

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2024-3046932
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	:	
Office of Consumer Advocate	:	C-2024-3048363
Office of Small Business Advocate	:	C-2024-3048456
State Representative Christina Sappey	:	C-2024-3048631
Alan McCarthy	:	C-2024-3048497
Pennsylvania Area Industrial Energy Users Group	:	C-2024-3048881
v.	:	
	:	
	:	
PECO Energy Company – Gas Division	:	

**RECOMMENDED DECISION**

Before  
Darlene Heep  
Marta Guhl  
Administrative Law Judges

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## I. INTRODUCTION

In this rate case, PECO Energy Company – Gas Division (“PECO”) requested an increase of \$111 million based on data for a fully projected future test year (“FPFTY”) ending December 31, 2025. PECO also requested that the Pennsylvania Public Utility Commission (“Commission”) approve a Weather Normalization Adjustment (“WNA”). Except for the International Brotherhood of Electrical Workers, Local 614 (“IBEW” or “Union”), the remaining parties reached a settlement on all issues except the WNA and filed a Joint Petition for Non-Unanimous Partial Settlement. (“Settlement” or “Joint Petition”).

The Joint Petitioners are PECO, the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Pennsylvania Area Industrial Energy Users Group (“PAIEUG”), the Southeastern PA Transportation Authority (“SEPTA”) and Walmart, Inc. (“Walmart”) (collectively “the Joint Petitioners”).

Regarding PECO’s request for the implementation of a WNA, IBEW supports the WNA and the OCA, OSBA and CAUSE-PA oppose it. I&E suggests limits if the WNA is approved.

This decision recommends that the Commission approve the Joint Petition for Non-Unanimous Partial Settlement subject to a minor modification discussed below. Under the Joint Petition, PECO will have an annual increase in PECO’s gas distribution revenues of \$78 million to become effective as of January 1, 2025. Additionally, if the Joint Petition is approved, PECO will not file for another gas distribution base rate

increase prior to March 16, 2026. According to the settling parties, the bill of a typical PECO Gas residential customer using 80 centum cubic feet (“ccf”) per month will increase by \$12.25 per month, from \$97.98 to \$110.23 (an increase of 12.5%) in the first year of the increase. The bill will increase again by the same amount in each year until the next rate case is filed by PECO.<sup>1</sup> The Joint Petitioners also agreed to a monthly residential customer charge increase for rate GR from \$14.25 to \$15.70.<sup>2</sup>

This Decision also recommends that the Commission: 1) deny the request of PECO to implement a WNA because it is unjust, unreasonable and contrary to the interest of customers and the public; 2) modify the Settlement to require PECO to provide a copy of its review of its customer service report to IBEW; 3) direct the Commission’s Bureau of Technical Utility Services (“TUS”) to review the efficacy of a PECO Schedule of Affiliate Transactions as proposed by IBEW and 4) deny the remaining requests of IBEW as more appropriately raised in another proceeding or not within the authority of the Commission.

## II. HISTORY OF THE PROCEEDINGS

On March 28, 2024, PECO, Utility Code 122300, filed Tariff Gas-Pa. P.U.C. No. 6 (“Tariff No. 6”) to become effective May 27, 2024, containing proposed changes in rates, rules, and regulations calculated to produce \$111 million (an increase of 23.1%) in additional annual gas revenues. Under this proposal, the bill of a residential customer using 80 ccf of natural gas would increase from \$97.98 to \$114.13 per month (an increase of 16.5%). The filing was docketed at R-2024-3046932.

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<sup>1</sup> See Joint Petition, Appendix D.

<sup>2</sup> Settlement at ¶ 17.

Also on March 28, 2024, PECO Energy Company – Electric Division filed with the Commission Tariff Electric Pa. P.U.C. No. 8 (“Tariff No. 8”) to become effective May 27, 2024, containing proposed changes in rates, rules, and regulations calculated to produce approximately \$464 million in annual electric revenues. This filing was docketed at R-2024-3046931. A separate Recommended Decision will be issued addressing Tariff No. 8.

On April 1, 2024, I&E entered an appearance.

On April 11, 2024, the OCA filed a Formal Complaint at Docket Number 3048363.

On April 16, 2024, the OSBA filed a Formal Complaint, Docket Number 3048456.

On April 17, 2024, the IBEW, filed a Petition to Intervene.

On April 17, 2024, Alan McCarthy filed a Formal Complaint at Docket Number 3048497.

On April 22, 2024, Pennsylvania State Representative Christina D. Sappey filed a Formal Complaint at Docket Number 3048631.

On April 23, 2024, PECO filed an Answer to the Complaint of OCA.

