# **PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held August 26, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

John F. Coleman, Jr.

Ralph V. Yanora

Pennsylvania Public Utility Commission 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

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition) filed by PECO Energy Company – Gas Division (PECO or Company) on July 7, 2021, seeking reconsideration of the Order entered on June 22, 2021 (*June 2021 Order*), relative to the above-captioned proceeding. The Commission’s Bureau of Investigation and Enforcement (I&E) and the Office of Consumer Advocate (OCA) each filed an Answer in response to the Petition (Answer) on July 19, 2021. For the reasons set forth below, we shall deny the Petition.

# **History of the Proceeding**

On September 30, 2020, PECO filed 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.[[1]](#footnote-1)

On October 6, 2020, I&E filed a Notice of Appearance. On October 14, 2020, the OCA filed a Public Statement, Notice of Appearance, and Formal Complaint at Docket No. C-2020-3022400. On October 15, 2020, the Office of Small Business Advocate (OSBA) filed a Verification, Public Statement, Notice of Appearance and Formal Complaint at Docket No. C‑2020‑3022414. On October 22, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene.

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 (OALJ) for the scheduling of such hearings as may be necessary and issuance of a Recommended Decision.

On November 5, 2020, the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed a Formal Complaint at Docket No. C-2020-3022745.

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.

By Order dated November 12, 2020, ALJ Pell granted PECO’s Motion for Protective Order.

On December 10, 2020, the ALJ conducted two telephonic public input hearings. Eight individuals testified at the public input hearing. For more information on the public input hearing, *see* Recommended Decision(R.D.) at 5-8.

On December 22, 2020, PECO, I&E, the OCA, the OSBA, and CAUSE-PA served Direct Testimony. Rebuttal Testimony was served by PECO, the OCA and PAIEUG on January 19, 2021.

On February 9, 2021, the OCA, I&E, the OSBA, CAUSE-PA, and PAIEUG served Surrebuttal Testimony.

On February 17, 2021, the evidentiary hearing was conducted as scheduled. During the hearing, PECO presented its witnesses’ rejoinder testimony, and also made its witnesses available for cross examination by the other Parties. All other Party witnesses were excused from appearing at the hearing since no Parties requested to cross examine them and ALJ Pell did not have any questions for them. PECO, I&E, the OCA, the OSBA, CAUSE-PA, and PAIEUG each moved to have its witnesses’ testimonies and exhibits entered into the record. As there were no objections, all of the Parties’ testimonies and/or exhibits were admitted into the record during the hearing. The hearing scheduled for February 18, 2021, was cancelled on the record during the February 17th hearing.

On March 3, 2021, PECO, I&E, the OCA, the OSBA, CAUSE-PA, and PAIEUG filed Main Briefs. All of these Parties filed Reply Briefs on March 15, 2021.

In the Recommended Decision, issued on April 12, 2021, ALJ Pell recommended that PECO’s Tariff No. 4, which proposed changes in rates, rules, and regulations calculated to produce an increase of approximately $68.7 million, or approximately 8.9% in additional annual distribution revenue, be denied because the Company did not meet its burden of proving by a preponderance of the evidence the justness and reasonableness of every element of its requested increase. Instead, the ALJ recommended the approval of an increase in annual operating revenue in the amount of $23,892,217, or approximately 4% over present rates. Under the recommended increase, an average residential customer’s monthly bill would increase by approximately $3.90, or 5%. R.D. at 1, 419.

PECO, I&E, the OCA, the OSBA, and CAUSE-PA filed Exceptions to the Recommended Decision on April 26, 2021. Also on April 26, 2021, PAIEUG filed its Letter observing an administrative issue within the Recommended Decision.

On May 3, 2021, PECO, I&E, the OCA, the OSBA, and PAIEUG filed Replies to Exceptions. Additionally, PAIEUG filed a Motion to Strike, seeking to have certain portions of the OSBA’s Exceptions stricken.

On May 24, 2021, the OSBA filed an Answer to PAIEUG’s Motion.

In the *June 2021 Order*, we: (1) granted, in part, and denied, in part, the Exceptions filed by PECO and I&E; (2) denied the Exceptions filed by the OCA, the OSBA, and CAUSE-PA; (3) denied the request set forth in PAIEUG’s Letter; and (4) granted PAIEUG’s Motion. Additionally, we approved an annual revenue increase of $29,118,484 to the Company’s *pro forma* revenue at present rates of $590,014,312 or approximately 4.94%.

As previously noted, PECO filed the instant Petition on July 7, 2021. I&E and the OCA each filed an Answer to the Petition on July 19, 2021.

# **Discussion**

## **Legal Standards**

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [*Consolidated Rail Corporation v. Pa. PUC*,625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C%3A%5CDocuments%20and%20Settings%5Ctfarrar%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5Cresearch%5CbuttonTFLink) *also* *see, generally,* [*University of Pennsylvania v. Pa. PUC*,485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C%3A%5CDocuments%20and%20Settings%5Ctfarrar%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5Cresearch%5CbuttonTFLink)

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13:

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 stated that:

 Parties . . . 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 by the Commission.

Under the standards of *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 which appear to have been overlooked or not addressed by the Commission. *Id*. at \*13.

## **Petition and Answers**

In its Petition, PECO avers that it has identified several arguments and important issues that the Commission did not address in the *June 2021 Order*. PECO contends that the recent elimination of COVID-19 limitations provides additional grounds for the Commission’s reconsideration of COVID-19 related adjustments we adopted in the *June 2021 Order* that were based on the recommendations the ALJ made while those limitations were in place. Petition at 6.

