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July 7, 2021

VIA eFILING

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

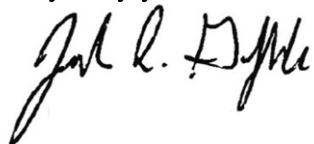
**Re: Pennsylvania Public Utility Commission v.
PECO Energy Company – Gas Division
Docket No. R-2020-3018929**

Dear Secretary Chiavetta:

Enclosed for filing is **PECO Energy Company's Petition for Reconsideration of the Commission's Order Entered on June 22, 2021** ("Petition"), in the above-captioned proceeding. As evidenced by the Certificate of Service, copies of the Petition are being served upon Deputy Chief Administrative Law Judge Christopher P. Pell, the Office of Special Assistants, and all parties of record. A confidential copy of the Petition is being provided separately by e-mail to your attention.

If you have any questions, please do not hesitate to contact me directly at 215.841.4608.

Very truly yours,



Jack R. Garfinkle

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 **PECO Energy Company's Petition for Reconsideration of the Commission's Order Entered on June 22, 2021** 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: July 7, 2021

Counsel for PECO Energy Company

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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	:	

PETITION FOR RECONSIDERATION OF THE COMMISSION'S ORDER ENTERED JUNE 22, 2021

I. INTRODUCTION AND OVERVIEW

Pursuant to Section 703(g) of the Public Utility Code (66 Pa.C.S. § 703(g)) and 52 Pa. Code § 5.572, PECO Energy Company ("PECO" or the "Company") hereby petitions the Pennsylvania Public Utility Commission (the "Commission") to reconsider its Opinion and Order entered June 22, 2021 (the "Order"). In the Order, the Commission addressed PECO's September 30, 2020 filing of its Tariff Gas – Pa. P.U.C. No. 4 ("Tariff No. 4") to become effective on November 29, 2020. Tariff No. 4 contained proposed changes in rates, rules, and regulations calculated to produce an increase of approximately $68.7 million or 8.9% in additional annual distribution revenue.

PECO's proposed rate increase was its first proposed increase for its gas distribution customers in over ten years, which was further delayed voluntarily by PECO in light of the COVID-19 emergency at a significant cost that will not be recovered in rates. After a fully litigated proceeding, Deputy Chief Administrative Law Judge Christopher P. Pell (the "ALJ") issued a recommended decision ("R.D.") that recommended an increase of only $23,892,717, or

just 36% of the rate relief sought by the Company. While the Company firmly believed its proposed revenue requirement was reasonable and entirely supported by the evidence in this proceeding, PECO filed exceptions to the R.D. that, if granted, would have provided a reduced revenue increase of $50.0 million. In the Order, the Commission approved a revenue increase of $29,118,484 to account for all of PECO's fully projected future test year ("FPFTY") plant additions in response to PECO's exceptions.

The Company appreciates the Commission's determination that PECO's claimed FPFTY plant additions established through its planning and budgeting processes were proper despite the challenges arising from the COVID-19 emergency. But that determination is inconsistent with the Commission's denial of several other PECO exceptions to the ALJ's recommendations that addressed the substantial difference in revenue requested by the Company, including the ALJ's reductions of PECO's FPFTY payroll expense (-$2,447,000) and contracting and materials expense (-$10,015,000). These reductions in revenue were also inconsistent with the additional obligations the Order imposed on PECO **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] and undertake other distribution system enhancements, as well as the change in COVID-19 restrictions in PECO's service territory as a result of the end of Pennsylvania Governor Tom Wolf's COVID-19 emergency declaration (the "Emergency Declaration") on June 16, 2021.

In fact, the Order effectively concludes, without substantial evidence, that PECO will have **less than its current number of employees** in 2022 despite the end of pandemic-related limitations on PECO's hiring program and the increased amount of work directed by the Commission in its Order in this case. The Company therefore seeks reconsideration of the Order's reduction in PECO's FPFTY payroll and contracting materials expense.

In addition, the Order adopts the ALJ's adjustments to PECO's outside services expense (-$3,134,144) and Other Post-Employment Benefits ("OPEB") expense (-$486,000). With respect to outside services expense, the ALJ's adjustment relies on the Bureau of Investigation & Enforcement's ("I&E's") unsupported determination to use data from only one FERC account instead of the multiple FERC accounts comprising PECO's outside services expense. Similarly, the OPEB adjustment reflects OCA's use of a multi-year averaging of OPEB expense instead of the calculation of expense attributable to the undisputed expiration of an OPEB credit in 2021. The Commission's disposition of these issues in the Order did not specifically address I&E's failure to use multiple FERC accounts or why the effects of the expiring OPEB credit should be normalized when the undisputed actuarial evidence permitted the Company to use the actual cost of the expiring credit.

