



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 6, 2024

Via Electronic Filing

Secretary Rosemary Chiavetta
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-2024-3046932
I&E Main Brief

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Main Brief in the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

Carrie B. Wright
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov

CBW/ac
Enclosures

cc: Administrative Law Judge Marta Guhl (*via Electronic and First-Class Mail*)
Administrative Law Judge Darlene Heep (*via Electronic and First-Class Mail*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

Dated: September 6, 2024

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I. INTRODUCTION AND OVERVIEW

A. Description of the Company

PECO is the largest combined electric and natural gas utility in Pennsylvania serving approximately 1.7 million customers. Regarding natural gas, PECO provides service to over half a million customers in a 1,900 square mile area composed of all or portions of Bucks, Chester, Delaware, Montgomery, and Lancaster counties in Pennsylvania.

B. Procedural History

On March 28, 2024 PECO Energy Company – Gas Division filed Tariff Gas Pa. P.U.C. No. 6 which proposed an annual operating revenue increase of \$111 million (23.1%), to become effective May 27, 2024. The Company used the Fully Projected Future Test Year (FPFTY) ending December 31, 2025 as the basis for its rate increase request.

On April 25, 2024, pursuant to 66 Pa. C.S. § 1308(d), the Commission ordered suspension of the proposed tariff changes until December 27, 2024, unless permitted by Commission Order to become effective at an earlier date. The Commission directed that the case be assigned to the Office of Administrative Law Judge (OALJ) for scheduling of hearings as may be necessary for the Administrative Law Judge (ALJ) to render a Recommended Decision. A Prehearing Conference was held on May 7, 2024 at 10:00 a.m., before Administrative Law Judges Marta Guhl and Darlene Heep. Pursuant to the procedural schedule, the parties exchanged direct, rebuttal, and surrebuttal testimony, as well as oral rejoinder outlines. I&E served the following testimony and exhibits:

- I&E Statement No. 1, I&E Exhibit No. 1, I&E Statement No. 1-R, I&E Statement No. 1-SR, and I&E Exhibit No. 1-SR, the prepared direct, rebuttal, and surrebuttal testimony and exhibits of I&E witness Christopher Keller;

- I&E Statement No. 2, I&E Exhibit No. 2, and I&E Statement No. 2-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness DC Patel;
- I&E Statement No. 3, I&E Exhibit No. 3 (in both proprietary and non-proprietary format), and I&E Statement No. 3-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness Ethan Cline;
- I&E Statement No. 4 (in both proprietary and non-proprietary format), I&E Exhibit No. 4 (in both proprietary and non-proprietary format), I&E Statement No. 4-SR (in both proprietary and non-proprietary format), and I&E Exhibit No. 4-SR the prepared direct and surrebuttal testimony and exhibits of I&E witness Martin Salamonski;

Hearings were held telephonically on August 8 and August 12, 2024. I&E now files this Main Brief pursuant to the procedural schedule established in this case.

C. Overview of PAWC's Filing

The Company's filing proposed to increase rates to produce additional overall revenues of \$111 million per year, a 23.1% increase in overall distribution revenue requirement. PECO Gas provides gas distribution service to approximately 552,834 residential, commercial, and industrial customers in portions of 5 counties in Southeastern and South-Central Pennsylvania. Under the Company's proposal, the total bill for a residential customer purchasing 80 CCF (hundred cubic feet of natural gas) per month would increase by \$16.15 from \$97.98 to \$114.13, or by approximately 16.5%. PECO Gas proposed a return on equity of 11.15% resulting in an overall rate of return of 8.08%. Additionally, the filing requests approval of the following: (1) a new Weather Normalization Adjustment (WNA), (2) changes to its Neighborhood Pilot Extension Program, and (3) changes to its recovery of Customer Assistance Program costs.

D. Overview of the Settlement

The parties entered into discussions to settle all or a portion of the instant base rate proceeding. As a result, most parties to this proceeding, with the exception of, the Internation Brotherhood of Electric Workers Local 614 (IBEW), were able to reach an agreement resolving all issues in this proceeding with the exception of the Weather Normalization Adjustment proposal. The WNA is discussed in greater detail below in this brief.

The settlement rates are designed to produce and annual increase in gas distribution revenues of \$78 million, exclusive of the \$18 million of revenue currently recovered through the Distribution System Improvement Charge (DSIC). The settlement also provides for a stay-out under which PECO will not file for another general rate increase until March 16, 2026. Additionally, the settlement sets forth a revenue allocation and rate design, along with the parties' agreements on various other issues that were proposed in the Company's base rate case filing.

I&E's position on the settlement is discussed in greater detail in its Statement in Support of the settlement.

