



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 19, 2021

**Via Electronic Filing**

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  
**I&E Answer in Opposition to PECO Petition for Reconsideration**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Answer of the Bureau of Investigation and Enforcement in Opposition to PECO Energy Company's Petition for Reconsideration of the Commission's June 22, 2021 Order** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Scott B. Granger'.

Scott B. Granger  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 63641  
(717) 425-7593  
[sgranger@pa.gov](mailto:sgranger@pa.gov)

SBG/ac  
Enclosures

cc: Honorable Christopher P. Pell – Office of Administrative Law Judge (*via email*)  
Pamela McNeal, Legal Assistant – Office of Administrative Law Judge (*via email*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT  
IN OPPOSITION TO PECO ENERGY COMPANY’S  
PETITION FOR RECONSIDERATION OF THE  
COMMISSION’S JUNE 22, 2021 ORDER**

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**TO THE HONORABLE COMMISSION:**

Pursuant to 52 Pa. Code § 5.572(e), the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits its Answer in Opposition to the Petition for Reconsideration (“Petition”) of the Commission’s June 22, 2021 Opinion and Order (the “Order”) in the above-captioned proceeding filed by the PECO Energy Company (“PECO” or “Company”) on July 7, 2021. In its Order, the Commission held that “the Recommended Decision (“R.D.”) of Deputy Chief Administrative Law Judge Christopher P. Pell, issued on April 12, 2021, is adopted as modified by this Opinion and Order.”<sup>1</sup> Further, the Commission stated “in

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<sup>1</sup> Order, pp. 73, 302. *See also* Order, p. 300 where the Commission stated “based on our review of the record in this proceeding, we shall: (1) grant, in part, and deny, in part, the Exceptions filed by PECO and I&E; (2) deny the Exceptions filed by the OCA, the OSBA, and CAUSE-PA; (3) deny the request set forth in PAIEUG’s Letter; (4) grant PAIEUG’s Motion to Strike; and (5) approve an annual revenue increase of \$29,118,484.”

this Opinion and Order, we shall approve an annual revenue increase of \$29,118,484<sup>2</sup> to the Company's *pro forma* revenue at present rates of \$590,014,312 or approximately 4.94%.”<sup>3</sup>

Now therefore, in support of the Commission's Order and in response to PECO's Petition, I&E avers the following:

## **I. INTRODUCTION AND OVERVIEW**

At the outset the averments alleged in PECO's Petition do not meet the requisite standard to warrant reconsideration or modification of the Commission's Order. In this case, PECO's arguments that purport to justify relief have already been expressly rejected by the Commission. Reconsideration is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.”<sup>4</sup> I&E submits that each of PECO's alleged grounds for reconsideration is without merit, as the record reveals that the Commission both considered and addressed each issue; therefore, reconsideration or modification of the Commission's Order is not warranted.

## **II. BACKGROUND**

1. Admitted.
2. Admitted.
3. Admitted.

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<sup>2</sup> See Order, pp. 1-2, 300. See also Order, p. 73, by comparison, in his April 12, 2021 Recommended Decision (“R.D.”), Deputy Chief Administrative Law Judge Christopher P. Pell recommended an increase of \$23,892,217.

<sup>3</sup> Order, pp. 1-2.

<sup>4</sup> *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982) (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm'n*, 179 A. 850, 854 (Pa. Super. 1935)).

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

### III. LEGAL STANDARDS

8. Admitted, to the extent that it is admitted that *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982) (“*Duick*”) is the seminal and controlling case with regard to petitions for reconsideration of a Commission order. To the extent that the *Duick* opinion is a written document, it speaks for itself. Additionally, it has been consistently upheld that *Duick* stands for the legal principle that “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.”<sup>5</sup> It is well settled that the *Duick* standard sets a very high bar for petitioners to overcome.

By way of further response, and with regard to the Commission’s broad discretion in base rate cases; as the Commission correctly opined, there is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.”<sup>6</sup>

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<sup>5</sup> *Duick*, p. 559.

<sup>6</sup> Order, p. 7, citing *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

Finally, the Commission correctly stated: “any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties.”<sup>7</sup> Therefore, in consideration of the above, PECO’s Petition fails to state any new and novel arguments; and, reconsideration or modification is not necessary nor appropriate.

