


COMMONWEALTH OF PENNSYLVANIA



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July 19, 2021

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to PECO Energy Company – Gas Division's Petition for Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Christopher P. Pell (**email only**)
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Certificate of Service

*313740

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Answer to PECO Energy Company – Gas Division’s Petition for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of July 2021.

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Dated: July 19, 2021
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO THE PECO PETITION FOR RECONSIDERATION**

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I. INTRODUCTION

On July 7, 2021, PECO Energy Company – Gas Division (PECO or Company) filed its Petition for Reconsideration of the Pennsylvania Public Utility Commission’s (Commission) June 22, 2021 Order (Petition). In its Opinion and Order entered June 22, 2021 (June 22-Order), the Commission adopted, and modified in part, Deputy Chief Administrative Law Judge Christopher P. Pell’s (the ALJ) April 12, 2021 Recommended Decision (R.D.) regarding PECO’s requested rate increase. June 22-Order at 302. The ALJ recommended an increase of \$23,892,717. R.D. at 17. In the June 22 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 Exception #1. June 22 Order at 50-51. PECO Exception #2 was also granted in relation to PECO’s annual depreciation expense. Id. at 125. The Commission then denied the remaining Exceptions of the Company. Id., passim.

In its Petition, PECO requests that the Commission reconsider its denial of PECO’s exceptions to the ALJ’s R.D. regarding the reduction in amounts requested for PECO’s FPFTY payroll expense (-\$2,447,000), contracting and materials expense (-\$10,015,000), outside services expense (-\$3,134,144), and Other Post-Employment Benefits (OPEB) expense (-\$486,000). Petition at 2-3, 7-21. Further, PECO requests in its Petition that the Commission also reconsider its determination to exclude PECO’s Pension Asset from its rate base. Petition at 3, 21-24. In support of its request for reconsideration, PECO contends that the Commission failed to address certain issues and arguments identified by PECO in Exceptions. Petition at 6.

The OCA respectfully requests that the Commission deny PECO’s Petition as it does not meet the standard under Duick v. Pennsylvania Gas & Water Co., 56 Pa. P.U.C. 553 (1982) (Duick), to warrant reconsideration or amendment of its June 22 Order. Specifically, PECO has

not raised any “‘new and novel arguments’ not previously heard or considerations that appear to have been overlooked or not addressed by the Commission.” Duick at 559. The OCA submits that this matter was fully litigated and PECO had ample opportunity to raise its arguments in support of its requested rate increase. The Commission fully considered and addressed each argument proffered by PECO and there are no considerations that were overlooked or not addressed by the Commission that warrant reconsideration and amendment of the June 22 Order.

II. LEGAL STANDARD

Pursuant to Section 703 of the Public Utility Code, “[a]fter an order has been made by the [C]ommission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing.” 66 Pa. C.S. § 703(f); 52 Pa. Code § 5.572(c) (“Petitions for reconsideration . . . shall be filed within 15 days after the Commission order involved is entered or otherwise it becomes final”). Section 703 also provides that the Commission may “rescind or amend any order made by it.” 66 Pa. C.S. § 703(g).

The Commission set forth the standard applied to petitions for reconsideration in Duick, where it stated:

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 part. In this regard we agree . . . 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.¹

¹ Duick at 559.

In further delineating the standard for petitions for reconsideration, in Pa. PUC v. PECO Energy Co., M-00960820, 1999 Pa. PUC LEXIS 24, at *10-11 (1999) (PECO), the Commission provided:

[B]ecause a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under the appropriate circumstances.

* * *

We have held that such petitions must make new or novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the Order under consideration.²

As such, a justifiable petition for reconsideration must present new or novel and convincing arguments.

