



September 12, 2024

Via electronic mail

The Honorable Darlene Heep
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

The Honorable Marta Guhl
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

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

Dear Judge Heep and Judge Guhl:

Enclosed please find the **Reply Brief of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania** in the above referenced proceeding.

Copies are being served upon all parties and Your Honors, as indicated on the attached Certificate of Service.

If you have any questions, do not hesitate to contact me.

Sincerely,

/s/ Charlotte Edelstein
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Enclosures

Cc: PA PUC Secretary's Bureau
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

R-2024-3046932

Office of Consumer Advocate
Office of Small Business Advocate
State Representative Christina Sappey
Alan McCarthy

C-2024-3048363
C-2024-3048456
C-2024-3048631
C-2024-3048497

v.

PECO Energy Company (Gas)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of **Reply Brief of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania** upon the parties of record in the above captioned proceedings in accordance with the requirements of 52 Pa. Code § 1.54.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company - Gas

Docket No. R-2024-3046932

REPLY BRIEF OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA

COMMUNITY LEGAL SERVICES, INC

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

 A. Description of Company 1

 B. Procedural History 1

II. SUMMARY OF REPLY ARGUMENT 2

III. WEATHER NORMALIZATION ADJUSTMENT 3

 A. The Existence of Other WNAs in Other Service Territories Does Not Support
 Implementation of a WNA for PECO’s Customers. 3

 B. The WNA Inappropriately Shifts Risk to Customers..... 3

 C. The WNA Disproportionately Impacts Low-Income Customers. 4

 D. The WNA Unjustly Impacts Dual Gas and Electric Customers 5

 E. PECO Has No Substantive Consumer Protections Associated With the WNA..... 6

IV. CONCLUSION 7

TABLE OF AUTHORITIES

Cases

<u>Pa. Elec. Co. v. Pa. PUC</u> , 509 Pa. 324, 502 A.2d 130 (1985).....	2
<u>Pa. P.U.C. v. Philadelphia Gas Works</u> , P-2022-3034229	2, 3
<u>Popowsky v. PUC</u> , 665 A.2d 808, 542 Pa. 99 (1995), 502 A.2d 130, 134 (1985).....	2

Statutes

66 Pa. C.S. § 315.....	2
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Regulations

52 Pa. Code § 69.3302	7, 2
-----------------------------	------

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through counsel Community Legal Services (CLS), files this Reply Brief asking the Commission to reject PECO Energy Company's (PECO) proposed Weather Normalization Adjustment mechanism (WNA). As set forth herein and in CAUSE-PA's previously filed Main Brief, PECO has not met its burden to show that the proposed WNA is just or reasonable, especially in light of the negative effects on affordability the WNA will have on low and moderate income consumers.

Rate mechanisms cannot be just and reasonable if they are not also affordable and accessible to all those in need of service. CAUSE-PA urges the Honorable Administrative Law Judges (ALJs) Darlene Heep and Marta Guhl and the Pennsylvania Public Utility Commission (Commission) to reject the WNA to ensure that low-income and economically vulnerable consumers are protected from rate unaffordability and corresponding inaccessibility of service.

A. Description of Company

CAUSE-PA incorporates the description of the Company as set forth in CAUSE-PA's Main Brief.¹

B. Procedural History

CAUSE-PA incorporates the procedural history as set forth in CAUSE-PA's Main Brief.²

¹ CAUSE-PA M.B. at 1.

² CAUSE-PA M.B. at 2-4.

II. SUMMARY OF REPLY ARGUMENT

As set forth in both CAUSE-PA’s main brief and OCA’s main brief, pursuant to Section 315 of the Public Utility Code, the burden of proving that a rate proposal is just and reasonable rests on the public utility.³ In determining the justness and reasonableness of rates the “PUC is obliged to consider broad public interests in the rate-making process.”⁴ Further, PECO’s proposed WNA is an alternative ratemaking mechanism, and must be considered in reference to the Commission’s policies regarding alternative ratemaking, codified as the Distribution Rates Policy Statement.⁵ That Policy Statement sets forth fourteen factors the Commission must consider when determining whether PECO’s proposed WNA is appropriate in the context of a base rate proceeding.⁶

As discussed below, PECO has not met its burden of proof to show that its proposed WNA is just and reasonable. The mere fact that the Commission has approved WNA mechanisms for other utilities does not, on its own, show that PECO’s proposal is just and reasonable. As discussed herein and in CAUSE-PA’s main brief, PECO’s proposed WNA will have a detrimental impact on low-income customers and programs that assist low-income customers, including PECO’s Customer Assistance Program, reduce incentives for energy efficiency, negatively impact rate stability, and confuse customers. Furthermore, PECO Gas’s proposed WNA unjustly puts PECO Electric customers who are also PECO Gas customers at risk of losing their electric services. As a result, PECO has failed to meet its burden of proof to demonstrate that its proposed WNA is just, reasonable, or in the public interest.

