for the billing cycle just five days later from May 12th to June 10th was, on average, \$87.28. OCA St. 1 at 9-10, Figure 1.
- PGW filed an Emergency Petition to refund its WNA charges in June 2022. *Petition of PGW for Emergency Order*, Docket No. P-2022-3033477, Petition (June 30, 2022).
- PGW filed an Emergency Petition requesting permission to not charge its WNA for May 2023. *Petition of PGW for Emergency Order*, Docket No. P-2023-3040233, Emergency Order (April 28, 2023).

The OCA submits that this undisputed evidence supports a finding that PGW’s WNA is no longer resulting in just and reasonable rates in compliance with Section 1301 of the Public Utility Code. 66 Pa. C.S. §1301. In addition, the undisputed evidence supports a finding that PGW’s WNA produces unreasonably discriminatory rates among residential customers in violation of Section 1304 of the Public Utility Code. 66 Pa. C.S. §1304; *see* OCA M.B. at 15-19.

III. The Company's Due Process Arguments Are Misplaced.

PGW argues that, “[a]ny Commission action that significantly modifies, suspends or terminates PGW’s WNA as part of this proceeding ... will violate PGW’s fundamental rights to due process.” PGW M.B. at 16-17. The Company made this argument in its request for Interlocutory Review, and it was rejected in its entirety. The Commission held:

[W]e conclude that PGW’s due process rights would not be violated by continuing this proceeding. PGW has had adequate notice of the issues in this proceeding and has had, and will continue to have, an opportunity to respond to those issues through testimony, at the evidentiary hearing, and in briefs. As discussed, *supra*, PGW has known since September 2022 that the scope of this proceeding included the investigation into the justness and reasonableness of the WNA. Therefore, PGW is not prejudiced in any way by continuing to litigate the WNA issues in this proceeding.

May 18 Order at 18.

The Company also made a similar argument in the Evidentiary Hearings in this docket that was rejected by the ALJ. The Company argued for the admission of supplemental testimony filed in its base rate proceeding, stating:

We have submitted supplemental direct testimony of Denise Adamucci and Ann Ronald Amen that are statements 1SD and 2SD, along with exhibits in the base rate case...we would request that the testimony also be admitted here.

Tr. 80. Counsel for PGW continued:

It’s our position that our testimony needs to go into the record of one of the proceedings.

Tr. 86. Counsel for PGW concluded that:

It would be grossly unfair to decide that we can only raise these issues in the WNA, and then when we in good faith, raised issues in the base rate case. And then the Commission makes a determination subsequent to that and says, no, we decided we want all the issues in the WNA to -to not permit us to – to raise that testimony or

transfer that testimony over. You know, that's just a gross violation of our due process...

Tr. 89. OCA counsel responded that that Company had:

[A]mple opportunity to present testimony in this case, to modify its proposal, to supplement its proposal if it chose to do so. The Company chose not to do so and is choosing to put the OCA and other parties in a position of having to litigate a new proposal in a very truncated schedule in order to not have further delay and impact to customers.

Tr. 89-90.

ALJ Guhl ruled on PGW's motion to move testimony into this proceeding at such a late date, as follows:

At this point, I would note for the record that the opinion and order issued by the Commission on May 18th is very clear. That the issues related to the [WNA] are to be addressed in this proceeding.

I would also note for the record that the time crunch we are now facing is purely of PGW's making. I issued the order that they requested interlocutory review for in February of this year. They did not request interlocutory review from the Commission until the end of April. They also knew, according to the regulations that the Commission would have up to 30 days to act on that request for interlocutory review.

The Commission has clearly indicated in their suspension order for this case that was issued *back in September of 2022 that the scope of this proceeding included investigation into the justice (sic) and reasonableness of the [WNA]*... So with that understanding, and with the fact that briefs are due in less than two weeks, I am denying PGW's request to move the testimony into this proceeding, and we will continue with the procedural schedule as it is indicated.

