

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

 @pa_oca
 /pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

September 6, 2024

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission
v.
PECO Energy Co. - Gas Division
Docket No. R-2024-3046932

Dear Secretary Chiavetta:

Enclosed for e-filing please find a copy of the Main Brief of the Office of Consumer Advocate in the captioned proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Gina L. Miller

Gina L. Miller
Senior Assistant Consumer Advocate
PA Attorney I.D. # 313863
GMiller@paoca.org

Enclosures

cc: Honorable Administrative Law Judge Marta Guhl
Honorable Administrative Law Judge Darlene Heep
Certificate of Service (as indicated)

CERTIFICATE OF SERVICE

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

v.

**PECO ENERGY COMPANY –
GAS DIVISION**

:
:
:
:
:
:
:

DOCKET NO. R-2024-3046932

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 6th day of September 2024.

VIA FEDEX DELIVERY

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

VIA ELECTRONIC MAIL

David P. Zambito
Jonathan P. Nase
Cozen O’Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
dzambito@cozen.com
jnase@cozen.com
Counsel for UPENN

Alan McCarthy
705 East Barnard St
West Chester, PA 19382
alanmccarthy25@hotmail.com
Pro Se

Kenneth M. Kulak
Mark A. Lazaroff
Catherine G. Vasudevan
Brooke E. McGlinn
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
215.963.5384 (bus)
215.963.5001 (fax)
ken.kulak@morganlewis.com
mark.lazaroff@morganlewis.com
catherine.vasudevan@morganlewis.com
brooke.mcglinn@morganlewis.com
Counsel for PECO Energy Company

Carrie B. Wright
Bureau of Investigation & Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
400 North St, 2nd Floor
Harrisburg, PA 17120
carwright@pa.gov
Counsel for BI&E

Charlotte E. Edelstein
Joline R. Price
Vikram A. Patel
Robert W. Ballenger
Community Legal Services, Inc.
1410 West Erie Avenue
Philadelphia, PA 19140
cedelstein@clsphila.org
jprice@clsphila.org
vpatel@clsphila.org
rballenger@clsphila.org
Counsel for CAUSE-PA

Todd Stewart
Hawke McKeon & Sniscak LLP
100 North Tenth St
Harrisburg, PA 17101
tsstewart@hmslegal.com
Counsel for SEPTA

Steven C. Gray
Rebecca Lyttle
Office of Small Business Advocate
555 Walnut St., 1st Floor
Forum Place
Harrisburg, PA 17101
sgray@pa.gov
relyttle@pa.gov
Counsel for OSBA

Derrick Price Williamson
Barry A. Naum
Steven W. Lee
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
slee@spilmanlaw.com
Counsel for Walmart Inc.

Charis Mincavage
Adeolu A. Bakare
Brigid Landy Khuri
Rebecca Kimmel
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
bkhuri@mcneeslaw.com
rkimmel@mcneeslaw.com
Counsel for PAIEUG

Charles T. Joyce
Spear Wilderman, P.C.
230 South Broad Street, Suite 1650
Philadelphia, PA 19102
ctjoyce@spearwilderman.com
Counsel for IBEW Local 614

Nicholas J. Enoch
Lubin & Enoch, P.C.
349 North 4th Avenue
Phoenix, AZ 85003-1505
nick@lubinandenoach.com
Counsel for IBEW Local 614

/s/ Gina L. Miller

Gina L. Miller
Senior Assistant Consumer Advocate
Office of Consumer Advocate
PA Attorney I.D. # 313863
GMiller@paoca.org

Barrett C. Sheridan
Jacob D. Guthrie
Office of Consumer Advocate
Forum Place
555 Walnut St., 5th Floor
Harrisburg, PA 17101-1923
OCAGASPECO2024@paoca.org

Counsel for:
Office of Consumer Advocate
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

Dated: September 6, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-2024-3046932
PECO Energy Company – Gas Division :

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

Gina L. Miller
Senior Assistant Consumer Advocate
PA Attorney I.D. # 313863
GMiller@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
BSheridan@paoca.org

Jacob D. Guthrie
Assistant Consumer Advocate
PA Attorney I.D.# 334367
JGuthrie@paoca.org

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
717-783-5048
Dated: September 6, 2024

Counsel for:
Patrick M. Cicero
Consumer Advocate

TABLE OF CONTENTS

I. INTRODUCTION1

 A. Description of the Office of Consumer Advocate1

 B. Procedural History1

 C. Description of the WNA3

 D. Overview of the Settlement5

 E. Legal Standards.....5

 1. Utility Monopoly Regulation5

 2. Burden of Proof.....6

 3. Just and Reasonable and Not Unduly Discriminatory Rates7

 4. Due Consideration to the Interest of Consumers9

II. SUMMARY OF ARGUMENT9

III. ARGUMENT - WEATHER NORMALIZATION ADJUSTMENT (WNA).....11

 A. The Commission Should Reject the WNA Because PECO Has Failed to Demonstrate that the WNA is a Just and Reasonable Rate.....11

 B. PECO Gas’s Proposed WNA Fails to Meet All the Relevant Alternative Ratemaking Factors in the Commission’s Policy Statement at 52 Pa. Code § 69.3302(a).....13

 C. PECO Gas Already Has Sufficient Alternative Ratemaking Tools at its Disposal and Does Not Require a WNA that Would Further Alienate its Rate Design from Principles of Cost Causation.18

 D. PECO Gas is not Entitled to a Guarantee of Meeting its Established Revenue Requirement and Guaranteeing Revenue Disincentivizes Efficient Management.21

 E. The Proposed WNA Will Not Benefit Customers.....24

 F. Low-Income Customers will be Particularly Disadvantaged by the WNA.....27

 G. Under a WNA, Customers Sacrifice Their Bill Savings From Reduced Usage to the Company.....31

 H. The WNA is Likely to Cause Customer Confusion.....33

 I. PECO Gas Cannot Meet its Burden of Proof for the Proposed WNA by Relying on the Existence of Other Utilities’ WNAs.38

IV. CUSTOMER SERVICE REPRESENTATIVE ISSUES41

V. IBEW PROPOSALS.....42
VI. PUBLIC COMMENT ON THE SETTLEMENT.....42
VII. CONCLUSION.....42

Appendix A – OCA Proposed Findings of Facts, Conclusions of Law, and Ordering Paragraphs

Appendix B – OCA Testimony and Exhibits Entered into Evidence

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm’n</i> , 461 U.S. 375 (1983) (<i>Ark. Elec.</i>)	5
<i>Barasch v. Pa. PUC</i> , 546 A.2d 1296 (Pa. Cmwlth. Ct. 1988) (<i>Barasch 1988</i>)	9
<i>Bell Atl. – Pa., Inc. v. Pa. PUC</i> , 672 A.2d 352 (Pa. Cmwlth. Ct. 1995)	40
<i>Berner v. Pa. PUC</i> , 116 A.2d 738 (Pa. 1955) (<i>Berner</i>)	7
<i>Burleson v. Pa. PUC</i> , 461 A.2d 1234 (Pa. 1983) (<i>Burleson</i>).....	6
<i>City of Lancaster Sewer Fund v. Pa. PUC</i> , 793 A.2d 978 (Pa. Cmwlth. 2002) (<i>Lancaster 2002</i>)	8
<i>Fed. Power Com. v. Hope Nat. Gas Co.</i> , 320 U.S. 591 (1944) (<i>Hope</i>)	21, 22
<i>Jenkins Twp. v. Pub. Serv. Comm’n</i> , 65 Pa. Super. 122, 1916 Pa. Super. LEXIS 30 (Oct. 30, 1916) (<i>Jenkins Twp.</i>).....	5
<i>Lansberry v. Pa. PUC</i> , 578 A.2d 600 (Pa. Cmwlth. Ct. 1990) (<i>Lansberry</i>)	6
<i>Lloyd v. Pa. PUC</i> , 904 A.2d 1010 (Pa. Cmwlth. Ct. 2006) (<i>Lloyd</i>).....	8, 20
<i>Lower Frederick Twp. Water Co. v. Pa. PUC</i> , 409 A.2d 505 (Pa. Cmwlth. Ct. 1980)	6
<i>McCloskey v. Pa. PUC</i> , 195 A.3d 1055 (Pa. Cmwlth. Ct. 2018) (<i>McCloskey 2018</i>).....	9
<i>McCloskey v. Pa. PUC</i> , 225 A. 3d 192 (Pa. Cmwlth. Ct. 2020)	19
<i>Munn v. Illinois</i> , 94 U.S. 113 (1877) (<i>Munn</i>).....	5

<i>Nat'l Fuel Gas Dist. Corp. v. Pa. PUC</i> , 464 A.2d 546 (Pa. Cmwlt. Ct. 1983)	22
<i>Pa. Elec. Co. v. Pa. PUC</i> , 502 A.2d 130 (Pa. 1985)	21
<i>Popowsky v. Pa. PUC</i> , 665 A.2d 808 (Pa. 1995)	8
<i>Popowsky v. Pa. PUC</i> , 683 A.2d 958 (Pa. Cmwlt. Ct. 1996) (<i>Popowsky 1996</i>)	8
<i>Relief Elec. Light, Heat & Power Co's. Petition</i> , 63 Pa. Super 1, 6-11 (Pa. Super. Ct. Mar. 1, 1916) (<i>Relief Elec.</i>)	5
<i>University of Pa. v. Pa. PUC</i> , 485 A.2d 1217 (Pa. Cmwlt. Ct. 1984)	7
Administrative Proceedings	
<i>Pa. PUC v. Columbia Gas of Pa., Inc.</i> , Docket No. R-2010-2215623 (Order entered Oct. 14, 2011) (<i>Columbia 2011</i>).....	20
<i>Pa. PUC v. Columbia Gas of Pa., Inc.</i> , Docket No. R-2012-2321748 (Order entered May 23, 2013).....	17, 39
<i>Pa. PUC v. Columbia Gas of Pa., Inc.</i> , Docket No. R-2020-3018835 (Order Feb. 19, 2021) (<i>Columbia 2021</i>)	8
<i>Pa. PUC v. Columbia Gas of Pa., Inc.</i> , Docket No. R-2022-3031211 (Order entered Dec. 8, 2022).....	39
<i>Pa. PUC v. Equitable Gas Co.</i> , 57 Pa. PUC 423 (1983)	7
<i>Pa. PUC v. Nat'l Fuel Gas Dist. Corp.</i> , Docket No. R-2022-3035730 (Order entered June 15, 2023).....	17, 39
<i>Pa. PUC v. PPL Elec. Utils. Corp.</i> , 237 PUR4th 419 (PaPUC 2004) (Order entered Dec. 22, 2004)	7
<i>Pa. PUC v. PPL Elec. Utils. Corp.</i> , Docket No. R-2012-2290597 (Order Dec. 28, 2012)	31
<i>Pa. PUC v. Pa.-American Water Co.</i> , 231 P.U.R.4th 277, 2004 Pa. PUC LEXIS 29 (Jan. 29, 2004) (<i>PAWC 2004</i>)	7

<i>Pa. PUC v. Pa.-American Water Co.,</i> Docket Nos. R-2023-3043189 et al (Order entered July 11, 2024) (<i>PAWC</i> <i>2023</i>)	10, 11, 33, 40
<i>Pa. PUC v. PECO Energy Co. – Gas Div.,</i> Docket No. R-2020-3018929 (Order entered June 17, 2021) (<i>PECO Gas</i> <i>2021</i>)	31, 32
<i>Pa. PUC v. Phila. Gas Works,</i> Docket No. R-00017034 (Order entered Aug. 9, 2002)	17, 39
<i>Pa. PUC v. Phila. Gas Works,</i> Docket No. R-2017-2586783 (Order entered Nov. 8, 2017)	26
<i>Pa. PUC v. Phila. Gas Works,</i> Docket Nos. R-2022-3034229 et al (Order entered Sept. 21, 2023).....	25
<i>Pa. PUC v. Phila. Gas Works,</i> Docket No. R-2023-3037933 (Order Entered Nov. 9, 2023)	25
<i>Pa. PUC v. Twin Lakes Util., Inc.,</i> Docket No. R-2019-3010958 (Order Mar. 26, 2020)	8
<i>Pa. PUC v. UGI Utilities, Inc. – Gas Division,</i> Docket No. R-2021-3030218 (Order entered Sept. 15, 2022).....	17, 39

Statutes

71 P.S. § 309-4.....	1
71 P.S. § 309-5.....	9
2 Pa. C.S. § 704.....	12
66 Pa. C.S. § 315.....	<i>passim</i>
66 Pa. C.S. § 523.....	8
66 Pa. C.S. § 526.....	8
66 Pa. C.S. § 1301.....	7, 38, 41
66 Pa. C.S. § 1330.....	<i>passim</i>
66 Pa. C.S. § 1357.....	14, 21

Regulations

52 Pa. Code § 5.232	39
---------------------------	----

52 Pa. Code § 56.12	35
52 Pa. Code § 56.15	18, 37
52 Pa. Code § 69.3301	19
52 Pa. Code § 69.3302	<i>passim</i>

Other Authorities

Charles F. Phillips, Jr., <i>The Regulation of Public Utilities: Theory and Practice</i> (Pub. Utils. Reports, Inc., 3rd ed. 1993)	6
James H. Booser, <i>The Constitutional Limitations on Public Utility Regulation</i> , 67 Dick. L. Rev. 363, 364 (1963) (last visited Mar. 21, 2024).....	6

I. INTRODUCTION

The Office of Consumer Advocate (OCA) joins in the non-unanimous partial settlement between PECO Energy Company – Gas Division’s (Company or PECO Gas) and the other parties to this proceeding. All issues but one are addressed in the Joint Petition for Settlement. The one unresolved issue – PECO Gas’ proposed alternative ratemaking mechanism called the weather normalization adjustment (WNA) – was reserved for briefing by the parties and for a final decision by the Pennsylvania Public Utility Commission (Commission). The OCA now submits this Main Brief in support of its litigation position in opposition to the WNA.

Appendix A provides the OCA’s proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs. Appendix B contains a list of the OCA’s Testimony and Exhibits that were admitted into the evidence in this case.

A. Description of the Office of Consumer Advocate

The Office of Consumer Advocate (OCA) is a statutory advocate with the authority and duty to represent the interest of consumers as a party before the Pennsylvania Public Utility Commission (Commission) in public utility rate requests. 71 P.S. § 309-4. The OCA’s interest in this case is to ensure that utility consumers – who ultimately pay the revenue requirement to the utility – are paying enough, but no more than is necessary, to ensure that service remains adequate, reliable, and safe while allowing the utility to have the opportunity to recover its costs and earn a fair rate of return on its investments.

B. Procedural History¹

On March 28, 2024, PECO Gas filed Original Tariff Gas – PA PUC No. 6 (Tariff No. 6) with the Commission to become effective on January 1, 2025. PECO Gas used a Historic Test

¹ In the interest of brevity, the OCA presents this concise and relevant procedural history. A more comprehensive summary of the procedural history was set forth in the Joint Petition for Settlement filed on August 30, 2024.

Year (HTY) ending December 31, 2023, a Future Test Year (FTY) ending December 31, 2024, and a Fully Projected Future Test Year (FPFTY) ending December 31, 2025. The Company requested an overall increase in annual operating revenues of \$111 million, or approximately 23.1%.

On April 11, 2024, the OCA filed its Formal Complaint and Public Statement.

