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August 7, 2023

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

RE: Supplement No. 152 to the Gas Service Tariff – Pa. P.U.C. of Philadelphia Gas Works,  
Docket No. R-2022-3034229

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

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Dear Secretary Chiavetta:

On behalf of the Philadelphia Gas Works (“PGW”), enclosed for electronic filing are the Reply Exceptions of PGW in response to the Exceptions filed to the Recommended Decision of Administrative Law Judge Marta Guhl, which was served in the above-referenced matter on July 19, 2023. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Karen O. Moury*

Karen O. Moury

Enclosure

cc: mguhl@pa.gov  
ra-osa@pa.gov  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the PGW's Reply Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa.

Code Section 1.54.

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Dated: August 7, 2023

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS OF PHILADELPHIA GAS WORKS**

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August 7, 2023

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## I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.535 of the regulations of the Pennsylvania Public Utility Commission (“Commission”) and the Secretarial Letter dated July 19, 2023 issued in the above-captioned proceeding, Philadelphia Gas Works (“PGW” or “Company”) submits these Reply Exceptions to the Recommended Decision (“RD”) of Administrative Law Judge Marta Guhl. Through these Reply Exceptions, PGW responds to the Joint Exceptions filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN”) (collectively “CAUSE-PA/TURN”).<sup>1</sup>

With no regard for the financial health of the municipally owned public utility that is providing natural gas service to approximately 500,000 customers in the City of Philadelphia, and no evaluation of the financial impacts of their proposal, CAUSE-PA/TURN call for the elimination of PGW’s long-standing Weather Normalization Adjustment (“WNA”) clause from its Commission-approved Tariff. Their policy-based advocacy is based on a single anomaly with the WNA over the course of a 20+ year period that occurred in May 2022 – one which PGW proactively rectified for the benefit of customers by voluntarily requesting and obtaining unprecedented emergency authorization from the PUC to reverse the charges. In making their demand, CAUSE-PA/TURN willfully neglect the indisputable facts that PGW’s WNA only: (i) allows the Company to bill revenues no more than the level authorized by the PUC in the last

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<sup>1</sup> No other parties filed Exceptions seeking a reversal of the RD including the Bureau of Investigation and Enforcement, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Philadelphia Industrial and Commercial Gas Users Group. For purposes of brevity, these Reply Exceptions incorporate PGW’s Main Brief and Reply Brief herein by reference. Although PGW’s Reply Exceptions respond to the arguments raised by the Joint Exceptions, they do not follow the same order of discussion or headings that were used by CAUSE-PA/TURN.

base rate case; and (ii) enables adjustments in distribution rates, through both increases and decreases, due to variations in weather over which PGW has no control.

PGW respectfully urges the Commission to adopt the ALJ's RD, without modification, because it: (i) would allow the Company's long-standing and PUC-approved Weather Normalization Adjustment ("WNA") in its Gas Service Tariff to remain in place for the benefit of PGW and its ratepayers; and (ii) would adopt the Company's recommendation to remove the month of May from the WNA calculation going forward. The RD further recommended that the Company be directed to fully address the WNA in its next base rate case ("BRC") after the current BRC at Docket No. R-2023-3037933. PGW accepts the ALJ's recommendation to fully address the WNA in its next BRC.

In permitting PGW's WNA to remain intact, with only one revision – being the removal of the month of May, as proposed by PGW – the RD properly recognized the importance of the use of this widely accepted ratemaking mechanism by natural gas utilities to the financial health of PGW, which is a municipally owned cash flow public utility providing natural gas service to approximately 500,000 customers in the City of Philadelphia. While CAUSE-PA/TURN are advocating for the elimination of PGW's WNA – without any evaluation of the financial impacts of their advocacy, the ALJ solidly rejected this proposal on the basis of three key grounds:<sup>2</sup>

- (i) 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 ratepayers and any bonds that it can issue (which are also funded by ratepayers);
- (ii) The PUC approved PGW's WNA over twenty years ago and PGW has successfully employed this alternative ratemaking method for a number of years; and
- (iii) The WNA only allows PGW the opportunity to collect revenues at the level already authorized by the Commission in its last BRC.

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<sup>2</sup> RD at 33.

The third factor identified above that was relied upon by the ALJ in recommending that the WNA be kept intact, with the month of May removed from the calculation, is particularly compelling in view of the pervasive commentary of CAUSE-PA/TURN throughout their Joint Exceptions – declaring, without providing evidence, that the WNA has a disproportionate impact on low-income households.<sup>3</sup> Notably, that argument is not directed at any aspect of the WNA mechanism itself. Since the WNA does not enable PGW to bill customers at a level higher than authorized by the PUC in the last rate case, the CAUSE-PA/TURN arguments against the WNA on behalf of low-income customers are actually arguments against the level of revenue requirements that the Commission has already authorized for PGW. Yet, CAUSE-PA and TURN did not oppose the Joint Petition for Partial Settlement filed in PGW’s last base rate case, which was approved by the Commission without modification and which fully resolved the issue of revenue requirements.<sup>4</sup>

Most importantly, CAUSE-PA/TURN have presented no evidence to demonstrate that any particular feature of PGW’s WNA mechanism is harmful to low-income customers. To the contrary, the low-income customers that the PUC has identified as needing energy assistance – those participating in PGW’s Customer Responsibility Program (“CRP”) – are not affected by the WNA because their rates are based on a percentage of household income that was established by the PUC as a reasonable energy burden for low-income customers.<sup>5</sup> Customers participating in the CRP are unaffected by the WNA and other rate fluctuations as their energy burden will not exceed the level approved by the PUC as reasonable. Further, in stabilizing the recovery by

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<sup>3</sup> CAUSE-PA/TURN Exceptions at 4, 6, 8-10, 12, 18, 20.

