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August 17, 2026

Via Electronic Filing
Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corporation
Docket No. R-2025-3059428

Dear Secretary Homsher:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in this matter.

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

Respectfully submitted,

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Enclosures
cc: The Honorable Katrina L. Dunderdale (email only)
Certificate of Service

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2025-3059428
	:	
National Fuel Gas Distribution Company	:	

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 Exceptions, 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 17th day of August 2026.

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Dated: August 17, 2026

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2025-3059428
v.	:	
	:	
National Fuel Gas Company	:	

EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: August 17, 2026

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I. INTRODUCTION

On July 31, 2026, Administrative Law Judge (ALJ) Katrina Dunderdale issued her Recommended Decision (R.D.) in the matter involving the request of National Fuel Gas Distribution Company (NFG or the Company) to increase its rates to produce an additional overall revenue of $19.8 million per year, a 7.41% increase in overall distribution revenue requirement. In its rebuttal testimony, NFG reduced its request to $16.2 million. Following full litigation of all issues contested by multiple parties, including evidentiary hearings, the R.D. was issued recommending that NFG be allowed to increase rates designed to produce an annual revenue increase of approximately $8,227,867, or 3.1%.

In response to the R.D., the Office of Consumer Advocate (OCA) files these Exceptions. Whereas the R.D. adopts many of the positions advocated by the OCA in this proceeding, there are some issues disposed of by the ALJ that require an Exception. Specifically, the OCA submits that the ALJ erred in rejecting the OCA's depreciation adjustment as well as the OCA's positions on cash working capital, incentive compensation, the weather normalization adjustment (WNA) and customer service issues.

For the reasons set forth in the OCA's Main and Reply Briefs and below, the OCA respectfully requests that the Commission adopt the ALJ's R.D. as modified by the OCA's Exceptions, with the necessary adjustments which are supported by the evidence of record and applicable law.

II. EXCEPTIONS

A. Exception No. 1: The ALJ properly recognized the reasonableness of the OCA's position that NFG should adopt the Average Life Group procedure for determining depreciation rates, but erred by not recognizing the sufficient evidence provided by the OCA to order NFG to switch from the inequitable Equal Life Group procedure in this proceeding. R.D. at 18-21, 65-67, 153-154; OCA M.B. at 19-40; OCA R.B. at 13-24.

1. **Current NFG customers will continue to face intergenerational inequity if the Equal Life Group (ELG) procedure is permitted to continue.**

Adopting the Average Life Group (ALG)[1] depreciation procedure in this proceeding would help NFG customers who are overextended financially and are trying to afford vital utility service while assuring that the Company recoups its plant-in-service costs as infrastructure depreciates over time.[2] The benefit to NFG's ratepayers by switching from ELG to ALG was recognized recently in a Statement by Commission Vice Chair Kimberly M. Barrow when the Commission issued its decision in *Pa. PUC, et al., v. Pennsylvania-American Water Company* (PAWC):

> I believe it is time to evaluate areas in the ratemaking process that help to address current affordability issues for our ratepayers and the ALG/ ASL approach proposed by the OCA in this proceeding presents an opportunity to do so.[3]

Though the Commission did not adopt the ELG procedure in the PAWC proceeding, the Vice Chair made astute observations that the OCA believes are applicable to this proceeding. The Vice Chair grounded her remarks of what the job of a regulator is in reference to *Hope Natural Gas*: "never forgetting that it is the impact of the rates we set, not the underlying theories that matter."[4] The Vice Chair continued: "This rings especially true now, as we navigate how to weather the substantial affordability storm facing nearly every consumer and crushing our low income neighbors in understanding the job of a regulator rates we set, not the underlying theories that matter."[5]

As the OCA demonstrated in testimony of expert witness Brian C. Andrews, its Main Brief, and Reply Brief, adopting the ALG procedure in this proceeding would lessen the impact of a rate

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[1] The ALG procedure is also referred to as the Average Service Life (ASL) procedure. R.D. at Fn. 3.
[2] *See* OCA M.B. 19-40.
[3] *Pa. PUC, et al., v. Pennsylvania-American Water Company*, Docket Nos. R-2025 3057983, *et al.,* Statement of Vice Chair Kimberly M. Barrow at 3 (July 16, 2026) (*Barrow Statement*).
[4] *Barrow Statement* at 2 (internal citations omitted).
[5] *Id.*

increase on NFG customers *and* do so with an underlying theory that supports the Company's right to recover the cost of its plant assets *and* treat ratepayers now and in the future equitably when it comes to sharing the cost of the Company's investments.[6]

A substantial portion of the increase that NFG's customers are being asked to bear in this case is due to the Company calculating its depreciation costs using the ELG procedure. Without changing its approach, NFG's customers will shoulder higher depreciation expenses because the Company is in a high investment period.[7] With more plant coming online during the next several years, ratepayers will be shouldering the cost for this period of high investment and accrue significantly higher charges up front under the ELG procedure.[8] OCA witness Andrews testified: "This indicates continued increased spending is likely to occur for at least the next 10 years."[9] Mr. Andrews testified that by not switching procedures, current customers carry an even heavier load, as stated in the following:

> [i]n particular, National Fuel's reliance on the ELG procedure results in depreciation rates that are front-loaded and forces unnecessary depreciation expense on current customers. This compounds the cost of the infrastructure asset in the early years of the asset's service life by increasing both the return on the asset (because undepreciated net plant cost is highest in the early year) and the annual recovery of the asset or depreciation expense.[10]