E. Legal Standards and Burden of Proof

The Company carries the burden of proof to show its rate proposal is just and reasonable.¹ PECO must satisfy its burden of proof by presenting a preponderance of evidence.² A preponderance of the evidence is evidence that is more convincing, by even

¹ See 66 Pa. C.S. § 315(a); *Irwin A. Popowsky v. Pa. P.U.C.*, 674 A.2d 1149 (Pa. Cmwlth. 1996).

² *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

the smallest amount, than that presented by another party.³ In base rate cases, the Commission has affirmed the utility's burden to establish the justness and reasonableness of every component of its rate request.⁴ The burden of proof does not shift to parties challenging a requested rate increase.⁵ Additionally, the Company must produce substantial evidence to satisfy its burden.⁶ Substantial evidence is "such relevant and competent evidence having a rational probative force which a reasonable mind might accept as adequate to support a conclusion."⁷ Thus, PECO must affirmatively prove the justness and reasonableness of each element of each of its claims.

II. SUMMARY OF ARGUMENT

Most issues in this base rate case have been settled and I&E requests the ALJ's recommend and the Commission approve the Joint Petition for settlement. The remaining issue for litigation relates to PECO's request for a weather normalization adjustment (WNA). As explained fully below, I&E recommends that if the Commission approve the WNA, a 3% deadband be implemented along with certain reporting requirements that will provide the parties with information regarding whether adjustments need to be made to the WNA in a future proceeding.

III. WEATHER NORMALIZATION ADJUSTMENT

Most gas utilities regulated by this Commission have established a WNA. The purpose of the WNA is to adjust the temperature sensitive portion of a customer's bill in

³ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁴ *See, e.g., Pa. P.U.C. v. PPL Electric Utilities Corporation*, 2012 WL 6758304 (Pa. P.U.C. 2012); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, 2004 WL 2314523 (Pa. P.U.C. 2004).

⁵ *Id.*

⁶ *See Brockaway Glass v. Pa. P.U.C.*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Lower Frederick Township v. Pa. P.U.C.*, 409 A.2d 505 (Pa. Cmwlth. 1980).

⁷ *Dutchland Tours, Inc. v. Pa. P.U.C.*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975).

order to mitigate the impacts of warmer or colder than normal weather. In other words, customers are billed less than what a traditional bill calculation would require during colder than normal heating seasons and billed more during warmer than normal heating seasons. A WNA is a mechanism that adjusts a customer's bill, either increasing or decreasing, based on a calculation of actual Heating Degree Days (HDDs) compared to a projected, normalized HDD.⁸

WNAs require scrutiny because that a WNA is a departure from traditional ratemaking in that it allows the Company to actually adjust a customer's base rate bill, which was calculated based on Commission approved rates, outside the scope of a base rate case. Such a departure from traditional ratemaking should only occur due to circumstances that are an extraordinary departure from normal operating conditions, such as abnormal weather.

PECO proposed a WNA with a 1% "deadband."⁹ A deadband is a certain threshold in which the adjustment is not triggered if Actual HDDs are within the Normal HDDs.¹⁰ I&E witness Ethan Cline recommended that if the Company's request for a WNA is approved, a 3% deadband be implemented.¹¹ As Mr. Cline notes, his recommendation maintains consistency with the existing WNA's of Columbia Gas, National Fuel Gas, and UGI Gas.¹² Additionally, witness Cline recommended that also recommended the Company provide schedules to this docket each year on August 1st that display the following information for the April and May heating months: (1) actual HDD compared to the normalized HDD; (2) total adjustment to revenue as a result of the April and May weather;

⁸ I&E St. No. 3, p. 2.

⁹ PECO Gas St. No. 3, p. 69.

¹⁰ I&E St. No. 3, p. 4.

¹¹ I&E St. No. 3, pp. 4-5.

¹² I&E St. No. 3, p. 6.

(3) impact to the bill of an average customer as a result of April and May weather; (4) the largest change to a customer bill; and (5) the smallest change to a customer bill.

PECO Gas witness Trzaska disagreed with the I&E recommendation of a 3% deadband, stating that “[t]he deadband is an arbitrary figure because the purpose of alternative rate recovery tools like the WNA is to allow the utility to recover an amount that the Commission has approved.”¹³ However, as witness Cline explains Mr. Trzaska’s claim that a deadband is an arbitrary figure is further reason to rely on the Commission’s conclusion of 3% representing “normal weather” and the well-established Commission precedent of applying a 3% deadband to NGDC’s WNAs. This standard established by the Commission removes the perceived arbitrary nature out of the deadband by imposing a universal condition to the functioning of the WNA as utilized by other investor-owned NGDCs.