Finally, the Company requests that the Commission reconsider its exclusion of PECO's pension asset from the Company's rate base. As explained hereafter, each of these requests satisfies the applicable criteria for reconsideration of a Commission order and should be granted.

II. BACKGROUND

1. On September 30, 2020, PECO filed Tariff No. 4 to become effective on November 29, 2020. Tariff No. 4 contained proposed changes in rates, rules, and regulations calculated to produce an increase of approximately $68.7 million or 8.9% in additional annual distribution revenue.

2. By Order entered October 29, 2020, the Commission suspended the implementation of Tariff No. 4 by operation of law, pursuant to 66 Pa.C.S. § 1308(d), until June 29, 2021, unless permitted by Commission Order to become effective at an earlier date, and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules,

and regulations proposed. The Commission assigned the matter to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary and issuance of a Recommended Decision.

3. On November 9, 2020, PECO filed Supplement No. 1 to Tariff Gas – Pa. P.U.C., which suspended the effective date of the rates, rules, and regulations proposed in Tariff No. 4 until June 30, 2021.

4. Following the exchange of direct, rebuttal, and surrebuttal testimony, an evidentiary hearing was held on February 17, 2021.

5. On March 3, 2021, PECO, I&E, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Philadelphia Area Industrial Energy Users Group filed Main Briefs. All of these Parties filed Reply Briefs on March 15, 2021.

6. ALJ Pell issued a Recommended Decision on April 12, 2021. ALJ Pell recommended the approval of an increase in annual operating revenue in the amount of $23,892,217, or approximately 4% over present rates.

7. The Commission issued its Order in this proceeding on June 22, 2021, in which it approved an annual increase of $29,118,484 to the Company's pro forma revenue at present rates of $590,014,312.

III. LEGAL STANDARDS

8. In *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982), the Commission provided the following guidance on the criteria it would consider in deciding requests for reconsideration:

> A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . ." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

9. This Commission has previously held that the standard for determining whether clarification is warranted is substantially similar to the standard for granting reconsideration set forth in *Duick*:

> The OCA's Petition was filed pursuant to 52 Pa. Code § 5.572, Petitions for Relief. This regulation encompasses "Petitions for Clarification," and, as with Petitions for Reconsideration, these are decided by the application of the standards set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559 (1982) n1. Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Application of PPL Elec. Utils. Corp., Docket Nos. A-2009-2082652 et al., 2010 Pa. PUC LEXIS 1707, at *3-4 (Order entered Apr. 22, 2010). *See also Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, 2009 Pa. PUC LEXIS 1158, at *3-4 (Order entered June 2, 2009).

IV. REQUEST FOR RECONSIDERATION

10. As described in detail below, the Company has identified several arguments and important issues that the Commission did not address in its Order. Accordingly, reconsideration is necessary and appropriate. *Cf. Metropolitan Edison Co. v. Pa. Pub. Util. Comm'n*, 22 A.3d 353, 373-74 (Pa. Cmwlth. 2011) (explaining that "[a]lthough we agree with the Commission that it is not required to expressly consider each and every argument a party raises, it should expressly consider evidence and arguments that raise legitimate and significant questions") (citations omitted). With respect to PECO's claims for payroll and contracting and materials expense, the recent elimination of COVID-19 limitations provides additional grounds for the Commission's reconsideration of COVID-19 related adjustments based on the ALJ's recommendations made while those limitations were fully in place. *See* Order, p. 81 (concluding that "there was no guarantee" that PECO's rescheduled 2021 Gas Mechanics School would occur) & p. 85 (stating that the Commission "agrees with the ALJ that the impacts of the pandemic on PECO's construction program are not certain").

A. The Order Denies PECO Recovery Of The Cost Of Employees Actually On Its Payroll At December 30, 2020; Erroneously Assumes PECO Would Not Hire Any Additional Employees In The Ensuing Eighteen Months; Accepts An OCA Rationale That Relied Upon The Much Different Factual Scenario In The *Columbia Gas* Decision; And Ignores The Additional Workload The Order Imposes On PECO's Existing Employees

11. PECO's claims for salaries and wages, employee benefits and payroll taxes were based on having 639 full-time equivalent employees ("FTEs") on its payroll during the FPFTY. That figure reflected PECO's plan to add thirty-seven employees to its payroll between the end of the historic test year ("HTY") (June 30, 2020) and the end of the FPFTY (June 30, 2022).