### **Payroll and Payroll Related Expense**

#### **June 2021 Order**

In the *June 2021 Order*, the Commission agreed with the ALJ’s recommendation to adopt the OCA’s downward adjustment to the Company’s payroll and payroll related expenses of $2,447,000, or from $42,209,000 to $39,762,000, by: (1) adjusting the employee headcount to 604 and (2) eliminating past costs for a one-time bonus paid in exchange for ratification of the union contract on or before December 31, 2014.[[2]](#footnote-2) The Commission also agreed with the ALJ’s recommendation to reduce the employee benefits expense by $315,000 to reflect the change in employee headcount as proposed by the OCA. *June 2021 Order* at 81. PECO had requested a payroll allowance for the fully projected future test year (FPFTY) of $42,209,000 based on an employee complement of 639 full-time equivalent (FTE) positions. The OCA recommended an employee headcount of 604 positions, representing the most recent actual number of employees, reasoning that the Company did not adequately support the increase in the number of positions for the FPFTY. The OCA noted that the Company showed that there were 585 employees at the beginning of the historical test year (HTY) and 604 employees at the end of the HTY. The OCA argued that the Company failed to provide the proper support, including management authorization, for the projected increase in the number of positions that occurred during the future test year (FTY). The OCA reasoned that the costs related to the additional positions should not be allowed. *June 2021 Order* at 76-77. I&E recommended a reduction of $858,715 based on employees’ unfilled (vacant) positions (that are budgeted in the FPFTY claim), calculated based on PECO’s historic average annual vacancy rate of 2.1% as experienced in the fiscal years ending June 30, 2018, 2019, and 2020. I&E stated that the Company’s claim, based on the assumption that it will maintain 100% full staffing levels as budgeted in the FPFTY throughout the whole year, is unrealistic since there will always be a certain number of normal vacancies. *June 2021 Order* at 78.

In our decision in the *June 2021 Order*, we noted that while PECO’s Gas Mechanics School, which PECO considers a hiring opportunity for gas operations personnel and is scheduled for September 2021, there is no guarantee that it will occur or that PECO will find twenty new employees from this class. We agreed with the OCA that PECO failed to provide job descriptions and proof of authorization for the projected thirty-seven positions. We noted PECO’s progress toward the 639 total positions by having in place 612 employees (although this included seven allocated employees) by December 31, 2020. We found the OCA’s downward adjustment reasonable and denied PECO’s Exception No. 3. *June 2021 Order* at 81.

#### **PECO’s Petition**

In its Petition, PECO objects to the Commission’s adoption of the ALJ’s recommendation to reduce the Company’s payroll and payroll related expenses. PECO argues that it identified thirty-seven FTE positions that should be added to its payroll between the end of the HTY and the end of the FPFTY (June 30, 2022) to operate safely and reliably. Petition at 7 (citing PECO M.B. at 29-31; PECO R.B. at 19). PECO contends that in the *June 2021 Order*, the Commission has increased the work PECO’s Gas Division will need to perform in the FPFTY and beyond. Petition at 7 (citing *June 2021 Order* at 207, 212).

PECO maintains that its proposed Gas Mechanics School is the “principal hiring pool for trained and qualified gas operations personnel” and will go forward in September 2021. PECO avers that the record evidence established that the Gas Mechanics School will be held in September 2021 because of the loosening of COVID‑19 pandemic restrictions. Petition at 8.

PECO provides that the *June 2021 Order* limits the Company’s cost recovery to only 604 FTEs. PECO avers that no party disputed PECO’s substantive determination that the demands of operating its Gas Division justified the need for a 639 FTE complement. PECO notes that the OCA contested the timing of PECO’s hiring and contended that PECO would not have its full complement of employees on the payroll by the end of the FPFTY. According to PECO, the OCA proposed capping the Company’s payroll costs at a level reflecting the 604 FTEs on its payroll on September 30, 2020. PECO claims that it had 612 employees on its payroll on December 31, 2020, which is more than the Commission is permitting PECO to recover costs for in the FPFTY. Petition at 8-9.

PECO states that the Recommended Decision’s rationale and disposition which the Commission adopted in the *June 2021 Order*, 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 higher than 604. Petition at 9.

PECO provides that the Recommended Decision states that its disposition of the payroll expense issue was guided by the principle that customers should not pay for the cost of employees “who have not been hired.”[[3]](#footnote-3) PECO argues that this statement should be expanded to “who have not been hired by the end of the applicable test period,” or the FPFTY ending June 30, 2022. PECO argues that it had 612 FTEs on its payroll on December 31, 2020. PECO maintains that the decision to cap its payroll cost recovery at 604 FTEs denies PECO recovery of payroll costs it will incur for employees who have already been hired. PECO argues further that at its current hiring rate, it will reach its full complement of 639 by June 30, 2022. Petition at 9, 10.

PECO contends that the OCA’s payroll adjustment was based on the Commission’s decision in Columbia Gas of Pennsylvania’s (Columbia’s) recently concluded base rate proceeding.[[4]](#footnote-4) According to PECO, 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 during 2020 or the FTY in that case. Petition at 12.

PECO reiterates here that it explained in its Reply Brief and Exceptions why the OCA’s reliance on the *Columbia Gas* decision was misplaced because of differences between Columbia’s payroll/headcount claim and PECO’s claim. PECO states that the Recommended Decision and the *June 2021 Order* do not acknowledge that PECO distinguished the Commission’s *Columbia Gas* employee headcount decision and explained why that decision does not apply to PECO. Petition at 12.

PECO explains that Columbia based its claim for payroll expenses on the number of employee positions that had been authorized in its budget, while PECO based its claim on the 604 employees actually on its payroll and the thirty-seven new positions that it planned to fill. PECO avers that it excluded any vacant positions from its costs claim. Petition at 13.

PECO maintains that the Commission 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. Petition at 13 (citing *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-201202290597 (Order entered December 28, 2012)). PECO submits that the Commission has imposed directives that require additional work not addressed in its staffing analyses and employee headcount decisions. Petition at 13-14.

#### **I&E's Answer**

In its Answer, I&E disagrees with PECO’s assertion that the *June 2021 Order* significantly increases the work PECO’s Gas Divisions will need to perform in the FPFTY and beyond. I&E Answer at 6. I&E provides that the averments in Paragraphs 11 through 26 of the Petition 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 and therefore the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments. I&E Answer at 7 (citing *June 2021 Order* at 76-81; 200-213).