For a Petition for Reconsideration to meet the standard under Duick, the considerations must satisfy a two-step analysis.³ Under the first step, the Commission determines whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order.⁴ Importantly, the Commission has stated that, to satisfy the first step of the analysis set forth in Duick, the arguments and considerations introduced in a Petition for Reconsideration are not considered “new” if they are “new” only to the extent that the petitioners could have, but did not, previously raise them during the exceptions stage.⁵ The Commission has found that a subsequent attempt to insert additional arguments that could

² Pa. PUC v. PECO Energy Co., M-00960820, 1999 Pa. PUC LEXIS 24, at *10-11 (1999) (PECO).

³ Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1; Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan, Docket No. M-2018-2640802 et al., (Opinion and Order entered June 18, 2020) at 66 (PWSA) (citing e.g. SBG Management Services, Inc./ Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works, Docket No. C-2012-2304183 (Order entered May 9, 2019)) (SBG/Colonial).

⁴ Id.

⁵ Id.

have been raised in exceptions during the Petition for Reconsideration stage does not satisfy the new and novel argument threshold contemplated under Duick and therefore, in the interest of judicial economy, the Commission has the discretion to not consider them.⁶

Under the second step of the Duick analysis, the Commission would evaluate the new or novel argument, or allegedly overlooked consideration, in order to determine whether to modify its prior order.⁷ Importantly, the Commission is not under any duty to modify its previous order if a new and novel argument is raised or a consideration that was overlooked or not addressed by the Commission is identified.⁸

Lastly, the Commission is not required to consider expressly or at length each contention or argument raised by the parties.⁹

As detailed below, PECO's Petition does not meet the Duick standard and, even if it did, PECO's arguments do not warrant reversal or amendment of the June 22 Order.

III. ARGUMENT

The OCA submits as a general matter that PECO's Petition for Reconsideration does not meet the legal standard for reconsideration and, therefore, should be denied. As discussed in the Duick and PECO cases, a Petition for Reconsideration must present new or novel arguments or arguments that have been overlooked. PECO's Petition fails to raise any new and novel arguments or identify any issues that the Commission has overlooked. See, Duick at *12-13; PECO Energy

⁶ Id. (Citing Ruth Mathieu-Alce v. Philadelphia Gas Works, Docket No. F-2015-2473661 (Order entered April 7, 2016) ("We note that the Commission has held that in the interest of judicial economy, the Commission will not grant exceptions or reconsideration when the party failed to raise an argument earlier in the proceeding.") at 11).

⁷ PSWA at 66 (citing SBG/Colonial).

⁸ Id.

⁹ Consolidated Rail Corporation v. Pa. Public Utility Commission, 625 A.2d 741 (Pa. Cmwlth. 1993) (Consolidated Rail Corp.)

Co. at *10-11. In its Petition, PECO raises arguments that have already been raised in this proceeding and were directly addressed in the ALJ's R.D. and the Commission's June 22 Order. Other arguments introduced by PECO do not meet the Duick standard as new or novel because PECO could have raised such arguments when it filed Exceptions to the ALJ's decision and failed to raise them. Further, none of the arguments presented by PECO in its Petition should convince the Commission to disturb its June 22 Order. The OCA submits that PECO has failed to meet the standard under Duick and its Petition for Reconsiderations should, therefore, be denied.

The OCA will deal with each of PECO's claims below.

A. Payroll.

In its Petition, PECO requests that the Commission reconsider its denial of PECO's Exceptions to the ALJ's R.D. regarding the amount granted for PECO's FPFTY payroll expense (-\$2,447,000). Petition at 2, 6-14. Specifically, PECO argues that the June 22 Order will deny PECO recovery of the cost of employees actually on its payroll at December 30, 2020 and "speculatively" assumes that PECO will not hire any new employees by June 30, 2022. Petition at 8-12. PECO claims that "the record fully supports" its projected headcount of 639 full-time employees (FTEs) by June 22, 2022 and that it demonstrated progress towards this number by reaching a total of 612 FTEs by December 31, 2020. Id.

