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May 3, 2021

VIA eFILING

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:

Enclosed for filing is the **Reply of PECO Energy Company to Exceptions** ("Reply Exceptions"), in the above-captioned proceeding. As evidenced by the Certificate of Service, copies of the Reply Exceptions are being served upon Deputy Chief Administrative Law Judge Christopher P. Pell, the Office of Special Assistants and all parties of record.

A confidential version of the Rely Exceptions will also be e-mailed directly to you, with copies to Shirley Spunaugle and Ariel Wolf.

If you have any questions, please do not hesitate to contact me directly at 215.963.5384.

Very truly yours,

Kenneth M. Kulak

Enclosures

c: Per Certificate of Service (w/encls.)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	**Docket No. R-2020-3018929**
	:	
PECO ENERGY COMPANY – GAS DIVISION	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Reply of PECO Energy Company to Exceptions** on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

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Dated: May 3, 2021

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	**Docket No. R-2020-3018929**
	:	
PECO ENERGY COMPANY – GAS DIVISION	:	

REPLY OF PECO ENERGY COMPANY TO EXCEPTIONS

Public Version

To The Recommended Decision Of
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I. INTRODUCTION

On September 30, 2020, PECO Energy Company ("PECO" or the "Company") initiated this proceeding by filing Tariff Gas – Pa. P.U.C. No. 4 ("Tariff No. 4") with the Pennsylvania Public Utility Commission (the "Commission" or "PUC") to increase PECO's annual gas distribution rates for the first time in more than a decade. In a Recommended Decision ("RD") issued on April 12, 2021, Deputy Chief Administrative Law Judge Christopher P. Pell (the "ALJ") recommended that the Commission approve an increase in annual operating revenues totaling only $23,892,717, or just 36% of the $66.5 million in rate relief sought by PECO for its operations and projected new investment in gas utility plant.

The RD properly rejected the "no increase" proposals of the Office of Consumer Advocate (the "OCA") and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), accepted PECO's cost of service study ("COSS"), and recommended adopting the Bureau of Investigation & Enforcement's ("I&E") proposed rate of return on common equity of 10.24%. A substantial portion of the difference between PECO's proposed increase and the ALJ's recommendation derives from his acceptance of adjustments to the Company's rate base and fully projected future test year ("FPFTY") expenses that did not properly reflect either the anomalous impacts of the COVID-19 emergency or the manner in which PECO has successfully operated prior to, and throughout, the pandemic.

The Company identified the principal errors in the RD in its Exceptions filed on April 26, 2021. If the PUC grants PECO's Exceptions, PECO's rates would increase by $50.0 million, or 6.4% of its total Pennsylvania jurisdictional gas operating revenue.

The OCA, I&E, the Office of Small Business Advocate (the "OSBA"), and CAUSE-PA have each filed Exceptions to the RD that, for the most part, repackage arguments presented in those parties' briefs, which the ALJ fully considered and properly rejected. Therefore, PECO

will address only the principal errors in other parties' arguments and urges the Commission to review the Company's Main and Reply Briefs in this proceeding to gain a deeper understanding of the errors, misstatements, and lack of record evidence in the opposing parties' positions.

II. REPLIES TO EXCEPTIONS

A. The ALJ Properly Rejected The OCA And CAUSE-PA's "No Increase" Proposals (OCA Exc. 1; CAUSE-PA Exc. 1)

In the RD (pp. 11-16), the ALJ reviewed the arguments of the OCA and CAUSE-PA against any rate increase that they now reiterate. The OCA relies on a theory of its witness, Scott Rubin, that the PUC can set utility rates outside the traditional zone of reasonableness because an unspecified number of customers might not be "willing and able" to pay any rate increase, PECO's existing rates allegedly provide a fair rate of return, and the PUC cannot have "any certainty" about FPFTY data.[1] CAUSE-PA similarly argues for a legal standard that rates must be "reasonably affordable" and opposed any increase based on historical data on the economic effects of COVID-19 in 2020.[2]

The ALJ carefully reviewed the OCA's and CAUSE-PA's evidence and arguments and determined that they are not a valid basis for departing from the Commission's analysis in *Columbia Gas*[3] that the COVID-19 emergency does not justify disregarding traditional ratemaking methodologies and principles. While acknowledging the impact of the COVID-19 pandemic on individuals and businesses in Pennsylvania, the ALJ properly concluded that "the pandemic alone is not sufficient reason to outright deny PECO's request for rate relief."[4]

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[1] *See* OCA Exceptions ("Exc."), pp. 4-6.
[2] RD, pp. 14-15; PECO Main Brief ("MB"), pp. 8-14.
[3] *See* RD, p. 14-16 (citing *Pa. P.U.C. v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835A (Opinion and Order entered Feb. 19, 2021) ("*Columbia Gas*"), pp. 44, 48, 51-52. The Commission reached the same conclusions in *Pa. P.U.C v. Pennsylvania-American Water Co.,* Docket Nos. R-2020-3019369 and R-2020-3019371 (Opinion and Order entered Feb. 25, 2021) ("*PAWC*").
[4] RD, pp. 16-17.