Periods of high investment amplify the discrepancy between the ALG and ELG procedures and result in excessive costs under the ELG procedure.[11] This fact demonstrates that the OCA is not making an argument based solely on the fact current customers will experience direct relief

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[6] *See* OCA Sts. 4, 4SR; OCA M.B. at 19-40; OCA R.B. at 13-24.
[7] OCA M.B. 22-25.
[8] *Id*.
[9] OCA St. 4 at 13-14; NFG St. 1 at 14. OCA witness Andrews acknowledged the Company's DSIC mechanism: "Although National Fuel implemented the Distribution System Improvement Charge ("DSIC") in January 2025, the DSIC is currently capped at 5% of distribution revenues, and the Company anticipates this cap will be met by the end of March 2026." OCA St. 4 at 14.
[10] *Id.* 15-16.
[11] *Id*.

now and for the next decade. Instead, this fact proves that current customers are experiencing generational inequity because not only does the ELG procedure frontload depreciation expense, this procedure is being applied to NFG customers at a time when NFG is undergoing a high investment period.[12]

2. The Findings of Fact that the ALJ relied on are not supported by evidence in the record.

According to NFG, its customers will experience lower rates in the fully projected future test year (FPFTY) and for approximately the next decade by utilizing the ALG procedure.[13] This is contrary to the ALJ's finding of fact that states: "ELG leads to higher depreciation expense in the short term, but results in lower revenue requirements over the long term."[14] However, neither the Company nor the ALJ define what is considered short and long term. Yet, NFG provided data showing that, for the next 10 plus years, adopting the ALG procedure will benefit NFG's ratepayers:

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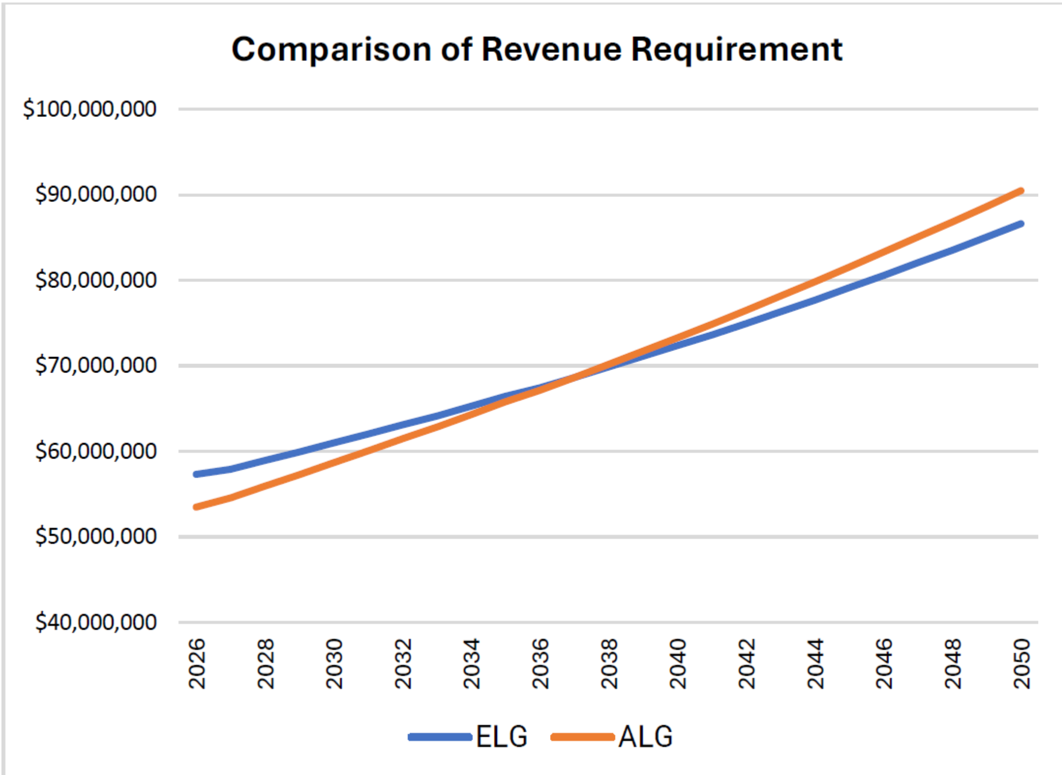
[12] *Pa. PUC, et al., v. Pennsylvania-American Water Company*, Docket Nos. R-2025 3057983, *et al.,* Order at 163. (July 16, 2026) (*PAWC Order*). The Commission's recent Pennsylvania-American Water Company Order claimed the central flaw in the OCA's advocacy for switching from ELG to ALG is it claims the OCA solely based on the fact current customers receive a near-term reduction in rates by switching. The OCA demonstrated in testimony and briefing that the reduction in rates, not to be undervalued, is but one of several substantiated reasons that justify switching depreciation grouping procedures.
[13] OCA St. 4SR at 13.
[14] R.D. at 21.

Figure 3. Comparison of Revenue Requirement



[15]

OCA witness Andrews testified as to the benefit of adopting the ALG procedure, which no party or the ALJ disputed, as follows: "11 years of lower utility bills is a substantial benefit to customers who are experiencing rate increases and facing affordability concerns today."[16] Though 11 years is a remote time in the future, it is important to address the crossover point in approximately the year of 2037, when the revenue requirement is projected to increase.[17] The crossover point gets to the crux of ALG vs. ELG. The Commission summarized this dynamic as follows:

> Depreciation impacts customer rates in two ways. First, depreciation expense is a direct component of the revenue requirement; however, accumulated depreciation is also a reduction to rate base. Second, a higher level of accumulated depreciation

[15] NFG St. 8R at 17.
[16] OCA St. 4SR at 14.
[17] NFG St. 8R at 17.

