

COMMONWEALTH OF PENNSYLVANIA



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September 12, 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 Reply 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,

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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**

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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 Reply 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 12th day of September 2024.

VIA FEDEX DELIVERY

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Dated: September 12, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

A. The Office of Consumer Advocate Is Statutorily Charged with Protecting Consumers from PECO Gas’s Unjust and Unreasonable WNA Proposal.

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 the public is paying enough, but no more than is necessary – through distribution rates or alternative ratemaking mechanisms – 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. The OCA opposes PECO Energy Company – Gas Division’s (PECO Gas or the Company) proposed weather normalization adjustment (WNA) mechanism because it would not produce just and reasonable rates.¹

B. Procedural History

The OCA incorporates by reference the Procedural History section of its Main Brief and now addresses only procedural developments that extend beyond those already identified. On the same date that OCA submitted its Main Brief, September 6, 2024, the parties to the Joint Petition submitted the jointly proposed findings of fact, conclusions of law, and ordering paragraphs in support of the Settlement. The Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and PECO Gas submitted Main Briefs regarding their positions on the WNA. IBEW submitted a Main Brief pertaining to the issues it raised in its testimony. The OCA’s statement in support of the Joint Petition will be provided on the same date

¹ The OCA continues to support the relief requested in the Joint Petition for Non-Unanimous Partial Settlement of Rate Investigation (Joint Petition or Settlement) as being in the public interest and fully supported by the evidence presented in this proceeding.

as this Reply Brief. The OCA submits this Reply Brief in accordance with the procedural schedule set forth in the Briefing Order issued by Administrative Law Judges Marta Guhl and Darlene Heep on August 13, 2024.

In this Reply Brief, the OCA responds to the arguments made in support of the WNA, an alternative ratemaking mechanism proposed by PECO Gas. The OCA's Reply Brief demonstrates that such arguments are unsupported by the applicable law and facts in evidence. The OCA also provides limited response to the arguments raised by Local 614 of the International Brotherhood of Electrical Workers, AFL-CIO (IBEW) which are contrary to the relief requested in the Joint Petition.

C. Description of the WNA

The OCA incorporates by reference its description of the WNA as set forth fully in its Main Brief. OCA M.B. at 3-5.

D. Overview of the Settlement

The OCA incorporates by reference its Overview of the Settlement as set forth fully in its Main Brief and continues its support for the Joint Petition. OCA M.B. at 5.

E. Legal Standards

The OCA incorporates the Legal Standards portion of its Main Brief as if fully set forth herein. OCA M.B. at 5-9.

II. SUMMARY OF ARGUMENT

The Company bears the burden of demonstrating that the proposed WNA would result in just and reasonable rates. Instead of meeting this burden, PECO Gas argues the OCA must demonstrate how PECO Gas's proposed WNA is unjust or unreasonable as compared to those WNAs currently in effect in Pennsylvania. PECO Gas's attempt to shift its burden of proof should

be rejected. It is well settled that PECO Gas, as the proponent of the WNA, bears the full and complete burden of proof.

The OCA set forth a comprehensive analysis of the Company's proposed WNA in its Main Brief. PECO Gas has not similarly analyzed the WNA that it has proposed. Instead, the Company relies on conclusory remarks unsupported by facts, analyses, or any other tangible evidence to support its request for approval of the WNA. Similarly, it relies on other rate mechanisms that were agreed to in the course of unanimous settlements, which cannot be relied on as precedential, as if their existence were evidence. Moreover, the Company's proposed WNA can be distinguished from prior Commission approvals of the WNA as it is not supported by a settlement agreement or substantial evidence. The case presented by PECO Gas is demonstrably outweighed by the evidence presented by the OCA. There is simply no substantial evidence supporting PECO Gas's requested WNA upon which the Commission could approve this alternative rate mechanism.

The evidence demonstrates that the Company does not need the WNA, as it already benefits from the use of a fully projected future test year (FPFTY), distribution system improvement charge (DSIC), and frequent rate cases to meet ever-increasing revenue targets. The evidence shows that WNA charges are significantly more likely than credits, with the Company's own data demonstrating that consumers would have been charged, on average, \$11 million per year for the past 10 years had the WNA been in effect, with only two years resulting in net credits. Additionally, the evidence reveals that low-income customers, and others who also struggle to reduce usage to cut costs, are disproportionately burdened by increased rates, which the WNA would impose and render unavoidable. Moreover, the evidence establishes that the WNA would obscure price signals, making it more difficult to determine incentives to conserve or accurately budget for each month's bill. Finally, the evidence demonstrates that the WNA shifts risks

associated with declining usage and warming weather from the Company – an entity with the agency to manage its risk and that elected to be in the natural gas business – on to captive customers who can only manage their utility bills through controlling their usage.

The evidence presented by the OCA outweighs PECO Gas’ conclusory remarks and misstatements of law, which are the foundation of the Company’s case. As a result, the Commission should assign little weight to the arguments advanced by PECO Gas in support of its WNA and, instead, recognize the substantial weight of the evidence presented by the OCA. By rejecting the Company’s attempt to shift the burden of proof and recognizing that the weight of the evidence presented supports the OCA’s position, it is clear that the WNA proposed by PECO Gas would not result in just and reasonable rates and, therefore, should not be approved.

The OCA also refutes the unsupported and misplaced arguments IBEW raised in favor of the Company’s WNA and against the Joint Petition.²

III. WEATHER NORMALIZATION ADJUSTMENT (WNA)

A. **The OCA’s Comprehensive Analysis of the Commission’s Policy Factors Demonstrates that the Policy Factors Do Not Weigh in Favor of Implementing the Company’s Proposed WNA.**

The OCA’s Main Brief set forth a comprehensive analysis of how application of the Commission’s policy factors – which are analyzed to determine whether a proposed alternative ratemaking mechanism would result in just and reasonable rates – weigh heavily against the WNA. Under these policy considerations, PECO Gas’s WNA would not result in just and reasonable rates. OCA M.B. at 11-13; 52 Pa. Code § 69.3302(a); *see* OCA Exh. RN-4 (evaluating the WNA proposed under the Commission’s 14 policy factors). The OCA incorporates that analysis as if fully set forth herein.

² The OCA continues to support the Joint Petition and submits that IBEW’s remaining concerns pertaining to the Company’s revenue requirement and expenses are fully addressed by the Joint Petition.