<sup>4</sup> *Pa. Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Order entered November 19, 2020 at 10, 64-71; Joint Petition for Partial Settlement at 1 and 16).

<sup>5</sup> PGW St. No. 1-R at 18.

PGW of the costs of delivering safe and reliable gas to customers, the WNA reduces the variability of distribution rates that are paid by consumers.<sup>6</sup> As to remaining arguments in the CAUSE-PA/TURN Joint Exceptions regarding utility service to low-income customers, these issues need to be addressed on a statewide basis, not in this rate proceeding.<sup>7</sup>

The Commission should reject the efforts of CAUSE-PA/TURN to use PGW and PGW's proceeding – initiated to propose a consumer protection measure – to advance their own policy agenda against WNAs in Pennsylvania. Rather, PGW urges the PUC to stay the course that it has been on over two decades and to faithfully follow the direction provided by the General Assembly in 2018 that encourages the implementation of WNAs by energy utilities.<sup>8</sup> Of particular note, on June 15, 2023, the Commission approved a settlement, without modification, that was signed by CAUSE-PA and will result in an investor-owned gas utility, National Fuel Distribution Corporation (“NFG”), implementing a WNA on October 1, 2023, a mere 10 days after the PUC is scheduled to vote on the CAUSE-PA/TURN Joint Exceptions, which seek to dissolve PGW's WNA.<sup>9</sup> Notably, CAUSE-PA/TURN have presented no explanation of any difference between the WNA approved for NFG and the WNA that has been in place for PGW for over two decades.<sup>10</sup> Additionally, approval of NFG's WNA earlier this Summer was the culmination of a series of decisions by the PUC to permit natural gas utilities to implement WNAs, starting with PGW as the pioneer in 2002.<sup>11</sup>

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<sup>6</sup> PGW St. No. 1-RJ at 14-16; PGW Exhibit DA-5.

<sup>7</sup> See *2023 Review of All Jurisdictional Fixed Utilities' Universal Service Programs*, Docket No. M-2023-3038944 (Secretarial Letter dated March 27, 2023).

<sup>8</sup> 66 Pa.C.S. § 1330; RD at 24.

<sup>9</sup> *Pa. Public Utility Commission v. National Fuel Gas Distribution Corporation*, Docket No. R-2022-3035730 (Order entered June 15, 2022, adopting the Recommended Decision issued May 9, 2023, at pp. 1, 8 (footnote 4)-9, 29-32, Ordering Paragraph No. 1). TURN was not a party in that proceeding.

<sup>10</sup> The same holds true concerning other WNA mechanisms that the PUC has approved.

<sup>11</sup> *Re Philadelphia Gas Works*, 2002 WL 1378610 (Pa.P.U.C.).



Not only has the PUC approved WNAs for other gas utilities, it has done so in a way that embraces the clear directives of the General Assembly set forth in Act 58 of 2018. For example, approximately a year ago, the Commission approved a settlement for the investor-owned natural gas utility, UGI Utilities, Inc. – Gas Division (“UGI”), which contained a provision for the implementation of a WNA. In approving UGI’s WNA, Chairman Gladys Brown Dutrieuille (“Chairman”) issued a Statement in which she noted 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.”<sup>12</sup>

Further, in approving a continuation of a WNA mechanism by Columbia Gas of Pennsylvania, Inc. (“Columbia”) in 2018, which had previously been approved as a pilot,<sup>13</sup> the Chairman issued a similar Statement commending the parties for their “commitment to maintain this mechanism” and noting that a WNA “works bi-directionally to insulate customers from high bills during the extremely cold months while also limiting the decline in revenue for Columbia during unseasonably warm heating months.”<sup>14</sup> She further stated as follows:

This decoupling of uncontrollable weather from revenues stabilizes Columbia’s cashflow, and in turn, allows Columbia to more acutely focus on operational items within its control; namely infrastructure upgrades and repairs. Further, since this decoupling mechanism is only applied to the distribution component of the bill, and not the natural gas commodity charge, *incentives for efficient consumption are maintained*.<sup>15</sup>

The Chairman’s Statement pointed out that WNAs are “not a novel concept,” specifically referring to PGW’s long-standing WNA. In addition, given the passage of Act 58 of 2018 on

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<sup>12</sup> *Pa. Public Utility Commission v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered September 15, 2022) (“*UGI Base Rate Case Order*”); Chairman’s Statement).

<sup>13</sup> *Pa. Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577 (Order entered December 6, 2018) (“*Columbia Base Rate Case Order*”).

<sup>14</sup> *Columbia Base Rate Case Order*, Chairman’s Statement.

<sup>15</sup> *Id.* (emphasis supplied).

alternative ratemaking,<sup>16</sup> the Chairman found it timely to highlight support for such revenue decoupling mechanisms and encouraged “other natural gas distribution companies in the Commonwealth to consider utilization of weather decoupling distribution charge mechanisms.”<sup>17</sup>

Despite the clear policy pronouncements by the legislature and the PUC regarding the value of WNAs as an alternative ratemaking method, it is noteworthy that CAUSE-PA/TURN have elected to voice their general opposition to WNAs in a proceeding that PGW voluntarily initiated to protect consumers from abnormal increases in rates due to the application of the WNA. In opposing the 25% cap that PGW originally proposed in this proceeding, these parties rebuffed the Company’s efforts to quickly put a control in place that would prevent a potential recurrence of the unusually large charges that resulted from the application of the WNA to usage in May 2022. During the pendency of the proceeding, PGW has determined that it no longer desires to implement the 25% cap, having realized that the recent extremely warmer weather trends in May in Philadelphia were the culprit of the anomaly that occurred in May 2022. As such, the removal of May from the formula would enable PGW’s WNA to continue to ensure that the Company has sufficient cash to pay its bills and provide gas service to its customers.