> results in a lower rate base, lower return on rate base, and therefore, lower customer rates when compared to a lower level of accumulated depreciation.[18]

This summary aligns with what OCA witness Andrews testified: "Both procedures ensure full cost recovery for the utility; the only question is how the timing of that cost recovery is allocated among generations of customers."[19] Mr. Andrews pointed out that the benefit for NFG ratepayers by utilizing the ALG procedure is firmly established at this present moment whereas the benefit to NFG ratepayers utilizing the ELG procedure is based on long-term projections:

> [T]hese long-range projections are based on speculative assumptions about plant activity, retirements, and rate of return extending 25 years into the future. The assumptions embedded in this forecast drive the result, and there is no way to verify whether those assumptions will prove accurate over a quarter-century time horizon. **In contrast, the near-term benefit of the ALG procedure is real and measurable**.[20]

As illustrated by NFG's Figure 3, the known and measurable impact of the ALG procedure means there is a tangible benefit to its current ratepayers whereas the ELG procedure unfairly produces higher rates for current customers based off a projected future scenario. The ALJ overlooked key complexities of balancing current, known, and tangible reality (and therefore direct customer benefit) of switching to the ALG procedure versus a remote and much less certain future: "ASL results in higher customer rates over time than ELG as the costs of a higher rate base will be paid for by future customers, and ASL serves as an intergenerational subsidy to current customers at the expense of other generations of customers."[21]

Here, NFG makes and the ALJ accepts an unsubstantiated claim that ALG "results in higher customer rates over time than ELG."[22] However, there is no accompanying evidence describing

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[18] *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.,* Docket Nos. R-2025-3053499 *et al*., Order at 108 (Dec. 4, 2025) (*Columbia Order*).
[19] OCA St. 4SR at 2.
[20] *Id.* at 14 (emphasis added).
[21] R.D. at 20.
[22] *Id*.

the totality of what will encompass NFG's rates in an unspecified amount of time. Yet, rates could be higher over time *if the ELG procedure is permitted to continue,* i.e. the Company may introduce more rate base (which would then saddle future customers with front-loaded depreciation on top of the ongoing depreciation costs of plant additions put into service during this current period of high investment). NFG's current customers are facing an affordability crisis, which does not lessen the validity of switching to the ALG procedure, rather this period of financial difficulty only magnifies the unequitable result from continued use of ELG procedure, as Mr. Andrews explained, "National Fuel's proposed depreciation rates are overstated and unnecessarily burdensome for National Fuel's customers due to excessive depreciation expense and the subsequently inflated revenue requirement."[23] Maintaining a depreciation procedure that continues intergenerational inequity as a means to potentially save future customers an unquantified amount of money acknowledges the real impact of the ELG procedure: intergenerational inequity.

3. As the facts of this case are different than the facts of Columbia's 2025 rate increase, the ALJ improperly applied the Commission's Order in Columbia 2025.

The Commission considered the merits of ALG vs. ELG in Columbia Gas' most recent rate case and found OCA's advocacy for adoption of ALG to be incomplete because it did not adequately address the outcomes of shifting from one procedure to the other:

> Mr. Garrett applied the ASL depreciation procedure but continued to use book reserve balances developed under the ELG procedure. As Mr. Spanos explained, in Pennsylvania, the standard procedure is to: (1) calculate depreciation for the HTY; (2) bring forward the reserve to the FTY; and then (3) bring that forward again to the FPFTY.[24]

That critique does not apply in this proceeding. In direct testimony, OCA witness Andrews presented a reserve bring forward of accumulated depreciation from September 30, 2025, to

[23] OCA St. 4 at 15.
[24] *Columbia Order* at 110.

October 31, 2027, based on the ALG methodology.[25] According to Mr. Andrews: "My recommended annual depreciation expense and accumulated depreciation are calculated on a reasonably consistent basis, which is required under Pennsylvania law."[26] Notably, the ALJ and NFG did not dispute the OCA's reserve bring forward or identify any methodological inconsistency with his analysis, thus confirming that this is a material difference between the evidence presented by the OCA in Columbia and this current proceeding.

The Recommended Decision cites to the *Columbia Order* in support of NFG maintaining use of the ELG procedure as follows:

> By ignoring the impact of depreciation expense on rate base, the OCA fails to acknowledge that any benefit to current customers from Mr. Garrett's proposal to use ASL depreciation rates only results from the change from the ELG to ASL procedure, not from the overall use of the ASL procedure itself.

The OCA discussed several benefits switching procedures would confer on NFG's ratepayers. Mr. Andrews noted whichever grouping procedure is utilized, the utility will recover the full cost of its prudent investments to provide utility service over the life of the assets.[27] The Company claimed that the ALG procedure produces intergenerational inequity because customers pay for assets from which they receive no service.[28] Mr. Andrews explained that the Company identified two concepts of intergenerational equity: the inequity of customers paying for retired assets, and the inequity of uneven distribution of depreciation charges over the life of an asset.[29] According to Mr. Andrews, NFG claimed that the first form is more detrimental than the second.[30] Mr. Andrews responded with the following:

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[25] OCA St. 4SR at 11.
[26] *Id*.
[27] *Id*.
[28] NFG St. 8R at 18.
[29] OCA St. 4SR at 16.
[30] *Id*.