The Commission held Public Input Hearings on June 6 at 6 p.m. in Media, on June 10 at 6 p.m. in Kennett Square, on June 12 at 1 p.m. and 6 p.m. in Philadelphia, on June 13 at 1 p.m. and 6 p.m. via telephone, and on June 27 at 6 p.m. in Limerick. Four customers testified at the Public Input Hearings regarding the WNA, though over 30 customers testified in total. OCA witness Nicholas DeMarco summarized the Public Input Hearing testimony in his Supplemental Direct Testimony and the attached Exhibit NAD-1-SD.

Consistent with the procedural schedule issued by Administrative Law Judges (ALJs) Marta Guhl and Darlene Heep, the OCA served on the ALJs and the parties its written Direct, Supplemental Direct and Rebuttal, and Surrebuttal Testimonies on June 17, 2024, July 16, 2024, and August 2, 2024, respectively, in which the OCA opposed and/or recommended adjustments to the Company's requests.

An outline of oral rejoinder testimony was submitted by PECO Gas on August 6, 2024. Evidentiary hearings were held telephonically on August 8 and 12, 2024. On August 14, 2024, a unanimous joint stipulation to move all parties' hearing exhibits and pre-served testimony into the record was filed with the ALJs. On August 23, 2024, parties notified the ALJs that they had reached a settlement on all issues except for the Company's proposed WNA, which was reserved for

litigation.² On August 30, 2024, the Joint Petition for Non-Unanimous Partial Settlement of Rate Investigation was filed.

In accordance with the procedural schedule established in this proceeding, the OCA now submits this Main Brief in opposition to the proposed WNA.

C. Description of the WNA

PECO Gas's stated purpose of the WNA is to smooth the Company's revenues to seek to ensure that the Company earns its entire revenue requirement established in this case despite declining usage, which may or may not stem from weather-related reasons. PECO Gas St. 3 at 66-67. The proposed WNA would function by adjusting residential and small- and medium-sized commercial customers' monthly bill for the quantity of gas which the Company projected they would use based on predicted "normal" weather for that month. OCA St. 6 at 6. Under PECO Gas's WNA proposal, if a month is warmer than anticipated between October 1 and May 31, the customer will receive a charge for the quantity of gas the Company believes the customer hypothetically would have used had the weather been as cold as the Company anticipated; the inverse is true for weather that is colder than the Company anticipated, resulting in a credit on customers' bills. PECO Gas St. 3 at 15.

The WNA makes this adjustment to usage by multiplying the Company's pre-determined level of weather-dependent usage – or the difference between the average usage during summer months and the actual usage during the month the WNA is in effect – by the ratio between the Company's pre-determined "normal" weather and the actual weather experienced by the customer.

Id. This "ratio" is expected to be greater than one when actual weather is warmer than "normal"

² It is the OCA's understanding that the Local 614 of the International Brotherhood of Electrical Workers, AFL-CIO (IBEW) will not be joining the Joint Petition for Settlement. The OCA reserves the right to address the arguments raised by IBEW in its Main Brief in the OCA's Reply Brief.

and less than one if colder than “normal,” which is what causes bills to either increase under warmer-than-normal weather or decrease with colder-than-normal weather.

The equation used to calculate the WNA charge is as follows:

$$\text{adjusted usage} = \text{baseload usage} + \left[\frac{(\text{"normal weather"} \pm (\text{"normal weather"} * 0.01))}{\text{actual weather}} * (\text{actual usage} - \text{baseload usage}) \right] - \text{actual usage}$$
$$\text{WNA} = \text{adjusted usage} * \text{distribution charge}$$

PECO Gas St. 3 at 71.

However, this adjustment is blind to any changes in usage which are unrelated to weather, as it assumes that all usage above summer-level is the result of the weather, which means that conservation or energy efficiency measures, or other things which affect customers’ usage, can cause significant bill impacts to customers whose usage does not move in the direction anticipated by the WNA. OCA Exh. RN-4 at 3-4. Simply, if a customer uses less gas in the winter due to energy efficiency measures or conservation efforts, the customer will be charged extra if weather is warmer than normal because the WNA formula automatically assumes the customer’s lower usage is due to the weather. *Id.*

“Weather,” for the purposes of the WNA, is measured in Heating Degree Days (HDDs), or the number of degrees below 65 for each day in a billing period. OCA St. 6 at 7. The Company proposes to determine “normal weather” by averaging the annual number of Normal Heating Degree Days (NHDDs) for the past 30 years, which will be “rolling,” meaning that it will update each year with data from the previous year. PECO Gas St. 3R at 14. Functionally, the “rolling” feature means that each year for the past 30 years will be given equal weight when determining what weather is “normal,” regardless of any trends in weather over time. OCA St. 6SR at 11. PECO Gas proposed a WNA with a “deadband” of one percent. The one percent “deadband” means a margin of error to the “normal weather” calculated by the Company wherein no WNA charge or

credit would be issued if the “normal weather” is within one percent, plus or minus, of the actual weather experienced. OCA St. 6 at 7.

D. Overview of the Settlement

On August 30, 2024, a Joint Petition for Non-Unanimous Partial Settlement of Rate Investigation was filed. The terms of the Partial Settlement are set forth fully in the Joint Petition. The Petition is comprehensive of all issues raised in this proceeding by the joint petitioners, with the exception of the WNA, which was reserved for litigation.

E. Legal Standards

1. Utility Monopoly Regulation

PECO Gas is a natural gas distribution company (NGDC) with an exclusive monopoly franchise. Customers who reside in its certificated service territory have no choice; if they want natural gas service, they must buy it from PECO Gas. Utility regulation stems from the state’s police power to protect the health, safety, morals, and general welfare of their citizens. States have the power to regulate the use of private property and the rates charged by certain private companies in industries “clothed with a public interest.” *Munn v. Illinois*, 94 U.S. 113, 126 (1877) (*Munn*). “[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States.” *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983) (*Ark. Elec.*). The Public Utility Code (Code) governing sales that are only rationally dealt in by a monopoly is a proper exercise of the state police power to regulate the health, safety, morals, and general welfare of citizens. *Relief Elec. Light, Heat & Power Co’s. Petition*, 63 Pa. Super 1, 6-11 (Pa. Super. Ct. Mar. 1, 1916) (*Relief Elec.*). The Commission’s comprehensive authority under the Code to oversee and regulate jurisdictional public utilities is a constitutional exercise of traditional state police powers as a reasonable exercise of police power by appropriate means for a legitimate end. *Jenkins Twp. v. Pub. Serv. Comm’n*, 65 Pa. Super. 122,

1916 Pa. Super. LEXIS 30, **15-16 (Oct. 30, 1916) (*Jenkins Twp.*) (“The authority which the commission seeks to exercise in this case is clearly the exercise of the police power inherent in our State as delegated to the commission by the provisions of the Public Service Company Law” (which the Public Utility Law of 1937 replaced) (which the Code (of 1978) replaced)).³

2. Burden of Proof

PECO Gas bears the full burden of proof to establish the justness and reasonableness of every element of its requested rate increase:

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 the 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.

66 Pa. C.S. § 315(a). The evidence necessary to meet that burden must be substantial, legally credible, and cannot be a mere “suspicion” or “scintilla” of evidence. *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. Ct. 1980); *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990) (*Lansberry*).

The party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983) (*Burleson*). Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Id.* Furthermore, it is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” *Lansberry* at 602.

³ See also Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice*, 87 (Pub. Utils. Reports, Inc., 3rd ed. 1993); James H. Booser, *The Constitutional Limitations on Public Utility Regulation*, 67 Dick. L. Rev. 363, 364 (1963), available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol67/iss4/3> (last visited Mar. 21, 2024).

The burden of proof does not shift to parties challenging the rate increase, but rather must be met by the utility:

It is well-established that in general rate increase proceedings, the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one and that burden remains with the public utility throughout the course of the rate proceeding. It has been held that there is no similar burden placed on other parties to justify a proposed adjustment to the utility's filing.

Pa. PUC v. Pa.-American Water Co., 231 P.U.R.4th 277, 2004 Pa. PUC LEXIS 29, *16-18 (Jan. 29, 2004) (*PAWC 2004*) (citing *Berner v. Pa. PUC*, 116 A.2d 738 (Pa. 1955) (*Berner*)). In *Berner*, the Pennsylvania Supreme Court stated:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations and that is the burden which the utility patently failed to carry.

Berner at 744. The Commission recognizes in its rate determinations that the burden of proof will not shift to a complainant or intervener that is challenging the requested rate increase. *Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983); *see also University of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. Ct. 1984); *Pa. PUC v. PPL Elec. Utils. Corp.*, 237 PUR4th 419 (PaPUC 2004) (Order entered Dec. 22, 2004). Thus, it is unnecessary for the OCA (or any challenger) to prove that the Company's proposed rates – including its proposed alternative ratemaking mechanism – are unjust, unreasonable, or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show *how* the Company failed to meet its burden of proof. While subtle, this critical distinction shows that parties opposing a utility in a rate proceeding need only to shift the burden of going forward to prevail.

3. Just and Reasonable and Not Unduly Discriminatory Rates

As a matter of law, a public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a). 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) (*Lancaster 2002*).

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. Ct. 1996) (*Popowsky 1996*) (emphasis added). The Commission’s discretion to determine if a requested rate is just and reasonable includes the “power to make and apply policy” concerning the appropriate balance between rates charged to consumers and returns allowed to utility investors. *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995).

There is ample authority for the proposition that the power to fix “just and reasonable” rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.

Id. (citations omitted) (emphasis added).

A utility’s cost of providing service guides the ratemaking process. *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (*Lloyd*). Additional important ratemaking concerns include quality of service, rate gradualism, and rate affordability. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Order Feb. 19, 2021) (*Columbia 2021*), at 46-47 (citing 66 Pa. C.S. §§ 523, 526(a)) (citing also *Lloyd* at 1020 and *Pa. PUC v. Twin Lakes Util., Inc.*, Docket No. R-2019-3010958 (Order Mar. 26, 2020) at 48, 80).⁴

⁴ Available at <https://www.puc.pa.gov/pcdocs/1693880.docx>.

4. Due Consideration to the Interest of Consumers

As a matter of law, an increase in base rates involves a substantial property right, entitling ratepayers to notice and procedural due process. *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1068 (Pa. Cmwlth. Ct. 2018) (*McCloskey 2018*) (citing *Barasch v. Pa. PUC*, 546 A.2d 1296, 1305-06 (Pa. Cmwlth. Ct. 1988) (*Barasch 1988*); citing also U.S. Const. amend. XIV, § 1).

Given that a utility's general rate increase request will substantially affect the interests of consumers, the Commission must "consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers." 71 P.S. § 309-5.

II. SUMMARY OF ARGUMENT

The OCA opposes PECO Gas's proposed WNA. The WNA, by its very nature, shifts the risks associated with warming weather and declining consumption onto residential and small business customers who are captive to PECO Gas. Weather-related risks have been faced by NGDCs for over a century. The increased number of rate tools available to NGDCs – such as the FPFTY, distribution system improvement charge (DSIC), and frequent rate case filings – shift risk away from the utility and do not require any savvy from an NGDC to mitigate the effect of warmer-than-normal weather. PECO Gas's request to implement a WNA would force captive customers to bear the risk traditionally and appropriately borne by a utility and its shareholders. Importantly, the Company provided no evidence to demonstrate a need for the WNA – not to compete in capital markets, to maintain financial solvency, or even to mitigate earning below its authorized revenue requirement as a result of warmer-than-normal weather. PECO's failure to demonstrate that the WNA is even necessary reeks of a request based in monopolistic excess and entitlement, which the Commission is uniquely situated to, and should, rein in.

Unlike PECO Gas, captive customers have no opportunity to mitigate their risk of increased bills under the WNA due to warmer weather. Regardless of reduced consumption or

investment in energy efficiency measures, ratepayers' bills will still increase if weather is warmer-than-normal, rewarding PECO Gas for its customers' conservation (and penalizing customers for conserving). Based on this record, there should be no doubt that weather is more likely to be warmer-than-normal, rather than colder-than-normal, and that the average surcharge on customer bills will be greater than the average surcredit. In fact, PECO Gas's own data supports the idea that, if the WNA had been in effect for the past 10 years, the Company would have recovered an additional \$11 million in revenues, while providing net credits to ratepayers in only two of those years. In part, this is because PECO Gas's "normal" weather is based on a 30-year average, meaning that it would use older weather data than any WNA currently in effect in Pennsylvania.

Not only is the WNA likely to increase customers' bills, but the mechanism itself is confusing. There are five variables which a customer would have to track in order to verify the accuracy of their bill, let alone predict what next month's bill would be. All four customers who testified at Public Input Hearings regarding the WNA said that it was confusing and would make bills more difficult to budget for. One thing that makes the WNA confusing to customers is that they are forced to pay for hypothetical usage of the Company's distribution infrastructure, not their actual usage. This runs contrary to traditional cost of service and ratemaking principles. It obscures price signals to customers. It puts the WNA firmly beyond the reach of common sense understanding without substantial investigation into the mechanism and how it works.

According to the Commission's policy factor considerations for alternative ratemaking mechanisms, the WNA weighs against implementation for each relevant factor. Furthermore, the WNA is incredibly similar to the revenue decoupling mechanism proposed by Pennsylvania-American Water Company, which the Commission rejected because it was harmful to consumers.⁵

⁵ See *Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2023-3043189 et al (Order entered July 11, 2024) (*PAWC 2023*) (finding that an alternative ratemaking mechanism which causes customers to share their bill savings with the

The WNA fails on all of the same grounds as Pennsylvania-American Water Company’s proposed revenue decoupling mechanism. PECO Gas has failed to meet its burden of proof to demonstrate that the WNA would result in just and reasonable rates. Further, PECO Gas’s attempt to satisfy its burden of proof by pointing to other NGDCs’ WNAs is misplaced; entitlement is not evidence, and PECO Gas must demonstrate that *its* proposed WNA would result in just and reasonable rates. It has failed to do so. Therefore, the OCA respectfully requests that the Commission deny the Company’s request for a WNA.

III. ARGUMENT - WEATHER NORMALIZATION ADJUSTMENT (WNA)

A. The Commission Should Reject the WNA Because PECO Has Failed to Demonstrate that the WNA is a Just and Reasonable Rate.

PECO Gas’s request to implement a WNA should be denied by the Commission because PECO Gas has failed to demonstrate with substantial evidence that the WNA is a just and reasonable rate. A WNA is a revenue decoupling mechanism used to shift the risk of recovery of a utility’s revenues onto ratepayers as temperatures continue to get warmer over time. OCA St. 6 at 6. The purpose of a WNA is to smooth utility revenues over time to provide a more stable and guaranteed revenue stream for the implementing NGDC, a revenue stream which is less dependent on weather-driven consumption. While this alternative ratemaking mechanism is clearly intended to benefit the Company and its shareholders by creating a stable revenue stream, PECO Gas has provided no evidence that ratepayers will benefit from the implementation of the WNA. OCA St. 6SR at 8-9. On the contrary, the evidence in the record suggests that ratepayers are very likely to

utility disincentivizes conservation practices). In *PAWC 2023*, the Commission determined that Pennsylvania-American Water Company’s request for a revenue decoupling mechanism – similar to the WNA – should be denied because there was no evidence to prove that the mechanism was needed, that it benefitted customers, that customers would understand the mechanism, or that there would be benefits for customers’ conservation and efficiency measures. *Id.* at 307-08. Importantly, the Commission determined that the mechanism would create a “guaranteed rate recovery” where none previously existed and would inequitably “shift the risk of recovery entirely onto customers without any benefit.” *Id.* at 307.

pay significantly more each year because of the WNA, if the Commission allows PECO Gas to implement this rate mechanism.