None of the arguments offered in the OCA's Exceptions demonstrate that the ALJ erred in concluding that PECO is entitled to a rate increase notwithstanding the effects of the pandemic. First, contrary to the OCA's assertions, the ALJ did not blindly follow *Columbia Gas* as "precedent precluding denial of a rate increase for all utilities" during the pandemic.[5] He explicitly reviewed the arguments and evidence provided by the OCA (and CAUSE-PA), including the financial hardships created by COVID-19.[6] The ALJ concluded that those parties had not furnished any valid basis to depart from the "just and reasonable" rate standard embodied in traditional methods for determining a utility's revenue requirement. In light of that analysis, he reached the same conclusion the Commission reached in both *Columbia Gas* and *PAWC* – the negative economic effects of COVID-19 do not warrant summarily rejecting a utility's rate increase request.[7]

Similarly, the ALJ fully considered and properly rejected the OCA's general, and unsubstantiated, assertion that the revenue requirement underlying PECO's rate increase request "did not adequately reflect the current economic climate and the impacts of the pandemic."[8] To the contrary, PECO prepared updated budgets as the basis for this case after voluntarily delaying its filing at the beginning of the pandemic.[9] Responding to OCA witness Rubin, who questioned the reliability of PECO's FPFTY data, PECO witness Paul Hibbard (the former chair of the Massachusetts Department of Public Utilities) explained:

> While [Mr. Rubin] talks about all the impacts to people and businesses, he does not connect any of his hyperbolic statements on the impacts of the pandemic to data or analyses in the record that are somehow unknowable or structurally flawed . . . The fact that the Company developed its data and forecasts during the

[5] OCA Exc., p. 4.
[6] *See* RD, p. 11-12, 16.
[7] RD, p. 17; *see also Columbia Gas*, p. 51; *PAWC*, pp. 42-46.
[8] OCA Exc., p. 12.
[9] The development of PECO's budget as the basis for this case is discussed in detail in Section II.B., *infra*.

> pandemic does not invalidate the results; rate cases always rely on forecasts in the face of uncertain future conditions, and Mr. Rubin has not presented any evidence demonstrating how the degree of accuracy in the forecasts used in this case is any different than other rate cases. To the contrary, there is no reason to assume a priori that the impacts of COVID-19 in any way compromise the data and forecasts used by the Company in their filing, and there is no reason for the Commission to conclude that any diminished credence should be assigned to PECO's projections for the FPFTY.[10]

The OCA's contention that PECO's current rates furnish a fair rate of return is also seriously flawed because it ignores all of PECO's FPFTY investment in new plant and equipment and uses the totally inadequate return on equity recommended by its own witness (coupled with a "hypothetical" capital structure that the PUC rejected in *Columbia Gas*). The ALJ properly rejected the OCA's unsupported and unprecedented adjustments.[11]

The OCA and CAUSE-PA also contend the Commission should not grant PECO a rate increase because, in their view, its programs to assist customers deal with the pandemic are inadequate. To that end, CAUSE-PA recommended temporary changes to several of the Company's universal service programs.[12] The OCA recommended an Emergency COVID-19 Relief Program ("ERP") not limited to universal service programming.[13]

The ALJ correctly determined that any marginal benefit from initiatives proposed by CAUSE-PA and the OCA are unnecessary because PECO took appropriate proactive relief measures and fully complied with the guidance and customer protections[14] the PUC furnished in

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[10] PECO MB, p 12; PECO St. 11-R, p. 19.
[11] *See* Section II.D, *infra*; PECO Reply Brief ("RB"), pp. 4-5.
[12] CAUSE-PA's recommendations include (1) increasing funding for, and removing the "zero balance" requirement of, the Matching Energy Assistance Fund ("MEAF"); (2) providing arrearage forgiveness for the arrearages of customers enrolled in the Customer Assistance Program ("CAP") that were incurred during the pandemic; and (3) waiving income certification requirements, late fees and reconnection fees. *See* CAUSE-PA Exc., p. 6.
[13] The OCA's proposed ERP is addressed in Section II.E of this Reply.
[14] *See, e.g., Pub. Util. Serv. Termination Moratorium,* Docket No. M-2020-3019244 (Order entered Mar. 18, 2021).

the moratorium proceeding.[15] For example, since March 2020, PECO offered all residential customers 24-month payment agreements, used multiple means to inform customers of this opportunity and facilitated enrollment through automated processes.[16] On December 17, 2020, the Commission approved a temporary modification of PECO's MEAF eligibility so that more customers would qualify for assistance.[17] PECO also implemented a variety of COVID-19 relief measures, including a temporary moratorium on terminating service and waiving connection fees and deposits for reconnection per the PUC's orders at Docket No. M-2020-3019244.[18] For all of these reasons, the ALJ properly rejected the arguments of the OCA and CAUSE-PA that no rate increase should be granted in light of the pandemic.

B. The ALJ Correctly Rejected The OCA's Proposed Adjustments To Eliminate PECO's Entire Allowance For Incremental Plant Additions During the FPFTY (OCA Exc. 2)

PECO's investment in gas infrastructure improvements since its last gas base rate case in 2010 is the single largest factor driving its need for an increase in revenues. The record evidence shows that PECO plans to invest approximately $1.2 billion in gas utility plant between July 1, 2020 and June 30, 2024 to maintain the safety and reliability of its gas distribution system, including accelerated replacement of mains and services, mapping enhancements and security updates.[19] Robert J. Stefani, PECO's Senior Vice President, Chief Financial Officer and Treasurer, described the rigorous budget process PECO employed to develop its future test year

[15] RD, pp. 264-66. PECO's Main Brief (pp. 82-86) also explains why each CAUSE-PA proposal is unnecessary.
[16] CAUSE-PA dedicates over a page of its Exceptions to concerns about the use of an Interactive Voice Response ("IVR") process for payment arrangements. However, the PUC has approved the use of IVR for payment arrangements (*see* CAUSE-PA St. 1-SR, p. 4, n.5) and PECO's standard offer of a 24-month payment arrangement does not preclude longer payment arrangements based on income information. PECO RB, pp. 53-54.
[17] *Petition of PECO Energy Co. To Temporarily Amend Its 2016-2018 Universal Serv. and Energy Conservation Plan*, Docket Nos. P-2020-3022124 and M-2015-2507139 (Secretarial Letter issued Dec. 17, 2020).
[18] PECO MB, p. 81.
[19] *See* PECO St. 1, pp. 5-7, 10, 16-18; PECO St. 2, pp. 2-3.