In summary, the WNA has allowed PGW to collect the revenues that the Commission has determined in a base rate case as necessary to sustain its safe and reliable operation as a municipally owned, cash flow, natural gas utility (and return dollars to customers when winters were colder than normal). In singling out PGW’s WNA to launch their policy battle against a legislative-endorsed and Commission-approved decoupling mechanism, CAUSE-PA/TURN have failed to carry their heavy burden of proof to show that PGW’s WNA (or other WNAs in

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<sup>16</sup> 66 Pa. C.S. § 1330 (authorizes the PUC to approve decoupling mechanisms for energy utilities).

<sup>17</sup> *Columbia Gas Base Rate Case Order*, Chairman’s Statement.

the Commonwealth) should be eliminated. As an approved existing Tariff provision, PGW 's WNA enjoys a presumption of reasonableness, which CAUSE-PA/TURN have not demonstrated otherwise through their mere reliance on rhetoric and theory that reflects a general disdain for WNAs. PGW respectfully requests that the Commission adopt the RD, without modification.

## II. REPLY EXCEPTIONS<sup>18</sup>

### A. Reply Exception No. 1: The Background of the CAUSE-PA/TURN Joint Exceptions is Replete with Misstatements.

The section of the CAUSE-PA/TURN Joint Exceptions that is labeled "Background" is misleading, incorrect and inappropriately argumentative.<sup>19</sup> By contrast, the ALJ's RD contains a neutral and accurate description of the history of this proceeding,<sup>20</sup> which the PUC should rely upon as necessary to understand the procedural framework leading up to the issuance of the RD.

A particularly problematic aspect of the Background presented by CAUSE-PA/TURN is that it not only contains extensive arguments advanced by its witness to support the elimination of PGW's WNA<sup>21</sup> but also describes proposals offered by the OCA witness to modify the WNA, and advances OCA's positions taken during the briefing phase of this proceeding.<sup>22</sup> Of note, by not filing Exceptions, OCA has accepted result of the RD and is no longer seeking to have the clause suspended or significantly modified as part of this proceeding. Moreover, as PGW has shown through its evidence, with which the ALJ agreed, OCA's witness did not properly analyze

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<sup>18</sup> The RD's Findings of Fact are referred to throughout the Exceptions as "FF" and the RD's Conclusions of Law are referred to as "CL."

<sup>19</sup> Joint Exceptions at 8-13.

<sup>20</sup> RD at 2-5.

<sup>21</sup> Joint Exceptions at 4-6.

<sup>22</sup> Joint Exceptions at 5-7, 9.

or develop his proposals for modifying PGW's WNA.<sup>23</sup> Therefore, any reliance on those recommendations to support the elimination of PGW's WNA is wholly misplaced.

Further, this section of the Joint Exceptions mischaracterizes the testimony offered by PGW witness Denise Adamucci regarding the removal of May from the WNA calculation,<sup>24</sup> which is explained in detail in these Reply Exceptions, and is contrary to the description of PGW's testimony that is set forth in the RD.<sup>25</sup> The Joint Exceptions also inappropriately argue about procedural issues concerning the timing of PGW raising the proposed elimination of May from WNA formula<sup>26</sup> – which is nothing more than an untimely attack on both pre-served written and live testimony that were admitted into the evidentiary record, without objection.<sup>27</sup>

**B. Reply Exception No. 2: The RD Properly Placed the Burden of Proof on CAUSE-PA/TURN for the Proposed Elimination of the WNA.**

In the RD, the ALJ ruled that while the Company has the burden of proving that its proposed modifications to the WNA are just and reasonable, parties challenging existing Commission-approved Tariff provisions have the burden of proving that they are somehow unreasonable. The RD correctly found that it is not PGW's burden to justify the continuation of existing Tariff provisions, which are considered *prima facie* reasonable.<sup>28</sup>

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<sup>23</sup> RD at 25-26, 34; PGW RB at 20-23; PGW MB at 31-33; FF Nos. 44-50.

<sup>24</sup> Joint Exceptions at 4, 6-7.

<sup>25</sup> RD at 21-22, 33-34; FF Nos. 41-43; PGW's Reply Exceptions at 22-25.

<sup>26</sup> Joint Exceptions at 7-8.

<sup>27</sup> Tr. 190. The Background of the Joint Exceptions also addresses arguments made by the parties during the briefing phase of this proceeding regarding due process issues. Joint Exceptions at 9-12. PGW did not file Exceptions to the RD relating to due process because the result of the RD essentially rendered those issues moot. See PGW MB at 15-18. Adoption of the RD, without modification, would have the same effect.

<sup>28</sup> RD at 15; CL Nos. 7-10, 12.

In their Joint Exceptions, CAUSE-PA/TURN argue that because this proceeding involves PGW’s rates, the Company has the burden of proving that its existing Commission-approved tariff provisions are just and reasonable.<sup>29</sup> This argument is incorrect.

Reliance by CAUSE-PA/TURN on the decision in *Sharon Steel Corp. v. Pa. P.U.C.*<sup>30</sup>, 78 Pa. Cmwlth. 447, 468 A.2d 860 (1983), is misplaced. *Sharon Steel* involved a general rate increase sought by a natural gas utility, and the disputed issue pertained to the adoption of a particular rate structure for allocation of the approved revenue increase. Because the revenue allocation was directly relevant to the rates proposed by the utility, the Court declined to impose the burden on the large industrial customer challenging the rate structure that is typically placed on the proponent of a rule or order by Section 332(a) of the Public Utility Code (“Code”).<sup>31</sup>

Two important facts distinguish this case from *Sharon Steel*. First, PGW filed this rate case under Code Section 1308(a) and not for the purpose of increasing existing rates. Rather, this proceeding was initiated by PGW – not upon a motion of the Commission – to place a control or cap on the WNA to protect customers from unusually large or unexpected rate increases during the heating season that began on October 1, 2022. Contrary to the claims of CAUSE-PA/TURN, the inclusion of standard language in the September 15, 2022 Suspension Order regarding a review of the reasonableness of PGW’s existing rules, rates and regulations did not somehow alter the burden of proof that must be met by the parties. In short, the PUC did not through issuance of the Suspension Order shift the burden to PGW to establish that its

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<sup>29</sup> Joint Exceptions at 16-18.

