



June 16, 2023

VIA Regular Mail and Email

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

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

Judge Guhl:

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

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

Respectfully Submitted,

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Secretary Chiavetta (Via Efile)
Certificate of Service*

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN), through their respective counsel at the Pennsylvania Utility Law Project (PULP) and Community Legal Services (CLS), file this Joint Reply Brief in response to the Main Brief of Philadelphia Gas Works (PGW). Consistent with the arguments advanced in CAUSE-PA and TURN's Joint Main Brief and as further explained herein, the Commission should order PGW to cease operations of its Weather Normalization Adjustment clause (WNA).

II. COUNTERSTATEMENT OF THE CASE

CAUSE-PA and TURN maintain the position advanced in our Joint Main Brief that PGW's WNA is unjust and unreasonable and should be discontinued. PGW has failed to carry its burden to show that either its originally proposed 25% cap on the WNA charge or the alternative suggestion that excluding the month of May from operation of the WNA will result in just and reasonable rates and charges for PGW customers.

To the contrary, the record in this proceeding demonstrates that PGW's WNA produces consistently and increasingly higher charges for consumers, causes unnecessary rate volatility for certain PGW customers, creates intraclass and interclass rate discrimination, disparately impacts low income households, and detrimentally impacts energy efficiency and conservation. In testimony, CAUSE-PA witness Harry S. Geller Esq. and Office of Consumer Advocate (OCA) witness Ron Nelson pointed out several flaws in PGW's WNA that produce inequitable rates and contravene the goals set forth in the Commission's Distribution Rate Policy Statement regarding alternative ratemaking and decoupling mechanisms.¹

¹ 52 Pa. Code § 69.3302.

To date, there has been no proposal for a reform or adjustment to PGW's WNA that would be adequate to remediate the unfairness inherent in PGW's WNA. The evidence of record strongly weighs against further approval of the WNA when analyzed pursuant to the Commission's Policy Statement regarding alternative ratemaking mechanisms.² Neither PGW's nor OCA's proposed changes to the WNA are adequate to address the inherent inequities of the mechanism, nor are they adequate to prevent future WNA induced rate spikes. Thus, PGW's WNA should be discontinued.

III. BURDEN OF PROOF AND LEGAL STANDARD

In its main brief, PGW asserts that the WNA should be considered as an existing rate and, as such, it is the other parties' burden to demonstrate that the existing Tariff provision is unreasonable.³ As support for its claim, PGW cites *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, which states:

Public utility rates, of course, are required to be just and reasonable, 66 Pa. C.S. § 1301, and, where a customer is heard to complain **concerning a proposed change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and reasonable**. Where the complaint involves an existing rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable.⁴

PGW appears to contend that because non-PGW parties submit the WNA should be discontinued or suspended, that such opposition shifts the overall burden to those parties to prove the WNA is no longer reasonable. This contention is unsupported for the simple reason that PGW commenced this proceeding; it was not commenced by complaint.

This case involves PGW's proposed rate change to its WNA.⁵ The Commonwealth Court has clarified that in cases involving a proposed change in rates, where the Commission's initiating

² 52 Pa. Code §§ 69.3301-3302.

³ PGW MB at 14.

⁴ *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Commw. Ct. 1981) (emphasis added).

⁵ See *Cup v. Pa. PUC*, 556 A.2d 470, 473 (Pa. Commw. Ct. 1989).

order institutes an investigation *upon commission motion* into the propriety of existing rates as well as the proposed rates, the burden of proof falls on the utility to show the just and reasonableness of *both its existing and proposed rates*.⁶ In *Sharon Steel Corporation v. Pennsylvania Public Utility Commission*, the Court stated:

By ordering an investigation into the propriety of existing and proposed rates on commission motion, the PUC clearly placed the burden of justifying those rates upon NFG. *Zucker* is inapposite because, in that case, no motion of the commission initiated the proceeding.⁷

In the current case, PGW filed a proposed tariff supplement with a revised weather normalization adjustment.⁸ Like the *Sharon Steel* case, the Commission suspended the Tariff Supplement and instituted an investigation *upon Commission motion* into the justness and reasonableness of PGW's *existing rates* as well as the proposed rates.⁹ By virtue of the PUC's motion, PGW has the burden of proving that, not only its proposed rates, but also its existing rates, are just and reasonable under section 1301(a) of the Public Utility Code (Code). Indeed, section 315(a) of the Code provides that “[i]n any proceeding upon the motion of the commission, involving any proposed or existing rate . . . the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.”¹⁰ Thus, consistent with the plain language of the statute and established precedent, the burden of proof in this proceeding remains on PGW. For PGW's WNA to continue, PGW must show that each element of its request is just and reasonable.

