

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held September 21, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Pennsylvania Public Utility Commission

R-2022-3034229  
P-2022-3034264

v.

Philadelphia Gas Works  
(Tariff Supplement No. 152)

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Joint Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN) (collectively, CAUSE-PA/TURN), filed on July 31, 2023, in the above-captioned proceeding. The Exceptions were filed in response to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Marta Guhl

issued on July 19, 2023.<sup>1</sup> Replies to Exceptions were filed by Philadelphia Gas Works (PGW or Company) on August 7, 2023.

By the Recommended Decision, ALJ Guhl recommended that the Commission grant Philadelphia Gas Works' (PGW's or the Company's) request that the month of May be removed from the Company's tariff Weather Normalization Adjustment clause (WNA) calculation going forward. For the reasons discussed more fully, *infra*, we shall deny the Exceptions and adopt the ALJ's Recommended Decision granting the Company's requested modification to remove the month of May from the WNA calculation and recommending that the Commission direct PGW to fully address the WNA in its next Base Rate Case, after the current Base Rate Case at R-2023-3037933.

## I. History of the Proceeding

This matter concerns a Petition seeking approval of Tariff Supplement No. 152 to Gas Service Tariff - Pa. P.U.C. No. 2 (Tariff Supplement No. 152 or Tariff Supplement) (Petition), filed with the Commission by PGW on August 2, 2022, to become effective October 1, 2022. In the Petition, PGW requested: (1) approval of tariff modifications on less than the statutorily established notice of sixty (60) days; and (2) to revise its Gas Service Tariff by adding a control cap to its WNA, to prevent customers from being billed a WNA charge or credit that is greater than 25% of total delivery

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<sup>1</sup> The Secretarial Letter accompanying the ALJ's Recommended Decision was issued to all Parties on July 19, 2023, and included, *inter alia*, instructions and deadlines for filing Exceptions and Replies to Exceptions. Pursuant to the Secretarial Letter, Exceptions were due within ten (10) days of the date of the Secretarial Letter, or July 29, 2023, and Replies to Exceptions were due within seven (7) days of the date when Exceptions were due. Because July 29, 2023, was a Saturday, the Exceptions were due the next business day, or Monday, July 31, 2023. Consequently, Replies to Exceptions were due August 7, 2023 (*i.e.*, seven days after July 31, 2023).

charges, excluding the WNA, on any given bill. R.D. at 1-2. On August 22, 2022, the Office of Consumer Advocate (OCA) also filed an Answer to PGW's Petition. R.D. at 2.

Previously, on June 30, 2022, at Docket No. P-2022-3033477, the Company filed a Petition for Emergency Order (June 2022 Emergency Petition), which requested that the Commission approve tariff modifications to suspend the Company's operation and application of the WNA for May 2022, due to a large rate spike. On July 1, 2022, the Office of Consumer Advocate filed an Answer to PGW's Emergency Petition supporting the suspension of the WNA for May 2022 and suggesting that the Commission open an investigation and suspend the WNA for further evaluation.

On September 15, 2022, the Commission ordered an investigation into the lawfulness, justness and reasonableness of Tariff Supplement No. 152, as well as the Company's existing rates, rules, and regulations. The Commission suspended the proceedings until April 1, 2023, and referred the matter to the Office of Administrative Law Judge (OALJ). R.D. at 2.

On September 6, 2022, CAUSE-PA and TURN filed separate Petitions to Intervene. On September 12, 2022, the Office of Small Business Advocate (OSBA) filed its Notice of Intervention and Notice of Appearance. On September 27, 2022, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. R.D. at 2.

On September 16, 2022, a Notice of a Telephonic Prehearing Conference was issued, scheduling a telephonic Prehearing Conference for September 28, 2022, and assigning ALJ Guhl as the presiding officer. On September 19, 2022, the ALJ issued a Prehearing Order. The telephonic prehearing conference was held on September 28, 2022, as scheduled. The Parties requested additional time to compile a

procedural schedule. On October 5, 2022, the Parties submitted a procedural schedule and the ALJ approved the proposed schedule. R.D. at 3.

On November 8, 2022, PGW filed a Petition for Leave to Withdraw its filings and a Motion to Hold the Procedural Schedule in Abeyance. On November 14, 2022, the OCA and CAUSE-PA filed separate Answers objecting to the Petition for Leave to Withdraw. On that same day, OSBA filed an Answer stating that it had no position on the Petition for Leave and the Motion to Hold the Procedural Schedule in Abeyance. ALJ Guhl granted the request to hold the procedural schedule in abeyance. Consequently, on December 6, 2022, PGW counsel advised that the Parties had agreed to a new procedural schedule and the Company voluntarily agreed to move the suspension deadline to October 5, 2023. On December 15, 2022, the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) filed a Late-Filed Petition to Intervene. R.D. at 3.

On February 14, 2023, PGW filed a letter indicating that it was not going to submit direct testimony in this matter. The OCA, CAUSE-PA and TURN objected to the Company failing to file its direct testimony. On February 22, 2023, an emergency telephonic prehearing conference was held with ALJ Guhl and the Parties regarding the procedural schedule. On February 22, 2023, ALJ Guhl issued a Prehearing Order which determined that the Petition for Withdraw had been rendered moot. On February 23, 2023, the ALJ issued Prehearing Order No.2 (Prehearing Order 2), which directed PGW to submit its Direct Testimony by the close of business on February 23, 2023. On February 23, 2023, PGW submitted the Direct Testimony of Denise Adamucci. On February 24, 2023, PGW submitted a Corrected Version of the Direct Testimony of Denise Adamucci. R.D. at 3-4.

On March 9, 2023, a public input hearing was held and thirteen (13) PGW customers testified. On March 31, 2023, the ALJ issued Prehearing Order No. 3, which

granted the requests of the OCA and CAUSE-PA for an extension for filing Direct Testimony to April 13, 2023. On April 13, 2023, the OCA submitted the Direct Testimony of Ron Nelson. On April 13, 2023, CAUSE-PA also submitted the Direct Testimony of Harry Geller. R.D. at 4.

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

On April 27, 2023, PGW filed a Petition for Interlocutory Review and Answer to a Material Question (Petition for Interlocutory Review), arguing that Prehearing Order 2 resulted in the litigation of PGW's WNA issues in two separate proceedings: (1) the instant proceeding; and (2) PGW's current base rate proceeding, at Docket No. R-2023-3037933. R.D. at 4-5. Accordingly, PGW requested that the Commission grant interlocutory review and respond to the following questions:

- (a) Does PGW's fundamental due process regarding the continuation of the WNA clause support withdrawal of the Cap Petition and movement of WNA issues to the Base Rate Case?
- (b) Does the continued litigation of [the] WNA issues in two separate proceedings involve an unnecessary waste of valuable resources?

R.D. at 5 (citing Petition for Interlocutory Review at ¶ 6). On May 18, 2023, the Commission entered an Opinion and Order that declined to answer the material questions

and denied PGW's Petition for Interlocutory Review. *See*, Opinion and Order entered May 18, 2023, at 19.

