

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pa. Public Utility Commission	:	
v.	:	Docket No. R-2020-3018835
Columbia Gas of Pennsylvania, Inc.	:	
	:	

Surrebuttal Testimony of
Scott J. Rubin

on Behalf of
the Pennsylvania Office of Consumer Advocate

September 16, 2020

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Introduction

1

2 **Q. Please state your name.**

3 A. My name is Scott J. Rubin.

4 **Q. Have you submitted other testimony in this case?**

5 A. Yes, I prepared direct testimony on behalf of the Office of Consumer Advocate (“OCA”)
6 which has been identified as OCA Statement 1.

7 **Q. What is the purpose of your surrebuttal testimony?**

8 A. First, I will provide an update to pandemic-related information that I discussed in my
9 direct testimony. Second, I will provide a brief response to portions of the rebuttal
10 testimony of Columbia Gas of Pennsylvania, Inc. (“Columbia” or “Company”) witness
11 James Cawley (Columbia Statement 16-R).

12 **Q. Do you have any preliminary matters to discuss?**

13 A. Yes. Mr. Cawley’s rebuttal testimony discussed issues I addressed at length in my direct
14 testimony. I am not attempting to respond to every assertion made in his testimony.
15 Rather, I am focusing on those items where I feel that the record needs to be clarified.
16 My failure to respond to a statement should not be taken as assent; rather it represents an
17 area where I already responded to the issue in my direct testimony.

Updates to Pandemic-Related Information

1
2 **Q. How has the pandemic affected Pennsylvania and Columbia’s service area since**
3 **your direct testimony was prepared toward the end of July and pre-filed on July 28,**
4 **2020?**

5 A. Since my testimony was prepared, additional data have become available concerning the
6 effects of the pandemic on public health and the economies of Pennsylvania and
7 Columbia’s service area. As I am preparing this surrebuttal in the second week of
8 September, the following is a summary of the most recent information available to me:

- 9 • I have updated Figures 3 through 7 and Schedule SJR-1, SJR-3, and SJR-4
10 in my direct testimony to reflect the most recent information available.
11 The updated figures and schedules are provided as Schedule SJR-6S.
- 12 • Initial unemployment claims in Pennsylvania have declined since peaking
13 in late March at more than 400,000 claims in one week. For the past four
14 weeks, between 25,000 and 30,000 Pennsylvania workers have filed initial
15 unemployment claims each week. This is a significant reduction in initial
16 claims, but the current level is still almost twice as high as it was in
17 February.
- 18 • Overall in the space of less than six months (from mid-March through late
19 August), approximately 38 percent of Pennsylvania’s workforce filed an
20 unemployment claim.
- 21 • On pages 13-15 of my direct testimony, I cited the U.S. Census Bureau’s
22 Household Pulse Survey as showing that through the week ending July 14
23 50% of households in Pennsylvania have lost at least some of their
24 employment income. That survey ended on July 21. Those figures have
25 not changed appreciably as of July 21.
- 26 • The outlook for small business is slightly worse than it was when I
27 prepared my initial testimony. On pages 16-17 of OCA Statement 1, I
28 summarized the results of the Census Bureau’s Small Business Pulse
29 Survey for Pennsylvania. At the end of June, that survey reported that
30 41% of Pennsylvania’s small businesses expected it to take six months or
31 more to return to a normal level of operations, with another 12% saying
32 their business would never fully recover. The Census Bureau stopped the

1 initial round of data collection with the week ending June 27, but it started
2 a new survey with similar questions on August 9. In the week ending
3 September 5, 44.7% of Pennsylvania’s small businesses said they would
4 take at least 6 months to recover, with another 10.1% saying they would
5 never fully recover from the pandemic.

- 6 • After peaking at more than 1,800 cases per day in early April,
7 Pennsylvania’s incidence of COVID-19 declined to fewer than 350 cases
8 per day in early June. In late June, case counts began rising again to 500
9 or more per day. During July and August, the situation worsened further,
10 with Pennsylvania reporting more than 1,000 new infections per day,
11 resulting in the Secretary of Health and the Governor imposing new
12 restrictions on social gatherings, certain businesses, and requiring the
13 wearing of masks. As I am preparing this testimony, new cases during the
14 past week have been ranging between about 500 and 1,000 per day. It is
15 unclear whether Pennsylvanians will take the actions necessary to control
16 the further spread of the virus (and the resulting loss of life and impacts on
17 the economy).

18 **Q. Have your opinions about the pandemic and its effect on Columbia’s customers and**
19 **the Commonwealth changed in the six weeks since your direct testimony was**
20 **prepared?**

21 A. No. I am about as pessimistic now as I was in late July. In July, it appeared that
22 Pennsylvania was having difficulty controlling the spread of COVID-19, and that still
23 appears to be the case. Daily case counts remain much higher than they were in early
24 June, new restrictions have been imposed on businesses and organizations, some colleges
25 and local schools are starting to reopen while others have decided to remain closed to in-
26 person instruction, the federal government appears unable to agree on offering more
27 economic assistance, businesses are closing, and people are dying. At this point, there
28 have been more than 31,000 cases and almost 700 deaths from the virus in the counties
29 served (in whole or in part) by Columbia.

1 Of course, none of us knows what the future will bring, but it looks as if it might
2 take several months, if not longer, for public health and the economy to return to a pre-
3 pandemic “normal” level.