The OCA does not dispute that the Commission *may* authorize the implementation of alternative ratemaking mechanisms, such as decoupling mechanisms like the WNA; however, in order to implement an alternative ratemaking mechanism, the proposing utility must provide substantial evidence that the specific mechanism, *proposed by the utility*, would result in just and reasonable rates.⁶ 66 Pa. C.S. §§ 315(a), 1330. Section 1330 does not waive the Public Utility Code's burden of proof requirements, or the Administrative Agency Law's requirement that the decisions of Commonwealth agencies – including the Commission – be supported by substantial evidence. *See* 2 Pa. C.S. § 704 (providing that the decisions of Commonwealth agencies be supported by substantial evidence to survive review of an appellate court). In other words, there is no mandate that the Commission *must* implement a proposed alternative ratemaking mechanism, including when the Commission has authorized similar mechanisms for other utilities. Instead, the utility must still support its proposed mechanism to satisfy the burden of proof required by the Public Utility Code, which is not satisfied by merely pointing to the implementation of other mechanisms. 66 Pa. C.S. § 315(a).

Here, PECO Gas has failed to provide any evidence that the proposed WNA would result in just and reasonable rates. Instead, the Company merely relied on the similarity of its proposed WNA to those implemented as a result of settlements by other NGDCs in Pennsylvania, and the

⁶ While the Company may allege that the OCA's arguments in this section "can be made against any WNA," acceptance of such an argument shifts the burden of proof on to the OCA. Such a burden shift is contrary to law because, while several of the OCA's arguments *may* be applicable to other WNAs, the fact remains that PECO Gas, as the proponent of the WNA, must provide substantial evidence to support that the WNA would result in just and reasonable rates. 66 Pa. C.S. § 315(a), 1330; *PAWC 2004, supra* ("It is well-established that in general rate increase proceedings, the burden of proof does not shift to parties challenging a requested rate increase. Rather, the utility's burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one that that burden remains with the public utility throughout the course of the rate proceeding.")

incorrect averment that customers and the Company are equally protected under the terms of the WNA. PECO Gas St. 3 at 68, 80. Neither of these arguments are supported by evidence, but are only bare assertions that, as demonstrated below, are false. OCA St. 6SR at 8-9. Therefore, PECO Gas has failed to meet its burden of proof in this proceeding and the OCA respectfully requests that the Commission deny the Company's proposed WNA mechanism.

As the OCA argues more fully below, the WNA is a sledgehammer solution, impacting a significant number of variables which exist beyond just warming weather, including any other customer behavior which is not weather-related. OCA St. 6SR at 17-18. It is crudely constructed, applying on a per-customer level to meet class-level revenue targets without regard for the bill impact that individual customers will see on a month-to-month basis, which are the bills customers are responsible for paying. OCA St. 6 at 19. WNAs are an illusory fix to a systemic issue resulting from declining usage and warming weather – an issue which consumers did not create – that is rooted in NGDCs' business model. *Id.* at 18.

The OCA submits that weather-related risk is more appropriately addressed with precision, namely the Company's modification of its existing resource, distribution, and infrastructure planning policies, rather than the imprecise instrument of the WNA as constructed by PECO Gas. *See Id.* at 10-11, 17-20 (discussing regulatory approaches to issues which are relevant to WNAs but are beyond PECO Gas's limited analysis).

B. PECO Gas's Proposed WNA Fails to Meet All the Relevant Alternative Ratemaking Factors in the Commission's Policy Statement at 52 Pa. Code § 69.3302(a).

To determine "just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose" of the Commission's policy and the policy laid out in Section 1330, the Commission developed 14 factor it considers in a policy statement. 52 Pa. Code § 69.3302(a); *see* OCA Exh. RN-4 (evaluating the WNA proposed under the Commission's 14

policy factors). This policy statement was enacted following the passage of Section 1330 of the Code, which permits the Commission to use alternative rate mechanisms to further policy objectives, including energy efficiency. 66 Pa. C.S. § 1330. Section 1330 specifically states that “[i]t is the policy of the Commonwealth that utility ratemaking should encourage and sustain investment through appropriate cost-recovery mechanisms to enhance the safety, security, reliability or availability of utility infrastructure and be consistent with the *efficient consumption* of utility service.” 66 Pa. C.S. § 1330(a)(2) (emphasis added).

Under those factors, PECO Gas’s proposed WNA would not result in just and reasonable rates. The factors can generally be grouped into four distinct categories: cost-of-service, customer legibility, impact on low-income customers, and impact on customer conservation incentives. 52 Pa. Code § 69.3302. While no one factor is dispositive, the totality of all factors materially relevant⁷ to PECO Gas’s proposed WNA weigh against its authorization and implementation.

PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 1, 3, 4, and 14. 52 Pa. Code § 69.3302(a). The WNA is a mechanism with an unlimited horizon of recovery: without a definitive endpoint, the WNA should only be designed to recover costs of an equal horizon of recovery, similar to how the FPFTY and DSIC have been implemented. *See* 66 Pa. C.S. § 315(e), 1357(a). No such costs exist for PECO Gas. OCA Exh. RN-4 at 1. While the Company claims many of its costs are fixed, no costs are

⁷ The OCA does not address factors 2, 10, and 11 in this Brief, as PECO Gas’s conclusions with respect to these factors were not contested, and they are not material to determining whether the policy factors – taken as a whole – indicate the WNA would result in just and reasonable rates, if implemented. *See* OCA Exh. RN-4. Factor 2 discusses capacity utilization and, with respect to this factor, OCA witness Nelson testified that “PECO’s proposed WNA is not mathematically related to the utilization of the system.” *Id.* at 2. Factor 10 is concerned with the frequency of rate case filings and effect on regulatory lag, and PECO Gas and the OCA agree that the WNA is not likely to impact the frequency of rate case filings or have an effect on regulatory lag. *Id.* at 6. Factor 11 addresses how the WNA’s revenues will interact with other non-rate revenue sources; PECO Gas did not provide quantitative analysis to indicate how the WNA will interact with such sources, meaning that the OCA could not reach a conclusion regarding potential interaction. *Id.*

truly fixed beyond the FPFTY, and those costs which appear to be fixed beyond the test year – which, in reality, are not yet fixed – are recoverable through the DSIC. OCA St. 6SR at 10. Therefore, there is no direct cost-of-service foundation for the WNA which, instead of recovering costs in accordance with the Company’s cost of service, provides greater revenues for less usage, demonstrating that recovery under the WNA has an inverse relationship to the cost-of-service over the WNA’s horizon of recovery. OCA Exh. ND-1-SD at 12 (“Mr. Nelms, at the June 13 afternoon Public Input Hearing, testified that “[t]he WNA is essentially a charge for a product which customers do not use. It’s unclear to me why I would be paying additional money to PECO because the weather was warmer in the winter and I did not use their product.”). This weighs against implementation under the Commission’s policy statement factors 1, 3, 4, and 14. 52 Pa. Code § 69.3302(a).

Further, PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 5 and 6. 52 Pa. Code § 69.3302(a). The WNA reduces incentives and rewards for consumers to conserve natural gas usage. Specifically, the WNA obscures price signals by adding an element to their bills which is disconnected from the cost of service – “normal” weather – that customers cannot control or determine with any accuracy. OCA St. 6 at 9. If customers do use less gas for non-weather-related reasons, a portion of that savings is sacrificed to the Company through the WNA if weather was warmer-than-normal, because the WNA is not crafted to delineate between why customers’ usage is lower than anticipated but to “adjust” usage to reflect “normal” weather. OCA Exh. RN-4 at 2-3. The addition of an unavoidable rate increase which is affected by factors beyond the customer’s control will interfere with customers’ calculus to determine if reduced consumption or installation of energy efficiency measures will actually be cost-effective. *Id.* For these reasons, PECO Gas’s proposed WNA

weighs against implementation due to how it disincentivizes conservation, which the Commission considers under factors 5 and 6 of its policy statement. 52 Pa. Code § 69.3302(a).

Additionally, PECO Gas has failed to demonstrate that the WNA should be approved under the Commission's policy statement factor 7. 52 Pa. Code § 69.3302(a). Low-income customers are the population of customers most likely to lack the agency to conserve energy or install energy efficiency measures. OCA St. 4SR at 5. Because PECO Gas enrolls only a fraction of its low-income into its CAP, most low-income customers within PECO Gas's service territory will bear the full brunt of the WNA charges. *Id.* at 6. As stated by OCA witness Colton, "To the extent that low-income bills increase, it is reasonable to expect low-income arrears to increase as well. And with the increase in those arrears will come even further bill increases as customers bear the burden of late payment charges, reconnection charges (after nonpayment disconnections), cash security deposits, and the like." *Id.* Because it is almost certain that the WNA will result in higher bills on a month-to-month basis for PECO Gas's customers, this means that non-CAP-enrolled low-income customers will see higher monthly bills, arrearage accruals, and an overall greater risk of termination. OCA St. 6 at 13-16. As such, the Commission's policy considerations, under factor 7, weigh against implementation of the proposed WNA, as it would not result in just and reasonable rates for low-income customers. 52 Pa. Code § 69.3302(a)(7).

Moreover, PECO Gas has failed to demonstrate that the WNA should be approved under the Commission's policy statement factor 8. 52 Pa. Code § 69.3302(a). While the Company alleged that the combination of the WNA with budget billing was most likely to result in the least volatile bills on a month-to-month basis, that conclusory statement was unsupported. PECO Gas St. 3R at 17. Instead, it appears that the Company's budget billing plan is already sufficient to minimize volatility in the monthly bills of enrolled customers, with less than 1% of all enrolled customers

having a year-end balance. OCA St. 4SR at 4. PECO Gas provides no evidence to support that the WNA will improve bill predictability, pointing to the fact that customers will get used to what a “typical” bill looks like once the WNA is in place. Tr. 832. Customers should not have to endure one, two, or more years – during which time the Company may return for a rate increase – of paying WNA charges to determine what their monthly bill will look like; it should be readily apparent from the customer’s usage alone. For this reason, factor 8 of the Commission’s policy considerations, weighs against implementation of the proposed WNA, as the WNA would not reduce customers’ month-to-month bill stability. 52 Pa. Code § 69.3302(a)(8).

Furthermore, PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factor 9. 52 Pa. Code § 69.3302(a). The WNA is more likely than not going to net the Company additional revenue each year that it would not receive absent the WNA. OCA St. 6 at 13. PECO Gas’s use of a 30-year normalization period further exacerbates this problem by diluting recent weather data – which, by and large, is warmer than less recent data – to create a higher “normal” number of HDDs.⁸ This demonstrates that, under factor 9 of the Commission’s policy considerations, weather will impact utility revenue positively while having a net negative impact on ratepayers. 52 Pa. Code § 69.3302(a)(9).

Finally, PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 12 and 13. 52 Pa. Code § 69.3302(a). Customers are also likely to be confused by the WNA. All four witnesses who testified regarding the WNA during the Public Input Hearings testified that the WNA was confusing, frustrating, and would make it more

⁸ If PECO Gas is permitted to implement the proposed WNA, it would be relying on the oldest weather data of any NGDC which has implemented a WNA in Pennsylvania, each of which utilize either a 15-year average or 20-year average. See *Pa. PUC v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 9, 2002); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. PUC v. Nat’l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023).

difficult to budget. OCA Exh. ND-1-SD at 12-14. PECO Gas has not provided a sample bill containing the WNA to explain how the accuracy of the bill containing the WNA can be calculated considering the five variable equation which calculates the WNA charge. *See* 52 Pa. Code § 56.15 (requiring bills to explain how to verify the accuracy of the bill amount); *see also* OCA St. 6SR at 6 (“An equation with five variables cannot feasibly be used for budgeting or predicting bills. A person can create a visual representation of an equation that has three variables at the most.”); *supra* at Section I.C (providing the WNA equation). PECO Gas has not provided any educational materials which could alleviate concerns that the WNA will be accurately and adequately explained to the subjected customers. Tr. 834. Not only is the WNA on its face a confusing and complicated mechanism, but PECO Gas has not provided evidence that it would be able to demystify and make legible the WNA to its customers. As a result, PECO Gas’s proposed WNA should not be implemented, as enforcing an alternative ratemaking mechanism which misleads and takes advantage of consumers would not result in just or reasonable rates, and consumer legibility is a critical component of the Commission’s analysis under factors 12 and 13 of its policy statement. 52 Pa. Code § 69.3302(a).

Therefore, each of the policy considerations addressed demonstrates that the WNA is more likely to result in ratepayer harm and utility benefit without ratepayers being appropriately compensated for the significant risk they bear under the WNA. The Commission’s policy factors clearly establish that the WNA would not result in just and reasonable rates and should be denied.

C. **PECO Gas Already Has Sufficient Alternative Ratemaking Tools at its Disposal and Does Not Require a WNA that Would Further Alienate its Rate Design from Principles of Cost Causation.**

In requesting an alternative ratemaking mechanism to address the problem of weather volatility, the Company has failed to demonstrate a need for it. PECO Gas utilizes alternative ratemaking mechanisms to collect revenues for not-yet-incurred expenses and investments.

Further, PECO Gas has provided that it will file its next general rate increase request within two to three years, showing that PECO Gas is filing rate requests frequently enough to diminish the likelihood of harm from weather volatility. PECO Gas St. 3R at 10. Weather volatility is a consistent and predictable risk for NGDCs and PECO Gas has presented no evidence to support the fact that it needs a WNA in order to maintain its own financial integrity.

Specifically, the Company uses several alternative ratemaking mechanisms to hedge against the age-old risks faced by utilities and NGDCs specifically. PECO Gas avails itself of the ability to recover future expenses which will be incurred through the end of the FPFTY or recover a return on rate base put into service through the end of the FPFTY. *See McCloskey v. Pa. PUC*, 225 A. 3d 192, 208 (Pa. Cmwlth. Ct. 2020) (providing that rates are set in a general rate increase request to recover expenses incurred through the end of the FPFTY). The Company also recovers the investment in plant made in accordance with its Long-Term Infrastructure Improvement Plan (LTIIP) between rate cases through a DSIC, even rolling its projected DSIC revenues through the end of the FPFTY – though they were not yet collected or guaranteed to be collected – into presumed revenues to set rates in the instant proceeding. Tr. 670. These mechanisms permit the Company to recover as-of-yet unfixed costs which will likely *become* fixed following the Company’s future investment in distribution plant.

Each of these in some way already deviates from principles of cost-causation. It is a primary concern of the Commission that alternative ratemaking is, in some way, rooted in the cost of service. 52 Pa. Code § 69.3301 (“an alternative rate design methodology should reflect the sound application of cost-of-service principles”); 52 Pa. Code § 69.3302(a) (factors 1, 3, 4, and 14 directly pertain to cost-of-service considerations). The passage of Section 1330 of the Code, which permits implementation of revenue decoupling mechanisms, does not alter the fact that cost-of-

service is an important consideration in determining just and reasonable rates. *Cf. Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth. Ct. 2006). A WNA's attempt to increase revenue from decreased usage of its system is thus contrary to Commission policy with respect to cost of service and fundamental ratemaking principles, generally.