On May 2, 2023, PGW submitted its Rebuttal Testimony of Denise Adamucci. On May 12, 2023, the OCA and CAUSE-PA submitted Surrebuttal Testimony of their respective witnesses, Ron Nelson and Harry Geller. TURN and OSBA filed letters that they would not be submitting Surrebuttal Testimony. On May 22, 2023, PGW submitted the Rejoinder Testimony of Denise Adamucci. On May 24, 2023, hearings were held that admitted the testimony into the record and the cross-examination of witnesses Denise Adamucci and Ron Nelson. R.D. at 5.

On June 7, 2023, PGW, the OCA, CAUSE-PA and TURN filed separate Main Briefs. On June 16, 2023, PGW, the OCA, CAUSE-PA and TURN filed separate Reply Briefs.<sup>2</sup> The record in this case closed on June 16, 2023 upon the filing of Reply Briefs.

In the Recommended Decision issued on July 19, 2023, ALJ Guhl found that PGW met its burden of demonstrating that the removal of May from the WNA calculation is just and reasonable and recommended that the Commission approve the ongoing usage of the WNA with this modification. Further, the ALJ recommended that the Parties revisit this matter when PGW files its next Base Rate Case.

As noted, *supra*, CAUSE-PA/TURN filed Exceptions to the Recommended Decision on July 31, 2023.<sup>3</sup> PGW filed Reply Exceptions on August 7, 2023.

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<sup>2</sup> I&E, the OSBA and PICGUG did not file briefs in this matter.

<sup>3</sup> We note that CAUSE-PA/TURN is the only Party that filed Exceptions in this matter. I&E, the OSBA and PICGUG did not file Exceptions.

## II. Background

PGW's WNA normalizes gas consumption from customer heating usage according to an approved temperature forecast known as Normal Heating Degree Days (NHDD). The NHDD is based on a 20-year average for any given day as provided by the National Weather Service. The WNA is applied to gas used for gas heating from October 1 through May 31. The WNA is calculated using a formula that assesses the difference in usage between the NHDD and the Actual Heating Degree Days (AHDD). Generally, the difference in usage is multiplied by the distribution delivery charge and is applied as a charge or reimbursement to customer rates, effectually reconciling revenues. The purpose of the WNA is to stabilize revenue for the Company by sharing weather risk between the utility and the customer. PGW Exh. DA-3 at 2-4; OCA St. No. 1 at 8.

## III. Legal Standards

We advise the Parties that any issue or argument that we do not specifically address herein has been duly considered and will be denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### A. Chapter 13, Subchapter A (Regarding Rates) and General Ratemaking Principles

#### 1. Chapter 13, Subchapter A (Regarding Rates)

##### § 1301. Rates to be “just and reasonable.”

- (a) Regulation. -- Every rate made, demanded, or received by any public utility, or by any two or more public

utilities jointly, shall be “just and reasonable”, and in conformity with regulations or orders of the commission...

66 Pa. C.S. § 1301(a).

Section 1308(a) establishes the general rule that existing Commission-approved tariff rates remain in effect until a new Commission-approved tariff rate takes effect. Section 1308(a) provides in pertinent part:

**§ 1308. Voluntary changes in rates.**

- (a) General rule.**--Unless the commission otherwise orders, no public utility shall make any change in any existing and duly established rate, except after 60 days notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice of the proposed changes to other interested persons as the commission in its discretion may direct. Such notices regarding the proposed changes which are provided to the utility's customers shall be in plain understandable language as the commission shall prescribe. All proposed changes shall be shown by filing new tariffs, or supplements to existing tariffs filed and in force at the time. The commission, for good cause shown, may allow changes in rates, without requiring the 60 days notice, under such conditions as it may prescribe.

66 Pa. C.S. § 1308(a).

**2. General Ratemaking Principles**

The Code gives the Commission broad authority and responsibility to ensure that the rates charged by public utilities are “just and reasonable” and not unduly



discriminatory. *See*, 66 Pa. C.S. §§ 1301, 1304. Pursuant to this “just and reasonable” standard, a public utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.” *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*). There is no single way to arrive at “just and reasonable” rates. “The [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky*). The Commission is required to investigate all general rate increase filings. *Popowsky*, 683 A.2d at 961.

### **3. Burden of Proof for a Change in Tariff**

Typically, the burden of proving the justness and reasonableness of a rate is placed on the public utility. 66 Pa. C.S. § 315(a) (relating to reasonableness of rates). The evidence necessary to meet this burden of proof must be substantial. *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Tariff provisions approved by the Commission are *prima facie* reasonable. *See, Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Deitch Co. v. Pa. PUC*, 203 A.2d 515 (Pa. Super. 1964). Once approved, the Parties challenging a Commission-approved tariff provision bear the burden of proof. *See, Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996). *See also*, 66 Pa. C.S. § 315(a) (relating to reasonableness of rates). Further, as a general matter, where a party makes a new proposal that differs from the utility’s proposed change in tariff rate or methodology, it is incumbent upon that party, as the proponent of a rule or order, to bear the burden of proof. *See*, 66 Pa. C.S. § 332(a)(regarding general rule that proponent of a rule or order bears the burden of

proof); *NRG Energy, Inc. v. Pa. PUC*, 233 A.3d 936, 950 (2020) at 950; *Allegheny Center Assocs. v. Pa. PUC*, 131 Pa. Cmwlth. 352, 570 A.2d 149, 153 (1990).

#### **4. Commission Review of the Recommended Decision is De Novo**

The Parties are reminded that the Commission’s scope of review of the ALJ’s Recommended Decision regarding approval of rates extends to any matter deemed relevant to the Commission. 66 Pa. C.S. § 335(a); *See, Romeo v. Pa. PUC*, 154 A.3rd 422 (Pa. Cmwlth. 2017).

### **IV. Discussion**

The ALJ made fifty-one Findings of Fact and reached thirteen Conclusions of Law. R.D. at 6-12, 35-36. We hereby adopt the said findings and conclusions, unless they are expressly rejected, or rejected by necessary implication from our disposition of this Opinion and Order.

#### **A. Exceptions of CAUSE-PA/TURN and Replies**

##### **1. CAUSE-PA/TURN Exception No. 1: The ALJ Erred As A Matter of Law by Failing to Address the WNA’s Unlawful Rate Discrimination**

###### **a. Positions of the Parties**

PGW asserted that the Company’s application of the WNA did not result in an unreasonable advantage or disadvantage to any customer because the WNA has been charged: (1) on a bill cycle basis for each customer since its implementation; and (2) in accordance with the Commission-approved calculation method that has been in place for twenty years. Further, PGW averred that it is not unreasonable or uncommon for

different billing cycles to result in customers being impacted by a rate at different levels, depending upon the number of days in a particular cycle that include updated rates. PGW R.B. at 19; PGW M.B. at 28 (citing PGW St. 1-R at 11).

Moreover, PGW addressed the proposals of the OCA and CAUSE-PA to suspend or eliminate the WNA, noting that neither party provided justification for their proposals. Furthermore, PGW averred that it would be “grossly unreasonable and unworkable” to eliminate or suspend the Company’s WNA, given that the WNA: (1) operates to both charge and credit customers, depending on the weather; (2) is important to maintaining the Company's financial stability; and (3) is similar to several other natural gas distribution company clauses. PGW M.B. at 28-29 (citing PGW St. 1-R at 2).

