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VIA Electronic Filing

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

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

Secretary Chiavetta:

Attached for electronic filing, please find the attached **Joint Exceptions 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.

Respectfully Submitted,



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CC: *Office of Special Assistants (Via Email: ra-OSA@pa.gov).
Certificate of Service*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

THE PENNSYLVANIA UTILITY LAW PROJECT

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network (TURN), herein referred to as CAUSE-PA/TURN, file the following Joint Exceptions to the Recommended Decision issued by Administrative Law Judge Marta Guhl (ALJ) in the above captioned proceeding. ALJ Guhl recommends that the Pennsylvania Public Utility Commission (Commission) authorize Philadelphia Gas Works (PGW) to continue to operate its Weather Normalization Adjustment clause (WNA), pursuant to Tariff Supplement No. 152, with the only modification being the elimination of the month of May from the period over which PGW's WNA charges or credits customers bills. She further recommends that PGW's WNA be revisited in PGW's next base rate case proceeding.

CAUSE-PA/TURN's Exceptions are as follows:

- **Joint Parties' Exception 1:**
ALJ Guhl erred as a matter of law by failing to address the WNA's unlawful rate discrimination.
- **Joint Parties' Exception 2:**
ALJ Guhl erred as a matter of law in failing to impose the burden of proof on PGW to prove each element of its WNA is just and reasonable and in accordance with law.
- **Joint Parties' Exception 3:**
ALJ Guhl erred as a matter of law in failing to analyze PGW's WNA pursuant to the provisions of the Commission's Distribution Rates Policy Statement.
- **Joint Parties' Exception 4:**
ALJ Guhl erred as a matter of fact in finding, without substantial record evidence, that elimination of the month of May would appropriately resolve issues with PGW's WNA.

CAUSE-PA/TURN respectfully submit that, based on these critical errors of law and fact, the Commission should reject the ALJ's recommendations and order PGW to discontinue its

WNA to avoid unjust and unreasonable rates and charges, constituting impermissible intra- and inter-class rate discrimination.

II. BACKGROUND

This proceeding commenced following a spike in WNA rates charged by PGW to some customers in May and June 2022. PGW undertook a review of the operation of its WNA, concluding that that the spike in WNA charges imposed on consumers in May 2022 was attributable to “mid to late month warm weather” and was not caused by “misapplication of or error in applying the long-standing WNA formula.”¹ On August 2, 2022, PGW filed Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2 to become effective October 1, 2022, and a Petition for Approval on Less than Statutory Notice of Tariff Supplement Revising Weather Normalization Adjustment (Petition).² The tariff supplement proposed changes to add a control cap to PGW’s WNA so that its customers would not be billed a WNA charge or credit greater than 25% of total delivery charges excluding the WNA.

On August 22, 2022, the Office of Consumer Advocate (OCA) filed an Answer to PGW’s Petition. The OCA stated that PGW did not provide evidence as to how it determined that a 25% cap was the appropriate level of protection for customers. The OCA also stated that the only reasonable approach is to suspend the WNA mechanism until a revised formula, free from its current defects, can be developed.³

On September 6, 2022, CAUSE-PA filed its Petition to Intervene in these proceedings. On September 7, 2022, TURN filed its Petition to Intervene in these proceedings. On September 15,

¹ Petition of Philadelphia Gas Works for Emergency Order, WNA Adjustment Report, Docket No. P-2022-3033477 (filed August 12, 2022).

² PGW Petition to Amend WNA, Docket Nos. R-2022-3034229, P-2022-3034264.

³ OCA Answer, Docket Nos. R-2022-3034229, P-2022-3034264.

2022, PGW filed a letter expressing its lack of objection to separate Petitions to Intervene filed by TURN and CAUSE-PA.

On September 15, 2022, the Commission entered an order initiating an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in PGW's proposed WNA tariff (including, but not limited to, PGW's proposed 25% cap), suspending the operation of PGW's proposed tariff, and referring this matter to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary to issue a Recommended Decision. Following some adjustments, a procedural schedule was adopted requiring PGW's Direct Testimony to be submitted on November 30, 2022. On November 8, 2022, PGW filed a Petition for Leave to Withdraw Supplement No. 152 and Motion to Hold Procedural Schedule in Abeyance. ALJ Guhl granted the motion to hold the matter in abeyance.⁴ On November 17, 2022, two Telephonic Public Input Hearings were held on this matter. Several PGW customers attended and expressed their concerns about PGW's WNA, which were not limited to the May 2022 WNA rate spike, but also the unfairness of the consistently higher cost that the WNA added to their bill.

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

Pursuant to the agreed-upon procedural schedule, PGW was scheduled to submit direct testimony on or before February 14, 2023, but failed to do so.⁵ PGW did not file any Motions prior to the testimony due date to request a change in the schedule, nor did it make any other

⁴ See February 22, 2023 PHO, Docket Nos. R-2022-3034229, P-2022-3034264.