<sup>30</sup> *Sharon Steel Corp. v. Pa. P.U.C.*<sup>30</sup>, 78 Pa. Cmwlth. 447, 468 A.2d 860 (1983).

<sup>31</sup> 66 Pa.C.S. § 332(a).

existing and long-standing WNA Tariff provision, which already enjoys an assumption of reasonableness, is just and reasonable in its application.

Second, a contention that the revenue increase should be allocated differently than as it was under either existing or proposed rates, which was the argument advanced in *Sharon Steel*, is a far cry from a claim that a gas utility's entire PUC-approved WNA should be eliminated within the context of a rate proceeding that was initiated by the utility to offer consumers a protection. To shift the burden to PGW of proving the need to keep the WNA in place, merely because the Company voluntarily and proactively made a filing designed to protect consumers through a cap, would be wholly contrary to the legal precedent applicable to the burden of proof.

Moreover, as the ALJ explained, Code Section 315(a)<sup>32</sup> cannot reasonably be read to place the burden of proof on PGW with respect to an issue that the utility did not include in the Tariff filing, and which frequently, the utility would oppose.<sup>33</sup> The statutory burden placed on a proponent of a rule or order under Code Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility's rate proceeding.<sup>34</sup> Rather, parties advocating for an order from the PUC directing PGW to take specified action bear a burden under Code Section 332(a) to present "some evidence or analysis" that convinces the PUC to enact the rule or order requested by that party.<sup>35</sup> Further, the RD appropriately emphasized that that the parties bear a "heavy burden to prove that facts and circumstances have changed drastically so as to render application of the Tariff provision unreasonable."<sup>36</sup>

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<sup>32</sup> 66 Pa. C.S. § 315(a).

<sup>33</sup> RD at 16, citing *Pa. Pub. Util. Comm'n v. Appalachian Util., Inc.*, Docket No. R-2015-24780908 (Order entered March 10, 2016).

<sup>34</sup> *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2017-2586783 ("2017 PGW Base Rate Order") (Order entered November 8, 2017, at 12-13).

<sup>35</sup> *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, 233 A.3d 936, 950 (Pa. Commw. Ct. June 2, 2020).

<sup>36</sup> RD at 16; *Shenango Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A2d 910 (Pa. Cmwlth. 1996).

Therefore, the ALJ properly concluded that since CAUSE-PA/TURN are making proposals that would terminate the WNA, they were required to come forward with evidence challenging the assumption of reasonableness enjoyed by existing Tariff provisions.”<sup>37</sup>

Here, CAUSE-PA/TURN propose to eliminate PGW’s WNA that has been in place for over two decades upon agreement of many parties and the approval of the Commission – and under the regulation and reporting requirements of the PUC – with a single change during that time to move to from a 30-year to a 20-year historic period for determining normal weather patterns.<sup>38</sup> The only proposal PGW set forth in its Tariff filing that initiated this proceeding was a 25% cap on delivery charges as a result of application of the WNA. As CAUSE-PA/TURN have sought to eliminate WNA, they were required to satisfy their burden of proof by a preponderance of the evidence to support their claims, which they have not done.

It is also noteworthy that in *Sharon Steel*, regardless of which party had the burden of proof, the Court agreed with the utility that it had shown the propriety of its approach for allocating revenues among the classes.<sup>39</sup> The same is true in this case. Even if the PUC determines, contrary to judicial precedent, to place the burden of proof on PGW in this proceeding to establish the justness and reasonableness of the continuation of its WNA, the Company has presented overwhelming evidence of the importance of this decoupling mechanism to both PGW and its ratepayers.<sup>40</sup> At the very minimum, it is without doubt that CAUSE-PA/TURN were obligated to come forward with evidence demonstrating that is reasonable to eliminate PGW’s WNA.<sup>41</sup> They have failed to do so. Indeed, the ALJ, despite her correct

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<sup>37</sup> RD at 16.

<sup>38</sup> PGW St. No. 1 at 5-8.

<sup>39</sup> *Sharon Steel* \*452-461.

<sup>40</sup> PGW M.B. at 18-22; PGW R.B. at 13-15.

<sup>41</sup> *NRG Energy* at 951.

analysis of the burden of proof, also expressly found that “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.”<sup>42</sup>

**C. Reply Exception No. 3: The RD Properly Found that PGW Carried Its Burden**

In the RD, the ALJ found that based on the testimony presented by PGW, the Company has shown the importance of maintaining its long-standing PUC-approved WNA, with a single modification to remove the month of May from the WNA calculation.<sup>43</sup> As the ALJ correctly observed, the Commission has approved, on an emergency basis, the removal of May from the WNA calculation the past two years, due to the recent extreme weather trends in Philadelphia.<sup>44</sup> The RD further described the benefits of PGW’s WNA as: (i) stabilizing cash flow from year-to-year; (ii) reducing the need for short-term borrowing from year-to-year; (iii) positively affecting PGW’s credit rating; and (iv) reducing the need for costly base rate proceedings.<sup>45</sup>

Relying on the testimony of PGW witness Adamucci, the ALJ concluded that PGW has demonstrated the importance of the WNA to PGW’s financial health and stability, which in turn benefits ratepayers, particularly given PGW’s responsibility to provide safe and adequate natural gas service to approximately 500,000 customers.<sup>46</sup> The ALJ also recognized that PGW’s WNA has effectively addressed the effect of abnormal weather on earnings and cash flow, while having a very positive impact upon the way in which PGW has been viewed by the financial community.<sup>47</sup> As Ms. Adamucci testified, the WNA “has been instrumental in helping PGW to

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<sup>42</sup> RD at 34.