The OCA argued that the WNA mechanism produces illegal discrimination in rates among residential customers. The OCA explained that the WNA charged to residential customers in May 2022 was directly related to a customer’s billing cycle. According to the OCA, while all PGW customers experienced the same warmer than average weather in May 2022, the magnitude of the WNA charge varied depending on where those warmer days fell in the customer’s billing cycle. The OCA noted that this resulted in some customers being unreasonably disadvantaged depending on their billing cycle while other customers have been unreasonably advantaged, in violation of Section 1304 of the Code. OCA M.B. at 15-16 (citing 66 Pa.C.S. 1304).

Specifically, the OCA witness, Mr. Ron Wilson, explained that the WNA formula recovered \$32 from some customers and nearly \$120 from other customers for the same warm weather event simply because of their billing cycle. OCA St. M.B. at 17.

In CAUSE-PA/TURN’s view, PGW’s WNA unreasonably disadvantages some customers over others within the same customer class, based on the arbitrary dates

of the customers' billing cycles and the underlying assumptions of baseload.<sup>4</sup> CAUSE-PA/TURN M.B. at 13.

CAUSE-PA/TURN argued that the WNA excludes non-heating customers as well as Interruptible Transportation (IT) customers from the WNA without providing any justification for this exclusion. CAUSE-PA/TURN further argued that the "WNA must not be maintained unless and until PGW produces evidence that the WNA does not discriminate against heating customers within and among PGW's customer classes." CAUSE-PA/TURN M.B. at 13-14. According to CAUSE-PA/TURN, PGW has not conducted an analysis of whether the WNA should be limited to the heating customers within the General Service (GS), Municipal Service (MS) and Philadelphia Housing Authority (PHA) classes. CAUSE-PA/TURN noted that PGW's witness did not know whether non-heating GS or MS, or IT customers had higher winter loads. CAUSE-PA/TURN M.B. at 16 (citing May 24, 2023; Tr. at 25, 27-28).

Regarding WNA charges, CAUSE-PA/TURN averred that the annual charges have increased substantially, shifting the financial risk of warmer weather from PGW to its customers. CAUSE-PA/TURN M.B. at 17. CAUSE-PA/TURN witness, Mr. Harry S. Geller, stated, "Over the past five years, PGW customers have paid a net total of approximately \$43.5 million in WNA charges – and annually, the total charges have increased exponentially year over year as average temperatures have increased." CAUSE-PA/TURN St. 1 at 5. Mr. Geller maintained that the WNA has worked to the benefit of PGW and to the detriment of customers. *Id.*

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<sup>4</sup> The WNA is based on a customer's weather normalized amount of gas used for heating purposes, or HL. HL is the customer's total usage minus the customer's non-heating usage or baseload. Baseload (BL) is determined separately for each customer or, if this is not available, a BL for the customer class is used. PGW Exh. DA-3 at 3-4.

**b. ALJ's Recommended Decision**

The ALJ agreed with PGW's position that the proposed Tariff Supplement removing the month of May from PGW's WNA calculation was reasonable and necessary given these circumstances. The ALJ rejected the position of CAUSE-PA/TURN regarding the elimination of the WNA as not supported by the record. The ALJ reasoned that because PGW is a municipal gas company with no shareholders, the Company's only source of revenue is from the rates that it collects from ratepayers and the bonds that it can issue. The ALJ noted that the Commission has already approved PGW's usage of the WNA mechanism, and the WNA only assists the Company in supporting revenues that have already been approved by the Commission in previous Base Rate Cases. R.D. at 33.

Further, the ALJ disagreed with the OCA's proposed modifications to the WNA mechanism, noting that the OCA has not met its burden of establishing that its proposed modifications are justified and would eliminate issues with the WNA. The ALJ pointed out that the OCA witness acknowledged that the specifics of the OCA's proposed modifications to the WNA, including how such changes would affect the Company's approved revenue levels and financial stability, had not been sufficiently analyzed. R.D. at 34.

**c. CAUSE-PA/TURN Exception No. 1 and Replies**

In its Exception No. 1, CAUSE-PA/TURN assert that the ALJ erred as a matter of law by failing to address the alleged discriminatory impact on customers' rates due to PGW's WNA, without regard to any modification of the WNA, which CAUSE-PA/TURN asserts justify the outright discontinuance of PGW's WNA. CAUSE-PA/TURN Exc. at 13-16.

CAUSE-PA/TURN asserts that it presented substantial evidence via testimony and briefs to establish that the application of PGW's WNA disparately and unreasonably impacts similarly situated customers based on arbitrary factors which include but are not limited to, the customers' billing cycle and the inaccurate assumptions PGW employs to estimate customer-specific load. CAUSE-PA/TURN Exc. at 13-14; 16.

CAUSE-PA/TURN asserts that, as averred by OCA's witness Wilson, the inequitable impacts of PGW's WNA span the entire heating season and are not restricted to one billing month. The OCA's witness concludes that rather than stabilizing charges, PGW's WNA:

increases WNA charge volatility and exposes customers to discriminatory risks beyond their control.

CAUSE-PA/TURN Exc. at 15 (citing OCA St. 1 at 15).

Further, CAUSE-PA/TURN asserts that PGW's proposal to eliminate the month of May from the WNA does not "restructure the WNA or prevent its discriminatory impact" but rather only "removes the period of time in which...customers are at the highest risk of experiencing a significant rate hike." CAUSE-PA/TURN Exc. at 14. Therefore, CAUSE-PA/TURN avers that it was error for the ALJ to fail to address the fact that the application of the WNA results in discrimination in rates, in violation of the Code. *Id.*

In summary, CAUSE-PA/TURN asserts by its Exception No. 1 that the ALJ's failure to address the general assertion that PGW's WNA results in an ongoing and unreasonable differential in rates as applied to similarly-situated ratepayers based upon arbitrary factors, *i.e.*, the billing cycles in which they fall and/or the alleged inaccuracies of PGW's estimation of customer-specific base load, was an error of law and should be reversed. CAUSE-PA/TURN Exc. at 16.

In its Replies to CAUSE-PA/TURN's Exception No. 1, PGW avers that the ALJ properly concluded that PGW had carried its burden of proof regarding the proposed Tariff Supplement and that CAUSE-PA/TURN had failed to carry the burden of proof necessary to either justify either the denial of the Tariff Supplement or override the Commission's prior approval of PGW's WNA. PGW R. Exc. at 12-20. PGW further reiterates its position that the removal of May from the WNA calculation is supported by the evidentiary record. *Id.* at 20-25.

**d. Disposition**

We concur with the ALJ that PGW has met its burden of demonstrating that the modification of the existing WNA to remove the month of May from the WNA calculation is just and reasonable in these circumstances. We further concur in the approval of the ongoing usage of the WNA as modified with instructions that the question of the usage of the WNA be examined at the Company's next base rate proceeding after 2023. *See*, R.D. at 34.

Our disposition of the question whether to approve PGW's proposed Tariff Supplement relies upon the ALJ's material factual findings, analysis, and conclusions with respect to the history of the development of PGW's WNA, the reasonableness and necessity of PGW's WNA, the practical circumstances justifying the need for the adjustment to PGW's WNA as approved by the Commission, and the rationale for the reasonableness and necessity of the removal of the month of May from PGW's WNA.