⁵ Id.

procedural filings that would have suspended litigation in this proceeding.⁶ OCA and CAUSE-PA each objected to PGW's failure to file direct testimony. In response, ALJ Guhl held an emergency telephonic conference on February 22, 2023, and ordered PGW to file its direct testimony by close of business February 23, 2023.⁷ That order also instructed the parties that they were prohibited from introducing evidence during rebuttal which should have been included in, or substantially varies from, their cases-in-chief.⁸ PGW served the Direct Testimony of Denise Adamucci on February 23, 2023.⁹ Ms. Adamucci's testimony supported implementation of PGW's proposed 25% cap on WNA charges/credits.

On March 31, 2023, ALJ Guhl issued an order memorializing an extension until April 13, 2023 for non-PGW parties to file Direct Testimony.¹⁰ On April 13, 2023, CAUSE-PA and the OCA submitted direct testimony expressing concern about the disproportionate and disparate impact of the WNA on PGW's residential and low income customers.¹¹ CAUSE-PA's witness, Mr. Geller, examined PGW's WNA and found the mechanism, as a whole, to be inequitable because it consistently and increasingly levies additional charges on residential customers, which disproportionately impact low income households.¹² Mr. Geller also examined PGW's proposed 25% cap and found that a customer with total bill charges (excluding WNA) of just \$36.96 would still face a maximum WNA charge of \$9.24, "an increase over actual, usage-based charges of 25%."¹³ Mr. Geller submitted that PGW's 25% cap would not alleviate the inherent inequities

⁶ Id.

⁷ Id.

⁸ Feb. 22 PHO ¶9; see 52 Pa. Code §5.243(e).

⁹ PGW St. 1.

¹⁰ See March 31 PHO, Docket Nos. R-2022-3034229, P-2022-3034264.

¹¹ See CAUSE-PA St. 1 at 3-15, OCA St. 1 at 9-22.

¹² CAUSE-PA St. 1 at 3-15.

¹³ Id. at 14.

caused by the WNA and that it was not supported by any rationale other than simplicity.¹⁴ Mr. Geller recommended the Commission order PGW to cease operation of its WNA.¹⁵

OCA's witness, Ron Nelson, recommended that PGW's WNA be suspended "until and unless PGW comes up with a rate formula that corrects the documented failures, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock."¹⁶ In the alternative, OCA's witness submitted that *if* the Commission allowed PGW's WNA to continue, it should change the adjustment from a monthly to an annual reconciliation period, add a 5% hard cap on WNA surcharges (but not credits), and utilize a 10-year estimate of normal heating degree days.¹⁷

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

On April 28, 2023, and as an interim measure to prevent the distinct potential for additional rate spikes for some customers, Vice Chairman Stephen M. DeFrank signed an Emergency Order

¹⁴ Id.

¹⁵ Id. at 14-15.

¹⁶ OCA St. 1 at 19.

¹⁷ Id.

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

On May 2, 2023, PGW submitted Rebuttal Testimony of Ms. Adamucci.¹⁹ Importantly, PGW's rebuttal testimony abandoned the proposed 25% cap, and generally submitted that any changes to the WNA should be considered in PGW's base rate proceeding.²⁰

CAUSE-PA and OCA submitted Surrebuttal Testimony on May 12, 2023. In response to PGW's Rebuttal Testimony, Mr. Geller reiterated that PGW has a duty to charge just and reasonable rates and the WNA violates that "basic tenet," particularly because of its impact on low income customers.²¹ Mr. Geller asserted that 72% of PGW's estimated low income customers will "have no protection from the unjust and inequitable financial burden imposed by PGW's WNA."²² Finally, Mr. Geller emphasized the importance of affordability, recognized by the Commission, in evaluating alternative rate designs.²³

OCA's witness, Mr. Nelson, maintained that PGW's WNA shifts risk to customers because bill outcomes differ with, and without, the WNA.²⁴ He also asserted that PGW's elimination of May 2023 from the WNA was a recognition of the bill volatility risk the WNA shifted to

¹⁸ May 18 Order Denying Petition at 19.

¹⁹ PGW St. 1-R.

²⁰ Id. at 5-6.

²¹ CAUSE-PA St. 1-SR at 2-3.

²² Id. at 5.

²³ Id. at 4.

²⁴ OCA St. 1-SR at 4.

customers.²⁵ Finally, he defended his alternative cap proposal, and contended that the proceeding was not limited to consideration of PGW's 25% cap proposal.²⁶

On May 19, 2023, PGW submitted Rejoinder Testimony of Ms. Adamucci, responding to the Surrebuttal Testimony of CAUSE-PA and OCA's witnesses. In general, PGW's witness maintained that the 25% cap *had* merit at the time it was proposed, but that PGW is no longer pursuing this option.²⁷ Finally, PGW's witness claimed that simply eliminating May from the formula was supported by the Atrium report.²⁸ That report was stricken from the record in PGW's base rate case.