Regarding the Gas Mechanics School, I&E notes that the Commission provided 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.” I&E Answer at 4 (citing *June 2021 Order* at 81). I&E avers that the Commission considered the arguments made by the Parties when exercising its discretion and PECO raises no new or novel arguments. I&E Answer at 5.

#### **OCA’s Answer**

In its Answer, the OCA argues that PECO’s Petition does not raise any new and novel arguments or identify any issues that the Commission has overlooked. The OCA provides that PECO raises arguments that have already been raised in this proceeding and that were directly addressed in the ALJ’s Recommended Decision and in the *June 2021 Order*. The OCA submits that other arguments introduced by PECO do not meet the *Duick* standard as new or novel arguments because PECO could have raised such arguments when it filed Exceptions to the ALJ’s decision and failed to raise them. The OCA contends that none of the arguments presented by PECO in its Petition should convince the Commission to disturb the *June 2021 Order*. OCA Answer at 4-5.

The OCA disagrees with PECO’s argument that the *June 2021 Order* will deny the recovery of the cost of employees actually on its payroll on December 30, 2020 and “speculatively” assumes that PECO will not hire any new employees by June 30, 2022. OCA Answer at 5 (citing Petition at 8-12). The OCA notes that this argument was previously presented in PECO’s testimony and Exceptions and was rejected by the Commission. OCA Answer at 5 (citing *June 2021 Order* at 79-81; PECO Exc. at 17-21). The OCA notes that the Commission acknowledged, but did not accept, PECO’s claim of 612 employees by December 31, 2020, due to the allocated[[5]](#footnote-5) positions added to the headcount number. OCA Answer at 5-6 (citing *June 2021 Order* at 81). The OCA states that PECO’s projected headcount by June 30, 2022 of 639 excludes allocated employees and therefore PECO had not made the progress towards its projected headcount it attempted to demonstrate with the 612 employee headcount update. OCA Answer at 6 (citing OCA M.B. at 44-45; OCA St. 2 at 23-24; OCA R. Exc. at 6-7). The OCA notes that 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 2021 Order*. OCA Answer at 6 (citing PECO Exc. at 18).

Similarly, the OCA disagrees with PECO’s argument that it will be able to hire the 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. OCA Answer at 6 (citing Petition at 8). The OCA notes that PECO proffered this argument in its 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. OCA Answer at 6 (citing *June 2021 Order* at 81; PECO Exc. at 18). The OCA avers that 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*. OCA Answer at 6-7.

#### **Disposition**

Before we address our disposition on this first issue, we note, as stated previously, that Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine 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. The Commission will not reconsider its previous decision based on arguments that have already been made. The second step is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. Based upon our evaluation of the record and the Parties’ positions in each particular case, we will determine if there is a sufficient basis for us to exercise our discretion to amend or rescind a prior Order, in whole or in part.

Upon review, we find that PECO has not satisfied the *Duick* standards concerning the issue of payroll and payroll related expense**.** We will first address PECO’s arguments regarding employee complement. PECO argues that the *June 2021 Order* will deny PECO recovery of the cost of employees actually on its payroll on December 30, 2020 and “speculatively” assumes that PECO will not hire any new employees by June 30, 2022. PECO claims that “the record fully supports” its projected headcount of 639 FTEs by June 2022 and that it demonstrated progress towards this number by reaching a total of 612 FTEs by December 31, 2020. Petition at 8-12.

This argument is not new and was previously presented in PECO’s testimony and Exceptions. *See June 2021 Order* at 79-81; PECO Exc. at 17-21. We did not “ignore” the progress PECO made toward its goal of 639 employees. *See* Petition at 10. Rather, we directly addressed this issue in our *June 2021 Order*. We noted that seven of those employees were allocated. *June 2021 Order* at 81. We also noted that PECO had not left any room in its predictions of FTEs for retirements or vacancies. Although the Commission decided to adopt the OCA’s recommendation for employee complement, we discussed that I&E had proposed an average annual vacancy rate of 2.1%. *Id*. at 78. While PECO stated that no party objected to its proposed complement of 639 (Petition at 8), we stated that I&E provided that PECO’s

claim is based on the assumption that it will maintain a 100% full staffing level as budgeted in the FPFTY throughout the whole year, which is unrealistic since there will always be a certain number of normal vacancies due to retirements, resignations, transfers, layoffs, etc. on a day-to-day operational basis. These vacancies are unpredictable and there will always be search and placement time involved in filling vacancies.

*June 2021 Order* at 78 (citing I&E St. 1-SR (citing I&E St. 1 at 12-15)).

PECO argues that the most significant impact the COVID-19 pandemic has had on PECO’s hiring process was the required postponement of its Gas Mechanics School. PECO avers that this school is the principal hiring pool for trained and qualified gas operations personnel. PECO states the next Gas Mechanics School is scheduled for September 2021. Petition at 8. PECO previously provided this argument in its Exceptions, *see* PECO Exc. at 18, and we addressed this argument in the *June 2021 Order*.

Specifically, in the *June 2021 Order* we 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.”

*June 2021 Order* at 81.

PECO objects to the statement “there is no guarantee that it will occur,” and contends that the Commission should reconsider its recommendations regarding employee complement on this basis. PECO ignores the second half of that sentence. There is no guarantee that PECO will be able to fill the Gas Mechanics School class with twenty applicants and then find those employees suitable for full status employment after the class. Even if each employee candidate that graduated from a full class of twenty was hired as a “first class” employee, that would not reach the thirty-seven employees PECO proposed to hire by the end of the FPFTY. We cannot agree with PECO’s statement that the Gas Mechanics School will “enable PECO to have 639 FTE employees on its payroll by June 30, 2022.” Petition at 11.