12. As explained by PECO's Senior Vice President and Chief Financial Officer Robert J. Stefani, the Company carefully reviewed the work that would be required going forward to operate its Gas Division safely and reliably and to comply with state and federal regulatory requirements. Based on that analysis, PECO identified thirty-seven FTE positions that should be added to meet its operational goals. *See* PECO Main Brief ("M.B"), pp. 29-31, and Reply Brief ("R.B."), p. 19. Notably, the Order significantly increases the work PECO's Gas Division will need to perform in the FPFTY (and beyond) by requiring the Company to **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] Order, pp. 207 and 212.

13. Before the onset of the COVID-19 pandemic in the United States, PECO had planned to have 635 FTEs on its payroll by year-end 2020 and reach 639 FTEs in 2021, as reflected in its initially adopted operating budgets. Efforts to slow the spread of COVID-19, including the Emergency Declaration, altered the timing of PECO's hiring process, which slowed the Company's progress toward its budgetary goal of reaching 635 FTEs by the end of

2020. The COVID-19 response measures did not, however, alter PECO's commitment to have 639 FTEs on its payroll before the end of the FPFTY (June 30, 2022) to meet it operational needs and, as explained above, the COVID-19 limitations that previously restricted PECO's hiring processes have now been eliminated.

14. The single most significant impact the COVID-19 emergency had on PECO's hiring process was postponing the Gas Mechanics School from March 2020 to September 2021[1] in response to the Governor's Emergency Declaration. The Gas Mechanics School is the principal hiring pool for trained and qualified gas operations personnel. The record evidence established that the Gas Mechanic School will be held in September 2021 because the loosening of the COVID-19 restrictions that affected the planned March 2020 session – including the Emergency Declaration – are no longer an obstacle to conducting the school as currently planned.[2]

15. The Order adopts the ALJ's recommendation to accept the OCA's proposed $2,949,000 reduction of the Company's payroll costs,[3] which limits PECO's recovery to the costs of only 604 FTEs.[4] Significantly, no party disputed PECO's substantive determination that the demands of operating its Gas Division justified the need for a 639 FTE complement. Rather, the OCA contested the timing of PECO's hiring and contended that PECO would not have its

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[1] The Gas Mechanics School involves "hands-on" learning by participants. It requires in-person instruction and active student participation that cannot be conducted on-line.

[2] The Governor's emergency declaration ended on June 16, 2021 after the certification of May 2021 primary election results restricted the Governor's disaster-declaration powers.

[3] The total adjustment is $2,949,000, consisting of reductions to salaries and wages, employee benefits and payroll taxes of $2,447,000, $315,000, and $187,000, respectively.

[4] The Commission also adopted the recommendation to disallow PECO's claim for $40,000 in annual expenses to normalize a one-time cash payment made in connection with the ratification of its current union contracts, which will expire in 2021. Order, p. 81; *see also* R.D., pp. 58, 101-02, 121-22. PECO is not seeking reconsideration of the Commission's decision on this issue.

full complement of employees on the payroll by the end of the FPFTY. Consequently, the OCA proposed capping PECO's payroll costs at a level reflecting the 604 FTEs on its payroll on September 30, 2020 – a date only three months after the end of the HTY. Adopting that arbitrary cut-off date necessarily precluded consideration of undisputed record evidence of the additional hires PECO made after September 30, 2020, which brought the number of FTEs actually on PECO's payroll at December 31, 2020 to 612. Stated differently, PECO has more employees on its payroll now than the Commission is permitting PECO to recover costs for in the FPFTY.

16. The post-September 30, 2020 positions that PECO filled are not mentioned in the Recommended Decision's brief one-paragraph disposition of this issue. Instead, the ALJ's sole purported rationale for finding that PECO had not "adequately supported" its FPFTY payroll claim was that the Company allegedly "fell substantially short of its anticipated headcount for 2020" and, therefore, it was "speculative" whether the Company would hire any additional employees during the eighteen months between the end of 2020 and the end of the FPFTY.[5]

17. The Recommended Decision's rationale and disposition, which the Order adopts without elaboration, contain no indication that the ALJ or the Commission considered directly relevant record evidence that fully supports PECO's payroll claim or, at a minimum, supports an FTE headcount materially higher than 604. In this regard, the Recommended Decision, and the Order's derivative disposition of the payroll issue, errs in five principal respects.

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[5] R.D., p. 121. I&E did not challenge PECO's planned complement of 639 employees for the FPFTY. However, I&E proposed to adjust PECO's payroll costs to reflect an average "vacancy" rate, which it calculated as the average difference between PECO's budgeted and actual FTEs for the three-year period ended June 30, 2020. The Recommended Decision did not accept I&E's proposed vacancy rate adjustment. PECO explained and demonstrated that I&E's proposed adjustment was an erroneous double-count of vacancies because PECO had already reflected a normal level of vacancies by basing its claim only on positions <u>filled</u> by employees actually on, and expected to be on, its payroll. *See* PECO Main (pp. 30-31) and Reply (pp. 18-19) Briefs and Exceptions (pp. 18-19).