On April 25, 2024, the Commission issued an Order suspending Tariff No. 6 until December 27, 2024 and assigning the matter to the Office of Administrative

Law Judge. Also on April 25, 2024, PECO filed the tariff as required by the Order of the Commission.

On April 26, 2024, a Telephonic Prehearing Conference Notice was issued, scheduling a prehearing conference for May 7, 2024, and assigning the matter to us. Also on April 26, 2024, PECO advised that, in accordance with 52 Pa. Code § 5.61(d), it would not file answers to the remaining Complaints.<sup>3</sup>

On April 29, 2024, CAUSE-PA filed a Petition to Intervene.

On April 30, 2024, a Prehearing Conference Order setting out the subjects to be discussed during the Prehearing Conference and directing the parties to file prehearing memorandum was issued.

On May 2, 2024, Walmart filed a Petition to Intervene.

On May 6, 2024, the PAIEUG filed a complaint at Docket Number 3048881. Also on May 6, 2024, a Motion for Admission *Pro Hac Vice* was filed by Charles T. Joyce, Esq. on behalf of Nicolas J. Enoch, Esq. to represent IBEW.<sup>4</sup>

On May 7, 2024, SEPTA filed a Petition to Intervene.

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<sup>3</sup> Section 5.61(d) of the Commission's regulations provide that an answer is not required for complaints which are docketed with Commission-instituted rate proceedings, except as may be directed by the Commission or the presiding officer. 52 Pa. Code § 5.61(d).

<sup>4</sup> On September 25, 2024, an Order NUNC PRO TUNC granting the Motion for Admission of Nicolas J. Enoch, Esq., *Pro Hac Vice* was issued.

All parties represented by counsel filed Prehearing Conference Memorandums in accordance with the Prehearing Conference Order issued. The prehearing conference was held as scheduled on May 7, 2024. The procedures and schedule for this matter were discussed with the parties during the conference. The parties agreed to four in-person and two telephonic Public Input Hearings. One Public Input Hearing was scheduled for the district of State Representative Christina Sappey, upon her request and agreement of the parties.<sup>5</sup> The parties also agreed that evidentiary hearings in this matter would be held on August 7-8, 2024 and August 12-13, 2024.

Following the Prehearing Conference, PECO conferred with OCA, and discussed with other parties, voluntarily extending the suspension period of this case and the PECO Energy Company - Electric Division Base Rate case at Docket Number R-2024-3046931. PECO agreed to file revised suspension tariffs voluntarily extending the suspension period until December 30, 2024, provided that, if approved by the Commission, PECO will be able to recoup, through a surcharge, revenue lost at the approved rates for the period from the anticipated effective date of new rates (January 1, 2025) through the date the Commission makes those rates effective by approving PECO's compliance filing.

All parties agreed to or did not oppose this extension and PECO's right to recover such revenues through a surcharge over a five-month period, provided that no surcharge will be implemented if the Commission approves PECO's compliance filings on or before January 1, 2025.

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<sup>5</sup> An additional Public Input Hearing was added to the schedule in the district of Pennsylvania State Representative Joe Ciresi, upon his request and agreement of the parties. A detailed discussion of the Public Input Hearings is at Section III herein.

On May 10, 2024, a Protective Order was issued with respect to all documents and information, as identified therein, produced or presented, or thereafter produced or presented, in this proceeding.

On May 14, 2024, PECO filed PECO Energy Company's Revised Responses to: (1) Defined Filing Requirement DFR-III-A-22; and (2) Supplemental Data Responses SDR-COS-6, 7, 8, and 12.

On May 21, 2024, a Public Input Hearing Notice was issued for In-Person Public Input Hearings to be held on June 6, 2024, in Media, Pennsylvania and on June 10, 2024 in Kennett Square, Pennsylvania.

Also on May 21, 2024, A Prehearing Order was issued, setting forth the procedural and scheduling matters discussed at the prehearing conference and agreed to by the parties. The Petitions to Intervene filed in this proceeding were formally granted via this Order.

On May 23, 2024, a Public Input Hearings Notice was issued for two In-Person Public Input Hearings to be held on June 12, 2024, in Philadelphia, Pennsylvania and two Telephonic Public Input Hearings to be held on June 13, 2024.

On May 28, 2024, PECO filed Supplement No. 2 to PA PUC No. 6 and Corrected Tariff Pages voluntarily suspending Tariff Gas PA PUC No. 6 until December 30, 2024.

On June 10, 2024, an Additional Public Input Hearings Notice was issued for an In-Person Public Input Hearing to be held on June 27, 2024, in Limerick, Pennsylvania.