PECO argues that the Commission did not consider its argument that the OCA relied on the *Columbia Gas* case in its recommendation to reduce PECO’s payroll expense claim. This is not a new argument. *See* Petition at 12 (citing PECO R.B. at 20; PECO Exc. at 19-20). We do not find it a material issue if the OCA based its recommendation on the *Columbia Gas* case. Our decision was not based on the *Columbia Gas* case but was based on the record and the specific facts in this particular proceeding. We agreed with the OCA that “PECO failed to provide job descriptions and proof of authorization for the projected additional thirty-seven positions.” *June 2021 Order* at 81.

PECO avers in its Petition that the Commission has required PECO to acquire additional personnel and resources. Petition at 7. We disagree with PECO’s argument. We are not requiring PECO to perform additional duties that require additional personnel but are reminding PECO of its existing duties. PECO has a continuing obligation to improve its mapping capabilities as per the 2017 *Penrose Settlement*[[6]](#footnote-6) at Docket No. C-2015-2479970.

We find that PECO’s arguments regarding payroll and payroll related expenses are a repeat of the arguments it made in its Briefs, Reply Briefs, and Exceptions and thus do not demonstrate a new and novel argument or consideration that has not previously been heard or has been overlooked by the Commission. Accordingly, for all of the above-mentioned reasons, we shall decline to exercise our discretion to disturb the *June* 2*021 Order* on this basis.

### **Contracting and Materials Expenses**

#### **June 2021 Order**

In the *June 2021 Order*, we adopted 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. PECO averred that the Company’s increase in contracting and materials expenses over the HTY for the FTY and FPFTY were mainly from: (1) gas mapping system enhancements and gas mapping projects in the FTY; (2) planned activities to reduce PECO’s non-emergent leak backlog; and (3) increased security expenses for PECO crews working in high crime areas during the FTY. *June 2021 Order* at 81-82. I&E recommended reducing the Company’s claim by utilizing a three-year overage. I&E testified that PECO has underspent its contracting and materials budgets by 11.42% in 2017-2018, 2.76% in 2018-2019 and 24.46% in 2019-2020. *June 2021 Order* at 82. We agreed 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. We also agreed with the ALJ that the impacts of the COVID-19 pandemic on PECO’s construction program are not certain. We found the ALJ’s recommendation to use the three-year average of construction and materials expenses as a basis to reduce the Company’s claim to be reasonable. *June 2021 Order* at 82-83.

#### **PECO’s Petition**

PECO avers 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. PECO contends that the Commission ignored the voluminous record evidence demonstrating that the COVID-19 pandemic will not impact the Company’s projected contracting and materials expense. Petition at 14.

PECO disagrees with I&E’s and the OCA’s assertions that the Company will not spend its projected FTY or FPFTY contracting and materials expenses. PECO notes that its witness, Mr. Robert J. Stefani, testified that the decrease in the Company’s contracting and materials expense in the second quarter of 2020 was “an anomaly and not indicative of future levels of those expenses.” Petition at 16-17 (citing Tr. at 252). PECO argues that its witness, Mr. Ronald A. Bradley similarly provided that while there were some delays early in the pandemic, PECO has developed systems to allow its construction teams to work safely and efficiently despite the pandemic. Petition at 17 (citing Tr. at 218).

PECO provides that it 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. Petition at 15 (citing PECO St. 2-R at 17-18).

PECO notes that its mapping efforts are required by the *Penrose Settlement* *Order*, at 4-6.

PECO maintains that the record demonstrates that the COVID-19 pandemic had only temporary effects on the Company’s contracting and materials expenditures and that PECO is on track to meet its FTY and FPFTY budgeted expenditures. Petition at 18.

#### **I&E’s Answer**

I&E states that the *June 2021 Order* will not deny the Company recovery of expenditures necessary to comply with Commission directives and to properly maintain its distribution system. I&E Answer at 7 (citing Petition at ¶ 27). I&E asserts that the Commission correctly recognized the arguments previously made by PECO. I&E Answer at 7 (citing *June 2021 Order* at 81-82). I&E provides that the Commission also considered the arguments made by I&E and the OCA and recognized the ALJ’s reasoning. I&E Answer at 7 (citing *June 2021 Order* at 81-83; R.D. at 122). I&E also provides that the averments in Paragraphs 27 through 40 of the Petition are a repeat of arguments made by PECO previously and were given due consideration by the Commission and therefore the averments in these paragraphs fail to meet the *Duick* standard and present no new and novel arguments. I&E Answer at 8 (citing *June 2021 Order* at 81-86).

#### **OCA’s Answer**

In its Answer, the OCA provides that 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. OCA Answer at 8. The OCA submits that in the *June 2021 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.”

OCA Answer at 8 (citing *June 2021 Order* at 85-86).

The OCA reasons that 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. OCA Answer at 8. The OCA maintains that PECO had the opportunity to offer its arguments describing the alleged consequences of the Commission adoption of a reduced amount to contracting and materials expense in Briefs and Exceptions. The OCA avers that PECO’s arguments related to the Commission’s mapping directives on pages 212-213 of the *June 2021 Order* are also not new or novel because PECO has been in the process of implementing mapping enhancements (Petition at ¶ 31) and PECO noted in rebuttal testimony that it would need additional money to expand its mapping efforts. OCA Answer at 9 (citing PECO St. 2-R at 17-18). The OCA contends that PECO failed to introduce any new or novel arguments or considerations overlooked by the Commission and therefore, has not met its burden under *Duick*. OCA Answer at 9

The OCA states that 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 2021 Order*. According to the OCA, 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 *June 2021 Order*. The OCA maintains that PECO has been under a continuing obligation to improve its mapping program since the 2017 *Penrose Settlement* (Petition at ¶ 31) so the additional directives on pages 212-213 of the *June 2021 Order* are not grounds for revising the Commission decision as to the expense related to contracting and materials. Additionally, the OCA submits that the costs associated with PECO’s mapping enhancement argument are not known and measurable and the proper method of recovery for additional costs would be in the next base rate case. OCA Answer at 9.