PECO Gas failed to perform a similar analysis in its Main Brief. Instead, the Company made a series of conclusory remarks, dedicating only a single paragraph to the analysis outlined by the Commission in Section 69.3302(a) of its regulations. PECO Gas M.B. at 16. As support for these statements, the Company refers to the testimony of its witness, who made similarly conclusory averments, declining to provide facts, data, or analyses to support them. PECO Gas St. 3 at 66-67. OCA witness Nelson responded to these averments in OCA Exhibit RN-4. As identified by Mr. Nelson in his surrebuttal testimony, the Company merely disagreed with Mr. Nelson's analysis in its rebuttal testimony and relied on opinions instead of data to support its position. *See, e.g.*, OCA St. 6SR at 14. The Company's failure to adequately address and analyze the positions advanced by the OCA in testimony demonstrate the insubstantial weight of the evidence presented by PECO Gas in support of its proposed WNA. Other than demonstrating its desire to impose a WNA, PECO Gas produced no evidence in support of the WNA that would justify its enactment.

The Commission's recent rejection of a revenue decoupling mechanism (RDM) proposed by Pennsylvania-American Water Company (PAWC) represents a more accurate analysis of how the Commission should consider the instant WNA than that performed by the Company. *Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2023-3043189 et al (Order entered July 11, 2024) (*PAWC 2023*). PECO Gas's attempt to distinguish its proposed WNA from PAWC's proposed RDM is misplaced. PECO Gas M.B. at 16-17. Simply, WNAs are revenue decoupling mechanisms. OCA M.B. at 11; OCA St. 6 at 6. A traditional revenue decoupling mechanism reconciles the difference between collected revenues and authorized revenues: if the rates set to meet the authorized revenue requirement do not collect the authorized amount, the RDM charges customers to increase collected revenue to be equal to the authorized revenue requirement. *PAWC 2023* at 299. Similarly, the WNA charges customers based on the amount of natural gas usage the

Company estimates the customer would have used under “normal” weather assumptions to produce an expected level of revenue. OCA M.B. at 40. Because the WNA severs the link between revenue and sales altogether, the Company faces little to no risk associated with revenue variability, or the Company’s “business risk”. Meanwhile, under a WNA, customers have no control over whether weather is colder- or warmer-than-normal, just like customers have no control under the RDM of whether a class of customers has achieved its revenue requirement, which obscures price signals and affects incentives to conserve usage. Similar to the Commission’s findings regarding PAWC’s proposed RDM, the Company’s proposed WNA is not necessary to it, does not benefit its consumers, and diminishes the value of its customers’ energy efficiency measures. OCA M.B. at 40; *infra* at Sections III.C, III.D, III.E.

As such, the arguments presented by the Company should be assigned little weight because they are unsupported by law or the evidentiary record. Instead, the Commission should assign greater weight to the evidence presented by the OCA in its Main Brief and testimony, which demonstrate that the WNA is likely to result in unjust and unreasonable rates under the Commission’s policy factor analysis.

B. PECO Gas Unreasonably Relies on Previously Approved WNAs to Support its Proposal.

Commission approval of previous WNA mechanisms is not substantial evidence that PECO Gas’s proposed WNA warrants approval. The Commission is not bound by its previous decisions and, instead, must support its decisions with substantial evidence and render consistent opinions that affirm, overrule, or distinguish prior opinions. *See Bell Atl. – Pa., Inc. v. Pa. PUC*, 672 A.2d 352, 354 (Pa. Cmwlth. Ct. Dec. 18, 1995). By rejecting PECO Gas’s proposal, the Commission would render a decision that is consistent with its prior rejection of revenue decoupling mechanisms which are unsupported by substantial evidence. *See, e.g., PAWC 2023*;

Pa. PUC v. Nat'l Fuel Gas Dist. Corp., 83 Pa. PUC 262, 1994 Pa. PUC LEXIS 134, *97-98 (Order entered Dec. 6, 1994) (rejecting NFG's request to implement a WNA-like decoupling mechanism, stating "approval of the WNC [weather normalization clause] would send the wrong message to ratepayers regarding conservation, and would ultimately discourage customer conservation.").

Further the Company's attempt to shift the burden of proof to the OCA and parties opposed to the WNA offends the Public Utility Code, Commission precedent, and laws of the Commonwealth. Any attempt by PECO Gas to claim that the OCA must support its opposition to the Company's WNA by furnishing evidence on how PECO Gas's proposed WNA is less reasonable or just than those currently in effect should be summarily rejected. The evidence presented by PECO Gas regarding its entitlement to a WNA because others have been previously approved is insubstantial and its factual and legal averments – of which the Company's position primarily consists – should be assigned no weight.

1. PECO Gas's Proposed WNA Is Unsupported by a Unanimous Settlement.

The Company's proposed WNA is distinguishable from the Commission's prior approvals of WNA mechanisms, as it is not supported by a settlement agreement or substantial evidence. WNAs which have been previously approved by the Commission arose out of unanimous settlements. OCA M.B. at 39. PECO Gas overlooks this critical fact when arguing that the Commission has previously approved WNAs. PECO Gas M.B. at 7. Unanimous settlements result from substantial compromise of the disparate positions advanced by utilities, advocates, and other interest groups in the course of a rate proceeding. 52 Pa. Code § 5.232(d). No one term can be pulled out of a settlement agreement to demonstrate Commission approval of that term on its own. OCA M.B. at 39; *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2022-3031211 (Order

entered Dec. 8, 2022)³ (*Columbia 2022*) at 107 (“It is well-established that the terms and conditions of settlements are not relied upon as precedential.”). To illustrate this, settlement agreements contain provisions that explicitly provide that “this Settlement may not be cited as legal precedent in any future proceeding, except to the extent required to implement this Settlement,” such as the Joint Petition submitted in this proceeding. Joint Petition at ¶ 56.

As stated in *HIKO Energy, LLC v. Pa. PUC*, 163 A.3d 1079, 1102-03 (Pa. Cmwlth. Ct. 2017) *aff’d* *HIKO Energy, LLC v. Pa. PUC*, 209 A.3d 246 (Pa. 2019), “the PUC previously explained that it ‘vigorously, and without equivocation, reject[s] considering a settlement as precedent, as to any subsequent issue, in *any* proceeding.’ Thus, ‘the [PUC’s] approval of a settlement does not establish legal precedent, because parties frequently waive their legal rights regarding certain issues in a settlement.’” *Id.* (citations omitted) (emphasis in original). The Company’s proposed WNA is not supported by a settlement agreement and the Commission would not violate the Public Utility Code or be inconsistent with its prior decisions by rejecting PECO Gas’s proposal, given that the Company’s proposal is not supported by substantial evidence. As such, despite PECO Gas’ urging, the Commission’s analysis should not focus on how the Company’s proposed WNA differs from those currently in effect – and whether *those differences* make the Company’s proposal just and reasonable or unjust and unreasonable – but rather on whether the Company has met its burden of proof to demonstrate that its proposed WNA is just and reasonable. The evidence in this case, on this record, demonstrates that there is *no* evidence – let alone substantial evidence – upon which the Commission can approve PECO Gas’s requested WNA.