This argument proffered by PECO was previously presented in testimony and exceptions and rejected by the Commission in this proceeding. June 22 Order at 79-81; PECO Exc. at 17-21. In particular, the Commission acknowledged, but did not accept, PECO's claim of 612 employees by December 31, 2020 due to the nature of the allocated positions added to the headcount number:

"We also note that while PECO provided evidence of progress toward the 639 total complement by including seven allocated positions in its 612 employee headcount as of December 31, 2020, we find the ALJ's recommendation to adopt the OCA's downward

adjustment of \$2,447,000, or from \$42,209,000 to \$39,762,000, to reflect an employee complement of 602 reasonable.”

June 22 Order at 81. As provided by the OCA in Testimony, Briefs, and Reply Exceptions, PECO’s projected headcount by June 30, 2022 of 639 excludes allocated employees¹⁰ and, therefore, PECO had not made the progress towards its projected headcount it attempted to demonstrate with the 612 employee headcount update. OCA M.B. at 44-45 (citing OCA St. 2 at 23-24); OCA Reply Exc. at 6-7. PECO’s argument that it provided evidence of 612 employees by the end of 2020 was argued in PECO’s Exceptions and, therefore, is not new and novel or a consideration overlooked by the Commission in its June 22 Order. PECO Exc. at 18.

Additionally, PECO argues in its Petition that the Commission failed to consider that PECO would hire a bulk of its FPFTY projected headcount after it commences the Gas Mechanics School that was postponed from March of 2020 due to the COVID-19 pandemic. Petition at 8. PECO argues that the restrictions in place due to the COVID-19 pandemic have been lifted and that it established evidence in the record that it will hold the Gas Mechanics School in September of 2021. Petition at 8. PECO proffered this argument in Briefs and Exceptions and it was rejected by the Commission as PECO did not meet its burden of proving beyond speculation that the Gas Mechanics School would be held in September of 2021. June 22 Order at 81; PECO Exc. at 18.

The Commission stated:

“...while the Gas Mechanics School is scheduled, we note that there is no guarantee that it will occur or that PECO will find twenty or more graduates suitable for hire from this class.”

¹⁰ The OCA defined allocated employees as employees who spend all or a substantial portion of their time performing services for a subsidiary or an affiliated business. OCA R. Exc. at 7, n. 4.

June 22 Order at 81. Therefore, PECO's argument regarding the Gas Mechanics School is not new or novel in this proceeding and does not meet the standard for a petition for reconsideration under Duick.

PECO also reiterates its argument that the Commission's Order in Columbia Gas¹¹ should have no bearing on PECO's projected headcount claim. Petition at 12-13. Particularly, PECO contends that the Commission failed to acknowledge its argument, in PECO's Reply Brief at 20 and PECO's Exceptions at 19-20, that there are significant differences in the operative facts between Columbia's payroll/headcount claim and PECO's. Petition at 12. This is not a new or novel argument as it was raised in PECO's Exceptions and the Commission is under no requirement to consider expressly or at length every contention of each party in its decision.¹²

The OCA submits that PECO has failed to meet the first step of the Duick standard because the arguments PECO has presented in its Petition in relation to the FPPTY payroll expense are not new or novel or considerations overlooked by the Commission in its prior decision. Particularly, the payroll arguments raised by PECO in its Petition were raised and denied in the Commission's June 22 Order. Even if PECO's arguments were considered new or novel, PECO has not presented compelling arguments to convince the Commission to disturb its June 22 Order in regards to payroll expenses. The burden was on PECO to provide substantial evidence that its FPPTY headcount of 639 FTEs was reasonable and PECO failed to do so. As indicated by the OCA in its Main Brief, the OCA requested evidence from PECO to support the jobs PECO was anticipating hiring, including proof of management authorization for the positions, and PECO failed to provide that information. OCA M.B. at 44-45; June 22 Order at 77. The Commission properly determined

¹¹ 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.

¹² See Consolidated Rail Corp.

that PECO was not on track to reach its FPFTY estimated headcount and adopted the OCA's reasonably reduced headcount number. Therefore, PECO's payroll expense arguments also fail to meet the second step of the Duick standard.