18. First, the Recommended Decision states that its disposition of this issue was guided by the principle that customers should not pay for the cost of employees "who have not been hired." Because future test years ("FTYs") and FPFTYs are authorized by statute and are regularly employed in rate proceedings, the Recommended Decision should correctly be interpreted to mean customers should not have to pay for employees "who have not been hired by the end of applicable test period," which, in this case, is the FPFTY ending June 30, 2022. However, even if the operative phrase were given a strictly literal interpretation, the Recommended Decision's disposition and the Order's acceptance of it are contradicted by the undisputed evidence, which establishes that PECO had 612 Gas Division FTEs **on its payroll** at December 31, 2020. The decision to cap PECO's payroll cost recovery at 604 FTEs denies PECO recovery of payroll costs it will incur for employees who have already been hired. That decision is arbitrary and not supported by any evidence, let alone substantial evidence.

19. Second, because the Recommended Decision and the Order adopt an arbitrary September 30, 2020 cut-off date for PECO's actual payroll costs, they ignore the progress PECO made toward achieving its 639 FTE complement during the last quarter of 2020 notwithstanding the postponement of the Gas Mechanics School. The addition of eight employees in a single calendar quarter demonstrates that, once COVID-19 related restrictions began to be loosened, the hiring process could proceed at a pace that would fill PECO's entire 639 FTE complement well before the end of the FPFTY. In fact, PECO would have 639 FTEs on its payroll by the end of the FPFTY even if it added on average only 1.5 FTEs per month during the eighteen months following December 31, 2020.[6] PECO's experience during the last quarter of 2020 in the

[6] 639 (FTEs claimed for FPFTY) – 612 (actual FTEs at December 30, 2020) = 27 FTEs. 27 FTEs/18 months (January 1, 2021 through June 30, 2022) = 1.5 FTEs per month.

evidentiary record shows that a pace of hiring much faster than 1.5 FTEs per month is not only possible but, in fact, had already been achieved.

20. Third, the only evidence the Order points to as alleged support for the Recommended Decision's conclusory "speculative" finding is the postponement of the Gas Mechanics School from March 2020 to September 2021. The Order adds that "there is no guarantee that it [the Gas Mechanics School] will occur or that PECO will find twenty or more graduates suitable for hire from this class." That statement has no basis in the record, particularly in light of the end of the COVID-19 limitations that gave rise to the cancellation of the 2020 Gas Mechanics School.

21. Until 2020 and the COVID-19 emergency, the Gas Mechanics School had been held on a regular annual (or more frequent) basis. Mr. Stefani testified unequivocally and without qualification that the Gas Mechanics School will take place in September 2021 despite its temporary hiatus due to the extraordinary events of 2020. Moreover, hiring from that talent pool is consistent with PECO's long-standing and well-established historic hiring processes and procedures and will enable PECO to have 639 FTE employees on its payroll by June 30, 2022 and, likely, well before that date. Consequently, the Commission's implicit finding that PECO is incapable of hiring *any* additional employees during the eighteen-month period from the end of 2020 through June 30, 2022 is contradicted by the record evidence in this case, which the Order gives no indication was considered.

22. Even if there were something "speculative" about PECO's ability to fill its *entire* complement of 639 employees by June 20, 2022 (and the record evidence does not support such a finding), it is even more "speculative" to assume that PECO could not hire *any* additional Gas

Division FTEs above the 604 on its payroll at September 30, 2020 prior to the end of the FPFTY. Indeed, as the evidentiary record demonstrated, PECO did hire eight additional employees between September and December 2020, and, as previously shown, even at a very modest hiring pace the full complement can be reached by June 30, 2022. The Order's disposition of this issue requires far more "speculation" – speculation that departs markedly from the record evidence – than would acceptance of the Company's claim.

23. Fourth, the Order, like the Recommended Decision, failed to consider that the OCA's payroll adjustment was based on – and certainly relied heavily upon – the Commission's decision in Columbia Gas of Pennsylvania Inc.'s ("Columbia's") recently concluded base rate proceeding. In that case, the Commission rejected Columbia's claim for payroll costs associated with its proposed addition of fifty-nine new employee positions and, instead, allowed payroll expenses based on the highest level of employees Columbia recorded on its books during 2020 (the future test year ("FTY") in that case).[7]

24. In its Reply Brief (p. 20) and Exceptions (pp. 19-20), the Company explained in detail why the OCA's reliance on the *Columbia Gas* decision to support its payroll adjustment was wholly misplaced because of significant differences in the operative facts between Columbia's payroll/headcount claim and PECO's. Notably, neither the Recommended Decision nor the Order acknowledged that PECO distinguished the Commission's *Columbia Gas* employee headcount decision and explained why that decision does not apply to the facts of this case.