³ 66 Pa. C.S. § 315.

⁴ Popowsky v. PUC, citing Pa. Elec. Co. v. Pa. PUC, 502 A.2d 130, 134 (1985).

⁵ 52 Pa. Code § 69.3302(a).

⁶ Id.; see also Pa. P.U.C. v. Philadelphia Gas Works, P-2022-3034229, Opinion and Order at 31 (Sept. 21, 2023) (deferring the analysis of PGW’s already existing WNA under Section 1330 of the Code and the Commission’s Policy Statement to the next base rate proceeding).

III. WEATHER NORMALIZATION ADJUSTMENT

A. The Existence of Other WNAs in Other Service Territories Does Not Support Implementation of a WNA for PECO's Customers.

PECO argues throughout its main brief that because the Commission has approved WNA mechanisms for other Natural Gas Distribution Companies (NGDCs), PECO's WNA should also be approved. PECO makes this argument seemingly without regard to whether PECO has met its burden of proof as to whether the WNA it proposes in this proceeding is just, reasonable, and consistent with Commission Policy. As OCA notes in its main brief, all of the other recently approved WNAs were initially approved by the Commission in the context of Joint Petitions for Settlement.⁷

B. The WNA Inappropriately Shifts Risk to Customers.

Throughout its brief, PECO reiterates its argument from testimony that the WNA is a “reciprocal mechanism” because PECO will “benefit from greater certainty in revenue when weather is warmer-than-normal and customers will be protected against higher bills when weather is colder-than-normal.”⁸ As a result, PECO argues, the WNA does not “unfairly shift risk to customers.”⁹ On the contrary, though, the evidence in this case shows that the WNA will benefit PECO significantly more than it benefits customers.

⁷ OCA M.B. at 39. PECO also relies on a recent Recommended Decision approving Peoples' Gas proposed WNA, which was part of a non-unanimous settlement. PECO M.B. at 7, 13. As noted by OCA, settlement agreements are subject to a different kind of review by the Commission – they are, inherently, a result of compromise, and specific terms and conditions of settlements are not to be relied upon as precedential. OCA M.B. at 39. PGW's WNA was recently litigated in the context of a petition proceeding, rather than a rate case. In that case, the Commission allowed the already-existing WNA to remain in place and deferred consideration of the appropriateness of the WNA pursuant to the Commission's Distribution Rates Policy Statement to PGW's next base rate case. Pa. P.U.C. v. Philadelphia Gas Works, P-2022-3034229, Opinion and Order at 31 (Sept. 21, 2023).

⁸ PECO M.B. at 12-13.

⁹ PECO M.B. at 12.

As discussed in CAUSE-PA’s main brief, PECO’s definition of “normal weather” itself shifts the burden to customers, to the benefit of PECO. PECO states “OCA and CAUSE-PA seem to believe it is a foregone conclusion that weather will be warmer-than-normal in any given month.”¹⁰ But this is a deliberate misstatement of CAUSE-PA’s concerns. It is not that each and every month will be warmer than average, but that over time, as a result of climate change, there will be more months with warmer than average temperatures than there will be months with colder than average temperatures. As discussed in CAUSE-PA’s main brief, the unrebutted record evidence is clear that temperatures are warming across Pennsylvania. What’s more, PECO’s own analysis shows that if the WNA had been in place for the past 10 years, the WNA would have benefited PECO far more than it would have benefitted customers where the residential class would have been surcharged between \$94 and \$110 million dollars.¹¹ Even PECO’s proposal to use a 30-year lookback to calculate “normal weather” is designed to benefit PECO over its customers. As PECO witness Mr. Trzaska described in his testimony, a shorter weather normal period “would result in lower sales projections.”¹² As temperatures continue to rise, PECO’s proposed WNA will only deliver benefits to PECO at the expense of their customers.

C. The WNA Disproportionately Impacts Low-Income Customers.

Despite PECO’s claims that its proposed WNA will not disproportionately impact low-income customers, the record clearly refutes PECO’s argument. As CAUSE-PA witness Elizabeth Marx testified, low-income customers “are disproportionately impacted by higher bills that could come with a WNA because a larger percentage of their income will need to be devoted to paying the increase.”¹³ As discussed in CAUSE-PA’s main brief, this is true for CAP and non-

¹⁰ PECO M.B. at 13.

¹¹ OCA St. 6 at 12-13.

¹² August 8th Hearing Transcript at 825:22-23.