#### **Disposition**

Upon review, we conclude that PECO’s arguments in its Petition are not new or novel, that we have thoroughly considered PECO’s arguments concerning contracting and materials expenses, and that our decision is supported by substantial evidence in the record. In its argument regarding the Construction and Materials Expense, PECO references the language from the *June 2021 Order* where the Commission opines that “we agree with the ALJ that the impacts of the pandemic on PECO’s construction program are not certain.” As I&E pointed out, PECO ignores the Commission’s statements right before and after the referenced language. I&E Answer at 5. The Commission stated “[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.” *June 2021 Order* at 85. And following the referenced language, the Commission stated:

“We find the ALJ’s recommendation to utilize the three-year average of construction and materials expense 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.”

*June 2021 Order* at 85-86.

Clearly the Commission did not base its decision solely on the uncertainty of the impacts of the COVID-19 pandemic on PECO’s construction program. As we included in our summary of I&E’s position, I&E provided that PECO underspent its budget for construction expenses for the past three years. *June 2021 Order* at 82. We found the ALJ’s recommendation to use the three-year average proposed by I&E to be reasonable. *June 2021 Order* at 86. PECO’s arguments regarding construction and materials expenses are not new or novel and do not demonstrate a consideration that has not previously been heard or has been overlooked by the Commission. Thus, we shall decline to reconsider our *June 2021 Order* on this basis.

1. **Outside Services Expense**
2. ***June 2021 Order***

In our *June 2021 Order,* we addressed PECO’s $22 million claim in its FPFTY for outside services expenses, including those for services performed by Exelon Business Services Company (EBSC), a subsidiary of PECO’s parent company, Exelon Corporation (Exelon). Namely, we noted that in its Exceptions, PECO took issue with ALJ Pell’s recommendation to adopt the position of I&E to use $16,572,000 (FERC Account 923) as the starting point for the Company’s outside services claim, as provided in PECO Exh. MJT-1, Sch. D-4 at 56, and to reduce this claim by $3,134,144, resulting in an allowance for the Outside Services Expense of $13,437,856. In summarizing this issue, we noted that the ALJ based this recommendation on his finding that the Company’s claimed increase in outside services expenses was overstated and unsupported. More specifically, the ALJ agreed with I&E that the Company had experienced a declining trend in outside services costs for the three years prior to the FTY. As such, the ALJ concluded: (1) that PECO failed to support its proposed increase in outside services expenses from the HTY to the FTY; and (2) that it failed to specify the inflation factors it used to determine its *pro forma* expense allowance or to support the resulting calculations. We found no merit in PECO’s argument in its Exceptions that, *inter alia*, (1) I&E utilized incorrect numbers to determine its recommended adjustment; (2) that it incorrectly derived 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; or (3) that applying I&E’s proposed methodology to the correct numbers would yield an even greater claim for outside services expense than the Company was seeking. Therefore, we adopted the ALJ’s recommendation, noting our agreement with I&E that the Company’s claimed increase of 26.55% in the FTY over HTY actual expense and an additional 4.57% increase for the FPFTY was not supported in the record. *June 2021 Order* at 86-90.

1. **PECO’s Petition**

In its Petition, PECO objects to our ruling in our *June 2021 Order* that the Company should be awarded $13,437,856 for outside services expense, rather than the full amount claimed by the Company. PECO insists that the ALJ’s recommendation, as adopted by the Commission, relied on I&E’s erroneous use of only part of the correct data set. In this regard, PECO submits that I&E, in its starting point, used data from only one FERC account (FERC Account 923), while ignoring that PECO’s Generally Acceptable Accounting Principles (GAAP)-based claim for its Outside Services Expense includes all cost elements (*i.e.,* contracting expenses, overhead expenses, and other expenses) that are spread across multiple FERC accounts. Petition at 2, 18.

Thus, according to PECO, neither the ALJ nor the Commission addressed why an examination of the Company’s outside services expense should be limited to those expenses included only under FERC Account 923. In PECO’s view, such an examination by both the ALJ and the Commission resulted in an “apples to oranges” comparison and an understated representation of the proper expense level to award to the Company. PECO reinforces its position that if the starting point of the Commission’s analysis was the HTY data set forth in its Attachment III-A-22(a), resulting in 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 Consumer Price Index factors would yield a greater FPFTY amount than the amount sought by the Company. Therefore, PECO submits that the Commission should reconsider its conclusion to adopt I&E’s proposed adjustment to the Company’s claim. Petition at 18-19.

1. **I&E Answer**

In its Answer, I&E submits that PECO has failed to meet the *Duick* standard because it has not presented any new and novel arguments that would justify overturning the rulings made by the Commission in the *June 2021 Order.*  Rather, I&E argues that the averments PECO makes in its Petition are nothing more than a restatement of the arguments the Company made in its testimony, briefs, and Exceptions that were given due consideration by the Commission and ultimately rejected. In I&E’s view, the Commission correctly denied PECO’s request for the full amount of its claim for outside services expense. I&E Answer at 8-9.

1. **OCA Answer**

Similar to I&E, the OCA, in its Answer, opines that PECO’s arguments in its Petition regarding its outside services expense claim are not new and novel, nor were they overlooked by the Commission in the *June 2021 Order.* The OCA submits that in summarizing the Company’s Exceptions, the Commission already recognized and considered PECO’s arguments with regard to the alleged incorrect numbers used by I&E in its calculation of the proper outside services expense to award to the Company. OCA Answer at 9-10 (citing *June 2021 Order* at 89). According to the OCA, we then properly rejected such arguments. Thus, the OCA takes the position that even if PECO’s arguments were considered new and novel, the Company has failed to proffer any compelling reasons for why the Commission should overturn its prior ruling in the *June 2021 Order.* OCA Answer at 10.