³ Available at: <https://www.puc.pa.gov/pdocs/1767004.pdf>.

2. PECO Gas's Proposed WNA Uses Older Weather Data and a Smaller Deadband than any WNA Implemented in Pennsylvania.

While the Company's proposed WNA is similar in its goal to those approved by the Commission, as a result of settlement, of the other natural gas distribution companies (NGDCs) – meaning that the equation used to calculate WNA charges is similar to those currently in effect – it differs in substance. PECO Gas proposes to use a 30-year weather normal to determine what constitutes “normal” weather. OCA M.B. at 26; OCA St. 6 at 16. A 30-year “normal” is more likely to have a higher number of heating degree days (HDDs) and, thus, result in greater WNA charges than a shorter weather “normal” period of 10, 15, or 20 years. OCA M.B. at 26; OCA St. 6 at 16. PECO Gas failed to point out in its Main Brief that no other WNA currently in effect uses such a long weather “normal” period. Two NGDCs, UGI Utilities, Inc. – Gas Division (UGI) and National Fuel Gas Distribution Corp. (NFG), use 15-year weather “normal” periods, while Philadelphia Gas Works (PGW) and Columbia Gas of Pennsylvania, Inc. (Columbia) use 20-year weather “normal” periods. Supplement No. 37 to UGI Gas – Pa. P.U.C. No. 7 at 53 (UGI Tariff); Supplement No. 271 to Gas Pa. P.U.C. No. 9 at 158 (NFG tariff); Supplement No. 166 to Gas Service Tariff – Pa. P.U.C. No. 2 at 150 (PGW tariff); Supplement No. 334 to Tariff Gas – Pa. P.U.C. No. 9 at 162 (Columbia tariff).

To support its use of a 30-year weather “normal” period, Company witness Trzaska stated: “The Company considered utilizing 10- and 20-year weather normals as well. The Company does not believe 10 years provides a large enough data set, and there is little variation between utilizing 20 years of data versus 30 years. The Company believes that utilizing 30-years is appropriate.” PECO Gas St. 3R at 18:1-4. PECO Gas's conclusory “belief” that a 30-year weather “normal” is appropriate is not evidence, nor are its beliefs regarding the size of a 10-year data set or amount of variation between a 20 and 30-year “normal” period. PECO Gas did not supply studies to support

its decision, why it elected not to consider a 15-year weather “normal” period, or any indication that such a long data set will be representative of actual weather in the FPFTY or beyond. OCA M.B. at 30. However, OCA witness Nelson demonstrates that the use of a 30-year weather “normal” period results in a 2% increase in HDDs over a 10-year “normal” period, effectively resulting in a 2% rate increase for residential and small business customers. OCA St. 6SR at 11. Given the likely rate increase, it is clear why PECO Gas continued to support its initially proposed 30-year weather “normal” period despite the lack of evidence in support thereof.

Similarly, the Company proposed the smallest deadband size it could while still having a deadband. A deadband is a margin of error, which provides that if the actual number of HDDs measured in a given billing period are within the deadband’s value of the “normal” number of HDDs estimated by the Company, then there will be no WNA charge or credit for that billing period. OCA St. 6 at 6-7. In this case, PECO Gas proposed a deadband of 1%. Currently, only one other NGDC has a deadband as small as PECO Gas’s proposal, PGW, while UGI, Columbia, and NFG currently have 3% deadbands. UGI Tariff at 53; NFG Tariff at 159; PGW Tariff at 150; Columbia Tariff at 163. The Company itself admitted that its decision to select a 1% deadband was arbitrary. PECO Gas St. 3R at 19-20. Arbitrary decisions are necessarily unsupported by evidence.

PECO Gas has failed to adequately support its decisions to vary from the WNAs which are currently in effect in Pennsylvania. The use of older weather data which bears no reasonable relationship to the risk that PECO Gas asserts that it is trying to mitigate will result in customer harm by estimating weather will be much colder than had more recent weather data been used.⁴

⁴ PECO Gas asserts that its 30-year weather “normal” period takes into account recent weather data to determine “normal” weather. PECO Gas M.B. at 13. However, due to the length of the weather “normal” period, it is unclear whether recent weather data moves the needle when it comes to being representative of likely actual weather due to the extent of the dilution of recent weather data. OCA Exh. RN-4 at 5.

OCA M.B. at 17; OCA Exh. RN-4 at 5. The deadband proposed would be equal to PGW's, which is currently the smallest in effect, and the Company's selection of that deadband level was "arbitrary" without an eye towards potential consumer impact. OCA St. 6SR at 20. While the Company did propose a cap on WNA charges in the month of May, it did so at the evidentiary hearings in this proceeding – without first raising the issue in testimony – and has not shown the cap to be an effective consumer protection through data or analysis.⁵ Tr. 826-27. Further, it would only cap customers' WNA charges if they would exceed 100% of the customer's combined distribution rate and customer charge, which is unlikely to stop bills from increasing to the point of becoming unaffordable. PECO Gas M.B. at 9; Tr. 826-27. In sum, more so than other WNAs in effect in Pennsylvania, PECO Gas's proposed WNA represents a greater threat of creating unaffordable rates; as a result, the Company's claim that its proposal is similar in substance to other WNAs currently in effect is not support by the record in this proceeding and should be given little weight.

3. After Two Decades of WNAs, it Is Clear that WNAs Harm Customers and Cause Customer Confusion.

Any similarity between PECO Gas's proposed WNA and those currently in effect is not support for the Company's proposal.⁶ Instead, it shows the significant likelihood of consumer harm and confusion. As provided in the OCA's Main Brief, PGW's WNA has collected nearly \$80

⁵ The Company did not state why this cap was only appropriate during May when substantial charges also can be present during October, November, and April – the other "shoulder months," or months when temperatures are transitioning into or out of colder weather – how it selected a cap of 100%, how much of an increase would be likely under the cap as measured in dollars, or why the customer charge was included in the cap instead of only the portion of the bill the WNA is intended to adjust, the volumetric rate. *See* OCA St. 6 at 24. These unanswered questions demonstrate that the Company does not take seriously its burden to demonstrate the justness and reasonableness of excessive WNA charges and, instead, seeks to appear as if it proposes the WNA for "bi-directional" protection without attempting to craft a mechanism which may lessen consumers' risk of significant rate harm.

