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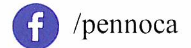 /pennoca

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March 3, 2021

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

Re: Pennsylvania Public Utility Commission
v.
PECO Energy Company – Gas Division
Docket No. R-2020-3018929

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3018929
	:	
PECO Energy Company – Gas Division	:	

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 3rd day of March 2021.

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3018929
Office of Consumer Advocate	:	C-2020-3022400
Office of Small Business Advocate	:	C-2020-3022414
Philadelphia Area Industrial Energy Users Group	:	C-2020-3022745
	:	
v.	:	
	:	
PECO Energy Company – Gas Division	:	

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James H. Cawley & Norman J. Kennard, Pa. Pub. Util. Commission (2018) 60

I. INTRODUCTION

On September 30, 2020, PECO Energy Company - Gas Division (PECO or the Company) filed a Section 1308(d) general rate increase seeking approval from the Pennsylvania Public Utility Commission (Commission) to increase its distribution rates to collect approximately $68.7 million in additional annual distribution revenue. The Office of Consumer Advocate (OCA) submits that the Commission should deny the Company's requested rate increase. As the OCA will set forth in its Main Brief, when considering the broad societal and economic impacts of the novel coronavirus pandemic (COVID-19 Pandemic), it is apparent that any increase at this time would not result in just and reasonable rates. In the absence of any rate increase, PECO can continue to earn a fair rate of return that adequately compensates the Company. Thus, the OCA submits that the Commission deny the Company's proposed rate increase. If the Commission determines to consider the Company's claims even though they are largely not supported by any evidence, let alone substantial evidence, application of a "business as usual" ratemaking approach shows that the Company should reduce rates by approximately $11.5 million.

A. Description of the Company.

PECO Energy Company "is an electric and natural gas utility subsidiary of Exelon Corporation." See PECO DFR I-A-1(a) Attachment. PECO Energy Company – Gas Division is engaged in the business of furnishing natural gas to approximately 534,000 residential, commercial, and industrial customers in several counties throughout southeastern Pennsylvania.

B. Procedural History.

On September 30, 2020, PECO filed Tariff Gas – PA. P.U.C. No. 4 (Tariff No. 4) with the Pennsylvania Public Utility Commission (the Commission) to become effective November 29, 2020. Through Tariff No. 4, PECO requested an annual increase of approximately $68.7 million in annual distribution revenue, or an 8.9% increase on the basis of total jurisdictional operating

revenue. In support of this filing, the Company also submitted its Direct Testimony and supporting information.

On October 6, 2020, a Notice of Appearance was filed on behalf of the Bureau of Investigation and Enforcement (I&E). On October 14, 2020, the OCA filed a Formal Complaint, Public Statement, and Notice of Appearance. On October 15, 2020, a Formal Complaint, Public Statement, and Notice of Appearance was filed on behalf of the Office of Small Business Advocate (OSBA). On October 22, 2020, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene and Answer to the Company's proposed rate increase.

On October 29, 2020, the Commission issued an Order initiating an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase in this filing, in addition to the Company's existing rates, rules, and regulations, and suspended the effective date of Tariff No. 4 until June 29, 2021, by operation of law. The case was assigned to the Office of Administrative Law Judge (OALJ) and further assigned to Deputy Chief ALJ Christopher P. Pell (ALJ Pell).

On November 5, 2020, the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed a formal Complaint. A Call-in Telephonic Prehearing Conference was held on November 9, 2020. Counsel for PECO, I&E, OCA, OSBA, CAUSE-PA and PAIEUG participated. During the Conference, the parties, upon approval of ALJ Pell, established modified rules for discovery as well as a procedural schedule. Further, because no party opposed the Petition to Intervene filed by CAUSE-PA, ALJ Pell granted the Petition during the Prehearing Conference.

On November 12, 2020, ALJ Pell granted PECO's Motion for Protective Order. On December 10, 2020, telephonic public input hearings were held at 1:00 p.m. and 6:00 p.m. On

December 22, 2020, OCA filed OCA Statement 1, the Direct Testimony of Scott J. Rubin[1]; OCA Statement 2, the Direct Testimony of Lafayette K. Morgan[2]; OCA Statement 3, the Direct Testimony of Kevin W. O'Donnell[3]; OCA Statement 4, the Direct Testimony of Glenn A. Watkins[4]; OCA Statement 5, the Direct Testimony of Roger D. Colton[5]; and OCA Statement 6, the Direct Testimony of Geoffrey C. Crandall[6]. Direct Testimony was also filed by OSBA, CAUSE-PA, PAIEUG, and I&E.

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[1] Mr. Rubin is an independent attorney and public utility industry consultant under contract with the OCA who has testified as an expert witness before utility commissions and courts in seventeen states and the District of Columbia and province of Nova Scotia. Since 1983, Mr. Rubin has provided legal and consulting services to a variety of parties interested in public utility regulatory proceedings. A more complete description of Mr. Rubin's qualifications is provided in OCA Statement 1, Appendix A.

[2] Mr. Morgan is a Senior Regulatory Analyst with Exeter Associates. He has reviewed and analyzed utility rate filings, focusing primarily on revenue requirements, accounting, regulatory policy and cost recovery mechanisms throughout the country. Prior to his work with Exeter Associates, Mr. Morgan was a Senior Financial Analyst with Potomac Electric Power Company. Prior to that, Mr. Morgan was a Staff Accountant with the North Carolina Utilities Commission. A more complete description of Mr. Morgan's education and experience is provided in OCA St. 2, Appendix A.

[3] Mr. O'Donnell is the President of Nova Energy Consults, a utility consulting firm. He has worked in utility regulation for over 35 years. He has previously been accepted as an expert witness in the fields of rate of return, cost of capital, capital structure, cost of service, rate design, and other regulatory issues in general rate cases, fuel cost proceedings, and other proceedings before utility commissions in North Carolina, South Carolina, Wisconsin, Virginia, Minnesota, New Jersey, Colorado, the District of Columbia, and Florida. He holds a Bachelor's degree in civil engineering from North Carolina State University and a Master's degree in business administration from Florida State University. He is a certified Chartered Financial Analyst (CFA). A complete description of Mr. O'Donnell's qualifications is provided in OCA Statement 3, Appendix A.

[4] Mr. Watkins is a President and Senior Economist with Technical Associates, Inc., an economics and financial consulting firm. Mr. Watkins conducts marginal and embedded cost of service, rate design, cost of capital, revenue requirement, and load forecasting studies involving numerous electric, gas, water/wastewater, and telephone utilities, and provided expert testimony in Alabama, Arizona, Delaware, Georgia, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Vermont, Virginia, South Carolina, Washington, and West Virginia. Mr. Watkins obtained his B.S. in economics and M.B.A. from the Virginia Commonwealth University in 1982 and 1988, respectively. A complete description of Mr. Watkins' qualifications is provided in his Direct Testimony (OCA St. 4) as Schedule GAW-1.

[5] Mr. Colton is a Principal of Fisher Sheehan & Colton, Public Finance and General Economics in Belmont, Massachusetts. He provides technical assistance to public utilities and primarily works on low income utility issues. Mr. Colton has devoted his professional career to helping public utilities, community-based organizations and state and local governments design, implement and evaluate energy assistance programs to help low income households better afford their home energy bills. He has been involved with the development of the vast majority of ratepayer-funded affordability programs in the nation. A more complete description of Mr. Colton's education and experience is provided in OCA Statement 5, Appendix A.

[6] Mr. Crandall is a Principal and Vice President of MSB Energy Associates, Inc. Mr. Crandall has over 40 years of experience in utility regulatory issues, including resource planning, restructuring, mergers, fuel, purchase power and gas cost recovery and planning analysis, energy efficiency, conservation and load management impacts, program design, and other issues. Mr. Crandall has provided expert testimony before a dozen public utility regulatory

On January 19, 2021, Rebuttal Testimony was filed by OCA witnesses O'Donnell, OCA St. 3-R; Watkins, OCA St. 4-R; and Colton, OCA St. 5-R. On that same day, rebuttal testimony was also filed by PECO, OSBA, and PAIEUG. On February 9, 2021, Surrebuttal Testimony was filed by OCA witnesses Rubin, OCA St. 1-SR; Morgan, OCA St. 2-SR; O'Donnell, OCA St. 3-SR; Watkins, OCA St. 4-SR; Colton, OCA St. 5-SR; and Crandall, OCA St. 6-SR. On that same day, surrebuttal testimony was filed by OSBA, CAUSE-PA, PAIEUG, and I&E.

On February 9, 2021, the parties requested that hearings on February 16, 2021, be cancelled. ALJ Pell granted the request on February 10, 2021. On February 12, 2021, PECO submitted their Final Outline of Oral Rejoinder. On February 16, 2021, ALJ Pell was informed by the parties that all parties agreed to waive cross-examination of other party witnesses, but reserved the right to cross examine the Company's witnesses on rejoinder. In the Telephonic Evidentiary Hearing on February 17, 2021, PECO, OCA, I&E, OSBA, CAUSE-PA and PAIEUG each moved to have their witnesses' testimonies and exhibits entered into the record. All parties' testimony and exhibits were admitted into the record during the hearing. Some of PECO's witnesses provided short oral rejoinder testimony.

The OCA has attached to this Main Brief, the following appendices: Appendix A – Rate Case Tables, Appendix B – Proposed Findings of Fact, Appendix C – Proposed Conclusions of Law, Appendix D – Proposed Ordering Paragraphs, and Appendix E – List of OCA Testimony and Exhibits Admitted into the Record. In accord with the procedural schedule, the OCA hereby submits its Main Brief in support of its position.

C. Overview of PECO's Filing.

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bodies throughout the United States. Prior to his current role, Mr. Crandall had over 15 years of experience on the staff of the Michigan Public Service Commission. A complete description of Mr. Crandall's qualifications is provided in his Direct Testimony (OCA St. 6) as Schedule GCC-1.

PECO filed Tariff No. 4 with the Commission on September 30, 2020. Pursuant to the Commission's Suspension Order, Tariff No. 4 is set to become effective on June 29, 2021. In its original proposal, the Company requested an annual rate increase of $68.7 million in annual distribution revenue, or an 8.9% increase on the basis of total jurisdictional operating revenue. As part of this request, the Company's original proposal sought to allocate approximately $43.2 million, or approximately 63% of the proposed $68.7 million increase, to the residential customer class. This request was based upon a Fully Projected Future Test Year (FPFTY) ended June 30, 2022, an overall rate of return of 7.70%, which includes a proposed 10.95% return on common equity, and projected and proposed increases to its operating and maintenance expenses, including a proposed expansion to its voluntary Energy Efficiency and Conservation (EE&C) programs. In addition, the Company is requesting to increase its residential customer charge by $4.25 per month, from $11.75 to $16.00, or by 36.2%. Under this original proposal, the total average monthly bill of a residential customer using 80 Hundred Cubic Feet (Ccf) per month would increase by $7.12, from $78.85 to $85.97 per month, or by 9.03%.

As this proceeding progressed, several errors and omissions were identified by the Company that necessitated material changes to its rate increase request. The Company now proposes to increase rates to produce additional annual operating revenues of approximately $66.2 million.[7] See PECO St. 3-R, Exh. MJT-1 Revised, Sch. A-1, Pg. 1, Column 3, Line 19. Furthermore, as a result of an error identified in PECO's Cost of Service Study (COSS), the Company now proposes to allocate $65.4 million, or 98.8% of the proposed $66.2 million increase, to the residential customer class. See PECO St. 7-R, Exh. JAB-1 Pg. 1, Column 3.

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[7] The changes in the amount of the overall revenue increase are the result of changes to the Company's claims and adjustments during the rebuttal phase of this proceeding. This includes, *inter alia*, adoption of a 3.84% cost of debt, reducing the Company's overall requested rate of return to 7.64%. See PECO St. 5-R at 9-10, see also PECO St. 5-R, Exh. PRM-1 (Updated), Sch. 1, p 1.

D. Burden of Proof.

The Company bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. In this regard, Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315 (a), provides as follows:

> Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315 (a). The Commonwealth Court has interpreted this principle in stating that:

> Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.[8]

The "term 'burden of proof' is comprised of two distinct burdens, the burden of production and the burden of persuasion."[9] The burden of production dictates which party has the duty to introduce enough evidence to support a cause of action.[10] The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established.[11] "The burden of persuasion never leaves the party on whom it is originally cast."[12]

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden must establish "the elements of that

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[8] Lower Frederick Twp. V. Pa. Pub. Util. Comm'n, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980) (citations omitted); see also Brockway Glass v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa. Commw. Ct. 1981).

[9] Hurley v. Hurley, 754 A.2d 1283, 1285 (Pa. Super. 2000) (Hurley).

[10] Id., at 1286.

[11] Id.

[12] Hurley at 1286; see also Pa. Pub. Util. Comm'n v Equitable Gas Co., Docket No. R-822133, *et al.*, 1983 Pa. PUC LEXIS 33 at *126-127 (Pa. PUC Jul. 8, 1983) (Equitable Gas 1983).

cause of action to prevail, precluding all reasonable inferences to the contrary."[13] Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

The OCA notes that Pennsylvania law is clear that there is no similar burden for a party proposing an adjustment to a utility base rate filing.[14] In Berner, the Pennsylvania Supreme Court stated:

> [T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.[15]

The Commission recognizes this standard in rate determinations.[16] Thus, it is unnecessary for the OCA, or any challenger, to prove that the Company's proposed rates are unjust, unreasonable, or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show how the Company failed to meet its burden of proof.

Therefore, the Company must affirmatively establish the reasonableness of every element of its claims and demonstrate that its proposed rates are just, reasonable, and in the public interest. In this Main Brief, the OCA will show that the Company has failed to satisfy its statutory burden in the manner set forth below.

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[13] Burleson v. Pa. Pub. Util. Comm'n, 461 A.2d 1234, 1236 (Pa. 1983) (Burleson).

[14] See e.g. Berner v. Pa. Pub. Util. Comm'n, 116 A.2d 738, 744 (Pa. 1955) (Berner).

[15] Id., at 744.

[16] Equitable Gas 1983, 1983 Pa. PUC LEXIS 33 at *126-127 (Pa. PUC 1983); see also, University of Pennsylvania v. Pa. Pub. Util. Comm'n, 485 A.2d 1217 (Pa. Commw. Ct. 1984); Pa. Pub. Util. Comm'n v. PPL Elec. Corp., Docket No. R-00049255, 237 P.U.R. 4th 419 (Pa. PUC Dec. 22, 2004).

II. SUMMARY OF ARGUMENT

The OCA opposes any increase to PECO's rates at this time. Throughout the Commonwealth as a whole, and particularly within PECO's service territory, ratepayers are still firmly in the grip of the COVID-19 Pandemic and the impacts to the health of the citizenry and the local economy are devastating. This is not the time to raise rates on PECO's customers. The evidence of record in this matter shows that PECO is not in need of immediate rate relief. PECO's current and near-term financial outlook is stable. PECO currently has sufficient revenues to continue to provide safe and reasonable service, to continue its construction activities, pay all of its expenses and earn a profit.

As set out in the testimony of OCA witness Scott J. Rubin, the economic impacts of the pandemic on Pennsylvanians have been severe. As of December 2020, approximately 2.78 million Pennsylvanians had filed initial unemployment claims, which was approximately 42% of Pennsylvania's workforce, since the beginning of the COVID-19 Pandemic. OCA St. 1 at 11. Since then, the number of new weekly unemployment claims has almost doubled statewide. OCA St. 1-SR at 2. As further discussed in the testimony of OCA witness Roger D. Colton, the burden of material hardships "fell hardest on adults whose families lost jobs, work hours, or work-related income." OCA St. 5 at 13. The OCA submits that any revenue increase at this time, considering the totality of the situation, will not result in rates that meet the just and reasonable standard.

Moreover, if the Commission were to employ a "business as usual" ratemaking approach in this proceeding, the OCA presented substantial, credible, and extensive evidence that supports the assertion that PECO has no need for a large increase in revenues. As discussed in detail in OCA witness Lafayette K. Morgan's testimony and this Brief, Mr. Morgan presents a number of adjustments to the Company's filed position that demonstrate the Company does not need a rate increase and should be subject to a rate decrease of approximately $11.5 million. Mr. Morgan also

cautions that there is cause for concern over "whether the accounting and financial data contained in the Company's filing provides a fair or reasonable projection of the Company's cost of service during the rate effective period." OCA St. 2 at 4.

Further, OCA witness Kevin O'Donnell found the return on equity of 10.95% recommended by PECO's Witness, Paul R. Moul, to be "excessive, unreasonable, and not indicative of current market conditions." OCA St. 3 at 4. Mr. O'Donnell instead found that "the proper return on equity on which to set rates for PECO in this proceeding in a business-as-usual environment should be 8.75%." OCA St. 3 at 4. In other words, this is the ceiling at which the return on equity should be set, but does not necessarily reflect a fair rate of return when taking into account the impacts of the COVID-19 Pandemic on ratepayers. Moreover, Mr. O'Donnell found that the 25-basis point return on equity (ROE) adder for "exemplary management" as advanced by the Company to be unsupported and unwarranted, particularly during this COVID-19 Pandemic. OCA St. 3 at 5.

Additionally, with respect to the Company's proposed expansion of its voluntary EE&C programs, OCA Witness Geoffrey C. Crandall offers specific suggestions regarding the reasonableness of PECO's proposal, including recommending the continuation of PECO's current budget levels of $2,008,000 per year for the residential programs and $28,000 for the commercial programs. OCA St. 6 at 3. As demonstrated by OCA witness Crandall, the Company's request to increase its budget to $4.5 million is unsupported, in part, because PECO has spent well below its existing budget since the inception of these programs. OCA St. 6 at 27-28. Accordingly, the Company can continue to operate at its existing budget and develop a cost-effective portfolio that maximizes savings and provides targeted relief to those who need it.

In addition, Mr. Watkins presents a cost of service study (COSS) that more accurately identifies the costs to serve and more equitably allocates any increase to the various customer classes than that presented by the Company. Moreover, as previously mentioned, PECO has proposed a nearly 36% customer charge increase from $11.75 to $16.00 per month. OCA witness Watkins' testimony demonstrates that this proposed increase is unreasonable as it is inconsistent with the Commission's general goal of fostering energy conservation and the principle of gradualism. OCA St. 4 at 30.

Lastly, based upon the testimony of OCA witness Roger D. Colton, the OCA recommends that the Company implement an Emergency Relief Program designed to provide arrearage relief to customers that have accumulated arrears during the COVID-19 Pandemic. OCA St. 5, Sch. RDC-1. Such a program is crucial for customers that are struggling to make ends meet. Additionally, the OCA recommends that the Commission require the Company to allocate universal service costs across all rate classes, rather than just the residential customer class. OCA St. 5 at 56. This change reflects the benefits these low-income programs provide to the community as a whole. OCA St. 5 at 56–58.

In conclusion, any increase that is granted in this proceeding must result in rates that are constitutionally just and reasonable. An analysis as to the affordability of such enacted rates on the ratepayers who will bear the brunt of any increase is a crucial consideration in determining whether rates are just and reasonable. In the present matter, PECO's near-term needs are already being adequately met through its existing rates. Conversely, PECO's customers continue to suffer the severe health and financial impacts of the Covid-19 Pandemic. Accordingly, the Company's rate increase should be denied, or decreased if rates are set based upon employing a "business as usual" ratemaking approach in accordance with the recommendations of the OCA's witnesses.

III. OVERALL POSITION ON RATE INCREASE REQUEST

The Commission has the authority under 66 Pa. C.S. Section 1301 to set rates at an amount it determines to be "just and reasonable" and that authority includes the ability to deny a utility its requested increase.[17] The OCA submits that PECO's existing rates are more than sufficient given the current COVID-19 Pandemic and associated financial hardships facing its ratepayers and would allow PECO, under its claims for the fully projected future test year ("FPFTY") ending June 30, 2022, to recover all of its claimed expenses and debt costs (without any adjustment to the Company's FPFTY projections) and earn a return on equity of 7.27 percent.[18] OCA St. 1 at 24. The Commission has the authority and discretion to deny the requested rate increase so long as that amount is not confiscatory and the utility has the opportunity to earn a fair rate of return.[19]

The OCA submits that raising natural gas rates on PECO's customers during this time would not meet the just and reasonable requirement of Section 1301.[20] Moreover, it is the Commission's responsibility, under constitutional requirements, to weigh the substantial evidence brought forth by the OCA's witnesses related to the unique COVID-19 Pandemic situation in

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[17] 66 Pa. C.S. § 1301.

[18] In Mr. Rubin's direct testimony, he explains how he calculated the Company's FPFTY return on equity under present rates:

> PECO Exh. MJT-1, Sch. A-1, p. 1, shows an overall rate of return of 5.73% for the FPFTY under present rates. Using the FPFTY capital structure on Sch. B-7, p. 13, of that exhibit, I calculate the return on equity was 7.27%, calculated as follows: overall return of 5.73% - 1.85% weighted cost of debt = 3.88% weighted return on equity. 3.88% ÷ 53.38% equity capitalization = 7.269% return on equity. See also PECO's Statement of Reasons, p. 2, where it states the FPFTY return on equity under present rates would be 7.26%. The difference appears to be due to rounding.

OCA St. 1 at 25, fn. 36. Please note that due to changes in the Company's position regarding some its claims and the Company's claimed cost of debt, the overall rate of return number has increased slightly. PECO St. 3, Exh. MJT-1 Revised, Sch. A-1, Column 2, Line 33. Accordingly, the underlying numbers may slightly differ from Mr. Rubin's initial analysis, but the point remains the same.

[19] Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989) (Duquesne).

[20] 66 Pa. C.S. § 1301.

setting just and reasonable rates.[21] As stated by this Commission, the evidence of the impacts of the COVID-19 Pandemic on the components of the Company's claimed cost of service—specifically, a fair rate of return, projected expenses and projected capital expenditures—will be included in the Commission's consideration of important ratemaking principles such as gradualism and rate affordability in arriving at just and reasonable rates.[22]

As explained in greater detail in this Main Brief, the OCA's evidence regarding the COVID-19 Pandemic's effects on customers' ability to afford a rate increase, particularly given the existence of inaccuracies and lack of support for certain projected expenses and capital spending, is ample basis for a denial of PECO's requested rate increase. Even if the Commission were to consider PECO's request under a "business as usual" approach, the record here demonstrates that PECO's rates should be reduced, not increased. See OCA St. 2-SR at 2. Given the substantial hardships facing customers, the OCA submits that the Commission must find that a fair rate of return and just and reasonable rates requires that PECO's request be denied.

Every business and consumer in this economy, including regulated utilities, will have to endure the challenges presented by the COVID-19 Pandemic. As evidenced by the testimony of OCA witness Scott J. Rubin, customers in PECO's service territory have suffered and are suffering financially due to the pandemic. OCA St. 1, *passim* and 1-SR, *passim*. The OCA submits that PECO's revenues need not be changed, and the Company would not be harmed, or its constitutional rights violated, if a rate increase is not granted in this case recognizing the economic circumstances we face and recognizing the need to better ensure the financial well-being of PECO's customers.

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[21] See Pa. P.U.C. et al. v. Columbia Gas of Pennsylvania, Docket Nos. R-2020-3018835 et al., Opinion and Order at 48 (Pa. PUC Feb. 19, 2021) (Columbia Gas).

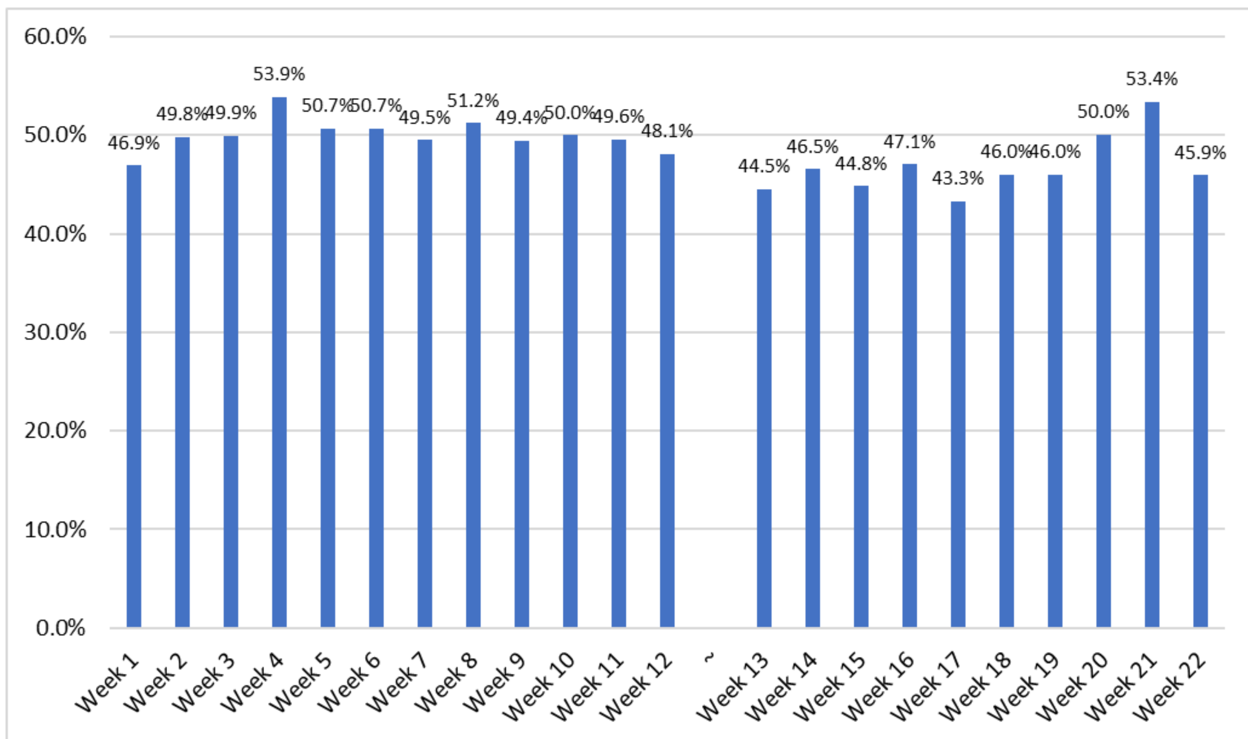
[22] Id.

A. The Data and Information Regarding the Economic Hardships Faced by PECO's Customers as a Result of the COVID-19 Pandemic is Substantial Evidence For the Commission to Deny PECO's Requested Rate Increase.

To the extent yet known, the economic repercussions of the COVID-19 Pandemic are real and significant in PECO's service territory. The OCA submits that the Commission must give great weight to the circumstances of consumers during these extraordinary times. OCA witness Scott J. Rubin testified to the impact the pandemic has had on unemployment rates, income loss, and other economic indicators within Pennsylvania and the PECO service territory. When looking at this evidence, Mr. Rubin concluded that now is not an appropriate time to raise PECO's rates. OCA St. 1, passim and OCA St. 1-SR, passim. The evidence of ratepayer impact is substantial and the Company has not provided evidence to the contrary. Id. The Commission would be well within its authority and the constitutional requirements of ratemaking if, by balancing the financial hardships faced by PECO's customers and PECO's need to earn a fair rate of return during this economic time, the Commission denies PECO's requested rate increase.

OCA Witness Scott J. Rubin provides substantial insight into the harmful economic effects of the COVID-19 Pandemic on individuals in PECO's service territory which ultimately affects the ability of PECO's customers to afford a rate increase during this time. Throughout the course of this proceeding, COVID-19 cases in Pennsylvania climbed from more than 1,000 reported infections a day in July and August of 2020 to peaking at more than 10,000 reported new infections a day following Thanksgiving in December of 2020. OCA St. 2-SR at 2.

The COVID-19 Pandemic has caused waves of job loss across Pennsylvania. As Mr. Rubin provided in his testimony, half of the Pennsylvania workforce has filed an unemployment claim since March of 2020. OCA St. 2-SR at 2. In the counties served by PECO, monthly unemployment rates at the end of November 2020 ranged between 4.4 percent in Chester County and 6.5 percent in Delaware County. OCA St. 2-SR, Exhibit SJR-8S. According to a survey conducted by the U.S. Census Bureau, roughly 50 percent of Pennsylvania households experienced wage loss from March 13, 2020 through February 9, 2021 as shown in Figure 3 (Updated) below. OCA St. 1-SR, Schedule SJR-7S at 1, Figure 3 (Updated). As demonstrated in the chart below, the percentage of Pennsylvania households which have experienced loss in employment income has fluctuated but not significantly improved since the start of the pandemic.



OCA SJR-7S at 1, Figure 3 (Updated): Percentage of Pennsylvania Households Experiencing Loss in Employment Income From March 13, 2020 through February 9, 2021.

Given the substantial reductions in employment and wages, there is an unusually large pool of ratepayers across the state unable to afford utility bills at this time. To address the prospect of Pennsylvanians experiencing job and wage loss to afford bill payments, Mr. Rubin cites the U.S. Census Bureau's Household Pulse Survey, testifying:

> Only 50% of Pennsylvanians who lost income said they used their normal source of income to pay bills in the previous week. About 20% cited unemployment benefits and 21% referred to the CARES Act stimulus payments. More people, however, relied on credit card debt or loans (including loans from family or friends) (45.8%) or money from savings or asset sales (29.5%) than relied on short-term government benefits.

OCA St. 1 at 14-15. For utility bills specifically, Mr. Rubin testified:

> A recent survey conducted by the Electric Power Research Institute ("EPRI") found that about two-thirds of people who lost their jobs during the pandemic are concerned about being able to pay their energy bills. Moreover, more than 20% of survey respondents reported that their energy bills were higher because of the pandemic. Interestingly, the survey also found that more than 25% of people who lost their jobs are planning to skip at least one utility bill payment, but a much lower percentage were planning to contact their utilities for assistance.

Id. at pp. 15-16 (footnotes omitted). The OCA submits that PECO's customers cannot reasonably withstand a rate increase at this time.

It should be further recognized that the economic repercussions of the pandemic are affecting minorities and individuals of lower income the most. In highlighting this disparity, Mr. Rubin testified:

> …the lower a household's income, the greater the impact of the pandemic on income loss. Similarly, households headed by a person who the Census Bureau categorizes as being Black, Hispanic, or Asian are much more likely to have experienced an income loss -- and to expect additional income loss during July and into August -- than are households headed by a White, Non-Hispanic person.

OCA St. 1 at 14. The OCA submits that a natural gas rate increase in the PECO service territory will not only increase the financial burden faced by customers experiencing job and wage loss due

to the pandemic, but it will likely increase that burden particularly on those individuals belonging to low-income and Black, Hispanic, or Asian households.

Similarly, the OCA's universal service witness, Roger D. Colton, testified to the disproportionate effects of the pandemic on low- and moderate-wage workers. OCA St. 5 at 7-11. The data and evidence presented by Mr. Colton demonstrates that low- and moderate-wage workers are more likely to experience job and income loss during the pandemic due to the nature of their positions[23] where working from home is typically not an option and, for this reason, these on-site workers are far more likely to miss work due to exposure to or contraction of the virus and, in more dire situations, hospitalization from the virus. Id. More specifically, Mr. Colton testified that: (1) 90 percent of the jobs lost during the COVID-19 Pandemic were in low-wage industries, particularly in the accommodations and food services industries; (2) low-wage workers do not have the safety net of paid leave to fall back on, and at the same time, they are also more likely to be employed in "high-risk jobs" where they are more likely to be exposed to COVID-19; and (3) many low- wage workers do not have access to health insurance benefits and those that do, may have lost health insurance recently as a result of COVID-19. OCA St. 5 at 7, 11-12. These impacts have resulted in material hardships for low- and moderate-wage workers. See also OCA St. 5 at 13-15.

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[23] As testified by Mr. Colton,

> Common occupations for low-wage workers include cashiers and retail salespersons, people who re-stock retail establishments and/or prepare orders for fulfillment, and others who have constant, close contact with the public (e.g., delivery people, drivers/truck drivers). Following the Bureau of Labor Statistics' National Compensation Survey, service occupations include health care support, protective service, food preparation, building and grounds, cleaning and maintenance, and personal care.

OCA St. 5 at 11.

Further, as Mr. Colton testified, a resolution to the public health crisis through a vaccine will not resolve the long-term economic crisis created in its wake. OCA St. 5 at 19. As Mr. Colton testified:

> This increase in Poverty is important for purposes of this proceeding because it is not likely to be resolved in the short-term. The long-term danger arises because when people lose their jobs, the long-lasting effects are not just on their income. Unemployment has a negative effect on workers' skills and education, even on their health—people who are unemployed become sicker. Human capital, the skills of the overall workforce, decays over time because of the loss of jobs. Moreover, with the COVID-19 pandemic, it is generally recognized that many of the jobs that have been lost will never come back. One recent research paper from the Becker Freidman Institute for Economics at the University of Chicago estimates that between 32% and 42% of COVID-19 induced layoffs will be permanent.

OCA St. 5 at 20-21. Moreover, many low-wage workers are 'liquid asset poor' and are unable to sustain long-term economic losses. See OCA St. 5 at 21-22. Thus, these consumers are relying on credit and/or household savings to make ends meet. The OCA submits that the Commission should give strong consideration to the groups of customers impacted the hardest financially by the pandemic and its economic repercussions.

In addition to residential customers, small businesses in PECO's service territory have also been impacted substantially from the pandemic. Mr. Rubin testified:

> The outlook for small business is slightly worse than it was when I prepared my initial testimony. On pages 15-16 of OCA Statement 1, I summarized the results of the Census Bureau's Small Business Pulse Survey for Pennsylvania. At the end of November, that survey reported that 48% of Pennsylvania's small businesses expected it to take six months or more to return to a normal level of operations, with another 10% saying their business would never fully recover.

OCA St. 1-SR at 2-3 (emphasis added); see also, OCA St. 1 at p. 15-16.

The data and information on the effect of the COVID-19 Pandemic on ratepayer's ability to withstand a rate increase during this time is substantial evidence for the Commission to exercise

its discretion in rejecting PECO's requested increase during this difficult economic period. An Agency's determination must be supported by substantial evidence.[24] "Substantial evidence" is a "term of art" used to describe whether the administrative record contains sufficient evidence to support the agency's factual determinations.[25] For a Commission decision to be supported by substantial evidence, it must be supported by such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[26] "Such evidence is more than a scintilla and must do more than create a suspicion of the existence of the fact to be established."[27]

From the above information, drawn from surveys and reports on the economic well-being of households and businesses both in PECO's service territory and in Pennsylvania from the start of the pandemic, Mr. Rubin recommends that rates in PECO's service territory not be raised at this time. OCA St. 1 at 28-29. This data, collectively, demonstrates why the economic hardships faced by customers in PECO's service territory should not be added to by any increase in PECO's rates at this time. In rebuttal, the Company does not contest any of the persuasive evidence presented by Mr. Rubin and Mr. Colton as to the effects of the pandemic on ratepayers. PECO St. 11-R, passim; see also PECO St. 5-R at 10. The OCA submits that the Company has not met its burden of proving that raising rates on PECO's customers while many are experiencing job and wage loss would lead to just and reasonable rates. The OCA submits that the unprecedented situation many

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24 2 Pa. C.S. § 704; see also, Yellow Cab Co. v. Pa. Pub. Util. Comm'n, 524 A.2d 1069 (Pa. Commw. Ct. 1987).

25 Biestek v. Berryhill, 139 S. Ct. 1148, 1154 (2019).

26 Dutchland Tours, Inc. v. Pa. Pub. Util. Comm'n, 337 A.2d 922 (Pa. Commw. Ct. 1975).

27 Pa. State Board of Medical Education & Licensure v. Schireson, 61 A.2d 343, 346 (Pa. 1948) ("The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power.") (citations omitted).

of PECO's ratepayers are facing is substantial evidence for the Commission to deny such an increase during this time.

B. The Commission has the Authority to Deny a Rate Increase Due to Pandemic-Induced Customer Hardships.

The OCA's proposal for no increase complies with constitutional and statutory requirements because the Company's current and near-term rate of return is not confiscatory, given the current economic situation. As Mr. Rubin explained, the Company is currently covering its expenses, debt, and making profit for shareholders. OCA St. 1 at 24. Simply put, the Company is earning a fair rate of return in these difficult economic times and the OCA has provided substantial evidence to demonstrate that PECO's requested increase should be rejected.

The Commission is not confined to a rigid mathematic formula in determining just and reasonable rates.[28] Rather, the Commission has the power to make and apply policy when balancing the interests of customers and investors so long as it is cognizant of the constitutional limitations.[29] Moreover, Mr. Rubin's proposal to keep the rates PECO charges for service in place until the pandemic situation and the economy improves is reasonable and within those constitutional requirements.

The Constitution requires that rates must be higher than a confiscatory level[30] and the utility should have the opportunity to earn a fair rate of return given the risks under the particular ratesetting system.[31] The U.S. Supreme Court has determined that, while the due process clause

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[28] Pennsylvania Pub. Util. Comm'n v. Pa. Gas and Water Co., 492 Pa. 326, 337, (Pa. 1980), cert. denied, 454 U.S. 824, (1981).

[29] Id.

[30] Federal Power Comm'n v. Texaco, Inc., 417 U.S. 380, 392-92 (1974) (citing FPC v. Natural Gas Pipeline Co., 315 U.S., at 585).

[31] Duquesne at 310.

of the Fourteenth Amendment safeguards against confiscation, or compelling use of property for service without just compensation, "it does not ensure to public utilities the right under all circumstances to have a return upon the value of the property so used."[32] It should further be mentioned that regulation does not ensure a profit.[33] As the U.S. Supreme Court stated in Federal Power Commission v. Hope Natural Gas Co., the "lowest reasonable rate" is one that is not confiscatory in the constitutional sense.[34] To invoke constitutional protection from confiscatory rates, it is not sufficient for a utility to merely assert in general language that rates are confiscatory.[35] The utility must specifically set forth facts that make clear that the rates would necessarily deny it just compensation and deprive it of its property without due process of law.[36] Thus, the burden of proving confiscation is on the utility alleging it.[37]

The U.S. Supreme Court established the standard with which to evaluate whether a rate of return is fair in the Bluefield case[38], stating:

> The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management. . .to raise the money necessary for the proper discharge of public duties.[39]

The Court also said that allowed rates of return should reflect the following:

> [A] return on the value of the [utility's] property which it employs for the convenience of the public equal to that. . .being made at the

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32 Public Service Com. v. Great Northern Utilities Co., 289 U.S. 130, 135 (1933).

33 Market St. R. Co. v. Railroad Comm'n of California, 324 U.S. 548, 566 (1945).

34 Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 586 (1944) (Hope).

35 Public Service Com. v. Great Northern Utilities Co., 289 U.S. at 136-37.

36 Id. (citing Aetna Insurance Co. v. Hyde, 275 U.S. 440, 447. P. 136).

37 Duquesne Light Co. v. Pa. Pub. Util. Comm'n., 176 Pa. Super. 568, 604 (Pa. Super 1954).

38 Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923) (Bluefield).

39 Id. at 693.

> same time… on investments in other business undertakings which are attended by corresponding risks and uncertainties.[40]

Twenty years later, the Court reviewed the issue of fair rate of return in Hope.[41] In Hope, the Court stated that a fair rate of return "should be commensurate with returns on investments in other enterprises having corresponding risks" while being sufficient "to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital."[42] The Court noted that "[t]he rate-making process under the Act, i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests . . . and does not insure that the business shall produce revenues."[43] More recently, the Court conveyed that consumers are obliged to rely upon regulatory commissions to protect them from excessive rates and charges.[44]

As noted, in Bluefield, the U.S. Supreme Court discussed the boundaries within which rates would not be deemed too low as to be confiscatory, but also not too high as to be rates utilities cannot reasonably be entitled to.[45] The Court explained that this determination "depends upon many circumstances" and must have "regard to all relevant facts."[46] The Court found that the return "should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."[47] The Court further stated:

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[40] Id. at 692.

[41] See Hope.

[42] Id. at 603.

[43] Id.

[44] See Permian Basin Area Rate Cases, 390 U.S. 747, 794-95 (1968) (citing Atlantic Refining Co. v. Public Service Comm'n, 360 U.S. 378, 388 (1959)).

[45] Bluefield at 692-93 (1923).

[46] Id.

[47] Id. (emphasis added).

> [a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.[48]

Accordingly, just and reasonable rates are products of individual ratemaking environments and there is nothing, from a legal standpoint, preventing the Commission from denying PECO's requested increase due to the pandemic if the rates are not confiscatory and the Company can cover all of its expenses and still have the opportunity to earn a fair rate of return.

In 1985, the Pennsylvania Supreme Court affirmed an order issued by the Commission under 66 Pa. C.S. Section 1310(d) that reduced the rates that the appellant electric companies could charge because two nuclear power plants at Three Mile Island were shut down and no longer "used and useful" in service.[49] In its decision, the court addressed at length Hope and the balance of consumers and investors interest in determining just and reasonable rates:

> In cases where the balancing of consumer interests against the interests of investors causes rates to be set at a "just and reasonable" level which is insufficient to ensure the continued financial integrity of the utility, it may simply be said that the utility has encountered one of the risks that imperil any business enterprise, namely the risk of financial failure. The express language of the Hope decision weighs against regarding utilities as a protected class of business enterprises which are to be relieved of such normal business risks. Specifically, it was stated in Hope, 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345, that investment returns to utility owners 'should be commensurate with returns on investments in other enterprises having corresponding risks.'[50]

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[48] Id.

[49] Pa. Elec. Co. v. Pa. Pub. Util. Com, 509 Pa. 324, 326 (Pa. 1985) (Pennsylvania Electric).

[50] Id. at 331-32.

…

> In short, Hope sets forth a balancing test, like that which we described in Pennsylvania Gas, supra, for the determination of "just and reasonable" rates, to be applied with the aim of protecting consumers against exploitation at the hands of utility companies while seeking to preserve the financial integrity of utility companies. (citing Federal Power Commission v. Memphis Light, Gas & Water Division, 411 U.S. 458, 465-466, 93 S.Ct. 1723, 1728, 36 L.Ed.2d 426, 433 (1973)).[51]

On the topic of investor interests, the Court stated:

> The decision in Hope enumerated certain legitimate areas of concern for investors, these being that a company have sufficient revenue to cover operating and capital costs, that the return on equity be commensurate with returns on enterprises having similar risks, and that the company be able to maintain credit and attract capital. These investor interests are appropriate factors to be weighed in the balancing analysis under Hope, but they are not, in themselves, controlling, for other factors must be taken into account.[52]

The Court also held that the legitimate investor interests listed in Hope are not of constitutional dimension, but are among the factors to be taken into account in the process of balancing interests to arrive at just and reasonable rates.[53]

In Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc., the Commission recently stated that there is no prescribed ratemaking formula, which the Commission must adhere to in arriving at just and reasonable rates.[54] The Commission explained that it must consider or weigh important factors or principles, such as quality of service, gradualism and rate affordability in setting just and reasonable rates, including the COVID-19 Pandemic.[55] Accordingly, the Commission should

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[51] Id. at 330.

[52] Id. at 331 (emphasis added).

[53] Id. at 334.

[54] See Columbia Gas at 44.

[55] Id. at 48.

consider the consequences of the COVID-19 Pandemic on customer affordability and reject PECO's requested rate increase.

Beyond case law, a review of the principles behind public utility regulation provides strong support for a denial of a rate increase in this case. To understand how just and reasonable rates are affected by a major economic event such as the COVID-19 Pandemic, Mr. Rubin presents in his testimony a valuable review of the regulated-monopoly arrangement of public utilities in this country and the determination of just and reasonable rates. OCA St. 1 at 4-8. Mr. Rubin states that, "[a]t its core, regulation is designed to protect utility consumers from what otherwise would be the unfettered power of a monopoly to set prices and the conditions of service." OCA St. 1 at 4. A useful way to visualize the balance of interests regulators of public utilities face in setting rates, Mr. Rubin explains that utility regulators should attempt to set rates within the "zone of reasonableness" which captures the interests of the ratepayers, the utility's investors, officers and employees, and local governments whose residents are served by the utility. Id. at 5-8. As Mr. Rubin explains, under normal conditions, there is often a "zone of reasonableness" within which there is a range of rates that utility customers would be willing and able to pay for service and investors would consider a reasonable return on their investment. Id. However, Mr. Rubin testifies, under certain conditions the range of rates customers are able to pay and the range of rates the utility requests to charge customers may not overlap—creating no "zone of reasonableness" at all. Id. When this occurs, regulators are tasked with setting rates outside of one of the ranges, or both. Id.

As further described above in Section III.B., the COVID-19 Pandemic has significantly impacted PECO customers' ability to pay for the Company's requested increase in rates at this time. Unlike what may have been the case during normal economic times, there is no overlap in

the ranges PECO's customers can pay for natural gas service and the proposed increase in rates PECO has requested in this matter. Because of this reality, the OCA submits that the only viable solution to the situation—to secure just and reasonable rates—would be to deny PECO's requested increase during this time. Keeping PECO's current rates while the pandemic and its effects on the economy continues to unfold will prevent additional financial hardship for PECO's customer base and also allow PECO to recover all of its expenses and debt costs (without adjustment) and earn a return on equity of 7.27 percent in the FPFTY. See OCA St. 1 at 24; PECO Exh. MJT-1, Sch. A-1, p. 1 and Sch. B-7, p. 13; and PECO's Statement of Reasons at 2.

As Mr. Rubin explained, regulation must always consider current economic conditions. Mr. Rubin testifies:

> "If regulation is supposed to be a substitute for market forces, then we must recognize that except for those commodities experiencing significant imbalances of supply and demand due to the pandemic, competitive businesses cannot sustainably raise prices when their customers' incomes have decreased significantly…Simply stated, what may have been a "just and reasonable" rate earlier this year may be unreasonable today."

OCA St. 1, p. 10 (emphasis added). Mr. Rubin also states:

> [i]mportantly, though, regulation is not designed to insulate the utility or its investors from normal market forces, technological improvements, or general economic conditions. If market forces (such as technological change) result in significant reductions in the demand for service, then the utility may not be able to recover its costs. That is not a failure of regulation, but a natural evolution of the market -- businesses fail if they cannot keep up with changes in consumers' preferences or respond to technological innovations.
>
> Similarly, if economic conditions change such that rates become unaffordable to many customers, rates may need to be reduced in order to remain "just and reasonable from the perspective of customers.

Id. at p. 5 (emphasis added). Thus, rejecting PECO's requested rate increase at this time is an appropriate result during the COVID-19 Pandemic and an appropriate response to the market imbalance caused by PECO customers' reduced ability to pay utility bills. Just and reasonable rates are products of individual ratemaking environments and ratemaking case law supports the Commission's consideration of ratepayer hardship during extraordinary times. Therefore, the OCA submits that the Commission should exercise its discretion and deny PECO's requested increase due to the pandemic. It is well within the Commission's authority as current rates will not be confiscatory in the near future because the Company can continue to cover all of its expenses and still have the opportunity to earn a fair rate of return.

C. In Considering the Impacts of the COVID-19 Pandemic on Ratepayers and the Company's Business Operations, the Commission Should Adopt the OCA's Proposals in Regard to Fair Rate or Return, Projected Expenses, and Projected Capital Spending.

From a financial standpoint, the OCA submits that the Company could continue to provide safe and adequate service under existing rates in addition to earning a rate of return of 5.73 percent during the FPFTY.[56] PECO Exh. MJT-1, Sch. A-1, p. 1; see also, OCA St. 1 at 24. While the OCA understands that this rate of return amount is lower than typically expected from a utility and may be lower than the OCA witnesses market-derived cost of equity,[57] it constitutes a fair rate of return in these circumstances of the COVID-19 Pandemic and the wide spread effects it continues to have on the economy and ratepayers. If the Commission determines that it will utilize the

[56] This calculation is premised on the assumption that the Company's entire FPFTY claims for rate base and expenses are accepted by the Commission. Please note that as a result of some revisions by the Company to its claims and adjustments in this proceeding, the relevant number is now 5.74%. See PECO St. 3, Exh. MJT-1, Sch. A-1, Column 2, Line 33.

[57] It should be emphasized that OCA witness Mr. O'Donnell's market-derived cost of equity recommendation is a starting-point, rather than an end-point, for the Commission's fair rate of return analysis.

market-derived cost of equity, the OCA submits that the record here supports a FPFTY fair rate of return of no higher than 6.30 percent as recommended by OCA witness Mr. O'Donnell. OCA St. 3 at 4 and Exhibit KWO-1; see also OCA St. 3-SR at 2. Regarding the Company's claimed expense adjustments, the OCA has raised many concerns with the Company's abbreviated budgeting process and the lack of accuracy due to the inappropriate use of blanket inflation adjustments, and the lack of support for many of the FPFTY expense increases as described in further detail in Section IV and VI of this Main Brief. As provided by the OCA's accounting witness, Mr. Morgan, if the Commission were to evaluate this matter under a "business as usual" ratemaking approach, his reasonable adjustments to PECO's projected FPFTY expenses result in a *decrease* in revenues of $11,475,000. OCA St. 2-SR at 2. For these reasons, the Company does not need a significant increase—let alone any rate increase at all—in base rates amid the COVID-19 Pandemic.

1. Fair Rate of Return.

PECO's current rates demonstrate that the Commission could reject the Company's rate increase request and PECO would still have the opportunity to earn a 7.27 percent return on equity after covering all of its claimed expenses (without adjustment) in the FPFTY. OCA St. 1 at 24. The OCA submits that the corresponding 5.73 percent overall rate of return (with a 7.27% return on equity) for the FPFTY is reasonable under the circumstances and more than sufficient for PECO during a time where many customers have experienced employment and income loss due to the pandemic. PECO Exh. MJT-1, Sch. A-1, p. 1; see also, OCA St. 1 at 24. This fair rate of return of 5.73 percent is only 57 basis points below OCA Witness Kevin W. O'Donnell's market-derived rate of return of 6.30 percent. OCA St. 3 at 4 and Exhibit KWO-1; see also OCA St. 3-SR at 2.

It is important to distinguish that a fair rate of return starts with a market-derived cost of equity but is only finally determined during the Commission's process of balancing of the interests

of customers, the utility, and its shareholders. As discussed *supra*, the Commission determined in Columbia Gas that its ratemaking methodologies permit it to consider "evidence presented regarding the risks, uncertainties, and impact of the COVID-19 global pandemic in determining various components of a utility's cost of service, or revenue requirement" including a fair rate of return.[58] As Mr. O'Donnell explains in his testimony, his primary recommendation is that the Commission adopt OCA witness Mr. Rubin's recommendation of no rate increase during this time. Id. at 15. If the Commission decides this case under a "business as usual" approach, Mr. O'Donnell's recommendation of a 6.30 percent overall rate of return should be the ceiling in the Commission's determination of a fair rate of return.

2. FPFTY Projected Expenses and Capital Expenditures.

The OCA's primary recommendation of a denial of PECO's requested rate increase is supported by the testimony of OCA witness Lafayette K. Morgan indicating that many of the Company's projected capital expenditures are overstated and lack support. If the Commission does not reject PECO's requested rate increase and employs a "business as usual" approach, Mr. Morgan recommended a reduction in revenues of $11,475,000 for the FPFTY. OCA St. 2-SR at 2. This decrease represents the amount by which revenues exceed those required to generate an overall rate of return of 6.30 percent after accounting for the OCA's adjustments to PECO's claimed rate base and operating income. As described in further detail in Sections IV and VI of this Main Brief, OCA witness Morgan provided testimony and evidence in support of the reduction or removal of many of the Company's claimed expenses for lack of evidence to support certain significant increases in spending and for claims which are inappropriately included in PECO's filing because recovery is not permitted. OCA St. 2 passim; see also, OCA St. 2-SR passim. The

58 Columbia Gas at 48.

Commission should accept Mr. Morgan's expense adjustments as the Company has not met its burden of proving these expenses. The OCA also submits that Commission should deny or significantly curtail the Company's projected capital spending in the areas highlighted by OCA witness Morgan due to the abbreviated budgeting process utilized by the Company which shows conflicting data, does not account for the impacts of the COVID-19 Pandemic on PECO's operations, and includes some capital spending projects that appear to go beyond the FPFTY. See OCA St. 2, passim; see also, 2-SR, passim.

In the Columbia Gas decision, the Commission stated:

> With respect to expenses, the Commission is charged with determining whether the utility's projected expenses "are reasonably necessary to provide service…" during the prospective period in which its rates will be in effect. *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002). This standard permits an examination by parties and the Commission of whether the utility's proposed specific expense claims in the FPFTY are "reasonably necessary to provide service" during the pandemic, which may lead to a trimming of certain expenses.[59]

Therefore, the Commission should adopt Mr. Morgan's accounting adjustments, which demonstrate that the Company's projected expenses and capital expenditure claims are not supported and cannot support an increase in revenues especially when it factors into the equation the pandemic-induced hardships facing many customers. The OCA submits that, particularly in light of the impact of the COVID-19 Pandemic on PECO's customers, the Company should be held strictly to its burden of proving every component of its rate increase request and it has not succeeded in the area of projected plant additions and expenses.

D. Conclusion.

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59 Columbia Gas at 49-50.

The Commission is investigating PECO's base rate case in the backdrop of an extraordinary public health emergency that continues to have devastating impacts on the economy and the incomes of many PECO customers. The Commission has the broad authority and discretion to reject PECO's requested new rates in light of the increased toll it would have on PECO's customers who are struggling financially to navigate the pandemic. The OCA submits that its witnesses have provided substantial evidence of customer hardship in PECO's territory and the Company has not met its burden of proving its requested rate increase would be just and reasonable. Therefore, PECO's proposed rate increase should be denied.