9. Admitted, to the extent that it is admitted that *Duick* is the seminal and controlling case with regard to petitions for reconsideration of a Commission order. By way of further response, it is admitted that such petitions for reconsideration 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.<sup>8</sup>

#### **IV. REQUEST FOR RECONSIDERATION**

10. Denied. It is denied that the Commission did not address the arguments and issues identified by PECO in its Order. First, PECO’s reference to the language in the Order on page 81 where the Commission opines that “there was no guarantee” was followed by the definitive statement that the Commission “agree[s] with the OCA that PECO failed to provide job descriptions and proof of authorization for the projected additional thirty-seven positions.”<sup>9</sup> Which was followed closely by the Commission’s statement that:

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<sup>7</sup> Order, p. 10, citing *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993).

<sup>8</sup> *Duick*, p. 559.

<sup>9</sup> Order, p. 81.

... 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. We also agree with the ALJ's recommendation to reduce the employee benefits expense by \$315,000 to reflect the change in employee headcount. We find the elimination of the past costs for the one-time bonus paid in 2015 to be reasonable. Accordingly, PECO's Exception No. 3 is denied.<sup>10</sup>

Clearly the Commission considered the arguments made by the parties when exercising its discretion and PECO raises no new and novel arguments.

Second, PECO's reference to the language in the Order on page 85 where the Commission opines that "we agree with the ALJ that the impacts of the pandemic on PECO's construction program are not certain"<sup>11</sup> ignores the Commission's statements right before and right after the referenced language. In the previous sentence, the Commission states "[w]e agree with the OCA that the Company did not provide the specifics of the inflation adjustment it used to project contracting and materials expenses for the FTY and FPFTY."<sup>12</sup> And in the sentences immediately following the referenced language the Commission stated:

We find the ALJ's recommendation to utilize the three-year average of construction and materials expenses as a basis to reduce the Company's claim for this expense by \$10,015,000, or from \$42,955,000 to \$32,940,000, to be reasonable and substantiated by the record evidence. Accordingly, PECO's Exception No. 4 is denied.<sup>13</sup>

Again, clearly the Commission considered the arguments made by the parties when exercising its discretion and PECO raises no new and novel arguments.

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<sup>10</sup> *Id.*  
<sup>11</sup> *Id.*, p. 85.  
<sup>12</sup> *Id.*  
<sup>13</sup> *Id.*, pp. 85-86.

Therefore, PECO's Petition fails to meet the *Duick* standard; fails to state new and novel arguments; and, reconsideration or modification of the Commission's Order is not necessary nor appropriate.

**A. The Commission's Order correctly adopted the ALJ's recommendation to reduce the Company's payroll and payroll related expenses.**

11 - 26. Denied. It is specifically denied that the Order significantly increases the work PECO's Gas Division will need to perform in the FPFTY and beyond. Further, it is specifically denied that no party disputed PECO's claims that the demands of operating its Gas Division justified the need for a 639 FTE complement. Additionally, it is specifically denied that neither the ALJ nor the Commission considered record evidence regarding PECO's payroll claim or a requested FTE headcount materially higher than 604. Finally, it is specifically denied that the decision to cap PECO's payroll cost recovery at 604 FTEs is arbitrary and not supported by any evidence.

Rather, the Commission correctly recognized the arguments previously made by PECO.<sup>14</sup> The Commission also considered the arguments made by I&E and the OCA.<sup>15</sup> Further, the Commission recognized the ALJ's reasoning.<sup>16</sup> Additionally, the Commission considered the exceptions filed by PECO and the subsequent replies by I&E;<sup>17</sup> and, the exceptions filed by I&E and the subsequent replies by PECO.<sup>18</sup> Finally, the Commission reached well-reasoned dispositions.<sup>19</sup>

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<sup>14</sup> See Order, pp. 76-77; 200-202; 208-209.

<sup>15</sup> *Id.*, pp. 77-78, 202-203, 209.

<sup>16</sup> *Id.*, p. 79, citing R.D. at 121; *Id.*, p. 203, citing R.D. at 269; and, *Id.*, pp. 209-210, citing R.D. at 269-270.

<sup>17</sup> *Id.*, pp. 79-81.

<sup>18</sup> *Id.*, pp. 203-206; 210-212.

<sup>19</sup> *Id.*, p. 81; pp. 206-207; and, *Id.*, pp. 212-213.

By way of further response, the averments in paragraphs 11 through 26 are a repeat of arguments made by PECO in its testimony, main brief, reply brief, exceptions, and replies to exceptions that were given due consideration by the Commission during the writing of the Commission's Order;<sup>20</sup> and, therefore, the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments.