4 **Q. Do the updated data affect your conclusions and recommendations about the**
5 **appropriate regulatory response to a pandemic?**

6 A. No. I continue to recommend that the Commission should not approve any rate increase
7 at this time.

8 **Response to Mr. Cawley (Columbia St. 16-R)**

9 **Q. Have you reviewed the rebuttal testimony of Mr. Cawley, Columbia Statement**
10 **16-R?**

11 A. Yes.

12 **Q. Mr. Cawley states on pages 14 and 15 that the Company’s rates should not “yo-yo”**
13 **with changing economic conditions and that utility rates are constrained by the**
14 **regulatory process. How do you respond to this portion of his testimony?**

15 A. First, I am not suggesting that Columbia’s rates should be reduced in this case. My
16 recommendation is for rates to not increase during a severe economic dislocation. This is
17 not a “yo-yo”. In fact, quite the opposite is true -- I am recommending a period of rate
18 stability until we have a better understanding of the long-term impacts of the pandemic
19 on the economy in the Company’s service territory.

20 Second, it appears that Mr. Cawley is basing this statement on some notion of
21 regulatory theory rather than the actual history of regulation in Pennsylvania.

1 **Q. What do you mean by the actual history of regulation in the Commonwealth?**

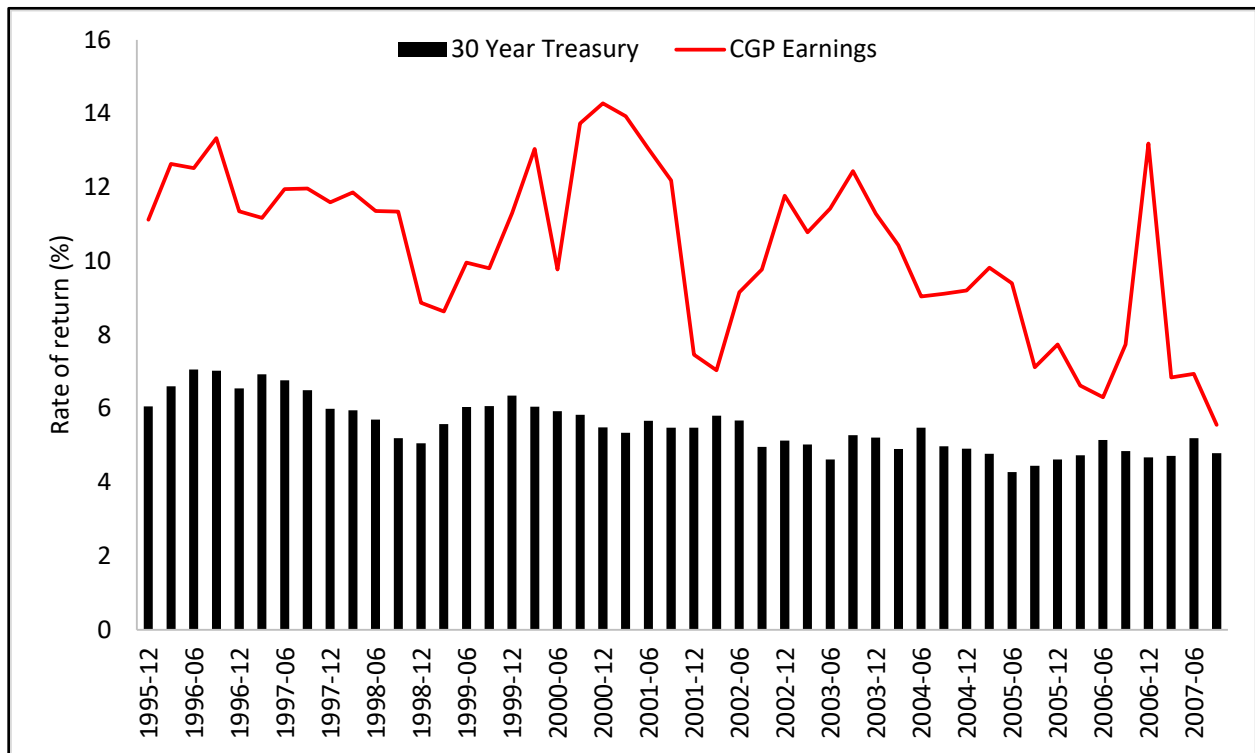
2 A. During the 1990s and 2000s, several natural gas utilities, including Columbia, went for a
3 decade or more without changing their base rates. During that time, earnings remained
4 high while interest rates were stable or falling. In Pennsylvania, unlike some other states,
5 utilities may choose to keep their high rates of return in place by not filing a rate case
6 while interest rates are declining, sales are increasing, or other conditions are working in
7 their favor.

8 **Q. Has this actually happened in Pennsylvania?**

9 A. Yes. As one example, Columbia did not have a base rate case from 1995 until 2008, a
10 period of roughly 13 years. As far as I can tell from the written decisions, Columbia
11 received a base rate increase in Docket No. R-832493 in August 1984. That case was not
12 finally resolved until December 1985 when the Commission approved a settlement that
13 resolved issues on appeal and/or reconsideration. The ultimate resolution included
14 setting an authorized return on equity of 14.5%. Columbia did not file another base rate
15 case until January 2008. After the passage of more than 12 years, Columbia sought a
16 base rate increase of 10.3% based on a return on equity of 11.375%. That case ultimately
17 settled for a 7.2% increase, with the new rates effective almost 13 years after the previous
18 base rate case.

19 According to Columbia's quarterly earnings reports to the Commission during
20 that 13-year period, Columbia's quarterly earnings were consistently in excess of 10%
21 (the median quarterly return during this time was 10.95%; the highest quarterly return

1 was 14.28% in the fourth quarter of 2000).¹ During this time, interest rates in the
 2 economy, as measured by 30-year Treasury yields, were stable or falling (by the end of
 3 2007, 30-year yields were more than 125 basis points lower than they were at the end of
 4 1985).² Figure 8S shows Columbia's quarterly returns and U.S. Treasury 30-year rates
 5 from the fourth quarter of 1985 through the third quarter of 2007.



