



COMMONWEALTH OF PENNSYLVANIA

September 12, 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 Reply 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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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: September 12, 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.

On September 6, the OSBA filed its Main Brief.

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

## II. Summary of Argument

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

PECO's citations to 66 Pa. C.S. Section 1330 are purposely misleading.

PECO's citations to 52 Pa. Code 69.3301, et seq. are carefully incomplete.

IBEW's climate science arguments are misplaced.

IBEW's support of PECO's proposed WNA mechanism is based upon a misunderstanding of winter-season rate shock.

## III. Weather Normalization Adjustment

### A. Response to PECO

In its Main Brief, PECO disingenuously re-writes Section 1330 of the Code, as follows:

Section 1330 of the Code provides that a public utility may propose alternative rates and rate mechanisms in a base rate proceeding.

PECO Main Brief, at 7, citing to 66 Pa. C.S. Section 1330(b). The correct text of Section 1330(b) is set forth, below:

Notwithstanding any other provision of law, including, but not limited to, sections 2806.1(k)(2) (relating to energy efficiency and conservation program) and 2807(f)(4) (relating to duties of electric distribution companies), *the commission may approve* an application by a utility in a base rate proceeding to establish alternative rates and rate mechanisms.

66 Pa. C.S. Section 1330(b)(1) (emphasis added). This is a critical distinction. PECO's version of Section 1330 tries to mis-direct the Commission by focusing on whether a utility is *allowed* to file for a WNA mechanism. This is a red herring. Instead, the statute focuses on the Commission's *option* to approve (or disapprove) a proposed WNA mechanism.

PECO fares no better in its citations to the Commission’s Policy Statements in Sections 69.3301 and 69.3303.<sup>1</sup> Section 69.3301 concludes, as follows:

At the same time, an alternative rate design methodology should reflect the sound application of cost of service principles, establish a rate structure that is just and reasonable, *and consider customer impacts*.

52 Pa. Code Section 69.3301 (emphasis added). Thus, the issue is not whether PECO *may file* a proposed WNA mechanism, the issue is that the Commission is under no obligation to approve it. Furthermore, as Section 3301 points out, the impact of a WNA mechanism on PECO’s small business customers is of critical importance.

In its Main Brief, PECO claimed that since “WNAs have been in place in the Commonwealth for over two decades” the Commission should approve its proposed WNA.<sup>2</sup> However, the presently-in operation WNA mechanisms were approved in the “before times” – 2002 and 2013.<sup>3</sup> Before the COVID Pandemic. Before the supply chain problems, some of which continue to this day. Before high inflation, which is still present today.<sup>4</sup>

Regardless, PECO admits the real reason that it covets a WNA mechanism:

[To] provide PECO with greater certainty in its ability to earn the distribution revenues authorized by the Commission when setting rates.

PECO Main Brief, at 8.

The OSBA respectfully submits that it is not just and reasonable for PECO to require “greater certainty” to earn the Company’s distribution revenues on the backs of its struggling small business customers.

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<sup>1</sup> 52 Pa. Code Section 69.3303 does not exist. The OSBA’s understanding is that PECO will delete this reference in its revised Main Brief.

<sup>2</sup> PECO Main Brief, at 7.

<sup>3</sup> PECO Main Brief, at 7.

<sup>4</sup> Today is “a time of historic inflation and interest rates.” IBEW Main Brief, at 5.

PECO, a natural gas distribution company (“NGDC”) *monopoly* with 515,000 captive customers.<sup>5</sup>

PECO, a subsidiary of Exelon Corporation, which has a market capitalization of \$38.65 billion.<sup>6</sup>

PECO, that regularly employs a Fully Projected Future Test Year (“FPFTY”), just to make certain it receives its revenues as quickly as possible.

PECO, that regularly employs a Distribution System Improvement Charge (“DSIC”), just so that it gets additional revenue, between rate cases, from its captive customers.

PECO has no need for a WNA mechanism. The Commission should not approve PECO’s proposed WNA as it is not just and reasonable, in 2024, for any of PECO’s customers, and specifically PECO’s small business customers, to pay for PECO to have “greater certainty.”

B. Response to IBEW

In its Main Brief, the Local 614 of the International Brotherhood of Electrical Workers, AFL-CIO (“IBEW”) parroted the claim made by PECO in support of the Company’s proposed WNA:

[To] provide PECO greater certainty in its ability to earn distribution revenues authorized [by] the Commission.

IBEW Main Brief, at 5. As set forth above, the OSBA rejects this reasoning as a valid, just, and reasonable basis for the Commission to award PECO a WNA mechanism.

Then, in its Main Brief, IBEW includes a section addressing “climate change.”<sup>7</sup> Climate science is an extremely complex and constantly evolving discipline. Nevertheless, the OSBA respectfully submits that there is a conceptual difference between the implications of “climate

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<sup>5</sup> www.exeloncorp.com

<sup>6</sup> At the time of this writing.

<sup>7</sup> IBEW Main Brief, at 6.

change” (specifically, recognizing a downward trend in heating degree days in the forecasting of weather-normalized load for a FPFTY) and protecting the Company’s distribution revenue for weather fluctuations around a level deemed to be “normal” (which is what a WNA mechanism does).

Thus, if IBEW is concerned about climate change, it should lobby for a lower normal HDD and the resultant higher rates, rather than a WNA mechanism which is designed to address fluctuations, not forecast bias.

Furthermore, this argument by IBEW is curious:

First, PECO did not cause climate change, it has been an unfortunate and collective effort, which includes ratepayers, that has led to the status of climate change today. As such, that PECO should bear the full risks of an issue we are all collectively at fault for does not make sense.

IBEW Main Brief, at 6. The OSBA respectfully rejects the notion that Pennsylvania small businesses are at fault for “climate change.”

Finally, IBEW claims that PECO’s proposed WNA will save the Company’s ratepayers from “rate-shock from fluctuating bills.”<sup>8</sup> Rate shock, during a colder-than-normal winter, is normally a result of the commodity cost of natural gas. Consequently, PECO’s proposed WNA for distribution rates will likely do little to prevent “rate-shock” for PECO’s small business customers.

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<sup>8</sup> IBEW Main Brief, at 6.

## 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 provide PECO "greater certainty" to recover its distribution revenue at the expense of its struggling small businesses, the OSBA 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 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,

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Dated: September 12, 2024

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|   | : |                                   |
| <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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