On May 24, 2023, ALJ Guhl presided over telephonic evidentiary hearings regarding PGW's WNA and the pre-served testimony and exhibits submitted by PGW, OCA and CAUSE-PA were entered on the record. At hearing, PGW reiterated that its position that the WNA continue, with the only modification being the elimination of May, a conclusion reached "based on the evaluation of [PGW's] consultant."²⁹ However, PGW's attorney objected to cross-examination concerning the Atrium report, and the potential elimination of May, on the basis that PGW had not, and could not, propose the elimination of May in rebuttal or rejoinder testimony.³⁰ PGW's counsel referenced the ALJ's February 22, 2023 PHO,³¹ instructing the parties to "comply with 52 Pa. Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party's case-in-chief or which substantially varies from the party's case-in-chief, unless the party is introducing evidence in support of a proposed settlement."³² Nonetheless,

²⁵ Id. at 4.

²⁶ Id. at 6-7.

²⁷ PGW St. 1-RJ at 2.

²⁸ Id. at 5.

²⁹ May 24 Hrg. Tr. at 17.

³⁰ Id. at 19-20.

³¹ Id. at 19.

³² Feb. 22 PHO at ¶9.

PGW endeavored to move its base rate case testimony and the Atrium report onto the record of this proceeding at the May 24 hearing, but the ALJ properly denied PGW's request.³³

The parties filed their Main Briefs (M.B.) on June 7, 2023, and Reply Briefs (R.B.) on June 16, 2023. CAUSE-PA/TURN argued that PGW's WNA works to unlawfully and unreasonably discriminate against some customers to the benefit of others. The crux of this argument is that PGW's WNA arbitrarily charges different amounts to customers of the same class, experiencing the same weather, based upon their billing cycles and different underlying assumptions regarding baseload.³⁴ Moreover, PGW failed to substantiate the basis for the exclusion of some customer classes from the WNA, admitting it had no knowledge of whether those customers had higher winter loads such that their usage would be influenced by the same weather patterns that PGW claims the WNA compensates for.³⁵ CAUSE-PA/TURN submitted that PGW's WNA detrimentally impacts low income customers and disincentivizes energy efficiency programming, weighing heavily against continued use of this decoupling mechanism pursuant to the Commission's Distribution Rates Policy Statement (Policy Statement).³⁶ Furthermore, CAUSE-PA/TURN submitted that the WNA violates cost causation principles, again contravening the Commission's Policy Statement.³⁷

Because the Commission authorized and directed the investigation into the lawfulness, justness and reasonableness both of PGW's Tariff Supplement, but also the *existing* PGW rates, rules and regulations, CAUSE-PA/TURN submitted that PGW bore the burden of proving every element of its rate proposal, including the underlying formula, billing basis, and customer

³³ May 24 Hrg. Tr. at 90.

³⁴ CAUSE-PA/TURN M.B. at 13.

³⁵ *Id.* at 16.

³⁶ *Id.* at 20-23; 52 Pa. Code §§69.3302(a)(5)-(a)(7).

³⁷ CAUSE-PA/TURN M.B. at 22-23; 52 Pa. Code §69.3302(a)(1).

classifications to which the WNA applies.³⁸ CAUSE-PA/TURN submitted that PGW failed to carry its burden, supported solely by its claimed benefits to PGW financially, because of the disparate and detrimental impacts the WNA has on PGW customers, particularly its many low income customers.³⁹ As a result, CAUSE-PA/TURN argued that neither PGW's proposed 25% cap, nor its unsupported claim regarding the elimination of May, would resolve the inequities of the WNA, and that it should be discontinued.⁴⁰

OCA likewise submitted that PGW bore the burden to establish the justness and reasonableness of every component of its request.⁴¹ OCA argued that the WNA shifts unreasonable risk to residential customers and produces illegal rate discrimination.⁴² It further submitted that public testimony regarding PGW's WNA supported its continued suspension.⁴³ Finally, OCA argued that PGW's proposed 25% cap is unreasonable and that if the WNA is to continue, its reconciliation mechanism should function on an annual, rather than monthly, basis.⁴⁴ It also submitted that a lower cap of 5% could be implemented together with annual reconciliation to address the WNA's volatility.⁴⁵

For its part, PGW argued that significant modification of its WNA would violate PGW's due process rights, primarily because it was required to submit direct testimony (as described above), did not intend to fully litigate the WNA, and was not permitted to submit additional direct testimony at the May 24 hearing.⁴⁶ It asserted that non-PGW parties bore the burden of

³⁸ CAUSE-PA/TURN M.B. at 9.

³⁹ *Id.* at 23-24.

⁴⁰ *Id.* at 24-27.

⁴¹ OCA M.B. at 9.

⁴² *Id.* at 12-19.

⁴³ *Id.* at 19-21.

⁴⁴ *Id.* at 21-23.