<sup>43</sup> RD at 34; FF Nos. 41-43; CL No. 11.

<sup>44</sup> RD at 33.

<sup>45</sup> FF No. 17.

<sup>46</sup> FF Nos. 21 and 27.

<sup>47</sup> FF Nos. 22-23.



become a financially stable and strong Company, while assuring that weather related charges to customers were fair and reasonable.”<sup>48</sup>

Particularly given PGW’s status as a municipally owned utility, the RD found that a WNA is appropriate because under the cash flow method of ratemaking, ratepayers provide revenues to cover the entire costs of service.<sup>49</sup> As the ALJ observed, when the weather significantly varies from the normal levels that the PUC 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.<sup>50</sup> If PGW were not able to adjust billings through the WNA to reflect warmer weather during the heating season, the ALJ concluded that its natural gas operations would be jeopardized, directly harming customers.<sup>51</sup> Further, without the WNA, the RD recognized that 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.<sup>52</sup>

Of particular note, the RD emphasized the significant effect that the loss of revenues of approximately \$60 million from January 2021 through May 2023 if PGW had not had use of the WNA – in that PGW’s number of cash on hand would be down from 16.9 days at the end of the Fully Projected Test Year to negative 14.8 days.<sup>53</sup> As PGW witness Adamucci testified, “[t]his would be a totally unacceptable financial result.”<sup>54</sup>

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<sup>48</sup> PGW St. No. 1 at 10.

<sup>49</sup> FF No. 28.

<sup>50</sup> FF No. 30.

<sup>51</sup> FF No. 31.

<sup>52</sup> FF No. 32.

<sup>53</sup> FF No. 33. Although the RD refers to May 2022, the testimony on which this finding is based refers to the time period “through today,” which was May 2, 2023. PGW St. No. 1-R at 17.

<sup>54</sup> PGW St. No. 1-R at 17.

**D. Reply Exception No. 4: The RD Properly Found that CAUSE-PA/TURN Failed to Carry Their Burden**

The RD properly concluded that “eliminating the WNA entirely is not supported by the record in this matter.”<sup>55</sup> Therefore, the ALJ rejected this proposal advanced by CAUSE-PA/TURN. In support of this conclusion, ALJ Guhl pointed to PGW’s status as a municipal gas company with no shareholders, meaning that “the only source of revenue for the Company is from the rates that it collects from ratepayer[s] and any bonds that it can issue.”<sup>56</sup> Further, the RD noted that the PUC has already approved PGW’s usage of the WNA and that PGW has been successfully employing this alternative ratemaking method for over twenty years.<sup>57</sup> Of particular importance, the ALJ emphasized that the WNA only allows PGW the opportunity to collect the level of revenues that the PUC has authorized in prior BRCs.<sup>58</sup> On this basis, the ALJ recommended that 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,” and “helps to alleviate the need for even higher rate requests” in BRCs.<sup>59</sup>

Nonetheless, the RD found that “there should be a more in-depth review of the WNA mechanism as it functions for PGW customers.”<sup>60</sup> Expressing the view that “the elimination of the month of May is an effective fix to the issues with the WNA in the short term,” the ALJ found that “it would be helpful if the parties revisit the issue at a later time.”<sup>61</sup> As such, ALJ

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<sup>55</sup> RD at 34.

<sup>56</sup> RD at 33; FF Nos. 2-3, 6, 8-9, 14-15.

<sup>57</sup> RD at 33.

<sup>58</sup> RD at 33; FF No. 30.

<sup>59</sup> RD at 34.

<sup>60</sup> RD at 34.

<sup>61</sup> RD at 34.

Guhl recommended that “the Commission direct the parties to address this issue when PGW files its next Base Rate Case after 2023.”<sup>62</sup>

### 1. Rate Discrimination

In their Joint Exceptions, CAUSE-PA/TURN argue that the RD failed to address claims regarding the “unlawful rate discrimination” addressed in their testimony. They specifically focus on the application of PGW’s WNA to customers based on what they term as “arbitrary factors” due to the use of billing cycles.<sup>63</sup> Contrary to the argument made by CAUSE-PA/TURN, ALJ Guhl extensively discussed this testimony in the RD.<sup>64</sup> That the ALJ did not view this testimony as warranting elimination of the WNA certainly does not constitute error.

Code Section 703(e) requires the Commission’s decisions to be accompanied by findings that contain sufficient detail to enable an appellate court to determine the controverted question presented by the proceeding and whether proper weight was given to the evidence.<sup>65</sup> As the Commonwealth Court has held, “[t]his section has been interpreted to mean that an order is sufficient if it refer to facts in the record supporting the conclusion, and it is not necessary that each and every issue raised by the parties be discussed.”<sup>66</sup>

Here, it is not even evidence that CAUSE-PA/TURN claim has been overlooked by the ALJ, but rather their arguments. However, the ALJ discussed their positions, and, as in *Consolidated Rail*, the RD includes numerous factual findings to support the conclusion that

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<sup>62</sup> RD at 34. PGW has not filed an Exception to and fully accepts this recommendation.

<sup>63</sup> Joint Exceptions at 13-14.

<sup>64</sup> RD at 26-32.

<sup>65</sup> *Consolidated Rail Corp. v. Pa. P.U.C.*, 155 Pa. Cmwlth. 537, 625 A.2d 741 \*744 (1993).