1. **Disposition**

On consideration of the positions of each Party, we conclude that the arguments PECO makes in its Petition, which would have us award the Company the full amount of its claim for outside services expenses, are parallel to the arguments PECO previously presented on the record in this proceeding. As such, we find that PECO has failed to present a new or novel argument necessary to satisfy the *Duick* standard for reconsideration. As the OCA points out, we previously considered these arguments, which are repeated by PECO in its Petition, when we summarized the Company’s Exception No. 5 in our *June 2021 Order*, as follows:

PECO refutes I&E’s contention, as echoed by the ALJ, that the Company has been experiencing a declining trend in costs from EBSC and other contracting service costs and that the Company failed to support its proposed increase in outside services expense from HTY to the FTY. PECO Exc. at 25 (citing I&E M.B. at 29-31; R.D. at 122-23). 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.

*June 2022 Order* at 89. We remain of the opinion that PECO has failed to support its claim for the full amount of its Outside Services Expense, and we find nothing in the Company’s Petition that would cause us to disturb our prior ruling. Therefore, we shall reject PECO’s request for reconsideration on this issue.

1. **Other Post-Employment Benefits (OPEB) Expenses**
2. ***June 2021 Order***

In our *June 2021 Order,* we considered PECO’s claim for OPEB Expenses, related to the medical-related benefits the Company provides to eligible retirees through Exelon’s OPEB plan. PECO claimed an OPEB Expense of $1,050,000. However, we adopted the ALJ’s recommendation to reduce the Company’s claim by $486,000, or from $1,050,000 to $564,000, as advocated by the OCA. We agreed with the OCA’s proposal to normalize PECO’s expense over the three-year period of 2020 through 2022, finding that this will reflect a level of the OPEB Expense that is more accurate and reasonable given that the OPEB Expense has a propensity to fluctuate from year to year. We also found persuasive the OCA’s argument that its proposed adjustment will include the projected increase in the OPEB Expense that will result from the expiration of the prior service credit amortization. We denied PECO’s argument, as set forth in its Exception No. 6, that the prior service credit, which emerged due to a change in its medical plan, is currently being amortized over the average remaining service period of the active plan participants, but the expiration of the service credit at the end of the FTY will cause the OPEB Expense to increase from the FTY to the FPFTY. We also found no merit in PECO’s argument that normalizing the OPEB expense over a three-year period when two of those years include the application of prior service credits set to expire after the end of the FTY would result in an unfair downward recovery. *June 2021 Order* at 90-94.

1. **PECO’s Petition**

PECO is of the opinion that we erred in adopting the ALJ’s recommendation to endorse the OCA’s proposed reduction of $486,000 to the Company’s OPEB expense claim. According to PECO, in doing so, we inappropriately adopted the OCA’s use of a multi-year averaging of the OPEB Expense instead of the Company’s proposal to use the calculation of expense attributable to the undisputed expiration of an OPEB credit in 2021. PECO reasons that the increase in the Company’s FPFTY OPEB expense is due to this known and measurable event. PECO insists that it fully explained, on the record, the circumstances giving rise to the expiration of the prior service credit. In addition, PECO contends that the expiration of the prior service credit, the loss of the amortization, and the Company’s resulting FPFTY OPEB expense claim of $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 and by the ALJ in adopting the OCA’s proposal. Petition at 2, 19-20. PECO states that the ALJ specifically noted that he was adopting the proposed normalization in order to “properly capture” the Company’s predicted rise in the OPEB Expense due to the expiration of the prior service credit in 2021. *Id.* at 20 (citing R.D. at 124).

However, PECO posits that because the OCA’s proposed adjustment imputes a now-expired prior service credit and attendant amortization, which will not be available to the Company on a going-forward basis, normalizing its OPEB expense will unfairly skew recovery, resulting in the exact opposite of what normalization is intended to avoid. Therefore, PECO submits that because this would be contradictory to Commission practice, we should reconsider our ruling that the Company’s claim should be adjusted downward by applying an historical three-year average that produces a result other than PECO’s known and measurable FPFTY expense. Petition at 20.

1. **I&E’s Answer**

In its Answer, I&E counters that we correctly adopted the OCA’s proposed downward adjustment to PECO’s OPEB expense claim. I&E notes our finding that the ALJ adopted the OCA’s proposed normalization in order to properly capture PECO’s predicted increase in the OPEB Expense, while reflecting a more accurate and normalized level of OPEB expenses. In I&E’s view, PECO’s arguments set forth in its Petition are nothing more than a restatement of the arguments the Company made in its testimony, briefs, and Exceptions. As a result, I&E contends that such arguments fail to satisfy the *Duick* standard because they present no new and novel arguments. Therefore, I&E submits that reconsideration of this issue should be denied. I&E Answer at 9-10.

1. **OCA’s Answer**

In its Answer, the OCA, likewise, submits that PECO’s arguments regarding its OPEB expense claim are not new or novel and have already been considered and rejected by the Commission in our *July 2021 Order.* The OCA insists that beyond the expiration of the prior service credit, the fluctuation of the OPEB Expense is based upon many assumptions that could affect the level of expense. Therefore, the OCA remains of the opinion that a normalization adjustment is appropriate to account for such variations and to arrive at a more reasonable and accurate calculation of the Company’s OPEB Expense. The OCA further submits that even if PECO’s arguments were considered new, novel, or overlooked by the Commission, the Company has failed to proffer any persuasive reasons for overturning the *June 2021 Order* on this issue. OCA Answer at 10-11.

1. **Disposition**

We shall deny PECO’s request for reconsideration of this issue. In our view, PECO’s arguments in favor of awarding the Company its full OPEB Expense claim of $1,050,000 are only a slight variation of the arguments PECO previously raised during this proceeding, and which we already considered in our *June 2021 Order*. In its Petition, PECO submits that the OCA’s proposal to normalize the OPEB expense would “unfairly skew recovery.” Petition at 20. However, PECO previously raised this argument in its Exceptions. Namely, in its Exception No. 6, PECO argued as follows

The ALJ recognized that the expiration of the prior service credits and associated amortization will result in an increase to the Company’s OPEB expense, stating that he was adopting the OCA’s 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.’ RD, p. 124. However, this rationale stands at odds with the purpose of normalization, which is to identify and remove non-annual events that would **unfairly skew recovery**.