¹³ CAUSE-PA St. 1 at 67:16-68:1.

CAP low income customers. PECO argues that CAP customers will not be impacted because “CAP customers will never be required to pay more than their PIPP affordability level.”¹⁴ This careful wording by PECO glosses over the fact that CAP customers are charged the lower of their actual bill or percentage of income based bill. During a warmer than normal month, a WNA surcharge would either increase the customer’s actual bill amount, if lower than the percentage of income amount, or make it more likely that a customer would be charged at the percentage of income amount.¹⁵

As discussed above, both CAP and non-CAP low-income customers are disproportionately impacted by the WNA. In 2023 PECO Gas had 79,853 estimated low-income customers, but in December 2023, only 23,715 PECO Gas customers were enrolled in CAP. That leaves an estimated 56,000 low-income PECO Gas customers who are not enrolled in CAP.¹⁶ As Ms. Marx testified, these low-income customers in particular “are disproportionately impacted by higher bills that could come with a WNA because a larger percentage of their income will need to be devoted to paying the increase.”¹⁷ These are higher bills that these customers will not be able to control by reducing their usage if the WNA is approved.

D. The WNA Unjustly Impacts Dual Gas and Electric Customers

In its main brief, PECO stated that “neither the OCA nor CAUSE-PA demonstrated that PECO’s WNA will have any greater or different impact on PECO’s low-income customers than the impact of the respective WNAs of PGW, Columbia, UGI and NFG.”¹⁸ However, to the contrary, as CAUSE-PA noted in its main brief, PECO customers who are dual service, both gas

¹⁴ PECO M.B. at 14. (Emphasis added).

¹⁵ CAUSE-PA St. 1-SR. at 7:10-14.

¹⁶ CAUSE-PA St. 1 at 67:FN 138.

¹⁷ CAUSE-PA St. 1 at 67:16-68:1.

¹⁸ PECO M.B. at 14-15.

and electric, will be uniquely impacted.¹⁹ PECO witness Jaqueline F. Golden stated in her rebuttal testimony that “PECO provides customers who receive electric and gas service with a total bill for their utility service,” and that “a customer in arrears is at risk for termination of both services.”²⁰ This means that when a dual customer receives an inflated and unaffordable gas bill as a result of the WNA their electric service could be at risk of termination. As a result, PECO’s proposed WNA is uniquely dangerous.

E. PECO Has No Substantive Consumer Protections Associated With the WNA.

PECO has asserted that its proposed WNA incorporates customer protections in the form of a 1% deadband, a cap on May distribution revenues under the WNA, and developing WNA educational materials for customers.²¹ Only one of these could even remotely be considered a consumer protection and it is a very small one.

A deadband is not a consumer protection. A deadband is a minimum threshold for the WNA to apply, no adjustment will apply to a customer’s bill if weather falls within the deadband.²² This will not protect customers from the potentially large bills possible under the WNA. In addition, the deadband does not just apply to surcharges, but also to credits, meaning that there may be situations where the deadband might prevent a customer from getting a credit.²³

PECO has proposed that if the WNA were to be approved, then it would provide their customers with “a bill insert describing the implementation of the WNA” and instructions to go

¹⁹ CAUSE-PA M.B. at 10-11.

²⁰ PECO St. 10-R at 23:9-12.

²¹ PECO M.B. at 9.

²² PECO St. 3, pp. 70.

²³ PECO M.B. at 17.

to PECO's website to access an FAQ with information about the WNA.²⁴ None of the materials PECO has described appear to reference any sort of consumer protections. Instead, they seem to be solely focused on informing customers about how the WNA operates. This will not provide customers with any sort of protection.

PECO has proposed a cap on May distribution revenues under the WNA. Specifically, PECO has proposed that WNA adjustments in May could not exceed 100% of the billed distribution amount.²⁵ This protection is minimal at best. It does not provide any protection for customers between October and April and it still allows for significant WNA surcharges even in May.

One of the factors for consideration of an alternative rate mechanism is “[w]hether the alternative ratemaking mechanism and rate design include appropriate consumer protections.”²⁶ PECO has provided almost nothing with regard to consumer protections related to the WNA. As such, this factor should weigh against approval of the WNA.

IV. CONCLUSION

Because of the negative impact on low-income customers and CAP, the disincentivizing of energy efficiency, the opaque billing, the violation of causation principles, the lack of consumer protections, and the unjust and unreasonable impact on dual electric and gas customers, CAUSE-PA respectfully urges the Commission to reject the proposed WNA.

²⁴ PECO St. 3-R, pp. 24-25.

²⁵ Hearing Tr. 826:22-827:6.

²⁶ 52 Pa. Code § 69.3302(a).

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