⁶ Notably, the OCA challenged Columbia's WNA in its recent rate proceeding as an unjust and unreasonable rate due to the significant rate impact the WNA has had on Columbia's customers; however, due to previous settlement commitments and the settlement achieved in that proceeding, the OCA and Columbia agreed that the parties could litigate the WNA in Columbia's next base rate proceeding, *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2024-3046519 (Joint Petition for Settlement filed Aug. 22, 2024) at ¶ 35.

million in additional net revenue above its base rate revenues in the past five years. OCA M.B. at 26. PECO Gas’s similarity to PGW in size and location – notwithstanding the Company’s failure to support the use of a singular location to collect weather data for its entire service territory⁷ – demonstrates the high likelihood that customers will see rates move in a single direction – up – instead of bi-directionally, as claimed by PECO Gas. Similarly, in May 2022, PGW’s WNA over-collected \$12 million in WNA charges, with some WNA surcharges in excess of \$200. OCA M.B. at 25; OCA St. 6 at 24. PECO Gas’s attempt to minimize the significant impact that this over-collection had on PGW’s customers fails to consider how serious the impact must have been for PGW to request removal of the month of May from its WNA calculations, beginning in 2023. OCA M.B. at 25-26. Yet, PECO Gas still requests implementation of the WNA during May while providing no analysis or evidence to distinguish how its WNA would be less likely to cause harm than PGW’s. *Compare* PECO Gas M.B. at 17 *with* OCA St. 6 at 25 (“PECO has included shoulder months within its WNA proposal with no analysis of potential customer bill impacts. It is likely that [May and/or October] should be eliminated from the WNA.”).

Further, the Company’s claim that the “Commission approved the WNAs of UGI and NFG, and the continuance of Columbia’s WNA, after the May 2022 PGW incident” is incorrect. PECO Gas M.B. at 18. The Commission has not yet investigated PGW’s WNA – electing to defer any such investigation until PGW’s next general rate increase request – and the source of the immense WNA charges in May 2022.⁸ *See Pa. PUC v. Phila. Gas Works*, Docket Nos. R-2022-3034229 et al (Order entered Sept. 21, 2023) at 37 (“[W]e further direct that PGW shall address the Weather

⁷ Mr. Tracey, at the June 13 afternoon Public Input Hearing, pointed out that temperatures are much different in PECO Gas’s service territory, even within one county. Tr. 505. Mr. Tracey provided more analysis than PECO Gas regarding the efficacy of using a single location to measure weather data for all of the Company’s service territory.

⁸ The Company’s statement is also incorrect because, as stated *supra*, it did not approve WNA mechanisms in those proceedings but rather it approved settlement agreements – which are not recognized as precedential or divisible with respect to their individual terms – and not the WNAs themselves.

Normalization Adjustment portion of its tariff . . . in PGW’s next base rate proceeding”). The Commission did not, at the time of the approval of the settlements of UGI, NFG, or Columbia⁹ nor does it currently, have the results of a full factual investigation into whether PGW’s WNA is a just and reasonable rate mechanism. Nor have there been full factual investigations opined on by the Commission into whether WNAs as a whole are just and reasonable rate mechanisms, despite the Company’s assertion that consideration of one means approval of all. PECO Gas M.B. at 18.¹⁰

The WNA remains an opaque and confusing concept to consumers, despite PECO Gas’s averments to the contrary. In its Main Brief, the Company argues that “the WNA is understandable as it is not a new concept to gas customers in Pennsylvania or the broader regulated utility industry,” an assertion which runs contrary to the evidence presented in this proceeding. PECO Gas M.B. at 16. Specifically, OCA witness Nelson cited to several news articles and internet forum threads from 2022 and 2023 – or approximately 20 years after Pennsylvania’s first WNA was implemented – where customers expressed confusion and frustration over WNA charges. OCA St. 6SR at 12. PECO Gas’s own customers testified at the Public Input Hearings in this proceeding that they did not understand the WNA or how it was calculated and thought that the Company’s proposal should be rejected. OCA M.B. at 33-38; OCA Exh. NAD-1-SD at 12-14. The Company’s further assertion that it will develop adequate educational materials to explain the WNA should be met with skepticism; 20 years of educational materials have proved insufficient to properly educate customers on what a WNA is and does. It is unlikely that any materials produced by PECO Gas –

⁹ In Columbia’s current rate proceeding at R-2024-3046519, the OCA presented evidence showing that Columbia’s pilot WNA collected net WNA revenue of \$61.9 million over an 11-heating season period from 2013-2014 to 2023-2024, and that the pilot WNA provided no benefits to retail ratepayers over that period. The OCA also presented evidence that over the last five years, ratepayers have been required to reimburse Columbia \$66.6 million through the pilot WNA. *See* OCA St. 1SR, Surrebuttal Testimony of David E. Dismukes at 9, Exhibit DED-SR-1 (as admitted into the record).

¹⁰ PECO Gas’s assertion is incorrect for the reasons stated in this paragraph, in addition to the fact that, as identified *supra*, the proceedings referenced resulted in settlement agreements, which cannot be construed as precedential. *HIKO Energy, LLC*, 163 A.3d at 1102-03.

especially considering that such materials have yet to be developed or shared with the parties to this proceeding – will alleviate customer confusion and frustration. *Compare* PECO Gas M.B. at 16 *with* OCA M.B. at 37-38; *see also* Tr. 834 (PECO Gas has not provided any educational materials regarding the WNA).

4. PECO Gas Is Not Entitled to Implement a WNA.

While PECO Gas is correct to assert that the Commission *may* authorize a WNA, it paints with broad strokes. PECO Gas at 7 (citing Section 1330 of the Public Utility Code). For example, the Company states that the Commission has investigated “alternative ratemaking mechanisms that may mutually benefit customers and utilities . . . including decoupling mechanisms in general and WNAs in particular.” PECO Gas M.B. at 19-20. However, the Commission only provided that WNAs, or other decoupling mechanisms, may be mutually beneficial “if proposed and implemented with care,” and stated that there is no presumption of approval with respect to WNAs or other proposed mechanisms. *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (Final Policy Statement Order entered July 11, 2019) (*FPSO*) at 23. PECO Gas has presented no evidence to support the claim that the WNA *that it requested* is proposed with and would be implemented with care; to the contrary, the lack of evidentiary support presented by PECO Gas demonstrates that the WNA was not proposed with care nor would it likely be implemented with care. Instead, the Company relies on a presumption of approval which the Commission feared in its *FPSO*, which is why the Commission ultimately elected not to adopt a proposed policy statement which described the WNA as an example of an alternative ratemaking mechanism which may be requested. *Id.* at 24.

For these reasons, the Company cannot rely on the fact of other NGDCs’ WNA mechanisms as if it were evidence to indicate that *its* proposed WNA will result in just and reasonable rates. Other WNAs arose out of settlements, which cannot be construed as Commission

support for WNAs as a whole. Other WNAs are substantially different, each with shorter weather “normal” periods and three with deadbands of a higher percentage threshold. Other WNAs are plagued with issues, as indicated by the evidentiary record in this proceeding, which were either ignored or dismissed by PECO Gas without further analysis. The Company’s assertions which profess support for the WNA are devoid of basis in law or fact. PECO Gas has failed to discharge its burden of presenting substantial evidence that implementation of its proposed WNA would result in just and reasonable rate. *See* 66 Pa. C.S. § 315(a); 2 Pa. C.S. § 704. Therefore, PECO Gas’s attempt to wriggle free of its evidentiary burden should not be permitted, and its attempt to utilize the existence of other WNAs to support the implementation of its own should be rejected, with little weight being assigned to those unsupported averments raised by PECO Gas throughout this proceeding.