Tr. 90-91 (emphasis added).

Nothing has changed since the ALJ rejected PGW's argument. The Company explicitly represented to the Commission that this proceeding was the proper proceeding and the only proceeding needed to correct issues with its WNA. PGW specifically referenced this WNA

proceeding as the corrective action that the Company was planning to take in order to address the issue. Report of PGW on Weather Normalization Adjustment Issue, Docket No. P-2022-3033477, PGW Report (Aug. 12, 2022). In its Petition initiating this proceeding, PGW stated that, with approval of its proposed 25% cap, “investigation beyond that which has already been undertaken is neither necessary nor required.” Petition at ¶26. PGW established that this proceeding was the proper venue to correct acknowledged flaws in its WNA. PGW’s current argument that the Company is prejudiced by having to address the flaws in the WNA in this proceeding has no merit.

PGW has had ample time to present evidence in this proceeding. A schedule was established, and then revised for additional time, for the presentation of evidence in this proceeding. PGW refused to provide its preferred testimony in this docket until ordered by the ALJ to do so on February 23, 2023. The Commission has since ruled that this is precisely the proceeding to address the WNA. The Company does not have “clean hands” in making the argument that it has been denied due process, and any perceived flaw in procedural due process is of the Company’s own making. PGW’s due process argument must be denied.

IV. The Company’s Proposal to Eliminate May Is Not Reasonable.

In its Brief, the Company argues that the WNA is functioning well and that the elimination of May from the WNA calculation will resolve any concerns with the charge. PGW M.B. at 23-24. The OCA submits that PGW’s support for the removal of May from the WNA calculation is not supported by evidence in the record. As discussed above, PGW’s oral motion to move new additional testimony at the evidentiary hearing into the record of this proceeding was denied. Tr. 80-91.

Despite the denial of its motion to admit additional testimony, PGW argues in its Main Brief that the unadmitted testimony of Ronald Amen supports the removal of May from the WNA

calculation. PGW M.B. at 12. PGW has not established in the record of this proceeding any support for its claim that the elimination of May would solve the problems inherent in its WNA. Rather, removal of May would not do anything other than move the problems requiring emergency relief the past two years to surface in April. It is mere speculation to assume the removal of May would rectify the WNA problems that have been established on the record.

V. PGW's Financial Harm Arguments are Flawed.

In its Brief, PGW argues that the WNA is necessary to ensure revenue stability and for the financial health of the Company. PGW M.B. at 20-22. As OCA witness Nelson explained, the WNA revenue represents a small portion of operating revenues and net income. OCA St. 1 at 19. Mr. Nelson explored the impact of removing the WNA and “when asked about difficulties financing long term debt, the Company did not substantiate with evidence.” *Id.*

The Company is currently before the Commission seeking over \$85.8 million from ratepayers in increased distribution rates. *Pa. PUC v. PGW*, Docket No. R-2023-3037933 (filed Feb. 27, 2023). As a result of that proceeding, PGW will likely receive an increase to base rates established by the Commission and found to be just and reasonable. Suspension of the WNA poses no threat to the Company's finances at this time. No party to this proceeding is challenging the Company's right to file for rate increases pursuant to the provisions of the Public Utility Code. The current WNA, however, is broken and does not meet the statutory requirements for rates as established in the Public Utility Code.

VI. The WNA Mechanisms of Other Utilities Are Not Relevant To This Proceeding.

In its Brief, PGW notes that multiple utilities have Weather Normalization Adjustment charges. PGW M.B. at 3-4, 29-30. Importantly, PGW does not claim that any of these other charges are identical to its rate mechanism. The term “WNA” is applied to tariff provisions for each of

these other identified utilities, but that term covers all decoupling mechanisms tied to weather variability. *See generally* OCA St. 1 at 4-8 (OCA witness Nelson’s discussion of the purpose of a WNA, revenue decoupling, and how PGW’s WNA operates.) Suspension of PGW’s WNA would not result in other identical WNA’s remaining in operation throughout Pennsylvania. It would only suspend PGW’s *specific* WNA. PGW would be free to file for the adoption of a new decoupling mechanism designed to address weather variability.