**B. The Commission's Order correctly denied the recovery of Contracting and Material expenses.**

27 - 40. Denied. It is specifically denied that 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.<sup>21</sup> Further, it is specifically denied that in reaching its decision, the Commission ignored any record evidence that the COVID-19 pandemic may not impact the Company's projected contracting and materials expense.<sup>22</sup>

Rather, the Commission correctly recognized the arguments previously made by PECO.<sup>23</sup> The Commission also considered the arguments made by I&E and the OCA.<sup>24</sup> Further, the Commission recognized the ALJ's reasoning.<sup>25</sup> And, the Commission considered the exceptions filed by PECO and the subsequent replies by I&E and the OCA.<sup>26</sup> Finally, the Commission reached a well-reasoned disposition.<sup>27</sup>

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<sup>20</sup> See Order, pp. 76-81; 200-213.

<sup>21</sup> Petition at ¶ 27.

<sup>22</sup> *Id.*

<sup>23</sup> Order, pp. 81-82.

<sup>24</sup> *Id.*, pp. 82-83.

<sup>25</sup> *Id.*, p. 83, *citing* R.D. at 122.

<sup>26</sup> *Id.*, pp. 83-85.

<sup>27</sup> *Id.*, pp. 85-86.

By way of further response, it is clear that the averments in paragraphs 27 through 40 are a repeat of arguments made by PECO in its testimony, main brief, reply brief and/or exceptions that were given due consideration by the Commission during the writing of the Commission's Order;<sup>28</sup> and, therefore, the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments.

**C. The Commission's Order correctly denied recovery of PECO's outside service expenses.**

41 - 46. Denied. It is specifically denied that the ALJ's Recommended Decision to adjust the Company's outside services expenses and the Commission's affirmation of that decision was predicated upon I&E's erroneous use of only part of the correct data set.<sup>29</sup>

Rather, the Commission correctly recognized the arguments previously made by PECO.<sup>30</sup> The Commission also considered the arguments made by I&E and the OCA.<sup>31</sup> Further, the Commission recognized the ALJ's reasoning.<sup>32</sup> And, the Commission considered the exceptions filed by PECO and the subsequent replies by I&E.<sup>33</sup> Finally, the Commission reached a well-reasoned disposition.<sup>34</sup>

By way of further response, the averments in paragraphs 41 through 46 are a repeat of arguments made by PECO in its testimony, main brief, reply brief and/or exceptions that were given due consideration by the Commission during the writing of

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<sup>28</sup> See Order, pp. 81-86.

<sup>29</sup> Petition at ¶ 41.

<sup>30</sup> Order, pp. 86-87.

<sup>31</sup> *Id.*, pp. 87-88.

<sup>32</sup> *Id.*, p. 88, *citing* R.D. at 123-24.

<sup>33</sup> *Id.*, pp. 88-90.

<sup>34</sup> *Id.*, p. 90.

the Commission's Order;<sup>35</sup> and, therefore, the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments.

**D. The Commission's Order correctly denies recovery of PECO's claimed OPEB expense.**

47 - 54. Denied. It is specifically denied that normalizing the Company's OPEB expense will result in an unfairly skewed recovery.<sup>36</sup>

Rather, the Commission correctly recognized the arguments previously made by PECO.<sup>37</sup> The Commission also considered the arguments made by I&E and the OCA.<sup>38</sup> Further, the Commission recognized the ALJ's reasoning.<sup>39</sup> The Commission noted that the ALJ adopted the proposed normalization in order to properly capture the Company's predicted rise in OPEB expense and reflect a more accurate and normalized level of OPEB expenses.<sup>40</sup> And, the Commission considered the exceptions filed by PECO and the subsequent replies by I&E.<sup>41</sup> Finally, the Commission reached a well-reasoned disposition.<sup>42</sup>

By way of further response, the averments in paragraphs 47 through 54 are a repeat of arguments made by PECO in its testimony, main brief, and/or reply brief that were given due consideration by the Commission during the writing of the Commission's

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<sup>35</sup> See Order, pp. 86-90.

<sup>36</sup> Petition at ¶ 52.

<sup>37</sup> Order, pp. 90-91.

<sup>38</sup> *Id.*, pp. 91-92.

<sup>39</sup> *Id.*, p. 92, *citing* R.D. at 124.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, pp. 92-93.

<sup>42</sup> *Id.*, pp. 93-94.

Order;<sup>43</sup> and, therefore, the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments.