C. PECO Gas Is Able to Provide Safe, Adequate, and Reliable Service Without the WNA.

The Company has presented no evidence to indicate that it would be unable to continue providing safe, adequate, and reliable service if it is not permitted to extract additional revenues from consumers through the WNA. While PECO Gas avers that its “inability to recover its Commission-authorized revenues could impair its ability to continue to maintain and enhance the safety and reliability of its system,” statements such as these are purely hyperbolic. PECO Gas M.B. at 11. The axiom that public utilities are not guaranteed to earn their Commission-authorized revenue requirement is fundamental to the regulatory compact; rather, utilities are given the *opportunity to earn* their Commission-authorized revenue requirement. OCA. M.B. at 21; *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (*Hope*). PECO Gas’s concern with respect to “matching” its authorized revenue with its actual revenue collections circumvents this underlying principle of public utility regulation. It should not be permitted to do so.

In the Company’s discussion of its claimed “need” for the WNA, it did not discuss its extensive use of alternative ratemaking at present, including the use of an FPFTY and recovery of investment in plant between rate cases through the DSIC. *Compare* PECO Gas M.B. at 10-12 with OCA M.B. at 18-21. PECO Gas also stated that it intends to request additional rate relief within the next two to three years.¹¹ OCA M.B. at 19; PECO Gas St. 3R at 10. Should PECO Gas make safety- or reliability-related investment in plant between the Commission’s final order in this rate investigation and its next requested for rate relief, it will be able to recover such investment through its DSIC.¹² The Commission recent rejection of PAWC’s proposed RDM was, in part, because PAWC already uses the FPFTY, DSIC, and frequent rate cases to ensure that it has access to sufficient revenues to combat declining consumption. *PAWC 2023* at 308. PECO Gas similarly employs these tools. Yet, in the Company’s plea for additional revenues through the WNA, the Company declined to mention that it is well-equipped to ensure access to adequate revenue.

Furthermore, the Company provided no evidence to demonstrate that it is unable to recover the totality of its fixed costs. The citations provided by PECO Gas to the factual record in support of its averments direct to conclusory remarks made its witness Trzaska. PECO Gas M.B. at 10-11. However, despite Mr. Trzaska’s statement that “if weather is warmer than normal, [it] would leave the Company in the position where it may not be able to recover its total fixed costs,” no facts, data, or analyses were provided to support this statement. PECO Gas St. 3 at 67:21-22. PECO Gas did not furnish evidence which showed that it was unable to meet its fixed costs as a result of warming weather, or the likelihood how much it would need to underearn before the Company

¹¹ If the Company is unable to make necessary safety or reliability-related investment in infrastructure, it can petition for an emergency rate increase under the Public Utility Code to ensure consumers are able to receive safe and reliable service without the need to implement a WNA. 66 Pa. C.S. § 1308(e).

¹² Importantly, if PECO Gas files its next general rate increase request in approximately two years, its FPFTY in this proceeding will be proximate in time with its historic test year in its next rate increase request, and may even overlap. The brief amount of time uncaptured between test years – if any – indicate that the Company will be able to provide an updated revenue increase request based on how weather in the FPFTY affected its ability to collect revenues.

would be unable to meet its fixed costs. Instead, no analysis was provided, and little weight should be afforded to these bare assertions.

PECO Gas, similarly, did not define its fixed costs, how such costs remain fixed beyond its test year, or how it is unable to recover those costs which become fixed through the use of the FPFTY and DSIC. When OCA witness Nelson raised these concerns in his direct testimony, Company witness Trzaska responded by stating that “PECO does have certain costs that are fixed and others that are variable. I disagree with Mr. Nelson that fixed costs are ‘poorly defined’ and that ‘all costs are variable in the longer.’” *Compare* OCA Exh. RN-4 at 1-2 with PECO Gas St. 3R at 16:15-17. However, the Company provided no further elaboration to either better define fixed costs or to demonstrate that costs *are not* variable in the long term despite all evidence showing they are. PECO Gas has the ability to plan and control its costs through the FPFTY and beyond, meaning that it should consider its ability to recover costs that become fixed between rate cases when incurring such costs if its ratepayers use less gas. The Company has not argued that it is incapable of financial foresight. As such, it should be prepared to adjust spending, investment, planning, or rate request filing frequency should its earned and authorized revenues not “match.”

Similarly, the Company also failed to present any evidence pertaining to the connection between the WNA and its ability to compete in capital markets. PECO Gas did not demonstrate that its investors would divest PECO Gas or, in any way, provide less capital if the Company does not receive Commission authorization for its proposed WNA.¹³ While PECO Gas claimed in its Main Brief that “deviation in actual weather from normal weather can also produce volatile financial results, which can impact the Company’s ability to attract the capital necessary to fund

¹³ Importantly, because PECO is a combined electric and natural gas distribution company, its investors are able to hedge in the event of warmer-than-normal winters due to rising summer temperatures, which, in turn, result in rising revenues for electric distribution companies. OCA M.B. at 23; PECO Gas St. 5 at 8.

its investments,” its factual citation for this statement is to another conclusory remark made in testimony. PECO Gas M.B. at 11; *see* PECO Gas St. 3 at 80 (“This will have the added benefit of assisting the Company in attracting the capital necessary to fund its investments.”). The Company’s conclusion is not supported by any facts, data, or analyses which lend credibility to its argument. As provided in the OCA’s Main Brief, weather is a business risk faced by all NGDCs and is diversifiable; investors do not expect to be compensated for such risks, or else business risk would be provided for in the models used to estimate market-based costs of equity. OCA M.B. at 22; OCA St. 2 at 49. PECO Gas did not present evidence to rebut or address this evidence.

The simple fact of the matter is that PECO Gas should not be guaranteed its revenue as the financial uncertainty of not having guaranteed earnings preserves the Company’s incentives to control costs during periods of warmer-than-normal weather, an incentive which benefits ratepayers who may pay reduced rates in the event of the Company’s improved efficiency. OCA M.B. at 22. Weather risk over time is something that NGDCs have borne for over a century and is knowingly accepted by those that invest in NGDCs; PECO Gas has presented no evidence that the strategies relied upon by NGDCs to ensure safety and reliability in the face of declining usage are no longer effective. *Id.* at 23. In other words, the Company has failed to demonstrate its need for a WNA. Therefore, the OCA submits that the Company has not demonstrated a need for the WNA and its arguments providing that such a need exists be assigned little weight.