Even if the burden of proof were upon non-PGW parties, CAUSE-PA and TURN's Joint Main Brief details ample record evidence demonstrating that PGW's WNA is neither just nor

⁶ *Sharon Steel Corp. v. Pa. PUC*, 468 A.2d 860, 862 (Pa. Commw. Ct. 1983).

⁷ *Id.*; *clarifying Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Commw. Ct. 1979).

⁸ Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment.

⁹ S&O Order at 2-3.

¹⁰ *Sharon Steel Corp.*, 468 A.2d at 862; *see also* 66 Pa. C.S. §§ 315 (a), 1301 (a).

reasonable and the Commission should order its discontinuation. The record in this proceeding clearly shows that PGW's WNA is unsupportable pursuant to the standards set forth in the Commission's Distribution Rates Policy Statement.¹¹

PGW's main brief points solely to the fact that its WNA has been in place since 2002 as support for its justness and reasonableness. However, in 2019, the Commission adopted its Distribution Rates Policy Statement, implementing section 1330 of the Public Utility Code. This Policy Statement set forth newly adopted standards for evaluating whether alternative ratemaking mechanisms and decoupling mechanisms are just and reasonable, and consistent with section 1330.¹² This proceeding provides the first opportunity for the Commission to carefully evaluate PGW's WNA under these standards.

Contrary to PGW's claims that the WNA's 2002 approval creates a presumption that the WNA is *prima facie* reasonable, the Commission's adoption of standards for evaluation of decoupling mechanisms, together with the documented inequities and rate volatility produced by the WNA, demonstrate that the rate mechanism does not benefit from any presumption in favor of its continuation. The May/June 2022 WNA rate spike, and PGW's proposal to substantially modify its WNA in response, demonstrate the substantial changes in circumstances since the Commission originally approved the WNA in 2002 and since PGW last modified the WNA in 2017. As explained more thoroughly below and in CAUSE-PA and TURN's Joint Main Brief, a review under the Commission's standards in the Policy Statement demonstrates that the WNA is not just and reasonable.

¹¹ 52 Pa. Code § 69.3302.

¹² 66 Pa. C.S. § 1330; 52 Pa. Code §§ 69.3301-.3302.

IV. ARGUMENT

A. PGW's due process rights will not be violated by discontinuing its WNA.

In its main brief, PGW asserts that its due process rights would be violated if the Commission suspends or terminates the WNA.¹³ PGW provides a lengthy explanation of the procedural strategy it employed in an effort to have late filed testimony entered into the record in its ongoing base rate case (BRC), rather than addressed at the current docket.¹⁴ It explains that its strategy failed, resulting in its testimony being stricken from the record in the BRC. Likewise, at the evidentiary hearing in this proceeding, PGW attempted to introduce the testimony that had been stricken from the BRC, but its motion was denied.¹⁵ PGW asserts that the combination of being ordered to submit direct testimony in a short timeframe after failing to meet its filing deadline (which, notably, had already been extended multiple times), the alleged expansion of the proceeding, and the refusal of the ALJ to admit the stricken base rate testimony into this proceeding violate its due process rights.¹⁶

PGW's due process rights have already been addressed by the Commission in its May 18, 2023 Order denying PGW's Petition for Interlocutory Review.¹⁷ The Commission held:

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

With respect to PGW's argument that it is an unnecessary waste of resources to litigate WNA issues in separate proceedings, we agree with OCA and CAUSE-PA

¹³ PGW MB at 16.

¹⁴ *Id.* at 16-17.

¹⁵ *Id.* at 17.

¹⁶ *Id.*

¹⁷ May 18, 2023 Order Denying Interlocutory Review at 18-19.

that much of any wasting of resources here is due to PGW's own actions in raising the WNA issues in the BRC.¹⁸

Nonetheless, in the sections below, CAUSE-PA and TURN respond to PGW's renewed contentions that its due process rights would be violated if the Commission discontinues the WNA. The Commission should find that PGW's due process arguments are meritless.