6
 7 **Figure 8S: Comparison of Columbia Gas of PA earnings**
 8 **and U.S. Treasury 30-year yields: 4th quarter 1985 to 3rd quarter 2007**
 9

¹ Columbia's quarterly earnings, as adjusted by Columbia, as shown in the Commission's Quarterly Earnings Report Summaries (June 2004 report has data back to 1995).

² Federal Reserve Board data series H15 (selected interest rates, 30-year Treasury yields), www.federalreserve.gov/data.htm.

1 If Mr. Cawley were correct that Pennsylvania regulation constrained utility
2 earnings during favorable economic conditions, then Columbia never would have been
3 able to go without a base rate increase for 13 years.

4 **Q. How is such an extended period with no base rate increase possible?**

5 A. I do not know all of the factors that went into Columbia’s decision-making, but certainly
6 declining interest rates and other operating efficiencies would be among the factors that
7 made it feasible to have such an extended period with no base-rate changes. During most
8 of this time period, regulation did not keep Columbia from filing for new rates. Rather,
9 the economy provided the conditions needed for the Company to earn sufficient returns.

10 **Q. Does that mean utility rates should never be reduced if economic conditions are**
11 **severe or that it would be improper to favor “customers’ interests ... over investors’**
12 **interests to determine just and reasonable rates in times of economic distress,” as**
13 **Mr. Cawley states on page 19?**

14 A. No, it does not. In another recent case, Mr. Cawley discussed a published Resolution
15 from this Commission’s predecessor, the Public Service Commission (“PSC”), during the
16 Great Depression.³ In that action, the PSC recognized that societal economic conditions
17 should affect utility ratemaking, stating: “this Commission should take cognizance of the
18 present economic conditions prevailing in the United States and as such economic
19 conditions particularly affect the welfare of the people of this commonwealth.”⁴ The

³ *Re Utility Rates During Economic Emergency*, 3 P.U.R. NS 123 (Pa. P.S.C. 1934).

⁴ *Id.*, at 124.

1 PSC then called on utilities to reduce their rates so they would earn a return of no more
2 than 6% on their rate base.

3 **Q. Was that 6% return a significant change from the previous returns authorized by**
4 **the PSC?**

5 A. Yes, it appears that it was a very significant reduction in rates. The PSC's 1934
6 resolution is referred to in a published history of the Philadelphia Electric Company as
7 follows:

8 In 1934, the [Public Service] Commission limited the return allowable to
9 utilities to six percent (it had been seven per cent), and between January 1,
10 1933, and June 30, 1936, it obtained rate reductions totaling \$15,000,000
11 from Pennsylvania operating companies. ... [The Philadelphia Electric]
12 Company lowered its rates substantially in 1933, 1934, 1935, and 1936.⁵

13 Thus, according to that book, the PSC lowered rates substantially during the Great
14 Depression based (at least in part) on prevailing economic conditions, as stated in the
15 1934 resolution.

16 **Q. How does that history help provide guidance to the Commission in this case?**

17 A. Utility regulation in Pennsylvania has long recognized that utility rates must reflect
18 economic reality. During severe economic downturns, rates can be reduced if they
19 become unjust and unreasonable in light of conditions in the economy. During stable or
20 favorable economic conditions, utilities can choose to not file a new rate case and keep in
21 effect rates that may allow them to profit from falling interest rates or other beneficial

⁵ Nicholas B. Wainwright, *History of the Philadelphia Electric Company: 1881-1961* (Philadelphia, PA 1961), p. 246.

1 circumstances. Contrary to Mr. Cawley’s assertions, this does not violate the nature of
2 utility regulation in Pennsylvania; rather it is fully consistent with our regulatory history.

3 **Q. On page 16, Mr. Cawley claims that you “essentially ignore[] substantial**
4 **government aid provided in response to the COVID-19 pandemic.” Is he correct?**

5 A. No, he is not correct. Despite the reporting in some news outlets, I would respectfully
6 suggest that the notion that most people aren’t suffering economically during the
7 pandemic must be evaluated by the facts and circumstances. Before drawing any
8 conclusions about the impacts of the pandemic on people’s ability to pay their bills, look
9 at the lines at local food pantries, or talk to social service providers who are trying to
10 keep families fed and healthy.

11 In addition, I addressed this directly on pages 14-15 of my direct testimony, and
12 in Schedule SJR-4. I have included an updated Schedule SJR-4 as page 8 of Schedule
13 SJR-6S. The update shows that as of July 21 only 60% of Pennsylvania households were
14 able to use their regular source of income to pay their bills. About 26% cited
15 unemployment benefits and 27% referred to the CARES Act stimulus payments. Indeed,
16 more people had to rely on credit card debt or loans (including loans from family or
17 friends) (40%) or money from savings or asset sales (35%) than relied on short-term
18 government benefits. Thus, I reject the implication that government benefits have been
19 sufficient to compensate most people for the loss of income during the pandemic.

20 Further, the federal government’s \$600 of enhanced unemployment benefits
21 ended on July 25, after the Census survey was conducted. On September 14,
22 Pennsylvania began offering the federal government’s \$300 Lost Wage Assistance

1 enhanced unemployment benefit.⁶ Thus I expect the current situation may be worse than
2 reported in the survey.

3 **Q. On page 20 of his rebuttal testimony, Mr. Cawley states that you are incorrect in**
4 **stating that “regulation is supposed to be a substitute for market forces.” How do**
5 **you respond?**

6 A. I disagree with Mr. Cawley. I made this statement based on my decades of experience
7 appearing before the Commission. At the time, I thought this was a non-controversial
8 statement; but since Mr. Cawley has disagreed with it, I conducted a little research and
9 located the following Commission statement that I believe accurately represents the
10 nature of utility regulation in Pennsylvania:

11 Even in general business enterprises, unfortunate or inexpedient
12 management expenditures, even if prudently made, may not always be
13 totally recovered from their customers; the market may not so permit as
14 customers may reject the product or service at such cost. **Regulation**
15 ***provides a substitute for market influences so as to protect the interest of***
16 ***captive customers of the public utility.***⁷

17 I note that Mr. Cawley was a member of the Commission in 1985 and voted in favor of
18 the order.

⁶ <https://www.media.pa.gov/Pages/Labor-and-Industry-Details.aspx?newsid=478>

⁷ *Pa. PUC v. Duquesne Light Co.*, 59 Pa. PUC 67, 91 (1985) (emphasis added).

1 **Q. On page 23 of Columbia Statement 16-R, Mr. Cawley states that the “central issue**
2 **in a base rate case [is] identifying the cost of service or revenue requirements of the**
3 **company.” Do you agree?**

4 A. No, I do not agree. This highlights my concerns with focusing on the utility’s interests
5 rather than the consumers’ interests. The fundamental purpose of a rate case is to
6 determine the just and reasonable rates that consumers should pay for utility service.
7 Determining the tariffed rate is the ultimate purpose of a rate case -- not ensuring the
8 profits earned by the utility’s investors. Indeed, the reason utility services are regulated is
9 because we cannot rely on market forces to set prices for a monopoly service. My direct
10 testimony focuses on this central issue: how do we determine just and reasonable rates
11 when the economy is in a severe downturn, unemployment rates have soared, and many
12 competitive businesses are experiencing severe losses or closing their doors.

13 **Q. Does anything in Mr. Cawley’s testimony cause you to change your**
14 **recommendations or conclusions?**

15 A. No.

16 **Conclusion**

17 **Q. Does this conclude your surrebuttal testimony?**

18 A. Yes, it does.

Figure 3 (updated): Initial Unemployment Claims in Pennsylvania: Weeks Ending March 7 to August 29, 2020

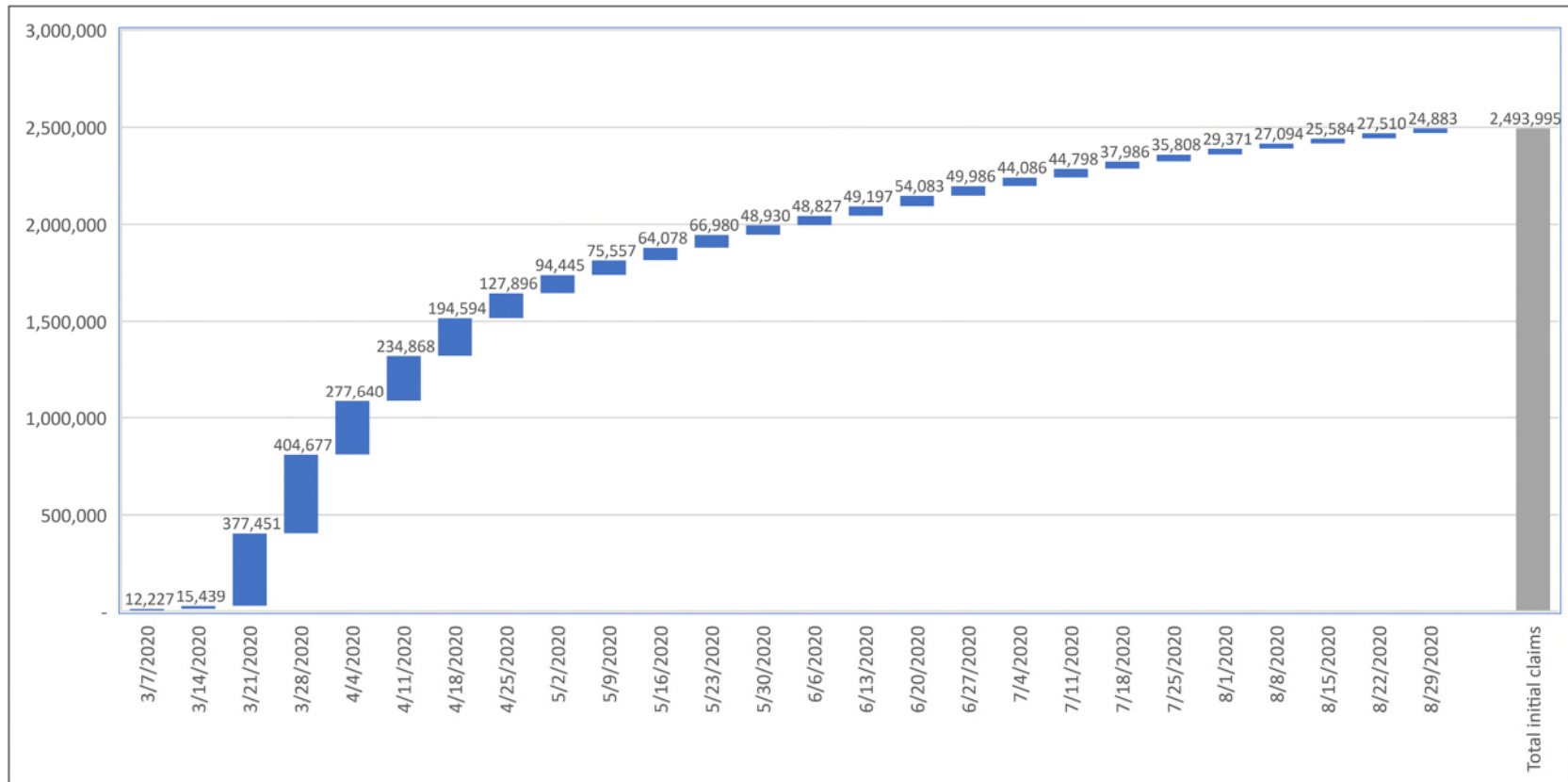


Figure 4 (updated): Unemployment Rates in Counties Served by Columbia, January to July 2020

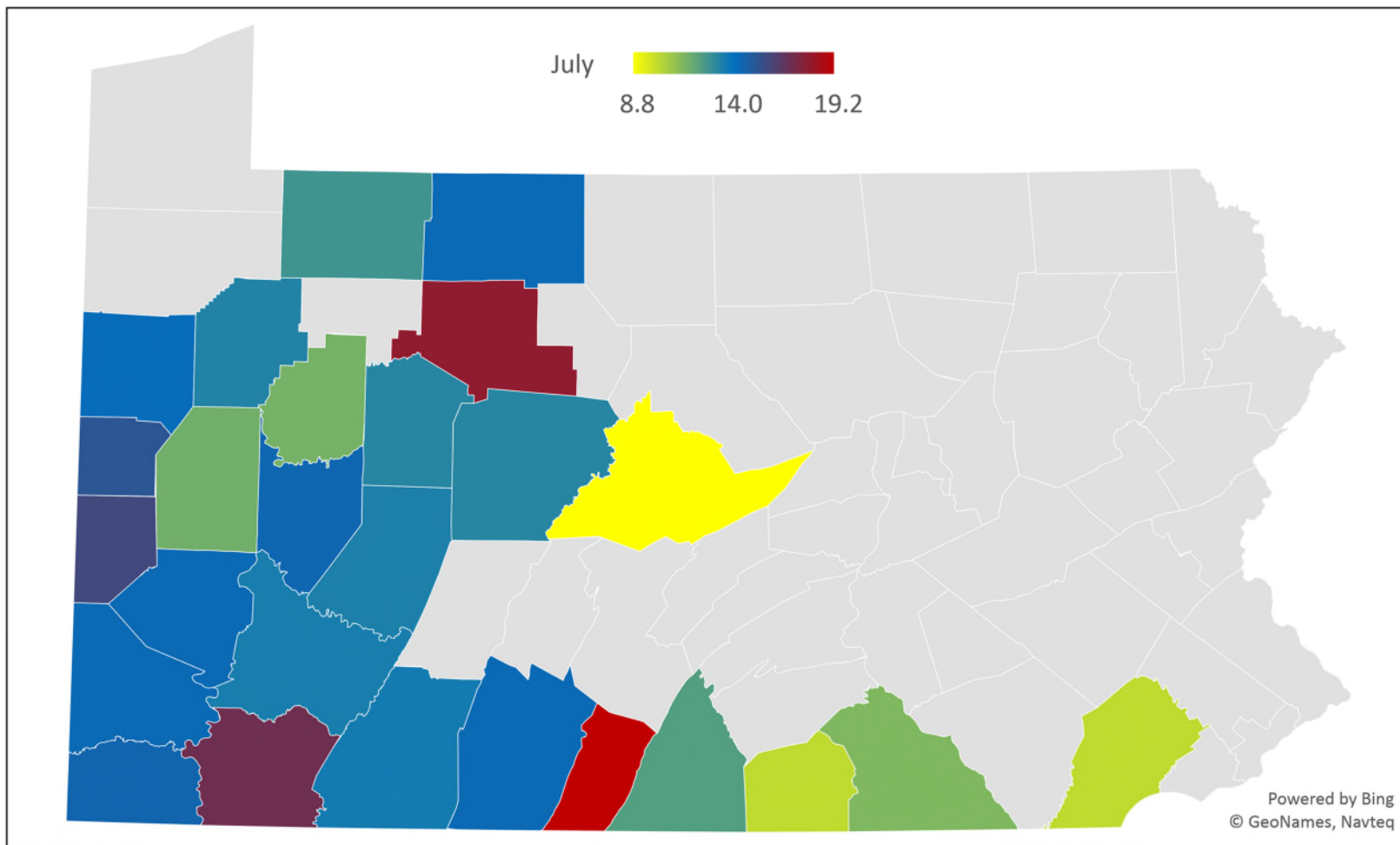


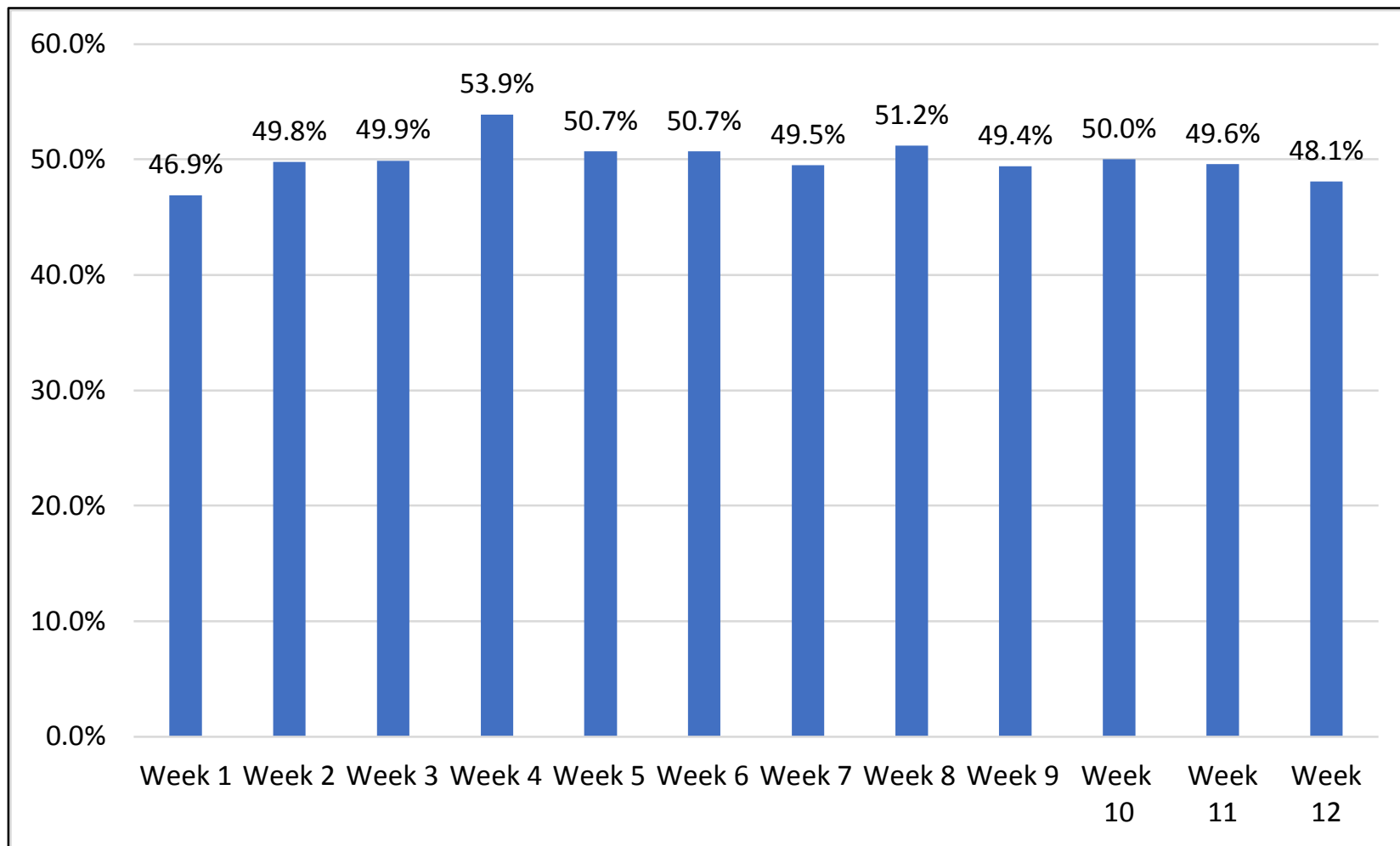
Figure 5 (updated): Percentage of Pennsylvania Households Experiencing Loss in Employment Income Since March 13, 2020

Figure 6 (updated): Percentage of Small Businesses in Pennsylvania Expecting it to Take at Least Six Months to Return to Usual Level of Operations (April 26 to September 5, 2020)

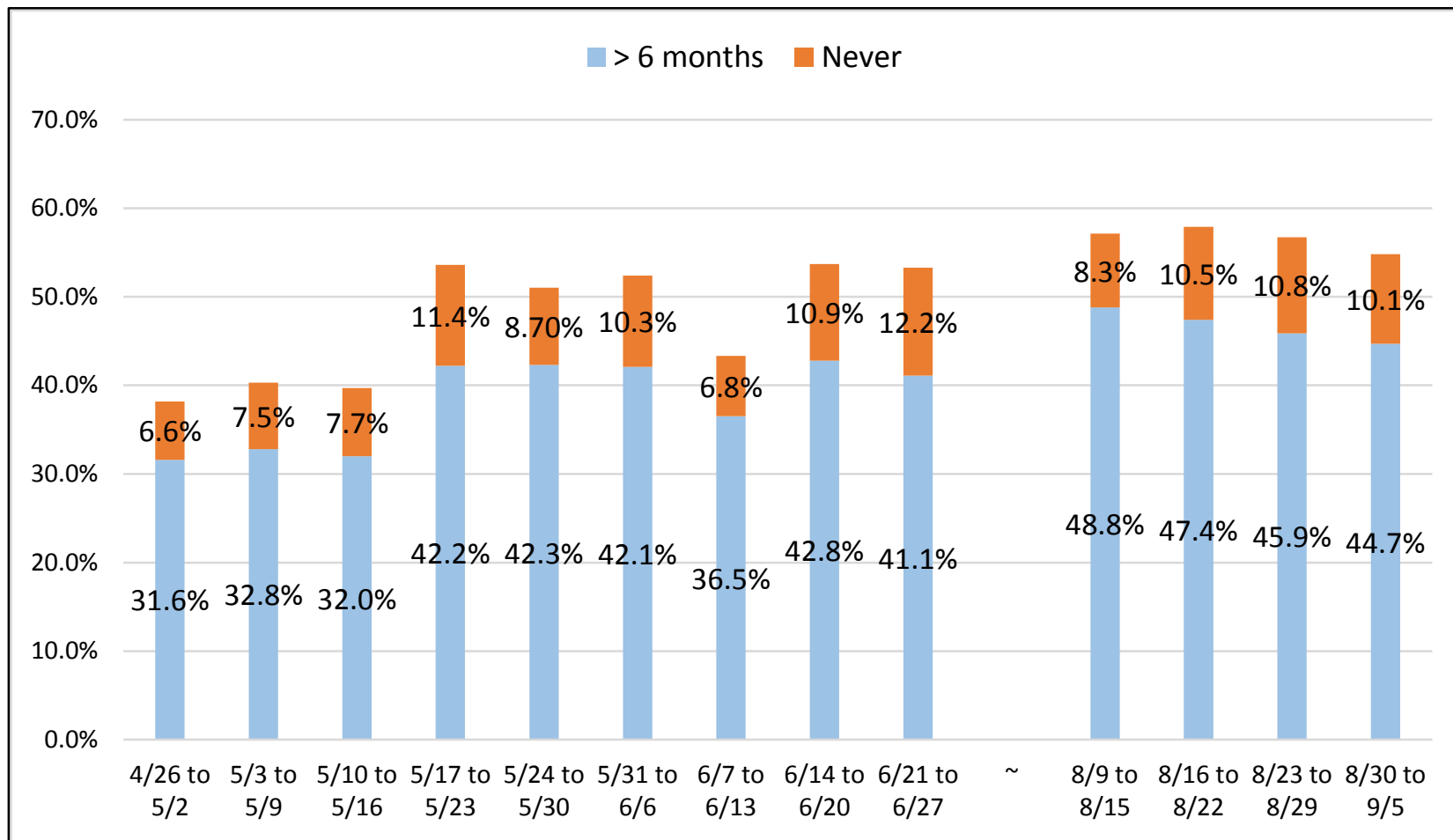
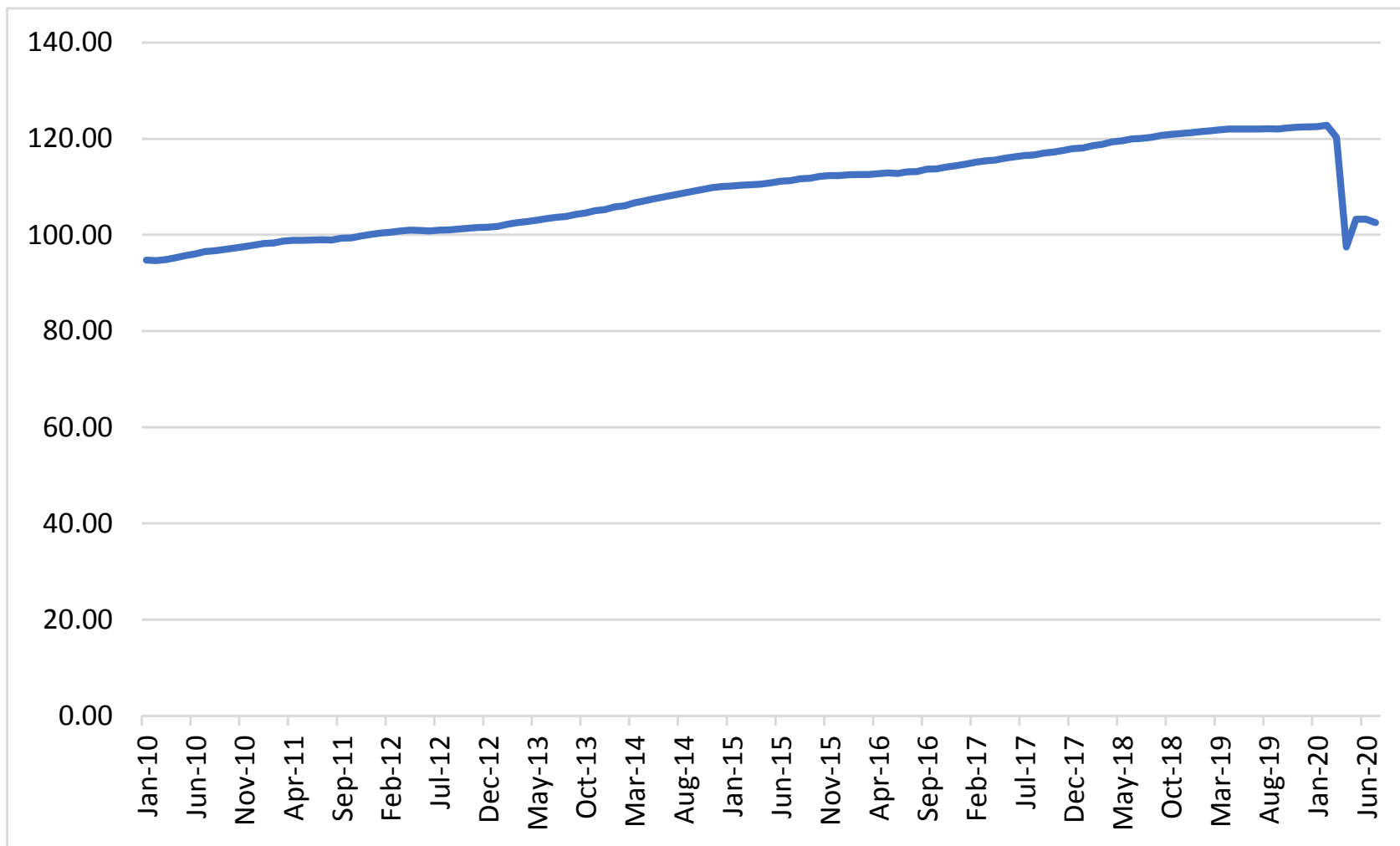


Figure 7 (updated): Federal Reserve Bank Coincident Index (Measure of Economic Activity) in Pennsylvania January 2010 to July 2020



Pandemic-related data for counties served by Columbia Gas

(Note: Columbia Gas does not serve entire population of all counties listed)

County	Population (2018)	COVID-19 Cases as of 9/9/2020	Cases per 100,000	Unemployment Rate as of February 2020	Unemployment Rate as of April 2020	Unemployment Rate as of May 2020	Unemployment Rate as of June 2020	Unemployment Rate as of July 2020	% Change from Feb. to July
Adams	102,023	717	703	3.5	14.9	11.7	10.2	10.1	189%
Allegheny	1,225,561	10,915	891	4.3	16.2	13.6	12.6	14.3	233%
Armstrong	66,331	366	552	5.8	17.8	13.8	12.5	14.4	148%
Beaver	166,896	1,722	1,032	5.2	18.7	15.2	14.6	15.8	204%
Bedford	48,611	187	385	5.4	18.0	13.8	12.6	14.3	165%
Butler	186,566	904	485	4.3	15.9	12.2	10.7	11.7	172%
Centre	161,443	870	539	3.6	10.4	8.3	8.0	8.8	144%
Chester	517,156	6,052	1,170	3.3	11.9	10.0	10.2	10.1	206%
Clarion	38,827	107	276	5.5	17.3	11.7	10.3	11.6	111%
Clearfield	80,216	265	330	5.8	17.2	13.1	11.9	13.2	128%
Elk	30,608	65	212	6.4	24.8	19.6	17.8	17.9	180%
Fayette	132,289	722	546	6.6	20.5	16.9	15.5	17.0	158%
Franklin	153,751	1,616	1,051	4.2	13.3	11.4	11.6	12.3	193%
Fulton	14,506	38	262	6.6	17.5	15.8	16.6	19.2	191%
Greene	37,144	152	409	6.0	14.7	13.1	13.1	14.5	142%
Indiana	85,755	479	559	5.5	15.9	13.1	11.8	13.4	144%
Jefferson	44,084	100	227	5.2	16.7	12.6	11.9	13.2	154%
Lawrence	87,382	479	548	6.3	18.6	14.4	13.8	15.2	141%
McKean	41,806	44	105	6.6	18.5	15.2	13.1	14.3	117%
Mercer	112,630	612	543	5.4	17.8	14.2	13.2	14.2	163%
Somerset	74,949	186	248	5.5	17.9	13.6	12.7	13.6	147%
Venango	52,376	74	141	6.0	15.6	12.4	11.5	13.3	122%
Warren	40,035	40	100	5.3	13.2	11.1	11.2	12.7	140%
Washington	207,547	1,156	557	4.9	17.4	14.1	12.9	14.3	192%
Westmoreland	354,751	1,914	540	4.9	17.7	14.2	12.2	13.5	176%
York	444,014	3,889	876	4.1	15.3	12.6	11.3	11.4	178%
Total	4,507,257	33,671	747	4.6	15.9	13.0	12.0	13.1	186%

Sources:

Population: US Census Bureau, American Community Survey, Table B01003 Total Population (5-year estimate, 2014-2018)
COVID-19 cases: <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>
Unemployment: Pa. Dept. of Labor & Industry, seasonally adjusted unemployment rate as of mid-July (released 9/1/2020)
<https://www.workstats.dli.pa.gov/MediaCenter/MonthlyNews/Pages/default.aspx>

Experienced loss of employment income since mid-March, and expected income loss in the next four weeks, Pennsylvania households by selected characteristics, as of the week ending July 21, 2021

	Lost income since mid-March	Expect to lose income in next 4 weeks
Hispanic origin and Race		
Hispanic or Latino (may be of any race)	78.5%	49.5%
White alone, not Hispanic	43.4%	26.0%
Black alone, not Hispanic	63.9%	34.2%
Asian alone, not Hispanic	30.9%	24.6%
Education		
Less than high school	48.8%	30.9%
High school or GED	47.5%	31.3%
Some college/associate's degree	58.2%	36.7%
Bachelor's degree or higher	39.9%	19.7%
Household income		
Less than \$25,000	45.0%	36.8%
\$25,000 - \$34,999	54.9%	34.6%
\$35,000 - \$49,999	54.0%	27.1%
\$50,000 - \$74,999	58.2%	29.1%
\$75,000 - \$99,999	50.0%	35.0%
\$100,000 - \$149,999	37.6%	16.4%
\$150,000 - \$199,999	35.4%	24.8%
\$200,000 and above	35.1%	21.1%
All households in Pennsylvania	48.1%	29.2%

Source: U.S. Census Bureau Household Pulse Survey, Week 12 (week ending July 21, 2020).
Employment Table 1. Experienced and Expected Loss of Employment Income, by Select
Characteristics: Pennsylvania

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How Pennsylvania households who lost employment income since mid-March paid their bills in the past 7 days, as of the week ending July 21, 2020

Regular income sources like those used before the pandemic	60.4%
Credit cards or loans	24.9%
Money from savings or selling assets	34.7%
Borrowing from friends or family	14.9%
Unemployment insurance (UI) benefit payments	25.7%
Stimulus (economic impact) payment	26.9%
Money saved from deferred or forgiven payments (to meet spending needs)	5.6%
Did not report	0.9%

Source: U.S. Census Bureau Household Pulse Survey, Week 12 (week ending July 21, 2020).
Employment Table 1. Experienced and Expected Loss of Employment Income, by Select
Characteristics: Pennsylvania

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VERIFICATION

I, Scott J. Rubin, hereby state that the facts set forth in my Surrebuttal Testimony, OCA Statement 1-S, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: September 16, 2020
*296081

Signature:



Scott J. Rubin

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