IV. RATE BASE

The OCA's witness, Lafayette Morgan, makes two adjustments to the Company's proposed rate base in this proceeding. The first adjustment is to rely on the Company's plant in service claim for the FTY, rather than the FPFTY, and the second adjustment is to remove the Pension Asset from the Company's rate base claim. The OCA will discuss each below:

A. Fair Value.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

B. Utility Plant In Service.

In this proceeding, the Company's claim for utility plant in service is approximately $3.5 billion for the FPFTY ended June 30, 2022. See PECO St. 3-R, Exh. MJT-1 Revised, Schedule C-2, page 15, column 4, line 35. This number is derived, in part, from the Company's estimated plant additions of $322.1 million during the FPFTY. See PECO St. 3-R, Exh. MJT-1 Revised, Schedule C-2, page 16, line 32. OCA witness Lafayette K. Morgan explained that, after multiple requests for the necessary data from the Company, he was unable to access the detailed data supporting the Company's plant in service claim. See e.g. OCA St. 2 at 14. The information Mr. Morgan did receive contained inconsistencies and, therefore, Mr. Morgan was left without a high degree of confidence that the Company's plant in service data was reliable and accurate. Id. As a result, Mr. Morgan adjusted the plant-related components in rate base to reflect the FTY level of additions. Id. The adjustment resulted in a decrease to the Company's net plant in service of approximately $271 million as presented on Schedule LKM-2, page 1. As will be discussed below in Section IV.D.1 of this Brief, the OCA recommends that the Commission adopt the recommendation of OCA witness Morgan and remove the Company's projected plant additions for the FPFTY.

C. Depreciation Reserve – Annual/Accumulated.

The only OCA adjustment to the Company's depreciation reserve is a derivative adjustment relating to Mr. Morgan's plant in service adjustment discussed below. In other words, the accumulated depreciation amount, should reflect the FTY amount, rather than the FPFTY amount, which is consistent with Mr. Morgan's Plant in Service Adjustment. See OCA St. 2-SR, Sch. LKM-2, Pg. 1. The reduction of $271 million to the Company's net plant in service as reflected on Schedule LKM-2, page 1, incorporates the removal of $41.5 million from its accumulated depreciation balance. See OCA St. 2-SR, Sch. LKM-2, Pg. 1, Line 2.

D. Additions to Rate Base.

1. Projected Plant in Service.

In this proceeding, the Company used a FPFTY ended June 30, 2022, and projected substantial capital additions for FTY and FPFTY. See PECO St. 3, Sch. MJT-1, Sch. C-2, Line 32; see also PECO St. 3, Sch. MJT-2, Sch. C-2, Line 32. More specifically, for the FTY ended June 30, 2021, the Company is projecting approximately $292 million in plant additions bringing its total plant in service claim to approximately $3.232 billion. See PECO St. 3, Sch. MJT-1, Sch. C-1, Column 4, Line 1. For the FPFTY ended June 30, 2022, the Company is projecting approximately $322 million in plant additions bringing the Company's total plant in service claim to approximately $3.538 billion. See PECO St. 3, Sch. MJT-1, Sch. C-1, Column 4, Line 1.

During OCA witness Morgan's investigation of the Company's plant addition claims, he made repeated efforts to obtain the information supporting the Company's FTY and FPFTY plant additions. As Mr. Morgan testified:

> Although I made several attempts to get detailed budget data, the Company was unable to provide the detailed data supporting its plant in service claim. In my initial data request, OCA-II-3 sought detailed information that would provide a description of the project, the initial estimated completion dates and any revised completion

> date; current status of each project, etc. The Company provided general categories rather than the data requested. The OCA contacted the Company in an attempt to obtain the data that was sought. The OCA submitted OCA-XIII-3 and OCA-XIII-4 as a result of our conversation with hopes of obtaining the data we sought. Again, the Company provided general and summary data rather than the data sought.
>
> Even the data we received contained inconsistencies. The plant in-service dates provided in the response to OCA-II-3, differed from the in-service dates presented on OCA-XIII-3, and the in-service dates on both of those documents were different than the in-service dates presented on IE-RB-4-D. The differing data does not provide much confidence about the accuracy of the Company's claim.
>
> Even when I attempted to gain better understanding of the budgeting process based on previous responses to the OCA's interrogatories, the Company's response was not clear. I attempted to seek other means to assure myself that the plant in service data was reliable but was not successful. I sought to obtain the budget preparation instructions that is often used by Companies at the beginning of their budget process. PECO did not provide the information.

OCA St. 2 at 14-15 (footnotes omitted). That is, when requested for specific budgeting data, broken out by plant account, the data could not be produced except at a high-summary level. Moreover, the data that was provided included projects with an end date that extended well beyond the FPFTY. See OCA St. 2, App. B at 31.

In addition to the lack of specific and conflicting budget data, Mr. Morgan identified some additional concerns related to the Company's budgeting process. In essence, the Company developed a five-year long-range plan (LRP) in June 2019 that was completed in January 2020, well before the onset of the COVID-19 Pandemic. See OCA St. 2 at 8-9; see also OCA St. 2, App. B at 28. As Mr. Morgan testified, if the LRP was developed prior to the COVID-19 Pandemic, this calls into question the projected plant additions:

> The budget preparation date is critical because the events, circumstances and related data from that period affects the judgement and decision making while preparing the budget. For example, during April and May 2020, there were very dramatic changes in the US economy. In April, sales of existing homes

> dropped by 17.8 percent. The National Association of Home Builders (NAHB) Housing Market Index (HMI) dropped from 72 to 30 and 37 for April and May, respectively. Unemployment surged in April to 14.7 percent from 4.4 percent in March. These data points began to recover in June, and the Company indicates it developed the FTY and FPFTY budget during this period when the economy was very volatile. These rapid changes in the housing sector are very relevant to gas operation because it affects capital expenditures, especially since capital expenditures related to New Business Connection forms 12.9 percent of PECO's FPFTY plant projection activity. New Business Connections also affects the revenue projections. It is doubtful that one can accurately project customer growth with the volatility in the housing market and business closures.
>
> Another reason to have concerns over the Company's budget is related to the spike in unemployment and the moratorium placed on service disconnection and late payment fees. These factors had the effect of increasing uncollectible expense and reducing revenues from late payment fees. Keeping in mind that the events were unprecedented, the ability of the Company to accurately forecast two years into the future amidst the uncertainty is questionable, especially given the rapid pace of the budget preparation.

OCA St. 2 at 9-10.

Moreover, after the LRP was developed without taking into account the effects of the COVID-19 Pandemic, the Company then developed its FTY and FPFTY budgets over a two-month period in the summer of 2020. See OCA St. 2, App. B at 28. As Mr. Morgan testified, this raised several concerns. First, no indication was made by the Company that the test year budgets were reflected to account for the effects of the COVID-19 Pandemic. See OCA St. 2 at 4-5; see also PECO St. 2-R at 3. Furthermore, this abbreviated approach to developing a test year budget during a period of great economic volatility creates concern for the accuracy of these projections. The Company also did not provide any of the specific instructions or guidance relied upon when developing this test year budget. See OCA St. 2 at 4.

Lastly, it was also concerning that the Company acknowledged that the COVID-19 Pandemic had impacted the Company's planned FTY plant additions, but that it would not impact the Company's FPFTY projections. As Mr. Morgan testified:

> Perhaps, one area that is impacted the most by the delays is rate base. The costs in rate base for the FPFTY are cumulative. Therefore, the FPFTY rate base assumes the planned plant additions for the FTY occurred. However, if planned construction projects did not occur in the FTY due to delays and are shifted to FPFTY, some of the FPFTY projects are likely to be shifted to the future because the Company's capacity to work on projects are not unlimited. Realistically, it cannot be assumed that the projects that are carried over will be completed in addition to previously planned projects. The problem is that construction work takes time, and some phases of projects need to occur before further work can be done in a subsequent period. Hence, one cannot simply assume that projects that did not get completed in one year will be completed in the next year along with all the other planned work. Complicating this further is the contribution of suppliers and subcontractors. If suppliers have shut down operations due to the pandemic, the materials and supplies may not be available instantly when the planned work resumes. Subcontractors may be regrouping themselves from COVID-related disruption. There is a whole supply chain that must be operating and functioning well to resume full construction activity. Consequently, some FTY & FPFTY construction work will inevitably be postponed.

OCA St. 2 at 12-13. Accordingly, Mr. Morgan did not have a high degree of confidence in the Company's forward looking estimates.

For these reasons, Mr. Morgan recommends that, rather than rely on the Company's planned additions for FPFTY, the Commission rely upon the FTY plant additions, which is a reasonable compromise given the lack of clarity associated with the Company's projections. OCA St. 2 at 15. This adjustment is similar to the Commission's decision regarding the general rate increase request of Columbia Gas of Pennsylvania, Inc. (Columbia Gas), where the Commission

removed $71 million in FPFTY plant additions because Columbia Gas failed to provide substantial evidence to validate its FPFTY plant additions.[60] As stated by the Commission:

> We find persuasive the OCA's argument, and the ALJ's finding, that [Columbia Gas] failed to provide substantial evidence to adequately validate the [Columbia Gas'] FPFTY plant additions for the FPFTY; while the OCA's adjustment was based on actual historical data. This is consistent with our discussion above under the first issue – determining net plant additions in the FPFTY is a matter of judgement for the Commission, governed by the evidence presented in this record and guided by our regulatory expertise.

Id.

Similarly, PECO is projecting $614 million in plant additions across both its FTY and FPFTY (PECO St. 3, Sch. MJT-1, Sch. C-2, Line 32; see also PECO St. 3, Sch. MJT-2, Sch. C-2, Line 32) based upon a LRP that was prepared before the pandemic began (See OCA St. 2, App. B at 28), has not been updated to reflect the impacts of the COVID-19 Pandemic (See PECO St. 2-R at 3), and is supported by inconsistent and vague data reflecting some projects that extend beyond the end of the test year. See OCA St. 2 at 10-11; see also OCA St. 2, App. B at 31. The Company has the burden of proof to demonstrate by a preponderance of the evidence that these additions will be placed into service as projected and it has not met that burden.[61]

In response to the adjustment recommended by Mr. Morgan, Company witness Bradley continues to assert that there will be no delays to the projected plant in service for the FPFTY. PECO St. 1-R at 4. As Mr. Morgan testified, however, this may not be entirely accurate as a large portion of the future plant additions are based upon new connections within the Company's service territory, which may be greatly affected with the COVID-19 Pandemic:

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[60] See Columbia Gas at 61.

[61] See 66 Pa. C.S. § 315(e).

> While Mr. Bradley argues that there will be no continual delay or "catch up" beyond the middle of 2021, and no impact to the FPFTY capital program, he totally ignores the fact that approximately 13.0 percent of the Company's capital expenditures is related to capacity expansion and new connections. Therefore, the projected plant in service balances for the FPFTY reflect the plant needed to serve customer demand that is based on a more robust economy. Less economic activity will mean less plant investment will be needed. PECO has chosen to ignore this reality which has led to the overstatement of its plant additions.

OCA St. 2-SR at 6. Moreover, during the evidentiary hearing, Mr. Bradley recently testified that bare steel replacements have been rescheduled and postponed due to the COVID-19 Pandemic. See Tr. at 213. Bare steel replacements, however, are included in the Company's projected FTY and FPFTY plant additions. Tr. at 258-59. Accordingly, it is unclear based on Mr. Bradley's statements whether these projects will be affected as well.

For all these reasons, the OCA submits that the Commission should adopt the recommendation of OCA witness Morgan removing from rate base the projected plant additions for the FPFTY and making the necessary derivative adjustments to the Company's claimed portion of common plant and accumulated depreciation. See OCA St. 2-SR, Sch. LKM-2. This change would reduce the Company's net plant in service by approximately $271 million. OCA St. 2-SR, Sch. LKM-2, Pg. 2, Line 5.

2. Pension Asset.

The Company is seeking to include in rate base a 'Pension Asset,' which represents the accumulation of past differences between the portion of pension expense that the Company assumes to be capitalized for ratemaking purposes and what is actually capitalized for financial accounting purposes. PECO St. 3 at 22-23. In other words, the Company is seeking to earn a return on past pension expense that has yet to be capitalized for financial accounting purposes. See also I&E St. 1 at 47. The OCA submits that the Company's claim should be denied. As the

Pension Asset is composed of past pension expense that has not yet been capitalized and cannot be included in the Company's capital accounts for some time, it cannot be included within the Company's rate base. The Pension Asset, however, will be included in rate base in future years when it is appropriate to do so for financial accounting purposes. Accordingly, the Commission should deny the Company's claim and reduce the Company's rate base by $35,059,000. OCA St. 2 at 19; see also OCA St. 2-SR, Sch. 5.

As stated in the Direct Testimony of Company witness Trzaska, the Company has included a Pension Asset of approximately $35.1 million in measures of value for determining the Company's rate base in this proceeding. PECO St. 3 at 22.; see also PECO St. 3, Sch. MJT-1, Sch. C-1, Column 4, Line 7. The Pension asset represents the difference between the portion of pension expense that it assumes to be capitalized for ratemaking purposes and what is actually capitalized and included in the Company's plant accounts for financial accounting purposes. PECO St 3 at 22-23.

More specifically, the Company makes an annual cash contribution to its pension plan in accordance with federal requirements (hereinafter Cash Contribution). OCA St. 2 at 16. The Cash Contribution is what the Company uses for ratemaking purposes when determining the amount of pension expense properly included in rates. OCA St. 2 at 17; see also PECO St. 3 at 23. Thus, as demonstrated by Exh. MJT-1 Revised, a portion of the Company's cash contribution is expensed and a portion must be capitalized. See PECO St. 3-R, Exh. MJT-1 Revised, Sch. D-9. In this case, the Company is *assumed* to have capitalized approximately $1.8 million for its gas operations.[62] Id. The rest is expensed and claimed for ratemaking purposes. Id.

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[62] Stated another way, the Company has decided to rely on its Cash Contribution amounts to determine its pension expense claim in this proceeding, rather than the ASC 715 amount. See PECO St. 3 at 23; see also Exh. MJT-1, Sch. D-9. As a result, the Company can claim a higher level of pension expense in this proceeding, but must continue to apply its capitalization rate of 41.62% to the Cash Contribution rate to determine the proper level of

Separate and apart from this Cash Contribution, the Company, in accordance with financial accounting requirements, has an annual required contribution amount calculated by an actuary, which uses an accrual basis method of accounting (hereinafter ASC 715). OCA St. 2 at 17. This ASC 715 amount may be larger or smaller than the Company's Cash Contribution, but has generally been lower for PECO in previous years. OCA St. 2 at 17. The Company uses this amount to determine what it will capitalize to the Company's capital accounts. That is, the Company capitalizes a portion of the ASC 715 amount, rather than the Cash Contribution amount. PECO St. 1 at 23. Thus, there is a mismatch for accounting and ratemaking purposes that results in cumulative differences in accounting. I&E St. 1 at 47. The Pension Asset represents those cumulative differences and is presently at approximately $35.1 million, as calculated by the Company.

As further explained by Mr. Morgan, this gap in financial accounting is booked to the Company's Account 186 – Miscellaneous Deferred Debits, which states as follows:

> A. This account shall include all debits not elsewhere provided for, such as miscellaneous work in progress, construction certificate application fees paid prior to final disposition of the application as provided for in gas plant instruction 15A, and unusual or extraordinary expenses not included in other accounts which are in process of amortization, and items the final disposition of which is uncertain.
>
> B. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein.

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pension expense in this proceeding. PECO St. 3 at 23. In other words, the Company is assumed to have capitalized that portion of the Cash Contribution for ratemaking purposes and is not eligible to be included in the Company's pension expense claim.

OCA St. 1-SR at 13. It is important to note that this is not a capital investment account, but is rather a deferred debit, or current asset.[63] OCA St. 1-SR at 13. Current assets are not generally included in a Company's rate base measures of value. Id. Moreover, as Mr. Morgan explains, the Pension Asset will remain on the Company's books and will not be amortized until the ASC 715 amount exceeds the Company's Cash Contribution. OCA St. 1 at 19.

Based on the nature of this claim, the OCA submits that the Commission should deny the Company's request to include the Pension Asset in rate base. Including the Pension Asset in rate base would inappropriately allow the Company to earn a return on unamortized pension expense, which the Commission has disallowed in the past.[64] As Mr. Morgan testified:

> Under past Commission ruling, no return is allowed to be earned on expenses, only on capital investments. Expenses are recovered on a dollar-for-dollar basis without profit. Hence, the attempt by the Company to include the Pension Asset in rate base is an attempt to earn a return on expenses and violate Commission rules.

OCA St. 2-SR at 17.

Moreover, because the amounts currently reflected in the Pension Asset have not yet been capitalized for financial accounting purposes, and may not for some time, these amounts will not be depreciated or amortized and will remain on the Company's books for a number of years, resulting in the Company over-earning on these amounts if included in rate base as proposed. As Mr. Morgan testified:

> [T]he pension asset would be reduced only when the pension expense for financial reporting exceeds the pension contribution. However, some of the capital projects to which PECO is attempting to attribute the pension asset have already begun depreciation. Under the Company's proposal, since the pension asset is not amortized (or depreciated), the pension asset amount (that was

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63 Current assets represent all the assets of a company that are expected to be conveniently sold, consumed, used, or exhausted through standard business operations within one year. Current assets appear on a company's balance sheet, one of the required financial statements that must be completed each year. OCA St. 1-SR at 13.

64 See Pa. Pub. Util. Comm'n v. Pa. Power Co., Docket No. R-811510, *et al.*, 1982 Pa. PUC LEXIS 154 at *117-18 (Pa. PUC Jan. 22 1982) (Penn Power 1982).

> attributed to those projects) would remain virtually constant, while the actual net balance (plant minus accumulated depreciation) of those projects will decrease over time. The return earned on the unchanging balance will result in an over-recovery of the return if the Commission allows the Pension Asset in rate base.

OCA St. 2 at 19-20.

The Commission should not be persuaded by Mr. Trzaska's claims that the Pension Asset must be included in rate base or else it will not earn a return on these amounts. See PECO St. 3-R at 16. This is not correct. In future years, when the Company's Cash Contribution is less than the Company's ASC 715 amount, the mismatch in financial accounting will reverse and a portion of the Pension Asset will then be placed into the Company's capital accounts. At that time, that capitalized portion can be placed in rate base and depreciated like any other capital asset.

In response to Mr. Morgan's recommendation, Company witness Trzaska argues that the Commission already approved this practice in a settlement reached in several Duquesne Light Company rate case proceedings. See PECO St. 3-R at 12-15. The OCA submits that this argument should be dismissed without merit as the decision referenced by Mr. Trzaska is the product of a settlement and should not be given precedential value. Id. As Mr. Morgan testified:

> A settlement is a product of negotiation and generally does not establish precedents. Therefore, the settlements reached in those dockets are inconsequential. Each case must be decided based upon the facts and circumstances as they apply to the company under review. The record in those cases is not part of this case, so the costs cannot be included in rate base on that basis, regardless of statements made by the OCA in each of those cases. The OCA's statements were based on the facts in the case.

OCA St. 2-SR at 12. Moreover, the referenced settlement contained in Mr. Trzaska's Rebuttal Testimony contains the following provision, which was adopted by the Commission:

> The Joint Petitioners acknowledge that this Settlement reflects a compromise and does not necessarily reflect any Party's position with respect to any issues raised in this proceeding. The Joint Petitioners agree

> that this Settlement shall not constitute or be cited as precedent in any other proceeding, except to the extent required to implement this Settlement.[65]

Thus, this argument should be rejected.

In addition, Mr. Trzaska tries to compare the Pension Asset to the capitalized portion of salaries and wage expense, stating that these items are similar. PECO St. 3-R at 16-17. Mr. Trzaska, however, inappropriately compares two different concepts. A portion of pension expense, like salaries and wage expenses, must be capitalized and included in the Company's capital accounts. OCA St. 2-SR at 14-15. The OCA does not dispute this fact. What concerns the OCA is the Company's proposal to include in rate base pension expense amounts that have not yet been capitalized for financial accounting purposes. This would inappropriately include an unamortized expense item in rate base before it is ripe for inclusion. See OCA St. 2-SR at 16.

Accordingly, the Commission should deny the Company's claim to include a Pension Asset in rate base. Denial of the Company's claim would reduce the Company's rate base by $35,059,000. OCA St. 2 at 19; see also OCA St. 2-SR, Sch. LKM-5, Line 3.

3. Uncontested Items.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

E. Conclusion.

The OCA submits that if the Commission considers the Company's rate base claims, it should adopt the recommendations of OCA witness Morgan regarding the Company's FPFTY plant additions and the Pension Asset. That is, the Commission should rely upon the Company's planned FTY additions when determining the Company's overall plant in service claim in this

[65] Pa. Pub. Util. Comm'n v. Duquesne Light Co., Docket No. R-2018-3000124, Opinion and Order at 15, 41-42 (Pa. PUC Dec. 20, 2018).

proceeding and should remove the approximately $35.1 million Pension Asset from measures of value.

V. REVENUES

A. Forfeited Discounts.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

VI. EXPENSES

Mr. Morgan proposed several adjustments to the Company's projected operating expense levels. Mr. Morgan's adjustments impact the following expense claims of the Company: (1) Payroll Expense, (2) Employee Benefits Expense, (3) Postretirement Benefit Expense, (4) Manufactured Gas Plant (MGP) Expense, (5) Injuries and Damages Expense, (6) Rate Case Expense, (7) Regulatory Initiative Costs, (8) Costs to Achieve, (9) Exelon Business Services Company (EBSC) Expense, (9) Research and Development Expense, (10) Regulatory Commission Expense, (11) Contracting Expense, (12) Employee Activity Expense, (13) Employee Travel Expense, (14) Energy Efficiency and Conservation Program Expense, and (15) Depreciation Expense. The combined impact of these adjustments and recommendations on the Company's claimed operating and maintenance expenses is a reduction of $9.322 million, excluding income tax effects, and a reduction of $7.287 million to the Company's claim for depreciation expense, excluding income tax effects. See OCA St. 2-SR, Sch. LKM-3, Pg. 2.

Accordingly, based on the analysis presented below, the Company's claims for expenses are inflated and largely unsupported by documents. The OCA will deal with each adjustment in turn.

A. Payroll and Payroll-related Expense.

The Company's claimed FPFTY payroll expense was calculated to annualize budgeted payroll expense to reflect the number of employees at the end of the FPFTY, or 638 positions, and reflect a 2.5% wage increase for both union and non-union employees forecasted to be effective on January 1, 2022 and March 1, 2022, respectively. PECO Exhibit MJT-1, Schedule D-6; see also PECO Exh. MJT-1, Sch. D-8. The Company also adjusted its payroll expense to increase its employee headcount by 1 more position to include a total of 639 positions. PECO Exh. MJT-1, Sch. D-8. The Company also normalized, over a 6-year period, a one-time cash payment to union employees made in connection with the ratification of current union contracts. PECO Exh. MJT-1, Sch. D-6. As explained in further detail below, Mr. Morgan adjusts the Company's FPFTY payroll expense according to his reasonably adjusted employee headcount and the elimination of past costs for a one-time bonus paid in exchange for ratification of the union contract on or before December 31, 2014. These adjustments reduce payroll expenses by $2,447,000 as presented on Schedule LKM-11.

1. Employee Headcount

Regarding the increase in employee headcount, Mr. Morgan's recommended adjustment reduces the number of employees to 604 positions, the most recent actual number of employees, because the Company has not adequately supported the increase in the number of positions for the FPFTY. OCA St. 2 at 23-24. Specifically, Mr. Morgan testified:

> According to the Company, it developed its FPFTY payroll on the average number of employees during the FPFTY of 638. In Public Attachment IE-RE-8-D(a), the Company showed that at the beginning of the HTY, there were 585 employees and 602 employees at the end of the HTY. That attachment showed that the projected increase of 35 employees did not occur until October 2020. Clearly, the increase in the number of employees were projected to occur during the FTY according to Public Attachment IE-RE-8-D(a) and the response to OCA-II-47 (a).

> I requested that the Company provide a list of each of the 37 new positions, showing the annual salaries and wages; date hired, if hired or the expected hiring date; and date terminated, if terminated during the HTY or FTY. The Company responded stating that 30 positions were hired during the HTY, and the remaining 7 positions were for positions that were allocated. Based on the response from the Company, these were not the support for the projected increase in the number of positions that occurred during the FTY. Consequently, I have not seen any support, including management authorization for the projected increase in the number of employees. In other words, there is no documentation that the new positions were authorized. There also is no support for the salary and wages, hire dates, or a description of the positions. Therefore, the costs related to the additional position should not be allowed.

Id.

In rebuttal, the Company's witness, Robert Stefani, disagreed with Mr. Morgan's conclusion and provided a list of positions the Company plans to fill and explained that the Company had filled 612 positions as of December 31, 2020, but did not reach its anticipated employee headcount of 635 by December 2020 due to the impacts of the COVID-19 Pandemic. PECO St. 2-R at 11; OCA St. 2-SR at 16. In response, Mr. Morgan testified:

> Mr. Stefani's comparison of the actual December 31st employee count of 612 to the projected forecasted headcount of 635 employees is misleading. The actual December 31st number of employees that Mr. Stefani uses includes allocated employees and he has compared that number to the projected December 31st number of employees which excludes allocated employees. As a result, the gap between the actual and the projected number of employees appears to be smaller, as if the Company were closer to meeting its hiring goal. Therefore, the Commission should disregard this comparison.

OCA St. 2-R at 16.

As concluded by Mr. Morgan in his testimony, the Company did not reach its projected forecasted headcount and the supplemental comparison provided by the Company in rebuttal should not be accepted as proper proof of the gap between the actual and projected number of employees because of the misleading effect of the inclusion of allocated employees in the number

of projected employees. Id. Additionally, the Company claimed that 37 additional employees would be hired during the HTY and FPFTY and the Company only provided information on and the job descriptions of the employees hired during the HTY. Id. at 17. The Company further did not provide management approval documentation for the positions the Company claims it will eventually fill. Id. As Mr. Morgan explains, other companies have been able to provide management approval documents to substantiate their future hiring claims. Id.

Recently, in the Columbia Gas decision, the Commission adjusted Columbia's projected employee headcount according to its actual hiring experience.[66] Similarly, PECO's projected employee headcount is not supported or reflective of the Company's actual hiring experience. For these reasons, the Company did not provide proper support for its increased employee headcount and the Commission should accept the OCA's reasonable adjustment, which reflects the Company's historic data and actual hiring experience. The Companies salaries and wage claim, therefore, should be adjusted by $2,447,000 as presented on Schedule LKM-11.

2. One-time Cash Payment for Ratification of the Union Contract

In addition to reducing the employee headcount to reflect the Company's actual and supported hiring data, Mr. Morgan removes the normalization of the one-time cash payment for ratification of the union contract because it is a prior period cost, and recovery would constitute retroactive ratemaking and violate normal ratemaking principles. Id. at 25. As Mr. Morgan explained:

> The bonus was paid in exchange for ratification of the union contract on or before December 31, 2014. Thus, the bonus was compensation for the action the workers took in December 2014. There also was no authorization from the Commission to defer those costs for future recovery. As a result, these costs are not eligible for recovery.

[66] Columbia Gas at 71.

Id.

In rebuttal, the Company's witness Mr. Trzaska claims that it is a Commission practice to spread expenses like this over the average length of the Company's collective bargaining agreements. PECO St. 3-R at 21. However, Mr. Morgan responds by indicating that expenses like the one-time bonus payment to union employees each time it negotiates new union contracts remains a past expense payment for past employee action and that "[t]he future collection of a prior period cost is the definition of retroactive ratemaking." OCA St. 2-SR at 18. Mr. Morgan also indicates that the Company admitted that the past payment was not connected to any requirement of the employees by stating "[t]here were no specific future tasks, service or obligations that were expected from those who received the one-time payment" Id.

The Commonwealth Court has held:

> Ratemaking, by its nature, is prospective. Typically, a utility files a general rate case with a record of revenues and expenses for the past year and a projection of anticipated expenses and revenues for a future test year. . . .
>
> Because of the prospective nature of rates, a rule against retroactive ratemaking has developed. The rule against retroactive ratemaking prohibits a public utility commission from setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits. The policy reasons behind this rule are that if retroactive ratemaking is allowed, it makes the "test year" method of ratemaking meaningless and the general principle that those customers who use power should pay for its production rather than requiring future ratepayers to pay for past use.[67]

[67] Popowsky v. Pub. Util. Comm'n, 642 A.2d 648, 650-51 (Pa. Commw. Ct. 1994) (Court held that a utility may not recover, in a future base rate case, costs that were previously and incrementally incurred due to changes in accounting standards) (citations omitted).

The Company's attempt in this case to recover in the FPFTY the bonus payments made in 2015 violates the rule against retroactive ratemaking and, therefore, should be excluded from its payroll expense claim as recommended by Mr. Morgan.

3. Conclusion

The Company has not adequately supported its projected increase in employees for the FPFTY and the Company's request to recover a one-time ratification bonus paid to union employees would violate the rule against retroactive ratemaking. As a result, the Commission should accept Mr. Morgan's adjustments (shown on Schedule LKM-11) to the Company's payroll expense to reflect the Company's actual hiring experience for purposes of employee headcount and to reflect the removal of the improperly claimed costs for the one-time ratification bonus made back in 2015. See OCA St. 2-SR, Sch. LKM-11.

B. Contracting and Materials Expense.

The Company increased the FPFTY amount for Contracting Services and Contracting Professionals (contracting and materials expense) by approximately $400,000 over the HTY amount in the aggregate. PECO St. 3, Exhibit MJT-1, Schedule D-4, pp. 55-56. Mr. Morgan testified that the Company did not offer a specific reason to attribute to the increase. OCA St. 2 at 39. Upon request for more information on the source of the increase, the Company replied:

> The increases in contracting professional expense are generally due to inflation adjustments. PECO does not budget by FERC account. For further detail pertaining to the FPFTY and FTY budgets by FERC account, refer to Exhibit MJT-1 and MJT-2, respectively.
>
> and
>
> The increases in contracting services expense are generally due to inflation adjustments. PECO does not budget by FERC account. For further detail pertaining to the FPFTY and FTY budgets by FERC account, refer to Exhibit MJT-1 and MJT-2, respectively.

OCA St 1 at 39 (quoting the Company's response). Based upon this broad response, and the lack of data related to the inflation adjustment provided by the Company, Mr. Morgan testified that the specifics of the inflation adjustment are unknown and should not be accepted by the Commission. OCA St. 2 at 39-40.

Mr. Morgan testified further to his disagreement with the Company's use of an inflation factor to calculate Contracting expenses for the same reason it was inappropriate to utilize in the calculation of the Company's Exelon Business Service Company (EBSC) charges (Section C below), Regulatory Commission expense (Section G below), and Property Taxes (Section L below). The Commission has previously found the use of a blanket inflation adjustment to be inappropriate because it does not directly relate to the actual costs expected to be incurred in each expense account in the FPFTY. [68] As in the case of all of these adjustments, Mr. Morgan testified to the inappropriateness of using an inflation adjustment for these expenses by stating:

> They do not reflect the anticipated cost of expenses and are inconsistent with the Company's claim that the annual budgeting and planning process is designed "to integrate and align PECO's operational, regulatory, and financial plans." Inflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set. Instead, projected costs should be based upon evidence or documentation that show the specific actions and program that underlie the Company's adjustments. I do not believe that, when Act 11 was implemented, the determination of expenses for the FPFTY was envisioned to be simply applying an inflation rate to expenses.

OCA St. 2 at 39-40. The Company's inappropriate use of a blanket inflation adjustment for contracting and material expenses is part of the reason Mr. Morgan concluded that the Company has used an abbreviated approach to developing the FPFTY expenses. Id. As a result, Mr. Morgan

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[68] See Pa. Pub. Util. Comm'n v. Wellsboro Electric Co., Docket No. R-2019-3008208, Opinion and Order at 40 (Pa. PUC Apr. 29, 2020) (Wellsboro 2020).

recommended an adjustment to reflect the most recent actual 3-year average level of contracting expenses, reducing O&M expenses by $367,000 as shown on Schedule LKM-23.

In rebuttal, the Company's witness Mr. Stefani tried to provide further explanation for its projected contracting professionals and services expense increases in the FTY and FPFTY by stating that they are driven by the same factors attributed to the increase in contracting and materials expenses. PECO St. 2-R at 19. Mr. Stefani set forth those factors as follows: "(1) costs will increase as the Company invests in and expands its gas mapping project; (2) the Company will incur additional expenses as it actively reduces the Company's non-emergent leak backlog; and (3) PECO expects to incur additional expenses related to increased security services for crews working in high crime areas." Id.

Although the reasons provided by the Company in rebuttal attempted to provide a bit more clarity regarding the basis for the increase, the Company has still failed to demonstrate or quantify the true increase in costs that would result from those actions. Even though the Company, in rebuttal, could identify specific projects, it has chosen to use an abbreviated approach by applying an inflation escalation rather than price out the cost of the projects. For that reason, and for the reasons provided above regarding the inappropriate use of blanket inflation adjustments, the OCA maintains that Mr. Morgan's calculation to reflect the most recent actual 3-year average level of contracting expenses, reducing O&M expenses by $367,000 as shown on Schedule LKM-23, is reasonable and should be accepted by the Commission.

C. Outside Services (including Exelon Business Service Company Charges).

The Company increased FPFTY Exelon Business Service Company (EBSC) charges by approximately $1,600,000 over the HTY. OCA St. 2 at 36. In his direct testimony, Mr. Morgan recommended an adjustment to EBSC charges because he disagreed with the use of inflation escalations as the basis of the increase in costs. OCA St. 2 at 36–37. Mr. Morgan testified that

inflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set.[69] OCA St. 2 at 36–37.

The Company was not able to provide a specific reason to attribute to the cause of the increase. OCA St. 2 at 36. Instead, when the Company was asked to explain the cause of the increase, it responded by stating that "[b]udgeted increases in the relevant line item of the allocated expenses are generally due to inflation and any MMF rate adjustments." OCA St. 2 at 36 (quoting PECO Response to IE-RE-11-D(E)). However, "[i]t is unknown what the MMF rate adjustment could be because the Company did not provide the information requested. The lack of data here (as well as for other expenses) is part of the reason [Mr. Morgan] concluded that the Company has used an abbreviated approach to develop the FPFTY expenses." OCA St. 2 at 36.

Mr. Morgan also disagreed with the use of adjustments based on inflation escalations for this expense "because they are not actually known and measurable." OCA St. 2 at 36. Mr. Morgan testified that the adjustments "do not reflect the anticipated cost of expenses and are inconsistent with the Company's claim that the annual budgeting and planning process is designed 'to integrate and align PECO's operational, regulatory, and financial plans.'" OCA St. 2 at 36. Mr. Morgan added:

> Inflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set. Instead, costs should be based upon evidence or documentation that supports the Company's adjustments. I do not believe the determination of expenses for the FPFTY was envisioned to be simply applying an inflation rate to expenses.

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69 See also Wellsboro 2020 at 40.

OCA St. 2 at 36. Thus, Mr. Morgan recommended "an adjustment to reflect the most recent 3-year average EBSC expense," which results in an adjustment to reduce O&M expenses by $997,000. OCA St. 2 at 36–37, Sch. LKM-20.

In PECO witness Stefani's rebuttal testimony, he argued that the FPFTY expenses are appropriate because Counsel for the Company "advised him that the Commission has repeatedly accepted the use of inflation factors as a reasonable method to derive the pro forma levels of operating expense items that were not otherwise separately adjusted." OCA St. 2-SR at 21 (citing PECO St. 2-R at 17). However, Mr. Morgan testified that:

> The charges from EBSC (as shown on Surrebuttal Schedule LKM-20) are composed of a variety of corporate support services. The costs relate to services such as Communication, Executives, Utilities, Finance, Government Affairs, Human Resource, Legal Governance, Security, Supply, etc. Each of these functional areas are managed by Exelon employees and are subject to similar guidelines for budget preparation as PECO. Therefore, it is possible for proper budget projections to have been made instead of applying an inflation escalation to these non-homogeneous categories. Inflation escalation should not be used just because one can show that they have been accepted by the Commission in the past. In fact, the use of inflation escalation for the EBSC costs is another indication that the Company has chosen to use an abbreviated budget approach. In an instance where it is possible to obtain proper budget forecast, the Company has chosen to shortcut the process and use inflation escalation. This shortcut approach does not produce more accurate projections.

OCA St. 2-SR at 21. Mr. Morgan finds that the Company did not meet "its burden in demonstrating that its proposed blanket inflation escalation to a diverse group of expenses would meet the 'known and measurable' standard for increasing each expense claim in the FPFTY."[70] OCA St. 2-SR at 21–22.

Thus, because the resulting amounts do not meet the known and certain standard in this instance, the OCA recommends that the Commission reject the Company's projections for EBSC

70 See also Wellsboro 2020 at 40.

costs. OCA St. 2-SR at 22. The OCA finds that "[p]roperly budgeted data would have been based on integrating and aligning PECO's operational, regulatory, and financial plans, and would have been more accurate." OCA St. 2-SR at 22. Accordingly, the Commission should adopt the adjustment of Mr. Morgan to reflect the most recent 3-year average EBSC expenses, which results in an adjustment to reduce O&M expenses by $997,000. OCA St. 2 at 36–37, Sch. LKM-20.

D. Other Post-Employment Benefits Expense.

Mr. Morgan testified that Company's claimed post-retirement benefits expense of $1,050,000 represents a significant increase from the HTY to the most recent actual 3-year average. OCA St. 2 at 26-27. Mr. Morgan further testified that he could not locate the source of the Company's OPEB expense claim and, therefore, adjusted the Company's OPEB expense to reflect the most recent actual 3-year average. Id. As a result of this adjustment, the Company's OPEB expense was originally reduced by $1,085,000 as presented on Schedule LKM-13.

In rebuttal, Mr. Stefani explained that the increase in OPEB expense is a result of an expiring service credit amortization in 2021-2022. PECO St. 2-R at 25-28. Mr. Stefani also provided, in rebuttal, PECO Exhibit RJS-4-R CONFIDENTIAL, which shows the Company's OPEB costs in recent years. Using the data presented in that document, Mr. Morgan recalculated his OPEB expense adjustment based upon the 3-year average (2020 to 2022) of OPEB costs resulting in a downward adjustment of $486,000 from the Company's OPEB claim of $1,050,000 presented on CONFIDENTIAL Surrebuttal Schedule LKM-13. See OCA St. 2-SR, Sch. 3, Pg. 1, Line 6. The OCA submits that Mr. Morgan's recalculation should be adopted because it is based upon the Company's recent 3-year average of OPEB costs and accounts for the service credit

amortization expiration in 2021-2022. These types of adjustments are appropriate where they occur regularly, but in irregular amounts.[71]

Accordingly, the Commission should adopt the adjustment of OCA witness Morgan to normalize the Company's OPEB expense over the 3-year period (2020-2022), resulting in a downward adjustment of $486,000 from the Company's OPEB claim. See OCA St. 2-SR, Sch. 3, Pg. 1, Line 6.

E. Costs to Achieve Exelon/PHI Merger.

The Company claimed $1,111,000 over 3 years, or $370,000 for the FPFTY, for the costs related to the merger between Exelon—PECO's parent company—and Pepco Holdings Corporation, a holding company for a non-Pennsylvanian public utility, that took place in 2016. PECO St. 3 at 40-41; see also, MJT-1 Schedule D-15. According to the Company, this merger brought $4.3 million worth of savings to PECO over the last 5 years and the Company believes it should recover the costs of the merger in this present rate proceeding. Id. OCA witness Mr. Morgan testified that this prior cost incurred in 2016 was not authorized to be deferred by the Commission and recommended that the costs to achieve expense be rejected in full because to include it in rates would constitute retroactive ratemaking. OCA St. 2 at 33-36.

In rebuttal, the Company's witness Mr. Stefani stated that the exclusion of these costs would be unfair given the savings the merger has brought to customers by reducing costs. PECO St. 2-R at 14. In response, Mr. Morgan indicated that the savings PECO has generated from the merger have been retained by the Company and PECO's customers have not experienced reduced rates as a result of the merger. OCA St. 2-SR at 20. Similar to the Company's claimed expenses

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71 See Pa. Pub. Util. Comm'n. v. Total Environmental Solutions, Inc., Docket No. R-00072493, *et al.*, 2008 Pa. PUC LEXIS 42 at *98 (Pa. PUC May 23, 2008) (TESI 2007).

for the one-time union bonus payments made in 2015 as discussed in Section IV.A.2 above, the inclusion of these past costs, without previously gaining from the Commission the permission to defer them, violates the rule against retroactive ratemaking and should, therefore, be excluded from FPFTY rates. As a result, the Commission should deny the Company's claim to recover the cost of the 2015 merger and reduce the Company's O&M expense by $370,000. See OCA St. 2-SR, Sch. LKM-19.

F. Regulatory Commission Expense (General Assessments).

The Company increased FPFTY Regulatory Commission expense by approximately $462,000 over the HTY. OCA St. at 38. However, Mr. Morgan disagreed "with the use of adjustments based on inflation escalations. OCA St. 2 at 38. Mr. Morgan again argues that adjustments based on inflation escalations are not actually known and measurable." OCA St. 2 at 38.

The Company did not "provide a specific reason to attribute the cause of the increase." OCA St. 2 at 38. When the Company was asked to explain the cause of the increase, it responded by stating that "[t]he projected increases in regulatory commission expense are generally due to inflation adjustments." OCA St. 2 at 38 (quoting PECO Response to IE-RE-15-D(B)). However, "[t]he specifics of the inflation adjustment are unknown because the Company did not provide the information requested. The Company's use of an abbreviated approach to develop the FPFTY expenses appears to contribute to the lack of data here." OCA St. 2 at 38.

Mr. Morgan disagrees "with the use of adjustments based on inflation escalations because they are not actually known and measurable."[72] OCA St. 2 at 38. Mr. Morgan testified that adjustments based on inflation escalations "do not reflect the anticipated cost of expenses and are inconsistent with the Company's claim that the annual budgeting and planning process is designed

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[72] See also Wellsboro 2020 at 40

'to integrate and align PECO's operational, regulatory, and financial plans.'" OCA St. 2 at 38. Mr. Morgan stated that "[i]nflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set." OCA St. 2 at 38. Instead, Mr. Morgan recommended that projected costs be based "upon evidence or documentation that show the specific actions and program that underlie the Company's adjustments." OCA St. 2 at 38. Mr. Morgan does not believe that "the determination of expenses for the FPFTY was envisioned to be simply applying an inflation rate to expenses" when Act 11 was implemented. OCA St. 2 at 38. Therefore, the OCA recommends an adjustment to reflect the HTY level of regulatory commission expense, which results in an adjustment to reduce O&M expenses by $462,000. OCA St. 2, Sch. LKM-22.

G. Research and Development Expenses.

The Company's requested $280,000 in Research and Development (R&D) expenses is, as pointed out by Mr. Morgan, abnormally high in comparison to prior years. OCA St. 2 at 37. Specifically, the Company's R&D expenses ranged from $59,000 in 2018 to $253,000 in 2020. OCA St. 2 Schedule LKM-21. Mr. Morgan testified that the Company did not provide support or reasoning for the significant increase and when he requested support from the Company, the Company's response lacked any information or data that would explain the significant increase. OCA St. 2 at 37. Further, Mr. Morgan observed that the response suggested that PECO does not expect to spend the significantly increased R&D amount.[73] Id. As a result, Mr. Morgan adjusted

[73] In his Direct Testimony, OCA witness Morgan quoted the Company's response when asked to explain the cause of the increase:

> The projected increase in R&D compared to the historical R&D expenditures is due to: (1) the overall management of Gas O&M; and (2) the R&D programs from NYSearch in which the Company participates. Relating to the overall O&M management, historically, we have used R&D funding to offset higher priority needs to manage to the total O&M expenditures in Gas. We also review the

the Company's R&D expense by $138,000 to reflect the Company's 3-year average spending as shown on Schedule LKM-21. Id. Mr. Morgan's adjustment is reasonable and, therefore, should be accepted.

H. Employee Activity Costs.

The Company claims that its FPFTY requested increase of approximately $71,000 in employee activity costs over the HTY spending level is attributed to reduced HTY spending due to the pandemic and the Company's expectation that FPFTY amount will be more indicative of normal spending levels. OCA St. 2 at 40. Mr. Morgan explains in his testimony that the forecasting of costs after the pandemic—particularly costs relating to employee gatherings and in-office work events—is highly speculative. Id. Mr. Morgan explains that, "[b]ecause of the uncertainty of the COVID-19 Pandemic, it is nearly impossible to forecast costs such as employee activity because it is unknown what and when the new normal will be." Id. As a result, Mr. Morgan adjusted the Company's employee activity costs by $71,000 as shown on Schedule LKM-24 to reflect the HTY spending level because it remains unknown as to what and when the new normal will be. Id

The Company's witness, Mr. Stefani, disagreed with Mr. Morgan and compared the COVID-19 Pandemic to any other economic, societal and national security upheaval that has occurred in the past 45 years that have not affected the projections of future operating conditions in the Pennsylvania ratemaking process. PECO St. 2-R at 22. Mr. Stefani further explains that

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> NYSearch R&D programs throughout the year to determine which programs are in our best interest and can be funded from our R&D budget.

OCA St. 2 at 37. The Company's response provides no specific information as to why it expects to spend such an abnormally high amount.

The Company's low spending on employee activities during the HTY was a response to the Commonwealth's COVID-19 emergency including the stay at home orders in 2020. Id. Mr. Stefani concludes that the stay at home orders are unlikely to reoccur in 2021 and 2022. Id.

As Mr. Morgan raises in surrebuttal, Mr. Stefani's justification for adjusting the Company's employee activity costs to reflect life after the pandemic fails to acknowledge that a significant portion of employee activity costs are related to gatherings of employees. OCA St. 2-SR at 22. Mr. Morgan continued:

> Despite the relaxing of stay-at-home requirements, large gatherings of people are still being curtailed. The indications from public health officials, even in January 2021, was that the pandemic and associated health precautions will be with us for an extended period of time. Moreover, given that these expenses are largely discretionary, it is not likely to return to pre-pandemic levels in the near future.

Therefore, the Company's justification for increasing its employee activity expenses is unpersuasive in light of the in-person nature of the expenses and the anticipated long-lasting effects of the pandemic on employee activities. As a result, Commission should deny the Company's claim and adopt the recommendation of OCA witness Morgan resulting in a downward adjustment to the Company's O&M expense of $71,000.

I. Travel, Meals and Entertainment.

The Company proposed a Travel Meals and Entertainment Expense of $343,000, based on a FPFTY ended June 30, 2022. OCA St. 2, Sch. LKM-25. However, Employee Travel Expenses have been impacted similarly to Employee Activity Expenses. OCA St. 2 at 40–41. The uncertain nature of the COVID-19 Pandemic makes it "nearly impossible to forecast costs such as employee travel activity because it is unknown what and when the new normal will be." OCA St. 2 at 41. Thus, OCA witness Lafayette K. Morgan recommends that "[r]ather, than base the level of expense on a forecast determined from 2018 and 2019 activity," the employee activity expense should be

adjusted to reflect the HTY level of expense. OCA St. 2 at 41. This results is an adjustment to reduce O&M expenses by $178,000, as reflected in Schedule LKM-25. OCA St. at 41.

In his rebuttal testimony, PECO witness Stefani argued that PECO "experienced abnormally low spending on employee activities during the HTY because of the Commonwealth's response to the COVID-19 emergency . . . which are unlikely to recur in 2021 and 2022." PECO St. 2-R at 22. Mr. Stefani also argued that the availability of a COVID-19 vaccine and other measures will mitigate the impact of COVID-19. OCA St. 2-SR at 23 (citing PECO 2-R at 23).

The OCA maintains that predicting "what and when the new normal will be" is "nearly impossible." OCA St. 2 at 41. Further, Mr. Stefani "makes no specific claim as to how those things will impact corporate travel, meals and entertainment." OCA St. 2-SR at 23 (citing PECO St. 2-R at 23). Mr. Morgan testified that "[a]s it stands, it is nearly impossible to forecast such costs" because during the COVID-19 Pandemic "organizations have adjusted to virtual meetings, remote working and reduced public gatherings." OCA St. 2-SR at 23. Thus, "[i]t is safe to say that for the near future, employee travel activity will be reduced." OCA St. 2-SR at 23. Therefore, the Commission should reject Mr. Stefani's position and accept the OCA's adjustment to reduce O&M expenses by $178,000, as reflected in Schedule LKM-25.

J. <u>Membership Dues</u>.

The OCA does not address issues related to Membership Dues in this Main Brief, but reserves the right to respond in its Reply Brief, as necessary.

K. <u>Injuries and Damages</u>.

The Company proposed to include a FPFTY budget amount for Injuries and Damages in the cost of service of $638,000. OCA St. 2 at 30, Sch. LKM-16. However, OCA witness Lafayette K. Morgan recommended normalizing the Injuries and Damages expense. OCA St. 2 at 30. Mr.

Morgan normalized the expense based on the most recent 3 years of actual expenses, which results in a decrease in expenses of $464,000. OCA St. 2, Sch. LKM-16.

The ratemaking technique of normalization is "used to smooth out the effects of an expense item that occurs at regular intervals, but in irregular amounts, and is a proper adjustment to make the test year expense representative of normal operations."[74] *A Guide to Utility Ratemaking* states that regularly occurring expenses should be normalized so that expenses are fairly recovered on an annual basis.[75]

Here, Mr. Morgan testified that "the amount included in the cost of service for Injuries and Damages is significantly higher than previous years." OCA St. 2 at 30. No single year is representative of the normal level of Injuries and Damages because this expense fluctuates from year to year. OCA St. 2 at 30. The Injuries and Damages expenses for the years 2018, 2019, and 2020 were $301,000, -$9,000, and $231,000, respectively. OCA St. 2, Sch. LKM-16. Thus, Mr. Morgan recommends normalizing the Injuries and Damages expense "to avoid an over-recovery of costs." OCA St. 2 at 30. Mr. Morgan normalized the expense based on the most recent 3 years of actual expenses, which results in a decrease in expenses of $464,000 for an amount of $174,000. OCA St. 2, Sch. LKM-16.

In rebuttal, Company witness Stefani incorrectly argued that Mr. Morgan "indicated that the Company ha[d] not adequately explained the budgeted increase in injuries and damages expense for the FPFTY." OCA St. 2-SR at 24 (citing PECO St. 2-R at 24). This was not an accurate representation of Mr. Morgan's testimony. Mr. Morgan testified that "[t]he Company has not provided any evidence to show that its claim for the FPFTY injuries and damages approximates

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74 TESI 2007, 2008 Pa. PUC. LEXIS 42 at *98.

75 James H. Cawley & Norman J. Kennard, *A Guide to Utility Ratemaking*, Pa. Pub. Util. Commission 86 (2018), https://www.puc.pa.gov/General/publications_reports/pdf/Ratemaking_Guide2018.pdf.

a normalized level." OCA St. 2-SR at 24. Thus, the OCA recommends that the Commission should reject PECO's claim and should normalize the Injuries and Damages expense "to avoid an over-recovery of costs" because the Company has not shown that its claim reflects normal amounts. See OCA St. 2, Sch. LKM-16. This would result in a reduction to the Company's O&M expense of $464,000. OCA St. 2-SR, Sch. LKM-16.

L. Property Taxes.

The Company's claimed amount for Property Taxes is $3,618,000. OCA St. 2, Sch. LKM-28. According to the Company, "the FPFTY real estate tax is based on the FTY real estate tax including a 2.5% inflation rate escalation." OCA St. 2 at 41. Mr. Morgan recommends removing the effect of the inflation escalation on the property tax expense. OCA St. 2 at 41.

The Pennsylvania Public Utility Commission "has specifically held that inflation adjustments do not create known and measurable changes because not all expenses are affected by inflation and those that are affected by inflation experience inflation differently."[76] Further, the Commission recently disallowed the use of a blanket inflation adjustment because it does not directly relate to the actual costs expected to be incurred in each expense account in the FPFTY.[77]

OCA witness Lafayette K. Morgan reiterates this principle and testified that "the use of adjustments based on inflation escalations . . . are not actually known and measurable." OCA St. 2 at 41. Mr. Morgan testified that these adjustments "do not reflect the anticipated cost of expenses and are inconsistent with the Company's claim that the annual budgeting and planning process is designed 'to integrate and align PECO's operational, regulatory, and financial plans.'" OCA St.

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[76] Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corporation, Docket No. R-00942991, 1994 Pa. PUC LEXIS 134 at *138 (Pa. PUC Dec. 6, 1994) (citing Pa. Pub. Util. Comm'n v. Pa. American Water Co., 71 Pa. PUC 210, 269 (1989)) (NFGD 1994).

[77] Wellsboro 2020 at 40.

2 at 41–42 (quoting PECO St. 2 at 10). Mr. Morgan reasoned that "[i]nflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set." OCA St. 2 at 42.

Mr. Morgan recommends that the "costs should be based upon evidence or documentation that supports the Company's adjustments [and does] not believe the determination of expenses for the FPFTY was envisioned to be simply applying an inflation rate to expenses." OCA St. 2 at 42. Therefore, the OCA recommends an adjustment to remove the effect of the inflation escalation on the property tax expense, which results in an adjustment to reduce Taxes Other Than Income by $112,000. OCA St. 2, Sch. LKM-28.