<sup>66</sup> *Id.*, citing *Paxtowne v. Pa. Pa. P.U.C.*, 40 Pa. Cmwlth. 646, 398 A.2d 254 (1979); *Allegheny Center Associates v. Pa. P.U.C.*, 131 Pa. Cmwlth. 352, 570 A.2d 149 (1990).

PGW's WNA should remain in place, subject to the elimination of the month of May from the calculation and a future study of PGW's WNA.<sup>67</sup>

Importantly, in testimony, PGW fully addressed the flaws of the CAUSE-PA/TURN's argument based on discrimination.<sup>68</sup> Further, as argued by PGW, discrimination in rates is unlawful only when it is unreasonable.<sup>69</sup> Specifically, Code Section 1304 prohibits utilities from granting "any *unreasonable* preference or advantage to any person, corporation, or municipal corporation," or subjecting and "person, corporation, or municipal corporation to any *unreasonable* prejudice or disadvantage."<sup>70</sup>

The use of billing cycles does not render a rate unlawfully discriminatory. Indeed, having multiple billing cycles is inherent in utility operations.<sup>71</sup> The fact that billing cycles may result in customers being impacted by a rate in different ways does not mean that PGW's application of the WNA granted any customer an unreasonable advantage or subjected any customer to an unreasonable disadvantage. To the contrary, PGW applied the WNA formula to each customer in exactly the same manner and in accordance with a PUC-approved calculation method that has been in place for over twenty years. Accordingly, the application of PGW's WNA did not result in unlawful discrimination. In any event, to the extent that the PUC determines to provide additional rationale in support of the adoption of the RD, it is the ultimate factfinder and "has all the powers which it would have had in making the initial decision."<sup>72</sup>

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<sup>67</sup> FF Nos. 1-51.

<sup>68</sup> PGW St. No. 1-5 at 11.

<sup>69</sup> PGW RB at 19-20.

<sup>70</sup> 66 Pa. C.S. § 1304 (emphasis supplied).

<sup>71</sup> PGW M.B. at 28; PGW St. No. 1-R at 11.

<sup>72</sup> 66 Pa. C.S. § 335(a).

## 2. Alternative Ratemaking Policy Statement

Through passage of Act 58 of 2018, the General Assembly has declared that the policy of the Commonwealth is to encourage the use of decoupling mechanisms by energy utilities.<sup>73</sup> To implement this declaration, the Commission issued a Policy Statement to guide energy utilities in the development of such ratemaking tools.<sup>74</sup> In their Joint Exceptions, CAUSE-PA/TURN argue that the RD did not analyze their claims that PGW's WNA is not consistent with the Commission's Policy.<sup>75</sup> Specific issues identified by the Joint Exceptions include cost causation, cost shifting and the effectiveness of energy efficiency programming. Notably, however, the ALJ discussed these arguments at length in the RD.<sup>76</sup> Again, that the ALJ was unpersuaded that these contentions warrant elimination of the WNA does not constitute error.

In addition, through rejoinder testimony in this proceeding, Ms. Adamucci thoroughly addressed these factors.<sup>77</sup> Even though PGW's WNA was approved prior to the addition of Section 1330 to the Code, or the promulgation of the Policy Statement, PGW witness Adamucci testified that PGW's clause is consistent with both.<sup>78</sup> She described PGW's commitment to the successful implementation of its Universal Service and Energy Conservation Plan, as well as its Low-Income Smart Thermostat Program as part of its Demand Side Management Program. As Ms. Adamucci's analysis also indicated, the WNA only addresses variations due to weather and does not negatively impact a ratepayer's ability to reduce usage, and thus save money, via energy

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<sup>73</sup> 66 Pa. C.S. § 1330; CL No. 6. A policy statement is not an enforceable regulation but rather is an announcement of the agency's future intentions. *See Pa. Human Relations Comm'n v. Norristown Area School District*, 473 Pa. 334, 349, 374 A.2d 671, 679 (1977).

<sup>74</sup> 66 52 Pa. Code § 69.3302(a)(5)-(6).

<sup>75</sup> Joint Exceptions at 18-20.

<sup>76</sup> RD at 29-33.

<sup>77</sup> PGW St. No. 1-RJ at 14-16; PGW Exhibit DA-5.

<sup>78</sup> *Id.*

efficiency programs. Further, she explained that customers remain incentivized to employ efficiency measures that reduce their overall bill. Moreover, Chairman Brown Dutrieuille explicitly recognized in approving Columbia’s WNA that “since this decoupling mechanism is only applied to the distribution component of the bill, and not the natural gas commodity charge, *incentives for efficient consumption are maintained.*”<sup>79</sup>

Ms. Adamucci also addressed the other factors identified by CAUSE-PA/TURN in their Joint Exceptions. For example, she explained that since the WNA mechanism applies rates that are based upon the specific revenue allocation and rate design approved by the Commission for heating customers, its continued implementation will mitigate the potential for interclass or intraclass cost shifting related to weather driven usage deviations from the weather assumptions used in establishing rates.<sup>80</sup> In addition, she noted that low-income customers participating in the CRP and abiding by its terms are unaffected by the WNA as their energy burden will not exceed the level approved by the PUC.<sup>81</sup> Ms. Adamucci likewise addressed the claim that PGW’s WNA violates cost causation principles, noting that it is simply designed to allow the Company to collect its approved level of revenue regardless of weather variations. As she emphasized, it is not just PGW’s WNA that is designed in this manner; it is the entire purpose of a WNA, which better aligns distribution revenues with cost causation principles than fixed cost recovery mechanisms because it accounts for variations in usage due to weather.<sup>82</sup>

CAUSE-PA/TURN further improperly portray PGW’s analysis of the Policy Statement in rejoinder testimony as “belated.”<sup>83</sup> This claim has no basis as: (1) PGW submitted the rejoinder

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<sup>79</sup> *Columbia Base Rate Case Order*, Chairman’s Statement (emphasis supplied).