⁴⁵ *Id.* at 22.

⁴⁶ PGW M.B. at 17; *see* May 24 Hrg. Tr. at 88.

demonstrating PGW's WNA is unreasonable, but that they had not done so.⁴⁷ PGW's main focus, however, was on the historical underpinnings of the WNA and its contribution to PGW's financial performance.⁴⁸ PGW argued that even though it no longer desired to implement its proposed 25% cap, it had offered data that supported the cap.⁴⁹ Despite its objections at hearing, and the prohibition on modifying the position in its direct testimony, PGW nonetheless argued that PGW had, in fact, proposed eliminating May as a reasonable solution to the WNA.⁵⁰

In reply, CAUSE-PA/TURN argued that PGW's due process rights would not be violated if the WNA were discontinued.⁵¹ Furthermore, responding to PGW's claims regarding the financial benefits of the WNA, CAUSE-PA/TURN submitted that PGW is never guaranteed revenues when rates and charges are set by the Commission and that the Constitutionally-based "just and reasonable" standard requires the balancing of competing interests.⁵² CAUSE-PA/TURN argued that PGW had abandoned the 25% cap proposal from its direct testimony and failed to support a proposal to eliminate May from the WNA.⁵³ Finally, CAUSE-PA/TURN argued that PGW's WNA is unjust and unreasonable, producing unlawfully discriminatory rates and impermissible cost shifting which detrimentally impacts low income customers, disincentivizes energy efficiency programming, and violates cost causation principles.⁵⁴

In its Reply Brief, OCA asserted that the weight of evidence favors suspension of the WNA, even though OCA disagreed with PGW's legal analysis regarding who bears the burden

⁴⁷ PGW M.B. at 14; 25-34.

⁴⁸ Id. at 18-22.

⁴⁹ Id. at 23.

⁵⁰ Id. at 23-24.

⁵¹ CAUSE-PA/TURN R.B. at 5-10.

⁵² Id. at 10-12.

⁵³ Id. at 12.

⁵⁴ Id. at 13-15.

in this proceeding.⁵⁵ OCA strongly opposed PGW’s due process arguments, based both on prior Commission order and PGW’s acknowledgement that this proceeding was the appropriate venue to address flaws with its WNA. As such, PGW had ample time to present evidence and any procedural issues that affected PGW were of its own making.⁵⁶ OCA submitted that PGW’s proposal to remove May from the WNA was not supported by substantial evidence.⁵⁷ OCA also noted that PGW’s financial harm arguments are flawed because PGW is currently in the process of seeking base rate relief from the Commission.⁵⁸ Finally, OCA argued that its proposed modifications are supported by substantial evidence but that its recommendation is that the WNA be suspended until PGW can develop a mechanism that corrects documented failures, does not discriminate against similarly situated customers, and does not result in unreasonable rate shock.⁵⁹ If not corrected, the OCA asserted that the WNA will unreasonably shift risk to PGW’s residential customers.⁶⁰

Finally, in its Reply Brief, PGW again asserted that the burden of proof is on OCA and CAUSE-PA/TURN to show PGW’s WNA is unjust and unreasonable.⁶¹ However, PGW asserted that if it does bear the burden, it has nevertheless shown “overwhelming evidence of the importance” of the WNA to PGW and its ratepayers.⁶² PGW responded that OCA and CAUSE-PA/TURN rely on policy arguments, rather than substantial evidence, and that OCA has not shown that PGW’s WNA differs from similar clauses of other utilities.⁶³ PGW contested CAUSE-

⁵⁵ OCA R.B. at 1-2.

⁵⁶ Id. at 4-5.

⁵⁷ Id. at 5-6.

⁵⁸ Id. at 6.

⁵⁹ Id. at 7.

⁶⁰ Id. at 8-11.

⁶¹ PGW R.B. at 6-7.

⁶² Id. at 8.

⁶³ Id. at 8-10.

PA/TURN's argument concerning the impact of the WNA on low income customers and asserted that those issues should be relegated to the statewide review proceeding, rather than addressed in this proceeding.⁶⁴ PGW submitted that its WNA is consistent with Commission policy and does not negatively impact a customer's ability to reduce usage via energy efficiency programs.⁶⁵ Finally, PGW contended that its WNA is aligned with cost causation principles because it allows PGW to recover fixed costs notwithstanding variation in usage due to weather.⁶⁶

PGW's Reply Brief attempted to buttress its arguments regarding the importance of the WNA to PGW's financial health and stability, arguing that May 2022 was a single anomaly, that didn't constitute unreasonable rate discrimination.⁶⁷ Furthermore, PGW sought to dismiss arguments regarding risk-shifting, asserting that its municipal status overrides such concerns.⁶⁸ As a result, PGW argued that significant changes to PGW's WNA should not be implemented and that only the removal of the month of May from the formula should be considered.⁶⁹

In her Recommended Decision, ALJ Guhl recommended the Commission "adopt the Company's position that the month of May should be removed from the WNA calculation going forward."⁷⁰ In support of her conclusion, she found that PGW's WNA is necessary for PGW's continued financial health, and took notice of PGW's Petition for Emergency Order at Docket No. P-2023-3040233 and its passing reference to a report by PGW's consultant in support of removing May.⁷¹ As mentioned above, the consultant's report was not admitted to the record.⁷² ALJ Guhl

⁶⁴ Id. at 10-12.