Specifically, with respect to the history of the development of PGW's WNA, the practical circumstances justifying the need for the adjustment to PGW's WNA as approved by the Commission, we note that the ALJ considered:

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16. PGW’s WNA is an automatic adjustment clause that adjusts billings to customers based upon the degree to which actual weather in its service territory varies from “normal” weather levels. Under the Commission-approved WNA, PGW applies the mechanism to customer usage from October 1 through May 31. PGW St. No. 1 at 5.

17. PGW’s WNA: (i) stabilizes cash flow from year-to-year; (ii) reduces the need for short-term borrowing from year-to-year; (iii) positively affects PGW’s credit rating; and (iv) reduces the need for costly base rate proceedings. PGW St. No. 1 at 6; PGW St. No. 1 -RJ at 12-13.

18. In 2017, PGW’s WNA was modified as under the settlement in its base rate case approved by the Commission. *Pa. Pub. Util. Comm’n v. Phila. Gas Works*, Docket No. R-2017-2586783 (Opinion and Order entered Nov. 8, 2017, at pages 17-18 and Ordering Paragraph No. 3) (“*2017 Base Rate Case*”). That modification resulted in a shift from the use of a thirty-year average of HDDs to the use of a twenty-year average of HDDs to determine normal weather. No other changes (except temporary ones authorized by the Commission at PGW’s request) have been made to the WNA formula since 2002. PGW St. No. 1 at 8.

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R.D. at 8.

With respect to the reasonableness and necessity of PGW’s WNA, the ALJ found: ...

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21. The continuation of PGW’s WNA is necessary for the continued financial health of the Company and to support the provision of safe and adequate natural gas service to



approximately 500,000 customers in Philadelphia. PGW St. No. 1 -RJ at 12-13; PGW St. No. 1-R at 19-20.

22. Because PGW's existing WNA has eliminated the effect of abnormal weather on earnings and cash flow, it has had a very positive effect upon the way in which PGW has been viewed by the financial community. PGW St. No. 1 at 9.

23. Rating agencies have expressly indicated their reliance upon the WNA to operate as a risk-mitigating tool, which has resulted in PGW achieving higher credit ratings. PGW St. No. 1 at 10.

24. Without the WNA, PGW would need to seek Commission approval for significantly higher base rates to guard against financial risks that might occur due to abnormal weather in its service territory. PGW St. No. 1 at 10.

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

26. The WNA has helped PGW to become a financially stable and strong Company, while assuring that weather related charges to customers were fair and reasonable. PGW St. No. 1 at 10.

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

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

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R.D. at 9.

With respect to practical circumstances justifying the need for the adjustment to PGW's WNA, the ALJ concluded: ...

34. As a result of extremely warm weather experienced in Philadelphia during a portion of May 2022, usage by customers in May 2022 resulted in unusually large charges due to the application of the long-standing and Commission-approved WNA. PGW St. No. 1 at 10.

35. PGW determined that its customers should not bear these charges although they had been correctly calculated pursuant to the formula in PGW's Tariff. PGW St. No. 1 at 10.

36. PGW filed a Petition for Emergency Order at Docket No. P-2022-3033477 on June 30, 2022, asking for Commission authorization to reverse the charges resulting from application of the WNA to May 2022 usage. PGW did not seek to reverse the WNA credits for May usage. PGW St. No. 1 at 10-11

Finally, with respect to the rationale for the reasonableness and necessity of the removal of the month of May from PGW's WNA formula, the ALJ found: ...

\* \* \*

41. ... On April 27, 2023, PGW filed a Petition for Emergency Order at Docket No. P-2023-3040233 proposing to exclude May 2023 usage from the WNA formula due to the May 2022 anomaly and the findings of PGW's consultant submitted in the base rate case regarding the ongoing removal of the month of May from the WNA formula since temperatures for that month over the past 10 years have become unusually divergent from the current normal. PGW St. No. 1-R at 3.

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

43. The ongoing removal of May from the WNA formula makes any other modifications unnecessary. PGW St. No. 1-R at 3-4; PGW St. No. 1-RJ at 5; Tr. 159, 161-162, 182, 184.

\* \* \*

R.D. at 11.

In Exception No.1, CAUSE-PA/TURN assert that the ALJ failed to consider the substantial evidence presented in support of the position that the WNA should be found to be in violation of the Code's prohibition on discrimination in service. However, the ALJ's analysis focused first upon PGW's WNA as a Commission-approved tariff provision. As found by the ALJ, Commission-approved tariff provisions are *prima facie* reasonable. Further, a challenge seeking elimination of an approved tariff provision must establish that the facts and circumstances have changed drastically so as to render application of the tariff provision unreasonable. *See*, R.D. at 35-36 (citing *See, e.g. Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); and, *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996)). Upon review of the evidence of record, the ALJ concluded that the burden for eliminating PGW's WNA, an approved tariff provision, had not been satisfied. Thus, the ALJ's conclusion was a matter of discretion in considering the relative weight of the evidence presented.

Further, we agree with the ALJ's analysis that the claims raised by CAUSE-PA/TURN on the present record, which constitute general attacks on the validity of PGW's existing and Commission-approved WNA, were unpersuasive. We agree, as found by the ALJ, that the elimination of the WNA entirely is not supported on the present record. R.D. at 33. We also agree that CAUSE-PA/TURN failed to carry the burden of proving that a change or elimination of the WNA was just and reasonable or to present evidence of a drastic change in the circumstances under which PGW's WNA had been approved, so as to render its application unreasonable. *See*, R.D. at 36. Finally, we conclude that the ALJ's determination of the sufficiency of the weight of the evidence, is

not, as CAUSE-PA/TURN argue, a failure to consider the evidence presented, but rather, is a finding that the weight of the evidence was not persuasive on the point argued, *i.e.*, that modification or removal of the WNA entirely was justified in the circumstances. R.D. at 33-36.

Based on the forgoing, we shall deny CAUSE-PA/TURN's Exception No. 1 and shall adopt the ALJ's Recommended Decision approving the Company's proposed Tariff Supplement removing May from PGW's WNA calculation going forward and directing PGW to fully address the WNA in its next base rate case, after the current base rate case at R-2023-3037933.

**2. CAUSE-PA/TURN Exception No. 2: The ALJ 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, Reasonable, and In Accordance With The Law**

**a. Positions of the Parties**

PGW asserted that, under Section 315(a) of the Code, PGW has the burden of proving that the Company's proposed modifications to its existing WNA mechanism are just and reasonable. PGW M.B. at 14 (citing 66 Pa. C.S. § 315(a)). However, PGW noted that the OCA and CAUSE-PA/TURN bear the burden of proving that the existing WNA, which is in its Commission-approved Tariff, is unjust and unreasonable in its application and should, therefore, be suspended or significantly modified. PGW noted that existing Tariff provisions are *prima facie* reasonable, and the courts have held that parties challenging existing Tariff provisions must prove that the facts and circumstances have dramatically changed since the Commission's approval of the Tariff, thereby rendering the provision unreasonable. PGW R.B. at 6; PGW M.B. at 14 (citing *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996); *Brockway Glass v. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. PUC*,

401 A.2d 1377 (Pa. Cmwlth. 1979); *U.S. Steel Corporation v. Pa. PUC*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Deitch Company v. PUC*, 203 A.2d 515 (Pa. Super. Ct. 1964)).