While PECO Gas argues that the WNA is consistent with cost causation principles because "PECO recovers a significant portion of fixed costs through volumetric rates," the fact remains that all costs are variable in the long term. OCA Exh. RN-4 at 1. Specifically, the Commission's rate design has consistently supported placing recovery of costs which PECO Gas claims are fixed in distribution rates because they are not fixed in the long-term. *See Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2010-2215623 (Order entered Oct. 14, 2011) (*Columbia 2011*) at 51-53. In the *Columbia 2011* proceeding, as part of its general rate increase request, Columbia proposed a rate design which would shift "virtually all distribution costs to the fixed customer charge component" of residential rates. *Id.* The Commission rejected this proposal, stating "Such a proposal would have achieved Columbia's goals of stable revenues, but at the expense of consumer interests in benefiting from energy efficiency investments." *Id.* The Commission has consistently provided that volumetric distribution rates are the proper mechanism to recover the cost of service which does not vary with the addition or subtraction of a single customer, even if the utility claims that such costs are fixed.

In addition, the only costs which can properly be considered "fixed" are the Company's claimed costs which extend through the end of the FPFTY, as those are the only costs for which the Company can request recovery in this proceeding. PECO Gas's investment in distribution plant, operations and management expenses, and other costs increase may fluctuate as such costs are incurred beyond the FPFTY. The alternative ratemaking mechanisms of the FPFTY and the

DSIC already serve to recover not-yet-incurred costs beyond the scope of this proceeding; in other words, PECO Gas already has the tools to recover costs that will likely *become* fixed between rate proceedings. Planned improvements eligible to be included in an NGDC’s LTIIP – or costs which become fixed but are not fixed at the time of its general rate increase request – are already recoverable through the DSIC until the NGDC adds the improvements to rate base in a subsequent rate proceeding. 66 Pa. C.S. § 1357(a). The Company has presented no evidence to demonstrate that the pre-existing alternative ratemaking mechanisms are in some way inadequate to ensure that it will retain the opportunity to earn its revenue requirement.

D. PECO Gas is not Entitled to a Guarantee of Meeting its Established Revenue Requirement and Guaranteeing Revenue Disincentivizes Efficient Management.

According to PECO Gas, the WNA is an attempt to guarantee, or “provide. . .greater certainty,” of the Company’s recovery of the Commission’s authorized revenue requirement for residential and small commercial customers. PECO Gas St. 3 at 66:18-20. However, PECO Gas overlooks the fact that utilities are not entitled to assurance during ratemaking that they will be able to recover net revenues; instead, utilities are granted the *opportunity* to recover their authorized revenue increase. *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*). This is a critical distinction. In Pennsylvania, there is no statutory guarantee of net revenues, judicial or Commission precedent which supports the guarantee of recovering net revenues, and the public interest weighs against guaranteeing levels of revenues. *Pa. Elec. Co. v. Pa. PUC*, 502 A.2d 130, 133-35 (Pa. 1985) (determining just and reasonable rates does not require setting rates which are guaranteed to ensure continued net revenues). As a result, PECO Gas’s request to implement a revenue mechanism which seeks to set a floor of recovery at the Commission’s authorized levels of revenue runs counter to relevant law governing utility monopolies.

It is inequitable for only the Company to be able to benefit in the event of costs or revenues not materializing. When forming its general rate increase request, PECO Gas is permitted to include all revenues it anticipates collecting and all expenses that it anticipates incurring during the FPFTY. Should expenses not materialize to the extent claimed by the Company, ratepayers are not able to recover their overpayment. *Nat'l Fuel Gas Dist. Corp. v. Pa. PUC*, 464 A.2d 546, 567 (Pa. Cmwlth. Ct. 1983) (“[T]he Code does not authorize the imposition of a refund of excess revenues and improvident expenditures without consideration of the reasonableness and justice of the rates as a whole.”). Instead, the Company is able to pocket the difference between its projected and actual expenses and retain those earnings, to the benefit of shareholders; this provides an incentive for utilities to control costs and maximize net operating income. Should the WNA be implemented, the Company’s incentives to tighten its belt during periods of warmer-than-normal weather will be reduced. Instead of implementing solutions which the Company has previously relied upon to address declining sales in its significant history of operating as an NGDC or to creatively address the issue in a proactive manner – such as refining its approach to infrastructure or expense planning – PECO Gas would prefer to remain impervious to changing weather.

Furthermore, there is no evidence to support the fact that PECO Gas will be placed at a disadvantage in capital markets because it does not have a WNA implemented. *See Hope*, 320 U.S. at 603 (“the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks.”). As stated by OCA witness Garrett, the risk of warmer-than-normal weather is a business risk for all NGDCs; this means that it is diversifiable and does not impact the overall cost of equity for the Company, as “investors do not expect a return for such risks.” OCA St. 2 at 49. There are no inputs into the Commission’s preferred cost of equity model, the Discount Cash Flow method, or the secondary model, the Capital Asset Pricing Model,

for business risk, reflecting investors do not expect to recover for such risks. *Id.* This fact was not rebutted by PECO Gas. Due to the age and experience of NGDCs with navigating periods of variations in weather over the past century, investors are well aware of this business risk and are unlikely to flee if a regulated NGDC posts revenues lower than its authorized revenue requirement as a result of warmer-than-normal weather.

In addition, PECO Gas's claim that investors expect alternative ratemaking mechanisms like a WNA because the members of the Company's proxy group have similar mechanisms is unfounded. PECO Gas St. 5 at 11. While several subsidiaries to the Company's proxy group may have implemented WNA-like mechanisms, the members of the proxy group themselves are merely holding companies for regulated utilities and unregulated utilities and businesses; it is unreasonable to conclude what the effect of a subsidiary's alternative ratemaking mechanism on a firm's overall cost of equity actually is, as such a conclusion would be purely speculative. This is especially true when considering the effect that having a substantial portion of a firm's revenues coming from areas beyond the regulated gas utility industry may have on firm's overall cost of capital. *See* I&E St. 2 at 10 (excluding Company proxy group member because less than 50% of its revenues come from regulated gas utilities).

Importantly, PECO's investor faces reduced risk by investing in a combined gas and electric utility. PECO Gas St. 5 at 8. As temperatures increase over time, creating warmer-than-normal weather, they are increasing during the heating season as well as the cooling season. This means that ratepayers are facing increased cooling costs in the summer. OCA St. 6 at 10. For PECO, this means that the extent to which recovery is limited for gas operations by a warmer-than-normal heating season, recovery will be substantial for electric operations during the cooling

season. *Id.*⁹ In this way, PECO's investor has effectively diversified the impact of warmer-than-normal weather and does not require a WNA in order to continue investment in PECO Gas's operations.

PECO Gas has not presented evidence to support the notion that (1) weather-related risk is a new concern for NGDCs, (2) without the WNA the Company will be unable to provide adequate and reliable service, and/or (3) the Company would not be able to recover sufficient revenue in its next base rate case in two to three years to mitigate unearned revenue as a result of warmer-than-normal temperatures. Because weather is merely a business risk for NGDCs, and the Company has not demonstrated a need for alternative ratemaking above and beyond the FPFTY and DSIC, there is no evidence to support the notion that PECO Gas needs the proposed WNA or that it should be approved.

E. The Proposed WNA Will Not Benefit Customers.

The Company claims that the WNA is mutually beneficial to itself and to its customers. PECO Gas St. 3-R at 12. The fact that the formula for calculating the WNA works bi-directionally does not mean that the customers will benefit over the course of a heating season. In this regard, PECO Gas sells its customers, and the Commission, a false promise: WNA charges this month are a down payment on WNA credits in the event of a colder-than-normal winter. As fully substantiated in the OCA's testimony – and unrebutted and unaddressed by PECO Gas – the likelihood persists that weather is more likely to be warmer-than-normal than colder-than-normal. OCA St. 6 at 16. Specifically, weather is not only more likely to be warmer-than-normal than colder-than-normal, but warm weather is much warmer than normal compared to how much colder

⁹ Notably, PECO Electric, in its pending rate proceeding, did not recommend the implementation of a decoupling mechanism which would mitigate weather risk to customers during warmer-than-normal summer months and revenue risk to the Company during cooler-than-normal summer months, similar to the WNA. This would seem to indicate that PECO understands that warming weather is a risk to its gas operations and a boon to its electric operations.

than normal cold weather is. *Id.* at 14. In other words, not only are customers more likely to experience a charge than a credit, but the likely amount of a charge is much greater than the likely amount of a credit. *Id.*

Importantly, PECO Gas measures its weather data at the Philadelphia Airport, which is the same location relied upon by the Philadelphia Gas Works (PGW) to measure weather data for its WNA. *Compare* Rate Filing Vol. 5, Attachment 53.64.c-13(a) at 4 *with Pa. PUC v. Phila. Gas Works*, Docket No. R-2023-3037933 (Order Entered Nov. 9, 2023) Rate Filing, Vol. 1, Official Statement at 78. PGW, in May 2022, over-collected \$12 million in WNA charges, leading to the subsequent removal of May from the active period of PGW’s WNA mechanism. *See Pa. PUC v. Phila. Gas Works*, Docket Nos. R-2022-3034229 et al (Order entered Sept. 21, 2023) (PGW Emergency Petition regarding tariff adjustments to remove the month of May from its WNA). While PGW’s WNA is subject to review in its next base rate proceeding, the Commission has more data now regarding the likelihood that WNAs will collect charges than provide credits than it has in previous proceedings where a WNA was requested. Because PECO Gas will use the same weather data as PGW when implementing its proposed WNA, it is important to review the lessons of PGW when considering the instant WNA proposal.¹⁰

Specifically, while PECO Gas introduced no specific analysis of the likely revenues of its proposed WNA into the record, PGW has netted approximately \$80 million from its WNA since 2019, as set forth in the table below.

¹⁰ Importantly, PECO Gas serves a much more geographically expansive service territory than does PGW. The Company’s territory spreads from New Hope in the northeast, to East Greenville in the north, to Chesterville in the southwest. PECO Gas presented no evidence that the use of a single location to measure weather data would be sufficient to provide accurate measures of AHDDs or NHDDs to reflect the weather experienced by customers throughout its service territory, instead of merely those closest to Philadelphia.

PGW Annual WNA Revenues since 2019 ¹¹	
Year	WNA Charge (Credit)
2019 ¹²	\$1,595,837
2020 ¹³	\$10,789,328
2021 ¹⁴	\$11,761,938
2022 ¹⁵	\$23,159,935
2023 ¹⁶	\$32,396,102
Total	\$79,703,140

While PGW and PECO Gas have different service territories, it is an important point of comparison considering the underlying weather data is identical and the size of the two NGDCs is similar. This is especially true, considering that the WNA charges in PGW’s service territory are consistently high in the month of May – a month which PECO Gas continues to support including in its WNA effective period – and PECO Gas’s longer load forecasting period creating an increased likelihood of a higher number of NHDDs per year (or greater charges and smaller credits) than PGW has currently implemented. OCA Exh. RN-4 at 5 (“PECO is using [a] 30 year [weather normal] which will likely lead to the largest amount of surcharges, when compared to a 10 or 20 year weather normal.”).

PECO Gas provided a revenue analysis regarding how the proposed WNA would have impacted customers over the previous 10 years. *See* OCA Exh. RN-3. This analysis demonstrated that the Company would have netted an average revenue bump of \$11 million *per year*, with only two years where customers would have received net credits. *Id.* at 2. Importantly, during the two years where customers received net credits, the amount netted in credits (\$11 million in 2014 and

¹¹ PGW provides publicly available annual reports regarding its WNA revenues at *Pa. PUC v. Phila. Gas Works*, Docket No. R-2017-2586783 (Order entered Nov. 8, 2017).

¹² Available at: <https://www.puc.pa.gov/pcdocs/1649264.pdf>.

¹³ Available at: <https://www.puc.pa.gov/pcdocs/1706848.pdf>.

¹⁴ Available at: <https://www.puc.pa.gov/pcdocs/1729601.pdf>.

¹⁵ Available at: <https://www.puc.pa.gov/pcdocs/1770259.pdf>.

¹⁶ Available at: <https://www.puc.pa.gov/pcdocs/1811170.pdf>.

\$5 million in 2018) was equal to or less than the average WNA revenue received by the Company during the 10-year period. *Id.* PECO Gas did not provide *any* testimony to acknowledge this data or to disavow the notion that, on a year-over-year basis, the Company will be extracting additional revenues beyond the rates authorized in this proceeding; rates which are designed to meet the established revenue requirement. There is simply no credible evidence in this proceeding indicating that customers and the Company share the risks equally, and all of the evidence demonstrates that it is far more likely than not that customers will pay millions of dollars more each year in support of the WNA.

F. Low-Income Customers will be Particularly Disadvantaged by the WNA.

Before considering the addition of WNA charges on top of PECO Gas rates, it is imperative to note that PECO Gas rates are unaffordable at present rates for many of its customers. As data presented by OCA witness Colton demonstrates, bill unaffordability for PECO Gas rates reaches 40% of households within PECO Gas's service territory. OCA St. 4 at 25 (measuring unaffordability using the Asset Limited, Income Constrained, Employed or ALICE survival index). This is especially true under the effects of the highly inflationary environment ratepayers are currently experiencing, which has not been matched by commensurate growth in income. *Id.* at 17-23. As discussed more fully below, this impact will be felt most strongly by low-income customers, due to the small fraction of low-income customers enrolled in PECO Gas's customer assistance program (CAP).

When considering if the WNA would result in just and reasonable rates, it is imperative to consider all customers, not merely those that would recognize benefit from a WNA credit because they are able to financially plan year-over-year instead of month-over-month. To be sure, PECO Gas has not produced any evidence that customers would actually be able to do such planning, so even the Company's claims pertaining to bill predictability and budgeting are unsupported. For

some customers, each winter month, the threat of the WNA increasing their bill to the point they could not afford it would become a consistent concern.

Low-income customers would be disproportionately impacted by the proposed WNA. At the outset, the proposed WNA will apply to confirmed low-income customers enrolled in PECO Gas's CAP, though CAP customers will only be charged their percentage of income payment under the Company's percentage of income payment plan (PIPP). OCA St. 4 at 85. As a result, the amount of any WNA adjustment will also apply to the cost of the CAP program recovered from non-CAP customers; in other words, non-CAP customers who are subject to the WNA will have to pay not only their own WNA adjustments, but also increased costs of CAP customers. PECO Gas St. 3 at 21. This double-recovery is inequitable and a flaw in the Company's WNA proposal. If the Company excluded CAP customers from the customer classes to whom or to which the WNA would apply, then there would be no double-recovery of WNA charges from non-CAP customers through the universal services rider.¹⁷

WNA charges are also likely to be more significant for low-income customers than for non-low-income customers. As explained by OCA witness Colton, low-income customers are less likely to be able to utilize energy efficiency measures in the home to reduce their overall natural gas usage, including home insulation, sealing one's home, or through installing a programmable thermostat. OCA St. 4SR at 5. Due to a decreased ability to influence natural gas usage through efficiency measures in the home, low-income customers must use disproportionately more natural

¹⁷ PECO Gas argues that excluding CAP customers from customers subjected to the WNA would undermine the goal of the WNA, including the benefits to the Company and the hypothetical benefits to subjected customers. PECO Gas St. 3 at 22. However, if the likelihood of warmer and colder than normal weather were as equal as implied by PECO Gas, then the Company would not need to include CAP customers within the pool of customers subjected to the WNA. As stated by the Company, "when weather is warmer than normal, OCA's proposal will result in a greater [universal service fund charge] USFC credit to non-CAP customers than under Commission-approved rates, resulting in under-recovery by the Company." *Id.* Because warmer than normal weather is more likely than colder than normal weather, the Company would not agree to exclude CAP customers, as under-recovery is more likely than over-recovery.

gas to heat the same space than a non-low-income customer during winter months, or they must resort to more extreme measures to control usage. OCA St. 4 at 74-76. As stated by Mr. Colton, “the population of customers which is most likely to be harmed by the WNA is that population of customers which does not have the ability to control their bills by reducing their consumption,” a population which is most likely to be comprised of low-income customers. OCA St. 4SR at 5.