VII. The OCA’s Proposed Modifications Are Supported By Record Evidence.

To be clear, it is the OCA’s recommendation that the WNA be suspended until or unless PGW develops a proposed mechanism that corrects the documented failures, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock. *See* OCA St. 1 at 20. In the alternative, if the Commission determined to allow PGW to continue the WNA, OCA witness Nelson identified three potential modifications to better balance the customer and utility risk: (1) extending the monthly reconciliation to an annual reconciliation; (2) a 5% hard cap; or (3) ten-year average weather instead of a 20-year average. OCA St. 1 at 20.

Both PGW and CAUSE-PA/TURN argue that the OCA’s alternative proposal for annual reconciliation is not supported by the record. PGW M.B. at 31-33; Joint CAUSE-PA/TURN M.B. at 27-28. The OCA submits that OCA witness Nelson’s testimony adequately addressed the ability to modify the WNA to reduce variability, if the WNA is not suspended.¹ It is important to note that PGW’s “resolution” to remove May would not address the variability that has been experienced with the WNA, as addressed above.

¹ Pennsylvania utilities have many riders that require reconciliation of costs over multiple periods of time. For example, energy efficiency charges implemented under Act 129 of 2008 are reconciled over an annual basis, as the Commission ordered “the tariff mechanism will be subject to an annual review and reconciliation in accordance with 66 Pa. C.S. § 1307(e).” *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887 (Order entered January 16, 2009 at 38).

Mr. Nelson explained that if the WNA is allowed to continue, reconciliation should be done on an annual, rather than monthly, basis to reduce volatility. OCA St. 1 at 20. Mr. Nelson testified that:

The Company can track the revenue deficit (or surplus) monthly, apply a carrying charge to reflect the time value of money, and roll the balance to subsequent months. These charges should be recovered through rates in the following fiscal year.

OCA St. 1 at 20. Mr. Nelson explained that extending the true-up period to an annual reconciliation would shift some customer risk to the utility and create a more equitable balance. OCA St. 1 at 21. Customers would be exposed to far less volatility than they are currently under monthly billing adjustments. *Id.*

In its Brief, PGW also argued that the OCA's alternative 5% hard cap and the ten-year average weather modifications were not supported in the record. PGW M.B. at 33-34. As discussed in the Direct and Surrebuttal testimonies of OCA witness Nelson, the additional potential protections would better balance the utility and customer risk than the current WNA or PGW's proposal to remove May from the calculation. OCA St. 1 at 21-22; OCA St. 1SR at 5-6. In particular, Mr. Nelson concluded that the 5% cap was unlikely to financially challenge PGW because of the impact on the small number of Heating Degree Days. OCA St. 1 at 21-22. Mr. Nelson also provided examples in his Direct and Surrebuttal Testimonies of other utilities which imposed a hard cap on their WNAs. OCA St. 1SR at 6. OCA witness Nelson also noted that PGW witness Adamucci provided "no supporting data" for its own 25% cap proposal. OCA St. 1SR at 6.

VIII. The Current WNA Shifts Unreasonable Risk to Residential Customers.

In its Brief, PGW argues that OCA and CAUSE-PA erroneously rely on "shifting of risk to consumers." PGW M.B. at 26-28; PGW St. 1-R at 7. PGW argues that the WNA provides revenue

neutrality and suggests that the OCA is arguing that the WNA is enabling PGW to recover more revenues than was authorized in the last base rate proceeding. PGW M.B. at 27. PGW also argues that the analysis of risk-shifting has no place in being applied to a municipally-owned utility. *Id.* As the OCA discussed in its Main Brief, PGW's WNA places the risk squarely on consumers. *See* OCA M.B. 12-15.