1. *PGW was not prejudiced by being ordered to submit direct testimony on February 23, 2023.*

In its main brief, PGW asserts that it was prejudiced by being required to submit direct testimony on February 23, 2023, the same day that the second prehearing order in this case was issued.¹⁹ However, PGW's argument fails to acknowledge that it had already missed its agreed upon deadline to submit direct testimony on February 14, 2023. Notably, this agreed upon deadline was already an extension of PGW's original deadline to submit direct testimony on November 30, 2022.²⁰ On February 14, rather than filing testimony or requesting a further extension, PGW filed a letter indicating that it was refusing to file direct testimony in this proceeding and that it intended to file its testimony at the BRC docket.²¹ Nonetheless, the ALJ provided PGW an *additional opportunity* to submit direct testimony by February 23, 2023 – 9 days after the deadline.

Furthermore, as discussed above, the Commission's May 18, 2023 Order denying PGW's Petition for Interlocutory Review squarely addressed the due process adequacy of this proceeding, providing PGW more than sufficient opportunity to pursue its objectives.²² PGW has had ample opportunity to make its case in this proceeding and the assertion that its due process rights will be violated by an order suspending or terminating the WNA is meritless.

¹⁸ *Id.*

¹⁹ PGW MB at 17.

²⁰ PGW Motion to Hold Procedural Schedule in Abeyance at 4 ¶ 12.

²¹ *See* PGW Feb. 14 Letter Indicating No Direct Testimony.

²² May 18, 2023 Order Denying Interlocutory Review at 18-19.

2. *There was no “subsequent expansion” of the current proceeding as PGW claims.*

In its main brief, PGW asserts that it was prejudiced by “the PUC subsequently expanding this proceeding to entail a full-blown investigation of the WNA despite the pendency of a base rate case.”²³

From the start of this proceeding, CAUSE-PA and TURN have been clear in our position that the scope of this proceeding necessarily includes an investigation into “*whether permanent elimination of the WNA may be appropriate.*”²⁴ We clearly stated this position in multiple filings at this docket from the very start of the proceeding, and specifically responded to PGW’s September 9, 2022 Letter filed at this docket which attempted to artificially narrow the scope of this proceeding to only consider the justness and reasonableness of PGW’s proposed 25% cap.²⁵

²³ PGW MB at 17.

²⁴ CAUSE-PA/TURN Joint Comments at 4 (emphasis added); see also CAUSE-PA Pet’n to Intervene at para. 7; Joint Letter of the Low Income Advocates in Response to PGW’s Sept. 9, 2022 Letter; CAUSE-PA Prehearing Memo at 5-6.

²⁵ See PGW September 9 Letter; Joint Letter of the Low Income Advocates in Response to PGW’s Sept. 9, 2022 Letter. In relevant part, we explained:

PGW argues, in essence, that the Commission is limited to an up or down vote on this proposal: Either the Commission accepts PGW’s proposal, or the WNA must continue unchanged. PGW asserts that any other modification of its WNA would impinge on PGW’s due process rights and, thus, would require initiation of a separate proceeding. PGW provides no support for this proposition, which is counter to the Commission’s statutory obligation to ensure that every rate and charge imposed by PGW is just and reasonable. 66 Pa. C.S. § 1301.

...

PGW’s proposal to cap its WNA credits and charges at 25% necessarily raises the question of whether a different cap, *elimination of the WNA*, or some other modification to the WNA is the most appropriate way to ensure that customers do not experience unjust and unreasonable rates, such as those WNA charges PGW billed for May 2022.

...

PGW’s Letter ostensibly amounts to a procedurally defective motion *in limine*, which deprives the Low Income Advocates of the right and opportunity to file a formal response. While the Commission has discretion to waive procedural defects, that discretion is limited to “an error or defect of procedure which does not affect the substantive rights of the parties.”² PGW’s attempt to limit the scope of this proceeding by filing an informal letter with the Commission would substantially affect the substantive rights of the Low Income Advocates and should be denied.

(Joint Letter of the Low Income Advocates at 2 (emphasis added)). PGW never made any subsequent filing seeking to limit the scope of the instant proceeding.