In a 2021 Columbia Order, the Commission agreed with the Administrative Law Judge’s finding that “the 3% deadband is a reasonable provision, because it allows for a range of what is considered ‘normal’ weather in which the Company’s Commission-approved rates would be applied without adjustment. (Docket No. R-2020-3018835, Order entered February 19, 2021, pp. 264-265).

I&E notes that the reporting requirements recommended by I&E witness Cline are important because they provide actual data so that the WNA can be adjusted to better protect customers in the future. These recommendations allow for the active gathering of information related to the functioning and impact of the WNA so that all parties are fully

¹³ PECO Gas St. No. 3-R, pp. 19-20.

informed on the impact of the WNA going forward. As the Company does not oppose these reporting requirements,¹⁴ the Commission should order PECO to provide the information I&E has requested.

For the reasons mentioned above, I&E submits that if the WNA is approved the 3% deadband is a reasonable provision because it serves to protect both the Company and customers from the effects of abnormal weather, which cannot be predicted or controlled. Therefore, I&E recommends that the 3% deadband be made a part of the Company's WNA. Further, I&E recommends the Company be required to provide a schedule at the instant docket on August 1st that display the following information for the April and May heating months: (1) actual HDD compared to the normalized HDD; (2) total adjustment to revenue as a result of the April and May weather; (3) impact to the bill of an average customer as a result of April and May weather; (4) the largest change to a customer bill; and (5) the smallest change to a customer bill.

IV. CUSTOMER SERVICE REPRESENTATIVE ISSUES

I&E is not presenting any arguments related to customer service representative issues in its Main Brief but reserves the right to respond accordingly in its Reply Brief where necessary.

V. IBEW PROPOSALS

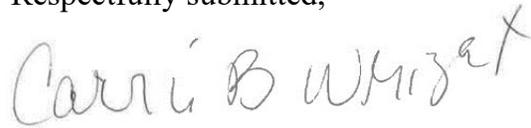
I&E is not presenting any arguments related to the IBEW proposals in its Main Brief but reserves the right to respond accordingly in its Reply Brief where necessary.

¹⁴ PECO Gas St. 3-R, p. 22.

VI. CONCLUSION

I&E recommends the Commission approve the Joint Petition for settlement of this rate investigation. Specifically regarding the WNA, I&E recommends the Commission require a 3% deadband if the WNA is approved. Further, I&E recommends the Company be required to provide a schedule at the instant docket on August 1st that display the following information for the April and May heating months: (1) actual HDD compared to the normalized HDD; (2) total adjustment to revenue as a result of the April and May weather; (3) impact to the bill of an average customer as a result of April and May weather; (4) the largest change to a customer bill; and (5) the smallest change to a customer bill.

Respectfully submitted,



Carrie B. Wright
Deputy Chief Prosecutor
PA Attorney ID No. 208185

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: September 6, 2024

APPENDIX A

PROPOSED FINDINGS OF FACT

WNA

1. A WNA is a mechanism that adjusts a customer's bill, either increasing or decreasing, based on a calculation of actual Heating Degree Days (HDDs) compared to a projected, normalized HDD. I&E Statement No. 3, p. 2.
2. PECO proposed a WNA with a 1% "deadband." PECO Gas Statement No. 3, p. 69.
3. A deadband is a certain threshold in which the adjustment is not triggered if Actual HDDs are within the Normal HDDs. I&E Statement No. 3, p. 4.
4. The Commission has a well-established Commission history of applying a 3% deadband to NGDC's WNAs.
5. The 3% deadband is a reasonable provision because it serves to protect both the Company and customers from the effects of abnormal weather, which cannot be predicted or controlled.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. The Company carries the burden of proof to show its rate proposal is just and reasonable. 66 Pa.C.S. § 315(a); *Irwin A. Popowsky v. Pa. P.U.C.*, 674 A.2d 1149 (Pa. Cmwlth. 1996).
2. PECO must satisfy its burden of proof by presenting a preponderance of evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990).
3. A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by another party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. In base rate cases, the Commission has affirmed the utility's burden to establish the justness and reasonableness of every component of its rate request. *Pa. P.U.C. v. PPL Electric Utilities Corporation*, 2012 WL 6758304 (Pa. P.U.C. 2012); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, 2004 WL 2314523 (Pa. P.U.C. 2004).
5. The burden of proof does not shift to parties challenging a requested rate increase. *Pa. P.U.C. v. PPL Electric Utilities Corporation*, 2012 WL 6758304 (Pa. P.U.C. 2012); *Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, 2004 WL 2314523 (Pa. P.U.C. 2004).
6. The Company must produce substantial evidence to satisfy its burden of proof. *Brockaway Glass v. Pa. P.U.C.*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Lower Frederick Township v. Pa. P.U.C.*, 409 A.2d 505 (Pa. Cmwlth. 1980).
7. Substantial evidence is "such relevant and competent evidence having a rational probative force which a reasonable mind might accept as adequate to support a conclusion." *Dutchland Tours, Inc. v. Pa. P.U.C.*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975).