⁶⁵ Id. at 12-13.

⁶⁶ Id. at 13-14.

⁶⁷ Id. at 14-17, 19.

⁶⁸ Id. at 17-19.

⁶⁹ Id. at 20-25.

⁷⁰ RD at 1.

⁷¹ Id. at 9 (¶24), 11 (¶41).

⁷² May 24 Hrg. Tr. at 90.

also asserted that OCA and CAUSE-PA/TURN bore the burden to come forward with evidence challenging the assumption of reasonableness enjoyed by PGW's existing WNA clause.⁷³ The Recommended Decision credited testimony of PGW's witness concerning the exclusion of May,⁷⁴ but failed to recognize that cross-examination regarding that exclusion was limited due to PGW's objection and its lawyers' statement that PGW was not proposing to eliminate May.⁷⁵ Nevertheless, despite this clarification from PGW's counsel at hearings, ALJ Guhl concluded that "PGW has supported its position that elimination of the month of May in the WNA calculation is just and reasonable" and that this is a simple and efficient way to handle the WNA.⁷⁶ She further found that eliminating the WNA is not supported due to PGW's municipal status, but concluded that a more in-depth review of the WNA should be undertaken in PGW's next Base Rate Case after 2023.⁷⁷

As set forth below, CAUSE-PA/TURN except to the Recommended Decision based on four interrelated reasons.

III. EXCEPTIONS

A. ALJ Guhl erred as a matter of law by failing to address the WNA's unlawful rate discrimination.

In her Recommended Decision, ALJ Guhl makes no finding, and reaches no conclusion, regarding the discriminatory impacts of PGW's WNA. OCA and CAUSE-PA/TURN extensively focused in testimony and briefs on the manner in which the application of PGW's WNA disparately impacted (and continues to impact) similarly-situated customers based on arbitrary factors – namely, the WNA's application to specific billing cycles and PGW's determination of

⁷³ RD at 16.

⁷⁴ Id. at 21.

⁷⁵ May 24 Hrg. Tr. at 19-20.

⁷⁶ RD at 33.

⁷⁷ Id. at 33-34.

baseload to which the WNA applies. In an effort to simply and efficiently move on, ALJ Guhl disregards the statutory prohibition on rates and charges which subjects any person to unreasonable prejudice or disadvantage.⁷⁸ Furthermore, ALJ Guhl disregards the Public Utility Code's guarantee against unreasonable and unjustified difference as to rates which amounts to inter-class and intra-class rate discrimination.⁷⁹

The ALJ's failure to address the documented rate discrimination amounts to an error of law because neither PGW's financial condition, nor the elimination of one month of the WNA, justifies violation of the express provisions of the Public Utility Code prohibiting discriminatory rates. Indeed, the elimination of May does not restructure the WNA or prevent its discriminatory impacts, it simply removes the period of time in which PGW claims customers are at the highest risk of experiencing a significant rate spike.⁸⁰ As CAUSE-PA/TURN explained, PGW's claim is unsubstantiated and, even if PGW's existing WNA tariff is entitled to some presumption of reasonableness (which it is not), the prior approval of the rate schedule is not *res judicata* on the question of discrimination or reasonableness.⁸¹

During this proceeding, OCA and CAUSE-PA/TURN have consistently asserted that PGW's WNA produces rate discrimination and unreasonable disadvantage based primarily upon customer billing cycles. While the magnitude of the discrimination and unreasonableness of PGW's WNA was highlighted by the financial havoc inflicted in May-June 2022, the structural

⁷⁸ 66 Pa. Code §1304; U.S. Steel Corp. v. Pa. PUC, 390 A.2d 849 (Pa. Commw. Ct. 1978); Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Commw. Ct. 2006).

⁷⁹ 66 Pa. Code §1304; see CAUSE-PA/TURN M.B. at 12-13.

⁸⁰ As discussed further below, there is no evidence on the record to support PGW's claim that the month of May necessarily presents a higher risk of rate spike than other months. See Section III.D, supra. To the contrary, the record supports a finding that abnormally warm weather in any month could cause a rate spike similar to the rate spike experienced by some customers (based on their billing cycle and usage patterns) in May 2022.