Following PGW’s September 9 Letter, and CAUSE-PA and TURN’s objections thereto, the Commission issued an Order suspending PGW’s proposed WNA tariff modifications and commencing an investigation into the justness and reasonableness of PGW’s WNA rates. Notably, this Order was issued on September 15, 2022 – five and a half months before PGW filed its BRC. In its Order, the Commission made it clear that it was initiating an investigation *upon Commission motion* into the lawfulness, justness, and reasonableness of the rates, rules, and regulations in PGW’s proposed tariff supplement, *including its existing WNA*.²⁶

In its May 18, 2023 Order denying PGW’s Petition for Interlocutory Review, the Commission clearly stated, “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.”²⁷

Any assertion by PGW that the Commission has expanded this proceeding subsequent to the September 2022 Order is without merit and should be rejected.

3. *PGW was not prejudiced by the denial of its motion to submit late-filed supplemental base rate testimony into the record in this proceeding.*

In its main brief, PGW asserts that it was prejudiced because Administrative Law Judge Marta Guhl denied its motion to admit supplemental testimony from the base rate proceeding into the record in this proceeding.

Again, the results that PGW perceives as violative of its due process rights are the consequences of its own actions. As the ALJs in the BRC explained in the Order granting OCA’s motion to strike PGW’s testimony from that proceeding:

It is the exclusion of the consultant’s report from the record in the WNA proceeding that has PGW allege a due process violation in the present BRC if OCA’s Motion

²⁶ September 15 Order at 2-3.

²⁷ May 18, 2023 Order Denying Interlocutory Review at 18-19.

to Strike is granted. However, it was not a Commission order but PGW's decision to enter the report as a part of its April 3, 2023, supplemental direct testimony to the BRC instead of filing it as a supplemental to its February 23, 2023, direct testimony in the WNA proceeding. That unilateral decision on the part of PGW to unnecessarily separate WNA issues into two different proceedings that have come to run simultaneously will not only waste judicial and administrative resources but may also lead to two separate and different decisions that the Commission, PGW and the parties will have to reconcile in the future.²⁸

PGW's argument disregards the lateness of PGW's motion, made at the evidentiary hearing in this matter, to have its supplemental testimony admitted in this proceeding. At that time, PGW's and other parties' witnesses were present for cross-examination, having had the opportunity to present Direct, Rebuttal, Surrebuttal and Rejoinder written testimony. If PGW were permitted to introduce supplemental direct testimony raising new evidence at this late stage in the proceeding, it would have disadvantaged all other parties - raising critical due process issues and adding substantial additional time to the proceeding for the other parties to respond to newly proffered proposals and evidence.²⁹

ALJ Guhl properly denied PGW's motion to admit late-filed supplemental testimony, as it would have further extended this proceeding - which has been ongoing for nearly a year.³⁰ PGW had ample opportunity to submit its WNA testimony in this proceeding but instead adopted a procedural strategy of trying to force the issues involved in this proceeding into its BRC. That PGW's strategy failed does not convert the ALJ's order denying PGW's late request to move supplemental testimony onto this proceeding record into a due process violation.

²⁸ Pa. PUC v. PGW, Order Granting the Motion to Strike of OCA, Pa. PUC Docket No. R-2023-3037933, at 13 (order entered June 6, 2023).

²⁹ Section 5.243(e) of the Commission's regulations plainly prohibits parties from "introduc[ing] evidence during a rebuttal phase which should have been included in the party's case-in-chief." 52 Pa. Code § 5.243(e); see also Prehearing Order at para. 9.

³⁰ See May 24 Hrg. Tr. at 90 (noting that timing pressure in the WNA proceeding "is purely of PGW's making.").

B. PGW is not guaranteed revenues through its proposed WNA.

In its main brief, PGW claims that without the WNA, its natural gas operations would be jeopardized due to lost revenues, directly harming customers and requiring it to more frequently seek rate relief from the Commission. In so doing, PGW seeks to elevate speculation about the impact of discontinuing the WNA on future revenues over consumers' interests in just and reasonable rates. Thus, PGW submits that the Commission must maintain its WNA to ensure its financial integrity, without regard to the WNA's impact on customers.

PGW's position is contrary to precedent from the Pennsylvania Supreme Court, namely *Pennsylvania Elec. Co. v. Pennsylvania Public Utility Commission*. In that case, analyzing *Federal Power Commission v. Hope*,³¹ the Court expressly rejected the notion that the ratemaking body must set rates at a level that will, in any given case, guarantee the continued financial integrity of the utility concerned.³² Rather, our Supreme Court recognized that the regulatory authority must balance competing interests to determine "just and reasonable" rates.³³

Although PGW emphasizes its status as a municipal gas utility, the requirement of just and reasonable rates is applicable to a municipally-owned utility like PGW with the same force and effect as it is to an investor owned utility.³⁴ Of course, the Commission is required to use the cash flow methodology to determine PGW's just and reasonable rates.³⁵ But that ratemaking obligation does not require the Commission to authorize the specific revenue recovery mechanism, the WNA, which PGW seeks to maintain. Indeed, because PGW is currently pursuing a rate increase in its

³¹ *Fed. Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

³² *Pa. Elec. Co. v. Pa. PUC*, 502 A.2d 130, 133 (Pa. 1985).

³³ *Id.*

³⁴ *American Aniline Products, Inc., v. Lock Haven*, 135 A. 726 (Pa. 1927).

³⁵ *See* 52 Pa. Code §§ 69.2701-2703.

BRC, the Commission can fulfill its ratemaking obligation based upon the record in that proceeding, ensuring adequate revenues to support PGW operations, depreciation allowances and debt service, as well as such appropriate margins as may be in the interest of PGW's customers.³⁶

PGW's continued assertion that the operation of the WNA only allows it to collect the revenues that the Commission has approved ignores the fact that the Commission does not guarantee revenue for utilities. In setting rates, the Commission has a "duty to set 'just and reasonable' rates, reflecting a balance of the interests of both the utility and its consumers."³⁷ The Commission's decision in any base rate case **does not guarantee a specific level of revenue for utilities**. PGW's argument also ignores the basic premise that a properly designed WNA should protect both the utility and the consumer from abnormal weather, not produce consistently high charges.

Throughout this proceeding, PGW has repeatedly asserted its need for the WNA to produce revenue and focuses solely on the alleged cash flow benefits of the WNA while ignoring the disparate and detrimental impacts that the alternative rate mechanism has on consumers, particularly PGW's low income customers. As CAUSE-PA witness Harry Geller explained in his testimony, consistently warmer weather has led to consistently and increasingly higher WNA charges for customers.³⁸ Consistent weather patterns can no longer be considered abnormal weather and it is inappropriate to use a decoupling mechanism that is purportedly designed to respond to abnormal weather, but that instead produces unlawfully discriminatory rates,

³⁶ 52 Pa. Code § 69.2702.

³⁷ Popowsky v. Pa. PUC, 665 A.2d 808, 811 (Pa. 1995); 66 Pa. C.S. § 1301.

³⁸ CAUSE-PA St. 1 at 4.

disproportionately harms low income customers, disincentivizes energy efficiency measures and is unsupported by cost causation principles.

In conducting the required balancing of interests to determine just and reasonable rates, the Commission should conclude that the demonstrated inequity and volatility in rates caused by PGW's WNA outweigh PGW's interests in maintaining the WNA as a revenue recovery mechanism. PGW's WNA should be discontinued.

C. PGW's arguments regarding its 25% cap and elimination of May from the WNA should be disregarded.

PGW asserts that it has supported its proposed changes to the WNA, including its 25% cap and its proposal to remove May from the WNA equation.³⁹ However, PGW has explicitly stated that it is no longer interested in pursuing its 25% cap.⁴⁰ Furthermore, PGW has not explicitly proposed to remove May from its WNA equation in this case. PGW's proposal was included in the supplemental testimony that was stricken from the BRC and not allowed to be introduced in this proceeding.⁴¹ Thus, CAUSE-PA and TURN respectfully assert that PGW has abandoned its 25% cap proposal and failed to support the removal of May by substantial record evidence.

As explained in CAUSE-PA and TURN's Joint Main Brief, no party is supporting the implementation of a 25% cap.⁴² Such a cap would fail to resolve the underlying issues with the WNA.⁴³ Further, simply removing the month of May from the WNA does not address the

³⁹ PGW MB at 22-24, Appendix B, ¶10.

⁴⁰ PGW St. 1-R at 4.

⁴¹ The closest PGW comes to proposing removal of May is the statement in its Rejoinder Testimony that PGW "would support an Order permanently removing May from the formula in this proceeding." See PGW St. 1-RJ at 5.