Further, PGW averred that in a rate case filed by a public utility, Section 315(a) of the Code places the burden of proof on the party who proposes a change beyond that sought by the utility, and the utility cannot account for every issue that a party may raise that was not included in its Tariff filing. PGW R.B. at 7 (citing 66 Pa. C.S. § 315(a)). Moreover, PGW asserted that when a party makes a new proposal that differs from the utility's proposed rate or methodology, it is incumbent upon that party, as the proponent of a rule or order, to bear the burden of proof. *Id.* (citing *NRG Energy, Inc. v. Pa. PUC*, 233 A.3d 936, 950 (2020) at 950; *Allegheny Center Assocs. v. Pa. PUC*, 131 Pa. Cmwlth. 352, 570 A.2d 149, 153 (1990); 66 Pa. C.S. § 332(a)). Accordingly, PGW averred that in this proceeding, because the other Parties are making proposals that would modify, suspend, or terminate the WNA, they must provide evidence challenging the existing Tariff provisions. PGW M.B. at 14.

The OCA averred that PGW is the moving party requesting that the Commission allow PGW to initiate its WNA rate cap and therefore, PGW has the burden of proof in this proceeding. OCA M.B. at 7 (citing *William Towne v. Great American Power, LLC*, 2013 Pa. PUC LEXIS 617, \*4 (Pa. PUC October 18, 2013)). The OCA continued by citing 66 Pa. C.S. § 315(a):

(a) Reasonableness of rates. – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

The OCA noted that the Commission entered a Suspension Order in this proceeding on September 15, 2022, that suspended the Tariff Supplement and instituted

an investigation into the justness and reasonableness of the WNA. Similarly, the OCA quoted from a recent Order concerning the Company's request for Interlocutory Review that stated:

...Contrary to PGW's claims, this proceeding is not limited and obsolete. Rather, in our Order entered September 15, 2022, in this proceeding, we suspended the Tariff Supplement and instituted an investigation into the justness and reasonableness of the WNA.

OCA M.B. at 7-8 (citing *Pa. PUC v. PGW*, Docket Nos. R-2022-3034229, P-2022-3034264 (Order entered May 18, 2023) at 18).

While the OCA acknowledged that this proceeding is not a rate case, it reasoned that PGW's WNA produces substantial and unreasonable rate discrimination in the rates that are charged to customers. The OCA argued that Commission precedent establishes that the Commission may place the burden of proof on the utility to support the validity of existing provisions. OCA M.B. at 8 (citing *Pa. PUC, et al. v. Equitable Gas Co.*, 1997 Pa. PUC LEXIS 139, \*18-19 (Oct. 8, 1997)). Additionally, the OCA provided that as the petitioner, PGW must provide substantial evidence in the record as support for its case before the Commission. OCA M.B. at 8-9 (citing 2 Pa. C.S. § 704).

As discussed *supra*, the OCA provided a wide-ranging analysis of the burden of proof in its Main Brief. OCA M.B. at 7-10. In its Reply Brief, the OCA disagreed with PGW's assertion that existing tariff provisions are *prima facie* reasonable and that the parties challenging the existing tariff must prove that the facts and circumstances have changed drastically so as to render the application of the tariff unreasonable. OCA R.B. at 1 (citing PGW M.B. at 25). The OCA averred that the evidence weighs in favor of suspending the WNA. OCA R.B. at 1 (citing OCA M.B. at 7-10).

CAUSE-PA/TURN averred that in any rate case filed pursuant to Section 1308 of the Code, including the current case filed by PGW, the burden of proof is on the public utility. CAUSE-PA/TURN M.B. at 8-9 (citing 66 Pa. C.S. §§ 315(a), 1308(a); *NRG Energy, Inc. v Pa. PUC*, 233 A.3d 936, 939 (Pa. Cmwlth. 2020)).

In CAUSE-PA/TURN’s view, PGW’s filing of Supplement No. 152 to its Gas Service Tariff proposes modifications to PGW’s existing WNA thereby placing the burden on PGW to show that the proposed rate is just and reasonable. CAUSE-PA/TURN M.B. at 9 (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)).

CAUSE-PA/TURN averred that the Commission has ordered the WNA to be investigated to “determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained” in the Tariff supplement. According to CAUSE-PA/TURN, the Commission’s order also requires that the Parties evaluate the “lawfulness, justness, and reasonableness of PGW’s **existing rates, rules, and regulations**.” CAUSE-PA/TURN M.B. at 9 (citing September 15, 2022 Order at ¶¶ 1, 4 (emphasis added)). CAUSE-PA/TURN reasoned that by ordering the investigation into the WNA, the Commission clearly placed the burden of proof on PGW. CAUSE-PA/TURN M.B. at 9 (citing *Sharon Steel Corp. v Pa. PUC*, 468 A 2d 860, 862 (Pa. Commw. Ct. 1983)).

CAUSE-PA/TURN contended that while PGW’s WNA has been in place for years, this “does not establish a binding presumption that it is reasonable and nondiscriminatory.” CAUSE-PA/TURN set forth that it is well settled that a prior rate schedule is not *res judicata* on the question of discrimination or reasonableness. CAUSE-PA/TURN M.B. at 10 (citing *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 849, 854 (Pa. Cmwlth. 1978) additional cite omitted).

**b. ALJ's Recommended Decision**

The ALJ referenced Section 315(a) of the Code to note that PGW has the burden of proving that the Company's proposed modifications to its existing WNA mechanism are just and reasonable. R.D. at 15 (citing 66 Pa. C.S. § 315(a)). The ALJ noted, however, that because PGW's WNA is already in the Company's Commission-approved Tariff, it is not PGW's burden to justify the WNA's continued existence, but the other Parties' burden to demonstrate that the existing Tariff provision is somehow unreasonable, as Tariff provisions approved by the Commission are *prima facie* reasonable. R.D. at 15 (citing *Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Deitch Co. v. Pa. PUC*, 203 A.2d 515 (Pa. Super. 1964)).

The ALJ also noted that “[p]arties challenging such provisions bear a heavy burden to prove that the facts and circumstances have changed drastically so as to render application of the Tariff provision unreasonable.” R.D. at 16 (citing *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996)). The ALJ added that, with respect to an issue the utility did not include in its Tariff filing and which, frequently, the utility would oppose, Section 315(a) of the Code cannot reasonably be read to place the burden of proof on the Company. R.D. at 16 (citing *Pa. PUC v. Appalachian Util., Inc.*, Docket No. R-2015-2478098 (Order entered March 10, 2016)). Accordingly, the ALJ found that the burden of proof must be on the party proposing a change beyond that sought by the utility. As such, the ALJ reasoned that because the OCA and CAUSE-PA are making proposals that would significantly modify, suspend or terminate the WNA, the OCA and CAUSE-PA were required to present evidence challenging the assumption of reasonableness enjoyed by the existing Tariff provisions. R.D. at 16.



**c. CAUSE-PA/TURN Exception No. 2 and Replies**

In its Exception No. 2, CAUSE-PA/TURN challenges the ALJ's conclusion regarding the relative burdens of proof on both the issue of PGW's proposed Tariff Supplement and to the continued application of PGW's Commission-approved WNA. CAUSE-PA/TURN reiterate the position that by seeking the Tariff Supplement in the present case, PGW has effectively *reassumed* the burden of proof to establish that the continued application of WNA is just and reasonable in these circumstances. CAUSE-PA/TURN Exc. at 16-18.