⁸¹ U. S. Steel Corp. v. Pa. PUC, 390 A.2d 849, 854 (Pa. Commw. Ct. 1978), citing City of Pittsburgh v. Pa. PUC, 112 A.2d 826 (Pa. Super. 1955).

failures of the WNA to produce just and reasonable rates run deeper.⁸² OCA’s witness testimony showed that the inequitable impacts of the WNA were not limited to a single billing month, but are pervasive across the heating season.⁸³ As a result, OCA’s witness concludes that PGW’s WNA “increases WNA charge volatility and exposes customers to discriminatory risks beyond their control.”⁸⁴ PGW fails to adequately rebut this testimony, asserting only that it “did not identify problems in other months.”⁸⁵

In addition, PGW’s baseload determinations, essential for estimating any variation in usage potentially attributable to anomalous weather, appear likely to inaccurately estimate heat load.⁸⁶ Indeed, PGW has explicitly acknowledged that baseload could be higher or lower than typical for the customer based on behavior – such as having house guests, taking vacations, conservation, etc.⁸⁷ Additionally, PGW’s use of class average baseload where customer-specific usage information is not available, fails to account for the variability of usage within each class to which the WNA applies.⁸⁸

Finally, and troublingly, when asked, PGW could not explain the basis for the WNA’s application to the specific customer classes provided for in PGW’s tariff. PGW’s witness was unaware of whether excluded customers, General Service, Municipal Service, Philadelphia Housing Authority or Interruptible Transmission customers, had high winter loads that would justify imposition of the WNA. PGW’s response was simply that the WNA has been in effect for 20 years.⁸⁹ As a result, TURN/CAUSE-PA averred that it is likely the WNA unreasonably

⁸² CAUSE-PA/TURN M.B. at 14.

⁸³ OCA St. 1 at 13-14.

⁸⁴ *Id.* at 15.

⁸⁵ May 24 Hrg. Tr. at 18.

⁸⁶ CAUSE-PA/TURN M.B. at 15.

⁸⁷ May 24 Hrg. Tr. at 31-34.

⁸⁸ *Id.* at 35-37; 39.

⁸⁹ *Id.* at 25-28.

discriminates against some customers with high winter loads to the benefit of other customers whose usage is also weather-dependent, but who are not charged via the WNA.⁹⁰

The Recommended Decision fails to evaluate and consider the WNA's ongoing and unreasonable differential in application to similarly-situated customers based on the arbitrary billing cycle in which they fall, or the inaccurate assumptions PGW employs to estimate customer-specific baseload. For this reason, the Commission should decline to adopt the Recommended Decision and instead discontinue PGW's WNA.

B. ALJ Guhl erred as a matter of law in failing to impose the burden of proof on PGW to prove each element of its WNA is just and reasonable, and in accordance with law.⁹¹

In her Recommended Decision, ALJ Guhl adopts PGW's strained misinterpretation of law, stating that "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."⁹² She goes on to state that parties challenging existing provisions "bear a heavy burden to prove that facts and circumstances have changed drastically so as to render application of the Tariff provision unreasonable."⁹³ CAUSE-PA/TURN submit that, to the extent the burden is on them or OCA to provide evidence demonstrating the reasonableness of discontinuing the WNA, that burden has been fulfilled. Nonetheless, the ALJ erred in adopting PGW's arguments regarding the burden in this proceeding.

Several of the cases relied upon by PGW and the ALJ involve customers filing complaints against a utility seeking to establish that an existing tariff provision should be modified or set

⁹⁰ CAUSE-PA/TURN M.B. at 16.

⁹¹ RD at 36 (Conclusion of Law No. 9).

⁹² Id. at 15.

⁹³ Id. at 16.

aside.⁹⁴ For example, in Brockway Glass, the complainant sought a more beneficial rate based on its reduced usage, but the utility would not alter the rate because of a one-year notice provision in its tariff.⁹⁵ Similarly, in Deitch, two companies filed a complaint that railroad freight rates in a carrier's tariff were unreasonable and discriminatory.⁹⁶ Another case the ALJ relies upon, Shenango, involved a township complaint against a water utility seeking payment for the cost of constructing water facilities under a then-existing policy statement of the Commission and an amendment to its contract entered into pursuant to the utility's tariff.⁹⁷ Shenango is not factually similar to this rate proceeding, wherein the Commission entered a suspension order specifically requiring investigation into PGW's proposed and current WNA rates.

Furthermore, the ALJ's reliance upon Zucker⁹⁸ disregards the Commonwealth Court's holding in Sharon Steel.⁹⁹ Indeed, the Commonwealth Court specifically distinguished Zucker, holding:

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.¹⁰⁰

Notably, and contrary to PGW's reliance on NRG,¹⁰¹ Sharon Steel involved a utility filing a tariff supplement, which was suspended by Commission motion in a manner directly analogous to this proceeding. By Commission Order, the entirety of PGW's Tariff Supplement No. 152 was made

⁹⁴ See, e.g., Brockway Glass v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa. Commw. Ct. 1981); U.S. Steel Corp. v. Pa. Pub. Util. Comm'n, 390 A.2d 865 (Pa. Commw. Ct. 1978); Deitch Co. v. Pa. Pub. Util. Comm'n, 203 A.2d 515 (Pa. Super. 1964).