(“FTY”) and FPFTY cost of service.[20] PECO’s rate base claims in this case reflect the Company’s well-considered budget projection of net plant balances as of June 30, 2022.[21]

The OCA’s witness, Lafayette Morgan, proposed adjustments that would reduce PECO’s claimed rate base by nearly $271 million to reflect only the Company’s forecasted plant-in-service balances as of June 30, 2021 (the end of the FTY), without recognition of any incremental plant additions during the FPFTY.[22] He contended that PECO’s budget process was “abbreviated” and did not adequately reflect the impacts of the COVID-19 emergency on PECO’s construction projects.[23] The ALJ properly rejected Mr. Morgan’s recommendation based on the substantial evidence supporting PECO’s budgeted data for FPFTY plant additions and the absence of any credible support for the OCA’s position.[24]

The OCA takes exception to the RD’s finding (p. 47) that “there is sufficient evidence in the record to support an addition to rate base for planned plant additions in the FPFTY” and repeats the arguments that the ALJ properly rejected on the basis of the detailed refutation of those arguments in PECO’s Main (pp. 15-19) and Reply (pp. 7-11) Briefs.

First, the OCA alleges that PECO formulated its FTY and FPFTY capital and operating expense budgets “during the middle of the COVID-19 Pandemic over a period of two months.”[25] At the same time, the OCA contends that those budgets are based on PECO’s five-year Long Range Plan (“LRP”) “developed in June 2019 and completed in January 2020” and were not updated to reflect the effects of the COVID-19 emergency.[26] Not only is the OCA’s position

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[20] *See* PECO St. 2, pp. 10-12; PECO St. 2-R, pp. 2-3; Tr. 249-51.
[21] *See* PECO MB, pp. 14-15.
[22] *See* RD, pp. 39-41. Mr. Morgan’s proposal also includes concomitant adjustments to annual and accrued depreciation and accumulated deferred income taxes.
[23] *Id.*
[24] *See id.* pp. 20-23, 47.
[25] OCA Exc., p. 8.
[26] *Id.*

internally inconsistent, it is contrary to all objective evidence. Mr. Stefani testified that the budget process for this rate case began in June 2019 with the submission of LRPs by individual "responsibility areas," such as Gas Operations, which were then analyzed and aggregated by PECO's finance group.[27] The LRP budget that included the FTY and FPFTY was approved by senior management in January 2020.[28] As Mr. Stefani also pointed out, because PECO delayed the filing of this case six months, those budgets were thoroughly refreshed in July 2020 and, therefore, reflect the most current data available.[29]

In addition, contrary to the OCA's contention, the Company fully considered the impact of the COVID-19 emergency on capital spending initiatives planned for the FTY and FPFTY. In fact, unrefuted record evidence establishes that PECO has almost entirely recovered from the COVID-19 related construction delays it experienced in the early months of the pandemic: the Company was able to spend 99% of its 2020 construction budget, and there will be no impact on the work scheduled for completion in the FTY and FPFTY.[30] The OCA's Exceptions (pp. 8-9) also repeat Mr. Morgan's critique that PECO provided inconsistent data regarding its plant in service projections. However, as the Company explained in its Main Brief (pp. 18-19), Mr. Morgan misconstrued statements in PECO's testimony and discovery responses to reach the erroneous conclusion that some capital projects included in PECO's rate base claim would not be completed and serving customers until after the end of the FPFTY.[31]

As the ALJ correctly determined, the OCA's proposal to simply ignore all of PECO's FPFTY plant additions is contrary to the record evidence and should be rejected.[32] For the

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[27] PECO St. 2, pp. 10-12; PECO St. 2-R, p. 2; Tr. 249-251.
[28] *Id*.
[29] PECO St. 2-R, p. 3; Tr. 249-251.
[30] PECO St. 1-R, pp. 3-4; Tr. 217-18, 246-47.
[31] *See also* PECO St. 2-R, pp. 5-7; Tr. 244-47.
[32] The OCA invokes *Columbia Gas* to try to suggest that its proposal to disallow PECO's projected plant additions for the FPFTY is supported by "sound reasons" (OCA Exc., p. 7), but the OCA proposed an adjustment based on a

reasons set forth in PECO's Exceptions (pp. 4-8), the Commission should also reject I&E's proposed adjustment to disallow $47,624,803 of PECO's claimed plant additions for the Natural Gas Reliability project because it is based on incorrect data and faulty assumptions.

C. The ALJ Correctly Found That PECO's Claims For Regulatory Commission Expenses and Property Taxes Are Supported By Substantial Evidence

PECO's regulatory commission expense claim was only challenged by the OCA, whose witness proposed an allowance at the amount of general assessments ($1,735,000) booked in the historic test year ("HTY") on the ground that PECO purportedly did not substantiate the projected increase in the FPFTY ($462,000, or approximately 26.6% of the book amount). As explained in PECO's Main (pp. 39-40) and Reply (p. 27) Briefs and as the ALJ found (RD, pp. 125-26), PECO's budgeted FPFTY increase for these expenses was fully justified by the actual increase of $288,000 (16.6%) that PECO incurred for 2021-2022 (FTY) general assessments. And, as the ALJ astutely observed, using the actual percentage increase in general assessments for the FTY to forecast PECO's regulatory commission expenses for the FPFTY would produce an amount that *exceeds* the Company's claim.

The OCA's exception on this issue focuses on its general disagreement with adjustments based on inflation escalations.[33] Contrary to the OCA's assertions, the use of inflation factors in PECO's budgeting process is appropriate where there are no specifically known changes in costs or activity levels.[34] The OCA also speculates that PECO's expense could fluctuate up or down in the FPFTY depending on how general assessments are allocated to utilities.[35] However, the

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three-year average in that case and not a complete disallowance of FPFTY plant additions. The additional errors in the OCA's reliance on *Columbia Gas* are addressed in the Company's Reply Brief (p. 10).

[33] *See* OCA Exc., pp. 10-11.

[34] *See*, *e.g.*, *Pa. P.U.C. v. Phila. Elec. Co.*, 60 P.U.R.4th 101 (1984).

[35] *See* OCA Exc., p. 11.