In establishing the WNA, PECO Gas did not consider the monthly impact on customers, but instead focused on the annual impact to customers, and the overall impact to customers over several years. OCA St. 4 at 88. However, many customers struggle to afford their utility bills on a month-to-month basis, and considerations regarding consumer impact and affordability should be made on a month-to-month basis, instead of year-over-year. *Id.* Especially during winter months, when natural gas bills increase as a result of cooling weather, residential customers can afford to pay a lesser percentage of their natural gas bills than during shoulder and summer months, causing spikes in the total arrears for low-income customers. *Id.* at 87 (showing that the Company’s total arrears for low-income customers generally increases annually from November to March). PECO Gas did not provide evidence sufficient to alleviate the concern that, during particularly warm months – and especially during the shoulder months of October, November, April, and May – residential customers could see significant increases in their monthly bills as a result of the WNA, making such bills unaffordable.

Instead, as stated above and in Mr. Colton’s testimony, it is more likely than not that the WNA will result in bills over and above the rates established in this proceeding. OCA St. 4 at 86. PECO Gas did not address the evidence which demonstrates that charges are more likely than credits in its rebuttal testimony and, because it remains uncontroverted, such evidence clearly establishes that the likelihood of rate harm under a WNA – on a month-to-month basis or on a

year-over-year basis – is substantial. Those customers who are the most impacted by rate harm are low-income customers, especially the significant portion of low-income customers served by PECO Gas who are not enrolled in CAP. OCA St. 4SR at 5 (“Being ‘low-income’ and being a ‘CAP participant’ are not synonymous with each other. Irrespective of what protections may be offered by CAP, there remains a substantial portion of the low income population served by PECO Gas not served by CAP.”).

In sum, the proposed WNA constitutes an inequitable shift of the risk of warming weather from the Company onto its customers. As stated above, weather risk is not new to the regulated natural gas utility industry; yet, PECO Gas seeks to shift its perennial risk on to ratepayers under the guise of a mutually beneficial mechanism. Not one shred of evidence supports the idea that customers are likely to see any material financial benefit from implementation of the WNA as charges are more likely than credits, and the likely size of any credits is substantially smaller, cumulatively or individually, than the size of charges. OCA witness Nelson concluded that “While there has been a total of 323 HDDs that were colder than normal using monthly true-up, there have been over 10 times more HDDs (3,388!) that are warmer than normal using the same monthly true-ups over the last 10 years of winter.” OCA St. 6 at 13. This clearly demonstrates the risk customers face.

It is indisputable that the WNA, under the Company’s proposal, is a rate requested to seek to guarantee its profit in the face of warming weather and earn at a revenue requirement set by a higher number of heating degree days than should reasonably be anticipated. PECO Gas’s request alleviates the Company’s burden of setting its rates at a reasonable number of HDDs when, under the WNA, PECO Gas could set the number of HDDs as high as it can get away with – in other words, by using a 30-year average – to ensure substantial earnings over weather expectations.

The Company has provided no evidence of a benefit, net or otherwise, to ratepayers. The risk of customers dramatically overpaying for identical usage levels outweighs the possibility that in some winter months, customers may have bills which align with their expectations, or are reduced. As a result, the WNA proposed by PECO Gas is constructed to obscure the true cost to consumers and inequitably shifts weather risk which only the Company is well-equipped to handle on to consumers. Ratepayers will not benefit under this shifted risk, and the slight chance of a small bill credit is an insignificant benefit compared to the Company's ability to practically guarantee its ability to earn its authorized revenues.

G. Under a WNA, Customers Sacrifice Their Bill Savings From Reduced Usage to the Company.

When setting rates, the Commission has long recognized two characteristics of traditional ratemaking and rate design: that customers understand what costs of service their bill contributes towards, or “price signals,” and that the customer be incentivized to conserve energy and reduce their commodity consumption. *See, e.g., Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) (*PECO Gas 2021*) at 275. However, the WNA both distorts price signals and reduces the efficacy of customers' conservation efforts.

Accurate price signals reflect how the services ratepayers receive appear on their bills; fixed charges are meant to reflect the cost of connection, while variable charges reflect the cost of commodity consumption and distribution. *See, e.g., Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Order Dec. 28, 2012)¹⁸ at 124-31 (placing sufficient revenue requirement in distribution rates to ensure customers receive accurate price signals and have control over their bills). Accurate pricing policies enable consumers to understand the finite nature of the commodity they receive from the utility and incentivize energy efficiency by reducing bills in proportion to

¹⁸ Available at: <https://www.puc.pa.gov/pedocs/1206360.docx>.

reduced usage. OCA St. 3 at 30. However, a WNA provides *no* price signal to customers because WNA charges do not relate to any service provided by the Company or even weather experienced by the customer and, instead, reflect historical weather patterns.

For example, if a customer experiences an atypically warm March, they may anticipate that their bill for that month will be much lower than the prior year's bill, during a colder March, because they used less natural gas for heating purposes. Yet, under the Company's proposal, the customer would see a bill similar to that of years prior, instead of one directly related to the actual weather experienced. The 30 years of weather data which comprise the NHDD calculation dilute the effect of seasonal or annual trends as the number of HDD in 2023 will be assigned equal weight to the number of HDD in 1994 when determining what weather is "normal."

Because the WNA provides inaccurate price signals, customers have a more difficult time determining whether limiting their consumption or improving their home's energy efficiency is worthwhile. As stated above, accurate price signals are an important part of rate design because they properly incentivize customer conservation of utility service. *See PECO Gas 2021* at 274 ("Improved price signals can translate into more economically efficient energy usage."). The WNA's distortion of price signals makes it more difficult for customers to determine if investment in energy efficiency measures are sufficiently beneficial to outweigh the cost, or to reward customers for reduced consumption.

In response to OCA witness Nelson's criticism that the WNA reduces incentives to consumer bill conservation and energy efficiency, the Company's response was that "The WNA does not disincentivize energy efficiency programs. Customers will still benefit from making efficiency investments." *PECO Gas St. 3R* at 17. PECO Gas provided no further elaboration or response and provided no data to support the idea that customers' energy efficiency measures will

be equally beneficial under the proposed WNA as under present rates. *See* 66 Pa. C.S. § 315(a) (requiring the utility proposing a new rate to provide evidence which shows that it is just and reasonable). Yet, it is undeniable that if a month is warmer than normal and a customer either reduces their usage, or invests in energy efficiency measures which would lower their bill *independent of the weather*, then a customer's bill will be higher as a result of the WNA than if no WNA were in place.

Therefore, to the extent that customers elect to take conservation measures if the WNA is put in place, a portion of those savings will be sacrificed to the Company under the proposed WNA. OCA Exh. RN-4 at 3-4. The Company should not be rewarded for the conservation efforts of its customers. *See PAWC 2023* at 308 (finding that an alternative ratemaking mechanism which causes customers to share their bill savings with the utility disincentivizes conservation practices). Customers are entitled to see the dollar-for-dollar decrease to their bill which directly corresponds to the lesser usage resulting from their investment in conservation.

H. The WNA is Likely to Cause Customer Confusion.

The WNA as a concept is difficult to understand for customers because it decouples a customer's bills from the cost to serve those customers. Two customers testified at Public Input Hearings in this proceeding that the WNA was difficult to understand and budget for. OCA Exhibit NAD-1-SD at 12-14.

For example, Mr. Nelms, at the June 13 afternoon Public Input Hearing, testified that “[t]he WNA is essentially a charge for a product which customers do not use. It's unclear to me why I would be paying additional money to PECO because the weather was warmer in the winter and I did not use their product.” Tr. 451. Similarly, Mr. Tracey, at the June 13 afternoon Public Input Hearing, testified that

I go to a store, you buy something, you know what you're paying for. But this - this WNA charge, no clue how it's calculated, how it will be calculated, and that's going to lead to confusion. And people, a lot of people don't put the time in and they'll just pay it because they don't understand it. And I want to understand what I'm paying. And it seems to me to be like a paragraph on my bill trying for them to break it down, to explain to me what I'm paying for. And I don't appreciate that.

Tr. 506-507. Mr. Nelms also expressed concern regarding PGW customers' difficulties with the WNA and being significantly overcharged; PECO Gas customers are concerned, as they should be, about the potential for the proposed WNA to have similar effects to those of PGW. Tr. 452.

The difference between "normal" and experienced weather will impact a customer's ability to understand month-over-month changes in billing, which should be decreasing due to warmer weather and less gas usage, but would not be decreasing proportionately to reduced consumption as a result of the WNA's revenue smoothing effects. As stated by PECO Gas witness Trzaska, the hope is that, over a period of years, customers will be able to determine what level of warmth in a given month constitutes "normal." Tr. 832. However, Mr. Trzaska admitted that he cannot determine what "normal" weather is in a given day or month and would not expect a customer to be able to, either. Tr. 831-32. Ms. Vanbuskirk testified at the June 13 evening Public Input Hearing that the WNA is confusing because "you never know what the weather is going to be. And then that's going to be a charge where they're going to take it off your bill. But when you're on a fixed income, that is hard to calculate what I'm going to pay." Tr. 540.

Without the ability to ground the Company's determined "normal" weather in actual weather, customers will not only be frustrated because their month-to-month bills are not moving in the anticipated direction but will be less able to predict how experienced weather will impact their bills. The Company's claims that the proposed WNA will reduce bill volatility on an annual basis or during unseasonably warm or cold months is, at best, a distraction. While bill stability may matter to customers, there are far simpler ways for them to achieve this stability through such

mechanisms as budget billing. Customers expect their monthly bills to relate to their usage and the weather *they experienced* and certainly would not appreciate having a charge added to their bill because they used less gas than PECO Gas anticipated in this proceeding, based on thirty years' weather data. The requirement to track five variables' worth of data to predict a monthly bill places a substantial and unreasonable burden on subjected ratepayers. As stated by OCA witness Colton:

[I]t is essential to avoid the pitfall of thinking about bills and energy burdens on an annual basis. Bills are paid monthly. While, in theory, the WNA may appear to create less volatility year-over-year, it creates substantially more volatility month-to-month. This consideration is especially important for those customers who struggle to meet their monthly payments and rely on budgeting and planning to stay on top of their living expenses.

OCA St. 4 at 88.

If PECO Gas seeks to reduce volatility in customer bills as a result of seasonal fluctuation in bills, the Company can promote budget billing to its customers, which is already available under the Commission's regulations and permits reconciliation of over- or under-billing, unlike the WNA. *Id.*; 52 Pa. Code § 56.12(8). PECO Gas both admits that customers who wish to stabilize monthly bills can sign up to be enrolled in a budget billing program and that it has not conducted any survey of its customers to gauge their interest in having a WNA mechanism for purposes of receiving bills that reflect normalized weather conditions. PECO Gas St. 3R at 19; Tr. at 834.

However, PECO Gas has underserved its low-income customer base by enrolling a disproportionately low number of confirmed low-income customers in its budget billing plan. While 6.1% of PECO Gas's customers are confirmed low-income, only a high of 4.2% of budget billing participants have been confirmed low-income in the past two years, though that amount has declined recently to 3.1%. OCA St. 4 at 88-89. Customer accounts are already exposed to seasonal volatility. While the number of accounts with arrears between 30 and 60 days old does not vary significantly during the winter heating season, the amount of those arrearage balances does vary.

Id. at 92. This is not an issue the WNA would resolve, because the WNA does not eliminate seasonal volatility in bills: it attempts to set a hypothetical “normal” representation of what a winter bill should be, an approach which does not lower the peaks customers’ bills reach during the winter season but keeps the peaks at a similar level year-over-year. *Id.* Enrolling customers in budget billing, however, creates a more static bill month-to-month which is higher in the summer and lower in the winter, than non-budget billing customers see, to recover the estimated annual bill.

Budget billing, therefore, corrects for the seasonal volatility experienced by PECO Gas customers in a predictable way which guarantees customers can accurately budget for their bills and that the Company earns its annual estimated revenue from that customer. *Id.* If PECO Gas devoted more resources to enrolling low-income customers in its budget billing program, both the Company and the enrolled customers would benefit. *Id.* at 94. Examining the benefits of budget billing – along with PECO Gas’s underservicing of the program despite its efficacy – demonstrates that the benefits PECO Gas purports would result from the WNA are already present on an opt-in basis through budget billing. It effectively reduces seasonal volatility and only requires a small portion of enrollees to true-up at the end of each billing year. Clearly, the averred benefits of the WNA for consumers are illusory and unwanted. Ratepayers subject to the WNA will not, on net, benefit from the proposed WNA in the manner indicated by PECO Gas because, when given the opportunity to *actually* address seasonal volatility in billing by enrolling in budget billing – unlike with the WNA – decline to do so, with less than 15% of PECO Gas’s customer base enrolled in budget billing. *Id.* at 90. The OCA submits that a second, less effective mechanism which PECO Gas avers meets the same or a similar goal does not constitute a benefit to ratepayers.

PECO Gas argues that budget billing and the WNA work best in tandem to better reduce bill volatility. PECO Gas St. 3R at 19-20. However, the Company provides no data to support this

assertion. OCA witness Colton reviewed the Company's budget billing program and found that of the over 70,000 participating accounts, the number with *any* amount of bill balance was in the hundreds. OCA St. 4SR at 4. This plainly demonstrates that PECO Gas's budget billing program is effective at controlling intra-year variations in bill balances which may result from the seasonal impact of weather. There is no demonstrated need to "complement" the pre-existing budget billing program with a WNA and no evidence to support that implementing a WNA would improve the budget billing program. As such, the Company's claims regarding the WNA reducing bill volatility are easily dismissed.

Additionally, PECO Gas's proposed bill language regarding the WNA is inadequate under the standards set forth in Chapter 56 of the Commission's regulations. Chapter 56 addresses the components a regulated utility must generally include in its bills. 52 Pa. Code § 56.15. Among the requirements are the customer's meter readings at the beginning and end of the customer's billing cycle, basic charges, adjustment charges, credits made to the account during the billing period, and "an explanation of how to verify the accuracy of a bill." *Id.* However, there is no assurance that the WNA proposed by PECO Gas will be calculable based on the customer's bill. It is unreasonable to expect that a residential customer will pore over the Company's tariff and other filings to identify each of the variables which are not available on their bill to be able to calculate what their WNA charge should be, or that a customer should call PECO Gas every month to discuss how the WNA is calculated. The WNA is not like any other rate component currently in place because it causes changes in a customer's bill based on a factor that they cannot control – weather – and the complexity of the calculation is unparalleled. *See supra* at Section I.C (providing the equation used to calculate the WNA).

In addition, PECO Gas has not provided a sample bill which demonstrates how customers will be informed of how the WNA charge on their bill is calculated. The Company has also not provided any educational materials which will be distributed to the customers subjected to the WNA to provide assurances to the parties that customers will be adequately informed. The OCA is unwilling to presume that whatever materials the Company provides to customers will be sufficient; instead, the burden rests on the Company to demonstrate that customers will be able to understand the WNA and that its bill will satisfy the requirements of Chapter 56. The Company has failed to meet that burden.

The Public Input Hearing testimony in this proceeding unequivocally demonstrates that customers have a difficult time understanding what the WNA is, what it does, or how to plan for it. OCA Exh. NAD-1-SD at 12-14. If customers are already concerned about the WNA, that concern will grow and become more vocal once WNA charges begin appearing on customers' bills. PECO Gas provided no evidence which might indicate that customers will understand the WNA, or that PECO Gas will be able to properly educate consumers about the WNA and how to verify the accuracy of their bill. A rate component the accuracy of which cannot be verified or is not understood cannot be just and reasonable.