In its Replies to CAUSE-PA/TURN's Exception No. 2, PGW avers that the ALJ correctly found that, while the Company retains the burden of proof regarding the proposed modification to the WNA, the parties challenging the existing Commission-approved WNA retain the burden of proving the existing provisions are unreasonable. PGW R. Exc. at 8-12 (citing, R.D. at 15; CL Nos 7-10, 12).

**d. Disposition**

As previously noted, we shall adopt the ALJ's reasoning in approval of PGW's proposed Tariff Supplement. In so doing, we expressly approve of the ALJ's analysis and treatment of the Parties' relative burdens of proof. *See*, R.D. at 15 (citing *Brockway Glass v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. 1979); *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 865 (Pa. Cmwlth. 1978); *Deitch Co. v. Pa. PUC*, 203 A.2d 515 (Pa. Super. 1964)); R.D. at 16 (citing *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996)).

Thus, we find that, in these circumstances where PGW's proposed Tariff Supplement was a modification to an existing Commission-approved WNA, the ALJ was correct to conclude that PGW bore the burden of proof as to the proposed modification.

We further concur in the ALJ's reasoning that Section 315(a) cannot reasonably be read to place the burden of proof on PGW with respect to an issue raised by an opposing party, *i.e.*, challenge to the general lawfulness of the Commission-approved WNA, which the utility did not raise in Tariff filing and which the utility would certainly oppose. *See, Pa. PUC v. Appalachian Util., Inc.*, Docket No. R-2015-2478098 (Order entered March 10, 2016). Therefore, we conclude, as did the ALJ, that the burden of proof must be on the party, such as CAUSE-PA/TURN in the present case, who propose a change beyond that sought by the utility's proposed Tariff Supplement. Since CAUSE-PA/TURN propose to either significantly modify or terminate the WNA, they are required, as the proponent of the rule or order, to establish sufficient evidence challenging the presumption of reasonableness afforded the existing Commission-approved WNA. In the present case, CAUSE-PA/TURN provided evidence in support of their position that PGW's WNA's application results in discrimination in rates as to similarly situated customers. However, the ALJ was not persuaded that the evidence presented was sufficient to overcome the presumption that the WNA's application was just and reasonable in the circumstances. We concur.

Based on the foregoing, we shall deny CAUSE-PA/TURN's Exception No. 2 and adopt the ALJ's recommendation on this issue.

**3. CAUSE-PA/TURN Exception No. 3: The ALJ Erred As a Matter of Law in Failing to Analyze The WNA Pursuant to The Provisions of the Commission's Distribution Rates Policy Statement**

**a. Position of the Parties**

PGW's witness, Ms. Denise Adamucci, asserted that its WNA is consistent with the alternative ratemaking methodologies of Section 1330 of the Code, which authorizes the implementation of a decoupling mechanism for energy companies, including a weather normalization clause, and the promulgation of the Commission's

Alternative Ratemaking Policy Statement. PGW St. 1-RJ at 15-16, PGW Exh. DA-5 (citing 66 Pa. C.S. § 1330; 52 Pa. C.S. § 69.3302(a)). Specifically, Ms. Adamucci referenced the Policy Statement factors at 52 Pa. C.S. § 69.3302(a), to explain how the WNA aligns with the applicable criteria. The following is a paraphrasing of Ms. Adamucci's explanations for how the WNA aligns with each criterion, pursuant to 52 Pa. C.S. § 69.3302(a)(1)-(14):

- (1) The WNA mechanism aligns distribution revenues with cost causation principles by allowing the Company to recover fixed costs through volumetric distribution rates by accounting for variation in usage due to weather.
- (2) The WNA has no impact on the Company's capacity utilization.
- (3) The base load is determined separately for each customer and is revised annually to reflect the non-temperature sensitive usage of customers to which the WNA applies reflected in the prior heating season's sales.
- (4) The WNA applies rates that are based on the Commission-approved revenue allocation and rate design for heating customers, and, therefore, will continue to mitigate the potential for interclass and intraclass cost shifting related to weather-driven usage deviations from the weather assumptions used in establishing rates.
- (5) The WNA only addresses variations due to weather and does not negatively impact energy efficiency programs.
- (6) Customers remain incentivized to employ efficiency measures and distributed energy resources that reduce their overall bill, including the portion of their bill related to the WNA.
- (7) The WNA does not affect customers in the Company's Customer Responsibility Program (CRP), as their rates will not exceed the percentage of household income approved by the Commission. Further, the WNA stabilizes cost recovery by delivering gas safely and reliably to customers and reduces the variability of distribution rates paid by customers.

- (8) The WNA provides rate stability for customers because it avoids the need for the Company to seek emergency rate relief, which may result in greater increases.
- (9) The WNA minimizes the impact of weather-related variation in both customer bills and associated utility distribution revenues.
- (10) The WNA could reduce the frequency of rate case filings and regulatory lag, as the Company is a municipal utility that operates under the cash flow method for ratemaking. The absence of a WNA would likely necessitate a higher frequency of rate case filings.
- (11) The WNA only applies to distribution-related charges, which recover the base distribution revenue requirement from applicable WNA customer classes for the heating season of October through May, and does not intermingle with other sources of revenue.
- (12) The WNA protects customers from paying higher bills when the weather is colder than normal and benefits consumers by ensuring that the Company is financially strong and stable to continue safe, secure, and reliable operations, regardless of variations in weather.
- (13) The basic concept of the WNA is not difficult to convey to customers.
- (14) The WNA ensures that the Company is recovering fixed costs, including infrastructure maintenance and upgrades, associated with operating a natural gas utility and providing natural gas service.

PGW St. 1-RJ, PGW Exh. DA-5 (citing 52 Pa. C.S. § 69.3302(a)(1)-(14)).

The OCA averred that the WNA is a form of revenue decoupling that has benefitted the Company and shifted risk onto residential customers. OCA M.B. at 12-13. The OCA's witness, Mr. Ron Nelson, explained that decoupling mechanisms address utility throughput, or volume of sales, by ensuring that revenue recovery does not depend on variations in energy consumption and/or weather. OCA St. 1 at 5. Specifically, Mr. Nelson stated that:

PGW's WNA acts as a limited decoupling mechanism by normalizing gas consumption in accordance with an approved temperature forecast, known as [NHDD]. The heating season stretches from October to May and the forecast assumes no heating in the summer months (June through September). A predetermined formula assesses the difference in actual usage from normalized usage by comparing temperature readings, known as [AHDD]), with NHDD. The [difference] in usage, multiplied by the distribution delivery charge, is applied as a charge, or reimbursement, to customer rates, effectively reconciling revenues. The intent of PGW's WNA, like revenue decoupling, is to share weather risk between the utility and its customers, ultimately stabilizing revenues for the utility. The formula does not adjust customer bills such that the utility earns a fixed revenue. Actual utility WNA revenues are ultimately a function of actual customer usage and deviations from weather forecasts. Furthermore, [although] the WNA only applies to weather-related demand fluctuations, actual utility revenues can vary due to other factors, such as an energy efficiency and electrification. Fuel costs are a pass through costs and are not directly implicated with the WNA. Under any form of decoupling mechanism, regulators must carefully balance how risk shifts between utilities and ratepayers to ensure that ratepayers equally benefit.