OCA did not present any evidence that would suggest that PECO's general assessments in the FPFTY would decrease all the way to the HTY level.

The ALJ also recommended approving PECO's claim for property tax expense that reflects a 2.5% increase over the most recent actual property tax bills received from 136 municipalities.[36] The OCA excepts to this finding claiming that the 2.5% increase is an inflation adjustment and, as such, should not be allowed.[37] The OCA relies upon a single case and, in so doing, tries to characterize PECO's property tax claim as one instance of a blanket inflation adjustment applied to numerous expense claims.[38] That is not the case; the proposed 2.5% increase is a targeted adjustment for a specific expense. Moreover, inflation adjustments have been approved where specific expense items are expected to increase in the future, the increase cannot be precisely determined, and the inflation increase is a reasonable proxy.[39] That is exactly what PECO did to project future property tax assessments in this case.

D. The Commission Should Deny OCA And OSBA's Exceptions To The ALJ's Recommended Cost of Common Equity (OCA Exc. 5; OSBA Exc. 1)

In the RD, the ALJ recommended adoption of a cost of common equity of 10.24% determined by I&E and rejected OCA's proposed 8.75%. As explained in PECO's Exceptions, I&E's cost of common equity would be reasonable if it were adjusted for the Company's exemplary management performance.[40] The OCA and OSBA both except to the ALJ's recommendation, which the Commission should deny for the reasons set forth below.

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[36] *See* RD, pp. 129-30.
[37] OCA Exc., p. 10.
[38] Indeed, the 1994 Commission decision cited by the OCA at page 10 of its Exceptions involved a utility's proposal for a separate inflation adjustment to seventeen expense items. *See Pa. P.U.C. v. Nat'l Fuel Gas Dist. Corp.*, Docket No. R-00942991, 1994 PA. PUC LEXIS 135, *137-38 (Dec. 6, 1994).
[39] *See*, *e.g.*, *Pa. P.U.C. v. Pennsylvania Gas and Water Co.*, Docket No. R-00922482, 1993 WL 856537, *31 (Pa. P.U.C. June 23, 1993).
[40] PECO Exc., pp. 32-33.

1. The OCA's Capital Structure Recommendation Is Unreasonable and Unsupported

In calculating a recommended rate of return, the ALJ agreed with the use of PECO's actual capital structure, which consisted of 53.38% common equity and 46.62% long-term debt. I&E supported this capital structure, but the OCA contends that the Commission should adopt a hypothetical capital structure of 50% equity and 50% debt.[41]

In *PPL 2012*,[42] the Commission explained that "the legal standard in Pennsylvania for deciding whether to use a party's proposed hypothetical capital structure in setting rates is that if a utility's capital structure is within the range of a similarly situated barometer group of companies, rates are set based on the utility's actual capital structure."[43] The ALJ found no reason to depart from PUC policy because PECO's capital structure falls within the ranges of the common equity ratios in the OCA and I&E comparison groups.[44]

The OCA claims that it is "unsound" to rely upon PUC policy discussed in *PPL 2012 Order* and, more recently, in *Columbia Gas,* and that it is "more compelling" to consider the actual capital structure ratios approved by other regulatory commissions for other utilities, the average common equity ratio for the OCA's proxy group, and the common equity ratio of PECO's parent Exelon.[45] But all this information shows is that PECO's common equity ratio is not equivalent to certain average calculations provided by the OCA; it does not show that the Company's capital structure falls outside of "the range of a similarly situated barometer group of companies."[46] Accordingly, the OCA's Exception should be denied.

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[41] OCA Exc., p. 15.
[42] *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012) ("*PPL 2012*").
[43] RD, p. 212.
[44] *Id.*
[45] OCA Exc., p. 16.
[46] *Columbia Gas*, at 116.

2. The Commission Should Reject the OCA's Cost of Common Equity Recommendation of 8.75%

In its Exceptions (pp. 19-20), the OCA asserts that the ALJ made three errors in adopting the I&E calculation. First, the OCA contends that I&E's proxy group is inadequate compared to the OCA's proxy group.[47] However, the ALJ properly rejected the OCA's proxy group in light of its inclusion of UGI Corporation, which does not have similar financial risks compared to the rest of the barometer group. As PECO explained, UGI Corporation is more diversified outside of the gas distribution business than the other companies in the Gas Group and reports financial results for six separate business segments, in addition to natural gas utility business.[48]

Second, the OCA contends that the 10.24% cost of common equity is flawed because I&E relied on forecasted earnings growth rates instead of considering historical growth rates.[49] The OCA's contention is wrong. Using historic growth rates is inconsistent with the DCF methodology, does not properly reflect investor expectations, and is inconsistent with the leading literature on the DCF methodology.[50] Moreover, forecast growth rates already consider historical performance, and to consider them separately results in double counting.[51]

Finally, the OCA contends that I&E's Capital Asset Pricing Model ("CAPM") analysis is flawed because of I&E's calculation of an overall market return of 10.46%.[52] However, the OCA's CAPM calculation incorrectly used the geometric mean in its historic analysis of the total market returns. The theoretical foundation of the CAPM requires that the arithmetic mean – not

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[47] OCA Exc., p. 19.
[48] PECO MB, p. 60.
[49] OCA Exc., p. 19.
[50] PECO MB, p. 62.
[51] PECO St. 5, p. 28.
[52] OCA Exc., pp. 19-20.

the geometric mean – be used because it conforms to the single period specification of the model and provides a representation of all probable outcomes and has a measurable variance.[53]

3. The Commission Should Reject OSBA's Cost of Common Equity Recommendation of 8.75%

In its Exceptions (p. 3), the OSBA asserts that the DCF methodology has "problems" and the cost of common equity should be no higher than 8.75% based upon an analysis of returns published by Duff & Phelps. OSBA also argues that the ALJ's adoption of a 10.24% cost of common equity would award an equity risk premium of 867 basis points as compared to recent 10-Year Treasury bond yields.[54] However, the PUC has clearly expressed its preference is to use cost of equity models:[55] the OSBA's analysis of Duff & Phelps returns cannot be used to set the cost of equity as those returns have no relationship to PECO, and the OSBA did not show how the alleged "premium" over Treasury bond yields provides any basis for calculating a proper cost of equity for PECO.