> First, the concern about customers paying for retired assets under ALG is addressed by the Remaining Life Technique, which both Mr. Spanos and I use. The Remaining Life Technique is self-correcting: any over-accumulations or under-accumulations due to the use of the average life are automatically spread over the remaining life of the account in subsequent depreciation studies. This means that the theoretical concern about stranded cost recovery under ALG is mitigated through the regular updating of depreciation rates, which as I noted above occurs on a regular basis for National Fuel.
>
> Second, Mr. Spanos's own testimony acknowledges that "in real-world operations, circumstances can change such that assets are retired earlier than expected." This acknowledgment applies equally to the ELG procedure: if assets are retired at times different than the survivor curve predicts (which Mr. Spanos concedes will happen), then the ELG procedure's allocation of cost among equal life groups will also be incorrect, and the claimed intergenerational equity advantage of ELG does not materialize in practice.
>
> Third, Mr. Spanos's focus on the first form of intergenerational equity (paying for retired assets) overlooks the fact that the ELG procedure creates the second form of intergenerational equity (front-loading depreciation expense). As I stated in my direct testimony, the ELG method assigns more depreciation expense to customers that take service early in the asset's service life and reduces the expense to customers toward the end of the asset's service life.[21] Mr. Spanos does not dispute this characterization. In the current environment, where National Fuel is in a higher-than-average investment cycle and the majority of its assets are relatively young (average age of 19.9 years for a company with a 70-year average service life for its largest accounts), the front-loading effect of ELG is particularly pronounced.[31]

Furthermore, the net present value of the dollar favors present customers, as Mr. Andrews explained: "Mr. Spanos's revenue requirement comparison treats a dollar of savings in 2026 as equivalent to a dollar of cost in 2050, but this fails to account for the time value of money."[32] Mr. Andrews stated that due to inflation, the purchasing power of a dollar erodes over time.[33] For example, at a 3% inflation rate, which is consistent with recent experience, the purchasing power of a dollar declines as follows:

- By 2030 (4 years from now), a dollar will have the purchasing power of approximately $0.89 in today's dollars.

[31] *Id.* at 16-17.
[32] *Id.* at 14.
[33] *Id*.

- By 2035 (9 years from now), approximately $0.77.
- By 2037 (11 years from now, the approximate crossover point in Mr. Spanos's analysis), approximately $0.72.
- By 2045 (19 years from now), approximately $0.57.
- By 2050 (24 years from now, the end of Mr. Spanos's projection), approximately $0.49.[34]

Using ALG procedure produces lower revenue requirements during the period when customers' dollars have the greatest purchasing power, and the higher revenue requirements that Mr. Spanos projects under ALG in later years are in dollars that are worth substantially less.[35] According to Mr. Andrews: "By the end of Mr. Spanos's projection period, a dollar of savings would be worth less than half of what it is worth today."[36] Mr. Andrews went on to state that customer's savings today are always more valuable than savings in the future, because the purchasing power of those future savings is diminished by inflation.[37] Mr. Spanos' analysis does not account for this fundamental economic reality.[38]

It is unjust and unreasonable to withhold direct relief to customers *now* when there is a procedure to properly account for depreciation expenses that would allow them to pay lower utility rates and strengthen intergenerational equity for consumers, which ultimately demonstrates that the Commission should reject NFG's proposal to continue utilizing the ELG procedure. The superiority of the ALG procedure is more evident when the Commission takes into account the evidence laid out above and considers it with the previously mentioned customer benefits of switching to ALG summarized by Mr. Andrews:

> National Fuel is in an accelerated investment cycle, with plant-in-service increasing 30% over five years and continued elevated capital spending projected through at least 2039. The Company implemented a Distribution System Improvement Charge ("DSIC") in January 2025, and the 5% cap on distribution

[34] *Id.*
[35] *Id.* at 15.
[36] *Id.*
[37] *Id.*
[38] *Id.*

> revenues was reached within approximately 14 months, necessitating this rate case. The use of the ELG procedure in this investment environment front-loads depreciation expense onto current customers, shortens the effective recovery period for National Fuel's assets well below the average service lives that the Company itself supports, and produces depreciation rates that are inconsistent with the vast majority of utility depreciation practice throughout the United States. National Fuel itself uses the ALG procedure in every other jurisdiction in which it operates, including New York.[39]

Finally, in the *Columbia Order*, the Commission stated that it, "on numerous occasions, has accepted the use of the ELG procedure, and has done so, specifically in regard to Columbia, for over forty years."[40] This current proceeding is distinguishable, because NFG's two most recent rate cases are from 2022 and 2006, both of which settled. This means the Commission has not reviewed NFG's depreciation expense under contested conditions in over two decades.

4. The fact that a supermajority of states require the use of the ALG procedure is relevant to NFG's ratepayers.

The Commission previously stated that the use of ALG in other jurisdictions is not relevant, stating that other jurisdictions use other depreciation parameters.[41] The OCA acknowledges that decisions in other jurisdictions are not legally binding before the Commission and never argued as such. However, the OCA presents recent decisions from other jurisdictions for their persuasive value for three following reasons: 1) ALG is the deprecation procedure used by more than a supermajority of utility jurisdictions; 2) the trend across the nation is to move away from ELG in favor of ALG; 3) in some cases, the facts are similar to the current proceeding; and, 4) other states evaluated the same deprecation procedures and found ALG to be just and reasonable, in the public interest, and supported by substantial evidence.

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[39] OCA St. 4 at 30.
[40] *Columbia Order* at 110; *see also*, *PAWC Order* at 165.
[41] *Id*.