D. The WNA Unfairly Shifts Risk to Consumers.

The evidence presented by the OCA demonstrates that WNA charges are more likely than credits, creating an uncontrollable and unpredictable additional rate consumers will pay during winter months. OCA M.B. at 26; OCA Exh. RN-3. This data, unrebutted and unaddressed by PECO Gas illustrates the way the risk of declining usage and warming weather are being shifted from the Company – which elected to bear the burden of weather risk by entering into the natural

gas business – on to its captive ratepayers, who merely elected to receive natural gas distribution service. By proposing the WNA, the Company is alleviating itself of the burdens of accurate weather forecasting, efficient management during periods of warmer weather, and designing a “future-proof” natural gas distribution system. OCA St. 6 at 9-10.

1. PECO Gas’s Attempt to Shift the Burden of Proof Should Be Rejected.

At the outset, PECO Gas seeks to shift the burden of proof in this proceeding by claiming that the Commission has determined WNAs to be reasonable “for PGW, Columbia, UGI, and NFG and should reach the same conclusion with respect to PECO’s WNA.” PECO Gas M.B. at 14. As stated *supra*, this is an incorrect statement of law because the WNAs for PGW, Columbia, UGI, and NFG were approved as a result of settlements, and the Commission cannot and should not hold that the approval of a settlement in its totality constitutes the approval of a specific term within that settlement. *Columbia 2022, supra*, at 107 (“It is well-established that the terms and conditions of settlements are not relied upon as precedential.”).

Beyond this, PECO Gas attempts to paint the burden of proof in this proceeding as resting upon the OCA to demonstrate that “the facts and circumstances have changed so drastically” since the Commission approved other NGDCs’ WNAs “as to render the application of the [WNA] unreasonable,” which is the burden of proof borne by a party challenging a tariff provision *already approved by the Commission. Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. Ct. 1996). However, PECO Gas, as the proponent of the rate, bears the burden of presenting substantial evidence that the WNA would result in just and reasonable rates. 66 Pa. C.S. § 315(a); 2 Pa. C.S. § 704.

2. The Increased Risk to Customers Is Demonstrated by the Likelihood of Higher Rates.

It is highly likely that customers will be forced to pay much more in WNA charges than they will receive credits, if subjected to the WNA. OCA St. 6 at 16. PECO Gas has not presented any data or argument to refute this fact; instead, the Company states that “[w]hile customers may experience warmer-than-normal weather, they may also experience colder-than-normal weather.” PECO Gas M.B. at 13. While this statement is certainly true in the abstract, data presented in this proceeding demonstrate that recent weather trends indicate weather is far more likely to be warmer than colder. OCA M.B. at 26; OCA Exh. RN-3. The OCA urges the Commission to recognize the difference in probability between warmer-than-normal and colder-than-normal weather. As the likelihood of colder-than-normal weather diminishes – with, for example, fewer than 10% of all HDDs within the last 10 years being colder-than-normal – the claimed bi-directional benefits of the WNA disappear and the sole beneficiary becomes the Company. OCA M.B. at 30; OCA St. 6 at 13. If the likelihood of charges and credits were near even, the Company would very likely not propose such a mechanism.

While the Company may claim that “the WNA reduces risk to both the Company and customers,” the risk cannot be reduced to both the Company and customers at the same time, in the same amount. PECO Gas M.B. at 13. The question which remains, then, is whether the party bearing the risk should be the Company – a financially, technically, and legally fit public utility with the agency to determine the rate of its investment, what expenses it incurs, and when it incurs such expenses – or a residential or small business ratepayer only able to control how much gas they use. Under the WNA, the risk is shifted onto the customers who would sacrifice potential bill savings from reducing consumption in warmer-than-normal months – or most months, especially

under the Company’s proposed 30-year weather “normal” and the warming weather trend¹⁴ – and be put at risk of an unaffordable bill each winter month. In turn, the NGDC – that elected to participate in an industry perennially impacted by weather-related risk – bears little, if any, weather-related risk.

Because no data indicates that colder-than-normal months are remotely as likely as warmer-than-normal months, there is little to no benefit to consumers from the WNA. Instead, the “benefit” received by customers is illusory. Customers will be forced to pay additional rates each month under the WNA without receiving any benefit commensurate to their contribution to the Company’s guaranteed revenues. To demonstrate this, if the Company’s proposed WNA had been in effect for the past 10 years, customers would have paid an average rate increase of \$11 million; it is unclear how consumers are benefiting by providing the Company with those additional revenues, as only two of those years resulted in net credits for the year. OCA M.B. at 26; OCA Exh. RN-3. Therefore, the Commission should assign little weight to arguments raised by PECO Gas which provide that customers are likely to benefit or will benefit equally to the Company, as such arguments are not supported by *any* evidence.

Further, the Company did not provide analyses on the bill impact to consumers which would support its claims that risk is not being unfairly shifted to consumers. OCA St. 6 at 26. The Commission should reject the Company’s attempt to shift the burden in this proceeding from itself, as the proponent of the WNA, on to the challengers to the WNA, who do not bear the burden of demonstrating whether the WNAs currently in effect are unreasonable but may, instead, identify

¹⁴ PECO Gas avers that its “30-year weather normal calculations are updated on an annual basis and, therefore, take into account the most recent weather data when forecasting sales and usage and anticipated heating degree days.” PECO Gas M.B. at 13. While technically correct, it is important to note that when 2024 weather data is incorporated into the Company’s weather “normal” period, the data will still include weather data from 1995. The greater issue is not the rolling nature of the Company’s weather “normal” period, but the fact that the data set will use the oldest weather data of any WNA in Pennsylvania.

where the Company's proposal is not supported by substantial evidence. OCA M.B. at 7; *Pa. PUC v. Pa.-American Water Co.*, 231 P.U.R.4th 277, 2004 Pa. PUC LEXIS 29, *16-18 (Jan. 29, 2004) (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."). The Commission should assign little weight to the unsupported factual averments made by the Company regarding whether the WNA would unfairly shift risk to consumers. Instead, the weight of the evidence presented by the OCA and other parties demonstrates that the WNA proposed by PECO Gas would unfairly shift risk to consumers.

E. The WNA Will Disproportionately Impact Low-Income Customers

PECO Gas failed to support its claims that its proposed WNA will not disproportionately impact low-income customers. The Company failed to address the significant evidence presented by the OCA and CAUSE-PA regarding the disproportionate impact of WNA charges on low-income customers who, as provided above, are unlikely to receive much benefit from the WNA.