M. Energy Efficiency and Conservation Program Costs.

The Company is seeking to expand its existing residential energy efficiency and conservation (EE&C) programs. PECO St. 9 at 6. The Company seeks approval to increase its budget by $2.492 million and adopt a residential portfolio that consists of a mix of existing, expanded, and new rebate programs, as well as two additional programs centered around low-income weatherization and emerging technologies. See PECO St. 9 at 6-9.

As the OCA will discuss in more detail in Section IX.D of this Brief, the Commission should deny the Company's proposed expansion of its residential energy efficiency and conversation programs. The evidence in this proceeding demonstrates that over the past several years the Company has underspent its existing budget by a significant margin. Moreover, the total resource cost (TRC) analysis provided by the Company demonstrates that the Company's proposed portfolio is marginally cost-effective at best. Accordingly, the Commission should deny the Company's request.

Rather, the Commission should adopt the recommendation of OCA witness, Geoffrey Crandall, which recommends that the Company maintain its existing EE&C budget and adopt a

proposed portfolio that is consistent with Mr. Crandall's recommended portfolio. Mr. Crandall's recommended portfolio has been shown to be more cost-effective than PECO's proposal and will be explained in more detail in Section IX.D of this Main Brief. Adoption of the OCA's position would reduce the Company's proposed expense by approximately $2.492 million. See OCA. St. 2 at 41; see also OCA St. 2-SR, Sch. LKM-26, Line 3.

N. Rate Case Expense Normalization.

The Company's rate case expense claim of $1.5 million is based on the inclusion of the fees for legal services and consultants to prepare and adjudicate the present case. OCA St. 2 at 30. The amount was normalized by the Company over a three-year period to derive an annual expense of $520,000. OCA St. 2 at 30–31. The Company cites its "need to file another rate case in three years" as the reason for a three-year normalization period. PECO St. 3-R at 22. However, Mr. Morgan recommended "an adjustment to normalize the rate case expense over a 5-year period . . . based on the Company's history of the frequency of rate case filings" in the past. OCA St. 2 at 31. Accordingly, Mr. Morgan recommended that the Commission reduce the rate case expense claim by $208,000. OCA St. 2 at 31.

The Commission has consistently held that that rate case expenses are normal operating expenses, and normalization should, therefore, be based on the historical frequency of the utility's rate filings.[78] In recent cases, the Commission reiterated that the normalization period is determined, "by examining the utility's actual historical rate filings, not upon the utility's

[78] Popowsky v. Pa. Pub. Util. Comm'n, 674 A.2d 1149, 1154 (Pa. Commw. Ct. 1996), Pa. Pub. Util. Comm'n v. Columbia Water Co., Docket No. R-2008-2045157, 2009 Pa. PUC LEXIS 1423 (Pa. PUC May 28, 2009) (CWC 2008); City of Lancaster (Sewer Fund) v. Pa. Pub. Util. Comm'n, 793 A.2d 979 (Pa. Commw. Ct. 2002) (Lancaster 2002); Pa. Pub. Util. Comm'n v. West Penn Power Co., Docket No. 901609, 1990 Pa. PUC LEXIS 142 at *108-110 (Pa. PUC Dec. 13, 1990).

intentions."[79] Basing the normalization period on historical filing frequency is reasonable because it represents known and measurable data. Speculation about the timing of future filings cannot be relied on to determine the proper normalization period.[80]

The Company's rate case expense normalization period must accurately reflect the Company's filing history. The Company's position to normalize its rate case expense over three years, does not accurately reflect the Company's filing history, as its last rate case filing was approximately 10 years ago. OCA St. 2 at 31. Thus, the OCA recommends that the rate case expense be normalized over a five-year period.[81]

Regarding the rate case amount requested by the Company, "the estimated costs are comparable to the costs incurred recently by the Company's electric division for its rate case [that] was adjudicated under the normal approach that included travel for hearings, document reproduction, etc." OCA St. 2 at 31. However, because this proceeding is mostly being done virtually, "it is possible that there may be some cost savings." OCA St. 2 at 31. Mr. Morgan recommended that "[r]ather than estimate those savings, the annual cost reduction brought about by the 5-year normalization will also serve to reflect the potential savings derived from the decreased travel and document reproduction." OCA St. 2 at 31, Sch. LKM-17. Accordingly, the OCA recommends that the Commission reduce the rate case expenses by $208,000. OCA St. 2, Sch. LKM-17.

O. Regulatory Initiatives.

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[79] Pa. Pub. Util. Comm'n v. City of Lancaster, Docket No. R-2010-2179103, 2011 Pa. PUC LEXIS 1685 (Pa. PUC Jul. 14, 2011) (Lancaster 2011); Pa. Pub. Util. Comm'n v. Metropolitan Edison Co., Docket No. R-00061366, 2007 Pa. PUC LEXIS 5 (Pa. PUC Jan. 11, 2007); Pa. Pub. Util. Comm'n v. City of Dubois – Bureau of Water, Docket No. R-2016-2554150, Opinion and Order at 65 (Pa. PUC May 18, 2017) (City of Dubois).

[80] See e.g. Lancaster 2011.

[81] I&E witness Patel agrees with the OCA's position. I&E St. 1 at 8 ("I recommend that the Company's rate case expense be normalized over a period of 60 months (five years) resulting in an annual expense of $311,800 (($1,559,000 ÷ 60 months) x 12 months), or a reduction of $208,200 ($520,000 - $311,800) to the Company's claim.").

The Company included "$753,000 in O&M expenses for costs incurred prior to the FPFTY associated with implementing certain regulatory programs for which it claims it has not fully recovered." OCA St. 2 at 31. These costs are associated with the initiatives to establish and implement a Merchant Function Charge (MFC) and a Gas Procurement Charge (GPC) pursuant to the Commission's Order in Docket No. P-2012-2328614 and the implementation of the Neighborhood Gas Pilot Program, which the Commission approved at Docket No. P-2014-2451772. OCA St. 2 at 31–32. The total amount presented for recovery is presented in the following graph:

Gas Unbundling of GPC/MFC		
Capital Costs	$129,249	
O&M Expenses	20,570	
	$149,819	*
Gas Neighborhood Pilot Program		
Capital Costs	$1,802,831	
O&M Expenses	314,507	
	$2,117,338	

** The Company claimed $141,000 for the Gas Unbundling Program instead of the $149,819.*

OCA St. 2 at 32. The Company "requested to amortize these costs over a 3-year period, resulting in an annual cost of $753,000." OCA St. 2 at 32. The Company also indicated that "there were no depreciation expense and no operating expense included in the FPFTY for these programs" and that the capital costs were software costs. OCA St. 2 at 32. However, Mr. Morgan recommends an adjustment to regulatory initiative costs which removes $746,000 from the cost of service. OCA St. 2, Sch. LKM-18.

Regarding the Gas Procurement Charge and Merchant Function Charge, Paragraph 39 of the Joint Settlement in Docket No. P-2012-2328614, which was approved by the Commission stated that "[i]mplementing the proposed PTC revisions will require changes to PECO's operations

and systems, including IT modifications to PECO's billing system and bill format. PECO may defer such costs on its books, and once determined, seek recovery in its next gas base rate case." OCA St. 2 at 32. The Commission-approved statement makes it "clear that IT modifications (capitalized software) could be recovered in this proceeding." OCA St. 2 at 32. Thus, "[c]onsistent with the Commission's Order, [Mr. Morgan] allowed the recovery of the capital costs, but removed the O&M expenses from the costs eligible for recovery." OCA St. 2 at 32.

Regarding the costs associated with the Neighborhood Gas Pilot program that the Company is seeking to recover, "the Commission's Order in Docket No. P-2014-2451772 does not authorize future recovery" of past expenses. OCA St. 2 at 33. Paragraph 16 of the joint settlement merely states:

> In its next general base rate case filing, PECO will assign all Neighborhood Gas Pilot Program related investment cost and associated revenues to the appropriate rate classes.

OCA St. 2 at 33. Thus, "to the extent there are current Neighborhood Gas Pilot Program costs in the cost of service, those costs should be assigned to the appropriate class." OCA St. 2 at 33. The settlement, however, did "not authorize deferral of any cost for future recovery." OCA St. 2 at 33.

Under Pennsylvania law, ratemaking is prospective.[82] In contrast, retroactive ratemaking is where a utility, in a subsequent proceeding, bases a claim for increased rates on past expense items that may have been greater than anticipated by the utility in its prior rate case.[83] Retroactive ratemaking is generally prohibited, unless agreed to in settlement or authorization to defer

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[82] See, e.g., Popowsky v. Pa. Pub. Util. Comm'n, 642 A.2d 648, 650-51 (Pa. Commw. Ct. 1994) (Popowsky 1994), appeal denied, Popowsky v. Pa. Pub. Util. Comm'n, 673 A.2d 338 (Pa. 1996).

[83] Columbia Gas of Pennsylvania, Inc. v. Pa. Pub. Util. Comm'n, 613 A.2d 74 (Pa. Commw. Ct. 1992) (Columbia Gas 1992); see also, Philadelphia Elec. Co. v. Pa. Pub. Util. Comm'n, 502 A.2d 722 (Pa. Commw. Ct. 1985) (PECO 1985); Pike County Light and Power Co. v. Pa. Pub. Util. Comm'n, 487 A.2d 118 (Pa. Commw. Ct. 1985) (Pike County).

expenses is granted by this Commission.[84] The Company, in the response to OCA-II-54, makes it clear that "there were no current costs to recover." OCA St. 2 at 33. The Company's attempt "to include the Neighborhood Gas Pilot Program costs in rate should not be allowed because it is a prior period cost and inclusion would be retroactive ratemaking which is prohibited in accepted ratemaking practice." OCA St. 2 at 33. Thus, because there was no Commission order to defer these costs, the costs "are not eligible for recovery." OCA St. 2 at 33.

In response to the recommendation of OCA witness Morgan, Company witness Trzaska removed the Company's claim for recovery of past expenses associated with the implementation of the Neighborhood Gas Pilot Program. PECO St. 3-R at 4; see also PECO St.3-R, Sch. D-14, Line 2. The Company, however, continues to seek recovery of all expenses associated with the implementation of the GPC and MFC. The Company's revised FPFTY claim for regulatory initiatives is $47,000 per year, or $141,000 over a three-year period. PECO St. 3-R, Exh. MJT-1, Sch. D-14.

For the reasons set forth above, however, the OCA continues to recommend that the Company not be allowed to recover O&M expenses related to the implementation of the GPC and MFC, as these costs were not allowed to be deferred under the terms of the settlement reached at Docket No. P-2012-2328614. It only allows recovery of the IT-related capital costs. OCA St. 2 at 32. Accordingly, the Commission should adopt the recommendation of OCA witness Morgan and remove those expenses from the Company's proposed amortization, which would result in a downward adjustment to the Company's O&M expense of $40,000. OCA St. 2-SR, Sch. LKM-18.

[84] See e.g. Popowsky v. Pa. Pub. Util. Comm'n, 868 A.2d 606, 611 (Pa. Commw. Ct. 2004), Petition of Newtown Artesian Water Company for a Declaratory Order Re: Accounting Treatment for Costs of its Linton Hill Water Storage Tank and Transmission Main, Docket No. P-00940819, 1994 Pa. PUC LEXIS 13 (Pa. PUC Jun. 23, 1994).

P. Manufactured Gas Plant Remediation Expense.

The Company proposed an adjustment to the Manufactured Gas Plant (MGP) Remediation Expense at an annual cost of $804,000. OCA St. 2 at 27. The amount was based on a nine-year recovery of an estimated total of $7.2 million to remediate former MGP sites. OCA St. 2 at 27–28. The OCA recommends that the Commission require the Company to recover the remaining remediation cost over a 14-year period instead, which is consistent with the settlement in Docket No. R-2010-2161592, resulting in an annual recovery of $517,000. OCA St. 2 at 29–30. The OCA further recommends that the Company be required to impute carrying costs on the over-collected MGP remediation cost that is held by the Company. OCA St. 2 at 30.

The Company claims that it has eight remaining sites with an overall estimated liability of $21.5 million to remediate, $7.237 million of which it has not recovered. OCA St. 2 at 28. According to the company, "[t]he nine-year amortization period is based on recovery of the unrecovered MGP remediation costs over three future rate cases as PECO expects to file a base rate case every three years." OCA St. 2 at 28 (quoting PECO Response to I&E-RE-45-D(g)). In Docket Nos. R-2008-2028394 and R-2010-2161592, the Company reached settlements with the intervening parties, which included a recovery mechanism for MGP remediation costs that designated annual recovery of MGP remediation. OCA St. 2 at 28. The Company determined that, based on this annual recovery, "out of the $21.5 million to remediate the remaining sites, it had pre-collected $14.3 million, resulting in an unrecovered amount of $7.2 million." OCA St. 2 at 28. From a ratemaking perspective, "this $14.3 million represents an over-collection of ratepayer funds that is being held by the Company, which can be used for general corporate purposes until it is needed for MGP remediation." OCA St. 2 at 28. Mr. Morgan has not observed any carrying charge being credited to ratepayers from the analyses that the Company provided with respect to the MGP remediation. OCA St. 2 at 28–29.

OCA witness Lafayette K. Morgan recommends that the Company should not be allowed to recover the $7.2 million over a nine-year period as it proposes. OCA St. 2 at 29. Mr. Morgan testified that "[t]he settlement language in Docket No. R-2010-2161592, was specific as to the recovery of the MGP remediation costs in this base rate proceeding." OCA St. 2 at 29. The settlement stated the following:

> The Joint Petitioners further agree that, in PECO's next general gas base rate case, the Company's MGP remediation expense allowance will be reset based on: (1) **a normalized annual level of MGP remediation costs to be incurred over the remainder of its MGP remediation program**, and (2) the difference between (a) $5.982 million per year times the number of years (including partial years as a fraction) that the Settlement Rates are in effect, and (b) the actual, prudently-incurred MGP remediation costs, net of insurance recoveries, experienced during that same period.[85]

Based on the Company's response to OCA-XIII-18, the remediation is expected to extend through 2034, 14 years from this year. OCA St. 2 at 29. Thus, Mr. Morgan recommends that "the $7.2 million be recovered through 2034, consistent with the settlement, instead of the 9 years proposed by the Company," which will result in an adjustment that reduces O&M expenses by $287,000. OCA St. 2 at 29–30, Sch. LKM-15. Mr. Morgan also recommended that the Company be required to impute carrying costs on the over-collected MGP remediation cost that is held by the Company. OCA St. 2 at 30. Mr. Morgan testified that the $14.5 million over-collection represents ratepayer funds that are "being held by the Company [and] can be used for general corporate purposes until it is needed for MGP remediation." OCA St. 2 at 30. Mr. Morgan also testified that "[r]atepayers should not be in the position of providing cost-free capital to the Company." OCA St. 2 at 30.

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[85] Pa. Pub. Util. Comm'n v. PECO Energy Co. – Gas Division, Docket No. R-2010-2161592, Joint Petition for Settlement of Rate Investigation at 4-5 (Aug. 31, 2010) (PECO Gas 2010).

The Company agreed to impute carrying costs on the over-collected MGP remediation cost that is held by the Company. PECO St. 3-R at 26. Thus, the OCA recommends that the Commission require the Company to recover the remaining remediation cost over a 14-year period consistent with the 2010 Settlement in Docket No. R-2010-2161592, which would result in an annual recovery of $517,000 and a downward adjustment of $287,000 to the Company's O&M expenses. OCA St. 2 at 29–30, Sch. LKM-15. The Commission should also require the Company to impute carrying costs on the over-collected MGP remediation cost that is held by the Company until it is needed for MGP remediation.

Q. Depreciation Expense.

Consistent with the plant in service adjustment recommended by OCA witness Lafayette K. Morgan, the OCA recommends a derivative adjustment that lowers the depreciation expense by $7,827,000 if Mr. Morgan's Plant in Service recommendation is adopted by the Commission. See OCA M.B., Section IV.D.1; see also OCA St. 2, Sch. LKM-27.

VII. TAXES

A. Property Taxes.

According to the Company, "the FPFTY real estate tax is based on the FTY real estate tax including a 2.5% inflation rate escalation." OCA St. 2 at 41. However, the OCA recommends an adjustment to reduce Taxes Other Than Income by $112,000. OCA St. 2 at 42, Sch, LKM-28. OCA Witness Morgan disagreed with the Company's use of adjustments that are based on inflation escalations. OCA St. 2 at 41. Mr. Morgan reasons that these adjustments "are not actually known and measurable" because "[t]hey do not reflect the anticipated cost of expenses and are inconsistent with the Company's claim that the annual budgeting and planning process is designed 'to integrate and align PECO's operational, regulatory, and financial plans.'" Id. at 41–42 (quoting PECO St. 2 at 10). As previously discussed, "[i]nflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set." Id. at 42.[86]

Mr. Morgan recommends basing costs on "evidence or documentation that supports the Company's adjustments." OCA St. 2 at 42. Further, Mr. Morgan does not believe that "the determination of expenses for the FPFTY was envisioned to be simply applying an inflation rate to expenses." Id. Thus, the OCA recommends "an adjustment to remove the effect of the inflation escalation on the property tax expense," which results in an adjustment to reduce Taxes Other Than Income by $112,000." Id., Sch, LKM-28.

B. Payroll Taxes.

The OCA recommends a reduction to payroll taxes of $187,000. As discussed in Part IV, Section A, OCA Witness Morgan recommended an adjustment to Payroll Expense. OCA St. 2 at

[86] See also Wellsboro 2020 at 40.

42. Thus, because of the reduction to Payroll Expense, "there is a corresponding effect on payroll taxes since payroll taxes are calculated as a percentage of payroll." Id. Consequently, Mr. Morgan "applied the FICA and Medicare tax rate to the decrease in payroll to derive [his] adjustment which reduces payroll taxes by $187,000." Id., Sch. LKM-29.

C. Federal Income Tax.

In his Direct Testimony, and as described in Section IV.D.1 of this Brief, OCA Witness Lafayette Morgan recommends removing the Company's plant additions projected for FPFTY. See OCA M.B., Section IV.D.1. In his rebuttal testimony, however, Company witness, Michael Trzaska, stated that Mr. Morgan failed to propose an adjustment to the tax repairs deduction that would be associated with the disallowance of incremental FPFTY plant additions. PECO St. 3-R at 7.

Mr. Morgan acknowledged that his "adjustment to plant in service reduced the plant in service balance to reflect the FTY level of plant." OCA St. 2-SR at 11. As such, he stated that it was an oversight on his part to not "have recalculated income taxes too by using the repairs deduction that corresponds to the FTY in the calculation of income taxes instead of leaving the effect of the FPFTY repairs deduction in the income tax expense." Id. Thus, Mr. Morgan "corrected the income tax calculation to reflect the FTY repairs deduction [and] reflected the FTY accelerated state and federal tax depreciation in [his] corrected income tax calculation." OCA St. 2-SR, Sch. LKM-31.

VIII. RATE OF RETURN

A. Introduction.

1. Overview of the Cost of Capital Recommendation.

PECO seeks a 7.64% overall rate of return, including a cost of equity of 10.95%, and a cost of debt of 3.84%. PECO St. 5-R at 1, PECO Exh. PRM-1 (Updated), Sch. 1. PECO presented the testimony of Paul R. Moul to support its rate of return request. The following table summarizes the Company's request:

Capital Type	Capital Structure Ratio (%)	Cost Rate (%)	Weighted Cost (%)
Long-Term Debt	46.62	3.84	1.79
Common Equity	53.38	10.95	5.85
Total	**100**		**7.64**

PECO St. 5-S, Exh. PRM-1 (Updated), Sch. 1. Mr. Moul's cost of capital analyses include adjustments for leverage and size, which increase the models' result. PECO St. 5 at 32-37, 42-48. Mr. Moul has then added a 25 basis point increment to his indicated cost of equity to recognize management performance. Id. at 2, 7-8, 52.

The OCA presented the testimony of Mr. Kevin O'Donnell, an expert economic consultant specializing in utility regulation, to support its rate of return allowance. Mr. O'Donnell's primary position supports the recommendation of OCA witness Rubin. OCA St. 3 at 3-4, 126-127. Mr. O'Donnell's alternative recommendation provides the Commission with an analysis based upon a "business as usual" approach with a market-derived cost of equity. Id. at 4. In determining an appropriate cost of capital, OCA witness O'Donnell rejected the Company's capital structure as comprised of too much equity and unfair to consumers. Id. at 34-48. Mr. O'Donnell recommends

a capital structure of 50% debt and 50% common equity. Id. Mr. O'Donnell determined a 8.75% market-derived return on common equity and an overall return on rate base of 6.30%:

Capital Type	Capital Structure Ratio (%)	Cost Rate (%)	Weighted Cost (%)
Long-Term Debt	50.00	3.84	1.92
Common Equity	50.00	8.75	4.38
Total	**100**		**6.30**

OCA St. 3 at 4; Exh. KWO-1 The 8.75% cost of equity recommended by Mr. O'Donnell is the result of his Discounted Cash Flow (DCF) analysis, and consideration of his Capital Asset Pricing Model (CAPM) and Comparative Earnings analyses. OCA St. 3 at 53-87.

I&E presented the testimony of Christopher Keller, Fixed Utility Financial Analyst with I&E to support its rate of return recommendation. The recommendation of Cost of Capital by I&E is as follows:

Capital Type	Capital Structure Ratio (%)	Cost Rate (%)	Weighted Cost (%)
Long-term Debt	46.62	3.84	1.79
Common Equity	53.38	10.24	5.47
Total	**100**		**7.26**

I&E St. 2-S at 37.

The OCA submits that the Company's 10.95% cost of common equity request is well in excess of an objective assessment of investor market requirements in the current economic environment and should be rejected. Since the Company's last base rate case, long-term interest rates have fallen and the economic impact of the COVID-19 Pandemic and extraordinary public safety measures have manifested in higher unemployment and reduced household income to pay

for basic necessities. OCA St. 3 at 3-4, 6-26. In addition, both OCA witness Mr. O'Donnell and I&E witness Keller testified the return on equity (ROE) adjustments proposed by Mr. Moul are inappropriate, unnecessary and only serve to inflate the Company's equity cost estimate. If included in the cost of equity determination, these adders will substantially and unreasonably increase costs for ratepayers. See, OCA St. 3 at 15, 101-115, 118-125; see also, I&E St. 2 at 35-48. The OCA opposes the inclusion of these adjustments.

If the Commission were to employ a "business as usual" approach in this proceeding, the OCA submits that the Commission should adopt the OCA's cost of capital recommendations for PECO. OCA St. 3 at 3-4, 126-127. The OCA recommends the Company be given the opportunity to earn no more than an 8.75% on a common equity ratio of 50%, resulting in an overall allowed return on rate base of 6.30%. Id., KWO Exh. 1. The Commission, however, is not so constrained as to its eventual decision on the return on equity component. The substantial evidence of record as to the economic and societal effects of the pandemic must be considered in order to arrive at rates that meet the constitutional just and reasonable standard. Id. at 27-30.

When further considering the impacts of the COVID-19 Pandemic to arrive at a fair rate of return, a return on equity lower than a market-derived return on equity may be set that reflects current economic and societal circumstances. As stated in the beginning of this Brief, if the Company were to receive no increase at this time and all of its adjustments and claims to rate base and O&M expense were adopted, the Company would continue to receive a 5.74% overall rate of return. This would continue to provide the Company an opportunity to earn a fair rate of return while benefiting consumers with public utility service at reasonable rates, consistent with Pennsylvania law and public policy as set forth in the Public Utility Code.

2. The Legal Framework for Determining What Rate of Return is Fair to PECO Consumers and the Company's Investors.

The Commission is responsible for protecting the public interest.[87] Generally, a public utility is entitled to no more than a reasonable opportunity to earn a fair rate of return on shareholder investment. The Court in City of Pittsburgh stated that "[i]t is the function of the commission in fixing a fair rate of return to consider not only the interest of the utility but that of the general public as well. The commission stands between the public and the utility."[88]

Typically, cost of capital is the starting point for determining a fair rate of return.[89] The Commission has defined an appropriate rate of return as:

> [T]he amount of money a utility earns, over and above operating expenses, depreciation expense and taxes, expressed as a percentage of the legally established net valuation of utility property, the rate base. Included in the 'return' are interest on long-term debt, dividends on preferred stock, and earnings on common stock equity. In other words, the return is the money earned from operations which is available for distribution among the capital. In the case of common stockholders, part of their share may be retained as surplus.[90]

Further, "[t]he return authorized must not be confiscatory, and must be based upon the evidence presented."[91]

A public utility with facilities and assets used and useful in the public service is entitled to no more than a reasonable opportunity to earn a fair rate of return on its investment.[92] The United

[87] City of Pittsburgh v. Pa. Pub. Util. Comm'n, 126 A.2d 777, 785 (Pa. Super. 1956) (City of Pittsburgh).

[88] Id.

[89] Pa. Pub. Util. Comm'n v. Philadelphia Suburban Water Co., Docket No. R-891270, 1989 Pa. PUC LEXIS 213 at *90-93 (Pa. PUC Dec. 29, 1989) (PSWC 1989).

[90] Pa. Pub. Util. Comm'n v. Emporium Water Co., Docket No. R-00005050, 2001 Pa. PUC LEXIS 7 at *12, (Pa. PUC Mar. 8, 2001) (EWC 2001) (quoting Public Utility Economics, Garfield and Lovejoy, 116 (1964)).

[91] PSWC 1989, 1989 Pa. PUC LEXIS 213 at *90 (citing Pittsburgh v. Pa. Pub. Util. Comm'n, 165 Pa. Super. 519, 69 A.2d 844 (1949)).

[92] Pa. Pub. Util. Comm'n v. Roaring Creek Water Co., 87 Pa. PUC 826, 844 (1997) (Roaring Creek).

States Supreme Court established the standard with which to evaluate whether a rate of return is fair in Bluefield, stating:

> The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management. . .to raise the money necessary for the proper discharge of public duties.[93]

The Court also said that allowed rates of return should reflect the following:

> [A] return on the value of the [utility's] property which it employs for the convenience of the public equal to that. . .being made at the same time… on investments in other business undertakings which are attended by corresponding risks and uncertainties.[94]

Twenty-one years later, the Court reviewed the issue of fair rate of return in Hope.[95] In Hope, the Court held that a fair rate of return "should be commensurate with returns on investments in other enterprises having corresponding risks" while being sufficient "to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital."[96] The Court noted that "[t]he rate-making process under the Act, *i.e.*, the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests . . . and does not insure that the business shall produce revenues."[97] More recently, the Court stated that consumers are obliged to rely upon regulatory commissions to protect them from excessive rates and charges.[98]

Finally, in Duquesne, the Court stated:

> whether a particular rate is 'unjust' or 'unreasonable' will depend to some extent on what is a fair rate of return given the risks under a

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93 Bluefield, 262 U.S. at 693.

94 Id. at 692.

95 Hope, 320 U.S. 591.

96 Id. at 603.

97 Id.

98 See Permian Basin Area Rate Cases, 390 U.S. 747, 794-95 (1968) (citing Atlantic Refining Co. v. Public Service Comm'n, 360 U.S. 378, 388 (1959)).

> particular rate setting, and on the amount of capital upon which the investors are entitled to earn on that return.[99]

In determining a fair rate of return this Commission has described its task as follows:

> A fair rate of return for a public utility, however, is not a matter which is to be determined by the application of a mathematical formula. It requires the exercise of informed judgment based upon an evaluation of the particular facts presented in each proceeding. There is no one precise answer to the question as to what constitutes the proper rate of return. The interests of the Company and its investors are to be considered along with those of the customers, all to the end of assuring adequate service to the public at the least cost, while at the same time maintaining the financial integrity of the utility involved.[100]

In this case, the OCA's recommended rate of return of 6.30%, comprised of an 8.75% cost of common equity and 3.84% cost of debt applied to a 50% equity and 50% debt capital structure, represents an appropriate market-derived rate of return. When balancing investor and consumer interests, to arrive at a fair rate of return, however, a return on equity lower than the recommendation of the OCA would still be appropriate for the Company and balances this need with that of the public interest.

B. Capital Structure.

The Company's estimated June 30, 2022 capital structure is comprised of 53.38% common equity and 46.62% long-term debt. PECO St. 5-R; Exhibit PRM-1 (Updated).

The question of what ratio of equity and debt the Commission should approve for setting rates in this proceeding is of vital concern to the Company's ratepayers who will pay the increased rates. At its most basic, Mr. O'Donnell noted that "[r]eturns on common equity, which in part take

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99 Duquesne at 310.

100 Pa. Pub. Util. Comm'n v. Pa. Power Co., Docket No. R-811510, 1982 Pa. PUC LEXIS 154 at *68-69 (Pa. PUC Jan. 22, 1982) (emphasis added). See Pa. Pub. Util. Comm'n v. National Fuel Gas Dist. Corp., Docket No. R-901670, 1990 Pa. PUC LEXIS 146 at *151-54 (Pa. PUC Dec. 24, 1990).

the form of dividends to stockholders, are not tax deductible which, on a pre-tax basis alone, makes this form of financing about 21% or more expensive than debt financing." OCA St. 3 at 34. The utility's capital structure impacts the calculation of total return. "Costs to consumers are greater when the utility finances a higher proportion of its rate base investment with common equity and preferred stock versus long-term debt." Id. at 35-36. Mr. O'Donnell explained further that "if a utility is allowed to use a capital structure for ratemaking purposes that is top-heavy in common stock, customers will be forced to cover the higher income tax burden, which can result in unjust, unreasonable, and unnecessarily high rates." Id. at 36-37.

As a matter of sound ratemaking, Mr. O'Donnell emphasized that "[r]ate-regulated utilities should only be allowed to recover in rates a revenue requirement derived from a capitalization ratio that allows the utility to provide reliable service at the least cost." OCA St. 3 at 37. The task of finding the right balance of debt to equity ratios is critical. Id.

Mr. Moul stated in his direct testimony that he would adopt the capital ratios provided by the Company:

> Because rate-setting is prospective, the rate of return should, at a minimum, reflect known or reasonably foreseeable changes which will occur during the course of the test year. As a result, I will adopt the Company's FPFTY capital structure ratios of 46.62% long-term debt and 53.38% common equity.

PECO St. 5 at 21. OCA witness O'Donnell found the only substantiating discussion included as a basis for the decision to use the 53.38% common equity ratio is the following:

> The five-year average common equity ratios, based upon permanent capital, were 54.1% for PECO Energy, 52.6% for the Gas Group, and 42.2% for the S&P Public Utilities. The Company's common equity ratio was fairly similar to the Gas Group, thereby indicating similar financial risk.

PECO St. 5 at 15.

For the purpose of determining an appropriate cost of equity, Mr. Moul has acknowledged that there is a recession and the COVID-19 pandemic presents unusual factors which make this case "unique," events which have impacted both the debt and equity capital markets. PECO St. 5 at 2-3. Yet, Mr. Moul's recommendation on the appropriate equity ratio does not reflect any similar consideration of the appropriateness of the Company's proposed capital structure. See PECO St. 5 at 2-3.

OCA witness O'Donnell is generally skeptical of projected common equity ratios. OCA St. 3 at 47. "Most projections tend to set common equity at too high a value given the inherent subjectivity and erratic nature of where the common equity ratios may actually fall out in the future years." Id. Mr. O'Donnell's concern is "additionally relevant given the economic climate in 2020 where the COVID-19 pandemic has increased the uncertainty associated with projected future common equity ratios. Id.

Mr. O'Donnell disagreed that the Company's proposed capital structure is appropriate for ratemaking purposes in this proceeding. Id. at 43. As Mr. O'Donnell testified, "[n]othing in the make-up of PECO Energy – Gas Division suggests that it requires a high equity ratio in the range that they are requesting, which would translate into lower financial risk, than any of the companies within the comparable proxy group." OCA St. 3 at 43.

If the Commission does not adopt the OCA's primary recommendation as set forth by OCA witness Scott Rubin, Mr. O'Donnell has recommended that the Commission employ a capital structure that contains an equity ratio of 50% common equity and 50% long-term debt. OCA St. 3 at 44, Table 8. This lower level of equity ratio is more appropriate to set just and reasonable rates and protect ratepayers from paying "higher rates associated with a capital structure that consists of so much higher cost equity." Id. at 43.

Mr. O'Donnell identified the appropriate equity ratio of 50% based upon a review of: a) the common equity ratio of the companies in the OCA proxy group (50.70%) and PECO's parent company Exelon (50.40%), b) the common equity ratio granted by utility regulators across the United States in 2019 (51.75%), and c) the common equity ratio granted by utility regulators across the U.S. over the past 15 years (49.91%). OCA St. 3 at 39-43.

To set just and reasonable rates in this proceeding, the Commission should adopt the OCA recommended capital structure of 50% common equity and 50% long-term debt.

C. Cost of Long-Term Debt

The appropriate cost of debt for PECO is 3.84%, to properly reflect the current and expected low cost of capital environment.

OCA witness O'Donnell determined the Company's initial projected debt cost rate of 3.97% as of June 30, 2022, was overstated. OCA St. 3 at 48-52; see PECO St. 5 at 21-22. Mr. O'Donnell disagreed with Mr. Moul's initial forecast of high interest rates as the basis for pricing certain debt issuances or securities. OCA St. 3 at 48-50, Exh. KWO-8, p. 1. The Company has updated and reduced its forecast debt rates for each of three upcoming debt issuances: March 2021 issuance from 3.46% to 2.90%; September 2021 issuance from 3.46% to 2.90%; and March 2022 from 3.51% to 2.90%. OCA St. 3-SR at 14; see PECO St. 5-S at 9-10; PECO Exh. PRM-1 Revised, Sch. 6, p. 3.

Mr. O'Donnell also contested the estimated cost rate assigned by Mr. Moul to certain securities issued in 1998, priced on a variable basis at the Prime Rate plus 200-basis points. OCA St. 3 at 49-50. Mr. Moul had estimated the Prime Rate would be 4.75% as of June 30, 2022. Based upon forwarding looking statements from the Federal Reserve chair and other economic considerations, Mr. O'Donnell rejected Mr. Moul's premise that the Prime Rate would increase from the current 3.25% by 150 basis points to 4.75% by June 30, 2022.

OCA witness O'Donnell determined that the Company's cost of debt should be reduced from 3.97% as requested by the Company to 3.84%, based upon these considerations. OCA St. 3 at 48-52, Exh. KWO-8. In rebuttal, Company witness Moul updated the Company's cost of debt for the FPFTY, reducing it from 3.97% to 3.84%. PECO St. 5-R at 9-10; PECO Exh. PRM-1 (Updated), Sch. 1, p 1. Company witness Trzaska identified the impact as a $1.5 million reduction to the Company's revenue requirement. PECO St. 3-R at 5.

D. Common Equity Cost Rate.

1. Introduction.

Mr. O'Donnell developed a market-based cost of equity recommendation of 8.75% based upon the DCF method, with use of a Capital Asset Pricing Model (CAPM) analysis as a check on the reasonableness of his DCF indicated results. OCA St. 3 at 53-54, 78-79, 87-88. In addition, Mr. O'Donnell conducted two Comparable Earnings (CE) analyses, including a review of state utility commission authorized returns for gas utilities. Id. at 75-78. Mr. O'Donnell's market-based cost of equity analyses are based upon data through mid-December 2020. See e.g., OCA St. 3 at 59; OCA St. 3-SR at 34. Mr. O'Donnell's recommended 8.75% common equity cost rate is close to the middle of his DCF range and above the range of his CAPM results. OCA St. 3 at 88, 90.

As part of his recommendation, Mr. O'Donnell stressed the importance of recognizing the negative impact of the COVID-19 Pandemic on consumers and the nation, including higher unemployment than in 2019 and business closures. OCA St. 3 at 14-15, 22-23, 89. Mr. O'Donnell also pointed out that some current economic conditions are more favorable to utilities. Id. at 6-26, 89-92; OCA St. 3-SR at 15-19. Declines in U.S. Treasury bond yields and Federal Fund rates indicate that the cost of capital has decreased for companies like PECO and are expected to remain low. OCA St. 3 at 7-9; OCA St. 3-SR at 20, 24, 31-32, 42. Indeed, PECO reduced its overall debt

cost based on expected lower rates. Id. at 15. Also, demand for utility equities has been more steady than the market at large. OCA St. 3 or 9-13.

Considering these facts, it would be unreasonable to burden PECO ratepayers with higher costs based on the Company's 10.95% return on equity proposal. As addressed below, the OCA also opposes I&E witness Keller's recommended 10.24% cost of equity rate, as not reflective of current market conditions. OCA St. 3-R at 2. OCA witness O'Donnell properly applied a DCF analysis checked by the CAPM in this proceeding to arrive at a market-derived cost rate of equity. Thus, the OCA recommended an 8.75% cost of equity for PECO should be adopted by Commission under a 'business as usual' approach based upon the record and informed judgment.

2. Mr. O'Donnell's Proxy Group Approach Provides the Commission with Useful Observations from All Ten Companies Followed by Value Line's Gas Utility Industry.

To estimate the cost of equity, a proxy group of similar companies is needed. A proxy group is generally preferred over the use of data exclusively from any one company because it has the effect of smoothing out potential anomalies associated with a similar company and is therefore a more reliable measure.[101] In developing his recommendation, Mr. O'Donnell chose to use the full group of gas utilities compiled and followed by *Value Line*. OCA St. 3 at 31-33. The number of available gas utilities needed to develop a reasonably reliable comparable group is dwindling. Id. at 31. The OCA proxy group includes each of the companies in Mr. Moul's proxy group, with one difference. Id. First, Mr. O'Donnell included UGI Corporation in his proxy group, a company excluded by Mr. Moul from the Company's proxy group. Id. at 31-33. Mr. O'Donnell and Mr. Moul each included Chesapeake Utilities in their respective proxy groups, as a utility followed by

[101] Pa. Pub. Util. Comm'n v. UGI Utilities, Inc. – Electric Div., Docket No. R-2017-2640058, Order at 82 (Pa. PUC Oct 25, 2018) (UGI Electric), aff'd McCloskey v. Pa. Pub. Util. Comm'n, 225 A.3d 192 (Pa. Commw. Ct. 2020).

the *Value Line's* Natural Gas Utility industry. As Mr. O'Donnell noted, Chesapeake Utilities operates a diverse set of businesses that include natural gas distribution, natural gas transmission, electric distribution operations, propane distribution and other lines of business. Id. at 32-33. UGI Corp. is similar as its diversified business portfolio includes natural gas utility service, as well as propane, international liquid propane gas (LGP), energy service, and electric generation. Id. Mr. O'Donnell has included UGI Corp. in his proxy group, disagreeing with Mr. Moul's decision to include one diversified company (Chesapeake Utilities) while excluding another (UGI Corp.) Id.

Mr. O'Donnell separately examined the existing capital structure and cost of equity indicated for PECO Energy's ultimate corporate parent Exelon. Exelon is traded on the New York Stock Exchange and is followed by *Value Line Investment Survey*, classified as an electric utility. OCA St. 3 at 6. Mr. O'Donnell examined Exelon as the company with the most direct link to PECO Energy – Gas Division, tempered by recognition of the different returns and capital need for electric utilities and natural gas utilities. Id. at 39-44, 55-56, 67; OCA St. 3-S at 27.

3. Mr. O'Donnell has Relied Upon the Discounted Cash Flow Model, the Commission's Preferred Method of Setting Common Equity Cost.

Mr. O'Donnell's recommended cost of equity of 8.75% is based upon the range of the DCF results for his proxy group, 7.75% to 10.00%. OCA St. 3 at 88. Mr. O'Donnell favors the DCF model as more reliable and superior to other approaches such as the CAPM, CEA, or Risk Premium model. Id. at 54-55, 78. Mr. O'Donnell described the DCF model as follows:

> The DCF Model is an investor-driven model that incorporates current investor expectations based on daily and ongoing market prices. When a situation develops in a company that affects its earnings and/or perceived risk level, the price of the stock adjusts to reflect those developments. Since the stock price is a major component in the DCF Model, the change in risk level and/or earnings expectations is captured in the investor return requirement with either an upward or downward movement.

OCA St. 3 at 54-55. Mr. O'Donnell noted the broad acceptance and reliance on the DCF method as a widely used method for estimating an investor's required return on a firm's common equity. Id. at 56. The DCF model allows analysts and investors to factor in a company's financial fundamentals over the long term. Id. at 57. In particular, the DCF model accommodates analysts' focus on earnings, dividend and book value growth. Id. An advantage is that the DCF model is straightforward and easy to understand. Id. at 58-59. "To determine the total rate of return one expects from investing in a particular equity security, the investor adds the dividend yield, which they expect to receive in the future, to the expected growth in dividends over time." Id. at 59.

The Commission has long relied upon the DCF method to determine a market-based common equity cost rate. As the Commission noted in PAWC 2004:

> Historically, we have primarily relied on the DCF methodology in arriving at our determination of the proper cost of common equity. We have, in many recent decisions, determined the cost of common equity primarily based upon the DCF method and informed judgment. [citations omitted] We determine that the DCF method is the preferred method of analysis to determine a market based common equity cost rate.[102]

More recently, the Commission has affirmed its primary reliance on the DCF method to determine a market based common equity cost rate, stating that it has "found no reason to deviate from the use of this method…."[103]

4. Mr. O'Donnell's DCF Analyses Provide a Robust Basis for his Cost of Equity Recommendation.

a. Application of the DCF Model.

[102] Pa. Pub. Util. Comm'n v. Pa. American Water Co. Docket No. R-00038304, 2004 Pa. PUC LEXIS 708 at *117-118 (Pa. PUC Jan. 29, 2004) (PAWC 2004), aff'd on other grounds, Popowsky v. Pa. Pub. Util. Comm'n, 868 A.2d 606 (Pa. Commw. Ct. 2004); accord Pa. Pub. Util. Comm'n v. Aqua Pa., Inc., 99 Pa. PUC 204, 233 (2004).

[103] UGI Electric at 106; accord, Pa. Pub. Util. Comm'n v. Valley Energy, Inc., Docket No. R-2019-3008209, Order at 102, 104 (Pa. PUC Apr. 27, 2020).

As described by Mr. O'Donnell, "[t]he DCF method is based on the concept that the price which the investor is willing to pay for a stock is the discounted present value (*i.e.,* its present worth) of what the investor expects to receive in the future as a result of purchasing that stock." OCA St. 3 at 56. This return to the investor is in the form of future dividends and price appreciation. Id. However, price appreciation is only realized when the investor sells the stock, and a subsequent purchaser presumably is also focused on dividend growth following his or her purchase of the stock. Id. So the DCF model describes the relationship using the following formula:

Let D = dividends per share in the initial future period
g = expected growth rate in dividends
k = cost of equity capital
P = price of asset (or present value of a future stream of dividends)

$$\text{then } P = \frac{D}{(1+k)} + \frac{D(1+g)}{(1+k)^2} + \frac{D(1+g)}{(1+k)^3} + \ldots\ldots + \frac{D(1+g)}{(1+k)^t}$$

This equation represents the amount (P) an investor will be willing to pay *today* for a share of common equity with a given dividend stream over (t) periods.

Reducing the formula to an infinite geometric series, we have:

$$P = \frac{D}{k - g}$$

Solving for k yields:

$$k = \frac{D}{P} + g$$

OCA St. 3 at 56-57.

In rebuttal testimony, Mr. O'Donnell provided this concise summary of his application of the DCF model, data sources, and development of an appropriate dividend yield and growth rate:

> I derived my DCF results by first utilizing Forecasted Annualized Dividend Yields based on three separate time periods (*i.e.,* 13-weeks, 4-weeks, and 1-week) provided by *Value Line*, plus the following growth rates for my 10-company comparable proxy group:
>
> - Historical EPS, DPS, and BPS growth rates over a 10-year period and a 5-year period provided by *Value Line*;
> - Forecasted EPS, DPS, and BPS growth rates from *Value Line*;
> - Average plowback growth rate (*i.e.,* percent retained to common equity) provided by *Value Line*;
> - 3-year projected EPS growth rate provided by the *Center for Financial Research and Analysis("CFRA")*; and
> - 3 to 5-year EPS growth rate provided by *Charles Schwab ("Schwab").*
>
> My DCF results are presented within **Exhibit KWO-2, Exhibit KWO-5, Exhibit KWO-6** to my originally pre-filed direct testimony.[104]

OCA St. 3R at 9.

b. <u>Mr. O'Donnell's Dividend Yield Range is Based on Current Data and Multiple Observations</u>.

Mr. O'Donnell calculated the appropriate dividend yield by averaging the dividend yield expected to be paid over the next 12 months for each for each comparable company, as reported by the *Value Line Investment Survey*. OCA St. 3 at 59. The period covered by the *Value Line* reported data is from September 25, 2020 through December 18, 2020. Mr. O'Donnell examined

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[104] The abbreviations in Mr. O'Donnell's testimony include: "EPS" for "earnings per share," "DPS" for "dividends per share," and "BPS" for "book value per share."

the 13-week, 4-week, and 1-week dividend yields for his comparable proxy group, in order to study the short-term and long-term movements in dividend yields. Id. at 59. Mr. O'Donnell obtained an average dividend yield for the ten-company proxy group for each of the three time periods – 3.7%, 3.5%, and 3.6%, respectively. Id. at 59, Exh. KWO-2.

Mr. O'Donnell developed these dividend yield ranges "by averaging each company's *Value Line* forecasted 12-month dividend yield over the above-stated periods, as well as examining the most recent forecasted 12-month dividend yield reported by *Value Line* for each company." OCA St. 3 at 59-60. Mr. O'Donnell employed this averaging approach over multiple time periods "in order to minimize the possibility of an isolated event skewing the DCF results." Id. at 60.

Mr. O'Donnell's dividend yield range of 3.5% to 3.7% provides a sound basis for Mr. O'Donnell's DCF range of 7.75% to 10.00% for his ten-company proxy group. Id. at 72-74.

c. Mr. O'Donnell's Growth Rate Range is Soundly Supported.

Mr. O'Donnell evaluated publicly available historic and forecasted growth rate information available for his proxy group companies using three methods. Information about historical growth rates and forecasted growth rate are widely available to investors to use in development of their expectations and would be used by prudent investors. OCA St. 3 at 63. Both historical growth rates and forecasted growth rates provide valuable data for what one can expect the ultimate growth rate for an individual stock will be. Id.; OCA St. 3-SR at 36-38.

Mr. O'Donnell also examined a variety of growth rates. Limiting his growth rate examination to only earnings growth rates would be improper. "Since the DCF formula is dependent on future *dividend* growth, I believe it would be inaccurate to use only earnings growth rates in the DCF." OCA St. 3 at 64. The use of only earnings growth rates would produce unrealistically high return on equity numbers that cannot be sustained indefinitely. Id. Mr.

O'Donnell analyzed earnings per share, dividends per share, and book value per share earnings growth rates to provide a robust, systematic analysis of available financial information. Id. at 64-65; OCA St. 3-SR at 36-38.

First is the plowback ratio method. Under this approach, if a company is earning of a rate of return or "r" on the company's common equity, and it retains a percentage of these earnings or "b", then each year the earnings per share (EPS) are expected to increase by the product (stated as "b x r" or simply "br") of its earnings per share in the previous year. Thus, "br is a good measure of the growth in dividends per share." (DPS). These "br" or plowback ratios are reported by *Value Line* for the proxy group companies under the title "percent retained in common equity." OCA St. 3 at 60-61; OCA St. 3-R at 9.

Second, Mr. O'Donnell addressed development of a growth rate measure that "consider[s] how dividends are created." This leads to the need to analyze "what if any growth can be expected in dividends." Review of book value growth is one part of the inquiry. To analyze the expected growth in dividends, Mr. O'Donnell believes that an analyst should also examine the historical record of past earnings, dividends, and book value. He examined historical EPS, DPS, and BPS growth rates over a 10-year period and a 5-year period provided by *Value Line*. OCA St. 3 at 61-64; OCA St. 3-R at 9.

Third, Mr. O'Donnell evaluated forecasted EPS, BPS, and DPS growth rates. Mr. O'Donnell examined: forecasted compound annual rates of change for earnings per share, dividends per share, and book value per shares as provided by *Value Line*; forecasted 3-year projected rate of change for earnings per share provided by CFRA (a publication of S&P Market Intelligence); and forecasted long-term 3-5 year earnings growth rates compiled by Schwab based on industry analysts' forecasts. OCA St. 3 at 65; OCA St. 3-R at 9.

From his analyses and consideration of current gas industry conditions and economic factors, Mr. O'Donnell identified a measure of the growth in dividends that investors would expect. OCA St. 3 at 60-66. Based upon review of the proxy group's historical EPS, DPS, and BPS growth rates, Mr. O'Donnell identified a proper historical growth rate range to be factored in the DCF Model of approximately 3.0% to 5.0%. Id. at 68, 71-74; Exh. KWO-2. Mr. O'Donnell reviewed the forecasted growth rate information for the proxy group (including outlier Northwest Natural Gas) and identified a forecasted growth rate range of 5.0% to 7.0% to factor in the DCF Model. Id. at 69-74.

Mr. O'Donnell's final growth rate recommendation is the result of his consideration of the assembled growth rate information and other factors. "[D]ue to the negative growth impact of COVID-19, as well as the fundamental changes that have occurred in the natural gas utility industry over the past ten years," Mr. O'Donnell concluded "it is proper to place more weight on forecasted figures in estimating the cost of equity for the comparable group." Id. at 73. Mr. O'Donnell determined that the proper growth rate range for his "DCF analysis is 4.25% to 6.25%." Id. at 74; Exh. KWO-5.

d. Mr. O'Donnell's Final DCF Recommendation.

Mr. O'Donnell's 8.75% cost of equity recommendation is based upon his DCF result range of 7.75% to 10.00%. OCA St. 3 at 74. Mr. O'Donnell identified the range based upon a matrix combining his dividend yield measures for three periods and historical and forecasted growth rates based upon his three methods. Id., Table 9. Mr. O'Donnell's 8.75% cost of equity recommendation is close to the middle of his DCF result range. Id. at 88, 90.

The OCA submits that Mr. O'Donnell's DCF analyses provide a sound foundation for his DCF based cost of equity recommendation for PECO of 8.75%.

5. Mr. O'Donnell's Capital Asset Pricing Model (CAPM).

Mr. O'Donnell performed CAPM analyses to provide the Commission with additional information, based upon market and financial data for the proxy group companies. OCA St. 3 at 53, 79. Mr. O'Donnell identified a range of 5.50% to 7.75% based upon his CAPM results. Id. 86-88; OCA St. 3-R at 13; OCA St. 3-SR at 41. However, Mr. O'Donnell expressed his reservations regarding the usefulness of the CAPM approach. Specifically that the application of the CAPM in an inaccurate manner, "such as when forecasted risk premiums or forecasted interest rates are employed," can lead to erroneous results. OCA St. 3 at 79.

The CAPM is "a measure of firm-specific risk, known as unsystematic risk and measured by beta, as well as overall market risk, otherwise known as systemic risk and measured by the expected return on the market." OCA St. 3 at 80. The CAPM formula requires identification of the risk-free rate, beta as the risk of the studied company relative to the overall market, and the expected return on the market. Id. at 79-80.

The risk free rate is designated as the yield on United States government bonds as the risk of default is seen as highly unlikely. OCA St. 3 at 80. In his CAPM analyses, Mr. O'Donnell developed risk premiums relative to the 30-year U.S. Treasury bonds, "as this time period is the longest available in the marketplace, thereby affording consumers the longest protection at the risk-free rate." Id. To approximate the risk-free rate, Mr. O'Donnell utilized historical 30-year U.S. Treasury Bond Yields from December 11, 2019 to December 11, 2020. OCA St. 3 at 7-9 (Chart 1), 86-87; OCA St. 3-SR at 41. Mr. O'Donnell identified 1.61% as his risk free rate, as the average of his 30-year risk free rate range of 0.99% to 2.39%. OCA St. 3-R at 14; OCA St. 3-SR at 44. Mr. O'Donnell also considered changes in the federal funds rate from late 2019 and in response to the impact of the COVID-19 throughout 2020. Id. at 6-9, 81. Mr. O'Donnell affirmed

the reasonableness of his risk free rate inputs, based on a strategy change by the Federal Reserve likely to keep interest rates at their low levels for a long time. OCA St. 3-SR at 41-42.

Beta is a statistical calculation of a company's stock price movement relative to the overall stock movement. Betas below 1.0 indicate less volatility in stock price. Betas above 1.0 indicates a company with a stock price that is less volatile than the overall market. OCA St. 3 at 64. As generally conservative equity investments, utility betas are almost always less than 1.0. Id. The average beta for Mr. O'Donnell's proxy group companies is 0.89%. OCA St. 3-R at 14.

Mr. O'Donnell developed his current market risk premium from the Ibbotson database published by Morningstar. OCA St. 3 at 82. Mr. O'Donnell provided an overview of the market return forecasts – equity risk premium as well as total market returns – published by Morningstar on April 23, 2020, information which reflects a large range of expectations. Id. at 82-85. Mr. O'Donnell concluded, using historical data as well as ex ante (forecasts) data, "the evidence suggests the equity risk premium is clearly within the range of 4.25% to 6.25%." Id. at 85; OCA St. 3-R at 14; OCA St. 3-SR at 41-42, 44.

Mr. O'Donnell used the *Value Line* derived beta sourced from the most recent Value Line editions for each company in the comparable proxy group. OCA St. 3 at 86.

Mr. O'Donnell concluded the proper return on equity from the CAPM is in the range of 5.00% to 7.75%. OCA St. 3 at 87-88. Mr. O'Donnell based his range on consideration of the average CAPM results for his proxy group companies with the use of the 4.25% equity risk premium and the 6.25% equity risk premium. OCA St. 3, Exh. KWO-7; OCA St. 3-R at 14; OCA St. 3-SR at 44.