For example, the Indiana Utility Regulatory Commission (IURC) recognized that Duke Energy of Indiana, LLC., was similarly in a high investment period and similarly proposed the use of ELG.[42] When the IURC was presented with arguments regarding ALG and ELG, it recognized that a high investment period harms ratepayers in the immediate term: "The use of ELG in a higher than average investment cycle has the effect of unnecessarily increasing the near-term depreciation expense as compared to the use of ALG."[43] The Kentucky Public Service Commission shared the same rationale in 2017 when it weighed ELG and ALG:

> [T]his Commission has found that the ELG procedure does not accurately match revenues and expenses, is front-loaded, and Duke Kentucky is the only Kentucky based utility that utilizes the ELG procedure for computing depreciation rates.
>
> Regulatory accounting requires the proper matching of revenues and expense in order to produce fair, just and reasonable rates.[44]

The Arkansas Public Service Commission also recognized that when a utility is increasing its plant-in-service, like NFG is here, the use of "ELG will continue to result in higher depreciation rates and expense as long as a utility's plant continues to grow."[45]

The scenarios from the three other jurisdictions are similar, but the current NFG case stands apart because NFG customers are struggling with growing and sustained unaffordability as discussed in the subsection above.

5. Conclusion

It is uncontroverted that NFG's depreciation procedure results in intergenerational inequity.[46] The ALJ's Recommended Decision that accepted NFG's continued use of the ELG

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[42] OCA St. 4 at 32-33.
[43] *Id*.
[44] *Id.* at 31.
[45] *Id.* at 33.
[46] *Id*.

procedure presents significant bias toward a speculative and remote future, resulting in unjust and unreasonable rates for NFG's current customers.[47] On the other hand, OCA's witness testimony, Main Brief, and Reply Brief contain a balanced analysis of what we know now and what we can predict with realistic accuracy in the near future. Measured against the OCA's briefs and substantial record evidence, NFG has failed to meet its burden of proof to justify its continued use of the ELG procedure, and the OCA respectfully requests the Commission grant this Exception.

B. Exception No. 2: The ALJ erred in failing to adjust NFG's cash working capital claim based on the OCA's revised adjustment despite also finding that the OCA's adjustments are dependent on the Commission's decisions on individual adjustments. R.D. at 70-71; OCA M.B. at 10-12; OCA R.B. at 5-7.

In this case, the OCA argued that NFG's rate base should be reduced by $1,195,000 to reflect an adjustment to the Company's claim for cash working capital.[48] As OCA witness Morgan testified, NFG's cash working capital should be adjusted in part to adjust the lead/lag study to reflect adjustments related to operating expenses he recommends, as well as interest expense adjustment related to his adjustments to rate base and the OCA's recommended capital structure.[49] This adjustment also reflects amortizations and accrued expenses that are reflected in the operating expenses that do not require the use of cash and should be removed from the lead/lag study, as well as Mr. Morgan's recommended adjustment to NFG's claim for prepaid expenses.[50]

NFG accepted the OCA's position that non-cash expenses should be removed from the led/lag study and the prepaid expenses should be removed from the O&M expenses total used to calculate the expense lag days.[51] However, NFG argued that the OCA failed to properly incorporate prepaid expenses as a separate line item in the calculation of the total cash working capital and

[47] NFG M.B. at 40-42.
[48] OCA M.B. at 11, *citing*, OCA Exh. LKM-4A-SR.
[49] *Id*. at 10-11, *citing*, OCA St. 2 at 9.
[50] *Id*. at 11, *citing*, OCA Exh. LKM-4A-SR.
[51] NFG M.B. at 16-17.

increased the prepaid expenses amount by an incorrect amount.[52] Upon review of NFG's rebuttal testimony, the OCA modified its adjustment to NFG's cash working capital claim to allow an increase of $680,000 and an increase in rate base of the same amount.[53]

Despite this exchange in testimony, in the Recommended Decision, the ALJ states:

> Based on the evidence presented, the presiding officer concludes the Commission should allow the Company's claims, consistent with this Recommended Decision and the Commission's Final Order. The ALJ notes that [cash working capital] is not a final recommendation because all adjustments to the Company's claims must be brought continually together in the Commission's decision in a process known as iteration. Accordingly, the ALJ concludes OCA's recommendation – to adjust cash working capital and reduce rate base by $1,195,000 – should not be allowed.[54]

The Recommended Decision is correct in describing that cash working capital is not a final recommendation because all of the adjustments to "the Company's clams must be brought continually together in the Commission's decisions in a process known as iteration."[55]

However, the ALJ then errs by rejecting ***all of the*** OCA's adjustment without recognizing that the OCA and NFG addressed this issue in multiple rounds of testimony and that the OCA's final adjustment was modified to adjust NFG's cash working capital claim to allow an increase of $680,000 and an increase in rate base of the same amount.[56] Instead the ALJ focused on the OCA's original proposed adjustment of $1,195,000.

As such, the ALJ erred in failing to adjust NFG's cash working capital claim based on the OCA's revised adjustment despite also appropriately finding that the OCA's adjustments are dependent on the adjustments ultimately decided by the Commission.

C. Exception No. 3: <u>The ALJ correctly determined to deny NFG's claim for Executive Cash Bonuses and Executive Performance Shares in NFG's incentive compensation claim but</u>

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[52] *Id*. at 17-19.
[53] OCA Exh. LKM-5A-SR (rev).
[54] R.D. at 71.
[55] *Id.*
[56] OCA Exh. LKM-5A-SR (rev).

erred in failing to also deny the Restricted Stock-Based Compensation portion of NFG's incentive compensation claim. R.D. at 144-147; OCA M.B. at 16-18; OCA R.B. at 9-11.