**E. The Commission's Order correctly denies the inclusion of PECO's pension asset in rate base.**

55 - 61. Denied. It is specifically denied that 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.<sup>44</sup> Further, it is specifically denied that the Commission's ruling to exclude PECO's pension asset from rate base perpetuates an imbalance of customer and company interests.<sup>45</sup>

Rather, the Commission correctly recognized the arguments previously made by PECO.<sup>46</sup> The Commission also considered the arguments made by I&E and the OCA.<sup>47</sup> Further, the Commission recognized the ALJ's reasoning.<sup>48</sup> And, the Commission considered the exceptions filed by PECO and the subsequent replies by I&E and OCA.<sup>49</sup> Finally, the Commission reached a well-reasoned disposition.<sup>50</sup>

By way of further response, the averments in paragraphs 55 through 61 are a repeat of arguments made by PECO in its testimony, main brief, reply brief and PECO exceptions that were given due consideration by the Commission during the writing of

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<sup>43</sup> See Order, pp. 90-94.

<sup>44</sup> Petition at ¶ 57.

<sup>45</sup> Petition at ¶ 61.

<sup>46</sup> Order, pp. 51-54.

<sup>47</sup> *Id.*, pp. 54-58.

<sup>48</sup> *Id.*, p. 58-60, citing R.D. at 48-49.

<sup>49</sup> *Id.*, pp. 60-65.

<sup>50</sup> *Id.*, pp. 65-68.

the Commission's Order;<sup>51</sup> and, therefore, the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments.

## V. CONCLUSION

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the relief requested in the Petition for Reconsideration of the PECO Energy Company, which provides no evidence that was not previously available and which raises the same arguments that have been definitively decided, be denied.

Respectfully Submitted,



Scott B. Granger

Prosecutor

PA Attorney ID No. 63641

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120  
(717) 425-7593

Dated: July 19, 2021

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<sup>51</sup> See Order, pp. 51-68.



Phillip D. Demanchick, Esq.  
Christy M. Appleby, Esq.  
Barrett C. Sheridan, Esq.  
Laura J. Antinucci, Esq.  
Darryl A. Lawrence, Esq.  
Office of Consumer Advocate  
Forum Place  
555 Walnut Street, 5th Floor  
Harrisburg, PA 17101-1923  
[OCAPECOGAS2020@paoca.org](mailto:OCAPECOGAS2020@paoca.org)

Steven C. Gray  
Office of Small Business Advocate  
Forum Place  
555 Walnut Street, 1st Floor  
Harrisburg, PA 17101-1923  
[sgray@pa.gov](mailto:sgray@pa.gov)

Glenn Watkins  
Technical Associates, Inc.  
6377 Mattawan Trail  
P.O. Box 1690  
Mechanicsville, VA 23116  
[OCAPECOGAS2020@paoca.org](mailto:OCAPECOGAS2020@paoca.org)  
*Consultant for OCA*

Kevin W. O'Donnell  
Nova Energy Consultants, Inc.  
1350 SE Maynard Road, Suite 101  
Cary, NC 27511  
[OCAPECOGAS2020@paoca.org](mailto:OCAPECOGAS2020@paoca.org)  
*Consultant for OCA*

Lafayette K. Morgan  
Exeter Associates  
10480 Little Patuxent Parkway, Suite 300  
Columbia, MD 21044-3575  
[OCAPECOGAS2020@paoca.org](mailto:OCAPECOGAS2020@paoca.org)  
*Consultant for OCA*

Roger D. Colton  
Fisher Shehan & Colton  
34 Warwick Road  
Belmont, MA 02478  
[OCAPECOGAS2020@paoca.org](mailto:OCAPECOGAS2020@paoca.org)  
*Consultant for OCA*

Robert D. Knecht  
Industrial Economics Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
[rdk@indecon.com](mailto:rdk@indecon.com)  
*Consultant for OSBA*

Mitchell Miller  
Mitch Miller Consulting LLC  
60 Geisel Road  
Harrisburg, PA 17112  
[mitchmiller77@hotmail.com](mailto:mitchmiller77@hotmail.com)  
*Witness for OSBA*

Jeffrey Pollock  
J. Pollock Inc.  
12647 Olive Boulevard, Suite 585  
St. Louis, MO 63141  
[jcp@jpollockinc.com](mailto:jcp@jpollockinc.com)  
*Consultant for PAIEUG*



Scott B. Granger  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 63641