I. PECO Gas Cannot Meet its Burden of Proof for the Proposed WNA by Relying on the Existence of Other Utilities' WNAs.

WNAs have been put into effect by four NGDCs in Pennsylvania: Philadelphia Gas Works, UGI Utilities, Inc., National Fuel Gas Company, and Columbia Gas of Pennsylvania. However, the Commission's decision to authorize WNAs for other NGDCs does not mean that PECO Gas has met its burden of proof in this case that the proposed WNA would result in just and reasonable rates. 66 Pa. C.S. §§ 315(a), 1301, 1330. The faulty logic of such a position is akin to arguing that a revenue requirement determination made in a PGW rate case ought to automatically entitle PECO

Gas to the same level of revenue that PGW received. OCA St. 6SR at 8. The Commission should not permit PECO Gas to be absolved of its burden of proof to support the WNA by merely pointing to other utilities. The OCA submits that the Commission’s obligation to give due consideration to consumers’ interests requires much more than the regulatorily-equivalent claim of “everyone else is doing it.”

Further, the four NGDCs which have received their WNA mechanisms did so as a result of unanimous settlement agreements. *See Pa. PUC v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 9, 2002); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. PUC v. Nat’l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023). Settlements must be found by substantial evidence to be in the public interest in order for the Commission to approve them and, to be in the public interest, involve compromise between the disparate positions of utilities and advocates. 52 Pa. Code § 5.232(d). Settlement agreements are reviewed in their totality to reflect the individual parties’ compromise and the inclusion of a particular term within the settlement agreement is not precedential for determining whether the Commission’s approval containing a term – such as a WNA – means that the term is in the public interest or would result in just and reasonable rates. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2022-3031211 (Order entered Dec. 8, 2022)¹⁹ at 107 (“It is well-established that the terms and conditions of settlements are not relied upon as precedential.”). PECO Gas has not obtained the support of a settlement to implement its proposed WNA, as prior NGDCs have.

¹⁹ Available at: <https://www.puc.pa.gov/pcdocs/1767004.pdf>.

The existence of other WNAs does not satisfy PECO Gas's burden of proof that its WNA would result in just and reasonable rates. *See Bell Atl. – Pa., Inc. v. Pa. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. Ct. Dec. 18, 1995) (administrative agencies are not bound by the rule of *stare decisis*, but are, instead, tasked with rendering consistent opinions that affirm, overrule, or distinguish prior opinions). In other words, just because other NGDCs have implemented WNAs does not mean that PECO Gas's customers will understand the complex calculations involved in translating weather and usage data into a charge on their bill. In fact, even for customers currently subjected to WNAs by other NGDCs, there is rampant frustration and confusion regarding the additional monthly charge. OCA St. 6SR at 12.

Similarly, the Commission recently rejected Pennsylvania American Water Company's (PAWC's) request to implement an alternative ratemaking mechanism which would decouple ratepayer revenues in the same vein as a WNA. *PAWC 2023* at 307-08, *supra*. The Commission rejected PAWC's proposal because (1) PAWC did not establish the need for a revenue decoupling mechanism, (2) the decoupling mechanism does not benefit consumers, and (3) the mechanism is confusing to consumers and would detract from conservation efforts. *Id.* As laid out above, the Company's proposed WNA fails in each of these respects. Therefore, when considering decoupling mechanisms similar to WNAs, the Commission has found that such mechanisms would not result in just and reasonable rates, without having ever specifically found that a WNA would necessarily result in just and reasonable rates.

In essence, any arguments raised by PECO Gas that the proposed WNA should be implemented because other NGDCs have WNAs should be rejected. The burden does not rest with the OCA to provide arguments which are specific to the proposed WNA and not WNAs generally.

Instead, PECO Gas must demonstrate that the WNA *the Company proposed* would result in just and reasonable rates. 66 Pa. C.S. § 315(a), 1301, 1330.

It has failed to do so. Instead, substantial evidence supports the OCA's conclusion that the WNA would not result in just and reasonable rates. The WNA will improperly and inequitably shift the risks associated with volatile weather on to residential and small business ratepayers while providing those ratepayers with only a small likelihood of hypothetical benefit. PECO Gas does not need a WNA: its access to capital is not threatened without a WNA, it has the tools to cope with short-term weather volatility or else it would have existed for over a century, and its use of the FPFTY, DSIC, and plan for frequent rate cases demonstrate that the WNA is a luxury for the Company paid for by its customers. The WNA will increase customer bills, an undisputed fact supported by evidence provided by PECO Gas. *See* OCA Exh. RN-3. If the Commission believes that the regulated natural gas industry is threatened by warming weather, the solution is not to implement alternative ratemaking mechanisms which seek to address a narrow issue with wide-ranging and inaccurate impact. As such, the OCA respectfully requests that the Commission deny PECO Gas's request to implement a WNA because the Company failed to support its request with substantial evidence and meet its burden of proof that the proposed WNA will result in just and reasonable rates.

IV. CUSTOMER SERVICE REPRESENTATIVE ISSUES

The OCA did not present evidence in this proceeding regarding adequacy of customer service representatives' training on PECO Gas' new billing system, the adequacy of supervisor support to customer service representatives, or customer service representative overtime requirements and satisfaction. As such, the OCA does not address these issues in its Main Brief but reserves the right to respond to such issues raised by other parties in its Reply Brief.

V. IBEW PROPOSALS

To the extent that the OCA presented evidence in this proceeding regarding the issues raised by IBEW, the OCA submits that such issues are fully addressed in the Joint Petition for Non-Unanimous Partial Settlement of Rate Investigation, will be fully addressed in the OCA’s forthcoming Statement in Support, and need not be addressed in its Main Brief. However, the OCA reserves the right to respond to arguments raised by other parties in its Reply Brief.

VI. PUBLIC COMMENT ON THE SETTLEMENT

The OCA joined the Joint Petition for Non-Unanimous Partial Settlement of Rate Investigation, and its position on the Settlement will be fully set forth in its Statement in Support.

VII. CONCLUSION

In summary, PECO Gas has not met its burden of proof that the proposed weather normalization adjustment mechanism would result in just and reasonable rates. Therefore, the Commission should reject the Company’s request to implement a WNA as it is unsupported by substantial evidence.

Respectfully submitted,

Counsel for:
Patrick M. Cicero, Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: 717-783-5048
Fax: 717-783-7152

Dated: September 6, 2024

/s/ Jacob Guthrie
Jacob D. Guthrie
Assistant Consumer Advocate
PA Attorney I.D. # 334367
JGuthrie@paoca.org

Gina L. Miller
Senior Assistant Consumer Advocate
PA Attorney I.D. # 313863

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
OCAGASPECO2024@paoca.org

OCA Proposed Findings of Fact

Overall

1. PECO Gas’s stated purpose of the proposed weather normalization adjustment (WNA) is to smooth the Company’s revenues to seek to ensure that the Company earns its entire revenue requirement established in this case despite declining usage, which may or may not stem from weather-related reasons. PECO Gas St. 3 at 66-67.
2. The proposed WNA would function by adjusting residential and small- and medium-sized commercial customers’ monthly bill for the quantity of gas which the Company projected they would use based on predicted “normal” weather for that month. OCA St. 6 at 6.
3. Under PECO Gas’s WNA proposal, if a month is warmer than anticipated during the months of October 1 through May 31, the customer will receive a charge for the quantity of gas the Company believes the customer hypothetically would have used had the weather been as cold as the Company anticipated; the inverse is true for weather that is colder than the Company anticipated, resulting in a credit on customers’ bills. PECO Gas St. No. 3 at 15.
4. The WNA makes this adjustment to usage by multiplying the Company’s pre-determined level of weather-dependent usage – or the difference between the average usage during summer months and the actual usage during the month the WNA is in effect – by the ratio between the Company’s pre-determined “normal” weather and the actual weather experienced by the customer. PECO Gas St. 3 at 15.
5. The equation used to calculate the WNA charge is:

$$\text{adjusted usage} = \text{baseload usage} + \left[\frac{\text{"normal weather"} \pm (\text{"normal weather"} * 0.01)}{\text{actual weather}} * (\text{actual usage} - \text{baseload usage}) \right] - \text{actual usage}$$

$$\text{WNA} = \text{adjusted usage} * \text{distribution charge}$$

PECO Gas St. 3 at 71.

6. The WNA adjustment is blind to any changes in usage which are unrelated to weather, as it assumes that all usage above summer-level is the result of the weather, which means that conservation or energy efficiency measures, or other things which affect customers’ usage, can cause significant bill impacts to customers whose usage does not move in the direction anticipated by the WNA. OCA Exh. RN-4 at 3-4.
7. Simply, if a customer uses less gas in the winter due to energy efficiency measures or conservation efforts, the customer will be charged extra if weather is warmer than normal because the WNA formula automatically assumes the customer’s lower usage is due to the weather. OCA Exh. RN-4 at 3-4.

8. “Weather,” for the purposes of the WNA, is measured in Heating Degree Days (HDDs), or the number of degrees below 65 for each day in a billing period. OCA St. 6 at 7.
9. The Company proposes to determine “normal weather” by averaging the annual number of Normal Heating Degree Days (NHDDs) for the past 30 years, which will be “rolling,” meaning that it will update each year with data from the previous year. PECO Gas St. 3R at 14.
10. Functionally, the “rolling” feature means that each year for the past 30 years will be given equal weight when determining what weather is “normal,” regardless of any trends in weather over time. OCA St. 6SR at 11.
11. PECO Gas proposed a WNA with a “deadband” of one percent. The one percent “deadband” means a margin of error to the “normal weather” calculated by the Company wherein no WNA charge or credit would be issued if the “normal weather” is within one percent, plus or minus, of the actual weather experienced. OCA St. 6 at 7.

III. ARGUMENT – WEATHER NORMALIZATION ADJUSTMENT (WNA)²⁰

A. The Commission Should Reject the WNA Because PECO Has Failed to Demonstrate that the WNA is a Just and Reasonable Rate

12. A WNA is a revenue decoupling mechanism used to shift the risk of recovery of a utility’s revenues onto ratepayers as temperatures continue to get warmer over time. OCA St. 6 at 6.
13. The WNA is clearly intended to benefit PECO Gas, yet PECO Gas has provided no evidence that ratepayers will benefit from the implementation of the WNA. OCA St. 6SR at 8-9.
14. The WNA is a sledgehammer solution, impacting a significant number of variables which exist beyond just warming weather, including any other customer behavior which is not weather-related. OCA St. 6SR at 17-18.
15. PECO Gas’s proposed WNA is crudely constructed, applying on a per-customer level to meet class-level revenue targets without regard for the bill impact that individual customers will see on a month-to-month basis, which are the bills customers are responsible for paying. OCA St. 6 at 19.
16. Generally speaking, WNAs are an illusory fix to a systemic issue resulting from declining usage and warming weather – an issue which consumers did not create – that is rooted in NGDCs’ business model. OCA St. 6 at 18.

²⁰ The headings which appear throughout the OCA’s proposed Findings of Fact are included for ease of reference. These headings mirror those in the OCA’s Main Brief and indicate in which sections of the Main Brief such facts appear in context.

17. Weather-related risk is more appropriately addressed with precision, namely through the Company's modification of its existing resource, distribution, and infrastructure planning policies, rather than the imprecise instrument of the WNA as constructed by PECO Gas. OCA St. 6 at 10-11, 17-20.

B. PECO Gas's Proposed WNA Fails to Meet All the Relevant Alternative Ratemaking Factors in the Commission's Policy Statement at 52 Pa. Code § 69.3302(a).

18. While the Company claims many of its costs are fixed, no costs are truly fixed beyond the FPFTY, and those costs which appear to be fixed beyond the test year – which, in reality, are not yet fixed – are recoverable through the DSIC. OCA St. 6SR at 10.
19. There is no direct cost-of-service foundation for the WNA which, instead of recovering costs in accordance with the Company's cost of service, provides greater revenues for less usage, demonstrating that recovery under the WNA has an inverse relationship to the cost-of-service over the WNA's horizon of recovery. OCA Exh. ND-1-SD at 12.
20. The WNA reduces incentives and rewards for consumers to conserve natural gas usage. Specifically, the WNA obscures price signals by adding an element to their bills which is disconnected from the cost of service – “normal” weather – that customers cannot control or determine with any accuracy. OCA St. 6 at 9.
21. If customers do use less gas for non-weather-related reasons, a portion of that savings is sacrificed to the Company through the WNA if weather was warmer-than-normal, because the WNA is not crafted to delineate between why customers' usage is lower than anticipated but to “adjust” usage to reflect “normal” weather. OCA Exh. RN-4 at 2-3.
22. The addition of an unavoidable rate increase which is affected by factors beyond the customer's control will interfere with customers' calculus to determine if reduced consumption or installation of energy efficiency measures will actually be cost-effective. OCA Exh. RN-4 at 2-3.
23. Low-income customers are the population of customers most likely to lack the agency to conserve energy or install energy efficiency measures. OCA St. 4SR at 5.
24. Because PECO Gas enrolls only a fraction of its low-income into its CAP, most low-income customers within PECO Gas's service territory will bear the full brunt of the WNA charges. OCA St. 4SR at 6.
25. To the extent that low-income bills increase, it is reasonable to expect low-income arrears to increase as well. And with the increase in those arrears will come even further bill increases as customers bear the burden of late payment charges, reconnection charges (after nonpayment disconnections), cash security deposits, and the like. OCA St. 4SR at 6.

26. Because it is almost certain that the WNA will result in higher bills on a month-to-month basis for PECO Gas’s customers, this means that non-CAP-enrolled low-income customers will see higher monthly bills, arrearage accruals, and an overall greater risk of termination. OCA St. 6 at 13-16.
27. The Company’s budget billing plan is already sufficient to minimize volatility in the monthly bills of enrolled customers, with less than 1% of all enrolled customers having a year-end balance. OCA St. 4SR at 4.
28. PECO Gas provides no evidence to support that the WNA will improve bill predictability, pointing to the fact that customers will get used to what a “typical” bill looks like once the WNA is in place. Tr. 832.
29. The WNA is more likely than not going to net the Company additional revenue each year that it would not receive absent the WNA. OCA St. 6 at 13.
30. PECO Gas’s use of a 30-year normalization period further exacerbates this problem by diluting recent weather data – which, by and large, is warmer than less recent data – to create a higher “normal” number of HDDs. OCA St. 6 at 16.
31. If PECO Gas is permitted to implement the proposed WNA, it would be relying on the oldest weather data of any NGDC which has implemented a WNA in Pennsylvania, each of which utilize either a 15-year average or 20-year average. *See Pa. PUC v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 9, 2002); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. PUC v. Nat’l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023).
32. All four witnesses who testified regarding the WNA during the Public Input Hearings testified that the WNA was confusing, frustrating, and would make it more difficult to budget. OCA Exh. ND-1-SD at 12-14.
33. PECO Gas has not provided a sample bill containing the WNA to explain how the accuracy of the bill containing the WNA can be calculated considering the five variable equation which calculates the WNA charge.
34. PECO Gas has not provided any educational materials which could alleviate concerns that the WNA will be accurately and adequately explained to the subjected customers. Tr. 834.

C. PECO Gas Already Has Sufficient Alternative Ratemaking Tools at its Disposal and Does Not Require a WNA that Would Further Alienate its Rate Design from Principles of Cost Causation.