Substantial record evidence in this proceeding supports adjusting NFG's claim for incentive compensation expense by $1.43 million.[57] Portions of incentive compensation tied to shareholder earnings goals have been disallowed where metrics lacked a sufficient nexus to ratepayer benefits and instead primarily advanced shareholder interests.[58] Mr. Morgan recommended an adjustment to remove the 2010 Equity Compensation Plan expense from the cost of service based upon the stated purpose of the plan to "advance the interests of the Company and its stockholders."[59] The Commission's Bureau of Investigation and Enforcement (I&E) and the Office of Small Business Advocate (OSBA) made similar arguments in this case.

In contrast, NFG argued that its incentive compensation program benefits ratepayers because it helps to attract and retain employees; it promotes cost containment, operational efficiency and access to cost-effective capital; and, because it is reasonable, prudently incurred and not excessive.[60]

In her Recommended Decision, the ALJ recommended that the Commission accept the position of I&E to disallow $379,731 of the Executive Cash Bonuses and also accept the recommendations of both I&E and OSBA to disallow $909,281 of the Executive Performance Shares.[61] The ALJ stated:

> The ALJ concludes, based upon the evidence and position of the parties, that NFG failed to provide sufficient proof that the following programs and amounts should be approved as requested: Executive Cash Bonuses and Executive Performance. These programs may benefit the employee and stockholders, but NFG did not provide sufficient evidence to meet its burden of proving that the programs, at the amounts requested, will improve customer service, safety or reliability. NFG's

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[57] OCA M.B. at 16, citing, OCA St. 2 at 14 and OCA Exh. LKM-8A-SR.
[58] *Columbia Order* at 204-05.
[59] OCA St. 2 at 13.
[60] NFG M.B. at 23.
[61] R.D. at 147.

> proposal is supposed to benefit the ratepayers but, if the claim is allowed, NFG's ratepayers will pay to cover the costs for programs that bring benefits to stockholders but do not bring benefits to ratepayers.[62]

The ALJ, however, also recommended that the Commission accept the claim of NFG of $472,821 on the Restricted Stock-Based Compensation,[63] even though the same reasoning for denying the Executive Cash Bonuses and Executive Performance also supports denying NFG's claim for Restricted Stock-Based Compensation.

The ALJ's decision to adjust only a portion of NFG's claim for incentive compensation was an error. The ALJ's recommendation to accept NFG's claim of $472,821 on the Restricted Stock-Based Compensation must also be rejected for the same reasons why the ALJ rejected NFG's claim for Executive Cash Bonuses and Executive Performance Shares.

In particular, OCA witness Morgan recommended an adjustment to remove the 2010 Equity Compensation Plan expense from the cost of service because the stated purpose of the plan is to "advance the interests of the Company and its stockholders."[64] As Mr. Morgan testified:

> As an investor owned utility, the interests of the Company and its stockholders primarily depend on the Company remaining a going concern. As such, operating the Company is based upon a profit motive. Hence, one of the primary interests of the Company and its shareholders is to achieve earnings high enough to attract investors, achieve financing on good terms and improve shareholder value.[65]

Mr. Morgan noted that these goals are primarily targeted toward increasing shareholder value and not necessarily consistent with the interests of NFG's ratepayers.[66] Mr. Morgan testified:

> Shareholders' interests are not necessarily compatible with ratepayers' interests. For example, delaying certain expenditures may improve earnings and share values while degrading customer service. This is why those plans with customer service metrics tend to be in the interests of ratepayers. Based on the forgoing discussion,

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[62] *Id.*
[63] *Id.*
[64] OCA M.B. at 17, *citing*, OCA St. 2 at 13.
[65] *Id.*
[66] *Id.*

> I recommend that the Equity Compensation Plan expenses be removed from the cost of service.[67]

Therefore, these costs are not properly recoverable from ratepayers for several reasons, including: 1) that the measures that achieve additional cost savings, increase revenue or otherwise improve financial results should generate the necessary income to cover the incentive plan payments, and 2) the payments are not tied to ratepayer benefits such as improved quality of service.[68]

As a result, the ALJ correctly denied NFG's claim for Executive Cash Bonuses and Executive Performance Shares in NFG's incentive compensation claim but erred in failing to also deny the Restricted Stock-Based Compensation portion of NFG's incentive compensation claim.

D. Exception No. 4 <u>The ALJ correctly recommended that the Commission end NFG's Proposed Weather Normalization Program, but if the Commission adopts the ALJ's alternative recommendation to continue NFG's WNA mechanism as a pilot, the OCA's proposed modifications of that pilot should also be approved.</u> R.D. at 309-310; OCA M.B. at 95-101; OCA R.B. at 50-53.