The Company's argument that "neither the OCA nor CAUSE-PA demonstrated that PECO Gas's WNA will have any greater or different impact on PECO Gas's low-income customers than the impact of the respective WNAs of PGW, Columbia, UGI, and NFG on their low-income customers" must be rejected. PECO Gas M.B. at 14-15. In this proceeding, the Commission is tasked with considering the WNA proposed by PECO Gas, not those proposed by PGW, Columbia, UGI, and NFG. 66 Pa. C.S. § 315(a); 2 Pa. C.S. § 704. PECO Gas appears to be under the impression it can satisfy its burden of production by pointing to a non-existent proceeding and remarking how little evidence had been presented in that proceeding. This is not the case; the OCA need not remark on the comparative impact of the WNAs of *other NGDCs* on the low-income customers of *those NGDCs*, it must only provide evidence to support its claims regarding the

impact of *PECO Gas*'s proposed WNA on *PECO Gas*'s customers.¹⁵ See *In re Navarra*, 185 A.3d 342, n. 5 (Pa. Super. Ct. 2018) (“The ‘burden of proof’ consists of two parts: the burden of production and the burden of persuasion. The ‘burden of production’ tells the court which party must come forward with evidence to support a proposition.”) (citations omitted). This is an attempt to shift the Company’s burden on to the OCA and CAUSE-PA and is contrary to law. PECO Gas must support its claim that no disproportionate impact to the Company’s low-income customers would result from implementation of the WNA, if it is going to make that claim. 66 Pa. C.S. § 315(a) (“In any proceeding . . . involving any proposed or existing rate of any public utility . . . the burden of proof to show that the rate involved is just and reasonable *shall be upon the public utility.*”) (emphasis added).

Further, it is self-evident that when rates increase, the rate increase disproportionately impacts low-income customers as the percentage of monthly income dedicated to energy costs increases. OCA M.B. at 29-30; OCA St. 4 at 87-88. Because the WNA is more likely than not to result in increased bills during months when it is in effect, as demonstrated *supra* and unrefuted by PECO Gas, low-income customers who are not enrolled in CAP will be required to relinquish a greater proportion of their monthly income to PECO Gas. OCA M.B. at 29; OCA St. 4 at 86. With the high penetration of unaffordability in PECO Gas’s service territory, the additional rates from the WNA will create a significant burden for those customers struggling to afford their monthly bills at present rates. OCA M.B. at 27; OCA St. 4 at 25. Once a customer becomes

¹⁵ It would be immensely difficult for the OCA to assemble data of the quantity and type required in order to meet the burden alleged by the Company. PECO Gas’s assertion that the OCA and CAUSE-PA – which presented significant evidence pertaining to the disproportionate impact of the proposed WNA on low-income customers – must somehow demonstrate that the Company’s WNA is worse for low-income customers than the WNAs implemented by other NGDCs is not grounded in law. See *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950) (“‘The term ‘burden of proof’ . . . imports the duty of ultimately establishing any given proposition . . . this phrase, ‘burden of proof’ . . . marks . . . The peculiar duty of him who has the risk of any given proposition on which parties are at issue, – who will lose the case if he does not make this proposition out, when all has been said and done.’”) (quoting James Bradley Thayer, *A Preliminary Treatise on Evidence at the Common Law* 353 (2d ed. 1898)).

payment-troubled, it is difficult for that customer to return to regular payments in full and on time, as the Company collects a late payment charge of 1.5% per month on the full, unpaid balance; implementing the WNA increases the likelihood that customers will fall behind on payments and be put at risk of termination. OCA St. 4 at 83-84.

Evidence of the Company's CAP is insufficient to demonstrate that low-income customers will not be disproportionately impacted by the WNA. While the Company is correct to argue that customers who are enrolled in the Company's CAP and are on the percentage of income payment plan will not be directly impacted by the WNA, this only helps those customers *who are actually enrolled in CAP*. PECO Gas M.B. at 14; OCA M.B. at 30; OCA St. 4SR at 5. As stated by OCA witness Colton, "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.*" OCA St. 4SR at 5 (emphasis added). As such, the Company's reliance on the existence of its CAP is misplaced as its CAP customer base represents only a fraction of the number of low-income customers in PECO Gas's service territory.

PECO Gas also overlooks the fact that its budget billing program is effective without needing to work in tandem with the WNA, as the two programs accomplish different aims. PECO Gas M.B. at 14. The Company did not supply evidence to support the argument that the combination of budget billing and the WNA somehow created more "bill predictability and stability than budget billing alone." *Id.* Such conclusory remarks should be given little weight. Instead, the evidence presented in this proceeding demonstrates that a small portion, close to 10%, of the accounts enrolled in PECO Gas's budget billing program had *any* degree of bill balance, with only hundreds of accounts requiring any bill balance adjustments out of over 70,000. OCA

M.B. at 35-37; OCA St. 4SR at 3-4. No facts, data, or analyses presented in the course of this proceeding demonstrate that the budget billing program would somehow be improved by the introduction of the WNA, though the program would be improved from the Company's perspective due to the extraction of greater revenues from customers.

In sum, PECO Gas has presented no evidence of weight to support its claim that *the Company's* low-income customers – and not the low-income customers of other NGDCs – would not be disproportionately impacted if the WNA were put into effect. The Company has failed to rebut the fact, supported by substantial evidence from the OCA and CAUSE-PA, that low-income customers will be disproportionately harmed should the WNA be implemented. The averments made by the Company in testimony were unsupported by data or analyses, despite the Company's opportunity to respond to the OCA's ample presentation of evidence with more than opinions and beliefs. Therefore, the Commission should assign little weight to the evidence and arguments made by PECO Gas and find that the WNA would be harmful to low-income customers if implemented.

F. The WNA Will Detrimentially Impact Conservation Efforts and Further Disproportionately Impact Low-Income Customers

Similarly, because the WNA is likely to increase bills, it necessarily impacts consumers' price signals regarding incentives to conserve energy. Put simply, a bill with a WNA is likely to be a higher than a bill without the WNA; if a customer reduces their usage and would have a lower monthly payment as a result, the customer's bill with the WNA will be greater than the customer's bill without the WNA. The Company seeks to inject confusion into consumers' price signals, which goes against the considerable weight the Commission gives to price signals during the ratemaking price signals. OCA M.B. at 32; *Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) at 274 (“Improved price signals can translate into more economically efficient energy usage.”). By varying customers' bills with an element beyond

their control – weather – customers’ bill expectations will become confused, making it more difficult to budget and perform the calculus necessary to analyze the costs and benefits of contemplated energy efficiency improvements. OCA M.B. at 27, 32; OCA Exh. NAD-1-SD at 13 (“Furthermore, the unpredictability of the variation between actual and historical weather makes it difficult to budget for potential WNA charges. Tr. 540. Budgeting plays an important role for low-income customers and those on fixed incomes to ensure that as many essential costs are paid-for as possible; unpredictability when budgeting can place a significant burden on customers who rely on it. Tr. 458-59.”).