E. The ALJ Correctly Rejected OCA's Proposed Emergency COVID-19 Relief Program (OCA Exc. 6)

The OCA contends that the ALJ erred by not adopting its proposed ERP, which it claims would provide eligible customers: (1) access to a long-term payment arrangement; (2) screening for CAP and MEAF eligibility; (3) suspension of collection efforts; and (4) a one-time bill credit of up to $400.[56] OCA Exception No. 6 should be denied for several reasons.

As previously discussed in Section II.A. above, the ALJ correctly found that additional COVID-19 relief measures, including the OCA's proposed ERP, are not necessary in light of PECO's efforts and the customer protections established by the PUC.[57] PECO is already taking

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[53] PECO MB, p. 77.
[54] OSBA Brief on Exceptions at 2-3.
[55] *See Columbia Gas*, p. 131.
[56] *See* OCA Exc., pp. 20-23; OCA Sch. RDC-1; OCA St. 5, p. 27.
[57] RD, pp. 264-66.

several actions covered by the ERP, including offering 24-month payment arrangements to *all* residential customers and expanding outreach about its universal service programs to all payment troubled customers. Furthermore, it is appropriate to comply with the PUC's COVID-19-related directives, which were issued after considering the views of many stakeholders.[58]

F. The ALJ Correctly Rejected CAUSE-PA's Proposal To Deviate From Established Processes To Review The Terms Of PECO's CAP

1. Energy Burdens Used In PECO's CAP (CAUSE-PA Exc. 2)

PECO currently operates the CAP in accordance with its existing Universal Service and Energy Conservation Program (the "2016-2018 USECP").[59] Significantly, PECO's proposed 2019-2024 USECP, which is pending at Docket No. M-2018-3005795, changes the format of PECO's CAP from a Fixed Credit Option ("FCO") to a Percentage of Income Payment Plan ("PIPP"). Under the PIPP, a CAP customer would receive a bill credit based upon his or her annual income and the applicable energy burden ("EB") percentage. PECO has proposed to adopt recommended EBs from the Revised CAP Policy Statement[60] for customers at 0%-50% and 51%-100% of the federal poverty level ("FPL") and maintain PECO's existing EBs for customers at 101%-150% of the FPL.[61] PECO expects the PIPP to improve bill affordability for all CAP income groups as compared to the current FCO.[62]

The ALJ properly recognized that CAUSE-PA's universal service proposals, including the CAP-specific recommendations, should be considered as part of the ongoing proceeding

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[58] PECO MB, p. 82.
[59] *See PECO Energy Co. Universal Serv. and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016).
[60] *2019 Amendments to Policy Statement on Customer Assistance Program*, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 (Order entered Nov. 5, 2019) ("*Final CAP Policy Statement Order*"); *2019 Amendments to Policy Statement on Customer Assistance Program,* 50 Pa.B. 1652, 1691-1695 (Mar. 21, 2020).
[61] Given the time that will be required to transition to a PIPP, PECO has also sought Commission approval to utilize the recommended EBs from the Revised CAP Policy Statement as part of the FCO until the Company transitions from the FCO to its PIPP. *See* PECO St. 10-R, pp. 8-9; *see also* Docket No. P-2020-3022154.
[62] *See* PECO St. 10-R, pp. 8-9.

dedicated to PECO's 2019-2024 USECP. The ALJ reasoned that considering certain universal service proposals "in isolation and apart from the 2019-2024 USECP proceeding would deny all parties a complete view of how such proposals may impact other parts of the USECP." The ALJ further found that most of CAUSE-PA's CAP proposals are either pending before the PUC in other proceedings or already being implemented by the Company.[63]

CAUSE-PA contends that the ALJ acted contrary to law and public policy by declining to modify PECO's existing CAP. CAUSE-PA alleges that: (1) the PUC has already determined that PECO's CAP rates are unreasonable and unaffordable and therefore continuation of those rates violates the Public Utility Code; and (2) the EBs from the Revised CAP Policy Statement must be incorporated into PECO's CAP rates as part of this base rate proceeding in order for the Commission to meet its universal service obligations and for PECO to meet obligations under the settlement[64] that established its existing CAP (the "Settlement).[65]

The PUC should reject CAUSE-PA's arguments for several reasons. First, CAUSE-PA overstates findings of the Revised CAP Policy Statement and the PUC's obligations regarding affordability. The PUC did not make any final determination about the justness and reasonableness of PECO's (or any other utility's) CAP or CAP rates in the Revised CAP Policy Statement. The Commission instead concluded that it was appropriate update its *non-binding universal service recommendations*, including EB proposals, for electric and gas utilities. In addition, the Commission has acted consistently with its universal service obligations by

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[63] RD, pp. 266-67.
[64] *See PECO Universal Serv. and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2012-2290911 (Order entered July 8, 2015). The Company's 2016-2018 USECP incorporated the CAP FCO and was approved by the Commission on August 11, 2016. *See* footnote 59, *supra*.
[65] CAUSE-PA Exc., pp. 10-17.

providing updated guidance to utilities through its Revised CAP Policy Statement and engaging in periodic reviews of universal service programs through dedicated USECP proceedings.