As discussed in the OCA's briefs, NFG's proposed WNA mechanism should be rejected because NFG's current WNA pilot produces inequitable results and the Commission's policy factors show that the proposed WNA will not result in just and reasonable rates.[69] Alternatively, if the Commission elects to continue NFG's proposed WNA mechanism, it should be continued as a three-year pilot, be subject to a 5% deadband, should not apply during October and May, and should utilize a total of four weather stations to determine its Heating Degree Days.[70] NFG objected to the above modifications, arguing that a 5% deadband would increase risk that weather volatility negatively impacts ratepayers and the company, that October and May have heat load that is "statistically significant to degree days," the use of more weather stations without changing

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[67] OCA St. 2SR at 11.
[68] OCA St. 2 at 14.
[69] OCA M.B. at 82-95.
[70] *Id.* at 95-101; OCA R.B. at 50-53.

the weather data for the demand forecast removes the WNA's connection to the forecast used for base rates, and the proposed weather stations are not indicative of the weather in NFG's service area.[71]

The Recommended Decision correctly recommends that the Commisssion adopt the OCA's primary position rejecting NFG's WNA program because NFG failed to support its proposed WNA with sufficient evidence showing that it produces just and reasonable rates.[72] Specifically, the Recommended Decision states that:

> The ALJ is persuaded by OCA's arguments that the Commission should reject NFG's request to make the WNA permanent, and the Commission should end the pilot. In the event the Commission elects to continue the WNA, the ALJ recommends the Commission continue the WNA as a pilot, to provide NFG more time to collect data that would support continuation of the WNA because NFG did not provide sufficient evidence that the WNA produces rates that are just and reasonable.[73]

However, should the Commission elect to continue NFG's WNA mechanism, simply adopting the ALJ's alternative recommendation that the proposed WNA mechanism continue as a pilot[74] does not provide enough ratepayer protections. If the Commission continues NFG's proposed WNA mechanism as a new pilot program, the Commission should also adopt the OCA's additional proposed modifications, which are supported by substantial evidence in the record.

If the Commission elects to continue NFG's proposed WNA mechanism as a new pilot, the mechanism should be subject to a 5% deadband.[75] The Commission has previously found that "if the goal of the WNA is to improve stability and customer bills and Company revenues, a 5% deadband adequately captures what could be considered normal weather fluctuations in

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[71] NFG M.B. at 75-78.
[72] R.D. at 309.
[73] *Id.*
[74] *Id.*
[75] OCA M.B. at 96; OCA St. 1 at 34, 37; OCA St. 1SR at 7.

Pennsylvania."[76] It also found that a 5% deadband "also places more of the burden for calculating and forecasting weather variations back onto the Company as a normal part of doing business."[77] This analysis applies just as equally to NFG as it did to Columbia Gas.[78] Increasing the deadband to 5% "would provide for additional protection to ratepayers from minor deviations from normal weather."[79]

Similarly, NFG should be required to remove October and May from any continued pilot program.[80] Under NFG's current pilot program, NFG's own data shows that including October and May in its WNA mechanism inequitably shifts weather-related risk from NFG to its customers because of a high level of variability in Heating Degree Days during those months.[81] Allowing NFG to continue a pilot program that includes October and May is more likely to produce harm and net surcharges to NFG customers than provide any protection from weather deviations.[82]

Finally, the Commission should determine that NFG's use of Erie, PA weather does not provide an appropriate proxy of weather conditions for its entire service territory and adopt the OCA's recommendation that it begin utilizing additional weather stations to calculate its Heating Degree Days.[83] Erie's weather conditions, which NFG recognizes as distinctive from the rest of Pennsylvania,[84] at most cover the weather experienced by 60 percent of NFG's customer base.[85]

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[76] *Id.* (quoting *Columbia Order* at 186).
[77] *Id.*
[78] *Id.*
[79] *Id.* at 97 (*quoting* OCA St. 1SR at 7).
[80] *Id.*; OCA St. 1 at 36; OCA St. 1SR at 7-8.
[81] *Id*. at 97-98 (*citing* OCA St. 1 at 36; NFG St. 1R at 9, Table 1).
[82] *Id.* at 98 (*citing* NFG St. 1R at 9, Table 1).
[83] *Id.* at 99-100; OCA R.B. at 51-52
[84] *Id.* at 100 (*citing* OCA St. 1SR at 9).
[85] OCA R.B. at 51 (*first citing* NFG Exh. CEH-1R, Table 2 and *then citing* NFG St. 13R at 3).

This does not make Erie weather a reasonable proxy for NFG's large service territory.[86] The OCA's proposed additional weather stations are reasonable[87] and supported by the record.

In sum, the OCA submits that the Commission should adopt the ALJ's primary recommendation to reject NFG's proposed WNA mechanism and to end its current pilot program. If the Commission instead elects to continue NFG's proposed WNA mechanism and adopts the ALJ's alternative recommendation to continue the mechanism as a pilot program, the OCA submits that the Commission should adopt the OCA's alternative recommendations, as supported above and in its briefs. Doing so would provide additional and necessary protections to NFG's ratepayers.

E. Exception No. 5: <u>The ALJ erred in finding that payment arrangement data would be helpful but not recommending the collection of payment arrangement data.</u> R.D. at 382-383; OCA M.B. at 106; OCA R.B. at 55-57.

The OCA recommended that NFG collect and analyze payment arrangement data, and that NFG should evaluate the extent to which payments or payment arrangements prevent terminations after a notice has been issued, in a report to the parties within six months.[88] CAUSE-PA strongly supported the OCA's adjustment and NFG opposed.[89]

The Recommended Decision acknowledges that the information requested by the OCA would be helpful to determine the effectiveness of payment arrangements, but fails to recommend any action as a result as follows:

> Having considered the evidence, the ALJ recognizes the information OCA and CAUSE-PA wish to collect could be helpful to determine the effectiveness of payment arrangements and how programs may need to be added or adjusted to improve the end results when a termination is avoided by a payment arrangement. However, the ALJ is persuaded by NFG's argument because OCA and CAUSE-PA did not provide sufficient explanation for what information would be collected, how

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[86] *Id.*
[87] *Id.* at 52.
[88] OCA M.B. at 106; OCA R.B. at 55.
[89] R.D. at 382.