In identifying his final recommendation of an appropriate cost of equity for PECO, Mr. O'Donnell considered this CAPM range (5.50% to 7.75%) as a check on his DCF results range (7.75% to 10.00%). OCA St. 3 at 54, 78-79, 87-88.

The OCA submits that Mr. O'Donnell's CAPM results reflect a careful examination of available information from analysts, use of a reasonable risk free rate, Value Line betas, and consideration of changes in the economy in general and current and future expectations for federal fund interest rates, in the context of the COVID-19 Pandemic, and its impact on the economy.

6. Mr. O'Donnell's Comparable Earnings Analysis.

Mr. O'Donnell conducted two different Comparable Earnings Analyses (CE). OCA St. 3 at 75-78. One examined returns on book value equity for the comparable group. The second examined allowed natural gas utility returns over an extended period of time to evaluate trends in returns for companies of similar risk. Id.

First, Mr. O'Donnell compared companies of similar risk to PECO, specifically his proxy group of gas utilities followed by Value Line. OCA St. 3 at 57. Mr. O'Donnell examined "historic and forecasted earned returns *on book value equity* of the proxy group over the period of 2018 through 2025E." Id. at 75; Exh. KWO-4. (emphasis in original). Based upon this review, the average earned returns on equity for the proxy group companies ranged from 8.9% (2020E) to 10.4% (2018). Id. However, the level of return suggested by this type of analysis is not directly comparable or relatable to a DCF result, where this type of CE focuses on the return on book value and not a return on market value. Id. at 77-78.

Second, Mr. O'Donnell evaluated the history and trend of what state utility commissions across the country are allowing for authorized returns on equity. OCA St. 3 at 76-77. Mr. O'Donnell's Chart 6 shows "the ROEs authorized for natural gas utilities by state regulators across

the United States from 2005 through 2019." Id. Mr. O'Donnell noted that the average allowed ROE for 2019 was 9.71%. Id. at 77. The average allowed ROE for natural gas utilities in 2020 was even lower at 9.46%, with no single rate above 10.00%. OCA St. 3-SR at 19-20. Mr. O'Donnell's Chart 6 and Chart 1S provide useful evidence that utility regulators are acknowledging the declining trend in the cost of capital for gas utilities. OCA St. 3 at 77; OCA St. 3-SR at 19-20. "Regulators may not move at the pace of the general market in terms of the decline in the market cost of capital, but regulators are, without a doubt, moving in that direction." OCA St. 3 at 89.

Mr. O'Donnell did combine some of the observations from these two different CE into a range of returns, 9.25% to 10.25%. OCA St. 3 at 77-78. However, Mr. O'Donnell cautioned that the CE approach is of limited usefulness and has shortcomings. Id. Significantly, the CE model "does not appropriately capture the economic impacts of the pandemic within the output of the Model." Id. at 78. Mr. O'Donnell affirmed that the DCF model produces the most reliable results, with use of the CAPM as a check.

7. The OCA's Return on Equity Recommendation of 8.75% for PECO is Supported and Appropriate to these Current and Future Market Conditions.

Mr. O'Donnell concurs with the OCA's primary recommendation of no rate increase, as set forth in Mr. Rubin's testimony as an appropriate result in light of the significant economic consequences of the COVID-19 Pandemic. OCA St. 3 at 3-4; OCA St. 3-SR at 1, 23. In the alternative, Mr. O'Donnell has developed a market-based recommended cost of equity of 8.75%, which the Commission should apply to an equity ratio of 50%, to produce an overall return of 6.30% for PECO. OCA St. 3 at 3-4. The OCA submits that any other higher return would be excessive and unreasonably over-burden PECO ratepayers during these unusual times of economic hardship arising from the COVID-19 Pandemic.

E. Business Risks and Management Performance.

1. Business Risks.

The Commission should consider the following financial and economic factors in determining an appropriate cost of capital for PECO and PECO ratepayers.

The debt market for PECO has changed since the last base rate cases for PECO Energy Company (electric and gas). OCA St. 3 a 6-9, 16. In the 2018 base rate case, PECO Energy Company – Electric Division requested a 10.95% ROE. Id. at 6. As shown by Mr. O'Donnell's analysis of the change in the 30-year U.S. Treasury bond yields, long-term interest rates have fallen, most notably in the past year. Id. at 6-7, Chart 1. The yield on the 30-year U.S. Treasury bonds decreased by 60-basis points between December 11, 2019 (2.23% yield) and December 11, 2020 (1.63% yield). Id. The yield on the U.S. Treasury bond closed even lower on January 14, 2021 at 1.88%. OCA St. 3-SR at 3.

Since September 19, 2019, the Federal Reserve has reduced the Federal Funds target range in a series of steps from a high target of 2.0 identified in September 2019 to a 0.25% target as announced March 15, 2020. OCA St. 3 at 7-9, 16. Based upon recent Federal Reserve guidance, interest rates are predicted to stay unchanged through at least 2023. OCA St. 3-SR at 42. The decrease in the Federal Funds rate signals a decrease in the cost of capital for companies like PECO. OCA St. 3 at 9.

Accordingly, these changes in the yields on the U.S. Treasury 30-year bonds and significant decreases in the Federal Funds rates have given rise to some turmoil in the markets, leading investors to look for safe harbors. This has contributed to some increased demand for bonds with a resulting decrease in yields. OCA St. 8-9.

The equity markets have also changed in recent years. Comparisons of the change in the Dow Jones Utility Average (DJUA) since the last PECO Gas rate case (2010) and since the last PECO Electric rate case (2018) to the DJUA close on January 14, 2021, represents significant increases in the DJUA. OCA St. 3-SR at 3. As Mr. O'Donnell testified "[s]uch a strong upward movement in the utility equity market is indicative of investors accepting a lower cost of capital on their investments." Id.

Changes in the DJUA compared to the Dow Jones Industrial Average (DJIA) are also informative. OCA St. 3 at 9-13, Table 3; OCA St. 3-R at 3. As Mr. O'Donnell observed, the difference between the equity prices for utilities versus industrials reflects the importance of utilities as providers of essential services. Id. at 12. The market for utility equities since the start of the COVID-19 pandemic has rebounded and steadied. OCA St. 3 at 20.

These are important factors, which should shape the Commission's determination of an appropriate cost of capital for PECO.

2. PECO's Requested Return on Equity Addition Based on Management Performance Should Be Rejected.

OCA witnesses O'Donnell and Colton evaluated the Company's request to increase the allowed return on equity by 25 basis points to reward the Company for the performance of management, past and current. Both Mr. O'Donnell and Mr. Colton determined that the Company's management performance is not sufficient to justify the imposition of additional costs[105] on PECO ratepayers under normal conditions. The fact of the current pandemic and the economic hardships faced by PECO residential and business customers further weighs against a grant of the Company's request. OCA St. 3 at 22; OCA St. 3-S at 6-7. Indeed, Mr. Colton faults

[105] I&E witness Keller calculated the impact of the Company's 25 basis point cost of equity adjustment at over $3.2 million, based upon the Company's original revenue requirement request. I&E St. 2 (Public) at 45.

the Company's COVID-19 emergency response plan as non-compliant under Chapter 14 and wholly inadequate to meet the needs of consumers in crisis.[106] The OCA recommends that the Commission deny the Company's request, based upon consideration of the Company's regulatory obligations and the evidentiary record. OCA St. 3 at 5, 15, 21-22, 118-125; OCA St. 5 at 90-108; OCA St. 3-S at 3-11; OCA St. 5-SR at 2-4, 10-13.

a. The Company's Request

Mr. Moul's recommended return on equity includes an additional 25 basis point premium to reflect the performance of the Company's management, variously characterized as exemplary or superior. PECO St. 1 at 2, 25; PECO St. 5 at 2, 7. PECO witness Bradley cited various PECO initiatives to address gas system safety and reliability, customer service changes, employee volunteerism, and other activities spanning the past ten years or so. PECO St. 1 at 2, 14-25. The Company also cited its improvement in J.D. Power scores, cost savings efforts between rate cases, as well as the Company's recent efforts to implement COVID-19 emergency assistance plans for PECO customers described by PECO witness Colarelli. Id.; PECO St. 1-R (public) at 15, 17-18.; PECO St. 10-R (revised) at 3-5; TR. 219 (public), li. 13-19.

The Company offered different explanations of how it arrived at the 25 basis points measure. According to Mr. Moul, that Company's total cost of equity request of 10.95%, inclusive of the 25 basis points, is within the range of the results of his multiple cost of equity analyses. OCA St. 3 at 119-120, quoting OCA-IV-19 reply. Mr. Moul's discovery reply concluded with the explanation "Mr. Moul's recommended 10.95% (i.e. 10.70% + 0.25%) rate of return on common equity provides recognition for the Company's management effectiveness that includes this 0.25% increment." Id.; OCA St. 3-S at 6. Company witness Bradley stated that PECO should be allowed

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[106] See Section IX.A,, infra.

an ROE, inclusive of recognition for management performance, "near the upper end of the range" recommended by Mr. Moul. OCA St. 3-S at 6, citing PECO St. 1-R (public) at 18.

b. Ratemaking Adjustment For Management Performance Is A Matter Of Commission Discretion

PECO has made its request for the cost of equity increase based upon Section 523. PECO St. 1 at 25, citing 66 Pa. C.S. § 523. According to Company witness Moul, the Commission has granted a higher return on equity for utilities in the past for management performance and should do so in this proceeding. PECO St. 5-R at 29, 30. The OCA disagrees.

Consideration of utility service quality is but one factor in the Commission's determination of just and reasonable rates. Section 523 permits the Commission to consider a request for an adjustment – upwards or downwards – to a component of the utility's cost of service to recognize the efficiency, effectiveness and adequacy of service.[107] In addition to evaluating whether PECO's request is supported, Section 523(a) instructs the Commission to consider "all other relevant evidence of record …."[108] The Commission shall give effect to Section 523 "by making such adjustments to specific components of the utility's claimed cost of service *as it may determine to be proper and appropriate*."[109]

First, the current pandemic and economic hardships confronting Pennsylvania utility consumers, including PECO ratepayers, is critical "other relevant information" which the Commission should consider. OCA St. 3 at 124-125; OCA St. 3-S at 6-7. In Columbia Gas 2020, the Commission supported the ALJ's reasoning that the utility's proposal to increase rates to reward management performance would defeat the purpose and benefits of effective operating and

[107] 66 Pa.C.S. § 523(a).

[108] Id.

[109] Id. (emphasis added).

maintenance cost measures, which should flow through to ratepayers and/or investors, "particularly during a pandemic when so many ratepayers have experienced reduced household income from job loss or reduction in hours."[110] The Commission adopted the ALJ's recommendation, as "supported by ample record evidence and is just and reasonable."[111]

Second, PECO's management performance claim does not satisfy the Commission's standards. As a regulated fixed utility, PECO is required to provide safe, adequate, reasonable and efficient service as a matter of law.[112] An appropriate rate of return on common equity assumes efficient and reasonable management of a utility.[113]

A utility must be doing much more than providing efficient and reasonable service in order to receive a positive performance adjustment pursuant to Section 523.[114] For example, compliance with quality of service regulations or LTIIP and DSIC regulations[115] may document the provision of adequate, efficient, safe, and reasonable service as required by Section 1501.[116] Such basic regulatory compliance alone does not support a Section 523 adjustment to increase rates.[117] Merely "commendable" service does not rise "to the level of supporting an added premium to its

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110 Columbia Gas 2020 at 134-135.

111 Id. at 135.

112 66 Pa. C.S. § 1501; see also Pa. Pub. Util. Comm'n v. Columbia Water Co., Docket No. R-2013-2360798, Order at 50 (Pa. PUC Jan. 1, 2014) (CWC 2013).

113 CWC 2013, at 50-51.

114 66 Pa. C.S. § 523.

115 To be eligible to have a Distribution System Improvement Charge (DSIC), the utility must have a Commission-approved Long Term Infrastructure Improvement Plan (LTIIP). 52 Pa. Code §§ 121.1, et seq. The utility's LTIIP plan for accelerated replacement of infrastructure "must … be sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers." Id., § 121.1. In other words, the LTIIP is a tool to ensure the provision of service sufficient to meet the Section 1501 standard.

116 66 Pa. C.S. § 1501.

117 CWC 2008, 2009 Pa. PUC LEXIS 1423 at *131-35 (Compliance with safe drinking water standards did not support adjustment); accord, CWC 2013 at 46, 51; but see UGI Electric, at 114-15. (Utility consistently exceeded multiple benchmark service reliability metrics).

rate of return on common equity."[118] "[A] utility must be doing *significantly more* than providing efficient and reasonable service to justify the receipt of a performance premium."[119]

PECO's claims of superior management performance do not justify an award of any additional basis points in equity return, as discussed further below. As in Columbia Gas, the Commission should deny PECO's requested 25 additional basis points in equity return in setting just and reasonable rates in this proceeding.

c. The Company Has Not Provided Substantial Support For Its Management Performance Claim

i. Capital Investments, Efficient Service, and Gas Safety

OCA witness O'Donnell broadly opposed the Company's management performance request as inconsistent with the Company's legal obligation to provide reasonable, safe, adequate, and efficient service. OCA St. 3 at 120, 124; OCA St. 3-S at 6-9. The Company's operation under an LTIIP and DSIC already provide the Company and shareholders with benefits. Id. at 9. For example, the DSIC reduces regulatory lag for recovery of eligible costs incurred to "ensure and maintain adequate, efficient, safe, reliable and reasonable service."[120] The Company's gas safety and maintenance improvements spanning the past five or ten years "would have already been factored in by the markets" in subsequent years and so shareholders have already received the benefits from these improvements. OCA St. 3 at 123; OCA St. 3-S at 8-9.[121]

The Company's claimed progress in gas safety improvements must be considered in context. For example, PECO witness Bradley cited the Company's replacement of bare steel

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[118] CWC 2013 at 50.

[119] Id. at 51 (emphasis added).

[120] 66 Pa.C.S. § 1353(a).

[121] See also Columbia Gas at 134-135.

services. PECO Gas St. 1-R (public) at 17. However, during the first four years of PECO's LTIIP, the Company *did not* meet its annual goals for replacement of bare steel services.[122] OCA St. 3-S at 8-9. Thus, the Company proposed in its Second Modified LTIIP to accelerate its efforts to replace bare steel services, in part to make up ground, a change which the Commission approved in June 2017.[123] The Commission should not mistake the Company's catch-up plans as evidence of exemplary management performance.

Certain other of the Company's efforts to enhance gas safety and reliability are a direct result of the Company's settlement of an investigation of a 2014 house explosion, the "Penrose Lane Settlement."[124] OCA St. 3 at 123-124; OCA St. 3-S at 7, 9-10. As part of the settlement, the Company paid a $900,000 civil penalty. Id. at 9. The Commission determined the level of civil penalty – which the Company will not recover in future rate proceedings – appropriate based upon consideration of the "remedial measures the Company has been and will continue to engage in pursuant to the Settlement…." Penrose Lane Settlement, at 11-12. Those "remedial measures" include a settlement condition that PECO implement a gas mapping project. Id. at 4-6. The Company began the gas mapping program in 2018, a project which is not expected to be completed until 2037. OCA St. 3 at 124. The OCA opposes the Company's position that these "remedial measures" to improve gas safety as required by Commission order should now be considered evidence of exemplary management performance.

ii. The Company's Scores From J.D. Powers Are Not Evidence Of Exemplary Management

122 Petition of PECO Energy Company for Approval of its Second Modified Gas Long-Term Infrastructure Improvement Plan, Docket No. P-2013-2347340, Order at 4, 11, 13 (Pa. PUC June 14, 2017).

123 Id.

124 Pa. P.U.C, Bureau of Investigation and Enforcement v. PECO Energy – Gas Div., Docket No. C-2015-2479970, Order approving Settlement (Pa. PUC Oct. 27, 2016) (Penrose Lane Settlement).

OCA witnesses O'Donnell and Colton each rebutted the Company's position that annual scores reported by J.D. Power support the Company's exemplary management. OCA St. 3 at 120-122; OCA St. 3-SR at 7-8, 10-11; OCA St. 5-S at 2-4; see, PECO Gas St. 1 at 21-22; TR. 219, li. 13-19. At the outset, the OCA does not agree that J.D. Power scores are useful measures of management performance and customer service, when the Commission has its own metrics and evaluations. Id.; OCA St. 3-SR at 10-11. As to the J.D. Power scores cited by PECO witness Bradley, Mr. O'Donnell noted that PECO's 2019 high score of 748 only placed PECO with a 4th place ranking in its regional peer group per J.D. Power. OCA St. 3 at 121. Further, the 2020 J.D. Power report ranked PECO in 7th place out of 12 companies in its regional peer group, with a score of 751. Id. at 121-122. In other words, PECO's ranking dropped between 2019 and 2020 in the J.D. Power reports, from 4th to 7th, even with a 3 point higher score (751-748 = 3). Moreover, a review of PECO's peer group J.D. Power rankings over a longer time-frame did not show PECO as performing any better than "middle of the pack." Id.; OCA St. 3-SR at 10-11; see also OCA St. 5-SR at 2-4 (Based upon certain PUC service quality metrics, PECO ranks "in the middle of pack" or lower compared to other Pennsylvania gas distribution utilities). The Company's management performance claim is not supported.

d. PECO's Customer Satisfaction, Collections Performance, and Customer Service Data Does Not Support a Conclusion of Superior or Exemplary Performance.

OCA witness Colton used customer satisfaction data, collections performance data, and customer service outcomes to evaluate whether PECO's performance merited a management performance adder. OCA St. 5 at 91-108. Mr. Colton based his analysis upon PECO's customer satisfaction data, collections performance data, and customer service outcomes data presented in the Commission's own reports. Id. The record in these critical areas of customer service and

collections do not support a conclusion of superior or exemplary performance that would merit a management performance adder.

i. Customer Satisfaction

Mr. Colton analyzed the customer satisfaction data from the Commission's 2014, 2018 and 2019 Customer Service Performance Reports.[125] OCA St. 5 at 91. OCA witness Colton noted that the Commission and PECO both combine PECO Gas and PECO Electric data into a single metric, and reports that data relative to the performance of other utilities in Pennsylvania. OCA St. 5 at 92. He examined the Commission's reports on data using two levels of satisfaction: (1) "somewhat satisfied" and "(2) very satisfied." Id. at 93. OCA witness Colton explained the standard by which he assessed the data:

> I do this because PECO Gas is claiming an equity enhancement not based on adequate management (manifested through adequate customer service), but rather because PECO Gas is claiming an equity enhancement based on superior or exemplary management (manifested through customer service). Customers who are "somewhat satisfied" with their customer service do not support a claim of "superior" management. If customers are "somewhat satisfied" with call center courtesy, or with call center knowledge, for example, those customers are not reporting "exemplary" service. Given the issue placed before the Commission in this case –not the presence of adequate service, but the presence of superior or exemplary service—the question to be considered is the extent of customers who are "very satisfied."

OCA St. 5 at 93. OCA witness Colton considered six aspects of customer satisfaction: (1) ease of being able to reach PECO; (2) ease of using PECO's automated telephone service; (3) "the way in which PECO customer service representatives handled a customer-initiated contact with the Company;" (4) the call center representative's "courtesy;" (5) the extent to which the customer

[125] OCA witness Colton utilized the 2014 Customer Service Performance Report because PECO witness Bradley used 2014 as the "base year" for comparison. OCA St. 5 at 91.

service representative is considered "knowledgeable;" and (6) overall quality of service. OCA St. 5 at 93-101.

The first customer satisfaction factor Mr. Colton considered was the customer's ease of being able to reach PECO in the base year 2014, 2018, and 2019. OCA St. 5 at 93-94. OCA witness Colton found that "PECO's overall performance on the proportion of customers very satisfied did not distinguish the Company." OCA St. 5 at 93-94. Based on his analysis, OCA witness Colton concluded that PECO's overall performance in this category did not distinguish the Company amongst the utilities.

The second customer satisfaction factor Mr. Colton considered was the customer's ease of using PECO's automated telephone service for 2014, 2018 and 2019. OCA St. 5 at 94-95. Mr. Colton noted that PECO did substantially improve its performance in this category from 2014 to 2019; however, improvement on its performance still did not distinguish the Company as exemplary. See, OCA St. 5 at 94-95. Mr. Colton concluded that "when measured against the test of whether PECO's performance exhibits superior management, rather than merely being adequate, the data does not support a finding of superior or exemplary management." OCA St. 5 at 95.

The third factor OCA witness Colton considered was customer satisfaction with "the way in which PECO customer service representatives handled a customer-initiated contact with the Company." Again, OCA witness Colton concluded that PECO's performance did not place the Company in a tier of utilities that would support a finding of superior or exemplary performance. Mr. Colton testified "[r]ather than demonstrating exemplary or superior performance, PECO's performance was ordinary or typical of the other Pennsylvania utilities." OCA St. 5 at 96.

The fourth factor that OCA witness Colton considered was customer satisfaction with the courtesy of the customer service representative. The courtesy of the call center representatives towards the customers should be as OCA witness Colton stated, "the most elementary expectations" that a customer should expect from a call center. OCA St. 5 at 96. He concluded that PECO's customer service in the category of "courtesy of the call center representatives" also did not distinguish the Company from other Pennsylvania utilities and did not support a conclusion of exemplary or superior performance. OCA St. 5 at 97-98. Mr. Colton testified "[i]ndeed, when nearly one-in-five customers making contact with the utility report that the call center representative was something less than "very courteous," there should be concern (whether by PECO management, by some other utility's management, or by the PUC)." OCA St. 5 at 97.

The fifth customer satisfaction factor that OCA witness Colton considered was the extent to which PECO's call center representatives were found to be "knowledgeable" in their contacts with customers. OCA St. 5 at 98-99. Based upon the "knowledgeable" factor, Mr. Colton concluded the Company's performance in this area also did not support a finding for superior or exemplary performance. OCA St. 5 at 99.

The final customer satisfaction factor that OCA witness Colton examined was overall quality of service. OCA St. 5 at 99-100. Mr. Colton found that, as with the other categories of performance, PECO provided adequate service but did not distinguish itself with superior or exemplary performance. Id.

In the six categories of customer satisfaction reported in the Commission's Customer Service Performance Reports, PECO has not demonstrated exemplary or superior performance. PECO's performance has trended towards the middle or bottom level of performance. The OCA submits that PECO cannot distinguish itself based upon its customer service. The record evidence

of PECO's performance in the area of customer satisfaction does not support a grant of the Company's request for a management performance adder.

ii. Collections Outcomes and Customer Service

In his examination of PECO's collections data and customer service outcomes, OCA witness Colton reviewed PECO's collections and customer service outcomes performance using the Cold Weather Survey and annual Bureau of Consumer Services (BCS) Report on Collections Performance and Universal Service Programs. OCA St. 5 at 101. Based upon the data presented in the reports, Mr. Colton also concluded that the collections data and customer service outcomes performance did not support a conclusion of exemplary or superior management outcomes to generate outcomes that are outside of the middle-of-the-pack. OCA St. 5 at 101-108. The record evidence of PECO's collections outcomes and customer service outcomes performance do not support the grant of the Company's request for a management performance adder.

In his examination of PECO's customer terminations and reconnections, OCA witness Colton reviewed the Commission's most recent Cold Weather Survey. Mr. Colton found that PECO "contributes disproportionately to the number of accounts who face serious threats to their cold weather well-being as a result of nonpayment disconnections during non-cold weather months." OCA St. 5 at 101.[126] OCA witness Colton testified that "[c]ontrary to other Pennsylvania utilities, who serve from nearly three to four times as many customers, PECO's customer service does not rise to the level of ensuring that customers have safe sources of home heating during Pennsylvania's cold weather months." OCA St. 5 at 102.

[126] As noted above regarding customer satisfaction performance, PECO reports its electric and natural gas together in the Cold Weather Survey.

According to the Cold Weather Survey, OCA witness Colton also found that PECO has under-performed other Pennsylvania utilities in reducing those customers placed at risk during the cold weather months. OCA St. 5 at 102. Mr. Colton testified:

> According to the Survey, while all (electric) utilities reduced the number of total households without service after completion of the survey by 27% from their 2014-2017 average through 2019, PECO had reduced its number by only 19% (4,043 / 5,008 = 0.81). While all (electric) utilities reduced the number of total households without a central heating source due to termination of utility service" by 28% from their 2014-2017 average through 2019, PECO had reduced its number by only 22% (4,136 / 5,284 = 0.22).

OCA St. 5 at 102-103. Moreover, PECO's performance has not improved in this area in 2018 and 2019. To the contrary, PECO increased its number of households without service in the period. OCA St. 5 at 103. When measured by how effectively PECO provides customer service to help customers who have experienced nonpayment disconnection, the OCA submits that PECO's Cold Weather Survey results demonstrate that PECO's termination and reconnection policies do not show exemplary or superior management.

OCA witness Colton also reviewed the Company's data reported in the Commission's BCS Collections Performance and Universal Service Programs Report (BCS Report). PECO's performance in the BCS Report also demonstrated that the Company has not shown exemplary or superior management. He found that PECO's number of confirmed low-income customers is significantly below the statewide confirmation rate. OCA St. 5 at 104. PECO has confirmed approximately 33.3% of low-income customers, compared to the statewide confirmation average of 62.0%. OCA St. 5 at 104.

PECO also under-performed on the number of payment plans issued for both residential customers, as a whole, and for confirmed low-income customers. OCA St. 5 at 104. As OCA witness Colton noted, the BCS Report has emphasized the importance of payment plans

"to provide functional alternatives to termination." OCA St. 5 at 104. With respect to residential customer arrears, Mr. Colton testified that the BCS report demonstrated "that PECO Gas has a far higher percentage of its residential natural gas customers who are in debt, but are *not* on arrangements, than do Pennsylvania natural gas utilities as a whole." OCA St. 5 at 104.

Mr. Colton emphasized that the difference is *not* attributable to the number of dollars in arrears. OCA St. 5 at 105. In fact, PECO also under-performs against Pennsylvania natural gas utilities in the percentage of dollars owed which are on agreement. OCA St. 5 at 105. Mr. Colton testified "[w]hile natural gas utilities statewide have 43.8% of its residential customers in debt on an arrangement, PECO Gas has only 34.6% of its residential customers in debt on an arrangement. (BCS, page 26)." OCA St. 5 at 105.

PECO's performance for payment plans and dollars in arrears for confirmed low-income customers is even worse when compared to other natural gas utilities across the state. As OCA witness Colton testified, "[w]hile PECO Gas has 42% of its Confirmed Low-Income customers who are in debt on an arrangement, natural gas utilities statewide have 72% of their Confirmed Low-Income customers who are in debt on an arrangement. (BCS, at 22)." OCA St. 5 at 105. OCA witness Colton also found the difference of dollars in arrears was even more significant for confirmed low-income customers. OCA St. 5 at 105. Mr. Colton explained that "[w]hile PECO Gas has 44.3% of its Confirmed Low-Income dollars owed on an agreement, natural gas utilities statewide have 75.8% of their Confirmed Low-Income dollars owed on an agreement. (BCS, page 27)." OCA St. 5 at 105.

PECO has also not targeted customers with the highest arrears for payment arrangements. In fact, the opposite is true. OCA witness Colton testified "the average PECO Gas arrearages not on an agreement is far higher than the average balance on an agreement ($666.81 vs. $391.28).

(BCS, page 28)." OCA St. 5 at 106. Mr. Colton found that not only is PECO Gas failing to place accounts in arrears on an agreement, but the payments agreements that PECO is negotiating involve smaller levels of arrears that are owed to the Company. Id.

PECO has also not exhibited superior or exemplary outcomes with respect to the customers with arrears over $10,000. OCA St. 5 at 106.[127] Under Chapter 14, PECO is required to report the number of active residential customer accounts, or not final billed accounts, that exceed $10,000 in arrearages at the end of each calendar year, including the account balances.[128] Mr. Colton testified:

> According to the most recent BCS report, PECO has 82 accounts with balances exceeding $10,000, an increase of 54.7% from 2017 to 2019. While that is not the worst performance, it is also far from being at or toward the best performance... PECO's 54.7% increase in the number of these high-balance accounts exceeds the statewide average of 29.7%, as well as exceeds every other (electric) utility, except Penelec (Id., at 30).

OCA St. 5 at 106. OCA witness Colton explained that the impact of the Company's collections performance results in higher arrearages, a greater number of disconnections, and ultimately, higher costs for ratepayers. OCA St. at 107-108.

Finally, PECO does not exhibit exemplary service with respect to service disconnections. For residential customers, the Company is a bit higher than the statewide average, but for confirmed low-income customers, PECO's performance is the worst among the natural gas utilities for terminations. OCA witness Colton testified:

> the PECO Gas Confirmed Low-Income termination rate (19.0%) is more than two times higher than the statewide average (9.1%). (BCS, page 14). No other natural gas utility has a Confirmed Low-

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[127] OCA witness Colton noted that PECO reports this metric with its gas and electric customers together. OCA St. 5 at 106.

[128] 66 Pa. C.S. § 1410.1

> Income termination rate that is close to PECO Gas (NFG being the closest at 16.4%, with PGW being the next closest at 13.4%). (Id.)

OCA St. 5 at 108. A Company whose performance for disconnections ranks the worst in the state cannot be distinguished for exemplary or superior management performance.

In his Direct, Rebuttal, and Rejoinder Testimonies, Company witness Bradley argued in support of exemplary Company performance and a management performance adder. PECO St. 1 at 19-21; PECO St. 1-R at 16. In support of his conclusion, Mr. Bradley testified that PECO has pursued a number of programs to enhance the customer service experience; that PECO's staff works to ensure that customer demands are met; that PECO invests in on-going skills training for its customer service representatives; and that PECO has improved its performance since 2014, including improvements to its JD Power score. PECO St. 1-R at 16. The OCA submits, however, that the clear data presented by Mr. Colton from the Commission's Cold Weather Survey and BCS Report do not support a claim of exemplary performance. OCA witness Colton testified:

> Using the data which the PUC prescribed to be reported for the explicit purpose of assessing utility customer service performance, I find that while, in many ways, PECO does not perform worse than other Pennsylvania utilities in the realm of customer service, PECO certainly does not perform substantially better than Pennsylvania utilities. Indeed, in many ways the performance of PECO on customer service related factor is toward the bottom level of performance in Pennsylvania. Mr. Bradley's testimony notwithstanding, PECO cannot lay claim to superior or exemplary management when it relates to customer service.

OCA St. 5-SR at 3-4.

The OCA submits that PECO's performance does not stand out for any of the performance categories identified for customer satisfaction, collections performance, and customer service outcomes. The OCA submits that OCA witness O'Donnell's recommendation to deny the proposed management performance adder should be approved.

e. Conclusion

As demonstrated above, the Company's evidence of capital investments, gas safety measures, and J.D. Power scores does not support the acceptance of their request for a management performance adder to their rate of return. Moreover, the data presented by OCA witness Colton, demonstrates that the Company's performance regarding customer satisfaction, collections, and customer service is adequate, but not exemplary. For these reasons, the Company's proposed management performance adder should be denied.

F. Other Parties' Equity Cost Rate Recommendations and Principal Areas of Dispute.

1. Overview.

PECO recommends a 10.95% cost of common equity rate, inclusive of a 25-basis point increment to recognize management performance. PECO St. 5 at 2. Mr. Moul's 10.70% equity return (minus the performance adder) is based, in part, upon application of three analyses – a DCF, CAPM, and Risk Premium (RP) – to a selected group of companies. Additionally, Mr. Moul conducted a Comparable Earnings (CE) analysis, applied to PECO and an assortment of non-utility companies.

I&E witness Keller recommends a 10.24% cost of common equity, as the result of his DCF analysis of a proxy group of gas utilities. I&E St. 2 at 6-10, 20-23. Mr. Keller also conducted a CAPM analysis of his proxy group companies and considered the CAPM results for comparison to his DCF results. I&E St. 2 at 24-28.

The OCA is opposed to both the Company's 10.95% cost of equity recommendation (inclusive of the management adder) and I&E's DCF-based 10.24% cost of equity. Both of these measures are overstated. Importantly, neither cost of equity recommendation is appropriate to set

rates that assure adequate service to the public at the least cost.[129] Grant of an excessive rate of return would burden consumers and provide a windfall to current investors, further leading to rates that are unjust and unreasonable. OCA St. 3 at 28. The Company's 10.95% and I&E's 10.24% cost of equity recommendations are especially overstated in consideration of the current pandemic and financial hardships confronting consumers. OCA St. 3 at 12, 17, 22-23; see, OCA St. 3-S at 22.

The OCA's points of disagreement include the Company's proxy group, Mr. Moul's inclusion of adjustments in his DCF analysis to develop his dividend yield, his growth rate, and addition of a leverage adjustment. OCA St. 3 at 3-4, 95-103; OCA St. 3-S at 2-4; 31-40. Mr. Moul's application of the CAPM is also flawed and overstated as he included adjustments for size and leverage. The OCA also disagrees with the Company's reliance on Risk Premium (RP) analysis results and a CE applied to non-regulated companies. OCA St. 3 at 116-118.

The OCA's criticisms of I&E's approach are fewer but equally significant, including I&E's small proxy group, Mr. Keller's development of a growth rate for his DCF, and Mr. Keller's choice of inputs in his CAPM which result in a high measure of 9.08%. OCA St. 3-R at 5-15.

2. The Company's Cost of Equity Recommendation is Excessive.

The Company has identified several possible cost of equity numbers, which PECO might accept for setting rates in this this proceeding. First, there is the Company's cost of equity claim of 10.95%, inclusive of 25-basis points for management performance, as based upon Mr. Moul's multiple analyses. PECO St. 5 at 2. Mr. Moul based this 10.95% cost of equity recommendation on the range of results for his DCF (12.74%), CAPM (12.33%) and RP (10.25%) analyses of his

[129] Penn Power 1982, 1982 Pa. PUC LEXIS 154 at *65-69.

proxy group in his direct testimony. Id. at 7-8. Mr. Moul stated that his selection reflects consideration of the current, but temporary impact of the COVID-19 pandemic. Id.

In rebuttal, Mr. Moul continued to support the Company's 10.95% cost of equity recommendation. PECO St. 5-R at 12. Mr. Moul updated his cost of equity analyses in rebuttal, identifying an increase in the "simple dividend yield plus growth return from 10.78% originally to 11.29%," a 0.51% increase (before his DCF leverage adjustments). PECO St. 3-R at 11-12. Based upon updates to each of his models (inclusive of adjustments), Mr. Moul concluded that the average of those new results "show a net decrease in the cost of equity of two basis points." Id. at 12. Mr. Moul continued to support the Company's recommended 10.95% cost of equity, inclusive of the management performance increment. Id.

However, Mr. Moul also testified in rebuttal that a cost of equity of 10.49%, based upon the I&E recommended 10.24% plus the Company's requested 25-basis points for management performance "would be close to adequate." PECO Gas St. 5-R at 12. Further, Mr. Moul proposed that the 10.15% or 10.20% return on equity for gas utilities included in recent Commission Quarterly Earnings Reports should be the floor for the authorized cost of equity in this proceeding. Id. at 13-14.

The OCA disagrees with the Company's position that a) a 10.95% cost of equity would be reasonable, b) that a 10.49% return could be adequate, and c) the authorized cost of equity should be no lower than the return on equity for gas utilities of 10.15% or 10.20% reported by the Commission in recent Quarterly Earnings reports. The OCA emphasizes that the Company bears the burden of proof on this important element of setting just and reasonable rates. The Company has not met this burden with substantial evidence supporting any of these three cost of equity outcomes considered by the Company.

a. The Company's Proxy Group is Not Appropriate.

As discussed above, OCA witness O'Donnell and Company witness Moul disagree on the inclusion of UGI Corp. in an appropriate proxy group. OCA St. 3 at 31-33. Mr. Moul used the publicly traded gas utilities included in *Value Line's* Natural Gas Group as a starting point, but Mr. Moul then excluded UGI Corp. while keeping Chesapeake Utilities as part of the Company proxy group. Id. Both UGI Corp. and Chesapeake Utilities are diversified corporations and included by Value Line in its Natural Gas Utility Industry classification. Id. at 33. OCA witness O'Donnell chose to include all 10 Value Line gas utilities in his proxy group, as providing a broader based for development of a cost of equity estimate for PECO and to avoid data integrity issues associated with smaller proxy groups. OCA St. 3-R at 7-8.

b. Mr. Moul's Application of the DCF Method is Flawed.

The results of the Company's DCF model do not provide a sound basis for a determination of an appropriate cost of equity in this proceeding. First, the Company's application of the DCF model includes unnecessary and unsupported adjustments to the dividend yield and for leverage, as explained by OCA witness O'Donnell. OCA St. 3 at 2-3; 95-103; OCA St. 3-SR at 2-3, 30-40. Second, Mr. Moul averaged the results of his DCF model with the results of his other three analyses, contrary to the Commission's preferred primary reliance on the results of a proper DCF analysis, as discussed above.[130] See PECO St. 5 at 7-8; PECO St. 5-R at 12.

i. The Company's Updated DCF Does Not Show that the Appropriate Cost of Equity has Increased.

OCA witness O'Donnell noted the following points regarding Mr. Moul's rebuttal update. OCA St. 3-S at 30-35. First, Mr. Moul updated his DCF analysis to include financial information through December 2020. Second, Mr. Moul switched the base for his dividend yield from three-

[130] See Section VIII. D., infra.

month data to six-month data. Id. at 31-34. Third, in direct and rebuttal, Mr. Moul used an adjusted dividend yield, a 7.50% growth rate based upon forecasted earnings per share, with the addition of a leverage adjustment. These adjustments unnecessarily increased the Company's DCF results. Id. at 31-35.

As noted by Mr. O'Donnell, Mr. Moul's original DCF analysis was based on data through June 2020. OCA St. 3-S at 31-32. The Company's "update" included three months of financial information, which was available at the time of the Company's filing. Id. Additionally, the OCA's cost of equity recommendation already reflected information current through mid-December. Id. The Company's update does not provide meaningful new information or a trend. The appropriate cost of equity for PECO is not higher now than it was prior to the pandemic, based upon consideration of changes in the DJUA in late 2020 and the continued low level of interest rates. OCA St. 3-S at 31-32.

ii. The Company's Dividend Yield Adjustment.

The Company's dividend yield is based upon three-month averages in direct and six-month averages in rebuttal. See PECO St. 5-R at 53. OCA witness O'Donnell examined the Company's changed approach and determined that it had no meaningful impact, as the three-month average and six-month average were numerically the same in the Company's rebuttal. OCA St. 3-R at 31-32. However, Mr. O'Donnell faulted the Company's dividend yield as the result of several adjustments, for which Mr. Moul did not provide support or an explanation. OCA St. 3 at 98; OCA St. 3-R at 31-32, 34-35. Mr. Moul's dividend yield adjustments are not necessary to perform an appropriate DCF analysis. OCA St. 3 at 98.

iii. The Company's Growth Rate is Overstated.

The Company's choice of a 7.50% growth rate is based solely on forecasted growth in earnings per share (EPS). OCA witness O'Donnell faulted the Company's approach as ignoring the broader range of growth rate information available to investors, information which Mr. O'Donnell considered.[131] OCA St. 3 at 95, 98-101; OCA St. 3-SR at 35-37. Mr. Moul's narrow reliance on forecasted earnings per share growth rates does not produce a reasonable DCF input. OCA St. 3 at 98-100; OCA St. 3-SR at 35-37. Specifically, OCA witness O'Donnell cited literature that challenges the premise that security analysts "may have some ability to predict growth."[132] OCA St. 3 at 99-100; OCA St. 3-SR at 36-37. The "Analysts' Conflict of Interest...." paper published in the Journal of Finance concluded that over long horizons, "there is little forecastability in earnings and analysts' estimates tend to be overly optimistic."[133] OCA St. 3 at 99-100. By relying entirely upon forecasted EPS growth rates, the Company's DCF growth rate contributes to unrealistically high return on equity numbers that cannot be sustained indefinitely. Id. at 100. The Company's 7.50% growth rate is overstated and not suited to identify an appropriate DCF-based cost of common equity for PECO.

iv. The Company's Leverage Adjustment to the DCF is Unsupported and Unnecessary.

Company witness Moul's DCF-based results included a 196 basis point addition in direct and a 217 basis point addition in rebuttal as a leverage adjustment. OCA St. 3 at 101; OCA St. 3-SR at 40. Mr. Moul describes the leverage adjustment as necessary "[i]n order to make the DCF results relevant to the capitalization measured at book value (as is done for rate setting purposes),

[131] As discussed above in Section VIII.D.4, Mr. O'Donnell considered a range of publicly available growth rates, both historic and forecasted, including DPS, BPS and EPS over several time periods.

[132] K. Chan, L., Karceski, J., & Lakonishok, J., "The Level and Persistence of Growth Rates," *Journal of Finance* (2003), page 683.

[133] Id.

the market-derived cost rate must be adjusted to account for this difference in financial risk." PECO St. 5 at 33.

Mr. Moul's leverage adjustment concept is unsound, as explained by OCA witness O'Donnell. OCA St. 3 at 101-103; OCA St. 3-SR at 38-40. Mr. O'Donnell stated that it is irrational to believe, as Mr. Moul does, "that investors, when purchasing an equity, are unaware that the market price of a security is different than the book value of the underlying security." Id. at 25-26. OCA St. 3 at 101; OCA St. 3-SR at 38-40.

Company witness Moul improperly claimed that his adjustment is uncontested and so should be included. PECO St. 5-R at 3. Mr. Moul is incorrect. It is the Company that has the burden of proof on this issue, the burden to convince the Commission that a leverage adjustment of up to 217 basis points is necessary to establish a proper DCF-based cost of equity in this proceeding.

The Commission should deny the Company's leverage adjustment as unsound and unnecessary. In discovery, Mr. Moul stated that he has proposed this adjustment in some 30 cost of capital testimonies before the Commission in the past decade, and that Mr. Moul was unaware of a Commission decision approving his proposed adjustment in that time. OCA St. 3 at 102-103. The Commission has expressly denied such a leverage adjustment previously as discretionary. Id. at 103.[134]

More recently, UGI Electric claimed that an unadjusted DCF would understate the cost of common equity and so the leverage adjustment for financial risk was needed.[135] The Commission denied the utility's requested leverage adjustment as "not reasonable," concluding that "an

[134] Pa. Pub. Util. Comm'n v. PPL Electric Utilities Corp., Docket No. R-2012-2290597, Order at 91 (Pa. PUC 2012).

[135] UGI Electric at 86, 91.

artificial adjustment in this proceeding is unnecessary and contrary to the public interest." Id. at 93-94. The OCA submits that PECO has failed to justify that an upward adjustment to a proper DCF based cost of equity estimate is necessary and reasonable in this proceeding.

c. Company Witness Moul's Risk Premium and CAPM Analyses Are Flawed and Not Appropriate to Determine the Cost Of Equity for PECO.

Mr. Moul applied a risk premium approach and a CAPM analysis to develop his cost of equity recommendation for PECO. PECO St. 5 at 38-48. Based upon his Risk Premium approach, Mr. Moul determined a Gas Group cost of equity of 10.25%. Id. at 41. Mr. Moul's CAPM analysis used a "1.75% risk-free rate of return, the leverage adjusted beta of 1.05 for the Gas Group, the 9.10% market premium, and the 1.02% size adjustment," for a resulting 12.35% cost of equity. Id. at 40.

In rebuttal, Mr. Moul stated that his re-calculated Risk Premium approach "shows a downward move in the cost of equity…." PECO St. 5-S at 10.

Mr. Moul revised his CAPM in rebuttal as well, showing a result of 12.76%, an increase from his direct testimony of 34 basis points. PECO St. 5-S at 10; OCA St. 3-SR at 31. Mr. Moul referenced an increase in the beta (measure of systemic risk) and an increase in risk-free rate. Id. According to Mr. Moul, "[t]hese increases have been offset by the decline in the market premium." Id.

The Commission should not accord any weight to the results of Mr. Moul's Risk Premium analysis or CAPM. First, the Commission has a long-stated policy of relying primarily on the DCF method to estimate the appropriate cost of equity, with consideration of the results of a CAPM for comparison.[136] In UGI Electric, the Commission rejected the utility's Risk Premium analysis

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[136] See e.g. UGI Electric, at 106 ("[T]he use of the DCF model has historically been our preferred methodology.")

because the model depends on indirect observations, where, in contrast the DCF model "measures equity more directly through the stock information, using equity information."[137]

Second, Mr. Moul's Risk Premium and CAPM analyses are flawed by Mr. Moul's choice of inputs and application. OCA St. 3 at 103-116. Mr. Moul's CAPM is further overstated by the inclusion of a leverage adjustment to his beta and a size adjustment. Id. at 105-108. Mr. Moul's recalculation of these analyses in rebuttal to reflect more current data does not improve the reliability of the results, where based upon the same flawed concepts, inputs, and adjustments. OCA St. 3S at 31.

Mr. O'Donnell noted that the Risk Premium and CAPM are both essentially risk premium models, where the CAPM is more company-specific due to its use of beta to measure systemic risk. OCA St. 3 at 16. Both models compare market returns (either total market or utility markets) to bond yields. Id.

i. Risk Premium.

Mr. O'Donnell criticized Mr. Moul's Risk Premium approach and use of forecasted bond yields. OCA St. 3 at 116. "The best predictor of future yields is the current yield curve." Id. As Mr. O'Donnell explained further, "[i]f the market feels interest rates are going to increase in the future, it will bid down current bond prices so that yields correspondingly increase." Id. The reverse is also true. Id. Mr. Moul's original 10.25% cost of equity estimate based upon the Risk Premium method does not support the Company's 10.95% cost of common equity request.

ii. Mr. Moul's CAPM.

[137] Id. at 105; see also Pa. Pub. Util. Comm'n v. Valley Energy, Inc., Docket No. R-2019-3008209, Order at 103 (Pa. PUC 2020) (Valley Energy) (No weight given to utility's RP method results).

Mr. O'Donnell determined that Mr. Moul's CAPM is flawed due to Mr. Moul's choice of inputs and adjustments for size and leverage. OCA St. 3 at 103-115; OCA St. 3-SR at 41-50.

The Company's original risk-free rate of 1.75% was not opposed by Mr. O'Donnell. OCA St. 3 at 104. However, Mr. Moul's update changed the risk-free rate to 2.00% without explanation or justification. OCA St. 3-SR at 41-42.

Mr. O'Donnell opposed the Company's leverage adjustment to the *Value Line* betas as unnecessary. OCA St. 3 at 105-108; OCA St. 3-SR at 49. Contrary to the Company's approach, Mr. O'Donnell explained that "the unadjusted historical Beta values provided by the *Value Line*" for each Gas Group utility "have already been adjusted to represent what Value line would deem to be proper forecasts for the Beta values going forward as time progresses." OCA St. 3 at 106. Mr. O'Donnell opposed Mr. Moul's choice of an average Beta value (1.05) higher than the unadjusted historical beta (0.60) for the same proxy group. Id. at 106-107. Effectively, Mr. Moul infers that "his proxy group will have a forecasted Beta of 1.05 going forward and will therefore be riskier that the overall volatility seen within the entirety of the market." Id. at 107. Mr. O'Donnell demonstrated that Mr. Moul's relative risk expectation is contrary to the performance of the DJUA relative to the DJIA during the pandemic. Id.

Mr. O'Donnell disagreed with Mr. Moul's CAPM leverage adjustment as conceptually unsound and not favored by the Commission. OCA St. 3 at 106; OCA St. 3-S at 49. In discovery, Mr. Moul acknowledged that he has included a leverage adjustment in CAPM analyses in many base rate testimonies in Pennsylvania cases in the past ten years. OCA St. 3 at 106. However, Mr. Moul was not aware of any Pennsylvania cases in that time period in which the Commission approved his CAPM leverage adjustment. Id. Indeed, in UGI Utilities the Commission rejected

the utility's request for a leverage adjustment in the calculation of the CAPM cost of equity, stating "[a]s preferring noted, we find no basis in this proceeding to add a leverage adjustment."[138]

As another adjustment included by Company witness Moul in his CAPM is to account for risk differences due to the size of the firm. PECO Gas St. 5 at 47. Mr. O'Donnell disagreed that Mr. Moul had properly identified which "firm," PECO Energy – Gas Division or Exelon, Mr. Moul was considering. OCA St. 3-SR at 14. Further, Mr. O'Donnell disputed that Mr. Moul's firm size comparison would be valid whether based on Exelon (a large-cap holding company with a total capitalization of $40 billion) or PECO Energy whose equity is owned by Exelon. Id. The Company's size adjustment is unnecessary and would result in a double count. Id. at 114-115. "To the extent investors feel these companies are a higher risk than larger entities, investors will price that premium into the current stock price." Id. This type of size adjustment to the CAPM was rejected by the Commission in UGI Electric.[139]

d. Company Witness Moul's Comparable Earnings Analysis.

Mr. Moul presented a CE analysis or approach to provide a comparison between returns realized by non-regulated companies to returns that a public utility with similar risk characteristics would need to realize. PECO St. 5 at 48-51. Mr. Moul selected a proxy group of companies based upon risk factors from *Value Line* sources and examined historical realized and forecasted returns for these companies. Id. at 50-51. Mr. Moul averaged certain of these data points to determine a CE result of 12.90%. Id. at 51. In rebuttal, Mr. Moul reported that his updated CE approach "shows a decline in results." PECO St. 5-S at 11.

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138 UGI Electric at 100.

139 Id.

The Company's CE results, whether from direct testimony or rebuttal, do not provide information about the appropriate cost of equity for PECO. OCA St. 3 at 117-118. Even if they passed certain screens applied by Mr. Moul, the Company's proxy group of non-regulated firms such as of The Dollar Tree and Scholastic Corporation are simply not comparable to PECO as a regulated gas utility. Id. at 117. Mr. O'Donnell further objected to Mr. Moul's CE as bringing a comparison of book value with market value into the question of determining the appropriate cost of equity for PECO. OCA St. 3 at 118.

The Commission has rejected a similar CE approach in UGI Electric for reasons similar to those identified by OCA.[140] The utility's identification of the non-regulated firms to analyze as comparable was entirely subjective; the resulting proxy group companies were still very different from a utility company; and the utility's CE focused on returns on book value, not the cost of equity.[141] Mr. Moul's CE analysis and results should be rejected by the Commission.

e. The Gas Utility Industry Return on Equity Developed for DSIC Purposes Should Not Be Adopted as a Floor in this Proceeding.

Mr. Moul proposed that the Commission adopt 10.15% or 10.20% as the minimum cost of equity to establish PECO's revenue requirement in this base rate proceeding. PECO St. 5-R at 13. According to Mr. Moul, the Commission "recently set the equity return for the DSIC in the Quarterly Earnings Report…" addressed at the Commission's January 14, 2021 Public Meeting. Id. Mr. Moul testified that it "just makes no sense that the cost of equity in a rate case could be any lower than the DSIC return." Id. Mr. Moul perceived application of a lower cost of equity in setting base rates as a penalty relative to the equity cost rate applied to recovery of plant through

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[140] Id. at 105-106.
[141] Id. at 106.

the DSIC. Id. at 13-14. Mr. Moul also perceived a difference in risk between a surcharge subject to true-up and a base rates. Id.

The Commission should reject the Company's proposal to import into this proceeding a cost of equity return calculated outside of this record and for different purposes than the establishment of just and reasonable base rates pursuant to Sections 1301 and 1308(d).[142] OCA St. 3-SR at 26-27. As Mr. O'Donnell explained, the DSIC mechanism provides PECO the opportunity to recover certain eligible investments in gas distribution system replacements between base rate cases. Id. at 25. As an automatic rate recovery mechanism for PECO, the DSIC "lowers its risk." Id. Contrary to Mr. Moul's inference, not all DSIC eligible plant may be recovered through the DSIC surcharge due to the 5% cap. Id. at 25-26. The DSIC surcharge reflects specific statutory and regulatory policy, which favors investment in main replacement, subject to consumer protections. Id. at 26. Accordingly, the equity return "that is calculated in some way by Commission staff, for use in a single quarter test of whether PECO is over-earning though its DSIC surcharge, is not suited to identification of the cost of common equity which PECO should be allowed the opportunity to earn as of the end of the FPFTY." Id.

The Commission should reject the Company's position that a return on equity calculated for DSIC purposes should control as a floor in the determination of just and reasonable rates in this base rate proceeding.[143]

3. The 10.24% Return on Equity Presented by I&E Witness Christopher Keller is Overstated and Not Suited to these Unusual Times.

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[142] 66 Pa. C.S. §§ 1301, 1308(d).

[143] In Columbia Gas, the Commission authorized a 9.86% cost of equity based primarily upon the DCF method and "the record developed in this proceeding." The Commission did not accept or comment on the utility's position that the 10.15% cost of equity reported by the Commission for DSIC purposes should serve as a benchmark. See Columbia Gas at 138-139 (Columbia Exc. # 17), 141 (Disposition).

I&E witness Keller recommended that the Company be allowed a return of equity of 10.24%, based upon the Company's proposed capital structure and cost of debt of 3.84%, for an overall cost of capital of 7.26%. I&E St. 2-SR at 37. OCA witness O'Donnell reviewed Mr. Keller's recommendation and determined that I&E's proposed 10.24% return on equity is not reflective of current market conditions and could allow PECO to over-earn at the expense of consumers, if adopted by the Commission. OCA St. 3R at 2.

The I&E recommended cost of equity of 10.24% is the exact value result of Mr. Keller's DCF analysis applied to the I&E seven company proxy group. OCA St. 3-R at 5; see I&E St. 2 at 23. Mr. O'Donnell disagreed that I&E's approach identified an appropriate cost of equity for PECO, based upon the narrow data points and factors considered by I&E witness Keller. OCA St. 3-R at 5-7.

a. The I&E Proxy Group is Too Small.

Mr. O'Donnell disagreed with I&E witness Keller's selection of gas utilities to include in the I&E proxy group. Through use of a screen tied to the level of company revenues from gas utility service, Mr. Keller narrowed his proxy group down to just seven of the ten gas utility companies followed by *Value Line*. OCA St. 3R at 5-8. In Mr. O'Donnell's opinion, the removal of gas utilities in this way is still subjective. Additionally, by reducing the number of companies in the proxy group, there can be data integrity problems. Id. at 7. The OCA acknowledges that the Commission adopted I&E witness Keller's similar proxy group in Columbia Gas, based upon the recommendation of the presiding ALJ.[144] Nonetheless, the OCA submits that the Commission should determine what proxy group and base of financial information provides the best basis to determine an appropriate cost of equity for PECO based upon this record and current information.

[144] Columbia Gas at 110. The OCA proxy group of ten gas utilities in this proceeding is not the same as the OCA nine-company proxy group examined in Columbia Gas, due to NiSource. See Id. at 111.

b. The I&E DCF Analysis.

OCA witness O'Donnell notes that the OCA and I&E applied different methods to identify an appropriate dividend yield. Mr. O'Donnell did not oppose Mr. Keller's approach, only the small company base in Mr. Keller's determination. OCA St. 3-R at 10.

The primary difference between the OCA and I&E DCF approach centers around the growth rate. OCA St. 3-R at 10. Mr. O'Donnell criticized I&E's singular reliance on EPS growth rate forecasts. Id. As Mr. O'Donnell explained, forecasted earnings growth rates may tend to be overly optimistic as earnings growth is difficult to forecast. Id.; see, OCA St. 3 at 99-100. Thus, Mr. O'Donnell examined more types of growth rates, historic and forecasted, to moderate or temper the likely overly optimistic bias reflected in EPS forecasted growth rates. OCA St. 3-R at 10-12. The I&E growth rate approach lacks this balance. Id.

The I&E growth rate determination is also compromised by Mr. Keller's removal of the forecasted EPS growth rate for one of the seven I&E proxy group companies, Northwest Natural Gas. OCA St. 3-R at 12-13. Mr. O'Donnell emphasized that this subjective decision by I&E witness Keller is unnecessary, when both historic and forecasted growth rates applied to a larger proxy group as applied by Mr. O'Donnell. Id. at 13.

c. The I&E CAPM Analysis.

The CAPM analysis performed by I&E witness Keller is flawed and so the result of a 9.08% cost of equity does not provide a meaningful check on the reasonableness of a proper DCF analysis to identify a market-based cost of equity estimate in this proceeding. OCA St. 3-R at 15. By comparison, I&E witness Keller's CAPM result of 9.08% exceeded Mr. O'Donnell's identification of a CAPM range of 5.50% to 7.75%. Id. at 13. Mr. O'Donnell identified differences between the time period for Betas sourced by Mr. O'Donnell (current quarter Betas) versus Mr.

Keller's use of the average Beta from different time periods for his seven company proxy group. The resulting OCA Beta was 0.89% compared to Mr. Keller's 0.85%.

Mr. O'Donnell and Mr. Keller differed on the appropriate risk-free rate, based upon differences in U.S. Treasury bond yields and whether to use historic or forecasted. OCA St. 3-R at 14. Mr. O'Donnell's use of historic 30-year U.S. Treasury bond yields and resulting risk-free average rate of 1.61% for use in the CAPM provided a better result, than the I&E risk-free rate of 1.23%. Id.

Mr. O'Donnell testified that Mr. Keller's CAPM results were greatly influenced by Mr. Keller's estimated overall market return of 10.46%, which lead Mr. Keller to use a 9.23% market premium. OCA St. 3-R at 15. That market premium is much higher than the 4.25% to 6.25% market premium range identified by Mr. O'Donnell. Id. Mr. O'Donnell did not find "the use of the 10.46% overall market return to be realistic given the current economic situation, or even when examining the market trends prior to the impacts of the COVID-19 pandemic." Id. Additionally, this double digit overall market return of 10.46% employed by I&E witness Keller also exceeded the forecasted market earnings of various market experts, as identified in Mr. O'Donnell's direct testimony. Id.

The OCA recommends that the Commission not rely upon the results of I&E witness Keller to evaluate the reasonableness of a market-based cost of equity estimate in this proceeding.

IX. CUSTOMER PROGRAMS AND MISCELLANEOUS ISSUES

The Company has proposed a few changes to its existing programs, including its Neighborhood Gas Pilot Rider Program and its voluntary natural gas EE&C Programs. The OCA will address at length the Company's proposed expansion of its EE&C programs recommending that it not be expanded at this time, but re-allocated to provide more cost-effective programs to customers that need it most. In addition, the OCA also recommends the adoption of a COVID-19 Pandemic Emergency Relief Program, which will provide arrearage forgiveness and extended payment arrangements for customers that have accumulated arrears because of the COVID-19 Pandemic. The OCA will discuss these issues below.

A. Recommendations Related to the COVID-19 Emergency.

In light of the significant long-term economic crisis created by the COVID-19 Pandemic, OCA witness Colton proposed an Emergency COVID-19 Relief Plan (ERP) to provide financial and collections relief to residential customers, in particular those low-wage customers that may not have access to other forms of assistance. OCA St. 5 at 27, Sch. RDC-1. The ERP proposal includes a forward-looking process timeline for the relief plan to conclude on December 31, 2021. OCA St. 5 at Sch. RDC-1, ¶ 4. The timeline also provides that the parties to the proceeding would meet thirty days prior to the termination date to discuss a possible further extension of benefits. OCA St. 5 at Sch. RDC-1, ¶ 4. The ERP also includes cost recovery through a deferral mechanism so as to not increase current rates until the full extent of the pandemic and its economic consequences are known. OCA St. 5 at 27, Sch. RDC-1, ¶ 4. The Company has already proposed a relief program for small business customers, and the OCA submits that a relief plan should also be implemented for residential customers. OCA St. 5 at 27.

The details for the Emergency COVID-19 Relief Plan are specifically laid out in Mr. Colton's Schedule RDC-1. Customers would be eligible if they met the following criteria:

i. Any residential customer meeting the following qualifications will be eligible for the program: (i)The customer is a current customer in arrears; and (ii)The customer is not participating or eligible for CAP; and (iii)The customer provides the following:

1. proof of unemployment benefits filed/received for one or more household members on March 13, 2020; or

2. proof the customer, or a member of the customer's household, is eligible for, or has received, the first federal COVID-19 relief check in the amount of $1,200.

OCA St. 5 at Sch. RDC-1, ¶ 1(c).

The Emergency COVID-Relief Plan would provide to eligible customers the following benefits:

b. Residential customer ERP benefits shall include:

   i. Upon enrollment, suspension of collection efforts for any amounts due for service beginning as of the March 2020 billing cycle and continuing through the duration of the shutoff restrictions adopted pursuant to paragraph 1; and

   ii. Upon enrollment, a customer shall be entitled to a one-time credit (up to $400) in an amount equal to 25% of the customer's applicable balance as of the ERP Enrollment Termination Date (defined below).

   iii. All ERP customers will be screened for CAP and MEAF eligibility, and those who may be eligible will be encouraged to apply for the most appropriate program to address their needs.

   iv. For customers determined to be ineligible for CAP, any remaining current applicable balance shall be subject to a long-term deferred payment arrangement (including the suspended amount). For purposes of establishing a deferred payment arrangement for applicable balances, the Company shall offer payment arrangement terms consistent with section 1405(b) or 24 months, whichever is longer, unless a shorter arrangement is affirmatively agreed to by the consumer. Longer payment arrangements may be offered to ERP participants at the discretion of the Company.

OCA St. 5 at Sch. RDC-1, ¶ 2(b).

The ERP program is designed to extend beyond low-income customers. The economic crisis is not limited to low-income customers, and the OCA submits that a broader-reaching program is needed. OCA witness Colton recommended consideration of the self-sufficiency standard for a COVID-19 Relief Plan. Mr. Colton testified:

> It is not uncommon to consider the difference between households who are considered "poor" as per the PUC definition, and households who are insufficiently poor to be income-qualified for PECO Gas universal service programs, but who have insufficient resources to meet their day-to-day obligations (e.g., utility bill payments) during the pandemic.

OCA St. 5 at 28. The ERP proposal would provide much-needed economic relief to customers that have demonstrated an impact from the COVID-19 Pandemic and are otherwise having challenges paying their arrearages but do not have access to other resources. See also OCA M.B., Section III.

The Commission has the broad legal authority to order the ERP proposal to provide collection relief and assistance to residential customers during this COVID-19 Pandemic. The OCA notes that PECO has proposed a similar program for small business customers. OCA St. 5 at 28. The Commission has broad authority to address a utility's customer service and quality of service under Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. Section 1504 of the Public Utility Code provides:

> The commission may, after reasonable notice and hearing, upon its own motion or upon complaint:
>
> (1) Prescribe as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations and practices to be furnished, imposed, observed and followed by any or all public utilities.

66 Pa. C.S. § 1504. In the context of a base rate case, evaluation of the "efficiency, effectiveness, and adequacy of service" by the Commission is affirmatively required. 66 Pa. C.S. § 523(a).

Further, in its consideration whether to maintain existing rates or as a condition of any rate increase, the Commission has authority to order improvements to service. Pa. P.U.C. v. Pennsylvania Gas & Water Co., Docket No. R-850178, 74 PUR4th 238, 244-45 (1986) (PG&W 1986); 66 Pa. C.S. § 1501 (every public utility shall make all changes and improvements to service as shall be necessary to make such service adequate, efficient, safe and reasonable).

In Rebuttal Testimony, PECO witness Colarelli testified that a COVID-19 relief plan is not necessary because "any residential customer that identifies a financial difficulty is provided with information about PECO's universal service programs." PECO St. 5-R at 10. The OCA submits that this proposal is not sufficient to address the financial problems of either confirmed low-income customers, the near-poor customers or low-wage earners. As the OCA identified in Direct Testimony, PECO significantly under-enrolls its confirmed low-income customer population in CAP. OCA St. 5 at 34. PECO has only enrolled 25.8% of its confirmed low-income customer population in CAP, meaning that 74.2% of confirmed low-income customers are not enrolled in program. OCA St. 5-SR at 13. The OCA submits that information alone is not sufficient to address the economic impact on low-income customers.

The OCA submits that Company witness Colarelli also assumes that only a low-income residential customer will have financial difficulties and need assistance. Ms. Colarelli misses the point of Mr. Colton's testimony. As discussed in OCA witness Colton's testimony, low-wage and near-poor customers also need assistance that the Company is not currently providing through its universal service programs. OCA witness Colton testified:

> Providing information about PECO's universal service programs, however, does not address the needs of PECO's customers. As my Direct Testimony documents, and witness Colarelli does not dispute, the economic crisis created by COVID-19 extends to low-wage customers, not merely low-income customers. The households facing an economic emergency not only may have, but are likely to have incomes that exceed those incomes which would qualify them for the PECO

> Gas universal service programs. The need for emergency assistance extends beyond households with income up to 150% of Poverty Level. While my recommended emergency relief program addresses that need, neither PECO's existing, nor PECO's proposed, COVID-19 responses do so.

OCA St. 5-SR at 11.

PECO witness Colarelli also testified that the Company is providing a sufficient response because PECO is providing a $50 credit to CAP customers. PECO St. 5-R at 10. While the OCA supports the Company's proposal to provide assistance to PECO's CAP customers, the response does not address the financial issues experienced by PECO's near-poor and low-wage customers who do not qualify for CAP. The proposal also does not provide assistance to the 74.2% of PECO's low-income customers that are not enrolled in CAP. As OCA witness Colton testified:

> Limiting emergency assistance to additional financial benefits for CAP participants is an insufficient response to the COVID-19 pandemic. As I document in my Direct Testimony, PECO Gas enrolls only a fraction of its estimated low-income population into its CAP. Witness Colarelli acknowledges that the Company's CAP population is only 25.8% of its estimated low-income population. (PECO Gas St. 10-R, at 6). The PECO Gas proposal, in other words, excludes not only 100% of its customers who exceed the CAP income-eligibility, but also excludes more than 3-of-4 (74.2%) of its income-eligible population.

OCA St. 5-SR at 11.

Finally, PECO witness Colarelli testified that the Company's proposal to offer customers a 24-month payment arrangement is a sufficient response to COVID-19 for all other residential customers. PECO St. 5-R at 10. The OCA submits that the proposed maximum 24-month payment arrangement is neither sufficient nor consistent with Chapter 14.[145] As OCA witness Colton testified:

> First, the PECO proposal allows the utility to establish a payment agreement of less than 24-months. The 24-month figure, according

[145] See, 66 Pa. C.S. § 1405(b).

> to witness Colarelli's own testimony, is merely a maximum; an arrangement of 12-months or 18-months (or some other term of less than 24-months), in other words, is in compliance with the PECO Gas proposal to offer payment arrangements of "up to" 24-months. In contrast, my recommended emergency relief provides for a payment arrangement in compliance with PUC regulations or 24-months *whichever is longer*.

OCA St. 5-SR at 12 (emphasis in original).

The OCA submits that the PECO's COVID-19 relief proposal is also not consistent with Section 1405(b) of the Public Utility Code.[146] As OCA witness Colton testified:

> Section 1405(b) of Pennsylvania's statutes, for example, provides that utilities shall offer payment arrangements of not to exceed "Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level." The existing statute, in other words, provides a longer period for payment arrangements than allowed by the PECO Gas COVID-19 emergency relief proposal.

OCA St. 5-SR at 12. Ratepayers should already be eligible for a longer payment arrangement than PECO proposes to offer to customers as part of COVID-19 relief assistance.

PECO's proposed COVID-19 assistance does not recognize the need for assistance for low-wage and near-poor customers. The ERP is designed to extend beyond low-income customers that qualify for PECO's universal service programs. The OCA's proposed COVID-19 Emergency Relief Plan would provide assistance to those near-poor, low-wage, low-income non-CAP residential customers that are struggling due to the public health and economic crisis. The proposal provides important and needed relief for residential customers. The ERP also sets forth a plan for cost recovery for the Company so the Plan can be implemented without the need for a rate increase for the Company. For the reasons set forth in OCA witness Colton's testimony, the OCA submits that OCA witness Colton's COVID-19 Emergency Relief Plan should be approved.

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146 Id.

B. Universal Service Programs.

In Rebuttal Testimony, OCA witness Colton addressed three of CAUSE-PA witness Miller's recommendations: (1) to increase the PECO Gas energy burdens for its Customer Assistance Program (CAP) as a part of this proceeding; (2) to implement an in-CAP arrearage forgiveness program; and (3) to increase CAP enrollment by 50%. CAUSE-PA St. 1 at 28-33, 40; OCA St. 5-R at 2-15.

1. Energy Burdens.

CAUSE-PA witness Miller proposed to lower the energy burdens for PECO Gas CAP customers in this proceeding to the energy burdens identified in the Commission's Final CAP Policy Statement Order.[147] See CAUSE-PA St. 1 at 27-31. Mr. Miller's proposal would be to lower the PECO gas energy burdens to 4% for customers at 0-50% of the Federal Poverty Level (FPL) and 6% for customers from 51-150% of the FPL as a part of this base rate proceeding.[148] OCA witness Colton testified that the energy burdens for PECO's gas CAP program should not be changed as a part of this base rate proceeding because the matter is already pending in two other proceedings before the Commission. Moreover, Mr. Colton testified that the Final CAP Policy Statement Order specifically identified that the changes should be made as a part of the Company's Universal Service and Energy Conservation Plan (USECP) filing. OCA St. 5-R at 3-9. PECO witness Colarelli similarly testified that the issue of energy burdens is already pending in other proceedings. PECO St. 10-R (Revised) at 9.

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[147] See also, 2019 Amendments to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-69.267, Docket No. M-2019-3012599, Order at 9-32 (Nov. 5, 2019) (Final CAP Policy Statement Order).

[148] See, 52 Pa. Code § 69.265(2)(i)(A).

The Commission's Final CAP Policy Statement Order anticipated that the utilities would address the energy burdens in their USECPs, and not in a base rate proceeding.[149] In the Commission's OCA Reconsideration Order, the Commission specifically provided:

> We remind stakeholders that the maximum energy burden percentages in the Annex to the November 5 Order are recommendations, not iron-clad limits on what a utility can charge a CAP household. Issues related to a specific utility's energy burdens are still subject to scrutiny in that utility's USCEP proceedings.[150]

The OCA submits that the purpose of a review in the Company's USECP is so the entire plan can be reviewed as a whole with consideration of all interrelated provisions of the Final CAP Policy Statement.

The Commission agreed in the Columbia base rate proceeding that the energy burdens should not be changed as a part of the base rate proceeding, but instead should be evaluated as a part of the Company's Universal Service and Energy Conservation Plan proceeding.[151] In the Columbia base rate proceeding, the Commission provided:

> Based on our review of the record and the applicable law, we find that issues related to Columbia's energy burden levels are more properly considered in the context of the Company's next USECP filing. We agree with Columbia and the OCA that the energy burdens of customers on PIP Plans should not be considered separately from other parts of the Company's CAP and universal service programs but should be considered as part of the Company's entire universal service plan, including the need for changes and associated costs. As the OCA's witness Mr. Colton aptly testified, an evaluation of whether additional cost controls, such as minimum payment terms, consumption limits, high usage treatments, and maximum CAP credits, should also be evaluated within a USECP proceeding. OCA St. 5 at 20. Our determination on this issue is consistent with our prior statements in the *February 2020*

[149] Final CAP Policy Statement Order at 2.

[150] 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-69.267, Docket No. M-2019-3012599, Order at 10-11 (Feb. 6, 2020) (Feb. 6, 2020) (OCA Reconsideration Order).

[151] Columbia Gas at 160-161.

> *Reconsideration Order* that issues related to a specific utility's energy burdens will be subject to strict scrutiny in that utility's USECP proceeding. *February 2020 Reconsideration Order* at 10-11.[152]

Moreover, the Commission is already considering the PECO gas energy burdens as a part of two other on-going proceedings. OCA witness Colton explained:

> there are two proceedings now pending before the Commission that directly present the question of when, if at all, PECO should implement the revised energy burdens recommended in the PUC's Revised CAP Policy Statement.
>
> - First, there is a specific, separate, pending proceeding, initiated as a complaint proceeding by the Tenant Union Representative Network (TURN) in which TURN sought a retroactive reduction of both the electricity and the natural gas home energy burdens used in the PECO Energy CAP. (TURN v. PECO Energy, Docket C-2020-3021557). CAUSE-PA, on whose behalf Mr. Miller is testifying in this rate proceeding, has intervened in that complaint case.
>
> - In addition, PECO has filed a revised Universal Service and Energy Conservation Plan (USECP) with the Commission. The PECO USECP has been docketed for review by the Commission. (Docket M-2018-3005795). In its proposed revised USECP, PECO states that "Beginning no later than 8 months after Commission approval of the Company's 2019-2024 USECP, PECO will implement its CAP PIPP program." (Proposed Revised USECP, at 3). PECO has proposed to incorporate the revised home energy burdens in that "CAP PIPP program."

OCA St. 5-R at 4.

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152 Columbia Gas at 161.

If the issue were to be addressed as a part of this base rate proceeding as well as the two pending Commission proceedings, it would create the potential for three inconsistent implementation dates and decisions regarding the energy burden changes. Mr. Colton explained the conflict that would be created:

> To incorporate Mr. Miller's recommendation in this proceeding would thus create the potential for three inconsistent implementation dates, resulting from three different proceedings all now pending before the proceeding: (1) retroactive to November 2019 (as requested by TURN in Docket C-2020-3021557); (2) "no later than eight months after Commission approval of the Company's 2019-2024 USECP" (as proposed by PECO in Docket No. M-2018-3005795); or (3) the effective date of rates determined in this proceeding.
>
> Without deciding for purposes here which date is most appropriate, it is nonetheless possible to reach two reasonable conclusions: (1) had the Commission contemplated implementation of the revised energy burdens in a base rate case, it would have said so in its Final Order setting forth the Revised CAP Policy Statement. After all, when the PUC contemplated inserting aspects of the Revised CAP Policy Statement into base rate proceedings, it explicitly said so (e.g., Final Order, at 7 ["Utilities should be prepared to address recovery of CAP costs (and other universal service costs) from any ratepayer classes in their individual rate case filing."]); and (2) the most appropriate date should not be established due to the exigencies of which case happens to be decided first. The implementation date of the revised energy burdens should not be subject to a race-to-the-finish for a final order in one of the three competing now-pending proceedings involving PECO.

OCA St. 5-R at 6.

The OCA submits that Mr. Miller's proposal also does not take into consideration that PECO's CAP program serves both natural gas customers and electric customers, but this base rate proceeding would only address PECO's natural gas customers. OCA witness Colton testified:

> Indeed, while PECO provides only electric service within the City of Philadelphia, it has customers who take both electricity and natural gas in the Philadelphia suburbs. It is thus not clear how Mr. Miller would have PECO implement his recommendation to

> PECO's combination electric and natural gas CAP customers. Given that this is only a natural gas proceeding, the PUC would not have the ability to direct PECO to implement both the revised electric CAP burdens and the revised natural gas CAP burdens in this proceeding. As a result, those PECO CAP customers who take both electricity and natural gas service from the Company would receive service for gas under the revised burdens, but service for electricity under the existing burdens. The potential for customer confusion would be high.

OCA St. 5-R at. Consideration of the energy burdens as a part of the pending Universal Service and Energy Conservation Plan proceeding would allow the Commission to evaluate the energy burdens for both PECO gas and PECO electric.

Finally, the energy burdens are only one component of the CAP program, and as the Columbia Gas decision correctly noted, the CAP Policy Statement does not consider the energy burdens in a vacuum.[153] CAUSE-PA witness Miller's proposal to change the energy burdens in this proceeding does not take into consideration the potential impacts to other elements of the USECP. The need for additional cost controls, such as changes to the minimum payments or maximum cap credits, must be evaluated as a part of the USECP.[154] For this reason, the OCA Reconsideration Order specifically provided that proposed changes to the energy burdens should be filed as a part of the Company's amendments to its Universal Service and Energy Conservation Plan.[155]

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[153] Columbia Gas at 161.

[154] The cost of the proposed energy burden changes must be considered together with cost control measures and the total cost impact of the Plan on non-CAP residential customers. In particular, the provision of assistance to CAP participants must be balanced against the obligations of income eligible non-participants, as well as the obligation of the near-poor, to pay the costs of such assistance.

[155] OCA Reconsideration Order at 10-11; Final CAP Policy Statement Order at 2.

The OCA Reconsideration Order provided that changes to the energy burdens should be considered as a part of the utility-specific USECP.[156] For PECO, there are currently two on-going proceedings that will review the energy burdens as a part of the Universal Service and Energy Conservation Plan. In the on-going Universal Service and Energy Conservation Plan proceeding, the Commission will be able to evaluate the energy burdens for both PECO Electric and PECO Gas. The OCA submits that the Commission should not approve the proposed changes to the energy burdens in this proceeding. Any proposed changes to the energy burdens should be evaluated along with any necessary cost control measures as a part of PECO's Universal Service and Energy Conservation Plan.

2. In-CAP Arrearage Forgiveness Program.

CAUSE-PA witness Miller recommended "rolling debts accrued through the pandemic into pre-program arrearages." CAUSE-PA St. 1 at 40. As support for his recommendation, Mr. Miller argued that "PECO's current CAP is not providing affordable bills, and the pandemic has exacerbated the economic struggle for low-income households across the board." CAUSE-PA St. 1 at 40. As OCA witness Colton described, the proposal is limited to customers who participated in CAP throughout the pandemic. OCA St. 5-R at 10. Mr. Colton recommended that CAUSE-PA witness Miller's proposal be deferred to PECO's currently pending USECP proceeding. OCA witness Colton reasoned that the proposal would create a substantive change to the CAP program and should be considered along with all other changes recommended for PECO's CAP in the USECP proceeding. OCA St. 5-R at 11.

Moreover, OCA witness Colton testified that consideration of the proposal as a part of the USECP proceeding would allow CAUSE-PA witness Miller to present additional important

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[156] OCA Reconsideration Order at 10-11.

programmatic and operational details that were not otherwise included in his Direct Testimony. OCA St. 5-R at 11-12. In Rebuttal Testimony, OCA witness Colton identified examples of the lacking programmatic details which make it impossible to know precisely what the full recommendation is. OCA St. 5-R at 12. Mr. Colton identified some of the missing programmatic details:

> - What is the start and end date of the in-CAP arrears that would be subject to in-CAP forgiveness?
>
> - Would in-program arrears that had been incurred prior to the beginning of the pandemic (and thus not possibly be related to the pandemic) be subject to his proposal?
>
> - Given that Mr. Miller's recommendation applies only to "debts accrued through the pandemic" because "the pandemic has exacerbated the economic struggle for low-income households," would a CAP participant need to demonstrate or document a pandemic-induced economic harm in order to qualify for the recommended in-program arrears?

OCA St. 5-R at 12.

OCA witness Colton also identified important operational details that were not included in Mr. Miller's Direct Testimony:

> - When Mr. Miller recommends that in-CAP arrears be "rolled into" pre-program arrearage forgiveness, is he recommending that: (1) the in-program arrears be forgiven over however many months remain for pre-program forgiveness, or (2) is he recommending that a new arrearage forgiveness period begin for all arrears subject to forgiveness; or (3) is he recommending that two separate period of forgiveness be tracked by PECO Gas, one for pre-program arrears and the other for in-CAP arrears;
>
> - Given that CAP programs, including PECO's CAP, require minimum payments irrespective of income, would in-CAP arrearage forgiveness apply only to arrears that exceed the minimum payment required in PECO's CAP?

OCA St. 5-R at 12.

In Surrebuttal Testimony, CAUSE-PA witness Miller suggested that these identified issues could be addressed in a stakeholder process, but the OCA submits that a more complete proposal is necessary to evaluate the need for the proposal. CAUSE-PA St. 1-SR at 16. As OCA witness Colton expressed in his Rebuttal Testimony, however, without the programmatic and operational details, Mr. Colton was not able to make an appropriate response to the proposal. OCA witness Colton testified:

> In this proceeding, since Mr. Miller has not made recommendations, I take no position on what the appropriate responses to any of the questions presented above might be. I offer the observations above for two reasons. First, Mr. Miller has not presented a complete proposal on which a decision can be made in this proceeding. Second, to consider a complete proposal would involve both policy and operational decisions that are best presented in, and considered in, a review of a PECO USECP. Given that (as I discuss above) PECO now has pending a proposed revised USECP, any recommendation for a modification in CAP along the lines of that which Mr. Miller proposes should be presented in that review.

OCA St. 5-R at 13.

The OCA submits that Mr. Miller's proposed in-program arrearage forgiveness program should not be approved as a part of this base rate proceeding. As OCA witness Colton recommended, the proposal for an in-program arrearage forgiveness program should be evaluated in the context of PECO's on-going USECP proceeding.

3. Increasing CAP Enrollment by 50%.

CAUSE-PA witness Miller recommended that PECO be required to benchmark its CAP enrollment and increase CAP enrollment by 50% by 2025. CAUSE-PA St. 1 at 33. Mr. Miller, however, did not include a specific proposal regarding how to achieve the objective either in his Direct or Surrebuttal Testimony. CAUSE-PA witness Miller proposed instead that "[r]ather than [prescribe] the specific methods for improved enrollment through this proceeding, the Commission

should require PECO to work with its stakeholders to identify the most workable solutions to achieve measurable improvements in CAP enrollment." CAUSE-PA St. 1 at 33. In his Direct and Rebuttal Testimonies, OCA witness Colton agreed with Mr. Miller that PECO's CAP is under-enrolled, but Mr. Colton's testimony on that issue was instead directed towards Mr. Colton's concerns about the financial impact of the proposed increase to the customer charge on low-income customers. OCA St. 5 at 34; OCA St. 5-R at 15, Exh. RDC-1R. While the OCA agrees that PECO should improve its CAP enrollment, the OCA submits that issues related to PECO's CAP enrollment should be addressed as a part of the Company's Consumer Education and Outreach Plan that is part of its pending Universal Service and Energy Conservation Plan.

In Rebuttal Testimony, OCA witness Colton noted that Mr. Miller's CAP enrollment recommendation closely resembles the language in the Commission's Final CAP Policy Statement Order and recommended that the details of Mr. Miller's proposal be set forth as part of PECO's pending USECP proceeding. OCA St. 5-R at 14.[157] The Final CAP Policy Statement Order provided:

> While there is no specific regulatory mandate that each utility must enroll a certain percentage of low-income households in CAP, the near uniform disparity between the total number of potential income-qualified households and those actually receiving assistance calls into question the overall adequacy of consumer education and outreach. Consumer Education and Outreach Plans are paramount to customer awareness of, and enrollment in, universal service programs. Therefore, we are expanding the current CAP Policy Statement in order to provide more guidance on this central matter.[158]

Similar to Mr. Miller's recommendation in this proceeding, the Final CAP Policy Statement Order directed utilities to develop an enhanced Consumer Education and Outreach Plan

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157 See, Final CAP Policy Statement Order at 78.

158 Id.

with input from stakeholders and submit the Plans as addendums to existing Universal Service Plans and their USECP filings going-forward.[159] The Final CAP Policy Statement Order provided:

> While utilities have flexibility as to the contents of their plans, the plans should reflect focused consumer education and outreach efforts, tailored to the demographics of their individual service territories, spanning the duration of the universal service plan period. In particular, these plans should identify efforts to educate and enroll eligible and interested customers at or below 50% of the FPIG. The Consumer Education and Outreach Plans will be reviewed by BCS and by the Commission's Office of Communications.[160]

The OCA submits that the Final CAP Policy Statement Order provides for each utility to include an education and outreach plan in its USECP to increase CAP enrollment. The Final CAP Policy Statement Order also provides that there should be a stakeholder process to review those Consumer Education and Outreach Plans. As OCA witness Colton testified, "it would appear that this now-pending review of PECO's USECP is precisely the appropriate place to address the problems identified by Mr. Miller and the "under-enrollment" identified in my Direct Testimony." OCA St. 5-R at 15. The OCA submits that CAUSE-PA witness Miller's recommendation to increase CAP enrollment by 50% by 2025 should be addressed as a part of PECO's pending Universal Service and Energy Conservation Plan.

C. Neighborhood Gas Pilot Rider.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

D. Energy Efficiency and Conservation Programs.

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159 Id. at 78-79.

160 Id. at 79 (footnotes omitted).

The Company is seeking approval to expand its existing EE&C programs, which, if approved, will more than double its existing EE&C budget for its residential programs from $2.008 million to $4.5 million per annum. While EE&C programs serve an important purpose, the Company has failed to demonstrate that the proposed expansion is just and reasonable and in the public interest. More specifically, the evidence demonstrates that the Company failed to fully expend its existing budget since their inception and the Total Resource Cost (TRC) test demonstrates that PECO's proposed expansion is not cost-effective at worst and marginally cost-effective at best. Thus, the Company has failed to support its request in this proceeding.

Therefore, the OCA recommends that the Commission (1) deny the Company's proposed increase to its voluntary natural gas EE&C portfolio, (2) re-allocate its existing budget consistent with the recommendation of OCA witness Geoffrey Crandall, (3) require the Company to perform and provide Evaluation, Measurement, and Verification (EMV) studies of its EE&C programs, and (4) require the Company, consistent with its residential program reconciliation mechanism, to track unspent funds for its commercial EE&C programs and propose a plan to return those amounts to commercial customers in the Company's next base rate proceeding. See OCA St. 6 at 29-38.

1. The Company's Proposal.

PECO's natural gas EE&C programs were established as a result of settlements reached in their 2008 and 2010 general base rate proceedings at Docket No. R-2008-2028394 and R-2010-2161592, respectively.[161] As a result, the Company currently operates its residential EE&C programs with a budget of approximately $2.008 million.[162] In addition, its existing programs

[161] See Pa. PUC v. PECO Energy Company, Docket No. R-2008-2028394, Joint Petition for Settlement of Rate Investigation at 9 (Aug. 21, 2008) (PECO Gas 2008); see also PECO Gas 2010, 2010 Settlement at 5.

[162] PECO Gas 2010, 2010 Settlement at 5.

has a refund mechanism that provides customers a bill credit to the Universal Service Fund Charge (USFC) for any unspent funds.[163]

As discussed in the Direct Testimony of Company witness Doreen L. Masalta, the Company currently offers its residential customers a mix of rebate programs to encourage them to upgrade to high-efficiency furnaces, boilers and water heaters. PECO St. 9 at 3. Similarly, the Company currently offers its commercial customers a mix of rebate programs that cost approximately $28,000 to operate over and above the Company's current residential program budget of $2.008 million. OCA St. 6, Sch. GCC-3 and GCC-4. Altogether, the Company offers the following rebate programs:

Existing Residential and Commercial Programs	Rebate
Residential Gas High-Efficiency Furnace Rebate	$300
Residential Gas High-Efficiency Boiler Rebate	$300
Residential Gas High-Efficiency Water Heater Rebate	$50
Commercial Gas High-Efficiency Furnace Program	$300
Commercial Gas High-Efficiency Boiler Rebate	$300

See PECO St. 9 at 3-4.

The Company requests approval in this case to expand its residential natural gas EE&C programs and seeks funding for a pilot program to support the growth of emerging technologies, but is not requesting to change or expand its commercial programs. PECO St. 9 at 6. Thus, the Company is seeking approval to implement the following natural gas EE&C portfolio:

Proposed Residential and Commercial Programs	Rebate
Residential Gas High-Efficiency Furnace Rebate	$300
Residential ENERGY STAR®+ Furnace Rebate*	$500
Residential Gas High-Efficiency Boiler Rebate	$300
Residential Gas High-Efficiency Water Heater Rebate**	$100
Residential Gas Heating Smart Thermostat Rebate*	$50
Residential Gas Water Heating Rebates (aerators and showerheads)*	Various
Low-Income Safe and Efficient Heating Program (including CSP Admin)*	N/A
Residential Emerging Technologies Pilot*	N/A

163 Id.

Commercial Gas High-Efficiency Furnace Program	$300
Commercial Gas High-Efficiency Boiler Rebate	$300

* New Program
** Increased Rebate for Existing Program

See PECO St. 9 at 6-9.

The Company proposes a budget of $4.5 million to operate the residential programs. PECO St. 9 at 9. The proposed budget breakdown of the $4.5 million across its residential programs would be as follows:

Proposed Residential Programs	**Estimated Funding (Dollars)**
Residential Gas High-Efficiency Furnace Rebate	$1,507,000
Residential ENERGY STAR®+ Furnace Rebate*	$250,000
Residential Gas High-Efficiency Boiler Rebate	$150,000
Residential Gas High-Efficiency Water Heater Rebate**	$25,000
Residential Gas Heating Smart Thermostat Rebate*	$332,500
Residential Gas Water Heating Rebates (aerators and showerheads)*	$65,000
Low-Income Safe and Efficient Heating Program (including CSP Admin)*	$1,000,000
Residential Emerging Technologies Pilot*	$125,000
Education, PECO Admin, CSP Admin	$1,045,000
Total	$4,500,000

PECO St. 9 at 9.[164] PECO continues to propose a reconciliation mechanism if the Company spends less than budgeted for the residential programs. PECO St. 9 at 10. As stated by Company witness Masalta:

> PECO is proposing to recover $4.5 million through residential gas distribution base rates. If less than $4.5 million is spent, the difference would be credited to the following year's USFC, as is currently PECO's practice. PECO Exhibit JAB-2 shows the proposed changes to the USFC to incorporate the $4.5 million annual spending amount.

Id.

[164] Please note that the proposed budget of $4.5 million does not include the cost to operate the commercial programs, which would amount to approximately $28,000 and is included within the Company's Marketing Department budget. OCA St. 1, Sch. GCC-3 and GCC-4.

As support for its proposal, the Company provided a total resource cost (TRC) analysis of the expanded residential programs performed by Guidehouse (formerly Navigant Consulting, Inc.).[165] PECO St. 9 at 10. Based on this analysis, Company witness Masalta indicated that its proposed portfolio had a TRC value of 2.9.[166] PECO St. 9 at 10.

2. Legal Standard.

Unlike EE&C Programs for Electric Distribution Companies (EDCs), the Pennsylvania legislature has not mandated EE&C plans for Natural Gas Distribution Companies (NGDCs).[167] The Commission, however, has acknowledged that it has jurisdiction to consider such natural gas EE&C plans and the absence of statutory requirements does not mean that a lesser standard or burden should apply to NGDCs.[168] As stated by the Commission:

> While the Legislature mandated EE&C plans only for larger electric distribution companies, we agree with the sentiment expressed in the ALJs' decision and believe that we must look to the framework established by Act 129 when evaluating gas utilities' proposed EE&C plans. That is not to say, however, that Act 129 should be applied wholesale to EE&C programs proposed by gas utilities. The Commission faced a similar issue when examining whether

165 A Total Resource Cost test evaluates the cost effectiveness of EE&C portfolios. See OCA St. 6 at 11. As stated by the Commission:

> The purpose of using a TRC test to evaluate EE&C programs is to track the relationship between the benefits to customers and the costs incurred to obtain those benefits. Sections 2806.1(c)(3) and 2806.1(d)(2), as well as the definition of the TRC test in Section 2806.1(m) of Act 129, provide that a TRC test be used to determine whether ratepayers, as a whole, received more benefits (in reduced capacity, energy, transmission, and distribution costs) than the implementation costs of the EE&C plans.

Petition of Philadelphia Gas Works for Approval of Demand-Side Management Plan for FY 2016-2020, and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, 52 Pa. Code § 62.4 – Request for Waivers, Docket No. P-2014-2459362, 2016 Pa. PUC LEXIS 88 at *38-39 (Pa. PUC Mar. 8 2016) (PGW Demand-Side Management Plan)

166 As discussed in more detail below, this TRC value of 2.9 was premised upon errors and omissions contained in the Company's initial analysis. Upon updating for these deficiencies, the Company's TRC analysis demonstrated a TRC value of 1.02 for the entire proposed residential and commercial EE&C portfolio. See PECO St. 9-E at 3.

167 See Pa. Pub. Util. Comm'n v. UGI Central Penn Gas, Inc., Docket No. R-2010-2214415, 2011 Pa. PUC LEXIS 1391 at *25 (Pa. PUC Aug. 19, 2011) (UGI CPG 2010).

168 Id., at *25-26; see also 66 Pa. C.S. § 1319(a).

> Pennsylvania's smaller EDCs, which were exempted from Act 129, should be encouraged to file voluntary EE&C programs. At that time, the Commission stated:
>
> > [W]e recognize that the Act 129 program contains a complexity and comprehensiveness that may not be appropriate for small EDCs, due to the costs of such programs that must be supported by a smaller customer base. Nevertheless, in evaluating each voluntary EE&C plan, the Commission will be looking to the Act 129 program and applying elements of that program where it is prudent and cost-effective.
>
> We believe that the same standard should be applied to voluntary EE&C plans proposed by gas utilities.[169]

Thus, the Commission looks to the framework established by Act 129. That is, application of the TRC test and some demonstration that the proposed programs will be cost-effective, as stated by the Commission:

> The Total Resource Cost Test, as defined in Act 129 and applied by the Commission pursuant to order at Docket No. M-2009-2108601, is applicable to all voluntary EE&C plans as the single standard by which to determine whether a proposed EE&C plan is cost-effective.[170]

Accordingly, this is the framework that should govern the evaluation of the Company's proposal in this proceeding.

3. The Company has Not Demonstrated that its Proposal is Needed or Cost Effective.

After review and investigation of the Company's proposal, OCA witness Crandall concluded that the Company has not sufficiently supported its proposal. OCA witness Crandall testified that the Company's analysis was deficient in the following ways: (1) that it could not

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169 UGI CPG 2010, 2011 Pa. PUC LEXIS 1391 at *25-26. (citations omitted).

170 Petition of UGI Utilities, Inc. Electric Division for Approval of its Energy Efficiency and Conservation Plan, Docket No. M-2010-2210316, 2011 Pa. PUC LEXIS 1690 at *95 (Rec. Dec. Jul. 13, 2011), aff'd 2011 Pa. PUC LEXIS 241 (Pa. PUC Oct. 19, 2011).

provide EMV studies on its existing EE&C programs implemented between 2010 and 2020, which impeded Mr. Crandall's review of these programs, (2) that the Company's proposal was not cost-effective under an appropriate TRC analysis, and (3) that the Company has failed to fully expend its existing residential and commercial EE&C budgets for the the past ten years. Thus, Mr. Crandall testified that the proposal should not be adopted by this Commission.

As stated above, with respect to the Company's existing EE&C natural gas programs, OCA witness Crandall noted that the Company did not perform EMV studies on its existing natural gas EE&C programs, which impeded the OCA's ability to conduct a thorough review of PECO's programs implemented between 2010 and 2020. OCA St. 6 at 3. Accordingly, OCA witness Crandall recommended that the Company conduct EMV studies in the future and provide these studies to the parties in the next base rate proceeding, to which the Company agreed. OCA St. 6 at 37-38; see also PECO St. 9-R at 9-10.

Moreover, when investigating the TRC analysis provided by the Company in support of its proposed EE&C portfolio, OCA witness Crandall noted that while it appeared to be cost effective as a whole, it was clear that when each proposed program was measured separately, a large portion of the programs were not cost effective. See OCA St. 6 at 12-13. As indicated in the table below:

PECO Proposed Programs Not Cost Effective Under TRC				
	2021	2022	2023	2024
Residential ENERGY STAR® Furnace (>= 95% AFUE)	0.67	0.69	0.72	0.75
Residential ENERGY STAR®+ Furnace (>= 97% AFUE)	0.62	0.64	0.67	0.69
Residential ENERGY STAR® Boiler (>= 90% AFUE)	0.40	0.41	0.43	0.44
Residential Storage Water Heater (0.67 EF)	0.18	0.18	0.19	0.20
Commercial ENERGY STAR® Furnace <225 kBTU/hr (>= 90% AFUE)	0.85	0.88	0.92	0.95

Source: Confidential Attachment OCA-VII-26(a), Tab "2-Measure Summary"

OCA St. 6 at 13. Rather, it was three new program additions that were responsible for a significant majority of the savings used to determine the overall TRC value, as seen in the table below:

PECO Proposed Programs That Are Cost Effective Under TRC				
	2021	2022	2023	2024
Residential Smart Thermostat	8.64	8.96	9.40	9.88
Residential Low Flow Faucet Aerator	18.20	18.59	19.01	19.44
Residential Low Flow Shower Head	15.98	16.33	16.70	17.09
Commercial ENERGY STAR® Boiler <300kBTU/hr (>= 90% AFUE)	1.53	1.58	1.64	1.70

Source: Confidential Attachment OCA-VII-26(a), Tab "2-Measure Summary"

OCA St. 6 at 14.

OCA witness Crandall then identified several errors in how Guidehouse calculated the TRC values used to determine the cost-effectiveness of PECO's proposed EE&C portfolio, one error of which would reduce the estimated savings by a substantial margin. OCA witness Crandall identified the following errors: (1) inflated smart thermostat savings (OCA St. 6 at 17-19); (2) reliance on an annual levelized cost of gas rather than the winter prices of gas for certain measures (OCA St. 21-22); (3) failure to reflect avoided transportation costs and distribution system costs incurred during system peak periods (OCA St. 6 at 22-23); and (4) failure to reflect electricity savings.

With respect to the smart thermostat savings, OCA witness Crandall testified that the related commodity cost savings were inflated and unrealistic:

> The amount of energy and dollar savings PECO attributes to smart thermostats does not seem reasonable. PECO's cost effectiveness analysis is based on each smart thermostat saving 62.00 MCF per year. In PECO's analysis, it takes less energy to heat a typical residential home for an entire year than what PECO assumed each smart thermostat would save that year. Clearly, this is an error since the smart thermostat cannot save 100% of the space heating load. In contrast, Philadelphia Gas Works estimated that smart thermostats save 8% on home heating usage.

OCA St. 6 at 17-18 (footnotes and citations omitted). Relying on an estimate provided by Philadelphia Gas Works in an unrelated proceeding, OCA witness Crandall recommended reducing the estimated smart thermostat gas savings from 62.00 Mcf per year per thermostat to 4.96 Mcf per year per thermostat.[171] OCA St. 6 at 18.

Reflecting that change substantially reduced the savings attributed to the Company's proposed smart thermostat program and PECO's entire proposed EE&C portfolio. OCA St. 6 at 19. As seen in the table below:

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171 PGW Demand-Side Management Plan, Implementation Plan Fiscal Years 2021-2023 at 23 (May 6, 2020).

Impact of Corrected Smart Thermostat Savings on TRC Benefit-Cost Ratios 2021			
Savings Per Installation	Measure	Residential Programs (Excluding Low Income)	Total PECO Portfolio (Including Low Income)
62 MCF PECO Calculation	8.64	2.65	2.02
4.96 MCF Corrected Savings	0.69	1.02	0.81

Source: Confidential Attachment OCA-VII-26(a), Tab “1-Portfolio Summary“

OCA St. 6 at 19. OCA witness Crandall noted that while it appeared based on this change that the Smart Thermostat program would not be cost-effective, if the Company included electricity savings associated with these devices, it could very well result in the program being cost-effective. OCA St. 6 at 19-20.

In response to the errors identified by OCA witness Crandall, Company witness Masalta acknowledged that the original TRC analysis provided by the Company contained some errors and omissions. Accordingly, the Company submitted a revised analysis that made the following changes:

- Reduced smart thermostat savings from 62 MCF/yr to 4.76 MCF/yr comparable with Mr. Crandall’s recommendations.
- Gas avoided costs were updated to be consistent with the values used to develop the Act 129 Phase IV Energy Efficiency and Conservation Plan at Docket No. M-2020-3020830.
- Gas avoided costs were updated within the analysis using the Statewide Evaluator Phase IV avoided cost calculator.
- Added electric avoided costs from the Company’s Act 129 Phase IV model consistent with Mr. Crandall’s recommendations.
- Added electric savings to the analysis of smart thermostats and residential and commercial furnaces consistent with Mr. Crandall’s recommendation.
- Added the commercial gas EE&C programs for a more comprehensive analysis.

PECO St. 9-R at 2-3. When accounting for the changes noted above, the Company's overall EE&C portfolio, this time including the commercial programs, dropped from 2.9 to 1.02. PECO St. 9-R at 3.

Mr. Crandall noted, however, that the Company's revised TRC analysis still contained an error that would reduce the overall cost-effectiveness of the Company's proposed EE&C portfolio from a TRC value of 1.02 to below 1. OCA St. 6-SR at 4. In essence, the Company's revised analysis included electricity savings associated with an efficient condensing furnace. OCA St. 6-SR at 4. According to the Mid-Atlantic Technical Resource Manual (TRM), efficient furnaces save no electric energy and do not reduce summer peak, unless that furnace has an electronically commutated motor (ECM) fan. OCA St. 6-SR at 5. Moreover, where an efficient furnace with an ECM is included in a TRC analysis, it must include the incremental costs associated with an ECM fan, which is $98. Id. The Company inappropriately failed to include those costs, but included the related electricity benefit. OCA St. 6-SR at 5-6. As Mr. Crandall testified, the exclusion of this incremental ECM fan cost is significant, as it reduces the cost-effectiveness of the Company's proposed EE&C portfolio from a TRC value of 1.02 to 0.95. OCA St. 6-SR at 7. Thus, the Company's proposal is not cost-effective (or marginally cost-effective without reflecting the incremental cost of the ECM fan).

In addition to the concerns noted above, OCA witness Crandall testified that the Company has underspent on both its residential and commercial EE&C programs since their inception, failing to meet the annual budgeted amount:

> In the years 2010 through 2016, PECO spent an average of $1,495,296 per year on its residential portfolio. That is 74% of the $2,008,000 that it collected annually.

> In the years 2017 through 2019, PECO spent an average of $1,101,893 per year on its residential portfolio. That is 55% of the $2,008,000 that it collected annually.
> In the years 2010 through 2016, PECO spent an average of $13,170 per year on its commercial portfolio. That is 47% of the $28,000 that it collected annually.
>
> In the 2017-2019 period, PECO's spending dropped to an average of $2,563 per year on its commercial portfolio. That is 9% of the $28,000 that it collected annually.

OCA St. 6 at 27-28.

For all of these reasons, in addition to the state of the economy during the COVID-19 Pandemic, OCA witness Crandall testified that the Company should not be granted an increase to its residential programs, but should remain at existing levels. OCA St. 6 at 28-29. As stated by OCA Witness Crandall:

> **Q. Is it reasonable to approve a budget of $4.5 million for its residential programs as proposed by PECO?**
>
> A. No. That would represent a quadrupling of actual residential energy efficiency expenditures during the time of COVID-19. It is particularly unreasonable given that in the past three years, PECO has been spending only about half of the energy efficiency budget it had collected from ratepayers to support energy efficiency programs.
>
> **Q. Do you have a proposal?**
>
> A. Yes. The Commission should limit PECO's budget for residential energy efficiency programs to $2.008 million and the budget for commercial programs to $28,000.

Id.

For these reasons, the OCA submits that the Company's proposed expansion should not be adopted. The Company has failed to demonstrate the cost-effectiveness of its proposed program and it has not shown that it should receive a more than 100% increase to its existing EE&C budget. As noted above, the evidence demonstrates that the Company has failed to expend its full budget

for its residential and commercial programs, spending on average approximately 55% per year for its residential EE&C programs for the last three years and 9% on its commercial programs for that same period of time. OCA St. 6 at 27-28. Moreover, if the Commission were to grant the Company's proposed EE&C portfolio, it would be marginally cost-effective at best and not cost-effective at worst. That is, the Company's most recent evidence demonstrates that its overall portfolio has a TRC value of 1.02 and, if including the incremental cost associated with the ECM fan, it would have a TRC value of 0.95. In other words, it would cost more to implement the program than it would save.

4. The Company Should Re-Allocate its Existing Budget Across a Mix of Programs that are More Cost-Effective.

OCA witness Crandall testified that the Company should re-allocate its existing budget amongst the programs proposed by PECO in a way that is more cost-effective and targeted. See OCA St. 6 at 30. OCA witness Crandall recommended the following EE&C Portfolio funded at the Company's existing budget:

Comparison of PECO and OCA Recommended Budgets		
Program/Portfolio	PECO 2021 and beyond Programs	OCA Recommendations
Residential Efficient Furnace	$1,507,500	$518,000
Residential Super-Efficient Furnace	$250,000	$75,000
Residential Boiler	$150,000	$0
Residential Storage Water Heater	$25,000	$ 0
Residential Smart Thermostat	$332,500	$50,000
Residential Aerators and Showerheads	$65,000	$65,000
Low Income S&EHP	$1,000,000	$1,000,000
Residential Emerging Technologies Pilot	$125,000	$0
Commercial Efficient Furnace	$12,000	$12,000
Commercial Efficient Boiler	$10,500	$10,500
Education/Admin/CSP admin	$1,050,625	$300,000
Annual Total	$4,528,125	$2,030,500

OCA St. 6 at 30.

As seen above, OCA witness Crandall recommended reducing the budgeted amounts for the Residential Efficient Furnace, Residential Super-Efficient Furnace, Residential Smart Thermostat, and Residential Aerators and Showerheads programs. Mr. Crandall explained that the furnace and smart thermostat programs were not cost-effective under PECO's TRC analysis, but some funding should continue for these programs as it will likely be cost-effective when

considering the seasonal avoided costs and considering these programs can help customers install long-lived assets, such as furnaces. OCA St. 6 at 20, 30-33.

Moreover, Mr. Crandall's proposed budget eliminates the residential boiler, storage water heater, and emerging technologies pilot programs. Mr. Crandall testified that the residential boiler and residential storage water heater programs fail the Company's TRC analysis and would likely continue to do so even taking into account the appropriate avoided costs. OCA St. 6 at 31-32. With respect to the residential emerging technologies pilot, Mr. Crandall testified that the program not be funded at this time due to the very substantive and pressing need for PECO customers to reduce and eliminate energy waste, rather than focus on experimental technologies. OCA St. 6 at 34.

OCA witness Crandall also recommended that the Company reduce its administrative costs from PECO's proposed $1,045,000 annually ($1,050,625 including the commercial programs) to $300,000 per year. In support of his recommendation, Mr. Crandall stated as follows:

> PECO proposed that this item be funded at $1,045,000 annually ($1,050,625 including the commercial programs). Given the tight economic times and the need to keep utility costs and rates down, I recommend that the budget be reduced from $1,050,625 as PECO proposed to $300,000 per year. I realize that this will require some belt-tightening, but given the economic hardship and the impact of the pandemic in Pennsylvania I believe that a 15% overhead to cover administrative, education and CSP costs for utility programs is not unreasonable and should be adopted.

OCA St. 6 at 34-35.

It should be noted that Mr. Crandall supported the Company's proposed Low-Income Safe and Efficient Heating Program, recommending that the full request of $1 million be included within his proposed portfolio. As support, Mr. Crandall testified as follows:

> Given the extreme hardship caused by the COVID pandemic, Pennsylvania's unemployment levels and the acute economic hardships being dealt with by Pennsylvania residents, there is a pressing need by PECO's low-income customers to maintain their households, cut costs and

> reduce the use of natural gas. Establishing this new program would be responsive to customers' needs and would be very beneficial. This program would increase the integrity of housing stock in Pennsylvania and would be responsive to the heightened need to mitigate economic hardships faced by PECO's residential customers.

OCA St. 6 at 33-34.

OCA witness Crandall then performed a TRC analysis of his recommended EE&C portfolio and testified as follows:

> I recommend PECO's budget be capped at the existing levels (which are nearly double the actual expenditures PECO made in recent years). The result of the lower budget is that there may be fewer participants and less savings than PECO has projected, corrected for the Smart Thermostat error. My proposal resulted in better benefit cost ratios than PECO's, even though overall savings were less. The comparison of PECO's and my proposals are summarized in Schedule GCC-6.

OCA St. 6 at 36. That is, while overall savings are less, the overall TRC values for Mr. Crandall's proposal demonstrates that it is more cost-effective, saving more for every dollar spent for these programs. See OCA St. 6, Exh. GCC-6. When correcting for the ECM issue identified above, Mr. Crandall presents a comparison of the cost-effectiveness of the two portfolios:

Comparison of Portfolio TRCs for PECO and OCA EE&C Plan Proposals		
Year	PECO Proposal	OCA Proposal
2021	0.95	1.35
2022	0.97	1.39
2023	1.01	1.42
2024	1.04	1.47

OCA St. 6-SR at 9.

Lastly, OCA witness Crandall did not contest PECO's reconciliation adjustment for its residential EE&C programs, which will return any unspent funds back to ratepayers as a credit to the USFC. Rather, Mr. Crandall requested that the Company also apply this reconciliation mechanism to its commercial EE&C program budget, so that "[i]f there are unspent funds, the procedure should ensure that those funds are credited back to commercial customers or used for the benefit of its commercial customers." OCA St. 6 at 35-36.

Accordingly, Mr. Crandall recommended that (1) the Commission adopt his recommended EE&C portfolio and maintain the Company's existing budgets amounts, (2) PECO increase its efforts to market these programs and get customers to participate, and (3) PECO return any unspent funds for its Commercial EE&C programs back to commercial customers.

In response to OCA witness Crandall and his recommendations, Company witness Masalta took issue with the OCA's recommended administrative budget of $300,000. PECO St. 9-R at 7. Company witness Masalta testified that a 15% budget spending limit for administrative purposes is unreasonable and that the Commission had capped non-incentive based spending at less than 50% of the total plan cost for its electric EE&C programs. PECO St. 9-R at 7-8. Ms. Masalta concluded "PECO believes that the outlined education and administrative costs in the proposed budget reflect the level of resources needed to administer a successful EE&C gas program." PECO St. 9-R at 7-8.

In response to Ms. Masalta's concerns, Mr. Crandall testified that the budgeted amounts for administrative costs for both proposals are similar when compared as a percentage to the overall portfolio budget. As stated by Mr. Crandall:

> The primary difference between PECO's administrative budget and mine is the CSP administrative budget as it applies to the residential (excluding low income) programs.

> In reviewing PECO's low-income budget related information, PECO proposes a CSP administrative budget for low-income programs which ends up being 13% of the low-income direct install budget. I don't disagree and also used 13% in my proposed low-income program budget. (See Schedule GCC-SR-6, my response to PECO-OCA-III-10)
>
> However, for non-low-income residential programs, PECO proposed a CSP administrative budget which ends up being 23% of the incentives budget. I propose a CSP administrative budget for non-low-income residential programs to be similar to PECO's low-income administrative budget costs. PECO is proposing a CSP administrative budget for the non-low-income programs nearly double (as a percentage of the incentives budget) that for the low-income CSP administrative budget.
>
> ***
>
> I would also note that as a percentage of the overall budget for residential and low-income programs, mine and PECO's proposal are not substantially different. PECO's administrative costs are approximately 27% of their overall residential and low-income program budget, whereas my proposed administrative costs amount to 21% of my overall residential and low-income program budget. See Sch. GCC-SR-6 at 2 and 3.

OCA St. 6-SR at 15-16. Accordingly, given the need to restrain from spending more during this difficult time for many customers, PECO should be able to continue to meet its program objectives with a slight reduction to administrative expense for its non-low-income residential programs.

The OCA submits that Commission should adopt Mr. Crandall's proposed EE&C portfolio for PECO. Adopting OCA witness Crandall's proposal would maintain existing budget levels and target programs and resources that provide greater savings per dollar spent. As demonstrated by OCA witness Crandall's most recent analysis, his proposed portfolio has an overall TRC value of 1.35 in 2021, increasing to 1.47 by 2024. OCA St. 6-SR at 9. Most importantly, the Company's existing budget would remain as is, which is critical during this significant economic crisis for many of PECO's customers. As explained by Mr. Crandall:

> Citizens and businesses in Pennsylvania and throughout the United States are coping with difficult economic conditions. As explained by OCA Witness Scott Rubin (OCA Statement 1, Page 11, lines 2-5), in 2018 Pennsylvania had a work force of approximately 6,576,000 people. Mr. Rubin further testified that since the pandemic started in Mid-March 2020, almost half of Pennsylvania's workforce has filed an unemployment claim (OCA Statement 1-SR, page 2, lines 14-28). These are trying economic times given the worldwide pandemic and the unemployment levels. They result in ratepayers facing food insecurity, eviction or foreclosure threats, which are principal targets of Covid relief proposals. In addition to jobs lost, household income is also stressed by reduced work hours and increased medical and health insurance costs. Each of these factors reduce discretionary household income. In this time of economic and public health crisis, unnecessarily increasing costs to ratepayers, further reducing discretionary income, is inappropriate. PECO's proposal to double its approved budgets, which would quadruple its actual expenditures on EE&C programs in recent years, is not appropriate during these economic hard times.

OCA St. 6-SR 12.

5. Conclusion.

For these reasons set forth above, the OCA submits that the Commission should adopt the proposal of OCA witness Crandall and deny the Company's proposed increase to its natural gas EE&C programs. Adoption of this adjustment would reduce the Company's claimed expense by $2.492 million. See OCA. St. 2 at 41; see also OCA St. 2, Sch. LKM-26.

In addition, the Company's existing budget should be re-allocated consistent with the proposal of OCA witness Crandall. See OCA St. 6 at 30. The Commission should apply require the Company to track unspent funds for its commercial EE&C program budget to ensure that those funds are credited back to commercial customers or used for the benefit of its commercial customers. OCA St. 6 at 35-36. Lastly, the Commission should require the Company to perform and submit EMV studies for these programs in its next base rate proceeding. OCA St. 6 at 37-38.

E. Quality of Service.

1. Distribution Integrity Management Program.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

2. Leaks and Excavation Damage.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

X. RATE STRUCTURE

In this section, the OCA will discuss the recommendations of OCA witness Glenn A. Watkins and Roger D. Colton. More specifically, the OCA will demonstrate that Mr. Watkin's Cost of Service Study, which utilizes a Peak and Average allocation of distribution mains, revenue allocation, and recommendations regarding the residential customer charge, the Rate IS margin sharing mechanism, and negotiated rate service are reasonable and in the public interest. The OCA will also demonstrate that Mr. Colton's recommendations regarding the allocation of universal service program costs and the Company's theft/fraud investigation fee are reasonable and in the public interest.

A. Cost of Service.

1. PECO Revised Gas Cost of Service Study.

Company witness Jiang Ding performed the Company's Cost of Service Study (COSS) in this proceeding. A COSS is a widely employed analytical tool used to determine the costs that different classes of customers impose on the utility and to quantify the revenue requirement for those services proved to that particular class of customers. PECO St. 6 at 4.

Generally, as noted by Ms. Ding, a COSS consist of three primary steps: (1) functionalizing rate base, purchased gas supply costs, and expenses to determine the particular rate schedules that should share responsibility for each of those assets and costs[172]; (2) classifying functionalized costs into demand-related, commodity-related, and customer-related cost categories to facilitate allocating such costs to rate schedules in accordance with identifiable characteristics[173]; and (3)

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[172] See PECO St. 6 at 8-10 for a description of how these costs were functionalized by Ms. Ding.

[173] See PECO St. 6 at 10-17 for a description as to how some of these costs were classified.

allocating the functionalized, classified costs among the rate classes. PECO St. 8 at 7-8. Ms. Ding noted the following rate classes were included in the COSS:

> (1) GR - General Service - Residential;
>
> (2) GC - General Service - Commercial and Industrial[174];
>
> (3) L - Large High Load Factor Service;
>
> (4) MV-F - Motor Vehicle Service-Firm;
>
> (5) MV-I - Motor Vehicle Service-Interruptible;
>
> (6) IS - Interruptible Service;
>
> (7) TCS - Temperature Controlled Service;
>
> (8) TS-F - Gas Transportation Service-Firm; and
>
> (9) TS-I - Gas Transportation Service-Interruptible.

PECO St. 6 at 8.

Of particular importance in this proceeding is Ms. Ding's classification of Mains. PECO St. 6 at 13-14. As Mr. Watkins stated, the classification of Mains of a natural gas utility is vitally important to the outcome of a COSS:

> For virtually every NGDC, the largest single rate base item (account) is distribution Mains. Furthermore, several other rate base and operating income accounts are typically allocated to classes based on the previous assignment of distribution Mains. As such, the methods and approaches used to allocate distribution Mains to classes are usually by far the most important (in terms of class rate of return ["ROR"] results) and tend to be the most controversial.

OCA St. 4 at 5-6. In this instance, mains represent 50% of the Company's gross plant. OSBA St. 1 at 19.

[174] This includes Rate OL – Outdoor Lighting Rate Class.

Company witness Ding's COSS and classification of mains was based upon the Average and Excess (A&E) Method. OCA St. 4 at 18. As stated by Ms. Ding:

> ***Mains*** were functionalized to Distribution and classified as capacity. A portion of mains costs was directly assigned. The balance of mains costs (approximately 99% of the total) was classified and allocated using the "Average and Excess Demand" method. In that method, the portion of mains costs equal to the system average load factor are allocated among the rate classes based on their average daily deliveries (annual deliveries divided by 365 days). The balance of mains costs is allocated based on excess demand, which is the excess of design peak demand over average demand. The excess demand is allocated among rate classes in proportion to each class' peak demand over its average demand (Exhibit JD-6, page 5). This is the same method used by PECO in its March 2010 gas base rate case (Docket R-2010-2161592) and has been recognized as an acceptable method by the American Gas Association's *Gas Rate Fundamentals*, 1987 Edition.

PECO St. 6 at 13-14 (emphasis in original).

After functionalizing, classifying and allocating the costs among rate classes, Ms. Ding then determined what the revenue requirements were for each class to produce the rate of return equal to the Company's proposed overall rate of return in its filing. PECO St. 6 at 25. Thus, based upon the results of Ms. Ding's COSS, it was determined that the Company should, *inter alia*, increase the annual distribution revenues from the residential customer class by approximately $47 million and the general service customer class by approximately $16.6 million. See PECO St. 6, Exh. JD-1, Pg. 3, Line 134.

Shortly after filing the COSS, a mathematical error was discovered in Ms. Ding's COSS that greatly impacted the required class rates of return at the Company's proposed overall revenue requirement. See OCA St. 4 at 19; see also PECO St. 6-R at 3. As a result of this error, the revised COSS corrected the underreported revenue increase for Rate GR from $47.1 million under the originally-filed COSS to $71.2 million under the revised COSS. Id. Ms. Ding also made several

other corrections to her COSS in response to the testimony of other expert witnesses. PECO St. 6-R at 4-5. The results of the revised COSS were as follows:

Table 1												
			Rate Class									
		Total	R	GC	L	MVF	MVI	IS	TCS	TSF	TSI
Rebuttal											
ROR @ Current Rate excluding Purchased Gas	Exhibit JD-1R, line 26	5.75%	4.76%	8.06%	-2.09%	12.33%	14.65%	9.34%	43.73%	6.69%	8.43%
Revenue Increase @ Proposed ROR of 7.64%	Exhibit JD-1R, line 134	$ 66,194	$ 69,060	$(3,441)	$ 293	$(134)	$ (1)	$ (4)	$(552)	$1,563	$(590)
PECO Exhibit JD-7R [Confidential Attachment OSBA-I-2(a)]											
ROR @ Current Rate excluding Purchased Gas	Exhibit JD-7R, line 26	5.73%	4.72%	8.12%	-2.08%	12.56%	32.20%	-5.64%	44.40%	6.50%	8.84%
Revenue Increase @ Proposed ROR of 7.70%	Exhibit JD-7R, line 134	$ 68,723	$ 71,368	$(3,443)	$ 293	$(138)	$ (4)	$ 34	$(560)	$2,023	$(850)

PECO St. 6-R at 5.

2. <u>Opposing Party Recommendations</u>.

The OCA submits that the Commission should dismiss the use of Ms. Ding's proposed A&E Method. As OCA witness Watkins testified, the A&E Method is one method amongst others that is rarely used to determine the classification of mains:

> While a myriad of cost allocation methods and approaches have been developed, three methods predominate in the NGDC industry: "Peak Responsibility," "Peak and Average (P&A)" or "Demand/Commodity," and "Customer/Demand," which I will address shortly in more detail. These methods differ in the criteria used to allocate Mains, as cost allocation analysts do not universally agree on the cost causative factors or drivers influencing Mains investments.
>
> ***
>
> There is another cost allocation method that is rarely applicable or used in the natural gas industry and is known as the Average & Excess ("A&E") method. The A&E method should not be confused with the P&A method as these two approaches are materially different in concept and application.

OCA St. 4 at 7-8.[175]

As Mr. Watkins points out, the A&E method is heavily weighted towards 'excess' use, or the amount by which a class of customers non-coincident peak demand exceeds its average day usage. See e.g. OCA St. 4 at 9. Thus, "classes with low load factors (e.g., Residential and Small Commercial) tend to have high levels of this so-called "excess" demand and are assigned the vast majority of the "excess" portion." OCA St. 4 at 8. Conversely, 'average' use tends to be underrepresented, such that the A&E method gives very little weight to the Industrial class's average day use. OCA St. 4 at 9.

OCA witness Watkins further testified as to why the A&E Method should not be used when applied to NGDCs and specifically to PECO:

> For public utility industries that are able to produce and store their product within their distribution system such as the water utility industry, the A&E approach has intuitive appeal particularly as it relates to water production and storage facilities. This is because even though a water utility may design its water treatment facilities to meet its maximum peak day demands, this capacity may not be large enough to meet maximum diurnal (hourly) demands. Because a water utility can produce and treat water during off-peak periods and then store water, it can then have enough resources to meet these peak hourly loads. The A&E method (known as the Base Extra Capacity method in the water industry) recognizes class load diversity in that all classes do not peak at the same time and also recognizes that water can be stored such that classes with higher load factors (more consistent usage throughout the year) are not assigned the same level of costs as classes with less consistent usage (low load factors) and demand profiles.
>
> Such is not the case in the NGDC industry in that, for all intents and purposes, once gas is injected into the distribution system at the city gate, it cannot be stored and is consumed as gas flows through the

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175 In the Direct Testimony of Billie LaConte, testifying on behalf of the Philadelphia Area Energy Industrial Users Group (PAIEUG), asserts that a portion of distribution mains should be classified as a customer-related cost, but did not have sufficient data to determine the customer-related portion of distribution mains for its system. PAIEUG St. 1 at 3. As stated by OCA witness Watkins, classifying a portion of natural gas distribution mains as customer-related is inappropriate because NGDC customers do not connect to the system with the intention of not utilizing natural gas, nor does an NGDC connect a customers without some anticipated usage. OCA St. 4 at 13-14. The Commission has likewise rejected this practice. PGW 2007, 2007 Pa. PUC LEXIS 45 at *123-24.

> distribution system. In other words, diversified class non-coincident demands have absolutely nothing to do with how natural gas distribution Mains are designed, operated, or how these costs are incurred.
>
> NGDC's distribution Mains are not designed or operated based on the sum of maximum loads over different days. In short, and at least with respect to NGDCs, the A&E method results in a distinct bias against low load factor customers (because excess demands are greater for low load factor customers than for high load factor customers) in favor of high load factor customers and is in no way correlated or related to how distribution Mains are operated.

OCA St. 4 at 10. Mr. Watkins also noted that Ms. Ding used a variant of the A&E Method because her assignment of mains excludes all non-coincident peak demands associated with the various interruptible classes. OCA St. 4 at 18. This further understated the industrial customers contribution to peak demand because, while it is true that interruptible customers may be interrupted during coincident system peak days, there is no such similar interruption on non-coincident peak demand days, which is what the 'excess' demands are based upon. OCA. St. 4 at 18-19.

Similarly, OSBA witness Robert Knecht advocates for the use of a 'modified' A&E approach by simply weighting average demand at 50% and excess demand at 50%. OSBA St. 1 at 24. As discussed by OCA witness Watkins, however, excess demand is not the same as peak demand, rather it is peak demand minus average demand. OCA St. 4-R at 3. Thus, equally weighting average demand and excess demand as suggested by Mr. Knecht still results in low load factor customer classes being allocated more than they ought to be, as they will continue to have high 'excess' demands when compared to high load factor customer classes. See OCA St. 4-R at 3.

Rather than use the A&E Method as described above, the appropriate approach to the classification of distribution mains is the Peak and Average (P&A) Method. The P&A Method is

the most fair and equitable method because it recognizes utilization of the Company's facilities throughout the year and also recognizes that some classes rely upon the Company's facilities more than other during peak periods. OCA St. 4 at 12. As further supported by Mr. Watkins in his Direct Testimony:

> When properly applied, the P&A method reasonably and fairly models the economies of scale reflected in Mains investment. If all customers (and classes) demanded and utilized natural gas at a consistent rate throughout the year, the PECO system would be comprised of smaller size Mains. Obviously, such is not the case in that the Company's peak (design day) demands are about 4.18 times that of its average day firm service demands. Even though the increased capacity required to serve design day peak loads is more than four times that required for average day loads, the actual cost of Mains is much smaller than this 4 to 1 relationship. In fact, it is apparent that the diameters of the Company's Mains are about twice as large as would be required under constant load conditions. However, the incremental cost of this additional capacity (to serve design day loads versus average day loads) is less than a factor of two. This indicates that a cost allocation method which allocates about half of the Company's Mains costs based on average demand and the remaining half on peak demand serves as a reasonable proxy for cost causation and fairly assigns class cost responsibility. To summarize, the allocation of Mains solely on peak demands does not reflect cost causation due to the economies of scale present in meeting the capacity (design day) needs of the company's distribution system; i.e., as peak demand increases, costs increase at a decreasing rate

OCA St. 4 at 15-17.

The use of the P&A Method is also consistent with previous decisions issued by this Commission, the Virginia State Corporation Commission, the Kentucky Public Utility Commission, and the Maryland Public Service Commission.[176] OCA St. 4-SR at 4. This method is also recognized by the National Association of Regulatory Utility Commissioners (NARUC), which is discussed in its Gas Distribution Rate Design Manual. OCA St. 4-SR at 4; see also OCA St. 4-SR, Sch. GAW-2SR at 9-10.

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176 See also NFGD 1994, 1994 Pa. PUC LEXIS 134 at * 320-21.

Indeed, the Commission recently re-affirmed the Commission's long-held practice of utilizing a P&A approach to the allocation of natural gas distribution mains:

> Based on our review of the record, and as noted by the ALJ, we have consistently used the Peak & Average methodology for the allocation costs for NGDCs.[177]

The Commission would go on to state that:

> Furthermore, distribution mains exist and are related to both annual demands and peak demands. Both annual and peak demands must be recognized in the allocation of distribution mains cost if the allocation is to be in accord with the principle of cost-causality[178]

Accordingly, OCA witness Watkins conducted a COSS using P&A allocation factors for the classification of mains, which were equally weighted 50% on peak (design) day usage and 50% average day usage. OCA St. 4 at 21. Mr. Watkins notes, however, he did not assign any 'peak' responsibility to the Interruptible classes recognizing that such service is inferior to firm natural gas service. OCA St. 4 at 21-22. Mr. Watkins also provided a table directly comparing how he weights the assignment of mains based on average and peak usage compared to Ms. Ding and Mr. Knecht:

TABLE 1-R

		Percent Weighting	
Party	Witness	Average	Peak
PECO	Ding [179]	17.4%	82.6%
OSBA	Knecht	33.4%	66.6%
OCA	Watkins	50.0%	50.0%

See OCA. St 4-R at 4. Accordingly, Mr. Watkins' proposal makes intuitive sense as it equally balances the nature of how the system is used during the year.

177 Columbia Gas at 215.

178 Id. at 217.

179 Because of the inappropriate application of Ms. Ding's A&E method, this weighting varies across classes and the amount represented is for the Rate R and Rate GC classes.

Moreover, OCA witness Watkins' COSS differed from Ms. Ding in that he assigned storage plant using Ms. Ding's storage allocator, which was used to assign her natural gas storage expenses. OCA St. 4 at 22. Mr. Watkins asserts that using the storage allocator as opposed to the design day allocator is more appropriate as it reflects a better assignment of cost responsibility because, while storage may be used to meet peak demand during the winter season, it is also used to assist with balancing service for transportation customers. OCA St. 4-SR at 6. Thus, it is reasonable to assign some cost responsibility for storage plant to Interruptible customers.

Based upon the use of his P&A Method, and the other changes identified above, Mr. Watkins' COSS demonstrated the following class RORs at current rates and the required increases at equalized 7.70% rates of return:

TABLE 6
OCA P&A Results At Current Rates and Equalized ROR

Rate Schedule		Distribution ROR @ Current Rates	Required Increase @ Equalized 7.70% ROR ($000)
GR	Resid.	4.93%	$64,230
GC	Gen. Svc.	8.75%	-$8,474
L	Lg. High LF	0.17%	$130
MV-F	Mtr. Veh. Firm	3.50%	$270
MV-I	Mtr. Veh. Interrupt	25.04%	-$3
IS	Interruptible	3.24%	$21
TCS	Temp. Controlled	25.21%	-$443
TS-F	Transportation Firm	4.56%	$6,469
TS-I	Transportation Interrupt.	3.13%	$6,017
Total Base Rate Revenues		5.73%	$68,217
Other Revenues			$88
Total Company			$68,305

OCA St. 4 at 23.

Shortly after, Mr. Watkins responded to the Direct Testimony of OSBA witness Robert Knecht, accepting Mr. Knecht's class design day demands as more reasonable than those used by

Ms. Ding. OCA St. 4-R at 10. Mr. Watkins disagreed, however, with Mr. Knecht's use of a 'modified' A&E approach that effectively assigns mains cost responsibility based on 67% peak demand and 33% average demand, as well as Mr. Knecht's treatment of Rates TCS and IS as firm service. OCA St. 4-R at 10.

When revised for Mr. Knecht's class design day demands, but maintaining his 50%/50% P&A Method, Mr. Watkins' revised COSS produces the following class rates of return at present rates:

TABLE 2-R
Comparison of OCA Initial and Revised
P&A RORs At Current Rates

Rate Schedule		Initial Distribution ROR @ Current Rates	Revised Distribution ROR @ Current Rates
GR	Resid.	4.93%	4.84%
GC	Gen. Svc.	8.75%	9.12%
L	Lg. High LF	0.17%	16.54%
MV-F	Mtr. Veh. Firm	3.50%	3.26%
MV-I	Mtr. Veh. Interrupt	25.04%	24.67%
IS	Interruptible	3.24%	3.24%
TCS	Temp. Controlled	25.21%	25.21%
TS-F	Transportation Firm	4.56%	4.56%
TS-I	Transportation Interrupt.	3.13%	3.13%
Total Company		5.73%	5.73%

OCA St. 4-R at 11.

In response to Mr. Watkins COSS, Company witness Ding asserted that her A&E Method is an acceptable method by the American Gas Association in *Gas Rate Fundamentals*, 1987 Edition. PECO St. 6-R at 6. She also asserts, as does OSBA witness Knecht, that the A&E Method has previously been used and approved by the Commission in other proceedings, citing to a 2006 PPL Electric Utilities Corporation (PPL) rate case and Mr. Knecht also citing to a 2007

Philadelphia Gas Works (PGW) rate case. PECO St. 6-R at 6; see also OSBA St. 1 at 23. Ms. Ding also asserts that the P&A Method double counts average annual usage, once in the annual component and again in the peak component.[180] PECO St. 6-R at 8. Instead, she argues that Mr. Watkins' COSS is designed to produce a certain outcome that is driven by factors other than cost causation. Id.

First, in response to the claim that the P&A Method double counts average annual usage, there is no basis in fact to this assertion. As Mr. Watkins testified, average and peak usage are two entirely different concepts:

> While there is no doubt that average day demand is less than peak demand by mathematical definition, there is no double count in that these are distinctly different concepts. With respect to average day demand, this is the exact same percentage across classes as annual throughput, which is known as energy in the electric industry. As such, average day demand, annual throughput, and energy measure the utilization of resources over time. Peak demand measures the highest level of demand placed on the system and is conceptually the amount of load on a system at a single point in time. The concepts are totally different in that average demand measures utilization, while peak demand measures peak load. As a matter of physics, these concepts are totally different. As an analogy, consider a motor vehicle's average miles per gallon compared to its fuel burned during peak load. Over the course of a year, a vehicle will burn a certain amount of fuel over the course of thousands of miles and hours of use. This will equate to average miles per gallon. However, when that vehicle is towing a large trailer or has a heavy load, its fuel burned at that point in time is much greater than the average fuel consumption over the course of an entire year. The concepts are entirely different. One being energy usage and the other being peak load.

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[180] This argument was also raised by PAIEUG's witness, Billie LaConte in her Rebuttal Testimony. PAIEUG St. 1 at 3. As discussed below, OCA witness Watkins rejects this argument in his surrebuttal testimony. OCA St. 4-SR at 2-3.

OCA St. 4-SR at 2-3. Moreover, Mr. Watkins' use of the P&A Method is not designed to produce a certain outcome, but is based on a reasonable conclusion that a proper weighting of system usage takes into account how that system is used 365 days a year. See OCA St. 4 at 15.

Mr. Watkins also responded to the claims that the Commission relied upon the A&E Method in two previous decisions and why those decisions should not be relied upon here. First with respect to the 2006 PPL rate case decision at Docket No. R-00061398, Mr. Watkins testified as follows:

> In that case, Mr. Knecht and I participated. Mr. Knecht and I both recommended various adjustments to Company witness Paul Herbert's CCOSS study that utilized a modified A&E approach to allocate mains. With respect to my testimony in the 2006 PPL Gas case, I accepted Mr. Herbert's allocation of mains because his modified A&E approach was not materially different than the results that would be obtained under the P&A method utilizing a 50%/50% weighting between peak and average demands. Therefore, in order to avoid bickering over two methods that produce very similar results, I focused my attention on other issues within Mr. Herbert's CCOSS. At the same time, Mr. Knecht rejected Mr. Herbert's modified A&E approach and recommended that mains be allocated to classes based upon number of customers (28%) and peak day demands (72%). Furthermore, Mr. Knecht made adjustments to Mr. Herbert's class peak day demands. In its Opinion and Order, the Commission accepted the Administrative Law Judge's ("ALJ") recommendation and stated:
>
> > The ALJ determined that the record does not demonstrate that the A&E allocator as calculated by PPL Gas is incorrect and that the OSBA failed to support its conclusion by explaining or demonstrating how the definition of the A&E methodology used by the Company is wrong. Finding that the A&E allocator is supported by the evidence, and that the OSBA modification to replace the A&E allocator with a peak demand allocator is not supported by the evidence, the ALJ recommended approval of the Company's A&E allocator. (Order, p. 114)
>
> Because the only controversy surrounding the allocation of mains in the 2006 PPL Gas case concerned Mr. Knecht's proposal to allocate

> mains based on customers and peak day demand, which was rejected and the fact that I did not object to Mr. Herbert's modified A&E approach because it produced very similar results to those that would be obtained under the P&A method, I do not consider the Commission's findings in this case as precedential -- at least in terms of advocating the A&E approach. The only thing that can be determined from this Order is that the Commission rejected the allocation of mains based partially on number of customers and partially on peak day demands.

OCA St. 4-R at 5-6 (footnotes omitted).[181] In other words, the facts present in the 2006 PPL rate case are materially different and the Commission did not have a P&A allocation method before it when making its decision.

Moreover, with respect to the 2007 PGW rate case at Docket No. R-00061931, Mr. Watkins testified as follows:

> As was the case in the PPL Gas case, the most controversial cost allocation issue concerned the allocation of mains investment. Company witness Howard Gorman conducted his CCOSS based upon an allocation approach in which mains were allocated 25% based on number of customers and 75% based on peak day demand. OCA witness Richard Galligan and Office of Trial Staff (now I&E) witness Joseph Kubas opposed the Company's allocation approach. OCA witness Galligan conducted an alternative CCOSS in which mains had no customer component and allocated mains with a weight of 20% on peak day demand and 80% on average day demands. Witness Kubas agreed conceptually with Mr. Galligan that there should be no customer component within the allocation of mains and stated on page 14 of his direct testimony as follows:
>
>> the A&E method reflects the fact that mains are built to deliver volumes of gas during both average and peak times. Therefore, an equal amount of weight should be given to both events.
>
> However, Mr. Kubas claimed to have used a modified A&E approach. Because Mr. Kubas' detailed workpapers are no longer available, it cannot be determined if the weighting mechanism he utilized in fact gave equal weight to peak and average day demands. In this case, the ALJ agreed with OCA and OTS concerning the two

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[181] See also Pa. Pub. Util. Comm'n v. PPL Electric Utilities Corporation, Docket No. R-00061398, 2007 Pa. PUC LEXIS 2 at *178 (Pa. PUC Feb. 8, 2007).

> most relevant factors as it relates to the allocation of mains. First, the ALJ recommended that the Company's proposal to allocate mains based on number of customers and peak day demands be rejected. In its Opinion and Order, the Commission agreed with the ALJ's recommendation and found "PGW's proposal to allocate a percentage of the costs of the distribution mains as a customer cost not to be acceptable." Perhaps most important as it relates to any "precedential" value of the A&E approach, the Commission found: "Reviewing the record, we find that the allocation of distribution mains investment costs should be done using both annual and peak demands."
>
> While I did not participate in the 2007 PGW rate case, I did participate in PGW's 2010 general rate case (Docket No. R-2009-2139884). In the 2010 case, Company witness Howard Gorman utilized a modified A&E approach that when evaluated against the traditional P&A method, produced no material differences.

OCA St. 4-R at 6-7 (footnotes omitted).[182]

Accordingly, the Peak & Average method is the preferred methodology for allocating the costs of natural gas distribution mains. As demonstrated above, the Commission has consistently used the Peak & Average methodology for the allocation costs of distribution mains for NGDCs.[183] As stated by the Commission, "[t]he Peak & Average method that allocates mains equally is a sound and reasonable method of cost allocation and should remain intact."[184] OCA witness Watkins adopts this methodology and weights the allocation of distribution mains based on 50% average use and 50% demand in accordance with Commission precedent and sound ratemaking principles.

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182 See also Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 at *123-124 (Pa. PUC Sept. 13, 2007) (PGW 2007)

183 Columbia Gas at 215.

184 NFGD 1994, 1994 Pa. PUC LEXIS 134 at *320-321; see also Pa. Pub. Util. Comm'n v. Equitable Gas Co., Docket No. R-901595, *et al.*, 1990 Pa. PUC LEXIS 135 at *139-42, 154 (Pa. PUC Nov. 21, 1990), Pa. Pub. Util. Comm'n v. The Peoples Natural Gas Co., Docket No. R-880961, *et al.*, 1989 Pa. PUC LEXIS 36 at *80-81 (Pa. PUC Jan. 27, 1989) ("In our opinion, the peak and average method appropriately recognizes both demand (peak) and commodity (average) factors in the allocation of system costs.").

B. Revenue Allocation.

1. PECO Revised Revenue Allocation.

The allocation of any revenue increase to the various customer classes is guided in part by the COSS that is used. That is, regulators should consider CCOSS only as a guide, with the results being used as one of many tools to assign class revenue responsibility. As stated by the United States Supreme Court:

> But where, as here, several classes of services have a common use of the same property, difficulties of separation are obvious. Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.

OCA St. 6 at 4 (citations omitted).

In its initial presentation of its case, the Company relied on four factors when setting its revenue allocation: (1) the results of Ms. Ding's COSS should be used as a guide; (2) the revenue allocation should move all rate classes closer to the cost of service indicated in the COSS and eliminate the remaining difference between the class rates of return for Rates GC and L and the system average rate of return as required by the 2008 Settlement; (3) adjusting for PECO's Gas Procurement Charge (GPC) and the Merchant Function Charge (MFC); and (4) customer impacts should be considered and avoid any disproportionate increases relative to the system average increase. PECO St. 7 at 3.

However, due to the error contained in Ms. Ding's COSS, the Company's initial revenue allocation was not appropriately designed to meet those goals. Moreover, when correcting for this change and when accounting for the requirements set forth in the 2008 Settlement regarding the class rates of return for Rates GC and L, the Company's revised revenue allocation fundamentally differs from the Company's original allocation proposal. As seen in the table below:

Comparison of the Company's Initial and Revised Allocation

Rate Schedule	Initial Class Revenue Allocation*	Revised Class Revenue Allocation**
GR	$43,213,329	$65,413,836
GC	$17,565,938	-$3,441,303
OL	$74	-$14
L	$34,697	$292,545
MV-F	$104,358	$78,533
MV-I	$532	-$734
IS	-	-$3,992
TCS	$55,646	-$497,069
TS-I	$2,377,787	-$74,732
TS-F	$5,370,429	$4,583,269
Total	$68,722,789	$66,193,272

* PECO St. 7, Exh. JAB-1
** PECO St. 7-R, Exh. JAB-1 Revised

PECO witness Bisti asserted that the Company's proposal provided the appropriate balance of the competing interests of all customer classes. PECO St. 7 at-R at 5.

2. Opposing Party Alternative Revenue Allocations.

While the OCA submits that it is not appropriate to increase a utility's rates at this time, OCA witness Watkins has prepared a revenue allocation should the Commission determine an increase should be given to the Company. OCA St. 4 at 24. In determining, the revenue allocation in this proceeding, OCA witness Watkins likewise was cognizant of the 2008 Settlement, which provided, in part:

> PECO agrees that, over the course of its next two gas base rate filings, it will propose to move the Rate GC and L class rates of return to the system average rate of return by moving fifty percent (50%) towards that goal in the next such filing and removing all remaining difference through the following filing. All parties retain their rights, in such future rate proceedings, to challenge that proposal through the use of class rates of return obtained through alternative cost of service studies or other ratemaking principles.

OCA St. 4 at 24.[185] In other words, this being the Company's second rate case since 2008, PECO agreed to propose to completely move Rates GC and L to the system average rate of return in this proceeding.

Based upon the results of his COSS, Mr. Watkins was aware that Rate GC was currently earning above the Company's requested ROR and would require PECO to propose a significant decrease in rates in order to strictly comply with the 2008 Settlement. OCA St. 4 at 25. As Mr. Watkins testified, however, that in considering this PECO proposal, current circumstances weigh heavily on the reasonableness of strictly complying with this provision:

> However, in 2008, no one could have envisioned the current disastrous state of affairs associated with the COVID-19 pandemic. Therefore, I am basing my alternative class revenue allocations on the 2008 settlement provision that allows for "other ratemaking principles." While the pure arithmetic of allocated costs within my CCOSS would indicate that Rate GC's distribution rates should be reduced in accordance with the first part of the 2008 settlement agreement, adhering to a strictly mathematical approach would not result in just and reasonable rates for all customers at this point in time.

OCA St. 4 at 25. In other words, any decrease in rates and revenues of Rate GC would need to be primarily recovered from the residential class. Id. at 25. Accordingly, Mr. Watkins concluded that Rate GC should remain at their current levels, rather than receive a decrease:

> Given the state of our economy, levels of unemployment, and ability of customers to pay their natural gas bills, a decrease to General Service customers' rates with corresponding increases to Residential customers' rates would not result in fair and reasonable rates for all ratepayers. As a result, and to the extent the Commission authorizes some overall increase in revenues as a result of this case, I recommend that Rate GC's rates remain at their current levels.

OCA St. 4 at 25-26.

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[185] See also PECO Gas 2008, 2008 Settlement at 5-6.

Thus, for the reasons stated above, Mr. Watkins' proposed revenue allocation assigns no increase or decrease in base rate revenues to those classes that are currently earning higher than the 7.70% rate of return requested by PECO. OCA St. 4 at 26. This includes Rates GC, OL, L, MV-I, and TCS. Id.; see also OCA St. 4-R at 12. With respect to Rates MV-F, IS[186], and TS-I, Mr. Watkins recommended that these classes receive one and a half times the system average increase as these classes' current rate of returns are significantly deficient under Mr. Watkins' COSS. OCA St. 4 at 26. Lastly, Mr. Watkins noted that the relative rate of returns for Rates GR and TS-F are at reasonably close parity at current rates (86% and 79%, respectively) such that he allocated equal percentage increases to these two classes based on the remaining overall increase. OCA St. 4 at 26.

Mr. Watkins revised revenue allocation was set forth in his Rebuttal Testimony and is as follows:

TABLE 3-R

OCA Revised "Business As Usual" Class Revenue Allocation

Rate Schedule	Current Distribution Revenue	Total Increase Before GPC & MFC Reduction	GPC Reduction	MFC Reduction	Net Increase Amount	Net Increase Percent
GR	$233,528,109	$61,466,303	($693,000)	($800,000)	$59,973,303	25.68%
GC	$100,578,711	$0	($370,000)	($66,000)	($436,000)	-0.43%
OL	$423	$0			$0	0.00%
L	$75,475	$0			$0	0.00%
MV-F	$474,506	$135,266	($7,000)		$128,266	27.03%
MV-I	$5,022	$0			$0	0.00%
IS	$34,964	$9,967			$9,967	28.51%
TCS	$689,833	$0			$0	0.00%
TS-F	$16,719,224	$4,400,622			$4,400,622	26.32%
TS-I	$9,508,783	$2,710,632			$2,710,632	28.51%

186 Historically, PECO has not reflected Rate IS revenues or increases to these revenues as the margins received from this rate schedule have been shared between ratepayers and shareholders (75%/25% respectively) and credited against the purchased gas cost (PGC) rate. OCA St. 4 at 28. Mr. Watkins and OSBA witness Knecht both recommended that the Company abandon this practice of margin sharing and reflect these revenues in base rates, as well as assign an appropriate increase to this class. OCA St. 4 at 28-29; see also OSBA St. 1 at 43-44. The Company agreed to adopt this recommendation and reflected this change in its revised analysis provided in the Rebuttal Testimony of Company witness Bisti. PECO St. 7-R at 17.

Total Rate Revenue	$361,615,052	$68,722,789	($1,070,000)	($866,000)	$66,786,789	18.47%
Other Revenue	$1,528,291	$88,491			$88,491	5.79%
Total Company	$363,143,343	$ 68,811,280	($1,070,000)	($866,000)	$66,875,280	18.42%

OCA St. 4-R at 12.

The OCA's proposed revenue allocation is eminently reasonable. It achieves a fair balance by moving the residential class closer to the system average rate of return, while recognizing that some classes are currently earning above the system average rate of return and assigns those customer classes no increase in rates or revenues. This revenue allocation is also reasonable when considered in the context of the other various rate allocation proposals in this case, as seen below:

TABLE 4-R
Comparison of Proposed "Business As Usual" Class Revenue Increases
($000)

	Initial OCA	Revised OCA	OSBA	PAIEUG	I&E
Before GPC &MFC Changes:					
Resid.	$61,440	$61,466	$64,430	$55,243	$66,662
Gen. Svc.	$0	$0	$436	$9,555	($1,818)
Lg. High LF	$29	$0	$0	$35	$35
Mtr. Veh. Firm	$135	$135	$139	$0	($14)
Mtr. Veh. Interrupt	$0	$0	$1	$0	$0
Interruptible	$10	$10	$0	$13	$0
Temp. Controlled	$0	$0	$56	$0	($30)
Transp. Firm	$4,399	$4,401	$1,570	$3,021	$2,549
Transp. Interrupt.	$2,711	$2,711	$2,094	$903	$1,338
Total Distribution Rate Rev.	$68,723	$68,723	$68,723	$68,769	$68,724
GPC & MFC Changes:					
GR Residential	($1,493)	($1,493)	($1,493)		
GC Gen. Svc.	($436)	($436)	($436)		
MV-F Mtr. Veh. Firm	($7)	($7)	($7)		
Total Base Rate Revenue	$66,787	$66,787	$66,787		
Other Revenue	$88	$88	$88		
Total Company	$66,875	$66,875	$66,875		

OCA St. 4-R at 13 (footnotes omitted). Accordingly, OCA witness Watkins proposed revenue allocation should be adopted by this Commission if the Commission determines to increase PECO's rates in this proceeding.

3. <u>Scale Back of Rates</u>.

In the event that the Commission grants PECO a rate increase that is smaller than requested, OCA witness Watkins recommended that any increase be distributed proportionally to the recommended class revenue allocations with no decreases to Rates GC, OL, MV-I and TCS (before recognition of GPC and MFC charges). OCA St. 4 at 29. In response, the Company agreed with the concept of a proportional scale back. PECO St. 7-R at 6. Thus, the OCA recommends that the Commission follow OCA witness Watkins' recommendation regarding a proportional scale back if the Commission grants a smaller increase than requested by the Company.

C. Allocation of Universal Service Program Costs.

1. Introduction.

The Commission recently amended its CAP Policy Statement and directed that the issue of the allocation of universal service costs be addressed in a base rate proceeding.[187] OCA witness Colton and CAUSE-PA witness Miller recommended that PECO change its allocation of its universal service costs so that those costs are paid by all customer classes rather than just the residential class as PECO proposes here. OCA St. 5 at 56-90, OCA St. 5-SR at 14-34; CAUSE-PA St. 1 at 48-53; CAUSE-PA St. 1-SR at 17-18. PECO witness Colarelli, OSBA witness Knecht, and PAIEUG Witness LaConte opposed the OCA's and CAUSE-PA's proposal to allocate costs to all ratepayers. PECO St. 10-R (Revised) at 12; OSBA St. 1-R at 21-30; PAIEUG St. 1-R at 10-13. PECO witness Colarelli proposed that because of the small size of PECO's natural gas CAP that the issue be addressed in PECO Electric's next base rate proceeding. PECO St. 10-R (Revised) at 12. For the reasons set forth below, the OCA submits that universal service charges should be allocated to all ratepayers and between customer classes on a competitively neutral basis based on a percentage of revenue provided by each customer class at base rates. OCA St. 5 at 90.

[187] 52 Pa. Code § 69.265(b); see also, Final CAP Policy Statement Order at 80-97.

2. The issue of allocation of universal service costs for PECO's natural gas customers should be addressed in this proceeding.

Historically, electric and natural gas universal service costs have been allocated to residential customers, but this historic practice is not mandated by the law.[188] The Natural Gas Choice and Competition Act also did not specifically require that universal service costs be allocated to only residential customers. Section 2203(6)-(8) of the Public Utility Code establishes the statutory requirements for natural gas universal service and energy conservation programs.[189] Section 2203(6) provides, in part:

> After notice and hearings, the commission shall establish for each natural gas distribution company an appropriate nonbypassable competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company's universal service and energy conservation costs over the life of these programs.

66 Pa. C.S. § 2203(6).[190] Section 2203(7) provides that the Commission must continue the programs at the "level and nature of the consumer protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services."[191] The statute also requires that universal service programs be appropriately funded and available to assist low-income customers with affording essential natural gas service.

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[188] The exception to this policy has been Philadelphia Gas Works. PGW recovers approximately 75% of its costs from residential ratepayers. Final CAP Policy Statement Order a 26.

[189] 66 Pa. C.S. §§ 2203(6)-(8).

[190] The OCA notes that 66 Pa. C.S. § 2203(10) relates to the establishment of a Universal Service Task Force and does not address cost allocation for natural gas distribution universal service and energy conservation programs.

[191] 66 Pa. C.S. § 2203(7).

The Commission issued its Final CAP Policy Statement Order in November 2019. In its Final CAP Policy Statement Order, the Commission provided:

> We note there is no statutory or appellate prohibition that limits the recovery of CAP costs, whether specifically calculated or as part of total universal service costs, to funding from the residential class. Universal service funding from non-residential classes, while not mandatory, is permissible:
>
> > Thus, under *Lloyd*, there is no statutory requirement that the funding for special programs come only from those who benefit from the programs. However, the lack of such a requirement does not mean that funding for special programs must come from those who do not benefit.
> >
> > *MEIUG v. Pa. PUC, 960 A.2d 189, 202 (2008), citing Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Cmwlth. 2006).*[192]

The Commission then provided:

> This Order amends the CAP Policy Statement as indicated in Annex A to address recovery of CAP costs. Consistent with the discussion above, he Commission finds it appropriate o consider recovery of the costs of CAP costs [sic] from all ratepayer classes. Utilities and stakeholders are advised to be prepared to address CAP cost recovery in utility-specific rate cases consistent with the understanding that the Commission will no longer routinely exempt non-residential classes from universal service obligations.[193]

The OCA and CAUSE-PA recommended the allocation of universal service costs to all customers in this proceeding pursuant to the CAP Policy Statement.

In the recent Columbia base rate proceeding, the Commission agreed that the allocation of universal service costs was appropriately raised in the base rate proceeding.[194] Although the

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192 Final CAP Policy Statement Order at 92-93 (footnote omitted).

193 Final CAP Policy Statement Order at 97.

194 Columbia Gas at 260.

Commission in the Columbia Gas base rate decision declined to allocate the costs to all customers, the Commission stated that the decision was based on the evidence in the record of that proceeding and that absent additional compelling reasons, the Commission would maintain the existing universal service cost allocation.[195] The OCA submits that the Commission should consider the additional record evidence presented in this proceeding regarding the impact of the proposed rate increase on residential customers and, in particular, low-wage customers who do not otherwise qualify for any assistance.

Company witness Colarelli recommended instead that the issue be addressed in the next PECO *electric* base rate proceeding because the PECO natural gas customer CAP is much smaller than the PECO electric CAP. The OCA submits that consistent with the final CAP Policy Statement and the Commission's Final CAP Policy Statement Order, the issue of cost allocation of universal service costs for PECO has been appropriately raised in this base rate proceeding, and PECO's proposal to address the issue in the next electric base rate proceeding will not address the allocation of natural gas distribution rates. See, OCA St. 5-SR at 15-17. For the reasons set forth below, the OCA recommends that the Commission approve OCA witness Colton's and CAUSE-PA witness Miller's recommendation to allocate the costs of universal services to all ratepayers.

3. The Final CAP Policy Statement Order identifies the factors the Commission will consider.

The Commission found that the "current cost recovery method for universal services, including CAP costs, is putting a significant burden on residential customer bills."[196] The Final CAP Policy Statement Order identified several factors to be considered as a part of the analysis of

[195] Columbia Gas at 260-261.

[196] Final CAP Policy Statement Order at 90.

the allocation of universal services costs. In its Final CAP Policy Statement Order, the Commission identified factors such as "poverty, poor housing stock, and other factors that contribute to households struggling to afford utility service."[197]

OCA witness Colton specifically examined these Commission-identified factors in his testimony. The OCA submits that the record evidence presented in this case demonstrated that both low-income, non-CAP customers and near-poor, low-wage customers are struggling to afford utility service, and the challenge to afford utility service has been exacerbated by COVID-19. See, OCA St. 5 at 6-29, 59-62. Mr. Colton presented evidence that examined two aspects of poverty: (1) those customers at or below 150% of the Federal Poverty Level and (2) "near poor" customers whose incomes are above 150% of the Federal Poverty Level but still struggle to make ends meet. OCA St. 5 at 59-62.

The first aspect of poverty that Mr. Colton examined relates to those customers who are at or below PECO's income-eligibility maximum. OCA witness Colton testified:

> The process I identify above yields an estimate of roughly 62,000 low-income customers. The Census data for PECO Gas zip codes indicates that the PECO Gas service territory has roughly 12.6% of the population in this service area living with income below 150% of Poverty.

OCA St. 5 at 59 (footnote omitted).

The second aspect of poverty that Mr. Colton examined involves those who have income above the maximum income-eligibility for CAP established by the Commission (150% of the Federal Poverty Level (FPL)) but whose income is sufficiently low that they can reasonably be expected to have difficulties paying their utilities bills. OCA St. 5 at 59-60. OCA witness Colton defined this population of "near-poor" to include households who have income higher than 150%

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[197] Final CAP Policy Statement Order at 94.

of the FPL, but lower than 200% of the FPL. OCA St. 5 at 59. Mr. Colton estimated that an additional 28,000, or 5.7%, of PECO's customers have between 150-200% of the FPL. OCA St. 5 at 59-60.

OCA witness Colton also examined the vulnerability of these two groups of households. In the first example, he looked at a three-person household with income equal to 150% of the Federal Poverty Level. The household would have income of $31,170, and then compared the household to one that was able to achieve "self-sufficiency" by county. OCA St. 5 at 61. The data shows substantial variation in the PECO natural gas service territories. For a three-person household (1 adult, 1 school age child, 1 infant), for example, the self-sufficiency income ranges from a low of $63,800 (Lancaster County) to a high of $79,518 (Chester County) in the PECO natural gas service territory. OCA St. 5 at 62. The OCA submits that these households are not able to achieve self-sufficiency, but at the same time, they are unable to qualify for any assistance and must pay the costs of the universal service programs.

His examination of the impacts of poverty showed that there are a substantial number of residential customers in PECO's natural gas service territory that are near-poor, low-wage customers or who even qualify for CAP but do not participate. These low-income customers must pay for the costs of the universal service programs. OCA witness Colton concluded:

> [f]or purposes of the PUC's consideration of whether to allocate universal service costs over all customer classes, the most important observation here is that tens of thousands of PECO Gas customers with income at or below 150% of Poverty do not participate in CAP notwithstanding their low-income status. In addition, even ***more*** customers live with incomes that are above the income-eligibility maximum of 150% of Poverty, but less than 200% of Poverty. Allocating universal service costs over all customer classes would help improve the affordability of PECO Gas bills to these low-income and near-poor customers who are income-challenged but not participating in, or not eligible for, PECO Gas' universal service programs.

OCA St. 5 at 61-62 (emphasis in original).

The second factor that OCA witness Colton examined is the housing stock. See, OCA St. 5 at 62. Although the Census Bureau does not report the age of housing, OCA witness Colton testified that "[n]onetheless, from an energy perspective, one can use the age of housing as a surrogate for which households have control over their energy consumption." OCA St. 5 at 62. Mr. Colton examined the penetration of older housing stock in zip codes in the PECO natural gas service territory. Id. at 63. He concluded that "the older housing stock in the PECO Gas service territory disproportionately occurs in zip codes with a higher penetration of low-income households." OCA St. 5 at 63. Mr. Colton testified that "[i]n short, the Commission was correct to be aware of the relationship between low-income status and poorer housing stock." Id. at 64.

The OCA submits that there is a substantial burden that is placed upon low-income and near-poor, low-wage residential customers. Allocating universal service costs to all customer classes would help to improve affordability for these customers.

4. Poverty is not just a residential class problem.

The Final CAP Policy Statement Order stated that poverty is "not just [a] residential class problem."[198] The OCA submits that the Commission's statement was also correct. OCA witness Colton examined the economic factors throughout PECO's service territory that contribute to the inability-to-pay of PECO's low-income customers. OCA St. 5 at 64-71.

OCA witness Colton found that "according to PECO Gas' data, its CAP participation includes a substantial proportion of participants who are eligible notwithstanding the fact that they receive wage or salary income." OCA St. 5 at 64, Table 23. He also found that "a very small

[198] Final CAP Policy Statement Order a 94.

proportion of PECO Gas' CAP participants have income from public assistance only." OCA St. 5 at 64. Mr. Colton testified:

> PECO Gas was further able to provide the average income of CAP participants who received only wages or salaries as their income source. CAP participants in the lowest Poverty bracket (0-50%) not only experienced lower monthly incomes, but experienced a higher rate of part-time (rather than full-time) employment. CAP participants in the middle Poverty bracket (50 – 100%) still had more part-time rather than full-time employment. Even full-time employment, however, resulted in an annualized income of less than $20,000 in the most recent year (through September 2020). The 2020 monthly income of $2,353, which annualizes to an income of $28,236, still results in households having a ratio of income to Federal Poverty Level falling between 101% and 150%.

Table 24. CAP Participants by Wage/Salary Income by Poverty Level (OCA-III-13)

	0-50%		51-100%		101-150%	
	No. Accts	Avg /Month	No. Accts	Avg /Month	No. Accts	Avg /Month
Dec-2018						
Full-time	361	$576	1,283	$1,601	1,588	$2,353
Part-time	1,218	$535	1,626	$1,154	976	$1,598
Dec-2019						
Full-time	337	$567	1,262	$1,610	1,577	$2,326
Part-time	1,239	$553	1,702	$1,134	1,039	$1,600
Sep-2020						
Full-time	321	$621	1,293	$1,604	1,738	$2,275
Part-time	1,283	$556	1,913	$1,097	1,163	$1,549

OCA St. 5 at 65-66.

Although PECO has not studied the economic health of its service territory, OCA witness Colton did examine the underlying economics within the PECO service territory. OCA St. 5 at 66-71.[199] Mr. Colton examined wages in the communities comprising PECO's service territory. OCA St. 5 at 67.[200] He found that "[a] substantial number of employed civilian adults (age 16 or older) in the PECO Gas service territory are employed in occupations that are generally defined to be "low-wage" jobs." OCA St. 5 at 68.

OCA witness Colton matched the communities listed in the PECO Gas tariff as comprising its service territory with the corresponding geographic units for which data was reported by the Census Bureau through the American Community Survey (ACS). Table 25 shows the median annual wages by occupation for the PECO natural gas service territory according to percentile of median income:[201]

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[199] Mr. Colton notes that the employment and wage data he relied upon predates the COVID-19 health problem. OCA St. 5 at 67.

[200] Mr. Colton notes that "for purposes of my testimony here, I define "community" as one of the geographic units listed in the PECO Gas tariff as comprising its service territory. PECO Exhibit JAB-2, page 5 of 83 ("List of Communities Served")." OCA St. 5 at 67, fn. 58.

[201] OCA witness Colton defined the term "percentiles" as:

> The "percentiles" included in Table refer to the community at that percentile within all PECO Gas communities. A community at the 20th percentile, for example, would be that community with a median earnings (for a given occupation) at which point 20% of all PECO Gas communities have median earnings less than the reported amount, and 80% of PECO Gas communities have median earnings greater than the reported amount.

OCA St. 5 at 68.

Table 25. Median Earnings for Low Wage Occupations (2018) (By Community in PECO Gas Service Territory)[202]			
Occupations	20th Percentile	50th Percentile	80th Percentile
Service[203]	$14,504	$19,919	$24,281
Service: Health care support	$19,123	$24,342	$30,397
Service: Food preparation and serving	$8,638	$12,975	$18,482
Service: Building and grounds maintenance and cleaning	$14,766	$23,950	$32,273
Service: Personal care and service	$10,993	$16,821	$25,318
Production/transportation & material moving: Material moving	$13,403	$21,793	$30,655

OCA St. 5 at 68.

OCA witness Colton also found that "[t]he number of workers (civilian age 16 and older) living with these low wages in the PECO Gas service territory is substantial." OCA St. 5 at 70. Mr. Colton testified:

> In just the four service occupations I identified in the Table above [Table 25], plus those working in "material moving," nearly 200,000 workers are employed in the PECO Gas service territory. These five limited occupations comprise more than one-of-seven workers employed in this geographic area (i.e., PECO Gas service territory).

202 American Community Survey, Table B24011 (Occupation by Median Earnings in the Past 12 Months [in 2018 inflation-adjusted dollars] for the Civilian Employed Population 16 Years and Over).

203 "Service" occupations include, but are not limited to, the service occupations listed in this Table.

Table 26. Civilian Workers Age 16 and Older (2018) (PECO Gas service territory)		
Occupations	Number of Full-Time Workers	Percent of Full-Time Workers
Service[204]	182,599	14.4%
Service: Health care support	32,523	2.6%
Service: Food preparation and serving	61,197	4.8%
Service: Building and grounds maintenance and cleaning	35,36	2.8%
Service: Personal care and service	34,939	2.8%
Production/transportation & material moving: Material moving	23,514	1.9%
Sub-total	187,519	14.8%

OCA St. 5 at 70.

The OCA submits low wages contribute to the need for customers to participate in low-income programs. OCA witness Colton concluded:

> the Pennsylvania PUC was correct when it observed in September 2019 that Poverty is a broad-based social problem not associated with any particular customer class, including specifically not being associated with the residential class exclusively. I find that a substantial number of wage-earning customers participate in PECO Gas' universal service programs. I find further that one reason that these customers income-qualify for PECO Gas' universal service programs is because a substantial number of people throughout the PECO Gas service territory are working at Poverty level wages.

OCA St. 5 at 71.

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204 "Service" occupations include, but are not limited to, the service occupations listed in this Table.

OCA witness Colton's analysis showed that the Final CAP Policy Statement Order was correct that poverty is "not jus [a] residential class problem."[205] The economic factors of the service territory contribute as a factor to the poverty problem. Low wages paid by employers contribute to the inability-to-pay for utility service.

5. Universal service programs have broad economic benefit.

The OCA submits that universal service programs have broad economic benefit. One key area of benefit to businesses is in improving employee productivity. As OCA witness Colton testified:

> Any increase in natural gas costs to business from payment of universal service costs would be offset by increases in employee productivity. Poverty produces ill-prepared workers whose lives are easily disrupted by small catastrophes. If the car breaks down, if a child gets sick, it suddenly becomes impossible to be a reliable worker. Poverty also generates poor health among workers, making them less reliable still and raising the cost of employing them. Paying a small increase in costs to help generate these offsetting benefits is a reasonable investment for a business to make.

OCA St. 5 at 71.

The OCA submits that the universal service programs support the overall competitiveness of Pennsylvania's economy. Studies by the U.S. Chamber of Commerce and the National Association of Manufacturers and the Brookings Institute Center on Urban and Metropolitan Policy have shown that universal service programs support economic development. OCA witness Colton explained the results of the U.S. Chamber of Commerce and the National Association of Manufacturers' 2004 study as follows:

> Why the under-use of public benefits is a problem. When most people hear about the idea of marketing public benefits through employers, their initial reaction is "why would a company want to get involved with a social service program?"

[205] Final CAP Policy Statement Order at 94.

> In fact, employers have good reason to be concerned that large numbers of working people with low family incomes do not take advantage of the public benefits intended to help them and their families achieve economic sufficiency--benefits that also help employers by contributing to the economic stability of their workforces. These public benefits bolster the ability of low-income workers to meet their basic needs, in effect providing a wage supplement to employers.

OCA St. 5 at 72 (footnote omitted).

OCA witness Colton also cited to the Pennsylvania-specific research that has been completed about the value of universal service programs to the competitiveness of Pennsylvania business. OCA witness Colton testified:

> Addressing the problems of poverty is a critical element to restoring the competitiveness of Pennsylvania businesses. In its report *Back to Prosperity: A Competitive Agenda for Renewing Pennsylvania*, the Brookings Institution Center on Urban and Metropolitan Policy consistently noted the need to address the factors contributing to the decline of communities, large and small, in the state. According to the report, funded by the Heinz Endowment and the William Penn Foundation, neighborhood decline "has become a contagious self-sustaining process in parts of older urban Pennsylvania." Such decline, the report found, triggers a slide in property values, brings negative perceptions, and erodes public health and safety, all of which impede the competitiveness of the state's business and industry. According to this analysis of the competitiveness of Pennsylvania business, and how to "restore prosperity," "the widening social and economic gap between Pennsylvania's older communities and their suburbs has negative implications for the overall health of its regions."

OCA St. 5 at (footnote omitted).

OCA witness Colton found that home energy affordability programs help to address utility payment problems, but they also help "address trends toward housing abandonment, reductions in educational attainment, and adverse health outcomes for payment-troubled customers." OCA St. 5 at 73 (footnotes omitted). OCA witness Colton testified:

> Universal service programs help to control the need to provide local government services, the cost of which is largely borne by non-residential taxpayers. There is a direct connection between unaffordable home energy bills and the costs of providing public health services. There is a documented connection between unaffordable home energy bills and public safety costs. The benefits of mitigating the need to provide these government services redound to the benefit of all taxpayers, including commercial and industrial entities.

OCA St. 5 at 74 (footnotes omitted).

In Direct Testimony, OCA witness Colton further discussed the research on the relationship between inability-to-pay and the mitigation of harms to business. OCA St. 5 at 74-79. Mr. Colton testified about a 2014 study by the Consumer Financial Protection Bureau (CFPB) that found "even when the economy was booming, financial stress was sapping the productivity and hurting the health of American workers." OCA St. 5 at 75-76.

The costs to employers can be substantial, and financial stress can lead to increased health care costs for the employer. OCA St. 5 at 76-77. OCA witness Colton noted that the CFPB report found that an increase in health care costs is one of the most cited costs imposed on employers due to financial stress. On this point, Mr. Colton quoted from the CFPB report by Dr. Martha Brown Menard as follows:

> A recent report in Health Affairs analyzed the health risks and medical expenses of more than 92,000 employees over a three-year period. Those reporting high stress were $413 more costly per year on average than workers who were not at risk from stress. By comparison, smoking – a common health risk targeted by corporate wellness programs – was found to raise health care costs by $587 on average. Since financial problems are an important stress factor, it appears employers may be paying a high cost for employee financial stress, but they do not recognize it because a large portion of that expense shows up indirectly as a health care expense.

OCA St. 5 at 77 (footnotes omitted).

OCA witness Colton also noted that financial stress can adversely impact employers through absenteeism and presenteeism. Mr. Colton again quoted the analysis of Dr. Menard as follows:

> Academic researchers have studied the costs of absenteeism, presenteeism, and employee turnover specifically associated with financial stress, and have estimated these costs based on real world data. Absenteeism from work resulting from worrying about personal finances and employee turnover in particular represents a problem that has been well documented in the literature, and higher levels of financial stress are associated with higher levels of absenteeism, particularly among blue-collar workers. A recent survey of over 5,000 US workers by the company Willis Towers Watson found that employees who are worried about their finances are absent on average of 3.5 days annually.

OCA St. 5 at 77 (footnotes omitted).

Mr. Colton's analysis was not limited to Dr. Menard's study, and the OCA submits that as his testimony demonstrated, it is widely understood in industry circles that employee financial problems impact the employer. He testified:

> For example, according to one report by the Society for Human Resource Management ("SHRM"), "when employees are stressed financially, their health and productivity can both suffer." According to SHRM, 48 percent of human resource managers report workers are struggling and stressed over "covering basic living expenses." SHRM reports that 60% of employers indicate that personal financial issues affect their "workers inability to focus at work" and 34% report such issues result in "absenteeism and tardiness."

OCA St. 5 at 79 (footnote omitted).

Low-income programs, like PECO's natural gas CAP, contribute to economic development and provide substantive benefits to all customer classes. The OCA submits that programs also contribute to the available income within the low-income population that can then be spent in the retail economy on items such as food and clothing. OCA St. 5 at 81. As OCA witness Colton

testified, "it helps drive additional job creation, income generation, and economic activity." Id. In support of his analysis, OCA witness Colton cited to a study prepared by Entergy Service Corporation, a major electric utility serving the Middle South. The study found that a low-income rate affordability program would be a significant generator of jobs, economic activity, and income throughout the region. Id.

The Entergy study found that the "distribution of energy assistance creates economic activity through the direct delivery of benefit dollars." OCA St. 5 at 81. The report concluded that:

> It is clear, therefore, that not only will the provision of energy assistance provide income and employment to low-income households, but the earnings and employment that are delivered to such households will likely be spent, retained and recirculated within the low-income community as well.
>
> The delivery of energy assistance in the four Entergy states accomplishes far more for those states than simply helping low-income residents avoid arrears on home energy bills and preventing the potential loss of home energy service due to nonpayment. The delivery of home energy assistance also serves as a substantial economic stimulant for the economies of the Entergy states.

OCA St. 5 at 81-82.

OCA witness Colton found that there is a direct relationship between the offer of a universal service program and the economic benefits to local commercial and industrial customers. OCA St. 5 at 80-83. Mr. Colton cited the following examples of these economic benefits:

- Turnover costs businesses money. We know that unaffordable home energy bills lead to the frequent mobility of households.

- Time missed due to family care provision costs businesses money. We know that unaffordable home energy leads to more frequent childhood illnesses.

- Time missed due to lack of employee productivity and employee illness costs businesses money. We know that the inability to stay

> warm due to unaffordable home energy bills leads to increased illnesses, including pneumonia, influenza, and other infectious diseases.

OCA St. 5 at 80 (footnotes omitted).

OCA witness Colton concluded that "increasing employee productivity contributes to the increased profitability of firms." OCA St. 5 at 80. Mr. Colton testified:

> With low-wage employees, in particular, unaffordable home energy directly contributes to lowered productivity. Increased personal illness, increased employee turnover, and increased family care responsibilities are but three of the factors contributing to lower employee productivity. The provision of affordable energy through universal service programs such as CAP positively affects each of these productivity factors.

OCA St. 5 at 80.

The relationship between inability-to-pay and economic growth has also been recognized by the Government Accountability Office (GAO). OCA witness Colton quoted the GAO report, Poverty in America:

> The relationship between poverty and adverse outcomes for individuals is complex, in part because most variables, like health status, can be both a cause and a result of poverty. Regardless of whether poverty is a cause or an effect, however, the conditions associated with poverty can work against the development of human capital—that is the ability of individuals to remain healthy and develop the skills, abilities, knowledge, and habits necessary to fully participate in the labor force. Human capital development is considered one of the fundamental drivers of economic growth. An educated labor force, for example, is better at learning, creating, and implementing new technologies. Economic theory suggests that when poverty affects a significant portion of the population, these effects can extend to the society at large and produce slower rates of growth.

OCA St. 5 at 82 (footnote omitted). Mr. Colton concluded "the causes and consequences which I have identified are widely recognized as being attributable to broad social forces unrelated to any

particular population that happens to fall into a group which someone has seen fit to label as a particular class of utility customers." OCA St. 5 at 83.

OCA witness Colton examined the impacts of the COVID-19 pandemic on businesses and whether it changed his opinion on the impacts of universal services on businesses. OCA St. 5 at 83. Mr. Colton testified:

> There is no question that businesses in Pennsylvania are being adversely affected by the COVID-19 pandemic. Many businesses have been ordered to close, or to substantially curtail, their operations during this time of public health emergency. However, residential customers are also impacted by the economic difficulties but still are responsible for universal service costs. Many of the residential customers paying the costs of the program are also low-income or near poverty and experiencing a similar economic impact that businesses are experiencing. The economic difficulties faced by business during this health emergency is not reason, unto itself, to decline to allocate universal service costs amongst all customer classes for all the reasons I have outlined above.

OCA St. 5 at 83.

The OCA submits that universal service programs benefit businesses. The programs are often provided to low-wage earners. OCA witness Colton found that the programs help to address the financial stressors that impact overall employee productivity for these low-wage earners and help to support the local economies of the PECO service territory.

6. <u>The allocation of universal service costs is consistent with sound ratemaking principles</u>.

The OCA submits that the allocation of universal service costs to all customer classes is consistent with sound ratemaking principles. One well-accepted tenet of utility ratemaking is that certain expenses incurred by the public utility are for "public goods." The costs of PECO's universal service program should be considered a "public good" that should be allocated across all customer classes. OCA witness Colton explained the concept of public goods:

> Due to the nature of public goods, all customers receive benefits from public goods and, accordingly, the costs of such goods are spread over all customer classes. Each end user makes a financial contribution to the utility's delivery of public goods. The "public goods" doctrine is applied in a variety of settings as a justification to spread designated utility costs over all customer classes.
>
> In economic theory, public goods are those products and services that are valuable to society but which are undersupplied when society relies on private markets to provide them. Because they are needed and will not be made sufficiently available through private markets, the government must supply public goods. Classic examples of public goods include streetlights, city roads, and police protection.

OCA St. 5 at 84. The "public goods" doctrine is applied in a variety of settings to spread designated utility costs over customer classes. Id. Fire hydrants and the basic telecommunications network have been found to be a "public good" as a justification to spread network costs over all customer classes. OCA St. 5 at 84.

OCA witness Colton recommended that the Commission adopt the definition of "public good" articulated by the National Regulatory Research Institute (NRRI). OCA St. 5 at 85-86. NRRI provided:

> A public good can be defined as "any publicly induced or provided collective good" that "arise[s] whenever some segment of the public collectively wants and is prepared to pay for a different bundle of goods and services than the unhampered market will produce." (note omitted). In sharp contrast to the private-good model. . ., the emphasis of the public-good model is on the *total* societal benefits—both direct and indirect—associated with network modernization. As applied to the telecommunications network, the public-good model is based upon the premise that the costs of achieving and supporting a modern, state-of-the-art network infrastructure are ultimately borne by the general body of ratepayers as opposed to limited subsets of customers who exhibit a high demand for specific new services. The public-good model is conducive to establishing social policies which provide for a "supply driven definition" of infrastructure.

OCA St. 5 at 85. The NRRI definition provides:

> Under the public-good model, infrastructure investment[s] that are in the "public interest" are mandated by regulatory commissions, which act as surrogates for marketplace forces for the very reason that those forces break down either because of the enormous risks involved because of uncertainty with respect to costs and demand or both, or because of the intangible or unmeasurable society benefits which are not valued by the marketplace. (emphasis in original).

OCA St. 5 at 85 (footnote omitted).

Mr. Colton testified that the NRRI discussion helps to guide the Commission's consideration of the allocation of universal service costs in the following ways:

- First, universal service is a "publicly induced or provided collective good" as described by the NRRI.

- Second, it is clear from prior Pennsylvania proceedings, that NRRI was correct in referring to such a "collective good" as one that not all ratepayers would choose to pay for. Indeed, the fact that the Pennsylvania General Assembly mandated that a universal service charge be "nonbypassable" indicates that the General Assembly understood this aspect of a "public good" and that it affirmatively decided that ratepayers could not avoid this cost by switching suppliers.

- Third, the Pennsylvania universal service programs are consistent with NRRI's statement that the emphasis is on "the *total* societal benefits." Indeed, these benefits include not simply the benefits to participating customers, but also, in the words of NRRI, the benefits "both direct and indirect." Pennsylvania's CAP programs, as a public good, clearly fit this notion of generating not only direct social benefits, but also a wide range of indirect social benefits to all customer classes. Some of these types of benefits to non-residential customers have been described in detail above.

- Fourth, the finding that universal service is a "public good" has cost allocation implications to it. As NRRI points out, "the costs of achieving and supporting a modern, state-of-the-art network infrastructure are ultimately borne by the general body of ratepayers." While some ratepayer groups would limit the allocation of costs only to those customers who "use" the service of a universal service program, accepting this decision is at fundamental odds with universal service being determined to be a "public good."

OCA S. 5 at 85-86.

A product or service such as universal service can represent a "public good" even though direct service is provided to an individual. OCA St. 5 at 87. Mr. Colton testified:

> For example, businesses do not go to school, individuals do. Businesses do not go to doctors, individuals do. Businesses do not place their children in day care, individuals do. Despite this, in each of these instances, the direct benefits to business from the affordable provision of these "public goods" have been documented. Affordable health care and child care are all akin to affordable home energy in their nature as public goods which provide direct and substantial benefits to business as well as individuals. Accordingly, businesses, as well as individuals, should be responsible for helping to pay for these public goods.

OCA St. 5 at 87.

The OCA submits that the fact that these public benefits of universal service programs such as CAP are hard to quantify is one of the reasons that universal service should be found to be "public good" with cost allocated to all ratepayers. See, OCA S. 5 at 86. Mr. Colton explained that "[a]s NRRI points out, the public good approach applies "for the very reason that those [market] forces break down. . .because of . . .the intangible or unmeasurable society benefits which are not valued by the marketplace." OCA St. 5 at 86. The National Association of Attorneys General reached this same conclusion and adopted a resolution at its spring 1998 meeting that endorsed the following principles "system benefit charges which are imposed to support public goods such as…universal service, and low-income assistance should be applied in a competitively-neutral and non-avoidable manner." OCA St. 5 at 87.

CAUSE-PA witness Miller also agreed that universal service costs should be considered a "public good." Mr. Miller testified:

> Energy insecurity impacts all customer classes (industry, business, commerce, educational institutions, hospitals, local and state governments, and other residential consumers) in specific and identifiable ways. The responsibility to provide universal access to life-sustaining utility service should be shared by all utility consumers.

> Poverty is a broad societal problem, impacting all customers and customer classes and requiring a collective, societal solution. While the most *direct* benefits of universal service programs are derived by program participants, who by definition are *part of* the residential customer class, there are a multitude of societal benefits which inure to non-residential ratepayers that should not be ignored. As a public good, the cost of ensuring affordable access to very basic human needs should be borne by all those who enjoy the benefits of a public utility.

CAUSE-PA St. 1 at 49-50.

Other states have reached the conclusion that universal service program costs should be allocated to all customers. OCA witness Colton cited to the allocation of universal service costs to all customers in Maine, New Hampshire, New Jersey, Ohio, Illinois, Colorado and Nevada. OCA St. 5 at 88. These eight states have Percentage of Income Payment Programs (PIPPs) and allocate the costs to all customer classes. OCA St. 5 at 88. CAUSE-PA witness Miller also cited to Washington and Oregon as states that allocate costs to all customer classes. CAUSE-PA St. 1 at 53.

The OCA submits that universal service costs should be allocated to all customer classes. The programs are not caused by the residential class, and the residential class is not the only beneficiary of these programs. As OCA witness Colton testified:

> Based on the data and discussion above, I find that programs such as the Pennsylvania universal service programs, directed toward preserving home energy service and relieving financial stress about a household's capacity to meet its fundamental household needs on a month-to-month basis, address a societal-wide problem that is not limited to the residential customer class. The problems that are related to unaffordable home energy are not "caused" by the residential class. Nor do the PECO Gas universal service programs deliver benefits that are limited to the residential class.
>
> Accordingly, the costs of those programs should be allocated and spread over all of PECO Gas' customer classes. No reason exists for the residential class to be charged with paying the entire cost of programs that have the effect of improving business profitability by

> reducing business costs, including reducing absenteeism and turnover, and increasing employee productivity.

OCA St. 5 at 89.

OCA witness Colton recommended that universal service charges should be allocated between customer classes on a competitively neutral basis based on a percentage of revenue of revenue by each customer class at base rates. OCA St. 5 at 90. First, this approach reflects the fact that these universal service costs are being treated as a distribution-related expense. Id. Second, many of the benefits and savings of the programs are captured in the distribution component of the base rates. Id. Finally, a cost allocation based on class contribution to total revenues would be administratively easy to apply because these revenues are already identified in the Company's filing. Id.

7. Proposals to allocate the universal service costs to only residential customers should be denied.

PECO witness Colarelli, OSBA witness Knecht, and PAIEUG witness LaConte presented testimony that opposed the OCA's and CAUSE-PA's proposal to allocate costs to all ratepayers. PECO St. 10-R (Revised) at 12; OSBA St. 1-R at 21-30; PAIEUG St. 1-R at 10-13. The OCA submits that many of the arguments raised in opposition to the allocation of universal service costs to all customer classes were extensively addressed in the Final CAP Policy Statement Order. Moreover, as discussed above and in the testimonies of OCA witnesses Rubin and Colton, the COVID-19 pandemic has had a significant and disproportionate impact on residential customers, and in particular, low-wage customers. The OCA submits that the burden of these costs should be shared across all customer classes. For the reasons set forth above and in the Final CAP Policy Statement Order, the costs of universal service programs should be allocated to all customer classes.

OSBA witness Knecht's Rebuttal Testimony raised the issue of the merits of collecting universal service costs at all through rates and provides two philosophies of providing universal service, a tax model or an insurance model. OSBA St. 1-R at 23-24. The OCA submits that OSBA's arguments are inapposite given the statutory requirements for universal service programs under Section 2203(6)-(8) of the Public Utility Code.[206] Universal service programs are required by the Natural Gas Choice and Competition Act and must be funded through utility rates. OCA witness Colton testified:

> Mr. Knecht's Rebuttal Testimony approaches the issue of universal service as though it is newly being determined whether such programs are appropriate or not. (OSBA St. 1-R, at 23– 24). As the PUC noted in is September 2019 Final CAP Policy Statement order, however, that is simply not the case.

OCA St. 5-SR at 20; see Final CAP Policy Statement Order at 3, 98-99.

OSBA witness Knecht also incorrectly limited the Commission's decision on this point. OSBA witness Knecht argued that the "rationale for considering a change to the policy appears to be that the low-income assistance programs have become unaffordable to the residential customers who are ineligible or otherwise do not participate in the programs." OSBA St. 1-R at 22 (footnote omitted). The OCA submits that the Commission's decision was much broader. The factors identified include "poverty, housing stock, and other factors" that contribute to low-income and near-poor customers' inability to sustain their own utility service. OCA witness Colton identified the various aspects of poverty and how each of these aspects are not "caused" by the residential class. In particular, OCA witness Colton discussed the impact of other factors, including the wage levels throughout the Company's service territory, that demonstrate that the residential class is not the "cause" of the need for CAP. OCA St. 5 at 64.

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[206] 66 Pa. C.S. §§ 2203(6)-(8).

PAIEUG witness LaConte also opposed the proposed allocation of universal service costs to all customers. PAIEUG St. 1-R at 10-13. Ms. LaConte argues that allocation to all customers would be an inappropriate subsidy and would be unfair to allocate at this time because only residential customers benefit from the programs. Id. at 12-13. She also recommends that if the proposal is approved, the cost be limited to $10.85 per customer per year. Id. at 13. The OCA submits that Ms. LaConte's arguments are contrary to the extensive academic research discussed above, including the analysis of the Chamber of Commerce and the National Association of Manufacturers. OCA St. 5 at-SR at 25-32. As OCA witness Colton responded:

> In short, Ms. LaConte would allow non-residential customers to pocket all of these financial benefits generated by the PECO Gas universal service programs while bearing none of the responsibility for paying the costs of generating those benefits. That argument should be rejected.

OCA St. 5-SR at 27.

OCA witness Colton also rejected Ms. LaConte's proposed alternative $10.85 per customer per year cost. OCA St. 5-SR at 32-33. PAIEUG witness LaConte did not address OCA witness Colton's proposed cost allocation methodology in her testimony. OCA witness Colton testified regarding Ms. LaConte's proposal:

> Moreover, Ms. LaConte's proposal treats universal service costs as though they are a static figure once established in a rate case. She fails to recognize that universal service cost recovery for PECO Gas is reconcilable. (See, PECO Ex. JAB-2, at 40 of 83). While Ms. LaConte estimates universal service costs to be $5.9 million (PAIEUG St. 1-R, at 13), PECO's estimated universal service costs (including CAP credits) are simply estimates. (PECO St. 3, at 7). While, as I note in my Direct Testimony, my recommended cost allocation methodology has the advantage of being "administratively easy to apply," (OCA St. 5, at 90), Ms. LaConte's proposal would involve extraordinary complexity. Reconciliation could involve changes in her recommended per customer charge of fractions of a cent on a monthly basis. (see, OCA-III-19). Ms.

> LaConte does not explain how such a monthly charge could be imposed which would provide PECO Gas full cost recovery.
>
> Finally, Ms. LaConte's proposal treats the number of customers as though it is a static figure from month-to-month (or year-to-year). PECO Gas data demonstrates that this figure would not be constant. (OCA-III-16, OCA-III-6(c)). The process of adjusting PECO universal service cost recovery based on changes in the number of customers would add yet another layer of complexity to Ms. LaConte's recommendation that she neither acknowledged nor considered. In contrast, the cost allocation recommended in my Direct Testimony would not generate such complexity.

OCA St. 5-SR at 32-33.

The Final CAP Policy Statement Order appropriately opened the door for the issue of universal service cost allocation to be addressed in this base rate proceeding. For the reasons set forth above, the OCA submits that the arguments in opposition to the allocation of universal service costs should be denied.

8. Conclusion.

As the Commission's Final CAP Policy Statement Order corrected stated, "poverty, poor housing sock, and other factors that contribute to households struggling to afford utility service are not just 'residential class' problems."[207] Universal service programs benefit all customer classes. For the reasons set forth above, the OCA submits that universal service charges should be allocated between customer classes on a competitively neutral basis, and the allocation of universal service costs should be based on the percentage of revenue provided by each customer class at base rates. OCA St. 5 at 90. The OCA submits that the Commission should adopt the OCA's and CAUSE-PA's proposal to allocate the costs of universal service programs to all customers.

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[207] Final CAP Policy Statement Order at 94.

D. Tariff Structure.

1. Residential Customer Charge.

a. Introduction.

OCA witness Colton supported OCA witness Watkins' recommendation to reject the proposed $4.25 increase to the residential customer charge. OCA St. 5 at 29. The proposed increase to the customer charge from $11.75 to $16.00, or a 36% increase, will have a disproportionate impact on low-income customers. OCA St. 5 at 29. As OCA witness Colton testified:

> When combined with other increases in rates proposed by PECO Gas, lower use customers receive a higher percentage increase in their bills. Overall, a customer bill at 3 MCF will increase by 12.7% under PECO's proposed rates, while a customer bill at 10 MCF will increase by 8.2%. A customer bill at 30 MCF will increase by 6.4%. (PECO Attachment III-E-11(a), page 1). As I will demonstrate below, low-income customers disproportionately fall into the lower usage ranges.

OCA St. 5 at 29-30. The total costs of the proposed customer charge increase to low-income customers is nearly equal to the PECO's total annual Low Income Home Energy Assistance Program (LIHEAP) grants for natural gas service. OCA St. 5 at 31. Low-income customers are disproportionately low-use use customers who cannot otherwise off-set the costs of the proposed $4.25 increase to the customer charge. The OCA submits, therefore, that the recommendations of OCA witness Watkins should be adopted.

b. Low-Income Customers Will Not be Protected from the Proposed Increase to the Customer Charge.

PECO's gas CAP would only protect low-income customers from an increase in rate, "if and to the extent that the program limits the PECO Gas bill to an affordable percentage of income." OCA St. 5 at 30. And that protection would be limited. OCA witness Colton found that PECO's

gas CAP actually "protects a very small proportion of its confirmed low-income customer base from the harms of an increased customer charge." OCA St. 5 at 30. OCA witness Colton testified:

> While the PECO Gas CAP serves roughly 5% of its total residential customer base, the percentage of population in the PECO Gas service territory with annual income less than 150% of Poverty Level is nearly 12%. Three-of-five low-income customers in the PECO Gas service territory, in other words, are not served by the Company's CAP and thus gain no protection against the increase in this unavoidable fixed charge.

OCA St. 5 at 30. As such, CAP does not protect the vast majority of PECO's low-income customers from the proposed increase to the customer charge. Moreover, as OCA witness Colton testified, low-income customers have also been disproportionately impacted by the COVID-19 Pandemic and would not be able to take any actions to otherwise mitigate the $4.25 per month increase. See Mr. Colton's discussion of the impact of COVID-19 on low-wage and low-income customers. OCA St. 5 at 5-29.

The OCA submits that the proposed increase to the residential customer charge will have an adverse impact on low-income customers. Most of PECO's confirmed low-income customers are not enrolled in the Company's CAP and would not otherwise be protected from the 36% increase in the unavoidable part of the utility's rate structure, the customer charge. See OCA St. 5 at 32.

In Rebuttal Testimony, PECO witness Bisti does not address the extensive testimony that OCA witness Colton presented regarding the disproportionate impact of an increase in the customer charge on low-income customers. See, OCA St. 5-SR at 4. Mr. Bisti testified that with "any division of cost between fixed and volumetric components in a customer class will have relative winners and losers." PECO St. 7-R at 10. As OCA witness Colton testified, however, "the evidence in this case is that low-income customers will, disproportionately and on average,

be amongst the losers from the PECO Gas proposal to increase its residential customer charge." OCA St. 5-SR at 5.

c. The Proposed Increase to the Customer Charge Will Harm PECO's Low-Income Customers.

An increase of $4.25 per month in the fixed customer charge would represent an increase of $51.00 per year ($4.25 x 12 months = $51.00) for a residential customer. OCA witness Colton testified that PECO reported having approximately 74,914 estimated low-income customers. OCA St. 5 at 32. Mr. Colton testified that "[u]sing that number, PECO's proposed customer charge increase, standing alone (i.e., without taking into account any other aspect of the PECO Gas rate increase, will draw $3,812,614 a year out of the Company's low-income population ($4.25/month x 12 months x 74,914 = $3,812,614)." OCA St. 5 at 32. OCA witness Colton explained the problem with PECO's proposal:

> As shown in the Table below, that is more than the total amount of LIHEAP received by PECO Gas customers in the past two years (program year 2019, program year 2020), and nearly as much LIHEAP as received by PECO Gas customers in program year 2018. (OCA-III-7)

Table 5. LIHEAP Cash Grants Received by PECO Gas Customers by Year (OCA-III-7)

Date Range	Date Range	Count	Dollars
10/1/17 - 9/30/18	10/1/17 - 9/30/18	21,821	$3,932,016
10/1/18 - 9/30/19	10/1/18 - 9/30/19	13,000	$3,352,426
10/1/19 - 9/30/20	10/1/19 - 9/30/20	14,564	$3,709,858

OCA St. 5 at 31-32. The Company did not directly address OCA witness Colton's testimony regarding the LIHEAP grants or that the proposed increase would exceed the amount of LIHEAP cash grants that PECO's gas low-income customers receive.

Company witness Bisti responded that PECO is not involved in "establishing the LIHEAP funding levels." PECO St. 7-R at 10. The OCA submits, however, that PECO witness Bisti missed the point of Mr. Colton's reference to the LIHEAP grants. As OCA witness Colton explained:

> Mr. Bisti's dismissal of my discussion of LIHEAP in my Direct Testimony indicates that he is not recognizing the impact of the PECO Gas proposal on those customers who can least afford to pay the increase in the PECO Gas unavoidable fixed customer charge. While Mr. Bisti is correct when he asserts that "PECO is not involved in the establishment of LIHEAP funding levels," (PECO Gas St. 7-R, at 10), that observation does not detract from the fact that the proposed increase in the unavoidable fixed charge proposed by PECO Gas will have the same impact on PECO Gas low-income customers as reducing LIHEAP benefits to $0. The low-income customers of PECO Gas receive federal assistance to help pay their PECO Gas bills. The PECO Gas proposal to increase its fixed monthly customer charge, standing alone, effectively reduces the benefits of LIHEAP assistance to nothing. (See OCA St. 5, at 31). For every dollar in assistance that LIHEAP delivers to PECO Gas low-income customers, PECO Gas is effectively proposing to remove a dollar through its proposed increase to the fixed monthly residential customer charge.

OCA St. 5-SR at 5.

PECO also failed to refute the additional harms to low-income customers identified by Mr. Colton including that the proposal will: (1) increase the depth and breadth of customer arrears;[208] (2) increase the incidence of service disconnections and threat of service disconnections [209]; (3)

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208 OCA witness Colton found that "[t]he average arrearage for Confirmed Low-Income customers was from 100% to 118% higher than the average arrears for Residential customers." OCA St. 5 at 35, Table 7. The breadth of arrears is also greater for confirmed low-income customers. He found that from 2015 through 2019, up to 75% more confirmed low-income customers have been in arrears and "the extent to which the percentage of Confirmed Low-Income customers is higher than the Residential percentage has increased each year 2015 through 2019." OCA St. 5 at 35, Table 8.

209 In 2019, PECO's percentage of confirmed low-income gas customers experiencing a non-payment disconnection was approximately four times higher than the percentage of residential customers experiencing a non-payment disconnection. OCA St. 5 at 36, Table 9. Nearly one-in-five of PECO's confirmed low-income gas customers had their service terminated for non-payment. Id.

reduce the ability of low-income customers to respond to their inability-to-pay through usage reductions; and (4) increase the Home Energy Insecurity. OCA St. 5 at 33; OCA St. 5-SR at 14.

The OCA also submits that the data that Mr. Colton references regarding confirmed low-income customer's payment difficulties is directly relevant to the reasonableness of the Company's proposed increase to its customer charge. OCA witness Colton testified:

> What PECO Gas is doing is increasing the unavoidable fixed monthly customer charge, resulting in a disproportionately higher percentage bill increase, to those customers who can least afford to make their bill payments in the first instance. Not only does this place the continuation of service to these low-income customers in jeopardy, but this also causes PECO Gas to incur credit and collection costs that will, in turn, be passed on to all ratepayers in future rates.

OCA St. 5 at 37. The OCA submits that the proposed customer charge increase will harm low-income customers in a way that low-income customers are otherwise unable to mitigate. The effect of the proposed increase on low-income customers will be nearly equal to the total amount of LIHEAP grants received for PECO's natural gas customers. The non-CAP, low-income customer population is already payment-troubled, and the proposed fixed customer charge will only increase those payment challenges, particularly in the context of the significant financial impact of the COVID-19 Pandemic on low-income customers.

d. Low-Income Customers are Disproportionately Low-Use Customers who Cannot Otherwise Off-set the Proposed Increased Customer Charge.

Low-income customers are disproportionately, and on average, low-use customers. OCA St. 5 at 38-55.[210] OCA witness Colton found that there is a direct correlation between low-income customers and low natural gas usage. With lower consumption and a higher fixed monthly

[210] Mr. Colton notes that his testimony is not that all low-income customers are also low-use customers. It is what he states: "disproportionately and on average." OCA St. 5 at 38.

customer charge, the OCA submits that low-income customers do not have the ability to mitigate the proposed rate increase.

As OCA witness Colton testified, PECO has not completed an analysis of the relationship between income and usage. Nor did PECO witness Bisti address the extensive evidence presented by OCA witness Colton regarding the relationship between history and usage. OCA St. 5-SR at 5. PECO did, however, provide the average monthly consumption for residential customers and for confirmed low-income customers. OCA St. 5 at 40. After examining the PECO Gas average monthly consumption data, OCA witness Colton found that:

> [a]ccording to PECO Gas, "The number of confirmed low-income customers were defined as those customers with verified financial statements within the last two years. These numbers include CAP customers who were verified within the last two years." (OCA-III-34). According to that Company data, somewhat fewer residential customers have lower usage during the heating season months (defined as November through March) than do confirmed low-income customers (5.1% residential have usage less than 10 CCF vs. 6.7% confirmed low-income have usage less than 10 CCF). Somewhat more residential customers have higher usage during the heating season than do confirmed low-income customers (85.9% residential customers have usage higher than 30 CCF vs. 82.6% confirmed low-income have usage higher than 30 CCF).
>
> This finding is significant for reasons beyond the fact that PECO Gas reports a higher percentage of low-income customers with lower usage and a lower percentage of low-income customers with higher usage. While PECO reports nearly 430,000 gas heating customers for its residential customer base, it also reports an additional 65,000 gas non-heating customers. (OCA-III-3). More than 13% of its total residential customers, in other words, do not use natural gas for their primary heating service. In contrast, while PECO Gas does not explicitly limit its CAP to gas heating customers (OCA-III-1(k)), the percentage of income burdens imposed by PECO Gas effectively limit CAP participation to heating customers.
>
> The PECO Gas numbers cited above, in other words, show proportionately fewer low use residential customers, and proportionately more high use residential customers (as compared to confirmed low-income) even though the bulk of the confirmed

> low-income customers are CAP customers, who are exclusively higher use heating customers.

OCA St. 5 at 39-40.

OCA witness Colton also completed two demographic analyses that support his assertions that low-income customers use less natural gas than other residential customers. First, in his zip code analysis, OCA witness Colton relied upon a 2009 Department of Energy (DOE) Residential Energy Consumption Study (RECs Study). The DOE RECs Study found that as incomes increase, natural gas usage also correspondingly increases. OCA St. 5 at 40-41. Moreover, the DOE RECs Study showed renters tend to use less natural gas than do homeowners, holding constant the type of housing unit occupied. OCA St. 5 at 41. OCA witness Colton performed an analysis that demonstrated there was a strong correlation between low-income status and renter status in PECO's service territory.[211] OCA St. 5 at 40-43. OCA St. 5 at 40-41. Based upon the DOE RECs data, OCA witness Colton testified that "[o]ne would conclude from this data that natural gas usage in the low-income housing units in the PECO Gas service territory is lower than natural gas consumption in the non-low-income housing units." OCA St. 5 at 43.

Second, Mr. Colton examined the number of rooms in a housing structure as compared to the average household income. The RECs study also showed that there is a correlation between the size of a housing unit and natural gas consumption. OCA St. 5 at 44. OCA witness Colton

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[211] Using the zip code data for the PECO natural gas service territory, Mr. Colton found the following: (1) zip codes with low percentages of households with income less than 150% of Poverty Level also have low percentages of renter-occupied housing units; (2) while 28 of the zip codes in the three lowest deciles of low-income status are also in the three lowest income deciles of percentage of housing units occupied by renters, only three of the zip codes in the three highest deciles of low-income status are also in the lower three deciles of renter-occupied units; and (3) at the same time, while 24 of the zip codes in the three ***highest*** deciles of low-income status are also in the three highest deciles of renter-occupied units, only six zip codes with a low penetration of low-income households also have a high penetration of renters. OCA St. 5 at 42, Table 11.

reached this same conclusion when he analyzed PECO-specific data.[212] See OCA St. 5 at 45-47, Tables 13-14. More specifically, Mr. Colton examined the housing stock (single-family homes vs. multi-family homes) by zip code and compared the data to the income levels in the zip codes. OCA St. 5 at 48-50, Tables 16-17. OCA witness Colton concluded "it is clear that the housing stock in the PECO Gas service territory is such that the building types with the lowest natural gas consumption (multi-family buildings, excluding those with only 2-4 units) are found within the lowest income zip codes." OCA St. 5 at 50.[213]

OCA witness Colton further tested his conclusions through several different reviews. Mr. Colton tested his conclusions by examining the relationship between income and PECO home heating bills; redefining income in terms of dollars instead of Federal Poverty Level and comparing the PECO home heating bills; examining the relationship between PECO home heating bills and the receipt of food stamps (SNAP); and examining the relationship between PECO home heating bills and the receipt of CAP. OCA St. 5 at 50-55, Table 18-20. Each of those tests supported Mr. Colton's conclusion. Mr. Colton concluded that "the PECO Gas proposal to substantially increase its fixed monthly customer charge will disproportionately impose adverse impacts on low-income customers." OCA St. 5 at 55. In Rebuttal Testimony, the Company did not address

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[212] Mr. Colton used Census data and zip codes to perform an analysis of average income by number of rooms in a housing structure. OCA St. 5 at 45-47, Tables 13-14. Mr. Colton found that:

> Clearly, as the percentage of low-income population increases throughout the PECO Gas service territory, the percentage of larger housing units, with higher natural gas consumption, increases as well.

OCA St. 5 at 47.

[213] As shown in Table 15, Mr. Colton also found that single family homes have greater usage than multi-family dwellings. OCA St. 5 at 47-48. He found that "[w]hile multi-family units in buildings with five or more units have natural gas usage of 41 MCF, single-family detached homes have gas consumption more than twice that high (97 MCF), while single-family attached homes have usage nearly twice that high (74 MCF)." OCA St. 5 at 47-48.

Mr. Colton's analysis or the DOE study. Regarding Mr. Colton's conclusion that low-income customers are disproportionately low-use customers, Company witness Bisti only testified:

> PECO's proposal to increase the residential customer charge will provide a relative benefit to high-use, low-income customer, by lessening the impact of the overall rate increase. Any division of cost between fixed and volumetric components in a customer class will have relative winners and losers, and the Company believes that its proposal to provide a relative benefit to high-usage low-income customers, who are more likely to experience high monthly bills, is reasonable.

PECO St. 7-R at 10. Mr. Bisti's testimony did not directly address the analysis performed by Mr. Colton. As OCA witness Colton testified:

> Mr. Bisti offers no facts, however, to support his claim that low-income customers are high-usage. His Rebuttal Testimony does not attempt to counter the extensive analysis presented in my Direct Testimony that low-income customers in the PECO Gas service territory disproportionately, and on average, tend to be low use customers. Thus, while I agree with Mr. Bisti that "any division of cost between fixed and volumetric components in a customer class will have relative winners and losers," (PECO Gas St. 7-R, at 10), the evidence in this case is that low-income customers will, disproportionately and on average, be amongst the losers from the PECO Gas proposal to increase its residential customer charge.

OCA St. 5-SR at 5. While Company witness Bisti does not agree with Mr. Colton's conclusions, the Company has not presented any evidence to rebut his detailed analyses.

The OCA submits that Mr. Colton has conclusively demonstrated that low-income customers are disproportionately low-use customers and would be disproportionately impacted by the proposed customer charge increase. As low-use customers, low-income customers would not have the ability to otherwise avoid the impact of the $4.25 proposed increase to the customer charge. PECO has been unable to refute the impact the proposed increase will have on low-income, low-use customers.

e. <u>Conclusion</u>.

As the OCA discusses throughout this Main Brief, this is not the time to be raising rates for PECO's customers as they continue to struggle during these unprecedented times. As Mr. Watkins testified, PECO's proposal as to the $4.25 increase in the residential customer charge should be rejected. As OCA witness Colton testified, lower income customers will be disproportionately impacted by PECO's proposed substantial customer charge increase.

2. Non-Residential Customer Rate Design.

a. Rate GC Customer Charge.

The OCA is not briefing this issue, but reserves the right to respond in Reply Brief if necessary.

b. Rage GC Declining Block Volumetric Charge Differential.

The OCA is not briefing this issue, but reserves the right to respond in Reply Brief if necessary.

c. Rate TS-F and TS-I Volumetric Charge Differential.

The OCA is not briefing this issue, but reserves the right to respond in Reply Brief if necessary.

d. Elimination of Rate IS Margin Sharing.

The current practice of the Company regarding its Rate IS – Interruptible Service is to share the margins received from Rate IS between purchased gas cost (PGC) customers and the Company's shareholders. As recognized by OCA witness Glenn Watkins and OSBA witness Robert Knecht, the practice of margin sharing with respect to a customer class is an outdated practice that should be eliminated. OCA St. 4 at 28; see also OSBA St. 1 at 43-44. As the Company agreed to remove the practice of margin sharing for Rate IS, the Commission should adopt the proposal of OCA witness Watkins.

As stated in the Direct Testimony of Company witness Bisti, Rate IS is an interruptible gas sales rate that is determined by formula. PECO St. 7 at 10. The Rate IS customer is charged a customer charge plus a rate per Mcf that is (1) no less than PECO's commodity cost of gas for the month plus three cents and (2) no more than the price, on an equivalent BTU basis, of the alternative fuel the customer is consuming. Id. PECO then subtracts from this price the Company's weighted average cost of flowing gas. Id. This gross margin is then divided between PGC customers and the Company's shareholders on a 75%/25% basis, respectively. Id. Thus, the Company did not assign any of the rate increase to Rate IS. Id.

In response, OCA witness Watkins recommended that the Company abandon this practice and assign some of the increase to Rate IS. OCA St. 4 at 28. PECO has utilized the practice of margin sharing for 41 years and is the result of a Commission decision in Docket No. R-79030781. Id. As OCA witness Watkins testified, however, this practice was developed under a set of circumstances that are no longer applicable:

> The natural gas industry is much different today than it was 41 years ago. In the late-1970s (when this margin sharing mechanism was implemented), natural gas was regulated at the well head and was a bundled product sold to NGDCs who then resold gas to retail customers. For all intents and purposes, there was no competition for natural gas at the well head nor was there open access to transportation from the well head to the NGDC. With FERC Order 636 in 1992, the entire natural gas industry changed. Indeed, we now see that the vast majority of PECO's Interruptible customers elect Interruptible Transportation service instead of Interruptible Sales service. Furthermore, and as discussed earlier, Rate IS is currently providing an inadequate rate of return on a fully allocated basis yet, PECO retains 25% of the gross margins (before allocation of overhead and other costs) for shareholders. Clearly, PECO's captive ratepayers are subsidizing this class such that the margin sharing mechanism should be abandoned and that a rate increase is warranted for this rate schedule should the Commission decide a "business as usual" approach to increase PECO's overall revenue requirement.

OCA St. 4 at 28-29. As Mr. Watkins stated, very few customers currently elect Interruptible Sales service and this rate class is providing an inadequate rate of return on a fully allocated basis. OCA St. 4 at 29. Accordingly, other ratepayers are inappropriately subsidizing this rate class and the practice of margin sharing should be abandoned. Based on this recommendation, OCA witness Watkins assigned a portion of the rate increase to the IS class. See OCA St. 4-R at 12.

Likewise, OSBA witness Knecht testified that at present only two relatively large customers currently take service on Rate IS. OSBA St. 1 at 43. Mr. Knecht also that that because of this margin sharing practice neither provide any contribution to base rates. Id. As there is no reason why the Company should be allowed to profit off this service, OSBA witness Knecht recommended that the Company abandon this practice and assign a portion of the increased base rate revenues to offset any proposed increases to the residential and TS-F classes.[214] OSBA St. 1 at 44.

In his rebuttal Testimony, Company witness Bisti agreed with the recommendation of OCA witness Watkins. PECO St. 7-R at 17. Company witness Bisti agreed to the following:

> The Company will propose to eliminate the Rate IS sharing mechanism on or before December 1, 2021 as part of its next annual PGC reconciliation filing and has updated its revenue requirements and GCOSS to reflect this change as described in Mr. Trzaska's and Ms. Ding's rebuttal testimony. The Company's revised revenue allocation and proof of revenues, set forth in PECO Exhibit JAB- 1 Revised and PECO Exhibit JAB-4 Revised, respectively, also reflect this change.

PECO St. 7-R at 17.

[214] OSBA witness Knecht also recommended that the Company consider eliminating Rate IS as a base rate option. OSBA St. 1 at 44. The OCA does not take a position on this recommendation.

For these reasons, the Company should adopt the recommendation of OCA witness Watkins and approve the abandonment of PECO's margin sharing mechanism with respect to Rate IS – Interruptible Service.

e. Elimination of Rate IS, MV-I and TCS.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

3. DSIC Cost Allocation.

The OCA is not briefing this issue, but reserves the right to respond in its Reply Brief if necessary.

4. Negotiated Rate Service.

During the investigation of the Company's rate filing, OCA witness Watkins determined that the Company had six negotiated rate service (NGS) customers that were receiving rate discounts for the provision of natural gas service. In some instances, it was determined that the Company's NGS customers had been receiving discounted rates for a number of years. Thus, the OCA recommends that the Commission require the Company to reevaluate the terms and rates for each of the three negotiated rate contracts identified in the Direct Testimony of OCA witness Watkins.

In response to OCA discovery, the Company indicated that PECO had negotiated rate discounts with six customers and each customer had demonstrated the existence of a viable and competitive alternative at the time of the agreement. OCA St. 4 at 32. During the course of OCA witness Watkins' review of these agreements, however, Mr. Watkins observed that three of the contracts were very old and there had been no increases for many years. Id.; see also OCA St. 4 at 32-33 (Confidential Version). Thus, OCA witness Watkins recommended the following:

> I recommend the Commission order PECO to completely reevaluate the terms and rates for each of the three negotiated rate contract customers discussed above. This reevaluation should include a detailed analysis of each customer's ability to use alternative fuels, whether such alternative fuels could viably be used to replace some or all of its current natural gas usage, a detailed analysis of the burner tip cost of the identified alternative fuel(s), and a financial analysis supporting each negotiated rate with adjustments to the current rates as appropriate. These findings should be provided to the Commission and OCA on, or before, the Company's next rate case filing.

OCA St. 4 at 33-34.

Similarly, OSBA witness Knecht took issue with certain aspects of the negotiated rate customer contracts. See OSBA St. 1 at 39-42 (Confidential). Thus, he recommended that if the Commission determines that, for the TS-F class, if any of the Company's negotiated rate discounts are not justified, additional revenues from these customers should be used to reduce the rate increase required from other TS-F customers. See OSBA St. 1 at 42. For the TS-I class, Mr. Knecht recommended that additional revenues should be first used to reduce the rate increase of other TS-I customers, but if any revenue increase would bring the TS-I revenues into line with the allocated cost, any additional revenues should then be credited to the Rate GR residential class. Id.; see also PECO St. 7-R at 21.

I&E witness Cline also recommended that the Company provide an update to the competitive alternative analysis for any customer that had not had its alternative fuel source verified for a period of five years or more when PECO files a base rate case and that the Company cease NGS service to any customer that does not have a verified alternative supply. See PECO St. 7-R at 21. Mr. Cline also recommended that, in future base rate cases, PECO separate the costs and revenues of customers with discounted rates into their own class in the COSS. Id., at 21-22.

Thus, the OCA submits that the Commission should adopt the recommendation of OCA witness Watkins. It is reasonable to ensure the continued provision of a viable, competitive

alternative for NGS customers to ensure their discounted rates are shown to be just and reasonable and not unduly discriminatory. This is consistent with the Commission's recent Opinion and Order issued in Columbia Gas' 2020 rate case at Docket No. R-2020-3018835:

> …[W]e agree with the ALJ and I&E that it is important to periodically analyze competitive alternatives to ensure that the rates of the flex-rate customers are not discounted lower than is necessary to avoid the customer choosing the alternative supply. As I&E witness Mr. Cline indicated, this analysis is needed to provide an accurate and up-to-date analysis of competitive alternatives to show the flex rate is necessary and reasonable and to ensure that flex-rate customers make the maximum contribution to fixed costs. I&E St. 3-SR at 5. We especially agree with the ALJ and I&E that providing excessive discounts to customers is not in the public interest and would be harmful to both the Company and its customers, since the other customers would be required to make up the lost revenues when flex-rate customers pay less than tariff rates.[215]

Accordingly, the Commission should adopt the recommendation of OCA witness Watkins.

5. Theft/Fraud Investigation.

In its base rate filing, PECO proposed to increase the Company's "Theft/Fraud Investigation Charge" in its proposed Tariff Rule 17.7 from $370 [216] to $460. OCA St. 5 at 109; PECO St. 7, Exh. JAB-2, PECO Energy Co. Gas Service Tariff, Pa. P.U.C. No. 4, Original Page No. 27, Tariff Rule 17.7.[217] The proposed Tariff Rule 17.7 states:

> If the Company's meters or other Company equipment on the customer's premises have been tampered or interfered with by any means whatsoever, the customer being supplied through such equipment whether an applicant or a customer as defined at pa [sic] C.S. § 1403 shall pay a theft/fraud investigation charge in addition to any amount that the Company estimates is due for service used, but not registered on the Company's meter. These theft/fraud investigation charges listed below include allocated overheads, all investigative costs and administrative cost [sic] deemed necessary

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215 Columbia Gas at 240.

216 OCA St. 5-SR at 9, referencing the fee identified in existing Tariff Rule 17.6.

217 The OCA notes that PECO amended its proposal in Rejoinder Testimony to eliminate inclusion of fraud in the tariff provision. Tr. at 202.

> by the Company to correct any and all unauthorized conditions at the premise. The Company reserves the right to assess theft/fraud investigation charges as a precedent to reconnection of service as well as the right to assess a separate reconnection charge as described in Rule 17.6.

PECO St. 7, PECO Exh. JAB-2, PECO Energy Co. Gas Service Tariff, Pa. P.U.C. No. 4, Original Page No. 27, Tariff Rule 17.7; see also, OCA St. 5 at 109. The OCA submits Tariff Rule 17.7 is overly broad, fatally flawed, and should not be approved. The OCA also submits that the Company has not met its burden to demonstrate that the proposed $90 increase to the charge is cost-based and should be applied as proposed to both customers and "applicants."

As OCA witness Colton explained, Tariff Rule 17.7 provides PECO with the "authority to determine the extent to which, if at all, the 'Company's meters or other Company equipment" has been "tampered or interfered with.' No definition has been provided for either term." OCA St. 5 at 109. OCA witness Colton identified the following concerns with the Company's proposed tariff provision:

> No process has been established to determine whether an ***allegation*** that the Company's equipment has been "tampered or interfered with" have a basis in fact. I note that allegations of meter tampering (or "interference" with Company equipment) have a higher standard of proof that must be met than most allegations. There is, with respect to any allegation of fraud, a presumption that the customer acted honestly in good faith. That allegation must be overcome by clear and convincing evidence. The fact the [sic] PECO Gas considers an allegation of meter tampering (or interference with other Company equipment) to be a type of "fraud" is evident in the tariff itself (i.e., "The Company reserves the right to assess theft/fraud investigation charges. . ."). Indeed, the Company's own label for its proposed tariff section is "Theft/Fraud Investigation." The PECO Gas tariff does not provide for any process to determine the legitimacy of an allegation that the Company's meters "or other Company equipment" have been "tampered or interfered with," it does not provide a process by which the Company must sustain its allegations by application of the appropriate burden of proof.

OCA St. 6 at 109-110 (footnote omitted).

In Rebuttal Testimony, PECO witness Schlesinger testified that the Company only actually applied the prior Tariff Rule 17.6 when there was "active gas theft" involving the specific tampering of the meter, and would continue to do so with the proposed revised Tariff Rule 17.7. PECO St. 8-R at 2-3. In Surrebuttal Testimony, OCA witness Colton discussed the distinction between theft and fraud and testified:

> Witness Schlesinger acknowledges, in other words, that: (1) even PECO Gas narrows its application of the tariff language; (2) that such narrowing is voluntary on its part, accomplished through "procedures in place,"; and (3) that PECO Gas' narrowing of the applicability of the proposed rule is "not detailed in its tariff" (and, accordingly, has never been presented to and approved by the Commission). Should the Commission approve the proposed tariff language, there is nothing to prevent PECO from deciding to adopt "procedures in place" to apply that tariff language in a different (and broader) fashion.

OCA St. 5-SR at 9.

In Rejoinder Testimony, PECO witness Schlesinger amended the proposed Tariff Rule 17.7 to strike the references to fraud from the tariff provision. Tr. at 202. While the OCA supports the removal of the references to fraud, removal of the fraud language alone does not cure the concerns that OCA witness Colton raised in his testimony. OCA witness Colton's concerns applied to ***both*** the fraud and the theft language, and deletions of the fraud language cannot address how overbroad the theft language remains. OCA witness Colton testified:

> The proposed tariff is irremediably excessively broad. Rather than proposing a specific charge applicable to specifically prescribed actions on the part of a customer, PECO Gas proposes a charge applicable if the Company alleges that its equipment has been interfered with "by any means whatsoever." Not only is there no limit on what PECO might deem to be "interference," but there is no limit on what activities PECO deems to be covered by the charge. Moreover, while the proposed tariff references meter tampering, the charge is not limited to meter tampering. The proposed PECO Gas language covers all allegations of "theft/fraud."

OCA St. 5 at 110. Mr. Schlesinger's explanation still does not require the Company to provide any factual demonstration that the customer has engaged in meter tampering or "interference" with the Company equipment.

The OCA submits that the language of the tariff, absent the fraud language, is still overbroad. OCA witness Colton explained:

> The over-reach of the tariff can be seen in the tariff language further when PECO Gas, in the four corners of its tariff, expands its charges from being applicable to meter tampering (or interference by any means whatsoever), to "theft/fraud," to circumstances which PECO Gas merely alleges involves "unauthorized conditions at the premise." The hypothetical illustration above, in other words, even if not representing meter tampering, may well be alleged to be an "unauthorized condition."

OCA St. 5 at 111. The "unauthorized conditions at the premise" language has not been deleted from the tariff and remains undefined and at the discretion of the Company to define.

OCA witness Colton also identified concerns with the Company's proposed $470 charge in Tariff Rule 17.7. First, the theft investigation charge includes inappropriate categories of costs. The explicit language of Tariff Rule 17.7 states that the charge "include[s] allocated <u>overheads</u>, all investigative costs and <u>administrative</u> cost [sic] deemed necessary by the Company to correct any and all unauthorized conditions at the premise." PECO St. 7, Exh. JAB-2, PECO Energy Co. Gas Service Tariff, Pa. P.U.C. No. 4, Original Page No. 27, Tariff Rule 17.7 (emphasis added). The OCA submits that it is not appropriate to include overhead costs and administrative costs in the charge when these charges are otherwise recovered in base rates. As OCA witness Colton testified, "[o]verhead costs and administrative costs have already been included in base rates. To include these costs in the proposed charge would allow PECO Gas to recover them twice: once in base rates and again through the proposed new tariffed charge." OCA St. 5 at 112.

In Rebuttal Testimony, PECO witness Schlesinger testified that the dollar value of the charge is "the average cost that PECO incurs to investigate and remediate theft or fraud." PECO Gas St. 8-R at 2. Mr. Schlesinger also claimed to address the double recovery of the overhead and administrative charges by making a $10,000 revenue adjustment to address the overhead and administrative costs already included in base rates under the existing Tariff Rule 17.6. PECO St. 8-R at 3. In Surrebuttal Testimony, OCA witness Colton testified that the explanation still did not adequately address the issue he raised. The proposed $10,000 revenue adjustment still does not tie the <u>actual</u> overhead and administrative costs to the overhead and administrative costs included in the proposed $460 fee and the current $370 fee. OCA St. 5-SR at 9.

In Rejoinder Testimony, PECO witness Schlesinger testified:

> The $10,000 adjustment is based on the actual 2019 gas revenues collected under existing rule 17.6 related to investigation and remediation of theft. In 2019, the company collected $9,740 of gas revenues and PECO rounded the revenue figure up to $10,000 for purposes of making a revenue adjustment in this proceeding.

Tr. at 203. The OCA submits that PECO witness Schlesinger's testimony still does not explain how the proposed $10,000 off-set is connected to the actual overhead and administrative charges included in base rates and in the investigation charge.[218] Second, it is also the breadth of the applicability of the $460 theft investigation charge that is problematic. In addition to customers, the Company proposed to apply Tariff Rule 17.7 to "applicants" as well. As OCA witness Colton explained:

> PECO Gas proposes a tariff charge to be applied even if a household is not a PECO customer. PECO's tariff proposal is to assess the

[218] Moreover, the Company's explanation of the charges does not appear to be complete. In order for the gas revenues to be directly tied to the existing Tariff Rule 17.6, the total number of instances of theft should be able to be multiplied by the $370 tariff charge to equal the total gas revenues assessed. The answer provided by the Company, however, does not result in a number divisible by the $370 investigation fee [$9,740/$370= 26.324343].

> proposed charge to "an applicant" as well as to a customer. The $460 charge may be assessed by PECO Gas whether or not the person had any involvement with, or any responsibility for, whatever objectionable behavior PECO Gas is alleging (whether it be meter tampering, "interference with other equipment by any means whatsoever," "theft/fraud," or "unauthorized conditions").
>
> Whatever the intended breadth of the tariff, the language in the four corners of the tariff language as proposed by PECO Gas is excessive and over-reaching to the extreme. The language within the four corners of the proposed tariff is certainly not limited to meter tampering.

OCA St. 5 at 112.

The consequences of not paying the fee are severe for both customers and "applicants." As OCA witness Colton explained:

> When PECO Gas states that it will apply this charge to "applicants," it seems clear that the Company will refuse to connect service to a new customer unless/until the proposed charge has been paid. In addition, PECO Gas explicitly states that it "reserves the right to assess theft/fraud investigation charges as precedent to reconnection of service." Inherent with reserving that "right," in other words, is the presumed action by PECO to disconnect service, and to leave a premises without service, pending payment of the fee.

OCA St. 5 at 112-113. Moreover, OCA witness Colton identified concerns that low-income customers will be disproportionately impacted by the proposed fee and accusations of theft and unauthorized use. OCA St. 5 at 113.

The OCA submits that Tariff 17.7 is overly broad and fatally flawed. The OCA also submits that the Company has not met its burden to demonstrate that the proposed $90 increase to the charge is cost-based and should be applied as proposed to both customers and "applicants." Moreover, PECO has not adequately explained how the inclusion of overhead and administrative costs will be off-set by the proposed $10,000 adjustment to base rate revenues and why there will

not still be a double-recovery of these costs. As such, the OCA submits that PECO's proposed Tariff Rule 17.7 should not be approved.

E. Summary and Alternatives.

For the reasons set forth above, the OCA submits that the Commission should adopt the following recommendations of the OCA regarding rate structure: (1) adoption of OCA Watkins' COSS and use of the P&A Method to allocate distribution mains, (2), adoption of OCA Watkins' proposed revenue allocation if any rate increase is approved in this proceeding, (3) adoption of OCA witness Colton's recommendation to allocate universal service program costs across all customers classes, (4) adoption of OCA witness Watkin's recommendation to eliminate Rate IS – Interruptible Service margin sharing, (5) require PECO to reevaluate the terms and rates for each of the three negotiated rate contracts identified in the Direct Testimony of OCA witness Watkins and provide its findings in its next gas base rate case, and (6) deny the Company's proposed changes with respect to proposed Rule 17.7.

XI. CONCLUSION

For the reasons set forth in this Main Brief, the OCA respectfully requests that the Commission deny any rate increase to PECO at this time. As demonstrated by the OCA, under a "business as usual" ratemaking approach, the Commission should reduce PECO's rates as it is currently earning above a market-derived return on equity. Moreover, when considering the societal and economic hardships currently facing PECO's customers as a result of the continuing COVID-19 Pandemic, it is clear that no rate increase is justified at this time.

Respectfully submitted,

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Dated: March 3, 2021
304688

APPENDIX A

OCA RATE CASE TABLES

TABLE I
PECO Energy Company - Gas Division
INCOME SUMMARY
Docket No. R-2020-3018929

	Pro Forma Present Rates (1)	Company Adjustments (1)	Pro Forma Present Rates (Revised) (1)	OCA Adjustments	OCA Pro Forma Present Rates	OCA Revenue Increase	Total Allowable Revenues
	$	$	$	$	$	$	$
Operating Revenue	590,014	0	590,014	0	590,014	(11,474)	578,540
Expenses:							
O & M Expense	370,135	0	370,135	(9,322)	360,813	(40)	360,773
Depreciation	86,146	0	86,146	(7,827)	78,319	0	78,319
Amortization of Regulatory Expense	2,812	0	2,812	0	2,812	0	2,812
Taxes, Other	7,545	0	7,545	(299)	7,246	(35)	7,211
Income Taxes:			0				
State	(4,151)	0	(4,151)	4,748	597	(1,139)	(542)
Federal	(13,868)	0	(13,868)	10,096	(3,772)	(2,155)	(5,927)
Total Expenses	448,619	0	448,619	(2,604)	446,015	(3,369)	442,646
Net Inc. Available for Return	141,395	0	141,395	2,604	143,999	(8,106)	135,893
Rate Base	2,463,555	0	2,463,555	(306,520)	2,157,035		2,157,035
Rate of Return	5.74%		5.74%				6.30%

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TABLE I(A)
PECO Energy Company - Gas Division
RATE OF RETURN
Docket No. R-2020-3018929

	Structure	Cost	After-Tax Weighted Cost	Effective Tax Rate Complement	Pre-Tax Weighted Cost Rate
Total Cost of Debt			1.92%		
Long-term Debt	50.00%	3.84%	1.92%		1.92%
Short-term Debt	0.00%	0.00%	0.00%		
Preferred Stock	0.00%	0.00%	0.00%	0.711079	0.00%
Common Equity	50.00%	8.75%	4.38%	0.711079	6.16%
	100.00%		6.30%		8.08%
Pre-Tax Interest Coverage	4.21				
After-Tax Interest Coverage	3.28				

TABLE I(B)
PECO Energy Company - Gas Division
REVENUE FACTOR
Docket No. R-2020-3018929

100%	1.00000000
Less:	
Uncollectible Accounts Factor (*)	0.00347200
PUC, OCA, OSBA Assessment Factors (*)	0.00308000
Gross Receipts Tax	0.00000000
Other Tax Factors	0.00000000
	0.993448
State Income Tax Rate (*)	0.09990000
Effective State Income Tax Rate	0.09924546
Factor After Local and State Taxes	0.89420254
Federal Income Tax Rate (*)	0.21000000
Effective Federal Income Tax Rate	0.18778253
Revenue Factor (100% - Effective Tax Rates)	0.70642001

(*) Company Main Brief

TABLE II
PECO Energy Company - Gas Division
SUMMARY OF ADJUSTMENTS
Docket No. R-2020-3018929

Adjustments	Rate Base	Revenues	Expenses	Depreciation	Taxes-Other	State Income Tax	Federal Income Tax
	$	$	$	$	$	$	$
RATE BASE:							
CWC:							
Int. & Div. (Table IV)	(193)						
Taxes (Table V)	8						
O & M (Table VI)	(306)						
Adjustment to FPFTY Plant in Service	(270,970)						
Remove Pension Asset from Rate Base	(35,059)						
REVENUES:							
		0				0	0
EXPENSES:							
Annualize FPFTY Payroll			(2,447)			244	463
Revise Benefits Expense			(315)			31	60
Annualize Postretirement Benefits Expense			(486)			49	92
Annualize Pension Expense			0			0	0
Remove Advance Recovery of MGP Remediation			(287)			29	54
Normalize Injuries and Damages Expense			(464)				
Normalize Rate Case Expenses			(208)				
Normalize Regulatory Initiative Costs			(40)				
Remove Recovery of Cost to Achieve			(370)				
Normalize EBSC Charges			(997)				
Adjustment to Normalize R&D Expense			(138)				
Reflect Annual Regulatory Commission Expense			(462)				
Normalize Contracting Expenses			(367)				
Annualize Employee Activity Expenses			(71)			7	13
Annualize Travel Meals & Entertainment Expense			(178)			18	34
Remove Increase in Energy Efficiency Costs			(2,492)			249	471
Annualize Depreciation Expense			0	(7,827)		0	0
Remove Inflation Escalation From Property Taxes			0		(112)	0	0
Remove Inflation Escalation From Payroll Taxes			0		(187)	0	0
Interest Synchronization			0			0	0
TAXES:							
Interest Synchronization (Table III)						268	507
TOTALS	(306,520)	0	(9,322)	(7,827)	(299)	895	1,694

TABLE III
PECO Energy Company - Gas Division
INTEREST SYNCHRONIZATION
Docket No. R-2020-3018929

	Amount $
Company Rate Base Claim	2,463,555
OCA Rate Base Adjustments	(306,520)
OCA Rate Base	2,157,035
Weighted Cost of Debt	1.92%
OCA Interest Expense	41,415
Company Claim (1)	44,098
Total OCA Adjustment	2,683
Company Adjustment	0
Net OCA Interest Adjustment	2,683
State Income Tax Rate	9.99%
State Income Tax Adjustment	268
Net OCA Interest Adjustment	2,683
State Income Tax Adjustment	268
Net OCA Adjustment for F.I.T.	2,415
Federal Income Tax Rate	21.00%
Federal Income Tax Adjustment	507

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TABLE IV
PECO Energy Company - Gas Division
CASH WORKING CAPITAL - Interest and Dividends
Docket No. R-2020-3018929

Accrued Interest	Long-Term Debt	Short-Term Debt	Preferred Stock Dividends	
Company Rate Base Claim	$2,463,555	$2,463,555	Company Rate Base Claim	$2,463,555
OCA Rate Base Adjustments	($306,520)	($306,520)	OCA Rate Base Adjustments	($306,520)
OCA Rate Base	$2,157,035	$2,157,035	OCA Rate Base	$2,157,035
Weighted Cost of Debt	1.92000000%	0.00%	Weighted Cost Pref. Stock	0.00000000%
OCA Annual Interest Exp.	$41,415	$0	OCA Preferred Dividends	$0
Average Revenue Lag Days	0.0	0.0	Average Revenue Lag Days	0.0
Average Expense Lag Days	0.0	0.0	Average Expense Lag Days	0.0
Net Lag Days	0.0	0.0	Net Lag Days	0.0
Working Capital Adjustment				
OCA Daily Interest Exp.	$113	$0	OCA Daily Dividends	$0
Net Lag Days	0.0	0.0	Net Lag Days	0.0
OCA Working Capital	($5,995)	$0		$0
Company Claim (1)	($5,802)	$0	Company Claim (1)	$0
OCA Adjustment	($193)	$0		$0
Total Interest & Dividend Adj.	($193)			

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TABLE V
PECO Energy Company - Gas Division
CASH WORKING CAPITAL -TAXES
Docket No. R-2020-3018929

Description	Company Proforma Tax Expense Present Rates	OCA Adjustments	OCA Pro forma Tax Expense Present Rates	OCA Allowance	OCA Adjusted Taxes at Present Rates	Daily Expense	Net Lead/ Lag Days	Accrued Tax Adjustment
PUC Assessment	$0	$0	$0	($35)	($35)	($0.10)	0.00	$0
Public Utility Realty	$0	$0	$0		$0	$0.00	0.00	$0
Capital Stock Tax	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
	$0	$0	$0		$0	$0.00	0.00	$0
State Income Tax	$0	$895	$895	($1,139)	($244)	($0.67)	0.00	$0
Federal Income Tax	$0	$1,694	$1,694	($2,155)	($461)	($1.26)	0.00	$0
	$0	$2,589	$2,589	($3,329)	($740)			

OCA Allowance	189
Company Claim (1)	181
OCA Adjustment	8

(1) Company Main Brief

TABLE VI
PECO Energy Company - Gas Division
CASH WORKING CAPITAL -- O & M EXPENSE
Docket No. R-2020-3018929

Description	Company Pro forma F.T.Y. Expense	OCA	OCA Pro forma Expenses	Lag Days	Lag Dollars
Payroll (Dist Only)	$ 42,209	$ (2,447)	$39,762	13.67	$543,551
Pension Expense	2,513	-	2,513	14.00	$35,182
Commodity Purchased - Gas	226,710	-	226,710	36.51	$8,277,182
Payment to Suppliers	63,454	-	63,454	56.21	$3,566,749
Other Expenses	96,118	(6,876)	89,242	37.54	$3,350,138
	$0	$0	$0	0.00	$0
	$431,004	($9,322)	$421,681	37.40	$15,772,802

OCA Average Revenue Lag	43.2	
Less: OCA Avg. Expense Lag	37.4	
Net Difference	5.8	Days
OCA Pro forma O & M Expense per Day	$1,155	
OCA CWC for O & M	$6,661	
Less: Company Claim (1)	$6,967	
OCA Adjustment	($306)	

(1) Company Main Brief

APPENDIX B

PROPOSED FINDINGS OF FACT

PROPOSED FINDINGS OF FACT

III. OVERALL POSITION ON RATE INCREASE

1. Throughout the course of this proceeding, COVID-19 cases in Pennsylvania climbed from more than 1,000 reported infections a day in July and August of 2020 to peaking at more than 10,000 reported new infections a day following Thanksgiving in December of 2020. OCA St. 2-SR at 2.

2. Almost half of the Pennsylvania workforce has filed an unemployment claim since March of 2020. OCA St. 2-SR at 2.

3. In the counties served by PECO, monthly unemployment rates at the end of November 2020 ranged between 4.4 percent in Chester County and 6.5 percent in Delaware County. OCA St. 2-SR, Exhibit SJR-8S.

4. According to a survey conducted by the U.S. Census Bureau, roughly 50 percent of Pennsylvania households experienced wage loss from March 13, 2020 through February 9, 2021 as shown in Figure 3 (Updated) below. OCA St. 1-SR, Schedule SJR-7S at 1, Figure 3 (Updated).

5. Mr. Colton testified that low- to moderate-wage workers have experienced greater income loss during the pandemic due to the disparity in paid leave afforded to low wage workers compared to higher earning individuals. OCA St. 5 at 10.

6. OCA witness Colton presented evidence and data demonstrating that low- and moderate-wage workers are more likely to experience job and income loss during the pandemic due to the nature of their positions. OCA St. 5 at 7-11.

IV. RATE BASE

7. For the Future Test Year (FTY) ended June 30, 2021, PECO Energy Company – Gas Division (PECO or the Company) is projecting approximately $292 million in plant additions bringing its total plant in service claim to approximately $3.232 billion. See PECO St. 3, Sch. MJT-2, Sch. C-1, Column 4, Line 1; see also Sch. C-2, Line 32. For the FPFTY ended June 30, 2022, the Company is projecting approximately $322 million in plant additions bringing the Company's total plant in service claim to approximately $3.538 billion. See PECO St. 3, Sch. MJT-1, Sch. C-1, Column 4, Line 1; see also Sch. C-2, Line 32.

8. The Company developed a five-year long-range plan in June 2019 that was completed in January 2020, well before the onset of the COVID-19 Pandemic. See OCA St. 2 at 8-9; see also OCA St. 2, App. B at 28.

9. After the long-range plan, the Company then developed its FTY and FPFTY budgets over a two-month period in the summer of 2020. See OCA St. 2, App. B at 28. The test year budgets were not reflected to account for the effects of the COVID-19 pandemic. See OCA St. 2 at 4-5; see PECO St. 2-R at 3.

10. The Company's data supporting its planned plant additions has conflicting data that reflects some projects in rate base that extend beyond the end of the test year. See OCA St. 2 at 10-11; see also OCA St. 2, App. B at 31.

11. The OCA recommends that the Company's projected FPFTY plant additions be removed from rate base, resulting in a reduction of $271 million to rate base. See OCA St. 2-SR, Sch. LKM-2, Pg. 2, Line 5.

12. The Company is seeking to include in rate base a 'Pension Asset' worth $35.1 million. PECO St. 3 at 22-23.

13. The Pension Asset is unamortized pension expense booked to Company Account 186 – Miscellaneous Deferred Debits that has yet to be capitalized and placed into the Company's capital accounts pursuant to financial reporting requirements. OCA St. 1-SR at 13.

14. The Pension Asset will remain on the Company's books and will not be amortized until the amount of pension expense determined for financial accounting purposes exceeds the Company's cash contribution to its pension plan. OCA St. 1 at 19.

15. The OCA recommends removing the Pension Asset of approximately $35.1 million from the Company's rate base. OCA St. 2 at 19; see also OCA St. 2-SR, Sch. LKM-5, Line 3.

VI. EXPENSES

16. The Company's claimed FPFTY payroll expense was calculated to annualize budgeted payroll expense to reflect 639 employees at the end of the FPFTY. PECO Exhibit MJT-1, Schedule D-6; see also PECO Exh. MJT-1, Sch. D-8.

17. The Company only provided information on and the job descriptions of the employees hired during the HTY. OCA St. 2-SR at 17.

18. The Company did not provide management approval documentation for the positions the Company claims it will eventually fill. OCA St. 2-SR at 17.

19. Mr. Morgan's recommended adjustment reduces the number of employees to 604 positions. OCA St. 2 at 23-24.

20. The Company proposed to normalize, over a 6-year period, a one-time cash payment to union employees made in connection with the ratification of current union contracts. PECO Exh. MJT-1, Sch. D-6.

21. The ratification bonus was paid in exchange for ratification of the union contract on or before December 31, 2014. OCA St. 2-SR at 25.

22. The past payment was not connected to any requirement of the employees by stating "[t]here were no specific future tasks, service or obligations that were expected from those who received the one-time payment." OCA St. 2-SR at 18.

23. OCA witness Morgan recommends that the Commission deny the Company's claim to include the proposed amortization of the ratification bonus when determining salaries and wage expense. OCA St. 2 at 25.

24. The Company increased FPFTY Exelon Business Service Company (EBSC) charges by approximately $1,600,000 over the HTY. OCA St. 2 at 36.

25. The Company stated that the increase in EBSC charges is "generally due to inflation and any MMF rate adjustments." OCA St. 2 at 36.

26. The Company did not explain or provide evidence explaining the MMF rate adjustment applied to EBSC charges. OCA St. 2 at 36.

27. Mr. Morgan recommended "an adjustment to reflect the most recent 3-year average EBSC expense," which results in an adjustment to reduce O&M expenses by $997,000. OCA St. 2 at 36–37, Sch. LKM-20.

28. The Company's claimed post-retirement benefits expense of $1,050,000 represents a significant increase from the HTY to the most recent actual 3-year average. OCA St. 2 at 26-27.

29. Mr. Morgan recalculated his OPEB expense adjustment based upon the 3-year average (2020 to 2022) of OPEB costs resulting in a downward adjustment of $486,000 from the Company's OPEB claim of $1,050,000 presented on CONFIDENTIAL Surrebuttal Schedule LKM-13. See OCA St. 2-SR, Sch. 3, Pg. 1, Line 6.

30. The Company claimed $1,111,000 over 3 years, or $370,000 for the FPFTY, for the costs related to the merger between Exelon—PECO's parent company—and Pepco Holdings Corporation, a holding company for a non-Pennsylvanian public utility, that took place in 2016. PECO St. 3 at 40-41; see also, MJT-1 Schedule D-15.

31. This prior cost incurred in 2016 was not authorized to be deferred by the Commission. OCA witness Morgan recommended that the costs to achieve expense be rejected in full because the included in rates would constitute retroactive ratemaking. OCA St. 2 at 33-36.

32. The savings PECO has generated from the merger have been retained by the Company and PECO's customers have not experienced reduced rates as a result of the merger. OCA St. 2-SR at 20.

33. The Company increased FPFTY Regulatory Commission expense by approximately $462,000 over the HTY. OCA St. 2 at 38.

34. The Company was asked to explain the cause of the increase, it responded by stating that "[t]he projected increases in regulatory commission expense are generally due to inflation adjustments." OCA St. 2 at 38

35. Mr. Morgan recommends an adjustment to reflect the HTY level of regulatory commission expense, which results in an adjustment to reduce O&M expenses by $462,000. OCA St. 2, Sch. LKM-22.

36. The Company's R&D expenses ranged from $59,000 in 2018 to $253,000 in 2020. OCA St. 2 Schedule LKM-21.

37. The Company did not provide support or reasoning for the significant increase in R&D expenses. OCA St. 2 at 37.

38. Mr. Morgan adjusted the Company's R&D expense by $138,000 to reflect the Company's 3-year average spending. OCA St. 2, Sch. LKM-21.

39. The Company claims that its FPFTY requested increase of approximately $71,000 in employee activity costs over the HTY spending level is attributed to reduced HTY spending due to the pandemic and the Company's expectation that the FPFTY amount will be more indicative of normal spending levels. OCA St. 2 at 40.

40. A significant portion of employee activity costs are related to gatherings of employees. OCA St. 2-SR at 22.

41. Mr. Morgan adjusted the Company's employee activity costs by $71,000 shown on Schedule LKM-24 to reflect the HTY spending level because it remains unknown as to when such activities will be allowed again. OCA St. 2 at 40.

42. The Company proposed a Travel, Meals, and Entertainment Expense of $343,000, based on a FPFTY ended June 30, 2022. OCA St. 2, Sch. LKM-25.

43. The uncertain nature of the COVID-19 Pandemic makes it “nearly impossible to forecast costs such as employee travel activity because it is unknown what and when the new normal will be.” OCA St. 2 at 41.

44. OCA witness Morgan recommends that the employee activity expense should be adjusted to reflect the HTY level of expense, resulting in an adjustment to reduce O&M expenses by $178,000, as reflected in Schedule LKM-25. OCA St. at 41.

45. The Company proposed to include a FPFTY budget amount for Injuries and Damages in the cost of service of $638,000. OCA St. 2 at 30, Sch. LKM-16.

46. The Company’s Injuries and Damages expenses for the years 2018, 2019, and 2020 were $301,000, -$9,000, and $231,000, respectively. OCA St. 2, Sch. LKM-16.

47. OCA witness Morgan recommended normalizing the Injuries and Damages expense based on the most recent 3 years of actual expenses, which results in a decrease in expenses of $464,000. OCA St. 2, Sch. LKM-16.

48. The Company’s claimed amount for Property Taxes is $3,618,000. OCA St. 2, Sch. LKM-28.

49. According to the Company, “the FPFTY real estate tax is based on the FTY real estate tax including a 2.5% inflation rate escalation.” OCA St. 2 at 41.

50. OCA witness Morgan recommends an adjustment to remove the effect of the inflation escalation on the property tax expense, which results in an adjustment to reduce Taxes Other Than Income by $112,000. OCA St. 2, Sch. LKM-28.

51. The Company seeks approval to increase its Energy Efficiency and Conservation Program budget by $2.492 million, from $2.008 million to $4.5 million. PECO St. 9 at 6-9.

52. Based on the recommendation of OCA witness Crandall, OCA witness Morgan recommends that the Company’s EE&C budget remain at existing levels, which would reduce the Company’s claimed O&M expense by $2.492 million. OCA St. 2-SR, Sch. LKM-26, Line 3.

53. The Company’s rate case expense claim of $1.5 million was normalized by the Company over a three-year period to derive an annual expense of $ 520,000. OCA St. 2 at 30–31.

54. The Company's last rate case filing was approximately 10 years ago. OCA St. 2 at 31.

55. OCA witness Morgan recommends that rate case expense be normalized over five years, which would reduce the Company's claim for rate case expenses by $208,000. OCA St. 2, Sch. LKM-17.

56. The Company included $753,000 in O&M expenses for costs incurred prior to the FPFTY associated with implementing a Merchant Function Charge (MFC) and a Gas Procurement Charge (GPC) pursuant to the Commission's Order in Docket No. P-2012-2328614 and the Neighborhood Gas Pilot Program at Docket No. P-2014-2451772. OCA St. 2 at 31–32.

57. In response to the recommendation of OCA witness Morgan, Company witness Trzaska removed the Company's claim for recovery of past expenses associated with the implementation of the Neighborhood Gas Pilot Program. PECO St. 3-R at 4; see also PECO St.3-R, Sch. D-14, Line 2.

58. Mr. Morgan recommends an adjustment to allow recovery of the capital costs to implement the MFC and GPC, but removed the O&M expenses from the costs eligible for recovery pursuant to the settlement reached at Docket No. P-2012-2328614, resulting in a downward adjustment to the Company's O&M expense of $40,000. OCA St. 2-SR, Sch. LKM-18.

59. The Company proposed to recover an estimated total of $7.2 million to remediate former Manufactured Gas Plant (MGP) sites over nine years, at an annual cost of $804,000. OCA St. 2 at 27.

60. The remediation of former MGP sites is expected to extend through 2034, 14 years from this year. OCA St. 2 at 29.

61. The Company determined that "out of the $21.5 million to remediate the remaining sites, it had pre-collected $14.3 million, resulting in an unrecovered amount of $7.2 million." OCA St. 2 at 28.

62. The Company agreed to impute carrying costs on the over-collected MGP remediation cost that is held by the Company. PECO St. 3-R at 26.

63. OCA witness Morgan recommends that the Commission require the Company to recover the remaining remediation cost over a 14-year period instead, which is consistent with the settlement in Docket No. R-2010-2161592, resulting in an annual recovery of $517,000. OCA St. 2 at 29–30.

64. OCA witness Morgan recommends the Company impute carrying costs on the over-collected MGP remediation cost that is held by the Company until it is needed for MGP remediation. OCA St. 2 at 30.

65. The OCA recommends a derivative adjustment that lowers the depreciation expense by $7,827,000 if Mr. Morgan's Plant in Service recommendation is adopted by the Commission. OCA St. 2, Sch. LKM-27.

VII. TAXES

66. OCA witness Morgan recommends a reduction to payroll taxes of $187,000, which is a derivative adjustment based on OCA Witness Morgan's recommended adjustment to Payroll Expense. OCA St. 2, Sch. LKM-29.

67. OCA witness Morgan recommends a derivative adjustment relying on the Company's FTY level of the Company's tax repairs deductions if the Commission adopts his Plant in Service recommendation. OCA St. 2, Sch. LKM-31.

VIII. RATE OF RETURN

68. PECO seeks an 7.64% overall rate of return, including a 10.95% return on common equity. PECO St. 5-S, Exh. PRM-1 (Updated), Sch. 1.

69. PECO's proposed capital structure is 53.38% common equity and 46.62% long-term debt. PECO St. 5 at 21.

70. The Company's 10.95% return on common equity includes a 25 basis point premium for management performance. PECO St. 5 at 23, 52.

71. Mr. O'Donnell testified that under a traditional ratemaking approach, a fair cost of common equity is 8.75% and a fair overall rate of return is 6.30%, based upon a capital structure of 50% debt and 50% common equity. OCA St. 1 at 3-4, 88-92.

72. The 8.75% cost of equity recommended by Mr. O'Donnell is the result of his Discounted Cash Flow (DCF) analysis, and consideration of his Capital Asset Pricing Model (CAPM) and Comparative Earnings analyses. OCA St. 3 at 72-74, 85-87.

73. The OCA accepted the Company's overall cost of debt rate of 3.84% as revised by Company witness Moul in rebuttal. OCA St. 3-SR at 15.

74. The OCA submits that the Company's proposal for a common equity cost rate of 10.95% is excessive under normal conditions and is especially overstated in consideration of the current pandemic and financial hardships confronting consumers who have lost employment and income. OCA St. 3 at 15-26.

75. The record does not support the Company's claim of exemplary management performance. See OCA St. 3 at 118-125; OCA St. 5 at 90-108.

IX. CUSTOMER PROGRAMS AND MISCELLANEOUS ISSUES

76. OCA witness Colton testified that low-wage households are "a long ways from achieving any post-pandemic economic stability." OCA St. 5 at 26.

77. In light of the significant long-term economic crisis created by the COVID-19 pandemic, OCA witness Colton proposed an Emergency COVID-19 Relief Plan (ERP) to provide financial and collections relief to residential customers. OCA St. 5 at 27, Sch. RDC-1.

78. The Company is seeking approval to expand its residential energy efficiency and conservation (EE&C) programs, increasing the annual budget from $2.008 million to $4.5 million per year.

79. In the years 2010 through 2016, PECO spent an average of $1,495,296 per year on its residential portfolio. That is 74% of the $2,008,000 that it collected annually. OCA St. 6 at 27-28.

80. In the years 2017 through 2019, PECO spent an average of $1,101,893 per year on its residential portfolio. That is 55% of the $2,008,000 that it collected annually. OCA St. 6 at 27-28.

81. The Company's residential EE&C program has a reconciliation mechanism that returns any of the unspent residential EE&C budget to residential customers as a credit to the Universal Service Fund Charge (USFC) and is proposing to continue this reconciliation mechanism. PECO St. 9 at 10.

82. The Company operates commercial EE&C programs with a yearly budget of $28,000, that is earmarked in the Company's marketing department budget and the Company is not seeking to expand this program in this rate case. OCA St. 1, Sch. GCC-3 and GCC-4.

83. In the years 2010 through 2016, PECO spent an average of $13,170 per year on its commercial portfolio. That is 47% of the $28,000 that it collected annually. OCA St. 6 at 27-28.

84. In the 2017-2019 period, PECO's spending dropped to an average of $2,563 per year on its commercial portfolio. That is 9% of the $28,000 that it collected annually. OCA St. 6 at 27-28.

85. The Company provided a total resource cost (TRC) test performed by Guidehouse (formerly Navigant Consulting, Inc.) that needed to be corrected to reflect reduced

smart thermostat savings, updated gas avoided costs consistent with the values used to develop the Act 129 Phase IV Energy Efficiency and Conservation Plan at Docket No. M-2020-3020830, electric avoided costs from the Company's Act 129 Phase IV model consistent with Mr. Crandall's recommendations, electric savings to the analysis of smart thermostats and residential and commercial furnaces consistent with Mr. Crandall's recommendation, and the commercial gas EE&C programs for a more comprehensive analysis. PECO St. 9-R at 2-3.

86. Under the Company's revised TRC test, the Company's proposed residential and commercial EE&C portfolio has a benefit-cost ratio of 1.02. PECO St. 9-R at 3.

87. Under its revised TRC analysis, the Company included avoided electric costs associated with efficient furnaces equipped with an electronic commutated motor (ECM) fan, but failed to include the associated incremental costs as required by the Mid-Atlantic Technical Resource Manual. OCA St. 6-SR at 5.

88. When including the incremental costs associated with an ECM-equipped furnace in the Company's revised TRC analysis, as is required, the Company's proposed EE&C portfolio has a TRC value of 0.95. OCA St. 6-SR at 7.

89. OCA witness Crandall recommends that the Company's proposed expansion to its residential EE&C programs be denied and the Company maintain its existing budget. OCA St. 6 at 30.

90. OCA witness Crandall recommends that the Company re-allocate its existing budget to the following mix of residential and commercial programs: Residential Efficient Furnace ($518,000), Residential Super-Efficient Furnace ($75,000), Residential Smart Thermostat ($50,000), Residential Aerators and Showerheads ($65,000), Low Income Safe and Efficient Heating Program ($1,000,000), Commercial Efficient Furnace ($12,000), Commercial Efficient Boiler ($10,500), and Education/Admin/CSP admin ($300,000).

91. OCA Witness Crandall recommends that the Company implement a reconciliation mechanism to its commercial EE&C program budget, so that if there are unspent funds, it should ensure that those funds are credited back to commercial customers or used for the benefit of its commercial customers. OCA St. 6 at 35-36.

92. OCA witness Crandall recommends, and PECO agreed, that the Company perform Evaluation, Measurement, and Verification (EMV) studies for its EE&C programs and provide them to the OCA and the Commission to better evaluate these programs in a future rate proceeding. OCA St. 6 at 37-38.

X. RATE STRUCTURE

93. Company witness Ding's COSS and classification of mains was based upon the Average and Excess (A&E) Method. OCA St. 4 at 18.

94. A mathematical error was discovered in Ms. Ding's COSS that greatly impacted the required class rates of return at the Company's proposed overall revenue requirement. See OCA St. 4 at 19; see also PECO St. 6-R at 3.

95. OSBA witness Robert Knecht advocates for the use of a 'modified' A&E approach by simply weighting average demand at 50% and excess demand at 50%. OSBA St. 1 at 24.

96. OCA witness Watkins testified that the A&E method is heavily weighted towards 'excess' use, such that classes with low load factors (e.g., Residential and Small Commercial) are assigned the vast majority of the "excess" portion and conversely underrepresents average usage of high load factor customers (e.g., Large Commercial and Industrial). OCA St. 4 at 8-9.

97. OCA witness Watkins conducted a COSS using Peak and Average (P&A) allocation factors for the classification of mains, which were equally weighted 50% on peak (design) day usage and 50% average day usage. OCA St. 4 at 21.

98. OCA witness Watkins testified that the P&A Method closely follows not only how the system is actually used, but also the principles of cost causality. OCA St. 4 at 10.

99. OCA witness Watkins testified that storage plant may be used to meet peak demand during the winter season, it is also used to assist with balancing service for transportation customers. OCA St. 4-SR at 6.

100. OCA witness Watkins COSS should be used to allocate any revenue increase. OCA St. 4-R at 12.

101. PECO's proposed revenue allocation assigns almost the entire increase to the residential class based on the results of Company witness Ding's A&E Method. PECO St. 7 at-R at 5.

102. OCA witness Watkins found PECO's proposed revenue allocation unreasonable as it was guided by the results of Company witness Ding's COSS and decreased rates for several of its rate classes. OCA St. 4 at 25.

103. OCA witness Watkins testified that if the Commission authorizes a revenue increase, it should be distributed proportionally to the recommended revenue

allocation of OCA witness Watkins with no decreases to Rates GC, OL, MV-I, and TCS (before recognition of the Gas Procurement Charge and the Merchant Function Charge). OCA St. 4 at 29.

104. Pursuant to the changes to the CAP Policy Statement and the language in the Final CAP Policy Statement Order, OCA witness Colton recommended that PECO change its allocation of its universal service costs so that those costs are paid by all customer classes rather than just the residential class as PECO proposes here. OCA St. 5 at 56-89.

105. OCA witness Colton testified that there are a substantial number of residential customers in PECO's service testimony that are near poor or that qualify for CAP, but are not enrolled. OCA St. 5-SR at 13.

106. OCA witness Colton found that there is a direct relationship between the offer of a universal service program and the economic benefits to local commercial and industrial customers. OCA St. 5 at 80-82.

107. The costs of PECO's universal service program should be considered a "public good" that should be allocated across all customer classes. OCA St. 5 at 88-89.

108. OCA witness Colton recommended that universal service charges should be allocated between customer classes on a competitively neutral basis and the allocation of universal service costs among customer classes be based on the percentage of revenue provided by each customer class at base rates. OCA St. 5 at 89-90.

109. PECO proposed to increase the residential customer charge from $11.75 to $16.00, a 36.6% increase. OCA St. 4 at 30.

110. PECO's proposed $16.00 customer charge violates the principle of gradualism. OCA St. 4 at 31.

111. PECO's proposed $16.00 customer charge will affect low-income customers. OCA St. 5 at 32.

112. Rate IS is an interruptible gas sales rate that is determined by formula and the gross margins received from these sales are then divided between PGC customers and the Company's shareholders on a 75%/25% basis, respectively. PECO St. 7 at 10.

113. OCA witness Watkins recommended that the Company abandon the practice of margin sharing with respect to Rate IS – Interruptible Service revenues and assign some of the rate increase to Rate IS. OCA St. 4 at 28.

114. OCA witness Watkins testified other ratepayers are inappropriately subsidizing the Rate IS – Interruptible Service rate class. OCA St. 4 at 29.

115. The Company has six negotiated rate service customers that are receiving rate discounts for the provision of natural gas service. OCA St. 4 at 32.

116. Three of the negotiated rate service contracts are very old and there have been no increases for many years. OCA St. 4 at 32.

117. OCA witness Watkins recommended that the Company reevaluate the terms and rates for each of the three negotiated rate contract customers discussed in his Direct Testimony and that these findings should be provided to the Commission and OCA on, or before, the Company's next rate case filing. OCA St. 4 at 33-34.

<u>APPENDIX C</u>

PROPOSED CONCLUSIONS OF LAW

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1. The Public Utility Commission has jurisdiction over the parties and the subject matter of this proceeding by virtue of the Public Utility Code, 66 Pa. C.S. § 101, *et seq*.

2. The Commission must consider the broad public interest during a base rate proceeding and apply policy concerning the appropriate balance between prices charged to a utility's customers and returns on capital to the utility's investors. Popowsky v. Pa. Pub. Util. Comm'n, 665 A.2d 808 (1995).

3. The Commission has the authority to determine whether a requested base rate increase is unreasonable and will lead to an unjust and unreasonable rate for a utility's customers, based upon all surrounding circumstances. Popowsky v. Pa. Pub. Util. Comm'n, 665 A.2d 808 (Pa. 1995).

4. Every rate made, demanded or received by a public utility shall be just and reasonable and in conformity with the regulations and orders of the Commission. 66 Pa. C.S. § 1301.

5. The standard of proof, which a public utility must meet, in any proceeding involving a proposed or existing rate is to show that the rate involved is just and reasonable by substantial evidence. 66 Pa. C.S. § 315(a).

6. PECO Energy Company – Gas Division has the burden of establishing the justness and reasonableness of every element of its requested rate increase. 66 Pa. C.S. § 315(a); Lower Frederick Twp. v. Pa. Pub. Util. Comm'n, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980).

7. PECO Energy Company – Gas Division may satisfy its burden of proof by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600, 601-02 (Pa. Commw. Ct. 1989).

8. The proposed base rate revenue increase of $68.7 million, as shown in the initial filing dated September 30, 2020, is not just and reasonable, as required by 66 Pa. C.S. § 1301, and has not been fully supported by PECO Energy Company – Gas Division.

9. As a consequence of the novel coronavirus pandemic (COVID-19 Pandemic) and the Company's inability to support its projected plant additions, many of the Fully Projected Future Test Year (FPFTY) projections included in PECO Energy Company – Gas Division's filing cannot be found to be just and reasonable.

10. Inclusion of a Pension Asset in rate base inappropriately attempts to recover a return on unamortized expense. Pa. Pub. Util. Comm'n v. Pa. Power Co., Docket No. R-811510, *et al*., 1982 Pa. PUC LEXIS 154 (Pa. PUC Jan. 22 1982).

11. The ratemaking technique of normalization is "used to smooth out the effects of an expense item that occurs at regular intervals, but in irregular amounts, and is a proper adjustment to

make the test year expense representative of normal operations." Pa. P.U.C. v. Total Environmental Solutions, Inc., 2008 Pa. PUC. LEXIS 42 (2008).

12. Rate case expenses are normal operating expenses, and normalization should be based on the historical frequency of the utility's rate filings. Pa. Pub. Util. Comm'n v. City of Lancaster, Docket No. R-2010-2179103, 2011 Pa. PUC LEXIS 1685 (Pa. PUC Jul. 14, 2011); Pa. Pub. Util. Comm'n v. Metropolitan Edison Co., Docket No. R-00061366, 2007 Pa. PUC LEXIS 5 (Pa. PUC Jan. 11, 2007); Pa. Pub. Util. Comm'n v. City of Dubois – Bureau of Water, Docket No. R-2016-2554150, Opinion and Order at 65 (Pa. PUC May 18, 2017).

13. Retroactive ratemaking is where a utility bases a claim for increased rates on past expense items outside the test year and is generally prohibited, unless previously authorized by the Commission. Columbia Gas of Pennsylvania, Inc. v. Pa. P.U.C., 149 Pa. Commw. 247, 613 A.2d 74 (1992); see also Philadelphia Elec. Co. v. Pa. P.U.C., 93 Pa. Commw. 410, 502 A.2d 722 (1985).

14. Inflation adjustments are typically blanket adjustments or increases which do not directly relate to actual costs expected to be incurred by the Company in the period in which rates are to be set. Instead, costs should be based upon evidence or documentation that supports the Company's adjustments. Pa. Pub. Util. Comm'n v. Wellsboro Electric Co., Docket No. R-2019-3008208, Opinion and Order at 40 (Pa. PUC Apr. 29, 2020).

15. The Commission applies the same standard used for Act 129 Energy Efficiency and Conservation Programs when evaluating voluntary natural gas Energy Efficiency and Conservation Programs. Pa. Pub. Util. Comm'n v. UGI Central Penn Gas, Inc., Docket No. R-2010-2214415, 2011 Pa. PUC LEXIS 1391 at *25 (Pa. PUC Aug. 19, 2011).

16. PECO Energy Company – Gas Division has not met its burden of proof to establish that its cost of equity is reasonable and otherwise supported by record evidence.

17. PECO Energy Company – Gas Division has not met its burden of proof to establish that its rate of return is reasonable and otherwise supported by record evidence.

18. The Peak & Average method that allocates natural gas distribution mains equally based on average and peak demands is a sound and reasonable method of cost allocation and should remain intact. Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corporation, Docket No. R-00942991, *et al.*, 1994 Pa. PUC LEXIS 134 at * 320-21 (Pa. PUC Dec. 6, 1994), Pa. Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2020-3018835, *et al.*, Opinion and Order at 61 (Pa. PUC Feb. 19, 2021).

19. After consideration of the evidence in this proceeding, PECO Energy Company - Gas Division's has failed to meet its burden of proof demonstrating that a rate increase would be just and reasonable.

20. Alternatively, if the Commission deems a rate increase is warranted, any increase shall only be assigned to each customer class in proportion to the recommended revenue allocation of OCA witness Watkins, with no decreases to Rates GC, OL, MV-I, and TCS (before recognition of the Gas Procurement Charge and the Merchant Function Charge), as set forth in the Rebuttal Testimony of Glenn A. Watkins, OCA St. 4-R.

<u>APPENDIX D</u>

PROPOSED ORDERING PARAGRAPHS

APPENDIX D

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. PECO Energy Company – Gas Division shall not place into effect the rates contained in Tariff No. 4, which have been found to be unjust, unreasonable and, therefore, unlawful.

2. In light of the COVID-19 Pandemic, PECO Energy Company – Gas Division shall not be authorized to file tariffs, tariff supplements, or tariff revisions containing rates, provisions, rules and regulations, consistent with the findings herein, to produce any revenue increase.

3. If, in the alternative, a revenue increase is authorized for PECO Energy Company – Gas Division, any increase shall only be assigned to each customer class in proportion to the recommended revenue allocation of OCA witness Watkins, with no decreases to Rates GC, OL, MV-I, and TCS (before recognition of the Gas Procurement Charge and the Merchant Function Charge).

4. PECO Energy Company – Gas Division shall allocate its universal service costs to all customers and between customer classes on a competitively neutral basis based on the percentage of revenue produced by each customer class.

5. The tariffs, tariff supplements, or tariff revisions may be filed upon less than statutory notice, and pursuant to the provisions of 52 Pa. Code §§ 53.31 and 53.101, may be filed to be effective for service rendered on and after the date of entry of this Commission's Opinion and Order.

6. PECO Energy Company – Gas Division shall file detailed calculations with its tariff filing, which shall demonstrate to this Commission's satisfaction that the filed rates comply with the proof of revenue, in the form and manner customarily filed in support of compliance tariffs.

7. PECO Energy Company – Gas Division shall comply with all directives, conclusions and recommendations contained in this Commission's Opinion and Order that are not the subject of individual ordering paragraphs as fully as if they were the subject of specific ordering paragraphs.

8. PECO Energy Company – Gas Division shall allocate the authorized increase in operating revenues to each customer class and rate schedule within each class in the manner set forth in this Order.

9. The Complaints filed by the various parties to this proceeding at Docket Number R-2020-3018929 are granted in part and denied in part, to the extent consistent with this Commission's Opinion and Order.

DATE: __________________

____
Christopher P. Pell
Deputy Chief Administrative Law Judge

APPENDIX E

LIST OF OCA TESTIMONY AND EXHIBITS ENTERED INTO THE RECORD

LIST OF THE OCA TESTIMONY AND EXHIBITS ENTERED INTO THE RECORD

I. DIRECT TESTIMONY

a. OCA Statement 1, The Direct Testimony of Scott J. Rubin, which consists of 29 pages and includes an Appendix A, Schedules SJR-1 through SJR-6, and a signed verification;

b. OCA Statement 2, The Direct Testimony of Lafayette K. Morgan (Confidential and Public Version), which consists of 43 pages and includes Schedules LKM-1 through LKM-30, Appendices A and B, and a signed verification;

c. OCA Statement 3, The Direct Testimony of Kevin W. O'Donnell, which consists of 127 pages and includes an Appendix A, Exhibits KWO-1 through KWO-8, and a signed verification;

d. OCA Statement 4, The Direct Testimony of Glenn A. Watkins (Confidential and Public Versions), which consists of 34 pages and includes Schedules GAW-1 through GAW-4 and a signed verification;

e. OCA Statement 5, The Direct Testimony of Roger D. Colton, which consists of 113 pages and includes Schedule RDC-1, Appendix A, and a signed verification.

f. OCA Statement 6, The Direct Testimony of Geoffrey C. Crandall, which consists of 38 pages and includes Schedules GCC-1 through GCC-9 and a signed verification.

II. REBUTTAL TESTIMONY

a. OCA Statement 3R, The Rebuttal Testimony of Kevin W. O'Donnell, which consists of 18 pages and includes a signed verification;

b. OCA Statement 4R, The Rebuttal Testimony of Glenn A. Watkins, which consists of 16 pages and includes Schedules GAW-1R through GAW-3R and a signed verification;

c. OCA Statement 5R, The Rebuttal Testimony of Roger D. Colton, which consists of 15 pages and includes Schedule RDC-1R and a signed verification.

III. SURREBUTTAL TESTIMONY

a. OCA Statement 1-SR, The Surrebuttal Testimony of Scott J. Rubin, which consists of 12 pages and includes Schedules SJR-7S through SJR-10S and a signed verification;

b. OCA Statement 2-SR, The Surrebuttal Testimony of Lafayette K. Morgan (Confidential and Public Version), which consists of 24 pages and includes Schedules LKM-1 through LKM-31 and a signed verification;

c. OCA Statement 3-SR, The Surrebuttal Testimony of Kevin W. O'Donnell, which consists of 50 pages and includes a signed verification;

d. OCA Statement 4-SR, The Surrebuttal Testimony of Glenn A. Watkins, which consists of 10 pages and includes Schedules GAW-1SR through GAW-2SR and a signed verification;

e. OCA Statement 5-SR, The Surrebuttal Testimony of Roger D. Colton, which consists of 34 pages and includes a signed verification.

f. OCA Statement 6-SR, The Surrebuttal Testimony of Geoffrey C. Crandall, which consists of 17 pages and includes Schedules GCC-SR-1 through GCC-SR-6 and a signed verification.

IV. HEARING EXHIBITS

a. OCA Hearing Exhibit No. 1: List of Witness Statements and Exhibits of the Office of Consumer Advocate.