WNA

8. In a 2021 Columbia Order, the Commission agreed that "the 3% deadband is a reasonable provision, because it allows for a range of what is considered 'normal' weather in which the Company's Commission-approved rates would be applied without adjustment. (*Pa. P.U. C. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, Order entered February 19, 2021, pp. 264-265).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS RECOMMENDED:

1. That the PECO Energy Company – Gas Division impose a 3% deadband on any approve WNA.
2. That the PECO Energy Company – Gas Division be required to provide a schedule at the instant docket on August 1st that display the following information for the April and May heating months: (1) actual HDD compared to the normalized HDD; (2) total adjustment to revenue as a result of the April and May weather; (3) impact to the bill of an average customer as a result of April and May weather; (4) the largest change to a customer bill; and (5) the smallest change to a customer bill.

Jonathan P. Nase, Esq.
David P. Zambito, Esq.
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
jnase@cozen.com
dzambito@cozen.com
Counsel for UPENN

Charlotte E. Edelstein, Esq.
Joline R. Price, Esq.
Vikram A. Patel, Esq.
Robert W. Ballenger, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
cedelstein@clsphila.org
jprice@clsphila.org
vpatel@clsphila.org
rballenger@clsphila.org
Counsel for CAUSE-PA

Charis Mincavage, Esq.
Adeolu A. Bakare, Esq.
Brigid Landy Khuri, Esq.
Rebecca Kimmel, Esq.
McNees Wallace & Nurick
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
bkhuri@mcneeslaw.com
rkimmel@mcneeslaw.com
Counsel for PAIEUG

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
Counsel for SEPTA

Derrick Price Williamson, Esq.
Barry A. Naum, Esq.
Steven W. Lee, Esq.
Spilman Thomas & Battle PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
slee@spilmanlaw.com
Counsel for Walmart

Charles T. Joyce, Esq.
Spear Wilderman PC
230 S. Broad Street, Suite 1400
Philadelphia, PA 19102
ctjoyce@spearwilderman.com
Counsel for IBEW Local 614

Nicholas J. Enoch, Esq.
Lubin & Enoch
349 North Fourth Avenue
Phoenix, AZ 85003
nick@lubinandenoach.com
Counsel for IBEW Local 614

John DeFever
Larkin & Associates, PLLC
15728 Farmington Road
Livonia, MI 48154
OCAGASPECO2024@paoca.org
Witness for OCA

Clarence Johnson
CJ Energy
3707 Robinson Avenue
Austin, TX 78722
OCAGASPECO2024@paoca.org
Witness for OCA

David Garrett
Resolve Utility Consulting PLLC
101 Park Avenue, Suite 1125
Oklahoma City, OK 73102
OCAGASPECO2024@paoca.org
Witness for OCA

Roger Colton
Fisher, Sheehan & Colton
34 Warwick Road
Belmont, MA 02478
OCAGASPECO2024@paoca.org
Witness for OCA

Nicholas A. DeMarco
Regulatory Analyst
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
OCAGASPECO2024@paoca.org
Witness for OCA

Ron Nelson
Volt-Watt Consulting LLC
1311 SE 53rd Avenue
Portland, OR 97215
OCAGASPECO2024@paoca.org
Witness for OCA

Robert D. Knecht
Mark Ewen
Industrial Economics, Inc.
2067 Massachusetts Avenue
Cambridge, MA 02140
rdk@indecon.com
mewen@indecon.com
Consultants for OSBA

Billie S. LaConte
Jeffrey Pollock
J. Pollock, Inc.
14323 South Outer 40 Road, Suite 206N
Town and Country, MO 63017
bsl@jpollockinc.com
jcp@jpollockinc.com
Consultants for PAIEUG

Elizabeth Marx
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
emarx@pautilitylawproject.org
Witness for CAUSE-PA

James Crist
Lumen Group, Inc.
4226 Yarmouth Drive, Suite 101
Allison Park, PA 15101
jlcrist@aol.com
Witness for SEPTA

James Glenn
IBEW Local 614
4613 West Chester Pike, Upper Level
Newtown Square, PA 19073
jamesglenn@614ibew.com
Witness for IBEW Local 614

Alan McCarthy
705 East Bernard Street
West Chester, PA 19382
alanmccarthy25@hotmail.com

Christina Sappey
State Representative
698 Unionville Road
Kennett Square, PA 19348
repsappey@pahouse.net



Carrie B. Wright
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov