

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

RECOMMENDED DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

In the 1308(b) proceeding for Philadelphia Gas Works (PGW), the parties litigated the Weather Normalization Adjustment (WNA) section of the Company's tariff. This Recommended Decision recommends that the Commission adopt the Company's position that the month of May should be removed from the WNA calculation going forward. This Decision also recommends that the Commission direct the Company to fully address the WNA in its next Base Rate Case (BRC) after the current BRC at Docket No. R-2023-3037933.

HISTORY OF THE PROCEEDING

On August 2, 2022, PGW filed a Petition seeking approval of Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2, to become effective on October 1, 2022. The Company's Petition requested that the Commission approve tariff modifications on less than the statutorily established sixty days' notice, which it asserted was designed to limit the harm that is possible due to the operation of its WNA. PGW sought to revise its Gas Service Tariff by adding

a control cap to its WNA so that customers would not be billed a WNA charge or credit that is greater than 25% of total delivery charges, excluding the WNA, on any given bill.

The introduction of Supplement No. 152 is the result of a large spike in the WNA in May 2022. On June 30, 2022, the Company filed a Petition for Emergency Order (Emergency Petition), Docket No. P-2022-3033477, with the Pennsylvania Public Utility Commission (Commission). The Company's Emergency Petition requested that the Commission approve tariff modifications designed to suspend operation of PGW's WNA for May 2022 because its application of the WNA during that month resulted in unintended rate shock for customers of more than \$11.3 Million. The OCA filed an Answer to PGW's Emergency Petition on July 1, 2022, supporting the suspension of the WNA as applied to May 2022 bills and urging the Commission to open an investigation and suspend the WNA until it can be thoroughly evaluated.

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

On September 15, 2022, the Commission ordered an investigation into the lawfulness, justness and reasonableness of Supplement No. 152. The Commission further ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations.¹ The Commission suspended the proceedings until April 1, 2023, and referred the matter to the Office of Administrative Law Judge. The matter was assigned to Administrative Law Judge Marta Guhl.

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

¹ *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket Nos. R-2022-3034229, P-2022-3034264 (Order entered Sept. 15, 2022).

A telephonic Prehearing Conference notice was issued on September 16, 2022, and a Prehearing Order was issued on September 19, 2022.

The telephonic prehearing conference was held on September 28, 2022. The parties requested additional time to put together a procedural schedule. The parties submitted a procedural schedule to ALJ Guhl on October 5, 2022, and the ALJ approved the proposed schedule.

On November 8, 2022, PGW filed a Petition for Leave to Withdraw its filings and a Motion to Hold the Procedural Schedule in Abeyance. The OCA and CAUSE-PA filed Answers objecting to the Petition for Leave to Withdraw. ALJ Guhl granted the request to hold the procedural schedule in abeyance. On December 6, 2022, PGW counsel advised that the parties had agreed to a new procedural schedule in light of the ALJ's granting of Motion to Hold the Procedural Schedule in Abeyance. The Company voluntarily agreed to move the suspension deadline to October 5, 2023.

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

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

The Direct Testimony PGW was originally scheduled to be submitted on February 14, 2023, but instead, the Company filed a letter indicating that it was not going to submit direct testimony in this matter. OCA, CAUSE-PA and TURN objected to PGW failing to file its direct testimony. An emergency telephonic prehearing conference was held with ALJ Guhl and the parties regarding the procedural schedule on February 22, 2023 where PGW was told that it would have until the close of business on February 23, 2023 to file its Direct Testimony.

On February 22, 2023, ALJ Guhl issued a Prehearing Order which determined that the Petition to Withdraw had been rendered moot. On February 23, 2023, the Judge issued Prehearing Order #2 which directed PGW to submit its Direct Testimony by close of business on February 23, 2023. Subsequently, on February 23, 2023, PGW submitted the Direct Testimony of Denise Adamucci.

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

Public Input Hearings were held at 10 a.m. and 6 p.m. on March 9, 2023, during which 13 customers testified.

On March 23, 2023, OCA and CAUSE-PA requested an extension of its Direct Testimony deadline from April 6, 2023, to April 13, 2023. On March 31, 2023, ALJ Guhl issued Prehearing Conference Order #3 which granted the requested extension. The OCA submitted the Direct Testimony of Ron Nelson on April 13, 2023. CAUSE-PA also submitted the Direct Testimony of Harry Geller on April 13, 2023.

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

Also on April 27, 2023, PGW filed its Petition for Interlocutory Review and Answer to a Material Question (Petition for Interlocutory Review). 52 Pa. Code § 5.302(b). PGW stated that its April 27, 2023 Petition was in response to ALJ Guhl's February 23, 2023 Prehearing Order. The Prehearing Order from February 23, 2023 denied PGW's Petition for Leave to Withdraw, filed on November 8, 2022, as moot. In its Petition for Interlocutory

Review, PGW argued that the Order resulted in the litigation of PGW's WNA issues in two separate proceedings – the instant proceeding and PGW's pending base rate proceeding at Docket No. R-2023-3037933. PGW asked the Commission to grant interlocutory review and answer the following questions in the affirmative:

(a) Does PGW's fundamental due process regarding the continuation of the WNA clause support withdrawal of the Cap Petition and movement of WNA issues to the Base Rate Case?

(b) Does the continued litigation of WNA issues in two separate proceedings involve an unnecessary waste of valuable resources?²

The OCA and CAUSE-PA filed Briefs opposing the Petition for Interlocutory Review on May 8, 2022. PGW and I&E filed Briefs in Support of the Petition for Interlocutory Review. On May 18, 2023, the Commission issued its Order answering the material questions in the negative and denying the Petition for Interlocutory Review.

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

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

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

PGW, OCA, CAUSE-PA and TURN filed Main Briefs on June 7, 2023. On June 16, 2023, PGW, OCA, CAUSE-PA and TURN filed Reply Brief in this matter. OSBA, I&E and PICGUG did not file briefs in this matter. The record closed on June 16, 2023, the date that the Reply Briefs were filed. The matter should be addressed at the September 21, 2023 public meeting and the end of the suspension period is October 5, 2023.

² Petition for Interlocutory Review at ¶ 6.

FINDINGS OF FACT

1. 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. 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. The 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. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 8, 2002, Ordering Paragraph No. 5) (“2002 Base Rate Case”). PGW St. No. 1 at 5.

8. The witness for then Office of Trial Staff (“OTS”), the predecessor of I&E, testified that the WNA would be reasonable since PGW's rates are established using the cash flow method of ratemaking. PGW St. No. 1 at 7.

9. The witness for 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.

10. 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. PGW St. No. 1 at 6.

11. The WNA was implemented on December 1, 2002. PGW St. No. 1 at 6.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. In 2017, PGW's WNA was modified as under the settlement in its base rate case approved by the Commission. *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-2017-2586783 (Opinion and Order entered Nov. 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 Commission at PGW's request) have been made to the WNA formula since 2002. PGW St. No. 1 at 8.

19. 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.

20. In September 2022, the Commission approved a WNA for UGI Utilities, Inc. PGW St. No. 1 at 8.

21. 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.

22. 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.

23. 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.

24. 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.

25. The WNA has worked largely as intended over the past two decades. PGW St. No. 1 at 10.

26. The WNA has helped 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.

27. The WNA is important to PGW's financial stability, which in turn benefits ratepayers. PGW St. No. 1 at 10.

28. A WNA-type clause is appropriate for a municipally owned utility because under the cash flow method of ratemaking, ratepayers provide revenues to cover the entire costs of service. PGW St. No. 1 at 6-7; PGW St. No. 1-R at 20.

29. The WNA minimizes the degree to which shortfalls or windfalls occur. PGW St. No. 1 at 6-7; PGW St. No. 1-R at 20.

30. 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.

31. 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.

32. 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.

33. 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. PGW St. No. 1-R at 17.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. PGW filed the 2022 WNA Report on August 12, 2022. PGW St. No. 1 at 11; PGW Exhibit DA-3.

41. 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 ongoing removal of the month of May from the WNA formula 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.

42. The ongoing exclusion of the month of May from the WNA formula would address the warming weather trends in Philadelphia over recent years. PGW St. No. 1-RJ at 5.

43. The ongoing 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

PUBLIC INPUT HEARINGS

At the time of the prehearing conference, there were no formal complaints that had been filed in this rate proceeding.³ However, there were multiple protests filed with the Secretary’s Bureau and the Office of Consumer Advocate indicated that there was public interest in the case. Based on the above, I determined there was sufficient public interest in Philadelphia Gas Works’ weather normalization adjustment. Accordingly, two public input hearings were held telephonically. In total, 13 people offered testimony:⁴

<u>Date/Time</u>	<u>Witnesses Testifying</u>
<u>Thursday, March 9, 2023</u> <i>10:00 a.m.</i>	11
<u>Thursday, March 9, 2023</u> <i>6:00 p.m.</i>	2

The majority of the PGW customers who testified at the public input hearings offered testimony regarding the need for a weather normalization adjustment and the fairness of such a charge. Russell Semen testified that he was unaware of the WNA that PGW charged until May 2022. Mr. Semen indicated that he felt that it was unfair to charge this to customers when there is no product or service provided. Mr. Semen stated that he questions whether the formula to calculate the WNA is fair or correct.⁵

Morgan Byrne testified on behalf of Solar United Neighbors. She testified that the rate increase is not necessary. Ms. Byrne indicated that she was unaware of the WNA charge

³ I have reviewed the Commission’s internal docketing system and found no formal complaints. Both PGW and OCA have indicated that according to their searches no formal complaints have been filed by consumers.

⁴ There was also one person who offered an off-the-record statement.

⁵ Tr. 53-59.

until she received a high bill in June 2022. Ms. Byrne stated that it is unfair that PGW customers should have to pay this charge when the Company should be pivoting away from fossil fuels.⁶

David Augenbraun testified he was unaware of the WNA until he received a bill for his gas usage from January 2023. Mr. Augenbraun stated that he found that he was charged more for using less gas and does not think it is fair to customers.⁷

Marie DeMarco testified on behalf of Physicians for Social Responsibility Pennsylvania and indicated that she was concerned for low-income customers who are already economically stressed. She stated that the WNA disproportionately affects low-income and marginalized communities. Ms. DeMarco stated that it is unfair for PGW to shift the problems associated with climate change to its customers.⁸

Linnea Bond⁹, Emily Abendroth¹⁰, Pamela Darville¹¹, on behalf of POWER, Walter Tsou¹², Steven Greenspan¹³, Russell Zerbo¹⁴, on behalf of Clean Air Council, and Julie Greenberg¹⁵ all testified similarly in this matter. They all voiced concerns about affordability and fairness. They also indicated that PGW should find ways to move away from fossil fuels as the climate continues to warm. They indicated that PGW's customers should not have to shoulder the burden for a decrease in natural gas usage.

⁶ Tr. 62-64.

⁷ Tr. 66-69.

⁸ Tr. 73-75.

⁹ Tr. 78-80.

¹⁰ Tr. 86-88.

¹¹ Tr. 91-92.

¹² Tr. 94-97.

¹³ Tr. 99-100.

¹⁴ Tr. 103-107.

¹⁵ Tr. 110.

Jackson Hart testified that PGW should abolish the WNA in this matter. Ms. Hart indicated that PGW should not be allowed to pass on losses to its customers due to decreased usage. Ms. Hart stated that PGW should find a way to use alternative sources of energy especially due to climate change.¹⁶

Robin Mann testified she is opposed to the usage of a weather normalization adjustment. Ms. Mann testified that she is concerned with affordability of rates and people will be struggling to pay their bills. Ms. Mann indicated that PGW and other utilities should not be allowed to shore up profits on the backs of customers. Ms. Mann stated that the utilities should make plans to transition away from fossil fuel usage.¹⁷

LEGAL STANDARD

The purpose of this investigation is to establish rates for PGW's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.¹⁸

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.¹⁹ 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. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *U.S. Steel Corp. v. Pa. Pub. Util. Comm'n*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Deitch Co. v. Pa. Pub. Util. Comm'n*, 203 A.2d 515 (Pa. Super. 1964).

¹⁶ Tr. 134-135.

¹⁷ Tr. 140.

¹⁸ 66 Pa.C.S. § 1301.

¹⁹ 66 Pa.C.S. § 315(a).

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 Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (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. *Pa. Pub. Util. Comm'n v. Appalachian Util., Inc.*, Docket No. R-2015-2478098 (Order entered Mar. 10, 2016). 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.

DISCUSSION

A. Due Process Issue

PGW contends that its due process rights have been violated in this matter. Specifically, the Company maintains that it should have been allowed to present additional testimony related to the WNA that it had initially submitted in its 2023 Base Rate Case at Docket No. R-2023-3037933. OCA and CAUSE-PA/TURN argue that the Company's rights have not been violated in this matter as it had adequate notice of the issues involved in this proceeding.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). I find that the WNA proceeding more than satisfies the due process requirements. The WNA Suspension Order entered September 15, 2022, notified PGW and the non-Company parties in that proceeding that the Commission had instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2. *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-2022-3034229 (Order

entered Sept. 15, 2022). (*WNA Suspension Order*). Further the Commission ordered that “this investigation shall include consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works’ existing rates, rules, and regulations. *WNA Suspension Order* at ¶ 4. These provisions satisfied the due process notice requirement notifying the parties that the Commission had instituted an investigation into the justness and reasonableness of PGW’s WNA. The procedural history of the WNA proceeding indicates that PGW and the other parties were given not only a meaningful hearing but also a meaningful opportunity to adequately protect their interests through discovery, testimony, cross examination, and through briefs and exceptions. *Snyder Brothers, Inc. v. Pa. Pub. Util. Comm’n*, 224 A.3d 450 (Pa. Cmwlth. 2020).

PGW asserts that it has not been allowed to file supplemental direct testimony and supplemental report that it had initially filed in its 2023 BRC. 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 instead of filing it as a supplement 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.

Further, while PGW contends that it was seeking the Commission's input when it filed its Petition for Interlocutory Review and Answer to Material Questions which it filed on April 27, 2023, I disagree that the Company is prejudiced in this matter. The Order that PGW was seeking clarification on was entered on February 23, 2023, and the Petition for Interlocutory Review was not filed until April 27, 2023, more than two months after the Order in question was issued. Under the regulations, the Commission had 30 days to rule of the Petition which meant that the Commission had until May 26, 2023 to make a ruling, which was after the scheduled evidentiary hearing in the WNA proceeding. Further, in accordance with the Commission May 18, 2023 Order on the Petition for Interlocutory Review, the proper forum to address the WNA issues is in this WNA proceeding. The Commission also declined to answer the material questions and denied the Petition. However, PGW did not raise the issue of including the supplemental direct testimony from the BRC until the hearing on May 24, 2023. At that point,

Main Briefs were due on June 7, 2023 and Reply Briefs were due on June 16, 2023. There was no time for the other parties in this matter to respond to the supplemental direct testimony and then for me to prepare a Recommended Decision for the Commission.

Through the WNA Suspension Order entered September 15, 2022, the Commission instituted an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2.²⁰ *WNA Suspension Order* at ¶ 1. Further the Commission ordered that “this investigation shall include consideration of the lawfulness, justness, and reasonableness of Philadelphia Gas Works’ existing rates, rules, and regulations. *WNA Suspension Order* at ¶ 4.

In conclusion, I find that the Commission has determined that WNA issues must be addressed in the WNA proceeding without limitation, noting explicitly that the scope of review in the WNA proceeding was ordered from the start to broadly encompass all aspects of review of PGW’s WNA – including the overall justness and reasonableness of the charge. PGW had adequate notice of the issues in the WNA proceeding and had adequate time to file the supplemental direct testimony before the request made at the May 24, 2023 evidentiary hearing. As such, the denial of the request is justified in this matter.

B. Party Positions regarding the Weather Normalization Adjustment

1. PGW’s Position

PGW argues that it has demonstrated the importance of the WNA to its financial health and stability, which in turn benefits ratepayers.²¹ PGW notes that it has the responsibility to safely and adequately provide natural gas service to approximately 500,000 customers. PGW argues that the WNA “has been instrumental in helping PGW to become a financially stable and

²⁰ The proposed Tariff Supplement would add a control cap to PGW’s Weather Normalization Adjustment Clause so that PGW’s customers would not be billed a WNA charge or credit greater than twenty-five percent of the total delivery charge excluding the WNA. See, Prehearing Conference Order #3 issued March 31, 2023, at 1.

²¹ PGW St. No. 1 at 2, 5-10; Tr. 185-186.

strong Company, while assuring that weather related charges to customers were fair and reasonable.”²²

PGW maintains that 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 its credit rating; and (iv) reduces the need for costly base rate proceedings.²³ 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.²⁴ PGW contends that the WNA minimizes the degree to which shortfalls or windfalls occur. PGW notes that 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.²⁵

PGW states that from January 2021 through May 2022, it 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. PGW contends that this is an unacceptable financial result.”²⁶

Further, PGW notes that 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

²² PGW St. No. 1 at 10.

²³ PGW St. No. 1-R at 20; *2002 Base Rate Case*, PGW St. 2 at 3 (Direct Testimony of Craig White).

²⁴ PGW St. No. 1-R at 20.

²⁵ PGW St. No. 1 at 6-7; PGW St. No. 1-R at 20.

²⁶ PGW St. No. 1-R at 17.

risk-mitigating tool, which has resulted in PGW achieving higher credit ratings.²⁷ 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 to abnormal weather in its service territory.²⁸

Moreover, PGW states that once the Commission determines the revenues that are needed and authorizes their collection through rates imposed on customers, it is imperative that PGW be given the opportunity to collect this level of revenues so that it can fulfill the obligations of ensuring that customers in Philadelphia continue to receive safe and adequate natural gas service. PGW notes that 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.²⁹ 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.³⁰

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 PGW's witness, this proposal was designed as a simple solution that could be quickly implemented to

²⁷ PGW St. No. 1 at 9-10; *Fitch Upgrades Philadelphia PA's Gas Works Revs to 'A-'; Outlook Stable*, Fitch Ratings (Feb. 17, 2022, 5:00 PM), <https://www.fitchratings.com/research/us-public-finance/fitch-upgrades-philadelphia-pa-gas-works-revs-to-a-outlook-stable-17-02-2022>.

²⁸ PGW St. No. 1 at 10; PGW St. No. 1-R at 20.

²⁹ PGW St. No. 1-R at 9.

³⁰ PGW St. No. 1-RJ at 2.

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, 2023.³¹

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, 2023.³² 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-4.³³

The second modification proposed by PGW in this case is the ongoing removal of the month of May from the WNA formula to prevent any potential recurrence in the future. PGW's witness testified that it became clear that the ongoing exclusion of the month May from the formula would address any issue in the existing formula caused by the warming weather trends in Philadelphia over recent years.³⁴ 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.³⁵ PGW asserts that 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. PGW's witness states that the evidence is clear – “to the extent that the WNA is producing concerning results, those results are focused on May.”³⁶

³¹ PGW St. No. 1 at 11-14.

³² PGW St. No. 1-R at 4-5; PGW St. No. 1-RJ at 10.

³³ PGW St. No. 1-RJ at 10-11.

³⁴ PGW St. No. 1-R at 3-4; PGW St. No. 1-RJ at 5; Tr. 159, 161-162, 182, 184.

³⁵ *Petition of Phila. Gas Works for Emergency Order*, Docket No. P-2022-3033047 (Emergency Order entered July 1, 2022; Ratification Order entered July 14, 2022); *Petition of Phila. Gas Works for Emergency Order*, Docket No. P-2023-3040233 (Emergency Order entered Apr. 28, 2023; Ratification Order entered May 18, 2023).

³⁶ PGW St. No. 1-RJ at 5.

PGW notes that it would be reasonable to completely eliminate May from the WNA formula for 2023 and moving forward. PGW asserts that 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.³⁷ 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.

PGW argues that neither OCA nor CAUSE-PA has met their burden to establish that the WNA should be suspended or removed. PGW contends 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 for the month of May has not been applied to customers since 2021.³⁸

Further, PGW maintains that 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.³⁹ Second, PGW states that 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

³⁷ Tr. 159-161.

³⁸ PGW St. No. 1-RJ at 4-5.

³⁹ PGW St. 1-R at 8.

the front end through a WNA or on the back end through rate increases, including emergency rate relief.”⁴⁰

Moreover, PGW argues that it is a municipally owned cash flow utility with no profit margin and no shareholders, so while the risk-shifting concept may be relevant in reviewing the WNA of an investor-owned utility, it has no place in this proceeding. PGW notes that it is imperative for the Commission to recognize that continued support for the WNA, as providing PGW with a cash balance, is critical to the safe and adequate provision of natural gas utility service to its customers.

PGW notes the WNA has been charged on a bill cycle basis since its implementation.⁴¹ In fact, customers in different billing cycles are *always* potentially subject to being billed at different levels. PGW contends that neither OCA nor CAUSE-PA have provided justification for their proposals relating to the suspension or elimination of the WNA. PGW maintains that it would be unreasonable and unworkable to eliminate or suspend PGW’s WNA as suggested by the opposing parties.⁴²

For instance, PGW states that OCA has not presented sufficient evidence to support suspension of the WNA, which has been in place for over twenty years with minimal changes. Further, OCA provided no financial analysis of the impact of a 5% cap on PGW and its ratepayers. In addition, OCA 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, CAUSE-PA presented no evidence in support of its proposal to terminate the WNA due to its impact on low-income customers. PGW asserts that 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.

⁴⁰ PGW St. No. 1-R at 8.

⁴¹ PGW St. 1-R at 11.

⁴² PGW St. No. 1-R at 2.

PGW contends that 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. PGW maintains that this issue with the WNA in a 20-year history does not provide a basis upon which to suspend, terminate or significantly modify the clause.

Notably, the testimony submitted by OCA and CAUSE-PA reflects an effort to urge the Commission 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, PGW notes that 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.”⁴³

The OCA/CAUSE-PA's 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 Commission to approve “decoupling mechanisms” for energy utilities.⁴⁴ PGW argues that the WNA clauses are a form of decoupling mechanism that decouples a utility’s revenues from the effects of weather.⁴⁵ In addition, PGW also asserts that the OCA’s proposal to suspend PGW’s WNA overlooks decades of proceedings in which the Commission 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.⁴⁶

⁴³ *Pa. Pub. Util. Comm'n v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022) (Brown Dutrieuille Statement).

⁴⁴ 66 Pa.C.S. § 1330.

⁴⁵ PGW St. No. 1 at 9; PGW St. 1-R at 6-7, 12, 15; PGW St. No. 1-RJ at 3.

⁴⁶ PGW St. No. 1-R at 12-13.

PGW also notes that the OCA has failed to consider the impact on PGW's cash flow that yearly reconciliation would have. PGW states that its witness 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 need to 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 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.⁴⁷

PGW also contends that the OCA has not "worked out the specifics of [its proposed modifications to the WNA]."⁴⁸ Without specifics, it is unclear how the Commission would adopt the OCA's proposal. OCA's witness 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.⁴⁹ This recognition underscores the point regarding the proposal causing liquidity issues for PGW.

Further, PGW also maintains that it has "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."⁵⁰ PGW states that 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.⁵¹

Regarding the recommendation for a 5% cap on WNA charges, PGW contends that the OCA offered no evidence as to how it might impact PGW, only speculating, without

⁴⁷ *Id.* at 13.

⁴⁸ Tr. 218.

⁴⁹ Tr. 218.

⁵⁰ PGW St. No. 1-RJ at 9.

⁵¹ PGW St. No. 1-RJ at 9.

supporting data, that the impact would be “minimal”⁵² and that a “5% cap is *unlikely* to financially challenge PGW.”⁵³ 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 the OCA's 5% proposed cap, PGW's witness describes it as “nullifying the financial benefit of a WNA”⁵⁴ as it would “impact PGW’s financial stability in much the same way as would elimination of the mechanism.”⁵⁵

Lastly, PGW contends that OCA offered no statistical data in support of this proposal to use a 10-year data set. 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 set that was then in use (or the 10-year average originally proposed therein by PGW).⁵⁶ PGW also notes 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.⁵⁷

2. OCA's Position

OCA argues that the WNA mechanism has produced discriminatory rates. As the company has acknowledged, the magnitude of the May 2022 WNA charged to residential customers was tied directly to a customer’s billing cycle. OCA notes that 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.

⁵² OCA St. 1 at 21.

⁵³ *Id.* at 22 (emphasis added).

⁵⁴ PGW St. No. 1-RJ at 11.

⁵⁵ *Id.* at 12.

⁵⁶ *2017 Base Rate Case* at 17-18, 77 at ¶ 3.

⁵⁷ PGW St. 1-R at 14-15.

OCA notes that 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. OCA maintains that all residential customers in Philadelphia experienced the same weather. However, OCA contends the impact of that weather through WNA charges has been highly discriminatory in violation of Section 1304 due to PGW's designation of billing cycles that cannot be reasonably said to relate to cost causation in terms of WNA revenue.

OCA states that WNA is a form of revenue decoupling that has shifted risk on residential consumers. OCA witness Nelson explains that decoupling mechanisms address utility throughput (volume of sales) by ensuring that revenue recovery does not depend on variations in energy consumption and/or weather.⁵⁸ OCA notes that while the WNA could work to both the customer and utility benefit in theory, in practice PGW's WNA has benefitted the Company to the detriment of consumers. OCA asserts that the WNA appears to only work for the benefit of PGW and not its customers. The Company's own annual reports to the Public Utility Commission demonstrate that for the four-year period from FY2019-FY2022 the net charges to customers range from \$1.5 million (FY2019) to \$23.1 million (FY2022).⁵⁹

Further, OCA states that all customers are in Philadelphia and experience the same weather and the same overall delta between NHDD and AHDD.⁶⁰ Despite experiencing the same weather, WNA charges varied widely based on billing cycle.⁶¹ OCA's witness states

⁵⁸ OCA St. 1 at 5.

⁵⁹ See, *Pa. PUC v. Phila. Gas Works*, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2019 (Dec. 30, 2019), <https://www.puc.pa.gov/pcdocs/1649264.pdf>; *Pa. PUC v. Phila. Gas Works*, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2020 (June 8, 2021), <https://www.puc.pa.gov/pcdocs/1706848.pdf>; *Pa. PUC v. Phila. Gas Works*, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2021 (Jan. 4, 2022), <https://www.puc.pa.gov/pcdocs/1729601.pdf>; *Pa. PUC v. Phila. Gas Works*, Docket No. R-2017-2586783, Philadelphia Gas Works' annual Weather Normalization Adjustment Report for Fiscal Year 2022 (Jan. 10, 2023), <https://www.puc.pa.gov/pcdocs/1770259.pdf>.

⁶⁰ OCA St. 1 at 13.

⁶¹ *Id.*

that the WNA formula recovered \$32 from some customers and nearly \$120 from others simply because of their billing cycle. OCA maintains that the wide gaps between the median, quartile three, and the peak average charge, highlight the volatility of WNA charges.⁶² Thus, while all customers experienced the same weather during the month of May, only some customers bore the brunt of excessively high WNA charges because of the way the WNA formula works.

Moreover, OCA asserts that individual customers faced greater WNA charges in June than others experienced over a full year.⁶³ At the March 9th Public Input Hearing, witness Morgan Byrne testified to receiving a \$255.30 bill in June.⁶⁴ OCA notes Ms. Byrne's WNA charge totaled \$201.51, nearly 80 percent of his total bill and exponentially more than customers on different billing cycles.⁶⁵ OCA submits that the evidence from this proceeding demonstrates that the WNA violates the prohibition against unreasonable discrimination in rates and must be suspended.

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

OCA maintains that a 25% cap on a surcharge is not reasonable, as a 25% increase would nevertheless constitute rate shock.⁶⁶ In addition, the Company has not adequately addressed the cost recovery of implementing the billing system changes needed to implement the 25% cap. In addition, OCA states that the Company has not adequately addressed the cost recovery of implementing the billing system changes needed to implement the 25% cap.

⁶² *Id.* at 13-14. *See* Figure 2.

⁶³ *Id.* at 10.

⁶⁴ Tr. at 63.

⁶⁵ Tr. at 63; OCA St. 1 at 10.

⁶⁶ OCA St. 1 at 17.

While PGW acknowledged that billing system changes will be necessary, the Company has not estimated the cost of such changes. It is the OCA's view that costs should not be incurred now to provide interim relief that will not cure the problem. The better approach is, as OCA recommends, that the WNA be suspended until such time as the documented failures can be corrected, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock.⁶⁷

While the OCA urges the Commission to require PGW to withdraw or suspend the WNA at this time, if the WNA is allowed to remain in place it must be modified to reduce volatility. Currently, the WNA is reconciled monthly. As an alternative, OCA contends that the WNA could be reconciled annually with a 5% cap. OCA's witness explained that the Company can track the revenue deficit monthly, apply a carrying charge to reflect the time value of money, and roll the balance to subsequent months. OCA notes that these charges would be recovered through rates in the following fiscal year. OCA states that the monthly carrying charge should be comparable to the Company's cost of debt in order to minimize Company risk.⁶⁸ OCA asserts that an annual reconciliation more fairly balances the risks associated with weather-related revenue impacts between the Company and customers. Lastly, OCA argues that the Company should modify its calculation to include ten years of historic weather data, rather than the current twenty-year period, to establish normal heating degree days.⁶⁹ The utilization of ten years of historic data better reflects the climate trends that the WNA is designed to address.

3. CAUSE-PA/TURN's Position

CAUSE-PA/TURN submit that PGW's WNA operates in such a manner as to unreasonably prejudice or disadvantage some customers over others within the same customer class, based on the arbitrary dates of customers' billing cycles and the underlying assumptions of

⁶⁷ OCA St. 1 at 20.

⁶⁸ OCA St. 1 at 20.

⁶⁹ OCA St. 1 at 20.

baseload. These are not reasonable conditions with which to justify imposition of discriminatory rates.

Furthermore, CAUSE-PA/TURN argue that the exclusion of non-heating customers as well as Interruptible Transportation (IT) customers, may constitute unlawful discrimination in rates. Notably, the Commission’s Policy Statement requires consideration of whether an alternative rate design “limit(s) or eliminate(s) interclass and intraclass cost shifting.”⁷⁰ CAUSE-PA/TURN assert that PGW has not advanced any evidence in this proceeding to justify its exclusion of these and other customers from the WNA. As such, CAUSE-PA/TURN maintains that the WNA must not be maintained unless and until PGW produces evidence that the WNA does not discriminate against heating customers within and among PGW’s customer classes.

Further, CAUSE-PA/TURN argue that emphasis on consideration of impacts to low-income customers is reflected in the Commission’s final Policy Statement, which requires consideration of the impact an alternative ratemaking mechanism would have on low-income customers and support for customer assistance programs.⁷¹ CAUSE-PA/TURN contends that PGW’s WNA is both detrimental to low-income customers and increases costs for PGW’s Customer Responsibility Program (CRP).

CAUSE-PA/TURN states that because the majority (72%) of PGW’s estimated low-income customers are not participants in its CRP, a significant number of low-income customers are subjected to the risk of unjust and inequitable imposition of rates and charges via PGW’s WNA.⁷²

Moreover, CAUSE-PA/TURN also contends that the WNA also limits the effectiveness of PGW’s customer assistance program. CRP customers are not exempt from the

⁷⁰ 52 Pa. Code § 69.3302(a)(4).

⁷¹ 52 Pa. Code § 69.3302(a)(7).

⁷² CAUSE-PA St. 1-SR at 5.

WNA. In testimony, CAUSE-PA witness Mr. Geller explained that, while some CRP participants whose bills are calculated based on a percentage of their income are insulated from the WNA charges, others who pay according to their average bill amount are levied the full WNA charge.⁷³ He also noted that, for CRP percentage of income customers, the cost of the WNA charge is passed on through the universal service rider and born by other ratepayers, compounding their own WNA charges and driving up the cost of the CRP program.⁷⁴

CAUSE-PA/TURN assert that energy unaffordability is especially acute in the city of Philadelphia, where the poverty rate is nearly double the statewide poverty rate, with 22.8% of residents living in poverty, including 34.2% of children and 21.2% of senior citizens.⁷⁵ CAUSE-PA/TURN maintain that the inability to afford home energy services has a profound impact on families – causing many to forego food, medicine, and other basic necessities in order to maintain energy services to their home.⁷⁶ As Mr. Geller explained in testimony, “Considering the disproportionately high rate of poverty in the city of Philadelphia, it is imperative that all necessary measures be taken to alleviate energy insecurity and limit unnecessary additional costs such as the WNA charge.”⁷⁷

In his direct testimony, Mr. Geller submitted unrefuted testimony regarding the detrimental impact of PGW’s WNA on the effectiveness of energy efficiency programing.⁷⁸ He explained that, “The WNA also appears to have a perverse impact on energy efficiency and conservation efforts – imposing larger WNA charges on consumers who are able to reduce consumption through installation of energy efficiency measures.”⁷⁹ He noted that the WNA “has a particularly unjust impact on PGW’s low income customers who are able to substantially

⁷³ *Id.* at 11-12.

⁷⁴ *Id.* at 12.

⁷⁵ *Id.* at 7-8.

⁷⁶ *Id.* at 8.

⁷⁷ *Id.*

⁷⁸ CAUSE-PA St. 1 at 11.

⁷⁹ *Id.*

reduce high consumption through participation in the Low Income Usage Reduction Program (LIURP).”⁸⁰

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

CAUSE-PA/TURN also submit that simply removing the month of May from the WNA formula does not rectify the inequities with PGW’s WNA. CAUSE-PA/TURN notes that OCA’s witness documented significant rate volatility in the WNA throughout the heating season. OCA’s witness provided an example to show how the WNA disproportionately impacts customers based on usage, demonstrating “volatility that is unrelated to cost causation for the distribution system.”⁸¹ Even a slight deviation in normal usage, OCA submitted, could generate significant financial consequences to customers under the WNA.⁸²

CAUSE-PA/TURN also acknowledge that the risk of fluctuations is particularly heightened during the shoulder months (October and May), and it remains throughout the heating season. Particularly with warming weather trends, the risk is not contained to May. So, the elimination of May from the WNA formula cannot ensure that customers will not experience rate volatility and significant rate discrimination in any month to which the WNA applies. CAUSE-

⁸⁰ *Id.*

⁸¹ OCA St. 1 at 15-16.

⁸² *Id.*

PA/TURN argue that elimination of May is not a solution to the structural flaws with the WNA and does not resolve its discriminatory treatment of customers based on billing cycle and baseload determinations.

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

C. Recommendation

Based on the testimony presented, PGW has supported its position that elimination of the month of May in the WNA calculation is just and reasonable. I would note that the Commission has approved, on an emergency basis, the removal of May from the WNA calculation for the past two years. It seems that this method is the best way to handle the WNA calculation in the most simple and efficient way. Other parties have acknowledged that May is one of the problem months in this calculation. Further, it would help to prevent rate shock to customers in the future if the weather patterns continue as they have for the past two years.

I agree with PGW's position that eliminating the WNA entirely is not supported by the record in this matter. Because PGW is a municipal gas company with no shareholders, the only source of revenue for the Company is from the rates that it collects from ratepayer and any bonds that it can issue. The Commission has already approved PGW's usage of the WNA mechanism and PGW has been successfully employing this alternative rate making method for a number of years. As PGW noted, the WNA only assists the Company in supporting revenues that have already been approved by the Commission in previous Base Rate Cases.

While I would note that the public has questioned the need for the WNA, I agree with PGW that the modification to the WNA formula by removing the month of May from the calculation will help to eliminate the rate shock when there are abnormal weather patterns. Further, I appreciate the concerns of the customers regarding the affordability of bills. However, PGW's proposed modification of the removal of the month of May coupled with the need of the Company to provide safe and adequate service to its customers makes the usage of the WNA just and reasonable in this matter. Moreover, the use of the WNA mechanism helps to alleviate the need for even higher rate requests in the Base Rate Cases.

Further, I disagree with the OCA and its proposed modifications to the WNA mechanism. OCA has not met its burden of establishing that its proposed modifications are justified and would eliminate issues related to the WNA charge. The OCA witness acknowledged that he had not worked out the specifics of his proposals to modify the WNA or how these proposed changes would affect PGW's approved revenue levels and financial stability.

However, I agree with OCA and CAUSE-PA/TURN that there should be a more in-depth review of the WNA mechanism as it functions for PGW customers. I believe that the elimination of the month of May is an effective fix to the issues with the WNA in the short term but it would be helpful if the parties revisit the issue at a later time. As such, I recommend that the Commission direct the parties to address this issue when PGW files its next Base Rate Case after 2023.

For all the foregoing reasons, I find PGW has met its burden of demonstrating that the WNA is just and reasonable with the modification of the removal of the month of May from the WNA calculation. I recommend the Commission approve the ongoing usage of the WNA with this modification and the direction that the parties revisit the matter again when the Company files its next Base Rate Case after 2023.

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 requires a public utility's rates to be just and reasonable. 66 Pa.C.S. § 1301.
3. Just and reasonable rates are determined for PGW using the cash flow method. 66 Pa.C.S. § 2212; 52 Pa. Code §§ 69.2701-2703.
4. 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. The Commission has approved the implementation of WNAs by other natural gas utilities. *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. Pub. Util. Comm'n v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022).
6. Section 1330 of the Public Utility Code expressly authorizes the implementation of decoupling mechanisms by energy companies. 66 Pa.C.S. § 1330.
7. 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).
8. Tariff provisions approved by the Commission are *prima facie* reasonable. *See, e.g., Brockway Glass v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *U.S. Steel Corp. v. Pa. Pub. Util. Comm'n*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Deitch Co. v. Pa. Pub. Util. Comm'n*, 203 A.2d 515 (Pa. Super. 1964).

9. Parties challenging tariff provisions, which they indicate should be eliminated, bear the burden to prove that facts and circumstances have changed drastically so as to render application of the tariff provision unreasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

10. The OCA and CAUSE-PA have the burden of proving that their proposals to modify the WNA are just and reasonable. *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

11. PGW carried its burden of proof that its proposed modifications to the WNA are just and reasonable.

12. The OCA and CAUSE-PA did not meet their burden to establish that the facts and circumstances have changed drastically so as to render application of the WNA provision of the tariff unreasonable.

13. The OCA and CAUSE-PA did not demonstrate that their proposals to modify the WNA are just and reasonable.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Philadelphia Gas Works' Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2 be allowed to go into effect with the modification that the month of May be removed from its Weather Normalization Adjustment formula for calculation of the Weather Normalization Adjustment charge for customer bills.

2. That the Commission direct Philadelphia Gas Works address the WNA portion of its tariff in its next Base Rate Case after 2023.

3. That Philadelphia Gas Works shall file Tariff Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2 as modified herein, to become effective upon at least one day's notice after entry of the Commission's Order approving the modified Tariff Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2.

4. That the Philadelphia Gas Works' Petition seeking approval of Supplement No. 152 to Gas Service Tariff- Pa. P.U.C. No. 2, on less than the statutorily established sixty days' notice filed at Docket No. P-2022-3034264 is dismissed as moot.

5. That upon acceptance and approval by the Commission of the tariff supplement consistent with this Order, this proceeding be marked closed.

Date: July 19, 2023

_____/s/
Marta Guhl
Administrative Law Judge