Second, CAUSE-PA ignores a clear PUC directive about how to incorporate elements of the Revised CAP Policy Statement. PECO, among other utilities, was instructed to file an addendum to its existing or proposed USECP to reflect policy changes in the Revised CAP Policy Statement.[66] There was no directive to address EBs, or any other part of the Revised CAP Policy Statement, as part of a base rate proceeding. Indeed, *Columbia Gas* makes it clear that rate proceedings *are not* the proper venue for the consideration of EBs.[67]

Finally, CAUSE-PA fails to acknowledge that PECO's compliance with the Settlement was recently affirmed by Administrative Law Judge Mary D. Long in a separate, fully-litigated proceeding where PECO directly addressed claims that it was violating the Settlement by failing to: (1) incorporate the EBs from the Revised CAP Policy Statement; and (2) adjust CAP credits after a distribution base rate increase. Judge Long made detailed findings and conclusions to support her conclusion that PECO is complying with the Settlement and all claims against the Company should be dismissed.[68]

2. The Adjustment Of CAP Credits If A Gas Distribution Rate Increase Is Granted (CAUSE-PA Exc. 3)

PECO explained in detail how the existing CAP FCO credit would be adjusted on a quarterly basis in response to a base rate increase.[69] CAUSE-PA contends a more immediate

[66] *Final CAP Policy Statement Order*, p. 105, Ordering Paragraph no. 6. *See also 2019 Amendments to Policy Statement on Customer Assistance Program*, Docket Nos. M-2019-3012599 and P-2020-3016889 (Order on Reconsideration and Clarification entered Feb. 6, 2020), pp. 9-11.
[67] *Columbia Gas*, p. 160 (finding that a utility's EB levels "should not be considered separately from other parts of [the utility's] CAP and universal service programs but should be considered as part of [the utility's] entire universal service plan, including the need for changes and associated costs").
[68] *Tenant Union Representation Network v. PECO Energy Co.*, Docket No. C-2020-3021557 (Initial Decision issued April 9, 2021).
[69] *See* CAUSE-PA St. 1, pp. 23-24.

reflection into the FCO credit is warranted and that the ALJ, by not requiring changes to PECO's methodology, is permitting the Company to "side-step the clear and unambiguous terms" of the Settlement.[70] As explained above, this allegation of non-compliance with the Settlement was raised in a separate, fully litigated proceeding and was rejected by ALJ Long. The Commission should therefore reject CAUSE-PA's exception concerning the adjustment of CAP credits.[71]

G. The ALJ Appropriately Preserved The Company's Existing Universal Service Cost Allocation (OCA Exc. 9; CAUSE-PA Exc. 5)

The ALJ declined to adopt the allocation proposals of the OCA and CAUSE-PA, noting that non-residential customers do not receive any direct benefits from universal service programs.[72] The ALJ's recommendation is consistent with *Columbia Gas* (pp. 258-61), where the PUC rejected proposals to reallocate universal service costs to non-residential gas customers. Because PECO does not support a change in universal service cost allocation as part of this proceeding, the ALJ acted appropriately in preserving the existing universal service cost allocation. Thus, the OCA's and CAUSE-PA's Exceptions on this issue should be rejected.

H. In Light Of The ALJ's Significant Reduction To PECO's Proposed Budget, PECO Should Not Be Required To Implement Its Full Suite Of Proposed Energy Efficiency And Conservation ("EE&C") Programs. CAUSE-PA's Proposal To Further Expand Low-Income Offerings And The OCA's Alternative EE&C Portfolio Should Also Be Rejected (OCA Exc. 4; CAUSE-PA Exc. 4)

PECO proposed to increase its annual funding for gas EE&C programs from $2.008 million to $4.5 million to support expanded residential rebate offerings, a new Safe and Efficient Heating Program ("SEHP") for low-income customers, innovative pilot projects, and new marketing and outreach to increase customer participation.[73] The Company's Total Resource

[70] CAUSE-PA Exc. pp. 17-19.
[71] PECO further notes that the provision at issue will no longer be effective once the Company transitions to a PIPP.
[72] RD, pp. 407-08.
[73] *See* PECO St. 9, pp. 6-10; *see also* PECO St. 9-R, pp. 4-6.

Cost ("TRC") analysis supports the cost-effectiveness of its expanded EE&C portfolio and resolves several issues raised by the OCA.[74]

The ALJ adopted I&E's proposal to reduce PECO's claimed costs by $1,772,500 in light of historic EE&C spending, resulting in an annual EE&C budget of $2,727,500.[75] The ALJ did not make any findings about the content of PECO's proposed programs, or the programmatic recommendations of the OCA and CAUSE-PA, but instead stated that PECO "should accommodate any and all new program costs within its existing budget."[76] The OCA contends that the ALJ erred by adopting *any* increase to the current EE&C budget, and further recommended that the Commission require PECO to adopt the OCA's alternative EE&C portfolio.[77] CAUSE-PA argued that PECO should be provided its full requested budget, but, under either budget scenario, should be required to implement CAUSE-PA's recommendations to expand the SEHP and include additional opportunities for low-income customers.[78]

Although the Company did not take exception to the ALJ's EE&C budget recommendation, PECO opposes the additional budget reduction recommended by the OCA. An increased budget is necessary to support both the expanded program offerings and the development and execution of campaigns to promote natural gas efficiency rebates.[79] If the Commission does not approve any increase to its budget, PECO could proceed to offer its expanded suite of rebates within budget limitations but *could not* support the SEHP (which has a proposed annual budget of $1 million[80]) or pilot programs (which have a proposed annual budget

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[74] *See* PECO St. 9-R, pp. 2-3. PECO explained at hearings why the OCA's remaining concern with the TRC analysis was unfounded. *See* Tr. 206-08.
[75] RD, pp. 130-31.
[76] RD, p. 130.
[77] OCA Exc., pp. 11-14.
[78] CAUSE-PA Exc., pp. 19-22.
[79] *See* PECO St. 9-R, pp. 4-6.
[80] Both OCA and CAUSE-PA expressed support for the $1 million annual spending on the SEHP. *See* OCA St. 6, pp. 33-34; CAUSE-PA MB, p. 38.

of $125,000). If the Commission approves the ALJ's budget recommendation, PECO could implement the SEHP as proposed by the Company, but only with a reduced annual budget.