35. PECO Gas has provided that it will file its next general rate increase request within two to three years, showing that PECO Gas is filing rate requests frequently enough to diminish the likelihood of harm from weather volatility. PECO Gas St. 3R at 10.
36. PECO Gas avails itself of the ability to recover future expenses which will be incurred through the end of the fully projected future test year or recover a return on rate base put into service through the end of the fully projected future test year.
37. PECO Gas also recovers the investment in plant made in accordance with its Long-Term Infrastructure Improvement Plan (LTIIP) between rate cases through a Distribution System Improvement Charge (DSIC), even rolling its projected DSIC revenues through the end of the fully projected future test year – though they were not yet collected or guaranteed to be collected – into presumed revenues to set rates in the instant proceeding. Tr. 670.
38. While PECO Gas argues that the WNA is consistent with cost causation principles because “PECO recovers a significant portion of fixed costs through volumetric rates,” the fact remains that all costs are variable in the long term. OCA Exh. RN-4 at 1.

D. PECO Gas is not Entitled to a Guarantee of Meeting its Established Revenue Requirement and it Disincentivizes Efficient Management.

39. According to PECO Gas, the WNA is an attempt to guarantee, or “provide . . . greater certainty,” of the Company’s recovery of the Commission’s authorized revenue requirement for residential and small commercial customers. PECO Gas St. 3 at 66:18-20.
40. The risk of warmer-than-normal weather is a business risk for all NGDCs; this means that it is diversifiable and does not impact the overall cost of equity for the Company, as “investors do not expect a return for such risks.” OCA St. 2 at 49.
41. There are no inputs into the Commission’s preferred cost of equity model, the Discount Cash Flow method, or the secondary model, the Capital Asset Pricing Model, for business risk, reflecting investors do not expect to recover for such risks. OCA St. 2 at 49.
42. In addition, PECO Gas’s claim that investors expect alternative ratemaking mechanisms like a WNA because the members of the Company’s proxy group have similar mechanisms is unfounded. While several subsidiaries to the Company’s proxy group may have implemented WNA-like mechanisms, the members of the proxy group themselves are merely holding companies for regulated utilities and unregulated utilities and businesses; it is unreasonable to conclude what the effect of a subsidiary’s alternative ratemaking mechanism on a firm’s overall cost of equity actually is, other than purely speculative. PECO Gas St. 5 at 11.

43. Having a substantial portion of a firm's revenues coming from areas beyond the regulated gas utility industry may have on firm's overall cost of capital. I&E St. 2 at 10.
44. PECO's investor faces reduced risk by investing in a combined gas and electric utility. PECO Gas St. 5 at 8.
45. As temperatures increase over time, creating warmer-than-normal weather, they are increasing during the heating season as well as the cooling season. This means that ratepayers are facing increased cooling costs in the summer. OCA St. 6 at 10.
46. For PECO, this means that the extent to which recovery is limited for gas operations by a warmer-than-normal heating season, recovery will be substantial for electric operations during the cooling season. OCA St. 6 at 10.

E. The Proposed WNA Will Not Benefit Customers.

47. Weather is more likely to be warmer-than-normal than colder-than-normal. OCA St. 6 at 16.
48. Weather is not only more likely to be warmer-than-normal than colder-than-normal, but warm weather is much warmer than normal compared to how much colder than normal cold weather is. OCA St. 6 at 14.
49. Not only are customers more likely to experience a charge than a credit, but the likely amount of a charge is much greater than the likely amount of a credit. OCA St. 6 at 14.
50. PECO Gas measures its weather data at the Philadelphia Airport, which is the same location relied upon by the Philadelphia Gas Works (PGW) to measure weather data for its WNA. Rate Filing Vol. 5, Attachment 53.64.c-13(a) at 4; *Pa. PUC v. Phila. Gas Works*, Docket No. R-2023-3037933 (Order Entered Nov. 9, 2023) Rate Filing, Vol. 1, Official Statement at 78.
51. PECO Gas serves a much more geographically expansive service territory than does PGW. The Company's territory spreads from New Hope in the northeast, to East Greenville in the north, to Chesterville in the southwest and would use a single location to measure weather data for its entire service territory.
52. PGW, in May 2022, over-collected \$12 million in WNA charges, leading to the subsequent removal of May from the active period of PGW's WNA mechanism. *Pa. PUC v. Phila. Gas Works*, Docket Nos. R-2022-3034229 et al (Order entered Sept. 21, 2023).
53. Specifically, while PECO Gas introduced no specific analysis of the likely revenues of its proposed WNA into the record, PGW has netted approximately \$80 million from its WNA since 2019, as set forth in the table below.

PGW Annual WNA Revenues since 2019 ²¹	
Year	WNA Charge / (Credit)
2019 ²²	\$1,595,837
2020 ²³	\$10,789,328
2021 ²⁴	\$11,761,938
2022 ²⁵	\$23,159,935
2023 ²⁶	\$32,396,102
Total	\$79,703,140

54. WNA charges in PGW’s service territory are consistently high in the month of May – a month which PECO Gas continues to support including in its WNA effective period – and PECO Gas’s longer load forecasting period creates an increased likelihood of a higher number of NHDDs per year (or greater charges and smaller credits) than PGW. OCA Exh. RN-4 at 5.
55. PECO Gas provided a revenue analysis regarding how the proposed WNA would have impacted customers over the previous 10 years. This analysis demonstrated that the Company would have netted an average revenue bump of \$11 million *per year*, with only two years where customers would have received net credits. OCA Exh. RN-3.
56. Importantly, during the two years where customers received net credits, the amount netted in credits (\$11 million in 2014 and \$5 million in 2018) was equal to or less than the average revenue received by the Company during the 10-year period. OCA Exh. RN-3.

F. Low Income Customers will be Particularly Disadvantaged by the WNA.

57. Bill unaffordability for PECO Gas rates reaches 40% of households within PECO Gas’s service territory. OCA St. 4 at 25.
58. Bill unaffordability is especially far-reaching under the effects of the highly inflationary environment ratepayers are currently experiencing, which has not been matched by commensurate growth in income. OCA St. 4 at 17-23.
59. Low-income customers would be disproportionately impacted by the proposed WNA. At the outset, the proposed WNA will apply to confirmed low-income customers enrolled in PECO Gas’s CAP, though CAP customers will only be charged their percentage of income payment under the Company’s percentage of income payment plan. OCA St. 4 at 85.
60. The amount of any WNA adjustment will also apply to the cost of the CAP program recovered from non-CAP customers; in other words, non-CAP customers who are subject

²¹ PGW provides publicly available annual reports regarding its WNA revenues at Docket No. R-2017-2586783.

²² Available at: <https://www.puc.pa.gov/pcdocs/1649264.pdf>.

²³ Available at: <https://www.puc.pa.gov/pcdocs/1706848.pdf>.

²⁴ Available at: <https://www.puc.pa.gov/pcdocs/1729601.pdf>.

²⁵ Available at: <https://www.puc.pa.gov/pcdocs/1770259.pdf>.

²⁶ Available at: <https://www.puc.pa.gov/pcdocs/1811170.pdf>.

to the WNA will have to pay not only their own WNA adjustments, but also increased costs of CAP customers. PECO Gas St. 3 at 21.

61. Low- income customers are less likely to be able to utilize energy efficiency measures in the home to reduce their overall natural gas usage, including home insulation, sealing one's home, or through installing a programmable thermostat. OCA St. 4SR at 5.
62. Due to a decreased ability to influence natural gas usage through efficiency measures in the home, low-income customers must use disproportionately more natural gas to heat the same space than a non-low-income customer during winter months, or they must resort to more extreme measures to control usage. OCA St. 4 at 74-76.
63. The population of customers which is most likely to be harmed by the WNA is that population of customers which does not have the ability to control their bills by reducing their consumption, a population which is most likely to be comprised of low-income customers. OCA St. 4SR at 5.
64. In proposing the WNA, PECO Gas did not consider the monthly impact on customers, but instead focused on the annual impact to customers, and the overall impact to customers over several years. OCA St. 4 at 88.
65. Many customers struggle to afford their utility bills on a month-to-month basis, and considerations regarding consumer impact and affordability should be made on a month-to-month basis, instead of year-over-year. OCA St. 4 at 88.
66. Especially during winter months, when natural gas bills increase as a result of cooling weather, residential customers can afford to pay a lesser percentage of their natural gas bills than during shoulder and summer months, causing spikes in the total arrears for low-income customers. OCA St. 4 at 87.
67. Those customers who are the most impacted by rate harm are low-income customers, especially the significant portion of low-income customers served by PECO Gas who are not enrolled in CAP. OCA St. 4SR at 5.
68. While there has been a total of 323 HDDs that were colder than normal using monthly true-up, there have been over 10 times more HDDs (3,388) that are warmer than normal using the same monthly true-ups over the last 10 years of winter. OCA St. 6 at 13.

G. Under a WNA, Customers Sacrifice Their Bill Savings From Reduced Usage to the Company.

69. When setting rates, the Commission has long recognized two characteristics of traditional ratemaking and rate design: that customers understand what costs of service their bill contributes towards, or "price signals," and that the customer be incentivized to conserve energy and reduce their commodity consumption. *See, e.g., Pa. PUC v. PECO Energy Co.*

– *Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) (*PECO Gas 2021*) at 275.

70. Accurate price signals reflect how the services ratepayers receive appear on their bills; fixed charges are meant to reflect the cost of connection, while variable charges reflect the cost of commodity consumption and distribution. *See, e.g., PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, 2012 Pa. PUC LEXIS 1757, *210 (Order Oct. 19, 2012).
71. Accurate pricing policies enable consumers to understand the finite nature of the commodity they receive from the utility and incentivize energy efficiency by reducing bills in proportion to reduced usage. OCA St. 3 at 30.
72. To the extent that customers elect to take conservation measures if the WNA is put in place, a portion of those savings will be sacrificed to the Company under the proposed WNA. OCA Exh. RN-4 at 3-4.

H. The WNA is Likely to Cause Customer Confusion.

73. Two customers testified at Public Input Hearings in this proceeding that the WNA was difficult to understand and budget for. OCA Exhibit NAD-1-SD at 12-14.
74. Mr. Nelms, at the June 13 afternoon Public Input Hearing, testified that “[t]he WNA is essentially a charge for a product which customers do not use. It's unclear to me why I would be paying additional money to PECO because the weather was warmer in the winter and I did not use their product.” Tr. 451.
75. Mr. Tracey, at the June 13 afternoon Public Input Hearing, testified that “I go to a store, you buy something, you know what you're paying for. But this - this WNA charge, no clue how it's calculated, how it will be calculated, and that's going to lead to confusion. And people, a lot of people don't put the time in and they'll just pay it because they don't understand it. And I want to understand what I'm paying. And it seems to me to be like a paragraph on my bill trying for them to break it down, to explain to me what I'm paying for. And I don't appreciate that.” Tr. 506-507.
76. Mr. Nelms also expressed concern regarding PGW customers' difficulties with the WNA and being significantly overcharged; PECO Gas customers are concerned, as they should be, about the potential for the proposed WNA to have similar effects to those of PGW. Tr. 452.
77. While PECO Gas provided that the hope is that, over a period of years, customers will be able to determine what level of warmth in a given month constitutes “normal,” it admitted that its expert cannot determine what “normal” weather is in a given day or month and would not expect a customer to be able to, either. Tr. 831-32.
78. As Ms. Vanbuskirk testified at the June 13 evening Public Input Hearing, the WNA is confusing because “you never know what the weather is going to be. And then that's going

to be a charge where they're going to take it off your bill. But when you're on a fixed income, that is hard to calculate what I'm going to pay." Tr. 540.

79. It is essential to avoid the pitfall of thinking about bills and energy burdens on an annual basis. Bills are paid monthly. While, in theory, the WNA may appear to create less volatility year-over-year, it creates substantially more volatility month-to-month. This consideration is especially important for those customers who struggle to meet their monthly payments and rely on budgeting and planning to stay on top of their living expenses. OCA St. 4 at 88.
80. If PECO Gas seeks to reduce volatility in customer bills as a result of seasonal fluctuation in bills, the Company can promote budget billing to its customers, which is already available under the Commission's regulations and permits reconciliation of over- or under-billing, which the WNA does not, and specifically applies to heating customers, who are likely to experience the weather sensitivity upon which the WNA is based. OCA St. 4 at 88.
81. PECO Gas both admits that customers who wish to stabilize monthly bills can sign up to be enrolled in a budget billing program and that it has not conducted any survey of its customers to gauge their interest in having a WNA mechanism for purposes of receiving bills that reflect normalized weather conditions. PECO Gas St. 3R at 19; Tr. at 834.
82. While 6.1% of PECO Gas's customers are confirmed low-income, only a high of 4.2% of budget billing participants have been confirmed low-income in the past two years, though that amount has declined recently to 3.1%. OCA St. 4 at 88-89.
83. The number of accounts with arrears between 30 and 60 days old does not vary significantly during the winter heating season, the amount of those arrearage balances does vary. OCA St. 4 at 92.
84. This is not an issue the WNA would resolve, because the WNA does not eliminate seasonal volatility in bills, it attempts to set a hypothetical "normal" representation of what a winter bill should be – an approach which does not lower the peaks customers' bills reach during the winter season, but keeps the peaks at a similar level year-over-year. OCA St. 4 at 92.
85. Budget billing corrects for the seasonal volatility experience by PECO Gas customers in a predictable way which guarantees customers can accurately budget for their bills and that the Company earns its annual estimated revenue from that customer. OCA St. 4 at 92.
86. If PECO Gas devoted more resources to enrolling low-income customers in its budget billing program, both the Company and the enrolled customers would benefit. OCA St. 4 at 94.
87. PECO Gas argues that budget billing and the WNA work best in tandem to better reduce bill volatility. PECO Gas St. 3R at 19-20. However, the Company provides no data to support this assertion. OCA witness Colton reviewed the Company's budget billing

program and found that of the over 70,000 participating accounts, the number with *any* amount of bill balance was in the hundreds. OCA St. 4SR at 4.

88. The WNA is not like other rate components currently in place because it causes changes in a customer's bill based on a factor that they cannot control – weather – and because of its complexity.
89. PECO Gas has not provided a sample bill which demonstrates how customers will be informed of how the WNA charge on their bill is calculated. The Company has also not provided any educational materials which will be distributed to the customers subjected to the WNA to provide assurances to the parties that customers will be adequately informed. Tr. 834.
90. The Public Input Hearing testimony in this proceeding unequivocally demonstrates that customers have a difficult time understanding what the WNA is, what it does, or how to plan for it. OCA Exh. NAD-1-SD at 12-14.

I. PECO Gas Cannot Meet its Burden of Proof for the Proposed WNA by Relying on the Existence of Other Utilities' WNAs.

91. The four NGDCs which have received their WNA mechanisms did so as a result of unanimous settlement agreements. *Pa. PUC v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 9, 2002); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. PUC v. Nat'l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023).
92. PECO Gas has not obtained the support of a settlement to implement its proposed WNA, as prior NGDCs have.
93. For customers currently subjected to WNAs by other NGDCs, there is rampant frustration and confusion regarding the additional monthly charge. OCA St. 6SR at 12.
94. The Commission recently rejected a revenue decoupling mechanism similar to PECO Gas's proposed WNA. *Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2023-3043189 et al (Order entered July 11, 2024) at 307-08.

