



COMMONWEALTH OF PENNSYLVANIA

September 6, 2024

**E-FILED**

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

**Re: Pennsylvania Public Utility Commission v. PECO Energy Company-Gas Division /  
Docket No. R-2024-3046932**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

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

Sincerely,

*/s/ Steven C. Gray*

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Assistant Small Business Advocate  
Attorney ID No. 77538

*Enclosures*

cc: Mark Ewen  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	<b>Docket Nos. R-2024-3046932</b>
<b>v.</b>	:	<b>C-2024-3048456</b>
	:	
<b>PECO Energy Company – Gas Division</b>	:	

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**MAIN BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: September 6, 2024**

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**I. Introduction.**

B. Procedural History

On March 28, 2024, PECO Energy Company – Gas Division (“PECO” or the “Company”) filed Tariff Gas – Pa. P.U.C. No. 6 (“Tariff No. 6”) with the Pennsylvania Public Utility Commission (“Commission”). The rates set forth in Tariff No. 6, if approved by the Commission, would increase the Company’s annual distribution revenues by approximately \$111 million.

On April 16, 2024, the Office of Small Business Advocate (“OSBA”) filed a Complaint in this proceeding.

On May 7, 2024, a PreHearing Conference was held before Administrative Law Judges (“ALJs”) Marta Guhl and Darlene Heep.

On May 21, 2024, ALJs Guhl and Heep issued their PreHearing Order.

On June 17, 2024, the OSBA served the Direct Testimony of Mark D. Ewen.

On July 16, 2024, the OSBA served the Rebuttal Testimony of Mr. Ewen.

On August 2, 2024, the OSBA served the Surrebuttal Testimony of Mr. Ewen.

On August 8, 2024, an evidentiary hearing was held before ALJs Guhl and Heep.

On August 12, 2024, a second evidentiary hearing was held before ALJs Guhl and Heep.

On August 30, 2024, PECO Gas filed a Joint Petition for Non-Unanimous Partial Settlement of Rate Investigation. The OSBA is a signatory of that Joint Petition.

The OSBA submits the Main Brief in accordance with the revised briefing schedule in this proceeding.

E. Burden of Proof

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to “consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates.” In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate, and reasonable service. “[I]n exchange for the utility’s provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the

cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility's investors . . . In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs." *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S. § 1501. As a result, the legislature has given the Commission discretionary authority to deny a proposed rate increase, in whole or in part, if the Commission finds "that the service rendered by the public utility is inadequate." 66 Pa. C.S. § 526(a).

## **II. Summary of Argument**

ALJ Guhl, ALJ Heep, and the Commission should reject PECO's proposed Weather Normalization Adjustment ("WNA") mechanism.

In the alternative, if the WNA is to be approved, certain conditions should be applied to the Company's WNA.

The conditions are:

- PECO's WNA will not apply when actual Heating Degree Days for any billing period are below 100 Heating Degree Days.
- PECO shall be required to continuously monitor small business's implied heating usage per degree day.
- PECO's return on equity should be reduced as the Company has less distribution revenue risk.
- PECO shall be required to fully explain the operation of its WNA, and each customer bill will include the dollar impact of the WNA as a line item.

### **III. Weather Normalization Adjustment**

#### **A. Section 1330**

Act 58 of 2018 was approved on June 28, 2018, and went into effect on August 27, 2018, and was codified in 66 Pa. C.S. Section 1330. Section 1330(a)(1) states that “the commission may approve an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms.” The operative word is “may.” There is no requirement or guarantee that a utility will be granted its proposed alternative ratemaking mechanism.

#### **B. Pennsylvania Small Businesses**

The OSBA considers August 2018 as the “before times.” Before the COVID Pandemic. Before the supply chain problems, some of which continue to this day. Before the rampant inflation, which is still present today.

The OSBA submits that the Office of Administrative Law Judge and the Commission should be fully aware of how each of these 3 events have affected small businesses throughout the Commonwealth, including those in PECO’s service territory. The COVID Pandemic crushed small businesses. The ensuing supply chain problems and high inflation have forced even more small businesses to shutter their operation.

#### **C. The OSBA Recommends Rejection of PECO’s Proposed WNA**

PECO currently employs a Fully Projected Future Test Year (“FPFTY”) as well as a Distribution System Improvement Charge (“DSIC”). Now PECO wants to add a WNA mechanism so that the Company’s distribution system revenue remains stable and consistent throughout the calendar year.

The OSBA recommends that the ALJs and Commission reject the proposed WNA. Small businesses in the PECO service territory are already struggling due to the 3 events, set forth

above. Furthermore, as Pennsylvania Law requires utility rates to be “just and reasonable,” it is absurd to suggest that PECO, a subsidiary of Exelon Corporation with a market capitalization<sup>1</sup> of \$38.49 billion, needs to be “made whole” on the backs of small businesses.