B. Contracts and Materials.

In its Petition, PECO requests that the Commission reconsider its denial of PECO's exceptions to the ALJ's R.D. regarding the reduction in amounts requested for PECO's FPFTY Contracting and Materials expense (-\$10,015,000). PECO argues that the Commission ignored PECO's "voluminous" record evidence demonstrating that COVID-19 would not impact its Contracting and Materials expense. Petition at 14. PECO added that the reduction in the amount PECO requested for Contracting and Materials expense would hinder its ability to maintain the integrity of its distribution system, comply with the Commission's June 22 Order directives at 212-13, respond to One Call requests to locate its underground equipment, and provide adequate support and safety to employees serving customers in the field. Petition at 15-16. Overall, PECO argues that the Commission should approve its requested Contracting and Materials expense as PECO claims the impacts of the COVID-19 pandemic had only temporary impacts on its spending.

PECO's arguments regarding its Contracting and Materials expense are not new and novel and the Commission did not "ignore" PECO's evidence that COVID-19 did not impact this expense area. In the June 22 Order, the Commission stated:

"While PECO contends that the COVID-19 pandemic will not affect its construction program, we agree with the ALJ that the impacts of the pandemic on PECO's construction program are not certain."

June 22 Order at 85-86. Thus, PECO's arguments in its Petition are not new or novel and the Commission considered and denied PECO's claim that the COVID-19 pandemic did not obstruct its Contracting and Materials spending. With regard to PECO's arguments in its Petition

describing the alleged consequences of the Commission adoption of a reduced amount for Contracting and Materials expense, PECO had the opportunity to offer such arguments in Briefs and Exceptions. PECO's arguments related to the Commission's mapping directives on pages 212-13 of the June 22 Order are also not new or novel because PECO has been in the process of implementing mapping enhancements (Petition ¶ 31) and PECO noted in rebuttal testimony that it would need additional money to expand its mapping efforts (St. 2-R at 17-18). PECO failed to introduce any new or novel argument or considerations overlooked by the Commission and, therefore, has not met its burden under Duick.

PECO's arguments, even if they did appear to be new or novel, also do not meet the second step of Duick as they are not compelling reasons for the Commission to disturb its June 22 Order. The Commission found the adjustment to Contracting and Materials recommended by I&E to be reasonable and PECO's arguments do not provide grounds for amending the final order. Additionally, PECO has been under a continuing obligation to improve its mapping program since the 2017 settlement (Petition ¶ 31) so the additional directives on pages 212-13 of the June 22 Order are not grounds for revising the Commission decision as to Contracting and Materials expense. The OCA further submits that the costs associated with PECO's mapping enhancement argument are not known and measureable and the proper method of recovery for additional costs would be in the next base rate case.

C. Outside Services.

PECO contends that the Commission approved the adjustment to PECO's claimed Outside Services expense recommended by I&E which was, according to PECO, "predicated upon I&E's erroneous use of only part of the correct data set." Petition at 18. PECO further argues that this error was not addressed in the R.D. or the June 22 Order. Id. The Commission, however, did

recognize and consider PECO's arguments with regard to alleged incorrect numbers used by I&E in its calculation. June 22 Order at 89. On page 89 of the June 22 Order, the Commission recites:

PECO avers that the ALJ ignored PECO's testimony that I&E is utilizing incorrect numbers to determine its recommended adjustment and is incorrectly deriving its conclusions based on the portion of outside service costs in FERC Account 923 only while ignoring the portions of outside service costs in other FERC accounts. PECO argues that applying I&E's proposed methodology to the correct numbers would yield an even greater claim for outside services expense than the Company is seeking. PECO R. Exc. at 25.

Id. The Commission proceeded to agree with the R.D. accepting I&E's conclusion that PECO's claim for Outside Services was overstated and unsupported. Id. at 90. Therefore, PECO's arguments in reference to its Outside Services expense claim are not new and novel nor were PECO arguments overlooked by the Commission in its June 22 Order.