The Public Input Hearings were held as scheduled.

On July 23, 2024, Prehearing Order #2 was issued, addressing telephonic evidentiary hearing procedures.

On July 30, 2024, an Evidentiary Hearings Notice was issued for Call-In Evidentiary Hearings on August 7, 2024 and August 8, 2024.

The parties exchanged written testimony and exhibits. Various parties filed statements in opposition to this rate increase. Approximately 25 written comments opposing the rate increase were filed with the Commission. Among them was a letter from the Pennsylvania House Democrats- Southeast Delegation<sup>6</sup>

On August 5, 2024, given the rejoinder and cross examination anticipated, PECO proposed that the August 7, 2024 hearing date be cancelled. None of the other parties objected to the cancellation of a hearing date.

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<sup>6</sup> Signing the statement of opposition to the rate increase filed were the following Representatives: Paul Friel, Chris Pielli, Jennifer O'Mara, Leanne Krueger, Tina Davis, Christina Sappey, Nancy Guenst, Liz Hanbidge, Lisa Borowski, David Delloso, Melissa Schusterman, Tim Brennan, Greg Scott, Jim Prokopiak, Carol Kazeem, Carol Hill-Evans, Kristine Howard, and Daniel Friel Otten.

On August 6, 2024, an Evidentiary Hearings Notice was issued for Call-In Evidentiary Hearings on August 12, 2024 and August 13, 2024. Also, on August 6, 2024, a Hearing Cancellation Notice was issued for the August 7, 2024 hearing date.

The evidentiary hearing was held and completed on August 8, 2024 and August 12, 2024. On August 12, 2024, a Hearing Cancellation Notice was issued for the August 13, 2024 hearing date.

A Briefing Order was issued on August 13, 2024. Under the Order, Main Briefs were due on August 30, 2024, Reply Briefs were due on September 12, 2024 and any stipulation regarding statements and exhibits was due on August 14, 2024.

On August 14, 2024, the parties submitted a Joint Stipulation for Admission of Testimony and Exhibits with an attachment listing the subject exhibits and testimony.

On August 27, 2024, the parties advised that they had reached a Non-Unanimous Partial Settlement on most of the issues. The WNA in the gas case, Docket Number R-2024-3046932, was reserved for further litigation. Additionally, IBEW opposed both the Gas and Electric Settlements. The parties proposed a modification in the briefing schedule, which was granted informally via email, with September 12, 2024 remaining as the due date for Reply Briefs and allowing the parties to determine when Main Briefs were due given the Partial Settlement.

On August 30, 2024, PECO, I&E, the OCA, the OSBA, CAUSE-PA, PAIEUG, SEPTA and Walmart filed a Joint Petition for Non-Unanimous Partial Settlement with exhibits.

On September 5, 2024, a letter was sent to Complainants Alan McCarthy and State Representative Sappey. The letter advised that they had until September 12, 2024 to file any objections to the Settlement. As of the date of this Recommended Decision, Mr. McCarthy and Representative Sappey have not responded to the letters.

On September 6, 2024, the Joint Petitioners filed Joint Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs in Support of Joint Petition for Non-Unanimous Partial Settlement.

Also on September 6, 2024, Main Briefs were filed by OSBA, I&E, OCA, IBEW and CAUSE-PA.

On September 12, 2024, Reply Briefs were filed by OSBA, I&E, OCA, IBEW and CAUSE-PA.

Also on September 12, 2024, the Joint Petitioners filed Statements in Support of the Settlement. IBEW filed a Statement in Opposition to the Settlement on this same date.

In accordance with our August 13, 2024 Briefing Order, the record closed on September 12, 2024.

### III. PUBLIC INPUT HEARINGS

At the time of the prehearing conference, there were several Formal Complaints that had been filed in this base rate proceeding. There were also multiple comments filed with the Commission's Secretary's Bureau and the OCA indicating that there was public interest in the case. Based on the above, we determined there was

sufficient public interest in PECO’s requested rate increase. Accordingly, seven public input hearings were held, five in person and two telephonically.<sup>7</sup> In total, 54 people offered testimony:<sup>8</sup>

<u>Date/Time</u>	<u>Witness Testifying</u>
<u>Thursday, June 6, 2024</u> <i>6:00 p.m.</i> <i>Delaware County Community College</i>	10
<u>Monday, June 10, 2024</u> <i>6:00 p.m.</i> <i>Kennett Square Borough Building</i>	5
<u>Wednesday, June 12, 2024</u> <i>1:00 p.m.</i> <i>Free Library of Philadelphia</i> <i>Parkway Central Library</i>	11
<u>Wednesday, June 12, 2024</u> <i>6:00 p.m.</i> <i>Free Library of Philadelphia</i> <i>Parkway Central Library</i>	8
<u>Thursday, June 13, 2024</u> <i>1:00 p.m.</i> <i>Telephonic</i>	7
<u>Thursday, June 13, 2024</u> <i>6:00 p.m.</i> <i>Telephonic</i>	9

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<sup>7</sup> These public input hearings were held concerning both PECO Energy Company’s gas and electric rate filings.