PECO will argue that the WNA mechanism is “supposed” to work both ways and will benefit the Company’s ratepayers in a colder-than-normal winter season. However, PECO’s enthusiasm for the WNA mechanism puts the lie to that assertion. Furthermore, the debacle in the Philadelphia Gas Works service territory in May 2022 demonstrates how “customer friendly” a WNA mechanism is.

Finally, as demonstrated at the various public input hearings held in PECO’s service territory, the Company’s ratepayers reject the proposed WNA mechanism.<sup>2</sup>

D. In the Alternative

If the Commission concludes that PECO should be awarded a WNA mechanism, paid for by the failing small businesses in the Company’s service territory, the OSBA recommends adoption of the following limitations on PECO’s WNA mechanism.

First, a change in PECO’s proposed WNA mechanism should be made to avoid the PGW’s WNA mechanism debacle of May 2022. Specifically, the Company’s proposed WNA should be revised so that the WNA will not apply when *actual* Heating Degree Days (“HDDs”) for any billing period are below 100 HDDs. This will eliminate the possibility of extreme charges that resulted in May of 2022 with PGW’s mechanism.

Second, PECO should be required to continuously monitor small business’s implied heating usage per degree day. Such monitoring will allow PECO and the parties to ascertain

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<sup>1</sup> At the time of this writing.

<sup>2</sup> OSBA Statement No. 1, at 26-27.

whether the Company's use of a "residual" approach for calculating the heat sensitive load is producing extensive variations in the supposed heat-sensitive load per degree day.

Third, the Commission will note that a WNA mechanism is purposefully designed to stabilize PECO's distribution revenue stream, thereby reducing PECO's risk. Consequently, with less risk, PECO's return on equity ("ROE") should be reduced. If the Commission awards PECO its WNA mechanism, an ROE in the 5 to 6% range may be appropriate.

Fourth, many utilities would prefer not to explain WNA mechanisms to their ratepayers. If the Commission awards PECO its proposed WNA, the Commission should require the Company to fully explain the operation of its WNA. In addition, each customer bill should include a line item stating what the WNA is charging (or rarely, rebating) the customer.

#### **IV. Customer Service Representative Issues**

The OSBA is not briefing this issue.

#### **V. IBEW Proposals**

The OSBA is not briefing this issue.

## VI. Conclusion

Wherefore, the OSBA respectfully requests that the ALJs and the Commission reject PECO's proposed WNA mechanism.

In the alternative, if the ALJs and Commission deem it just and reasonable to approve PECO's proposed WNA mechanism, the OSBA respectfully requests that the following conditions be applied to the Company's WNA:

- PECO's WNA will not apply when actual Heating Degree Days for any billing period are below 100 Heating Degree Days.
- PECO shall be required to continuously monitor small business's implied heating usage per degree day.
- PECO's return on equity should be reduced as the Company has less distribution revenue risk.
- PECO shall be required to fully explain the operation of its WNA to its customers, and each customer bill will include the dollar impact of the WNA as a line item.

Respectfully submitted,

*/s/ Steven C. Gray*

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Dated: September 6, 2024

# **APPENDIX A**

## **FINDINGS OF FACT**

### **Findings of Fact**

- 1) On March 28, 2024, PECO Energy Company – Gas Division (“PECO”) filed Tariff Gas – Pa. P.U.C. No. 6 (“Tariff No. 6”) with the Pennsylvania Public Utility Commission (“Commission”).
- 2) The rates set forth in Tariff No. 6, if approved by the Commission, would increase the Company’s annual distribution revenues by approximately \$111 million
- 3) On April 16, 2024, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint in opposition to Tariff No. 6.
- 4) In this proceeding, PECO proposed to implement a Weather Normalization Adjustment (“WNA”) mechanism. OSBA Statement No. 1, at 23-27.

# **APPENDIX B**

## **CONCLUSIONS OF LAW**

### Conclusions of Law

- 1) Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”
- 2) The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).
- 3) Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.
- 4) Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to “consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates.” In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate, and reasonable service. “[I]n exchange for the utility’s provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility’s investors . . . In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs.” *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S. § 1501. As a result, the legislature has given the Commission discretionary authority to deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa. C.S. § 526(a).

# **APPENDIX C**

## **PROPOSED ORDERING PARAGRAPHS**

### **Proposed Ordering Paragraphs**

- 1) PECO's proposed Weather Normalization Adjustment mechanism is hereby rejected.

#### **In the Alternative:**

- 1) PECO's WNA mechanism is approved with the following conditions.
- 2) PECO's WNA will not apply when actual Heating Degree Days for any billing period are below 100 Heating Degree Days.
- 3) PECO shall be required to continuously monitor small business's implied heating usage per degree day.
- 4) PECO's return on equity shall be reduced as the Company has less distribution revenue risk.
- 5) PECO shall be required to fully explain the operation of its WNA to its customers, and each customer bill will include the dollar impact of the WNA as a line item.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	<b>Docket Nos. R-2024-3046932</b>
<b>v.</b>	:	<b>C-2024-3048456</b>
	:	
<b>PECO Energy Company – Gas Division</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: September 6, 2024

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