Additionally, if PECO's arguments were considered new and novel or overlooked by the Commission, PECO has not proffered any compelling reasons why the Commission should disturb its final June 22 Order. The Commission properly concluded that PECO's claim for outside services was overstated and unsupported and PECO's argument regarding erroneous numbers remains unconvincing.

D. OPEB.

In its Petition, PECO argues that it was inappropriate for the Commission to adopt the OPEB adjustment reflecting 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. Petition at 19-21. PECO states in its Petition:

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

Petition at 20-21. PECO's argument here that normalizing the OPEB expense would "unfairly skew recovery" is not new or novel as the argument was made by PECO in Briefs and Exceptions. Petition at 21; PECO R.B. at 24-25; PECO Exc. at 25-26. The Commission has already considered the Company's requested OPEB expense amount and rejected it. June 22 Order at 93-94. Particularly, the Commission determined:

We agree with the ALJ's recommendation that the OCA's proposed adjustment to OPEB expense, in which actual and projected OPEB expense for the years 2020-2022 are averaged, will reflect a level of OPEB expense that is more accurate and reasonable. We are persuaded by the OCA's argument that its proposed adjustment calculation, which utilizes the Company's actual and estimated OPEB costs from 2020-2022, will include the projected increase in OPEB expenses that will result from the expiration of the prior service credit amortization. We also agree with the OCA's argument that OPEB expense has a propensity for fluctuation from year to year.

Id. PECO has failed to meet the first step of the Duick standard in regard to the OPEB expense. The Commission considered PECO's request, but found multiple grounds for adopting the OCA's adjustment as more reasonable.

Additionally, if PECO's arguments were to be considered new and novel or overlooked by the Commission, PECO has not offered any compelling reasons why the Commission should disturb its June 22 Order. PECO has failed to meet its burden under the second step of the Duick standard with regard to its OPEB expense arguments. As the OCA provided in its Reply Brief, the fluctuation of OPEB expense is based on many assumptions—beyond the expiration of the prior service credit—that could affect the level of OPEB expense and, therefore, a normalization adjustment was recommended. OCA R.B. at 28-29. The Commission properly adopted the OCA's more reasonable and accurate calculation of PECO's OPEB expense and PECO's arguments against such adoption remain unconvincing.

E. Pension Asset.

Lastly, the Company's contentions regarding the Pension Asset do not meet the Quick standard as the Company has not raised any new or novel arguments. Instead, the Company is attempting to relitigate the same issues before the Commission. PECO argues that the Commission should reconsider its position because the Pension Asset of \$35.1 million is "the net aggregate difference...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 cost actually included in PECO's plant accounts," and that PECO actually contributed these amounts to PECO's pension fund. Petition at ¶ 56. The Company then asserts that it will not recover carrying costs on the Pension Asset unless it is included in rate base. Id. Moreover, the Company asserts that contrary to the Commission's ruling, its decision does not strike the appropriate balance of the Company's interests and consumer interests. Id., at ¶ 58. The Company also asserts that its proposal to accumulate a liability when the accounting difference reverses in future years is the appropriate approach. Id., at 60.

These arguments are not new or novel. They were addressed by the Company at length in the Company's Main Brief, Reply Brief, and Exceptions.¹³ The Commission likewise considered

¹³ As PECO stated in its Main Brief:

The pension asset arises because of a difference in the calculation of pension costs for ratemaking purposes in Pennsylvania and the calculation of pension costs under GAAP...

The pension asset, therefore, consists of \$35.1 million of investor-supplied capital that was actually contributed to PECO's pension fund...

PECO has included the pension asset in rate base in this case because, unless it is given rate base recognition, PECO will never recover the carrying costs it incurs on those investor-supplied funds.

PECO M.B. at 22-24. Also, as PECO stated in its Reply Brief:

A future "match" or liability account does not obviate the need for a return on PECO's actual cash contribution; moreover, to the extent that the relationship between PECO's contribution and the

these arguments in its Order and rejected each of the Company's contentions in making its ultimate determination. As stated by the Commission:

Upon consideration of the Company's position and the arguments posed by I&E and the OCA in opposition to allowing the Company to include the Pension Asset in rate base, we agree with I&E and the OCA that the Company's pension expense is appropriately calculated and capitalized pursuant to ASC 715.