Under any budget outcome, the Commission should reject the programmatic changes recommended by the OCA and CAUSE-PA. The OCA proposed eliminating certain measures (i.e., residential boilers and storage hot water heaters) and sharply reducing the available budgets for others (ENERGY STAR® furnaces and smart thermostats), citing concerns about cost-effectiveness.[81] On the other hand, CAUSE-PA proposed that PECO increase access to energy efficient equipment for low-income customers with no upfront costs and relax eligibility requirements for the SEHP.[82] PECO's portfolio provides an appropriately broad range of EE&C opportunities *while remaining cost-effective*. The OCA's proposal would unnecessarily limit customer opportunities, and CAUSE-PA's recommendations would drive up portfolio costs with no commensurate increase in available funding.[83] For these reasons, the Company's proposed EE&C portfolio should be approved subject to limitations described above.

I. The ALJ Properly Rejected I&E's Recommendations Regarding PECO's Distribution Integrity Management Program ("DIMP") And Its Leaks and Excavation Procedures (I&E Excs. 1 and 2)

I&E filed two exceptions to the RD, objecting to the ALJ's rejection of I&E's proposed modifications to PECO's DIMP and other recommendations to reduce leaks and damage to PECO's distribution system. *** * * BEGIN CONFIDENTIAL * * ***

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[81] *See* OCA St. 6, pp. 31-33.
[82] *See* CAUSE-PA MB, pp. 38-39.
[83] PECO RB, pp. 56-59; PECO MB, pp. 87-89.

* * * * **END**

CONFIDENTIAL * * *. The PUC should therefore deny I&E's Exceptions.

J. Use Of The Average & Excess COSS Methodology As A Guide In Developing A Reasonable Revenue Allocation (OCA Excs. 7 and 8; OSBA Exc. 2)

The ALJ recommended accepting the Company's COSS because it "aligns with industry standards, Commission precedent, and cost causation."[87] The principal COSS issue in this case related to the method that PECO uses to allocate the costs of mains, which is the largest component of PECO's plant investment and associated fixed costs.[88]

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[84] PECO MB, pp. 92-93; Tr. 222-23.
[85] *Id.*, pp. 93-94; PECO St. 1-R, p. 12.
[86] *See* I&E Exc., p. 7.
[87] RD, p. 404.
[88] PECO MB, p. 97.

Consistent with PECO's approach in its 2010 case, PECO used the Average and Excess Demand ("A&E") method in which the portion of the cost of mains equal to the system average load factor is 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 amount by which the design peak demand exceeds average demand for each class. The excess demand is allocated among rate classes in proportion to each class' peak demand over its average demand.[89]

Four of the five parties that addressed this issue affirmatively supported the A&E method (PECO and I&E) or accepted the A&E method as appropriate for use in this case (the OSBA and the Philadelphia Area Industrial Energy Users Group ("PAIEUG")) instead of the Peak & Average Demand method ("P&A"), in which mains costs are allocated based in part on average demand and in part on each class' total peak demand (not just the portion that exceeds average demand). Three of the five parties supporting the A&E method also supported weighting "average" demand on the basis of PECO's system load factor as prescribed by the treatise *Gas Rate Fundamentals* (PECO, I&E and PAIEUG), while two parties proposed a 50% weighting of average demand (the OCA and the OSBA).[90]

The OCA and the OSBA both excepted to the ALJ's acceptance of PECO's COSS. The OCA contends that the ALJ erred on the grounds that, in comparison to the P&A method, the A&E method improperly assigns "excess" demand to the residential class and overweights excess demand. Second, the OCA asserts that the A&E method purportedly "does not align with how PECO designs its system" or how PECO's system is used.[91] For its part, the OSBA

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[89] PECO MB, pp. 98.
[90] PECO MB, pp. 99-102; PECO RB, pp. 61-62.
[91] OCA Exc., pp. 25-30.

requests that the Commission use this proceeding to establish either the A&E method or the P&A method for future rate cases, but notes that, if the Commission selects the A&E method, the OSBA believes the Commission "should do so recognizing that it is overturning its long-held position that the allocation of gas mains should be based in part on average demand."[92] The OSBA's exception is perplexing in two respects. First, it is uncontroverted that the A&E method does, in fact, allocate a portion of the cost of mains in accordance with average demand.[93] Second, the OSBA, in its Exceptions, is apparently walking away from the position advanced by its own witness, who testified that no part of the cost of mains should be allocated based on average demand because "mains costs are not causally related to average use" and, for that reason, he favored a methodology that allocates the cost of mains costs based only on number of customers and a "peak demand allocator."[94] While the OSBA admonishes the Commission to provide specific guidance on a COSS methodology to be used uniformly in all gas base rate cases (a position that raises other problems, as discussed below), the OSBA only makes the Commission's task harder in this case by taking a position in its Exceptions that is markedly different from its own witness's testimony.

As the ALJ concluded, each of the OCA's objections to the A&E method (which are set forth in detail in the RD)[95] do not invalidate PECO's reliance upon the A&E method. First, by allocating mains costs based in part on average demand and in part on each class's total peak demand, the P&A method implicitly double-counts average demand – once in the average demand component and a second time as part of the composition of total peak demand (which necessarily includes average demand). Consequently, the P&A method introduces a bias against

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[92] OSBA Exc., p. 4.
[93] *See* PECO MB, p. 98.
[94] OSBA St. 1, pp. 21-23.
[95] RD, pp. 309-313.

high load-factor customers, who use the distribution system more uniformly (and, therefore, more efficiently) than customers whose peak demands are much higher than their average usage. Because residential customers have highly temperature-sensitive demand and correspondingly low load factors, the P&A method's double-counting of average demand understates the cost of service for that class while overstating the cost of service of more efficient users of a gas utility's distribution system.[96] Second, the OCA's contention (without evidence other than its own witness's testimony) that the A&E method is inconsistent the design and use of PECO's system was directly contradicted by factual evidence presented by PECO witness Jiang Ding, who testified to PECO's actual design criteria – which are driven by peak demand, not "average" usage.[97] In short, the ALJ considered – and properly rejected – each of the bases for the OCA's Exception to the Company's COSS. Accordingly, the OCA's Exception No. 7 should be denied.