<sup>80</sup> PGW Exhibit DA-5.

<sup>81</sup> PGW Exhibit DA-5. PGW RB at 13-14

<sup>82</sup> PGW St. No. 1 at 4; PGW Exhibit DA-5.

<sup>83</sup> Joint Exceptions at 19-20.

testimony in accordance with the procedural schedule in response to the surrebuttal testimony of CAUSE-PA/TURN witness Geller; (2) Ms. Adamucci expressly addressed all of the criteria set forth in the Policy Statement;<sup>84</sup> and (3) no party sought to strike this testimony, which was admitted into the record. It is not even clear that the criteria in the Policy Statement are applicable to this case. PGW was not initially proposing to implement its WNA in this proceeding, which is the focus of the Policy Statement, but rather was seeking to build a protection into the clause so that customers would not be called upon to pay unusually large increases due to the application of the WNA as a result of extreme variances in weather. The fact that the RD found that PGW's WNA complies with Code Section 1330 as a decoupling mechanism, after discussing the issues raised by CAUSE-PA/TURN is more than sufficient.

Particularly in view of the compelling evidence presented by PGW, which was relied upon by the RD, regarding the importance of the WNA to the Company's financial health and to continue providing safe and adequate natural gas service to the City of Philadelphia,<sup>85</sup> CAUSE-PA/TURN have offered no justification for their proposal to eliminate the WNA. In view of how the WNA fairly operates to both charge and credit customers depending on the weather, and its importance to maintaining PGW's financial stability, as well as the fact that several other natural gas distribution companies have similar clauses, it would be grossly unreasonable and unworkable to eliminate PGW's WNA as suggested by the opposing parties.<sup>86</sup>

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

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<sup>84</sup> PGW Exhibit DA-5.

<sup>85</sup> FF No. 21.

<sup>86</sup> FF Nos. 12-15, 19-27; PGW St. No. 1-R at 2.

normal weather in PGW’s service territory. One glitch with the WNA in a 20-year history does not provide a basis upon which to eliminate the clause. As explained by Ms. Adamucci, “[i]n advancing proposals to suspend or eliminate the WNA – because of one instance in 2022 when the mechanism did not operate as intended (in comparison to a 20-year period in which it did operate as intended), which PGW promptly identified and voluntarily rectified” – CAUSE-PA/TURN are willfully overlooking the overall importance of PGW’s WNA to its operations.<sup>87</sup> Indeed, the RD concludes that 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.”<sup>88</sup>

**E. Reply Exception No. 5: Removal of May from WNA Calculation is Supported by the Evidentiary Record**

The RD recommends adoption of PGW’s proposal in this case to remove May from the WNA formula.<sup>89</sup> Such removal would prevent a potential recurrence of the anomaly experienced in May 2022, which resulted in a reversal of these charges when PGW proactively sought and received emergency authority from the PUC in June 2022, and which PGW avoided in May 2023 by requesting and obtaining emergency relief to remove the month of May from the WNA formula this year.<sup>90</sup> The ALJ’s conclusion was based on the extensive testimony, both in written preserved testimony and in live testimony of PGW witness Adamucci, regarding May being the problematic month given the extreme warming weather trends in Philadelphia.<sup>91</sup>

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<sup>87</sup> PGW St. No. 1-R at 19-20.

<sup>88</sup> FF No. 31.

<sup>89</sup> RD at 34.

<sup>90</sup> RD FF Nos. 34-41.

<sup>91</sup> RD FF No. 42.



In their Joint Exceptions, CAUSE-PA/TURN erroneously claim that the elimination of May from the WNA calculation is not supported by the evidentiary record.<sup>92</sup> Ignoring the evidence presented by PGW’s witness, the Joint Exceptions reference counsel comments at the hearing in the context of a discussions regarding the proper scope of cross examination.<sup>93</sup> CAUSE-PA/TURN’s argument should be outright rejected, as the record is replete with evidence offered by PGW’s witness regarding the removal of May from the WNA calculation.

PGW witness Adamucci first referred to the anomaly that occurred with the WNA for May 2022, which produced unusually large charges to customers in many billing cycles with May usage in her direct testimony submitted on February 23, 2023. She testified that “[t]his occurred as a result of warmer than normal weather in PGW’s service territory on certain dates in May.”<sup>94</sup> Ms. Adamucci further, at that time, detailed the steps that PGW had taken to seek and obtain PUC approval to immediately revise its Tariff to reverse the WNA charges that were applied to May 2022 usage.<sup>95</sup> This proactive measure voluntarily taken by PGW resulted in refunds to customers in the amount of approximately \$12.6 million.<sup>96</sup> Therefore, with the submission of direct testimony in this proceeding, PGW witness Adamucci specifically targeted May as a problem in the calculation of the WNA due to the weather variances in Philadelphia.

Again, in rebuttal testimony submitted on May 2, 2023, Ms. Adamucci addressed the removal of May from the WNA formula. She specifically described the PUC’s authorization to

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<sup>92</sup> Joint Exceptions at 21,

<sup>93</sup> The reference to the transcript made by the Joint Exceptions is incorrect since the transcript started on page 144 of that day. It is also unclear whether the discussion was properly transcribed with respect to the identity of counsel discussing the objection. Regardless, counsel argument at a hearing is not evidence and may not be treated as such. It is the testimony of witnesses that forms the basis for the evidentiary record. 52 Pa. Code §§ 5.401-403.

<sup>94</sup> PGW St. No. 1 at 10.

<sup>95</sup> PGW St. No. 1 at 10-11.