PECO Exc. at 27-28 (emphasis added). As noted above, we considered and rejected this, and other arguments PECO made in its Exception No. 6, finding that the OCA’s proposed adjustment presented a level of OPEB expense that is more accurate and reasonable because the OPEB Expense has the propensity to fluctuate from year to year. *June 2021 Order* at 93-94. Therefore, like I&E and the OCA, we find that because PECO has failed to present any new and novel arguments, it has failed to meet the *Duick* standard. Accordingly, we remain of the opinion that the ALJ appropriately recommended that the OCA’s proposed downward adjustment of $486,000 should be applied to PECO’s OPEB Expense claim.

1. **Pension Asset in Rate Base**
2. ***June 2021 Order***

In the *June 2021 Order*, we evaluated PECO’s claimed rate base recognition of $35.1 million as a Pension Asset based on the difference between PECO’s calculation of pension costs for ratemaking purposes in Pennsylvania and PECO’s calculation of pension expense under the GAAP rules governing pension administration. The Company claimed that including the $35.1 million Pension Asset in rate base was reasonable and necessary to earn a rate of return on the accumulated past pension expense actually paid by the Company, which had otherwise yet to be capitalized for financial accounting purposes. I&E and the OCA objected to PECO’s claim for rate base recognition of actuarial accounts reflected as accumulated uncapitalized Pension Asset. *June 2021 Order* at 65.

Based on our review of the record and the unique nature of pension contributions, we agreed with the ALJ’s recommended disallowance of PECO’s claim for the $35.1 million Pension Asset from rate base, thereby reducing the Company’s claimed rate base by $35,059,000. Initially, we rejected PECO’s claim that the ALJ committed reversible error in failing to apply terms that the Parties agreed to in prior rate case settlements as precedent in the present case. *Id*. Additionally, due to the unique financial accounting and funding requirements associated with calculating employers’ pension expense and funding requirements, we concluded that it would be unreasonable to establish that a company’s pension asset should be allowed to be recovered in rate base. *Id*. at 67-68. We specifically disagreed with the underlying premise of PECO’s claim: that pension contributions are, for rate making purposes, indistinguishable from other capitalized expenses included in rate base, such as employee salaries. *Id*. at 65. In striking the appropriate balance between the interests of the company and the consumer in establishing just and reasonable rates, we found the better practice was 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 Financial Accounting Standards Codification Topic 715 or (ASC 715). *June 2021 Order* at 65.

In reaching this determination, our analysis began with the understanding that the Pension Asset arises due to the unique nature of the applicable accounting requirements for pension expenses in addition to the employer’s obligation to comply with specific pension funding requirements. We noted that employers are obligated under GAAP rules and ASC 715 for financial reporting of pension expenses, and these rules require that employers recognize the cost of their pension plans on an actuarial, not cash, basis. We reasoned that because of this unique requirement, the amount of pension expense calculated pursuant to ASC 715 is generally different than the actual amount of the employers’ contributions. We stated that as I&E and the OCA correctly described, this creates a financial accounting “mismatch” between the cash account method and the actuarial method required by ASC 715. We also stated that over the life of the pension plan, the employers’ total contributions are expected to equal the total expense calculated under ASC 715. We observed that over the life of the pension, the fund can experience investment gains and losses, resulting in negative or positive expense calculations under ASC 715 that determine whether the employer is required to make an additional pension contribution to meet funding requirements. *June 2021 Order* at 66.

We continued that the employer’s funding requirements are generally also governed by federal standards, and employers use actuaries to determine the amounts deemed necessary to contribute to the plans to meet future pension obligations. *Id*. at 66. As a result, we remarked that employers’ funding obligations fluctuate and are often different from the calculated ASC 715 expense in any given year. *Id*. at 66-67. Based on this analysis, we rejected PECO’s proposal that the Company, while experiencing a Pension Asset, should be permitted to recover the accumulated financing costs for employer contributions by the inclusion of the Pension Asset in rate base, rather than restricting PECO’s recovery of pension expense to the pension expense calculated pursuant to ASC 715. *June 2021 Order* at 67.

1. **PECO’s Petition**

In its Petition, PECO avers that the Commission’s decision does not balance company and consumer interests because PECO is not earning a return on the investor-supplied capital that was contributed to PECO’s pension fund. Petition at 23. PECO states that if the portion of total pension costs that PECO capitalizes were notconstrained by GAAP, PECO would record in its plant accounts allof the pension costs that it does not charge to operating expenses for ratemaking purposes. PECO asserts that because the amount it would include in its plant accounts would consist of a portion of the actual cashcontribution to its pension fund, the capitalized costs would unquestionably be “a real infusion of capital or funds” on which PECO would be entitled to earn a return. *Id*. (citing PECO Exc. at 12).

PECO disagrees with the Commission’s reasoning in the *June 2021 Order* that differences between pension contributions and pension costs calculated under ASC 715 fluctuate over time but are intended to achieve a rough equivalence over the life of the pension fund. Petition at 23 (citing *June 2021 Order* at 67). PECO argues that even if that prediction proved to be accurate, eventual recovery does not balance company and investor interests if the time value of money is ignored. PECO avers that if it is not afforded a reasonable return on the portion of its actual investor supplied pension contributions, which are not recognized in its operating expenses or included in its plant accounts, the Company will be “short-changed” by the “time-value” of those funds between the period when they are expended and when they are, in theory, recovered in the indeterminant future. Petition at 23.

PECO reasserts its position throughout this proceeding that 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. *Id*. (citing PECO Exc. at 13). PECO contends that under its proposed approach, both the Company and its customers will be afforded an accurate accounting for actual costs, including the time value of money, in a manner that is certain and timely. PECO believes that the Commission’s determination in the *June 2021 Order* disregards the time value of money and, therefore, either PECO or its customers could experience a penalty or windfall at any point in time. *June 2021 Order* at 24.