The OSBA is incorrect in contending that the PUC will be "overturning a long-held position" if it validates the A&E method.[98] Contrary to the OSBA's unfounded contentions, the A&E method is described as a recognized and well-accepted COSS methodology in the widely accepted treatise *Gas Rate Fundamentals* published by the American Gas Association, and the PUC has previously approved its use in litigated base rate cases for PPL Gas Utilities Corporation ("PPL Gas") and the Philadelphia Gas Works as recently as 2007.[99] More fundamentally, PECO does not believe that the PUC should mandate uniform industry-wide adoption of either the A&E method or the P&A method in a single company's rate case without notice and an opportunity for other natural gas distribution companies and stakeholders to be

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[96] *See* PECO MB, p. 101; PECO RB, pp. 62-63; PECO St. 6-R, p. 7.
[97] *See* PECO RB, pp. 65-66.
[98] OSBA Exc., p. 4.
[99] *See* PECO RB, p. 63; *Pa. P.U.C. v. PPL Gas Utils. Corp.*, Docket No. R-00061398 (Opinion and Order entered Feb. 8, 2007); *Pa. P.U.C. v. Phila. Gas Works*, Docket No. R-00061931 (Opinion and Order entered Sept. 28, 2007).

heard, particularly where the request is first made in an Exception and is not fully considered by the ALJ and other parties to the case. Thus, the OSBA's Exception No. 2 should be denied.

The OCA also excepts to the ALJ's recommended adoption of I&E's revenue allocation. The OCA concedes that its objection to I&E's revenue allocation is a derivative of I&E's use of the Company's COSS as a guide in allocating the revenue increase among customer classes.[100] The critical point is that I&E used the Company's COSS as a "guide" while giving due consideration to other factors typically used to develop a fair and reasonable revenue allocation, consistent with PUC and appellate court precedent.[101] In short, while a COSS is an important input to developing a reasonable revenue allocation, it is not the sole input.[102] Significantly, notwithstanding the theoretical arguments that the OCA tries to marshal against the use of the A&E method, the practical differences between the class cost allocations under the A&E and P&A methods are not as great as the OCA's arguments suggest. As the OCA itself acknowledges, the A&E method allocates 58.3% of PECO's total investment in distribution mains to the residential class, while the OCA's preferred P&A method would allocate 56.23% of PECO's distribution mains investment to that class.[103] The narrowness of that differential is mirrored in the allocation of the revenue increase to the residential class, which (at PECO's total proposed overall increase) is $62 million under I&E's allocation and $60 million under the OCA's proposed allocation.[104] Even that differential is reduced if the overall revenue increase granted to PECO is less than the Company proposed.

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[100] OCA Exc., p. 8.
[101] *See* PECO MB, p. 95.
[102] *Id.*
[103] OCA Exc., pp. 25, 29.
[104] *Id.*, pp. 31-32.

In summary, the OCA's objection to the ALJ's recommended revenue allocation is largely a function of the OCA's theoretical opposition to I&E's use of PECO's A&E-based COSS to guide the development of its revenue allocation proposal. However, the practical consequences flowing from that theoretical difference are not as great as the OCA's extensive discussion of this issue in its Exceptions would suggest. The results of PECO's COSS are reasonable and appropriate for the practical purpose of developing a fair and equitable revenue allocation that conforms to cost of service principles while recognizing other factors typically considered when the PUC adjudicates rate structure issues in base rate proceedings.

K. The Increase In PECO's Residential Customer Charge Is Reasonable And Should Be Excluded From Any Scale Back If The Commission Grants Less Than PECO's Requested Increase (OCA Exc. 10; CAUSE-PA Exc. 6)

The ALJ recommended approving the proposed increase in PECO's residential customer charge from $11.75 to $16.00, finding it reasonable because direct customer costs are higher than PECO's proposed charge.[105] Nonetheless, the ALJ expressed concerns about gradualism and found that the customer charge should be reduced in proportion to the final revenue increase approved in this case.[106] As explained in PECO's Exceptions (pp. 31-32), customer charges should be excluded from the scale back if the PUC grants less than PECO's requested increase.

CAUSE-PA and the OCA except to the ALJ's recommendation. CAUSE-PA opposes any increase in PECO's residential customer charge.[107] The OCA, in turn, asks the PUC to limit the charge to $13.00 under proposed rates and use that amount as the starting point for any proportional scale back.[108] Their Exceptions attempt to overcome the undisputed fact that PECO's proposed increase is supported by the customer costs identified in Ms. Ding's COSS.

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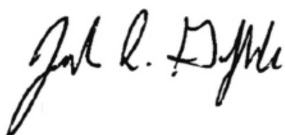
[105] *See* RD, p. 409.
[106] *Id.*
[107] CAUSE-PA Exc., pp. 29-31.
[108] OCA Exc., pp. 37-38.

CAUSE-PA's and the OCA's positions are contrary to the fundamental ratemaking principle that the customer component of total cost of service should be recovered in the service charge.[109] Neither party offered a cost-of-service basis for its recommendation. Instead, they argue that raising the customer charge makes it harder for low-income customers to lower their utility costs through energy conservation.[110] However, as explained in PECO's Main Brief (pp. 117-19), customers can still adopt energy efficiency measures to reduce their overall bill.

III. CONCLUSION

For the foregoing reasons, the Commission should reject the Exceptions filed by I&E, the OCA, the OSBA and CAUSE-PA and instead grant PECO's Exceptions and adopt the Recommended Decision with the modifications described therein.

Respectfully submitted,



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[109] *See* PECO MB, pp. 116-17; PECO RB, pp. 75-76.
[110] *See* CAUSE-PA Exc., pp. 30-31; OCA Exc., p. 38.