PGW mischaracterizes OCA witness Nelson's testimony. As Mr. Nelson testified in his Surrebuttal, he "did not claim that the WNA enables PGW to bill more revenues than have been authorized," and he agrees that the mechanism provides revenue neutrality but that does not equate to bill neutrality as the customers' testimony shows. OCA St. 1SR at 4; OCA St. 1 at 10; Tr. 56-57, 67, 69-71, 99 (March 9, 2023 Public Input Hearing Testimony). However, as OCA witness Nelson testifies, PGW's WNA does shift risk "because outcomes for customers and for PGW will differ with and without the WNA." OCA St. 1SR at 4. When a WNA like PGW's is in place, the outcomes may also differ for customers based on how the WNA is designed. *Id.* OCA witness Nelson testified:

[i]f under one WNA design (say, monthly reconciliation), customer bills vary radically as compared to another WNA design (say, annual reconciliation), all else constant (e.g., no significant change in outcome for PGW), the WNA with monthly reconciliation shifts more risk from PGW onto consumers.

OCA St. 1SR at 4.

Another risk shift between PGW and customers involves the potential of a warming climate. OCA St. 1SR at 4. OCA witness Nelson testified:

[i]f warming weather results in lower consumption and lower bills for consumers, but those customers have to continue paying the same level to the Company, that outcome is not equitable. Under that structure, there also might be little incentive for the company to address its falling sales, causing customers to continue to shoulder the consequences of the weather abnormality.

OCA St. 1SR at 4-5.

PGW argues in its Brief that the analysis of risk-shifting has no place in being applied to a municipally-owned utility. PGW M.B. at 27. The OCA disagrees. As Mr. Nelson testified, this very proceeding is due to the excessive risk shift from the Company to its customers. OCA St. 1SR at 5. PGW's ownership by the City of Philadelphia does not change the fact that the ratepayers bore the significant, disparate impact of the increased WNA in their bills in May of 2022 and the risk of future similar impacts from the WNA due to the design of PGW's WNA. The risk of the monthly volatility was clearly imposed on the customers in order to secure revenue stability for the Company due to the abnormally warm May 2022 weather. *Id.* at 5. The way that PGW's WNA is designed shifts the risk from the Company to its customers. *Id.*

PGW also argues that different billing cycles are always subject to being billed at different levels. PGW M.B. at 28. PGW argues in its Brief that OCA witness Nelson's concerns regarding the disparate impact of the WNA on different billing cycles are without merit. PGW M.B. at 28. PGW attempts to compare the different impact of the WNA to whenever there are changes in base rates, gas cost rates, or other rate changes. PGW M.B. at 28. It is PGW's arguments that are without merit. The issue in May of 2022 was not due to rate increases or rate changes as identified in PGW's examples. Instead, the WNA mechanism itself produces the discriminatory rates for ratepayers. That is, while all PGW customers experienced the same warmer than average weather in May 2022, the impact of the WNA charge varied depending on where those warmer days fell in a customer's billing cycle. As noted above, PGW's WNA produced charges that were, on average, \$3.95 for May 2022 for billing cycle May 7th to June 7th. At the same time, the average WNA charge for the billing cycle *just five days later* from May 12th to June 10th was, on average, \$87.28. OCA St. 1 at 9-10, Figure 1.

The WNA results in discriminatory rates in violation of Section 1304 of the Public Utility Code. 66 Pa. C.S. § 1304; *see* OCA M.B. at 15-19. The significant difference in the amounts charged was due to how the WNA formula differently applied to each of the customer classes. Here, residential customers have been unreasonably disadvantaged depending on the billing cycle into which they happen to be placed. At the same time, residential customers in certain billing cycles have been unreasonably advantaged through lower weather adjusted charges. The OCA submits that the evidence from this proceeding demonstrates that the WNA violates the prohibition against unreasonable discrimination in rates and must be suspended.

IX. Conclusion.

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

Respectfully Submitted,

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