OCA St. at 8 (quotations omitted). Moreover, the OCA asserted that although other utilities have utilized decoupling mechanisms to address the variability of weather, it is unaware of any other Pennsylvania gas utility customers being exposed to WNA-type charges to the extent that PGW has charged its customers. The OCA, therefore, asserted that the WNA as it currently exists should be suspended. OCA R.B. at 1.

CAUSE-PA/TURN contended that the record shows that PGW's WNA is unsupportable pursuant to the standards set forth in the Commission's Distribution Rates Policy Statement. CAUSE-PA/TURN R.B. at 4 (citing 52 Pa. Code § 69.3302). While PGW argued that the WNA has been in place since 2002, CAUSE-PA/TURN explained that in 2019, the Commission adopted the Distribution Rates Policy Statement, and this is

the first opportunity for the Commission to carefully evaluate PGW's WNA under these new standards for evaluating alternative ratemaking and decoupling mechanisms. CAUSE-PA/TURN R.B. at 4.

**b. ALJ's Recommended Decision**

The ALJ found that PGW has been successfully employing the WNA as an alternative ratemaking method for several years and recommended that the Commission approve the ongoing usage of the WNA (with the month of May removed from the WNA calculation). R.D. at 33-34.

**c. CAUSE-PA/TURN Exception No. 3 and Replies**

In its Exception No. 3, CAUSE-PA/TURN submits that it was error of law for the ALJ to fail to appropriately consider the Commission's policy guidelines in evaluating the lawfulness of the PGW's WNA and deferring the evaluation of the WNA under those terms to a future base rate proceeding. CAUSE-PA/TURN Exc. at 18-20.

CAUSE-PA/TURN also questions the ALJ's reliance upon the Commission's prior approval of the WNA mechanism and the fact that decoupling mechanisms are expressly authorized under the Code. CAUSE-PA/TURN Exc. at 18 (citing R.D. at 31; 66 Pa. C.S. § 1330). CAUSE-PA asserts that the ALJ's analysis is in error by failing to also examine the Commission's guidance as to when, and if, a decoupling mechanism is to be approved. CAUSE-PA/TURN Exc. at 18-19 (citing 52 Pa. Code § 69.3301).

In its Replies to CAUSE-PA/TURN's Exception No. 3, PGW notes that the ALJ discussed the arguments raised by Exception No. 3 at length in the Recommended Decision and concluded that CAUSE-PA/TURN failed to carry the burden of persuasion

on the issue. PGW further asserts that PGW's witness had thoroughly addressed the factors set forth in the Commission's Policy Statement on alternative distribution ratemaking mechanisms. PGW R. Exc. at 17-20 (citing R.D. at 29-33; PGW St. No. 1-RJ at 14-16; PGW Exhibit DA-5). Finally, PGW asserts that the fact that the ALJ was unpersuaded by CAUSE-PA/TURN's assertions regarding the applicability of the Commission's Policy Statement to the WNA does not constitute reversible error. *Id.*

**d. Disposition**

As previously indicated, by our Opinion and Order, we adopt the ALJ's approval of PGW's proposed Tariff Supplement. In so doing we expressly concur with the ALJ's decision to defer the question of the analysis of PGW's Commission-approved WNA under Section 1330 of the Code and the Commission's Policy Statement on alternative distribution ratemaking mechanisms to the Company's next upcoming base rate proceeding after the present proceeding at R-2023-3037933. *See*, R.D. at 33-34.

We note that both Section 1330 of the Code and the Commission's Policy Statement regarding alternative distribution ratemaking mechanisms are expressly stated to be applicable in the context of *the Company's base rate proceeding*.

Section § 1330 (b)(1) of the Code provides:

[T]he Commission may approve an application by a utility **in a base rate proceeding** to establish alternative rates and rate mechanisms... .

66 Pa. Code § 1330(b) (1) (emphasis added). In addition, Commission Regulations establishing the purpose and scope of the Commission's Policy Statement on alternative ratemaking mechanisms, expressly states:

The purpose of this policy statement is to invite **the proposal, within a utility's base rate proceeding, of fixed utility distribution ratemaking mechanisms and rate designs** that further promote these Federal and State policy objectives, the objectives of 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities)

52 Pa. Code § 69.3301(emphasis added)

Given the clear intent of Section 1330 of the Code and the Commission's Policy Statement on alternative ratemaking mechanism that the consideration of a utility's use of an alternative ratemaking mechanism should occur in the context of a base rate proceeding, it was appropriate for the ALJ to defer consideration of that question, *i.e.*, examination of PGW's Commission-approved WNA for consistency with the Commission's Policy Statement, from the present proceeding, which is not a base rate proceeding, to PGW's next upcoming base rate proceeding after 2023.

Based upon the foregoing, we shall deny CAUSE-PA/TURN's Exception No. 3.

**4. CAUSE-PA/TURN Exception No. 4: The ALJ Erred As a Matter of Fact in Finding, Without Substantial Record Evidence, That Elimination of May From the WNA Would Resolve Issues With The WNA**

**a. Position of the Parties**

PGW provided two modifications to its WNA during this proceeding. The Company first proposed a cap of 25% of total delivery charges on any given bill. Subsequently, PGW noted that it no longer desires to implement the proposed cap. PGW also proposed the removal of May from the WNA formula. PGW's witness, Ms. Adamucci, asserted that the exclusion of May from the WNA formula would address



any issue in the existing formula caused by the warming trends in Philadelphia over the past ten (10) years. Further, Ms. Adamucci noted that May usage has resulted in the issuance of emergency orders by the Commission in the last two years.<sup>5</sup> Moreover, Ms. Adamucci averred that, to the extent that the WNA is producing concerning results, those results are focused on May and, therefore, the elimination of May from the WNA formula would be reasonable. PGW R.B. at 24-25 (citing PGW St. No. 1-R at 3-4; PGW St. 1-RJ at 5; Tr. at 159, 161-162, 182, 184).

The OCA maintained that PGW's recommendation for the removal of May from the WNA calculation is unsupported by evidence in the record. The OCA noted that PGW's oral motion to move new additional testimony at the evidentiary hearing into the record of this proceeding was denied. OCA M.B. at 5 (citing Tr. at 80-91). With respect to this testimony, the OCA asserted that despite its denial, PGW argued in its Main Brief that the unadmitted testimony of Ronald Amen supports the removal of May from the WNA calculation. OCA M.B. at 5-6 (citing PGW M.B. at 12). The OCA put forward that PGW has not established in the record of this proceeding any support for its claim that removing May from the WNA calculation would solve the problems inherent in its WNA. In the OCA's view, removal of May would only move the problems that required emergency relief to the month of April. The OCA reasoned that it is mere speculation that removing the month of May from the WNA calculation will rectify the WNA problems. OCA M.B. at 6.