⁴² CAUSE-PA/TURN MB at 25.

⁴³ Id. at 24-25.

inequities caused by PGW's WNA in any of the other months in which it operates.⁴⁴ Neither of PGW's proposals is a viable solution to solve the inequities produced by PGW's WNA.

D. CAUSE-PA and TURN have demonstrated that PGW's WNA is unjust and unreasonable.

In PGW's main brief, it asserts that CAUSE-PA and TURN must carry the burden of proving the WNA is unreasonable and have failed to do so.⁴⁵ As explained above, the burden of proof in this proceeding is on PGW to support each element of its WNA and to show that the WNA produces just and reasonable rates.⁴⁶ However, CAUSE-PA, TURN, and OCA have presented substantial and persuasive evidence demonstrating that PGW's WNA is unjust and unreasonable and should be discontinued. CAUSE-PA and TURN's Joint Main Brief explains that PGW's WNA:

- Produces unlawfully discriminatory rates and impermissible intraclass (and likely interclass) cost shifting;⁴⁷
- Detrimentally impacts low income customers;⁴⁸
- Disincentivizes energy efficiency programming;⁴⁹ and,
- Violates cost causation principals.⁵⁰

Each of these outcomes contribute to the overwhelming weight of evidence against permitting the WNA to continue, particularly when viewed in light of the Commission's Distribution Rate Policy Statement.⁵¹

⁴⁴ Id. at 25-26.

⁴⁵ PGW MB at 25-30.

⁴⁶ See Section III *supra*.

⁴⁷ CAUSE-PA/TURN MB at 12-17.

⁴⁸ Id. at 17-20.

⁴⁹ Id. at 20-22.

⁵⁰ Id. at 22-23.

⁵¹ 52 Pa. Code § 69.3302.

As explained further in CAUSE-PA and TURN’s Joint Main Brief, PGW has failed to carry its burden to support continuation of the WNA.⁵² Although PGW provides a lengthy explanation of the intention of the WNA when implemented many years ago, and the purposes for which it was established, PGW fails to address the WNA’s intraclass rate discrimination, detrimental impact on energy efficiency programming, or disparate impact on low income households. PGW’s claims in support of the continuation of the WNA simply do not satisfy the burden to show that the WNA produces just and reasonable rates. PGW claims that there is no justification for elimination of the WNA and asserts that “the WNA fairly operates to both charge and credit customers depending on the weather.”⁵³ However, CAUSE-PA witness Harry Geller explained that the WNA does **not** operate in a fair manner. He explained that the WNA consistently and increasingly adds additional cost to residential bills, exacerbating energy insecurity for income families and that, “On the rare occasion that the WNA results in credits for a customer, those credits are far less in comparison to the charges levied in other months.”⁵⁴

Overall, PGW’s argument is summed up in its claim that “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.”⁵⁵ However, the inequities pointed out by Mr. Geller and OCA witness Mr. Nelson are not limited to the single “glitch” in May/June 2022. The WNA has resulted in discriminatory rates and consistently and increasingly charged customers more than they would have otherwise paid. Furthermore, PGW’s implied assertion that the WNA has operated well for 20 years is unsupported and inadequate. When asked in discovery about the WNA charges and credits over the past ten

⁵² CAUSE-PA/TURN MB at 23-24.

⁵³ PGW MB at 28.

⁵⁴ CAUSE-PA St. 1 at 10.

⁵⁵ PGW MB at 29.

years it failed to produce any documentation prior to 2018.⁵⁶ Finally, although PGW has provided some hypothetical examples about how its WNA works, it has not presented any analysis of historical performance in this proceeding.

PGW's exclusive focus on revenue recovery ignores the inherent technical flaws of its WNA and the effect of the WNA on its customers. PGW has failed to carry its burden to prove that its WNA can produce just and reasonable rates. Thus, the Commission should order PGW to cease operation of the WNA.

V. CONCLUSION

For the reasons set forth in CAUSE-PA and TURN's Joint Main Brief and this Joint Reply Brief, the Commission should discontinue operation of PGW's WNA and should require PGW to make appropriate changes to its tariff to eliminate this unjust and unreasonable charge.

Respectfully Submitted,

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⁵⁶ See CAUSE-PA St. 1 at 5, Append. B at p. 26 (CAUSE-PA I-14).