OCA Proposed Conclusions of Law

Overall

1. PECO Energy Company (PECO) Gas Division (PECO Gas) is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa. C.S. § 102.
2. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. § 101, et seq.
3. The regulation of utilities is one of the most important functions traditionally associated with the police power of the States. *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983) (*Ark. Elec.*).
4. The Public Utility Code governing sales that are only rationally dealt in by a monopoly is a proper exercise of the state police power to regulate the health, safety, morals, and general welfare of citizens. *Relief Elec. Light, Heat & Power Co's. Petition*, 63 Pa. Super. 1, *5-10 (1916), 1916 Pa. Super. LEXIS 89, **6-15; *Jenkins Twp. v. Pub. Serv. Comm'n*, 65 Pa. Super. 122 (1916), 1916 Pa. Super. LEXIS 30, **15-16.
5. The utility requesting the rate increase has the burden of establishing the justness and reasonableness of every element of its requested rate increase. 66 Pa. C.S. §§ 315(a), 1301; *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. Ct. 1980).
6. PECO Gas has the burden of proving that every element of its proposed rates is just and reasonable. 66 Pa. C.S. §§ 315(a), 1301, 1330.
7. As a matter of law, a public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a).
8. 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).
9. 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. Ct. 1996).
10. Given that a utility's general rate increase request will substantially affect the interests of consumers, the Commission must "consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers." 71 P.S. § 309-5.
11. PECO Gas has not met its burden of proving its requested Weather Normalization Adjustment (WNA) alternative ratemaking mechanism will produce just and reasonable rates.

12. The OCA's arguments made against the proposed WNA are supported by substantial evidence of record.

III. ARGUMENT - WEATHER NORMALIZATION ADJUSTMENT (WNA)²⁷

A. The Commission Should Reject the WNA Because PECO Has Failed to Demonstrate that the WNA is a Just and Reasonable Rate.

13. The Commission may authorize the implementation of alternative ratemaking mechanisms, such as decoupling mechanisms like the WNA; however, in order to implement an alternative ratemaking mechanism, the proposing utility must provide substantial evidence that the specific mechanism, proposed by the utility, would result in just and reasonable rates. 66 Pa. C.S. §§ 315(a), 1330.
14. Rejecting arguments simply because they “can be made against any WNA” constitutes an impermissible shift of the burden of proof which is contrary to law because PECO Gas, as the proponent of the WNA, must provide substantial evidence to support that the WNA would result in just and reasonable rates. 66 Pa. C.S. § 315(a), 1330; *Pa. PUC v. Pa.-American Water Co.*, 2004 Pa. PUC LEXIS 29 at *16-18 (Jan. 29, 2004).
15. Section 1330 does not waive the Public Utility Code's burden of proof requirements, or the Administrative Agency Law's requirement that the decisions of Commonwealth agencies – including the Commission – be supported by substantial evidence. 2 Pa. C.S. § 704.
16. Weather-related risk is more appropriately addressed with precision, namely the Company's modification of its existing resource, distribution, and infrastructure planning policies, than the imprecise instrument of the WNA as constructed by PECO Gas.

B. PECO Gas's Proposed WNA Fails to Meet All the Relevant Alternative Ratemaking Factors in the Commission's Policy Statement at 52 Pa. Code § 69.3302(a).

17. To determine “just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose” of the Commission's policy and the policy laid out in Section 1330, the Commission developed 14 factor it considers in a policy statement. 52 Pa. Code § 69.3302(a).
18. This policy statement was enacted following the passage of Section 1330 of the Code, which permits the Commission to use alternative rate mechanisms to further policy objectives, including energy efficiency. 66 Pa. C.S. § 1330.
19. Section 1330 specifically states that “[i]t is the policy of the Commonwealth that utility ratemaking should encourage and sustain investment through appropriate cost-recovery

²⁷ The headings which appear throughout the OCA's proposed Conclusions of Law are included for ease of reference. These headings mirror those in the OCA's Main Brief and indicate in which sections of the Main Brief such legal support appears in context.

mechanisms to enhance the safety, security, reliability or availability of utility infrastructure and be consistent with the efficient consumption of utility service.” 66 Pa. C.S. § 1330(a)(2).

20. The factors can generally be grouped into four distinct categories: cost-of-service, customer legibility, impact on low-income customers, and impact on customer conservation incentives. 52 Pa. Code § 69.3302.
21. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 1, 3, 4, and 14. 52 Pa. Code § 69.3302(a).
22. The WNA is a mechanism with an unlimited horizon of recovery: without a definitive endpoint, the WNA should only be designed to recover costs of an equal horizon of recovery, similar to how the fully projected future test year and distribution system improvement charge have been implemented. 66 Pa. C.S. § 315(e), 1357(a).
23. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 5 and 6. 52 Pa. Code § 69.3302(a).
24. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factor 7. 52 Pa. Code § 69.3302(a).
25. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factor 8. 52 Pa. Code § 69.3302(a).
26. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factor 9. 52 Pa. Code § 69.3302(a).
27. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 12 and 13. 52 Pa. Code § 69.3302(a).
28. Each of the material policy considerations demonstrates that the WNA is more likely to result in ratepayer harm and utility benefit without ratepayers being appropriately compensated for the significant risk they bear under the WNA. The Commission’s policy factors establish that the WNA would not result in just and reasonable rates and should be denied.

C. PECO Gas Already Has Sufficient Alternative Ratemaking Tools at its Disposal and Does Not Require a WNA that Would Further Alienate its Rate Design from Principles of Cost Causation.

29. The fully projected future test year permits utilities to recover future expenses and investment which have not yet been incurred but will be incurred through the end of the test year. *McCloskey v. Pa. PUC*, 225 A. 3d 192, 208 (Pa. Cmwlth. Ct. 2020).
30. The distribution system improvement charge permits utilities to recover investment in plant which is made between general rate increase requests. 66 Pa. C.S. § 1357(a).

31. It is a primary concern of the Commission that alternative ratemaking is, in some way, rooted in the cost of service. 52 Pa. Code § 69.3301; 52 Pa. Code § 69.3302(a).
32. The Commission's rate design has consistently supported placing recovery of costs which PECO Gas claims are fixed in distribution rates because they are not fixed in the long-term. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2010-2215623 (Order entered Oct. 14, 2011) at 51-53.

D. PECO Gas is not Entitled to a Guarantee of Meeting its Established Revenue Requirement and Guaranteeing Revenue Disincentivizes Efficient Management.

33. Utilities are not entitled to assurance during ratemaking that they will be able to recover net revenues; instead, utilities are granted the *opportunity* to recover their authorized revenue increase. *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).
34. In Pennsylvania, there is no statutory guarantee of net revenues, judicial or Commission precedent which supports the guarantee of recovering net revenues, and the public interest weighs against guaranteeing levels of revenues. *Pa. Elec. Co. v. Pa. PUC*, 502 A.2d 130, 133-35 (Pa. 1985).
35. When forming its general rate increase request, a utility is permitted to include all revenues it anticipates collecting and all expenses that it anticipates incurring during the fully projected future test year. Should expenses not materialize to the extent claimed by the Company, ratepayers are not able to recover their overpayment. *Nat'l Fuel Gas Dist. Corp. v. Pa. PUC*, 464 A.2d 546, 567 (Pa. Cmwlth. Ct. 1983).

E. Under a WNA, Customers Sacrifice Their Bill Savings From Reduced Usage to the Company.

36. When setting rates, the Commission has long recognized two characteristics of traditional ratemaking and rate design: that customers understand what costs of service their bill contributes towards, or "price signals," and that the customer be incentivized to conserve energy and reduce their commodity consumption. *Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) (*PECO Gas 2021*) at 275.
37. Accurate price signals reflect how the services ratepayers receive appear on their bills; fixed charges are meant to reflect the cost of connection, while variable charges reflect the cost of commodity consumption and distribution. *PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, 2012 Pa. PUC LEXIS 1757, *210 (Order Oct. 19, 2012).
38. A utility should not be rewarded for the conservation efforts of its customers. *Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2023-3043189 et al (Order entered July 11, 2024) at 307-308.

F. The WNA is Likely to Cause Customer Confusion.

39. The Commission's regulations permit budget billing, which smooths a heating customer's annual bills over a fixed amount each month and eliminating seasonal volatility. 52 Pa. Code § 56.12(8).
40. Chapter 56 addresses the components a regulated utility must generally include in its bills. 52 Pa. Code § 56.15.
41. Among the requirements are the customer's meter readings at the beginning and end of the customer's billing cycle, basic charges, adjustment charges, credits made to the account during the billing period, and "an explanation of how to verify the accuracy of a bill." 52 Pa. Code § 56.15.
42. PECO Gas has not provided evidence sufficient to conclude that customers' bills will provide the required explanation for customers to verify the accuracy of their bills due to the complicated nature of the WNA calculation.

G. PECO Gas Cannot Meet its Burden of Proof for the Proposed WNA by Relying on the Existence of Other Utilities' WNAs.

43. The Commission's decision to authorize WNAs for other NGDCs does not mean that PECO Gas has met its burden of proof in this case that the proposed WNA would result in just and reasonable rates. 66 Pa. C.S. §§ 315(a), 1301, 1330.
44. The four NGDCs which have received their WNA mechanisms did so as a result of unanimous settlement agreements. *Pa. PUC v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 9, 2002); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. PUC v. Nat'l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023).
45. Settlements must be found by substantial evidence to be in the public interest in order for the Commission to approve them and, to be in the public interest, involve compromise between the disparate positions of utilities and advocates. 52 Pa. Code § 5.232(d).
46. Settlement agreements are reviewed in their totality to reflect the individual compromise and the inclusion of a particular term within the settlement agreement is not precedential for determining whether the Commission's approval containing a term – such as a WNA – means that the term is in the public interest or would result in just and reasonable rates. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2022-3031211 (Order entered Dec. 8, 2022) at 107.
47. The existence of other WNAs does not satisfy PECO Gas's burden of proof that its WNA would result in just and reasonable rates. *Bell Atl. – Pa., Inc. v. Pa. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. Ct. Dec. 18, 1995).

48. The Commission rejected Pennsylvania American Water Company's proposal because (1) Pennsylvania American Water Company did not establish the need for a revenue decoupling mechanism, (2) the decoupling mechanism does not benefit consumers, and (3) the mechanism is confusing to consumers and would detract from conservation efforts. *Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2023-3043189 et al (Order entered July 11, 2024) at 307-308.
49. PECO Gas's (1) did not establish a need for its proposed WNA, (2) the WNA would not benefit customers, and (3) the WNA is confusing to customers and would negatively impact conservation efforts.
50. Substantial evidence supports the OCA's conclusion that the WNA would not result in just and reasonable rates.
51. PECO Gas did not meet its burden of proof to demonstrate by substantial evidence that the WNA would result in just and reasonable rates, and its request to implement a WNA should be denied.

OCA Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. PECO Energy Company's Gas Division shall not place into effect the rates, rules, and regulations contained in Original Tariff GAS – PA PUC No. 6, which have been found to be unjust, unreasonable and, therefore, unlawful, due to the inclusion of a proposed Weather Normalization Adjustment.
2. The request of PECO Energy Company's Gas Division to implement a Weather Normalization Adjustment is denied.
3. PECO Energy Company's Gas Division is authorized to file tariffs, tariff supplement, or tariff revisions, consistent with the Commission's Opinion and Order, which shall not include the proposed Weather Normalization Adjustment.
4. The Complaints filed by the various parties to this proceeding at Docket Number R-2024-3046932 are granted in part and denied in part, to the extent consistent with this Commission's Opinion and Order.

DATE: _____

Darlene Heep
Administrative Law Judges

Marta Guhl
Administrative Law Judges

**LIST OF EVIDENCE ADMITTED INTO THE EVIDENTIARY RECORD BY THE
OFFICE OF CONSUMER ADVOCATE**

The Office of Consumer Advocate (OCA) submitted the following evidence into the evidentiary record in the above captioned proceedings via a Joint Stipulation for Admission of Testimony and Exhibits filed on August 14, 2024.

DIRECT TESTIMONY

- OCA Statement 1: Public Version of Direct Testimony of John Defever consisting of 34 pages of testimony, Appendix I consisting of 6 pages, and Exhibit JD-G-1 consisting of Schedules A through D along with a signed verification of John Defever.
- OCA Statement 1: Confidential Version of Direct Testimony of John Defever consisting of 34 pages of testimony, Appendix I consisting of 6 pages, and Exhibit JD-G-1 consisting of Schedules A through D along with a signed verification of John Defever.
- OCA Statement 2: Direct Testimony of David J. Garrett consisting of 66 pages of testimony, Exhibits DJG-1 through DJG-16 and Appendices A-B along with a signed verification of David J. Garrett
- OCA Statement 3: Direct Testimony of Clarence L. Johnson consisting of 35 pages of testimony, Attachment A and Exhibit CJ-1 through CJ-4 with a signed verification of Clarence L. Johnson (corrected version distributed on July 10, 202 is offered for the record).
- OCA Statement 4: Direct Testimony of Roger Colton consisting of 109 pages of testimony and Exhibits RDC-1 through RDC-9 with a signed verification of Roger Colton.
- OCA Statement 5: Public Version of Direct Testimony of Nicholas A. DeMarco consisting of 23 pages of testimony and Exhibits NAD-1 through NAD-2 with a signed verification of Nicholas A. DeMarco.
- OCA Statement 5: Confidential Version of Direct Testimony of Nicholas A. DeMarco consisting of 23 pages of testimony and Exhibits NAD-1 through NAD-2 with a signed verification of Nicholas A. DeMarco.
- OCA Statement 6: Direct Testimony of Ron Nelson consisting of 28 pages of testimony and Exhibits RN-1 through RN-6 with a signed verification of Ron Nelson.

SUPPLEMENTAL DIRECT TESTIMONY

OCA Statement 5 Supp: Supplemental Direct Testimony of Nicholas A. DeMarco consisting of 3 pages of testimony and Exhibit NAD-1-SD along with a signed verification of Nicholas A. DeMarco.

REBUTTAL TESTIMONY

OCA Statement 2R: Rebuttal Testimony of David J. Garrett consisting of 2 pages of testimony and a signed verification of David J. Garrett

OCA Statement 3R: Rebuttal Testimony of Clarence L. Johnson consisting of 5 pages of testimony and a signed verification of Clarence L. Johnson

OCA Statement 6R: Rebuttal Testimony of Ron Nelson consisting of 8 pages of testimony with a signed verification of Ron Nelson.

SURREBUTTAL TESTIMONY

OCA Statement 1SR: Surrebuttal Testimony of John Defever consisting of 15 pages of testimony along with a signed verification of John Defever.

OCA Statement 2SR: Surrebuttal Testimony of David J. Garrett consisting of 8 pages of testimony along with a signed verification of David J. Garrett.

OCA Statement 3SR: Surrebuttal Testimony of Clarence L. Johnson consisting of 20 pages of testimony with a signed verification of Clarence L. Johnson.

OCA Statement 4SR: Surrebuttal Testimony of Roger Colton consisting of 23 pages of testimony with a signed verification of Roger Colton.

OCA Statement 5SR: Surrebuttal Testimony of Nicholas A. DeMarco consisting of 18 pages of testimony with a signed verification of Nicholas A. DeMarco.

OCA Statement 6SR: Surrebuttal Testimony of Ron Nelson consisting of 23 pages of testimony and Exhibit RN-1-SR through RN-4-SR along with a signed verification of Ron Nelson.

ADDITIONAL EVIDENCE

OCA Hearing Exh. 1: List of Evidence to be Admitted into the Evidentiary Record by the Office of Consumer Advocate

OCA Hearing Exh. 2: PECO responses to Interrogatories OCA-20-1 through OCA-20-5, including Attachments OCA-20-1 (a-b) and OCA-20-2 (a-b)