With regard to the months that the WNA is in effect, CAUSE-PA/TURN claimed that removing the month of May from the WNA does not correct the inequities with the operation of the WNA. CAUSE-PA/TURN noted that the OCA's witness documented significant rate volatility in the WNA throughout the heating season. CAUSE-PA/TURN alleged that financial impacts on customers are particularly

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<sup>5</sup> See, April 2023 Emergency Petition; June 2022 Emergency Petition.

heightened during the shoulder months of October and May, and removal of May from the WNA cannot protect customers from rate volatility and significant rate discrimination in any month to which the WNA applies. CAUSE-PA/TURN concluded that the elimination of May does not resolve the discriminatory treatment of customers based on billing cycle and baseload determination. CAUSE-PA/TURN M.B. at 26-27 (citing OCA St. 1 at 15-16).

**b. ALJ's Recommended Decision**

The ALJ found that PGW supported its position that elimination of May from the WNA calculation is just and reasonable. The ALJ noted that the Commission approved, on an emergency basis, the removal of May from the WNA calculation for the past two years, and this method seems to be the best, most-simple, and efficient way to address the WNA calculation. The ALJ also noted that other Parties acknowledged that May is a problem month in the WNA calculation, and its removal would help to prevent rate shock to customers in the future, if the weather patterns of the past two years continue. R.D. at 33.

The ALJ agreed with PGW that removing May from the WNA formula will help to eliminate rate shock resulting from abnormal weather patterns. The ALJ acknowledged that the public has questioned whether the WNA is needed and noted the concerns of the customers regarding the affordability of their bills. However, the ALJ found that the Company's proposed removal of May, coupled with the need of PGW to provide safe and adequate service to its customers, makes the utilization of the WNA just and reasonable and helps to alleviate the need for even higher rate requests in the Base Rate Cases. Accordingly, the ALJ found that PGW met its burden of demonstrating that the WNA is just and reasonable with the modification of the removal of May from the WNA calculation. R.D. at 34.

Additionally, the ALJ found that although the removal of May from the WNA calculation is an effective fix to the issues with the WNA in the short-term, a more in-depth review of the WNA mechanism, as it functions for PGW's customers, should be undertaken in the future. Accordingly, the ALJ recommended that the Commission direct the Parties to address issues with the WNA when PGW files its next Base Rate Case after 2023. R.D. at 34.

**c. CAUSE-PA/TURN Exception No. 4 and Replies**

In its Exception No. 4, CAUSE-PA/TURN argues the ALJ's recommendation that the elimination of May from PGW's WNA calculation would be a just and reasonable modification is in error and is not supported by substantial evidence of record. CAUSE-PA/TURN Exc. at 21-22. CAUSE-PA/TURN asserts that because the ALJ precluded admission of the PGW base rate case testimony proffered by PGW, that the record is devoid of any evidence to support the conclusion that the removal of May from the WNA calculation would be a reasonable solution to the weather fluctuations which resulted in high rates. CAUSE-PA/TURN further asserts that the removal of May from the WNA calculation fails to address the "structural flaws" which CAUSE-PA/TURN argue render the WNA unlawful. *Id.*

In its Replies to CAUSE-PA/TURN's Exception No. 4, PGW asserts that it is disingenuous for CAUSE-PA/TURN to argue that PGW is precluded from proposing in the present proceeding that the removal of May from the WNA is a just and reasonable solution to the rate issue. PGW avers that its arguments regarding the removal of May from the WNA calculation are well founded in the record where it is established that, not only that the Commission approved, on an emergency basis, the removal of May from the WNA calculation for the past two years as a reasonable way to address the WNA calculation, but also that PGW has consistently argued throughout the entire proceeding, and supported by witness testimony, that the inclusion of May in the calculation was the

“culprit.” PGW R. Exc. at 21-25 (citing PGW St. No. 1 at 10-11; PGW St. No. 1-R at 3; PGW St. No. 1-RJ at 3-5).

**d. Disposition**

As previously indicated, by our Opinion and Order, we shall adopt the ALJ’s approval of PGW’s proposed Tariff Supplement. In so doing, we expressly concur with the ALJ’s reasoning and rationale. We find that in analyzing the Company’s proposed removal of May from the WNA calculation, the ALJ properly drew the balance between the need of PGW for adequate revenue to provide safe and adequate service to its customers via the utilization of the WNA and the need to alleviate rate shock for customers due to weather fluctuations. Accordingly, we shall adopt the ALJ’s finding that PGW met its burden of demonstrating that the WNA is just and reasonable in the circumstances with the modification of the removal of May from the WNA calculation. See, R.D. at 34.

We further note that the arguments raised by CAUSE-PA/TURN on Exception, as a whole, ignore the record evidence establishing a correlation between the rate fluctuations and the month of May. We agree with PGW that, in attempting to overturn PGW’s Commission-approved WNA, CAUSE-PA/TURN generally focuses on the anomaly with the WNA which occurred in May 2022, while ignoring the fact PGW proactively and voluntarily addressed this anomaly for the benefit of customers by seeking emergency authorization from the Commission to reverse the charges incurred for that period. *See*, PGW R. Exc. at 1. CAUSE-PA/TURN’s arguments ignore the indisputable fact that, as to the question of the just and reasonable billing by PGW, it is indisputable that PGW’s billing is authorized pursuant to the Commission-approved WNA which sets the level of revenue which the Company is authorized to collect pursuant to the tariff, no more no less.

When PGW's WNA was first approved, the Commission's approval was rendered in view of both the important interests of PGW's customers in affordable utility service and the financial soundness of the municipally owned public utility that provides natural gas service to approximately 500,000 customers in the City of Philadelphia. While the decision to approve the use of the WNA to address the impact upon utility rates due to weather fluctuations may be an imperfect solution, it is, however, based on the present record, a just and reasonable solution in these circumstances. Whether a more just and reasonable solution may be established, remains for the Parties and the Commission to resolve in PGW's next base rate proceeding which shall address the WNA portion of PGW's tariff, and not in the pending base rate case at Docket No. R-2023-3037933.

Therefore, based upon the forgoing, we shall deny CAUSE-PA/TURN's Exception No. 4.

## V. Conclusion

Upon analysis, we agree with ALJ Guhl that PGW has met its burden of demonstrating that the removal of the month of May from the Weather Normalization Adjustment calculation is just and reasonable. We shall therefore: (1) deny the Exceptions of CAUSE-PA/TURN; (2) adopt the ALJ's Recommended Decision; and (3) direct that PGW file a modified Tariff Supplement No. 152 to Gas Service Tariff-Pa. P.U.C. No 2, which excludes May from the Weather Normalization Adjustment calculation; we further direct that PGW shall address the Weather Normalization Adjustment portion of its tariff after conclusion of the pending base rate case at Docket No. R-2023-3037933 in PGW's next base rate proceeding. **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network filed on July 31, 2023, to the Recommended Decision of Administrative Law Judge Marta Guhl, issued on July 19, 2023, at Docket Nos. R-2022-3034229; P-2022-3034264, are denied, consistent with this Opinion and Order.

2. That by this Opinion and Order, we shall adopt the Recommended Decision of Administrative Law Judge Marta Guhl, issued on July 19, 2023, at Docket Nos. R-2022-3034229; P-2022-3034264.

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

4. That Philadelphia Gas Works shall address the Weather Normalization Adjustment portion of its tariff in the next upcoming base rate proceeding after the conclusion of the pending base rate case at Docket No. R-2023-3037933.

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

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

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

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: September 21, 2023

ORDER ENTERED: September 21, 2023