<sup>96</sup> PGW St. No. 1 at 11.

remove May 2022 usage from the formula due to an anomaly with the extremely warm weather in the Philadelphia area.<sup>97</sup> PGW witness Adamucci further discussed a request for emergency relief that PGW filed on April 27, 2023 asking the PUC for authority to exclude May 2023 usage from the WNA formula.<sup>98</sup> The request for emergency relief referred to the May 2022 usage anomaly, as well as the findings of a PGW consultant, Atrium Economics, LLC (“Atrium”) regarding May weather. As Ms. Adamucci explained, concerns existed about continuing application of the WNA in May “since temperatures for that month have become unusually divergent from the current normal” over the past ten years. She further described the recommendation of Atrium to remove May from the WNA formula.<sup>99</sup>

Then, in rejoinder testimony submitted on May 19, 2023, PGW witness Adamucci stated that “if any changes are made to the WNA in the context of this proceeding, the removal of May from the formula make sense since usage in this month has resulted in the issuance of emergency orders by the PUC (at the request of PGW) in the last two years.<sup>100</sup> As she testified, “to the extent that the WNA is producing results, those results are focused on May. Elimination of May in the formula, therefore, would be reasonable.”<sup>101</sup>

Finally, during the evidentiary hearing on May 24, 2023, Ms. Adamucci repeatedly referred to the month of May as the problem in PGW’s WNA formula. She explained that the WNA has been in place for over 20 years and that PGW “experienced an anomaly last May that resulted in significant charges to customers.”<sup>102</sup> Ms. Adamucci further noted that weather

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<sup>97</sup> PGW St. No. 1-R at 3.

<sup>98</sup> *Petition for Emergency Order*, Docket No. P-2023-3040233 (Order entered April 28, 2023).

<sup>99</sup> PGW St. No. 1-R at 3-4.

<sup>100</sup> PGW St. No. 1-RJ at 5.

<sup>101</sup> PGW St. No. 1-RJ at 5.

<sup>102</sup> Tr. 159.

variances are occurring in Philadelphia in May, which has caused the concern with the WNA.<sup>103</sup> PGW witness Adamucci also testified that in studying the application of the WNA, PGW “did not identify problems in any other months”<sup>104</sup> and PGW supports the removal of May.<sup>105</sup> Ms. Adamucci’s testimony emphasized the extreme variance in May weather from normal weather since 2003 because “the weather varied three times in May, there was 80 percent variance from normal, and twice there was a hundred percent variance from normal.”<sup>106</sup> When asked during cross-examination what PGW wants the PUC to do in this proceeding, Ms. Adamucci directly responded: “We believe that May should be removed.”<sup>107</sup>

CAUSE-PA/TURN’s position is that because the Atrium report is not evidence in this record, it may not be considered in a decision to remove May from the formula. Contrary, to this view, PGW’s witness testified that she had reviewed the report. Indeed, the PUC’s Ratification Order issued on May 18, 2023 authorizing the removal of May 2023 from the WNA formula expressly recognized the existence of “separate ongoing proceedings” – being the pending BRC and this WNA proceeding – that were examining PGW’s WNA formula, the inputs and current weather trends affecting May.<sup>108</sup> While the PUC referred this matter to those separate ongoing proceedings, the ALJs in the BRC denied PGW the opportunity to further litigate these issues in that context. For CAUSE-PA/TURN to now argue that PGW cannot propose the removal of May in this proceeding is disingenuous, particularly given the consistency throughout this case

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<sup>103</sup> Tr. 159.

<sup>104</sup> Tr. 160.

<sup>105</sup> Tr. 162.

<sup>106</sup> Tr. 163.

<sup>107</sup> Tr. 184.

<sup>108</sup> *Petition for Emergency Order*, Docket No. P-2023-3040233 (Ratification Order entered May 18, 2023).

of PGW testimony pointing to the inclusion of May in the formula as the culprit that caused the anomaly when the WNA was applied to the May 2022 usage.

Further, as Senior Vice President for Customer & Regulatory Affairs at PGW, Ms. Adamucci was presented by PGW as an expert witness in this WNA proceeding, and her qualifications as such were not challenged. Her pre-served written testimony that was admitted into the record, without objection, and her live testimony regarding the removal of May constitute evidence to support the removal of May. Based upon her expertise, Ms. Adamucci testified repeatedly that the month of May is the problem in the existing WNA.<sup>109</sup>

Removal of May from the formula 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. Indeed, removing May from the formula renders unnecessary the elimination of the WNA as proposed by CAUSE-PA/TURN.<sup>110</sup> 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 eliminate the mechanism or make modifications beyond that proposed by PGW. If the Commission adopts the RD, the parties will have a full opportunity in the next BRC to address any aspect of PGW's WNA.

The other arguments raised in this context by CAUSE-PA/TURN are nothing but red herrings – i.e. calculation of the baseload and the application of the WNA to specific heating load classes.<sup>111</sup> If those factors have a meaningful impact on the operation of PGW's WNA, the parties should have presented those concerns during their testimony, rather than seeking to use

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<sup>109</sup> PGW St. No. 1-R at 3-4; PGW St. No. 1-RJ at 5; Tr. 159, 161-162, 182, 184.

<sup>110</sup> FF Nos. 42-43.

<sup>111</sup> Joint Exceptions at 15-16.

PGW's responses to limited cross-examination conducted by OSBA's counsel to generally attack PGW's WNA. The ALJ's RD should be adopted by the Commission, without modification.

### III. CONCLUSION

Philadelphia Gas Works ("PGW") respectfully requests that the Commission: (i) deny the Joint Exceptions filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia; (ii) adopt the Recommended Decision without modification; (iii) approve a modification to PGW's Tariff so that the month of May is removed from the Weather Normalization Adjustment ("WNA") calculation; (iv) direct PGW to fully address the WNA in its next base rate case that is filed after the conclusion of the pending base rate case at Docket No. R-2023-3037933 and (v) direct any other relief as may be appropriate.

Respectfully submitted,

*Karen O. Moury*

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