⁹⁵ Brockway Glass Co. v. Pennsylvania Pub. Util. Comm'n, 437 A.2d 1067, 1069 (Pa. Commw. Ct. 1981).

⁹⁶ Deitch Co. v. Pennsylvania Pub. Util. Comm'n, 204 Pa. Super. 102, 103, 203 A.2d 515, 517 (1964).

⁹⁷ Shenango Twp. Bd. of Sup'rs v. Pennsylvania Pub. Util. Comm'n, 686 A.2d 910, 913 (Pa. Commw. Ct. 1996)

⁹⁸ RD at 15, citing Zucker v. Pa. Pub. Util. Comm'n, 401 A.2d 1377 (Pa. Commw. Ct. 1979).

⁹⁹ Sharon Steel Corp. v. Pennsylvania Pub. Util. Comm'n, 78 Pa. Commw. Ct. 447, 468 A.2d 860 (1983)

¹⁰⁰ Sharon Steel Corp. v. Pennsylvania Pub. Util. Comm'n, 78 Pa. Commw. Ct. 447, 451-52, 468 A.2d 860, 862 (1983).

¹⁰¹ NRG Energy Inc., v. Pa. PUC, 233 A.3d 936 (Pa. Commw. Ct. 2020)

subject to review and investigation and PGW retained the burden to prove each aspect of its WNA, including the provisions predating its filing, were just and reasonable.

The ALJ's Recommended Decision improperly charges OCA and CAUSE-PA/TURN with carrying the burden to demonstrate the unreasonableness of PGW's WNA. That is contrary to the Commonwealth Court's holding in Sharon Steel, and the Commission should decline to follow the Recommended Decision. Instead, the Commission should hold that PGW did not carry its burden to establish that continuing to charge customers pursuant to its volatile WNA rate mechanism is just, reasonable, and nondiscriminatory and should order that the WNA must be discontinued.

C. ALJ Guhl erred as a matter of law in failing to analyze PGW's WNA pursuant to the provisions of the Commission's Distribution Rates Policy Statement.

Although ALJ Guhl acknowledges CAUSE-PA/TURN's arguments, submitting that the Commission's Policy Statement contains several provisions which weigh heavily against PGW's WNA, she performs no analysis, nor in any way discusses the Commission's guidance. She makes no findings and reaches no conclusions regarding WNA's impact on low income customers, its lack of cost causation alignment, its inter- and intra-class cost shifting, and Mr. Geller's "unrefuted testimony regarding the detrimental impact of PGW's WNA on the effectiveness of energy efficiency programming."¹⁰² Inexplicably, ALJ Guhl finds as fact that the Public Utility Code expressly authorizes decoupling mechanisms,¹⁰³ like PGW's WNA, but fails to examine the Commission's guidance as to when, and if, a decoupling mechanism should be approved. As the Commission itself has stated, "[A]n alternative rate design methodology should reflect the sound

¹⁰² RD at 31.

¹⁰³ 66 Pa. C.S. §1330.

application of cost of service principles, establish a rate structure that is just and reasonable, and consider customer impacts.”¹⁰⁴

As CAUSE-PA/TURN submitted, PGW’s WNA is not supported by, and in fact contravenes, specific considerations the Commission adopted in the Policy Statement. The Policy Statement lays out 14 non-exclusive considerations, the majority of which PGW has disregarded for the bulk of this proceeding. PGW submitted a conclusory overview of how it believed its WNA aligned with the Commission’s Policy Statement together with its Rejoinder Testimony.¹⁰⁵ However, PGW’s Main Brief does not even acknowledge the Policy Statement, relying instead on the history of its WNA and prior approvals.

Nonetheless, even if the Commission recognizes PGW’s belated submission of an exhibit purporting to analyze the factors included in the Policy Statement, CAUSE-PA/TURN and OCA have specifically called into question PGW’s conclusory assertions that the WNA is supported by Commission policy. As a result, there are significant factual issues in dispute which the Recommended Decision fails to address. Indeed, CAUSE-PA’s witness and OCA’s witness identify specific issues with the WNA demonstrating that it out-of-tune with Commission policy. Primarily, CAUSE-PA/TURN assert that PGW’s WNA is unlawfully discriminatory, creating impermissible intraclass cost shifting, that violates the Policy Statement.¹⁰⁶ Furthermore, CAUSE-PA/TURN submit that the WNA fails to respond to potential cost savings to PGW associated with reduced through-put, and so does not respond to capacity utilization, anticipated consumption levels and energy efficiency adoption goals set forth in the Policy Statement.¹⁰⁷ Because the vast

¹⁰⁴ 52 Pa. Code §69.3301.

¹⁰⁵ PGW St. 1-RJ, Exh. DA-5.

¹⁰⁶ CAUSE-PA/TURN M.B. at 12-17.