Based upon our analysis of the unique financial accounting and funding requirements associated with calculating employers' pension expense and funding requirements, we conclude it would be unreasonable to establish that a company's pension asset should be allowed to be recovered in rate base. In striking the appropriate balance between the interests of the company and the consumer in establishing just and reasonable rates, we conclude the better practice is to continue the existing practice of establishing the employers' allowable pension expense by the recovery of PECO's pension expense as calculated and capitalized under the ASC 715. Accordingly, we shall deny PECO's Exception No. 2.

June 22 Order at 67-68. Thus, the Company has not presented any new or novel arguments that the Commission has overlooked or not addressed.

Moreover, the Commission's decision is well founded. It is undisputed that the Pension Asset represents a financial accounting mismatch that will fluctuate from year to year, but will eventually equal out over the life of the pension. June 22 Order at 67. Thus, PECO will be made whole in future years when the amounts assumed to be capitalized for ratemaking purposes are less than the amounts that are capitalized for GAAP accounting purposes and placed in the Company's plant accounts allowing it to earn a return at that time.

In contrast, recognition of the Pension Asset in rate base prematurely will allow the Company to earn a return on unamortized pension contributions for a prolonged period of time,

amount of that contribution it is permitted to capitalize goes "negative" at any point, there will be no over recovery since PECO will reflect the change through a reduction in rate base for ratemaking purposes.

PECO R.B. at 15; see also PECO's Exc. at 8-16.

thus overstating rate base and allowing the Company to over earn as a result of this financial accounting mismatch. As the Commission stated, such an approach is not reasonable and it is not necessary. June 22 Order at 67.

Accordingly, the Commission should not grant reconsideration of this issue as the Company has failed to raise any new or novel arguments not previously heard or overlooked by the Commission. Moreover, the Commission should not reverse its decision in this matter as the Commission correctly excluded the Pension Asset from rate base.

F. Conclusion.

As stated previously, the arguments presented by PECO in its Petition for Reconsideration do not meet the threshold under the Commission's analysis of the Duick standard. PECO's arguments are not new or novel, nor are they considerations that have been overlooked by the Commission in its June 22 Order. As the OCA has pointed out in this Answer, PECO's arguments were either raised in its Briefs and Exceptions, considered by the Commission, and not adopted in the June 22 Order, or PECO could have raised such argument in its Exceptions and failed to do so. To satisfy the first step of the analysis set forth in Duick, the arguments and considerations introduced in a petition for reconsideration are not considered "new" if they are "new" only to the extent that the petitioners could have, but did not, previously raise them during the exceptions stage.¹⁴ Additionally, PECO's claims that the Commission "ignored" or failed to consider other arguments it made in Briefs and Exceptions should further be rejected. As indicated in the June 22 Order, "...any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion." June 22 Order at 10. The OCA, therefore,

¹⁴ SBG/Colonial at 66.

respectfully requests that the Commission deny PECO's Petition for failing to meet the standard under Duick.

Even if PECO's arguments in its Petition challenging the Commission's determination of the aforementioned expense items were new and novel or previously overlooked, PECO has not provided compelling reasons for the Commission to reconsider its decision and amend the June 22 Order. The Commission has determined that, even if new and novel arguments are made, the petitioner for reconsideration must convince the Commission to exercise its discretion to rescind or amend the order under consideration.¹⁵ The Commission has further stated: "...because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under the appropriate circumstances."¹⁶ The OCA submits that PECO has not provided a sufficient basis for the Commission to disturb its June 22 Order.

¹⁵ PECO at *10-11.

¹⁶ Id.

IV. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Commission deny PECO's Petition for Reconsideration of the Commission's June 22 Order.

Respectfully submitted,

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