> it would be analyzed and how the information would benefit ratepayers. The ALJ recommends the Commission reject OCA's proposal, at this time.[90]

This recommendation was made despite the Recommended Decision's finding of fact 212, which states as follows:

> 212. With regards to customer complaints informally appealed to the Commission's Bureau of Consumer Services (BCS) and presented in the 2024 and 2025 UCARE filings, the Company's performance shows an increase in the volume of payment arrangement disputes from 2024 to 2025. OCA St. No. 5, p. 11.[91]

As shown above, the Recommended Decision recognized that payment arrangement data could be helpful to determine the effectiveness of payment arrangements and includes a finding of fact that NFG experienced increased payment arrangement disputes from 2024 to 2025.[92] Yet, the Recommended Decision fails to adopt the OCA's recommendations because the OCA and CAUSE-PA allegedly did not provide a sufficient explanation.[93]

To the contrary, the OCA showed that NFG does not collect any data on whether a termination notice is avoided when a customer enters a payment arrangement.[94] OCA witness Wise testified that "[w]ithout such data, it is difficult to evaluate whether existing customer assistance or payment arrangement options are successfully preventing service termination."[95]

Substantial evidence supporting the OCA's recommendation was provided in the OCA's testimony. As discussed in the OCA's Briefs, if payment arrangements are not actually reducing terminations, then the program is not fulfilling its fundamental purpose of maintaining continuous service while customers resolve arrears.[96] Without tracking whether payment arrangements are

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[90] *Id.* at 383.
[91] *Id.* at 43.
[92] *Id.* at 43, 383.
[93] *Id.* at 383.
[94] OCA M.B. at 106.
[95] *Id. citing* OCA St. 5 at 5-6.
[96] OCA R.B. at 56; OCA St. 5SR at 11.

successful in avoiding terminations, there is no way to determine whether customers are being disconnected despite participating in a payment arrangement.[97] Preventing disconnections is essential to providing safe and reliable service.[98]

As further discussed in the OCA's Briefs, if terminations for customers in payment arrangements are not tracked, payment arrangement issues may surface through increased customer complaints or increased bad debt, as is the case for NFG.[99] Payment arrangements are frequently relied upon as a primary alternative to disconnection.[100] If NFG's payment arrangements do not actually prevent termination, then they are likely ineffective.[101] Measuring termination avoidance allows the Commission to evaluate real-world effectiveness rather than relying on assumptions about program performance related to an increase in total dollars in debt meaning that NFG's payment arrangements are effective.[102]

The Recommended Decision recognizes the problem with NFG's lack of payment arrangement data in relation to termination and the factual nature of NFG's increase in payment arrangement disputes from 2024 to 2025 yet fails to adopt the OCA's reasonable recommendation that would correct this issue.[103] The OCA's recommendation that NFG begin to track data regarding whether termination is avoided when NFG's customers enter payment arrangement plans is reasonable and should be adopted.

F. Exception No. 6: <u>The conclusion of law in the Recommended Decision regarding payment fees necessitates the elimination of NFG's payment fee for online and telephonic payments.</u> R.D. at 377-379; OCA M.B. at 106-107; OCA R.B. at 57-59.

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[97] *Id.*
[98] 66 Pa.C.S. § 1501.
[99] R.D. at 43; OCA R.B. at 57.
[100] OCA R.B. at 57.
[101] *Id.*
[102] *Id.*
[103] R.D. at 383.

The OCA recommended that NFG eliminate its $2.95 payment fee for online and telephonic payments.[104] While the Recommended Decision contains multiple pages of discussion summarizing the parties' arguments regarding fee-free payments, it is silent in either accepting or rejecting the OCA's recommendation.[105] However, the Recommended Decision's conclusion of law 59 correctly states as follows:

> 59. Requiring payment fees for customers to pay bills by electronic payment methods is unjust and unreasonable rate discrimination. 66 Pa.C.S.§ 1304.[106]

The OCA agrees. Requiring a payment fee increases NFG customer bills for online payments, resulting in unjust and unreasonable rate discrimination.[107] Electronic payment is encouraged by NFG and is a popular payment method.[108] These additional payment fees totaled $815,559 in 2024 and $930,384 in 2025.[109] OCA witness Wise testified that "[t]hese fees particularly have a discriminatory impact on fixed and lower income customers who often need to make a last-minute payment to avoid termination of service. In 2025, 233,756 online payments were made totaling $692,014 supporting my concern about the adverse impact on vulnerable customers."[110]

NFG neither disputed that its customers have incurred substantial payment processing fees, nor argued that eliminating fees could increase the adoption of electronic and telephonic payment methods.[111] NFG also did not address the underlying customer affordability and accessibility concerns that forms the basis of the OCA's recommendation to eliminate payment fees.[112] Given

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[104] OCA M.B. at 106-107; OCA R.B. at 57-59.
[105] *See* R.D. at 377-379.
[106] *Id.* at 413.
[107] OCA M.B. at 106.
[108] *Id.*
[109] *Id.* at 106-107.
[110] *Id.* at 107 *quoting* OCA St. 5 at 16.
[111] OCA R.B. at 59; NFG M.B. at 31-32.
[112] *Id.* at 58.

the correct conclusion of law contained in the Recommended Decision, the OCA's recommendation that NFG eliminate its $2.95 payment fee for online and telephonic payments should be adopted. The Recommended Decision errs in failing to adopt that recommendation in an ordering paragraph.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, the OCA respectfully requests that the Commission grant the OCA's Exceptions and adopt the OCA's positions as discussed above.

Respectfully submitted,

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