1. **I&E’s Answer**

In its Answer, I&E states that the Commission reached a well-reasoned disposition. I&E Answer at 10. I&E avers that PECO has failed to satisfy the *Duick* standards, because PECO’s arguments in its Petition are a repeat of PECO’s arguments in its testimony, Main Brief, Reply Brief, and Exceptions, which the Commission thoroughly considered in the *June 2021 Order*. I&E Answer at 10-11 (citing *June 2021 Order* at 51-68).

1. **OCA’s Answer**

In its Answer, the OCA avers that PECO’s arguments do not satisfy the *Duick* standards because they are not new or novel, and the Company addressed these arguments at length in its Main Brief, Reply Brief, and Exceptions, and the Commission considered and rejected these arguments in the *June 2021 Order*. OCA Answer at 12-13 (citing PECO M.B. at 22-24; PECO R.B. at 15; PECO Exc. at 8-16; *June 2021 Order* at 67-68). Additionally, the OCA states that the Commission’s determination is well-founded because the Pension Asset represents a financial accounting mismatch that will fluctuate from year to year but will equal out over the life of the pension. OCA Answer at 13 (citing *June 2021 Order* at 67). As such, the OCA submits that 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. OCA Answer at 13. On the other hand, the OCA contends that 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, thus, overstating rate base and allowing the Company to over earn as a result of this financial accounting mismatch. *Id*. at 13-14.

1. **Disposition**

Upon review, we conclude that PECO has not satisfied the *Duick* standards for reconsideration because the Company has not raised any new or novel arguments or considerations that we did not address in the *June 2021 Order*. The arguments that PECO sets forth in its Petition regarding recognition of the Pension Asset in rate base are the same arguments PECO has made throughout this proceeding. *See, e.g.,* PECO M.B. at 22-24; PECO R.B. at 13; PECO Exc. at 11 (averring that PECO included the pension asset in rate base because unless it is given rate base recognition, PECO will not recover the carrying costs it incurs on those investor-supplied funds); PECO R.B. at 15; PECO Exc. at 12 (a future match between actual cash contributions and the amounts recorded in plant accounts does not obviate the need for a return on PECO’s actual cash contribution); PECO Exc. at 12 (if the portion of total pension costs PECO capitalizes were notconstrained by GAAP, PECO would record in its plant accounts a portion of the actual cashcontribution to its pension fund, and the capitalized costs would unquestionably be “a real infusion of capital or funds” on which PECO would be entitled to earn a return); PECO Exc. at 13 (recognizing the Pension Asset or liability in rate base ensures that PECO earns a return only on its actual investment in plant in service, determined by cash expended for its pension contribution).

In reaching our determination on this issue in the *June 2021 Order*, we specifically considered PECO’s testimony and exhibits and its arguments in its Briefs and Exceptions. *June 2021 Order* at 52-54, 60-62. We also considered I&E and the OCA’s testimony and exhibits and the arguments set forth in I&E and the OCA’s Briefs and Replies to Exceptions. *June 2021 Order* at 54-58, 62-65. Based on substantial evidence in the record, we determined in the *June 2021 Order* that PECO had not satisfied its burden of proving that it was just and reasonable to include the $35.1 million Pension Asset in rate base. *June 2021 Order* at 67-68. PECO’s instant Petition does not provide any new arguments or considerations that warrant reconsideration of our decision.

As we concluded in the *June 2021 Order*, due to the unique financial accounting and funding requirements associated with calculating employers’ pension expense and funding requirements, it would be unreasonable to establish that a company’s pension asset should be permitted to be recovered in rate base. Our determination was based on the solid rationale that the Pension Asset represents a financial accounting “mismatch” between the cash account method and the actuarial method required by ASC 715. We noted that while pension assets and accrued pension liabilities calculated under GAAP rules and ASC 715 fluctuate from year to year, they are intended to equal the employer’s contributions over the life of the pension. As the OCA avers, PECO will be made whole and can earn a return 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.

# **Conclusion**

Based on our review of the record, the Parties’ positions, and the applicable law, we shall deny PECO’s Petition which seeks the following relief: (1) reconsideration of the *June 2021 Order*’s reduction in PECO’s payroll and payroll related expense, contracting materials expenses, outside services expense, Other Post-Employment Benefits expenses; and (2) reconsideration of the exclusion of PECO’s pension asset from the Company’s rate base; **THEREFORE,**

 **IT IS ORDERED:**

 That the Petition for Reconsideration filed by PECO Energy Company – Gas Division on July 7, 2021, is denied, consistent with the discussion in this Opinion and Order.

** BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: August 26, 2021

ORDER ENTERED: August 26, 2021

1. PECO originally planned to seek rate relief in March 2020, but delayed filing the rate case until September 30, 2020, in light of the onset of the COVID-19 pandemic. PECO M.B. at 1. [↑](#footnote-ref-1)
2. PECO is not seeking reconsideration of the Commission’s decision 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. Petition at 8, n. 4. [↑](#footnote-ref-2)
3. R.D. at 121. [↑](#footnote-ref-3)
4. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Order entered February 19, 2021) (*Columbia Gas*) at 71-72. [↑](#footnote-ref-4)
5. The OCA defined allocated 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. [↑](#footnote-ref-5)
6. An explosion occurred on July 17, 2014, at a home on Penrose Lane in Coatesville, near a PECO uprating project. PECO and the Commission reached a settlement regarding the incident. *See* *I&E v. PECO Energy Company*, Docket No. C‑2015-2479970, Order entered October 27, 2016 (*Penrose Settlement Order*). As part of the settlement, PECO agreed, *inter alia*, to pay a civil penalty of $900,000 and spend $3 million to improve the accuracy of the mapping systems of its underground gas-distribution network. PECO estimated that it would take ten to twenty years to fully map out its entire gas system (12,900 miles of infrastructure). *Penrose Settlement Order* at 4-5. [↑](#footnote-ref-6)