[7] *Pa. P.U.C. v. Columbia Gas of Pa., Inc*., Docket No. R-2020-3018835 (Opinion and Order entered Feb. 19, 2021) ("*Columbia Gas*"), pp. 71-72.

25. As explained in detail in PECO's Exceptions, Columbia based its claim on the number of employee *positions* that had been *authorized* in its budget for its FTY and FPFTY, irrespective of whether those positions would be filled during the rate application period. In stark contrast to Columbia's approach, PECO began with employee compensation reflecting the 604 employees that were *actually on its payroll* during the HTY and added the compensation and related benefits and employment taxes for thirty-seven new positions that PECO planned to fill and add to its payroll during the FTY (ending June 30, 2021) and FPFTY (ending June 30, 2022).[8] Thus, in stark contrast to Columbia's approach, PECO had already excluded from its claim any costs related to "vacant" positions.

26. Finally, as this Commission has held in the past, utilities are in the best position to properly assess their staffing needs and implement hiring processes to achieve the employee complement needed to achieve their hiring goals. The Commission, therefore, should not lightly second-guess a utility's reasonable plan to fill the complement of employees it determines necessary to furnish safe and reliable service within the timeframe the utility determines is appropriate.[9] The Commission should use the same approach here and reconsider the Order to affirm PECO's claims for payroll expense, employee benefits and payroll taxes based on a complement of 639 FTE employees. In this regard, it is particularly important that the Commission reconsider its decision because, at the same time the Commission's Order limits PECO's recovery to the complement of employees on its payroll at September 30, 2020, it is imposing a substantial additional workload to comply with the Order's mandates that PECO

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[8] *See* PECO St. 3, pp. 34-35; PECO Ex. MJT-1 Revised, Sch. D-6.

[9] *See*, *e.g.*, *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012) ("We agree with the ALJ that PPL is most familiar with its needs in terms of staffing, and that PPL's historical payroll supports a finding that the Company's claim is reasonable.").

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]. The additional work required to comply with those directives was not reflected in PECO's prior staffing analyses and employee headcount decisions. Significantly, there is no indication in the Order that the Commission considered the impact that those added requirements would have on PECO's staffing needs or how PECO could comply with the Commission's directives with less than its planned complement of 639 employees being on-board during the FPFTY.

B. The Order Denies PECO The Recovery Of Contracting And Material Expenses That It Must Incur In Order To Comply With Commission Directives And To Properly Maintain Its Distribution System, And Ignores The Record Evidence That The COVID-19 Pandemic Will Not Impact Its FPFTY Contracting And Materials Expenditures

27. The Commission's determination to reduce the Company's FPFTY contracting and materials expense by $10,015,000 will deny the Company recovery of expenditures necessary to comply with Commission directives and to properly maintain its distribution system. Further, in reaching that decision, the Commission ignored the voluminous record evidence demonstrating that the COVID-19 pandemic will not impact the Company's projected contracting and materials expense.

28. The Company's HTY contracting and materials expense was approximately $30 million. Mr. Stefani testified that this figure would have been approximately $36 million had it not been for the impacts of the COVID-19 pandemic. As Mr. Stefani explained, COVID-19 related restrictions, among other things, reduced work levels in the Company's mapping plan and slowed efforts to repair non-emergent leaks. R.D., p. 61; Hearing Tr., pp. 251-53.

29. The Company anticipated that it would need to expend an incremental $8 million in both the FTY and FPFTY in order to (1) further its locate and mapping efforts; (2) reduce its non-emergent leak backlog; and (3) provide necessary security for crews working in high crime areas. PECO St. 2-R, pp. 17-18. This accounts for the entire difference between what the Company would have expended in the HTY had its efforts not been impacted by COVID-19 and the approximately $43 million in contracting and materials expense required for the FPFTY. PECO M.B., pp. 31-32; PECO R.B., pp. 20-21.

30. Incurring these amounts is necessary to comply with Commission directives and to otherwise fulfill the Company's obligations under Pennsylvania law.

31. The Company's mapping efforts are required by its 2017 settlement in *Pa. P.U.C. v. PECO Energy Co.*, P.U.C. Docket No. C-2015-2479970, Opinion and Order, pp. 4-6 (Oct. 27, 2016). The Company is in the process of implementing mapping system enhancements that will allow it to map and locate its facilities. **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] *See* Order, pp. 212-13.