This impact will be felt especially hard by PECO Gas’s low-income customers. Low-income customers who are unable to improve the energy efficiency of their home 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 M.B. at 28-29; OCA St. 4 at 74-76. As stated by OCA witness 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 M.B. at 29; OCA St. 4SR at 5. With the introduction of an uncontrollable and unpredictable charge on to low-income customers’ bills which reduces the effectiveness of decreasing consumption in the home, it will become more difficult for low-income customers to budget for their monthly bills, and, in turn, low-income customers will be put at a greater risk of being unable to pay their bills on time and in full. OCA M.B. at 17-18; OCA Exh. NAD-1-SD at 12-14; OCA St. 4 at 85.

G. OCA Response to IBEW’s Support for the WNA.

IBEW supports PECO Gas’s WNA proposal on policy bases that do not withstand scrutiny. IBEW’s support for the WNA is limited to two arguments: (1) PECO Gas did not cause climate

change and, therefore, it should not bear the risks of it; and (2) because PECO Gas is “entitled to recovery” the WNA will spread costs over time instead of hitting ratepayers with rate-shock from fluctuating bills. IBEW M.B. at 6. Not only are IBEW’s arguments without merit, but they are devoid of any underlying analysis, thereby failing to demonstrate that the WNA is a just and reasonable for PECO Gas customers.

First, IBEW’s argument that PECO Gas is somehow entitled to implement a WNA because “PECO did not cause climate change” is fundamentally flawed. *See* IBEW M.B. at 6. At the outset, the OCA notes that there is no federal or state statute or Commission regulation, order, or policy to support IBEW’s argument that climate change entitles PECO Gas to implement a WNA mechanism. There is also no underlying fact-based analysis explaining how IBEW arrived at its conclusion. Importantly, even PECO Gas contradicts IBEW’s argument that climate change offers a supporting basis for the WNA. During the evidentiary hearing on August 8, 2024, PECO Gas witness Michael Trzaska disclaimed that climate change served as a basis for the WNA proposal, and he stated that “climate change is more of a long-term issue” and that “one of the purposes [of the WNA] is to address short-term volatility.” Tr. at 828-829. Thus, IBEW’s reliance upon climate change is unsupported by law, regulation, policy, analysis, and even by PECO Gas’s testimony; accordingly, it must be rejected.

Additionally, without any underlying cost analysis or other type of fact-based substantiation, IBEW concludes that the WNA will protect customers from rate shock by spreading costs over time. IBEW M.B. at 6. IBEW’s conclusion is not grounded in the record, as IBEW provides no basis for its conclusion, and the OCA avers that the record provides no such support. To that end, it is difficult to respond to IBEW’s claims other than that it appears that IBEW may be conflating the WNA with budget-billing. As the OCA explained in its Main Brief, the WNA

does not eliminate seasonal volatility in bills: it attempts to set a hypothetical “normal” representation of what a winter bill should be (and hence a target revenue to collect), 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 M.B. at 36; OCA St. 4 at 92. On the other hand, budget billing, which is an existing billing option for PECO Gas customers, would correct for the seasonal volatility that appears to underlie IBEW’s concern. More specifically, budget billing would create a 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. OCA M.B. at 36; OCA St. 4 at 92.

Not only would the WNA fail to spread costs over time, but unlike budget billing, which customers would opt-in to enroll, the WNA would be foisted upon impacted customers without their ability to opt-out. OCA M.B. at 36; OCA St. 4 at 92. IBEW’s arguments ignore this reality, but other than PECO Gas witnesses’ testimony and opinions, there is no evidence offered to support the claim that PECO Gas customers wish to have a WNA mechanism in place to normalize their bills. Tr. at 834-835. Accordingly, IBEW’s claim that the WNA will serve customers by spreading cost over time to normalize them in lieu of rate shock is not only at odds about how the WNA would actually work, but is also a solution in search of a problem that PECO Gas customers have not identified. As the advocate statutorily charged to represent the interest of PECO Gas’s consumers, the OCA does not support the approval of the WNA to mitigate rate shock or otherwise protect consumers because the WNA does not do these things, it in fact does the opposite. To the extent that IBEW is concerned about seasonal rate volatility, its concerns perfectly exemplify why PECO Gas’s underservicing of the budget billing program is consequential and warrants scrutiny. *See* OCA M.B. at 36; OCA St. 4 at 94. However, IBEW’s claims and arguments against the OCA,

and in favor of approving a WNA for PECO Gas customers, are unsupported, devoid of any evidence-based analysis, misinformed, and should be rejected.

IV. CUSTOMER SERVICE REPRESENTATIVE ISSUES

The OCA presented no evidence pertaining to the Customer Service Representative issues presented by IBEW in its Main Brief. As such, the OCA does not address the arguments raised by IBEW in this Brief.

V. IBEW PROPOSALS

The OCA submits that the arguments raised by IBEW with respect to the revenue requirement established in this proceeding are fully addressed by the Joint Petition. The Joint Petition presents a “black box” settlement, which means that the Joint Petition provides a sufficient revenue increase for each component of the Company’s revenue requirements without the need to delineate each expense individually. *See Columbia 2022* at 12 (defining a “black box” settlement). As a result, the OCA avers that IBEW’s concerns pertaining to the Company earning sufficient revenue are sufficiently addressed by the Joint Petition. By virtue of entering into the Joint Petition resolving its revenue requirement at a lower amount than initially requested, PECO Gas agrees that the Joint Petition’s terms are sufficient to enable it to meet all regulatory requirements and operational obligations.

A. Worker Safety and Safety Standards

The OCA presented no evidence pertaining to the worker safety issues presented by IBEW in its Main Brief. As such, the OCA does not address the arguments raised by IBEW in this Brief.

B. PECO’s Vacancy Rate, Budgeting and Workforce Planning Process

The OCA submits that, as provided above, the “black box” Settlement set forth in the Joint Petition sufficiently addresses the issues raised by IBEW pertaining to the Company’s vacancy

rate, and budgeting. The OCA did not address PECO Gas’s workforce planning process as set forth by IBEW and therefore it takes no position on this issue in briefing.

C. IBEW’s Proposals For Additional Reporting Requirements

The OCA did not present evidence pertaining to the additional reporting requested by IBEW in this proceeding. As such, the OCA does not address these issues in this Brief.

VI. 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 for the reasons set forth in this brief and the OCA’s Main Brief and in this Reply Brief. Therefore, the Commission should reject the Company’s request to implement a weather normalization adjustment as unjust and unreasonable and unsupported by substantial evidence. Additionally, the Commission should approve the Joint Petition without modification.

Respectfully submitted,

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