¹⁰⁷ Id. at 17; 52 Pa. Code §69.3302(a)(2), (3), (6).

majority of PGW's low income customers do not participate in PGW's low income customer assistance program, CAUSE-PA/TURN further assert that PGW's WNA negatively impacts low income customers and increases the cost of customer assistance programs, both contrary to the Policy Statement.¹⁰⁸ Likewise, CAUSE-PA/TURN submit that PGW's WNA disincentivizes energy efficiency programming, contrary to the goals of the Policy Statement, punishing those low income customers who have recently adopted energy efficiency measures.¹⁰⁹ Finally, CAUSE-PA/TURN submit that PGW's WNA violates cost causation principles, because customers using less gas are levied a surcharge, creating rate volatility that is unrelated to cost causation.¹¹⁰

Contrary to the Commission's guidance, however, the Recommended Decision reflects that no consideration was given to the purpose and scope of the Commission's Policy Statement or the explicit factors that the Commission has identified are necessary to determining the justness and reasonableness of an alternative rate mechanism. Because PGW, on the one hand, and CAUSE-PA/TURN and OCA, on the other, present significant factual disagreement regarding the application of the Policy Statement to PGW's WNA, the ALJ's seeming disregard for the Commission's guidance and factors is clearly erroneous. CAUSE-PA/TURN submit that the Recommended Decision constitutes an error of law by failing to appropriately consider the Commission's policy guidelines, and deferring evaluation of the WNA pursuant to the Commission's Policy Statement to a future base rate proceeding.

¹⁰⁸ 52 Pa. Code §69.3302(a)(7).

¹⁰⁹ CAUSE-PA/TURN M.B. at 20-21; 52 Pa. Code §69.3302(a)(5)-(a)(7).

¹¹⁰ Id. at 22-23.

D. ALJ Guhl erred as a matter of fact in finding, without substantial record evidence, that elimination of the month of May would appropriately resolve issues with PGW’s WNA.¹¹¹

As discussed more fully above, PGW’s tariff supplement, to which the Commission’s suspension order applied, proposed a 25% cap on PGW’s WNA. PGW contended that the 25% cap was a simple solution that could be quickly implemented to protect consumers, to the extent the WNA charge would exceed 25% of total delivery charges on their bills.¹¹² However, PGW stated in both Rebuttal and Rejoinder Testimony that it no longer had any interest in pursuing its 25% cap. Instead, in Rejoinder Testimony, PGW stated that elimination of May from the WNA formula was reasonable, and that it would support an Order permanently removing May.

At hearing, however, PGW’s counsel objected to questions posed to PGW’s witness concerning the elimination of May. In specific, because PGW had presented testimony in its base rate proceeding in support of eliminating May, together with its consultant report from Atrium, PGW acknowledged that those matters were not on the record of this proceeding.¹¹³ Indeed, PGW’s lawyer recognized, in objecting to questions concerning the elimination of May, that the February 22, 2023 PHO specifically instructed the parties they could not introduce evidence during rebuttal that should have been in, or varied from, their respective cases-in-chief.¹¹⁴ As PGW’s counsel asserted, omitting the month of May “*wasn’t actually a new proposal*” and objected to cross-examination on the subject.¹¹⁵ ALJ Guhl sustained the objection.¹¹⁶

¹¹¹ RD at 11 (Findings of Fact Nos. 42, 43).

¹¹² PGW M.B. at 22.

¹¹³ May 24 Hrg. Tr. at 19.

¹¹⁴ Id. at 20; Feb. 22 PHO at ¶9.

¹¹⁵ May 24 Hrg. Tr. at 20.

¹¹⁶ Id.

Importantly, PGW's base rate case testimony concerning its WNA was stricken from the record of that proceeding, together with the report prepared by PGW's consultant.¹¹⁷ Likewise, it was denied entry onto the record in this proceeding.¹¹⁸ Accordingly, because PGW has been clear in submitting that the basis for its belief that eliminating May from the WNA is its consultant's report, which has not been placed on any record before the Commission, CAUSE-PA/TURN submit that elimination of May is inadequately supported on the record. Indeed, approving the elimination of May based on PGW's unsupported assertion, made contrary to and subsequent to its case-in-chief, violates Commission regulation and the ALJ's February 22 PHO.

As submitted by CAUSE-PA/TURN, elimination of May does not address the structural flaws with PGW's WNA. However, because PGW did not, and could not submit testimony in support of eliminating May from the WNA, the issue was not properly before the ALJ and lacks substantial evidence on the record of this, or any, Commission proceeding.

IV. CONCLUSION

For the foregoing reasons, CAUSE-PA/TURN respectfully request that the Commission reject the Recommendations of ALJ Guhl and discontinue PGW's WNA.

¹¹⁷ CAUSE-PA/TURN MB at 8, n. 29.

¹¹⁸ May 24 Hrg. Tr. at 90.

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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 Exceptions 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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