32. Further, the Company has an obligation to maintain the integrity of its distribution system, which requires it to continually repair non-emergent leaks as necessary. The Company cannot simply ignore the discovery of leaks in its system; they must be repaired in accordance with prudent utility practices.

33. Similarly, the Company has an obligation to respond to One Call requests to locate its underground equipment. The Underground Utility Line Protection Law requires the Company to respond to One Call requests. *See* 73 P.S. § 177. The Company's locate expense grew 60% between 2010 and 2019, and the Company will need to continue responding to these requests in the FPFTY.

34. Finally, the Company must provide adequate support and safety to any employee serving customers in the field. It is in the benefit of the ratepayers, the Company, and the Company's employees to ensure that utility employees in the field receive adequate support and security when working in high-crime areas.

35. The Company must expend its projected contracting and materials expenses to comply with Commission directives **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] and to otherwise meet its general obligations to maintain the PECO distribution system and ensure the safety of its customers and employees. Requiring the Company to undertake these efforts, but then denying the Company the ability to recover its expenses in connection with those efforts, is inequitable and contrary to law. The Company should be afforded the ability to recover the significant contracting and materials expenses that are necessary to meet its operational needs.

36. I&E's and OCA's assertions that the Company will not expend its projected FTY or FPFTY contracting and materials expense are specious and unsupported by the record in this case. As Mr. Stefani explained, PECO's locating and mapping efforts are on track and the Company fully expects to meet its FTY and FPFTY budgets for contracting and materials expenses. PECO M.B., p. 33; PECO R.B., pp. 21-22. He noted that "[t]he significant decrease

in the [C]ompany's contracting and materials expense in the second quarter of 2020, immediately at the outbreak of the pandemic, is an anomaly and not indicative of future levels of those expenses," explaining further that "the [C]ompany['s] current operating and mapping plan are operating as they were prior to the pandemic." Hearing Tr., p. 252.

37. Mr. Bradley, PECO's Vice President of Gas, likewise stated that, while there were some delays early in the pandemic, "delays don't stop us from working on our system, and we've developed procedures to ensure that our construction teams can work safely and efficiently despite the pandemic," and that "COVID procedures are not delaying our construction program and I do not know of any basis for believing that our scheduled work for the [FTY] and the [FPFTY] will be delayed." Hearing Tr., p. 218.

38. Moreover, as noted in Section A, *infra*, the COVID-19 pandemic restrictions contained in Governor Wolf's emergency proclamation have been lifted, meaning the Company will not be hampered in any manner in its efforts to meet its FTY and FPFTY operational goals (which, according to the testimony of Messrs. Stefani and Bradley, PECO has already largely achieved).

39. As the Commission noted with respect to the Company's projected utility plant in service, "it is not reasonable to simply ignore PECO's projected plant additions for the FPFTY determined through its budgeting process, regardless of how 'abbreviated' it may have been in this case." Order, p. 50. It would be similarly unreasonable for the Commission to ignore PECO's forecasted contracting and materials expense here, which was developed in accordance with the Company's same budget processes.

40. The record demonstrates that the COVID-19 pandemic had only temporary effects on the Company's contracting and materials expenditures, that PECO is on track to meet its FTY projected spend, and that it will meet its FPFTY budgeted expenditures. There is no evidence contradicting these reasonable and well-supported forecasts, particularly in light of the changed COVID-19 circumstances statewide. The Commission should therefore approve the Company's contracting and materials expense claim in its entirety.

C. The Order Denies PECO Recovery Of Its Outside Services Expenses; Ignoring That I&E Erroneously Took Into Account Only PECO's Outside Service Costs Allocated To FERC Account 923

41. The ALJ's Recommended Decision to adjust the Company's outside services expenses and the Commission's affirmation of that decision is predicated upon I&E's erroneous use of only part of the correct data set. This issue was not addressed in either the Recommended Decision or the Commission's Order. *See* R.D., pp. 122-24; Order, pp. 86-88.

42. The Company's claim for FPFTY outside services is approximately $22 million. This represents a 2.25% increase over the HTY. PECO St. 2-R, pp. 16-17, PECO M.B., p. 34.

43. As Mr. Stefani explained, the Company's claim is GAAP-based and represents the Company's total Exelon Business Services Company ("EBSC") charges, including all cost elements (e.g., contracting, overhead, and other), **spread across multiple FERC accounts**. *Id.*

44. I&E's "starting point," however, was incorrectly limited to the Company's outside service costs only in FERC Account 923. *See* PECO Ex. MJT-1, Schedule D-4, PECO M.B., p. 34, PECO St. 2-R, pp. 16-17. While the ALJ and the Commission adopted I&E's proposed adjustment, endorsing I&E's proposed CPI factors, neither the ALJ nor the Commission supported why the Company's outside services expense should be limited to

Account 923. Essentially, the ALJ and the Commission were "comparing apples to oranges," and never explained or addressed why I&E's subset of data limited to FERC Account 923 should be utilized in place of the Company's full claim, which included outside services expenses allocated to several FERC accounts.

45. As the Company explained, if the starting point of the Commission's analysis was the HTY data set forth in Attachment III-A-22(a), i.e., a starting point of $21,640,000, instead of the HTY FERC Account 923 amount of $12,818,000 relied upon by I&E, then **application of I&E's proposed CPI factors would yield a greater FPFTY amount than the amount sought by the Company**. PECO R.B., pp. 23-24.

46. There is no justification for utilizing the subset of FERC Account 923 data proffered by I&E in place of the full complement of outside services expense sought by the Company that is in multiple accounts. Therefore, the Commission should permit the Company to recover its full claim for outside services expense.

D. The Order Denies PECO Recovery Of Its Known And Measurable OPEB Expense

47. The increase in the Company's FPFTY OPEB expense is due to a known and measurable event – the expiration of a prior service credit in June 2021 and the loss of the attendant amortization of that credit. The Company fully-explained the circumstances giving rise to the expiration of the prior service credit. *See* PECO St. 2, pp. 7-8, PECO St. 2-R, pp. 25-28; Hearing Tr., pp. 231-33.

48. The expiration of the prior service credit, the loss of the amortization, and the resulting FPFTY OPEB expense – $1,050,000 – was confirmed by the Company's independent

third-party actuary, Willis Towers Watson, and recognized by the OCA in its proposal to normalize the Company's FPFTY OPEB expense over three years (resulting in a $486,000 reduction in the Company's OPEB claim) and by the ALJ in adopting the OCA's proposal. The ALJ specifically noted that he was adopting the proposed normalization in order to "properly capture" the Company's predicted rise in OPEB expense due to the expiration of the prior service credit in 2021. *Id.*, R.D., p. 124.

49. The OCA cited to *Pa. Pub. Util. Comm'n v. Total Environmental Solutions, Inc.*, Docket Nos. R-00072493, et al., 2008 Pa. PUC LEXIS 42 at *98 (Pa. PUC May 23, 2008) ("*TESI*") in support of normalizing the Company's OPEB expense, stating that "[t]hese types of adjustments are appropriate where they occur regularly, but in irregular amounts." In *TESI*, the Commission explained:

> Normalization adjustments are made to eliminate any unusual activity or event, or to stabilize fluctuations in expenses which would not reasonably be expected to recur in the future. In other words, normalization is a ratemaking technique 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.

50. This rationale is in accord with *A Guide to Utility Ratemaking*, which notes that normalization adjustments are made to identify and remove non-annual events that would unfairly skew recovery. *See* James H. Cawley and Norman J. Kennard, *A Guide to Utility Ratemaking* (2018), p. 86.

51. The ALJ concluded that normalizing the Company's OPEB expense over the historical three-year period would "reflect a more accurate and normalized level of OPEB

expenses." R.D., p. 124. The Commission stated that it agreed with this justification for adjusting the Company's OPEB expense. Order, p. 93.

52. Normalizing the Company's OPEB expense, however, would do exactly what normalization is intended to avoid – unfairly skew recovery – since the OCA's proposal imputes the (now-expired) prior service credit and attendant amortization, which will not be available to the Company in the FPFTY or on a going-forward basis, in determining the Company's OPEB expense.

53. This is not in accord with Commission practice. For example, if the Company was regularly incurring an annual expense of $10 million and the Company confirmed and all parties acknowledged that at the conclusion of the FTY, the expense was going to decrease to $1 million, the Company doubts that the OCA would support the Company's future recovery of its historical three-year average – $7 million– instead of the known and measurable FPFTY amount of $1 million. Adopting the OCA's proposal here results in the same logical fallacy.

54. The Commission should approve the Company's OPEB expense claim in its entirety, and not adjust the Company's recoverable amount downward by applying an historical three-year average that produces a result other than the Company's **known and measurable** FPFTY expense.

E. The Order Denies Inclusion Of PECO's Pension Asset In Rate Base

55. In this proceeding, PECO proposed to include a $35.1 million pension asset in rate base. The pension asset arises from the different ways pension costs are calculated for ratemaking and financial reporting (GAAP) purposes. The Commission has generally required that, for ratemaking purposes, pension costs be based upon a utility's cash contribution to its

pension fund. For companies that are subject to GAAP's reporting requirements, pension costs must be determined for financial statement purposes on the basis of different rules, which are set forth in the Financial Accounting Standard Board Accounting Standards Codification Topic 715 ("ASC 715"), which was formerly Statement of Financial Accounting Standard 87 ("SFAS 87"). Using these two calculation methods (as the Company must) produces a difference, each year, between PECO's pension costs calculated for ratemaking purposes (based on pension plan contributions, representing actual cash expenditures) and the amount of pension costs reflected for financial reporting purposes (based on SFAS 87, representing accrual-based accounting entries on PECO's financial statements). PECO Exceptions, pp. 9-10.

56. The $35.1 million amount is the net aggregate difference, as of the end of the FPFTY in this case, between the amount of pension costs the Commission's ratemaking methodology assumes should be included in PECO's plant accounts and the amount of pension costs actually included in PECO's plant accounts. This $35.1 million is investor-supplied capital that was **actually contributed** to PECO's pension fund and was assumed for ratemaking purposes to be included in PECO's plant accounts even though it could not be so recorded because GAAP rules will not allow it. PECO Exceptions, p. 10. In the absence of inclusion in rate base, PECO will not recover the carrying costs incurred on this $35.1 million of investor-supplied capital. PECO Exceptions, p. 11.

57. In the R.D., the ALJ erroneously adopted I&E's argument that there was "no real infusion of capital or funds" and excluded the pension asset from rate base. R.D., p. 48. The Commission does not adopt the ALJ's reasoning, but instead reaches a different conclusion in the Order that excluding the pension asset from rate base is a "better practice" that strikes "the

appropriate balance between the interests of the company and the consumer in establishing just and reasonable rates." Order, p. 68.

58. Under the Commission's ruling, however, there is no "appropriate balance" of company and consumer interests, as PECO is not earning any return on these investor-supplied funds. Indeed, if the portion of total pension costs that PECO capitalizes were *not* constrained by GAAP, PECO would record in its plant accounts *all* of the pension costs that it does not charge to operating expenses for ratemaking purposes. And because the amount PECO would include in its plant accounts would consist of a portion of the actual *cash* contribution to its pension fund, there would be no question that the capitalized costs were "a real infusion of capital or funds" on which PECO would be entitled to earn a return. *See* PECO Exceptions, p. 12.

59. In the Order (p. 67), the Commission tries to support its decision with the observation that differences between pension contributions and pension costs calculated under ASC 715, fluctuate over time but, in theory, are intended to achieve a rough equivalence over the "life" of the pension fund. However, even if that prediction proved to be correct, "eventual" recovery does not "balance" company and investor interests if the time value of money is ignored. Unless PECO is afforded a reasonable return on the portion of its actual investor-supplied pension contributions that are not recognized in its operating expenses nor included in its plant accounts, PECO will always be short-changed by the time-value of those funds between the time they are expended and their theoretical "eventual" recovery in the indeterminant future.

60. As PECO has stated repeatedly in this case, its proposed recognition of a pension asset necessarily requires the recognition (as a deduction from rate base) of any similarly calculated pension liability that could arise in the future. *See* PECO Exceptions, p. 13. Thus,

under the approach PECO proposes, both the Company and customers will be afforded an accurate accounting for actual costs, including the time value of money, in a manner that is both certain and timely. In contrast, the approach endorsed in the Order disregards the significant impact of the time value of money and, therefore, either PECO or its customers could be experiencing an unjustified penalty or windfall at any given point in time. Under the PUC-endorsed theory, the alleged "balance" of those windfalls and penalties, if it were to occurs at all, would simply be left to chance. PECO's proposed method, by recognizing the time value money in an accurate, timely and reciprocal fashion, actually produces the "balance" of company and customer interests that the Commission emphasizes is its goal in resolving this issue.

61. In short, contrary to the Commission's ruling, the exclusion of PECO's pension asset from rate base perpetuates an imbalance of customer and company interests. The Commission should therefore reconsider the Order and permit PECO to include its $35.1 million pension asset in rate base.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should grant reconsideration of the Order with respect to the issues identified in this Petition for Reconsideration and approve a total revenue increase of $49,260,000 instead of $29,118,484.

Respectfully submitted,

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Dated: July 7, 2021

Counsel for PECO Energy Company

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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	:	

VERIFICATION

I, Richard G. Webster, Jr., hereby declare that I am the Vice President, Regulatory Policy and Strategy of PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Richard G. Webster, Jr.
Vice President, Regulatory Policy
and Strategy of PECO Energy Company

Dated: July 7, 2021