<sup>8</sup> One party presented an off the record statement at the public input hearing on June 10, 2024, at 6:00 p.m.

Thursday, June 27, 2024  
*6:00 p.m.*  
*Limerick Township Building*

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Melissa Grimm testified on behalf of Grimm and Grove Communications, which is her company. She testified that her company has worked with PECO and they have provided support to her small business. She indicated that PECO is a good corporate citizen.<sup>9</sup>

Joanne Craig, Chief Impact Officer for the Foundation for Delaware County, testified that PECO has been a good corporate partner with non-profits in the area. Ms. Craig noted that the Company has provided support to the non-profit which allows it to continue its outreach to the community.<sup>10</sup>

Peter Beisser testified that he is opposed to the rate increases proposed by PECO. He indicated that inflation and increases have gotten out of control in the past few years. Mr. Beisser also noted that he was not sure how much of the proposed rate increases are to go towards infrastructure.<sup>11</sup>

Ted Uhlman stated that he is retired and opposed to the rate increases. He also indicated that with inflation, the rate increases are too much for customers to bear. Further, Mr. Uhlman indicated that PECO should do more to decrease the use of fossil fuels including natural gas. He also indicated that he is opposed to the weather normalization adjustment because it is outside of the control of customers.<sup>12</sup>

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<sup>9</sup> Tr. 79-80.

<sup>10</sup> Tr. 86-87.

<sup>11</sup> Tr. 92-94.

<sup>12</sup> Tr. 98-102.

Bill Lenahan testified that he agreed with the statements made by Mr. Beisser and Mr. Uhlman.<sup>13</sup>

Leslie Friedman testified that she opposed the proposed rate increases and agreed with the statements from Mr. Beisser, Mr. Uhlman and Mr. Boyd.<sup>14</sup>

Sara McCullough, a staff member with State Senator Timothy P. Kearney who represents the 26<sup>th</sup> District, testified that PECO is an excellent corporate partner and has worked with the Company regarding vegetation control. Ms. McCullough testified that they received many calls from constituents regarding the costs of utility service and struggling to make ends meet.<sup>15</sup>

State Representative Lisa Borowski, who represents the 168<sup>th</sup> District, testified in opposition to the proposed rate increases. She indicated that many of her constituents are senior citizens who are struggling financially and would not be able to pay for the proposed increases. She also noted that PECO has been a good corporate partner within the community.<sup>16</sup>

State Representative Christina Sappey, who represents the 158<sup>th</sup> District, testified that she opposes the proposed rate increases on behalf of her constituents. She indicated that people in her district are facing higher utility rates. She noted that there

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<sup>13</sup> Tr. 106.

<sup>14</sup> Tr. 113.

<sup>15</sup> Tr. 116-119.

<sup>16</sup> Tr. 126-128.

are many in her district that are on a fixed income and cannot afford continuing rate increases.<sup>17</sup>

Michelle Duncan testified that she opposes the rate increases. She indicated that she is low income and cannot afford the combined effect of utility rate increases.<sup>18</sup>

Craig Parkinson testified on behalf of Young Men and Women in Charge. Mr. Parkinson indicated that PECO provided support to the community and in particular his organization.<sup>19</sup>

Stephanie Micek testified that she is opposed to the rate increases. She indicated that she is also concerned about the effects of smart meters and that PECO should offer its customers an opt-out option.<sup>20</sup>

Kelly Herrenkohl testified on behalf of Natural Lands. Ms. Herrenkohl indicated that PECO has partnered with Natural Lands since 2004. PECO has provided funding for projects and has been a community partner in regard to sustainability and green issues.<sup>21</sup>

Councilman Nicolas O'Rourke testified that he opposes the proposed rate increases. He indicated that a rate increase would place an undue burden on customers

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<sup>17</sup> Tr. 165-167.

<sup>18</sup> Tr. 169-170.

<sup>19</sup> Tr. 173.

<sup>20</sup> Tr. 177-183.

<sup>21</sup> Tr. 186-188.

who are already struggling to make ends meet. Councilman O'Rourke noted that Philadelphia is the poorest large city and many are unable to pay bills and are rationing in order to afford food, medicine and other essentials.<sup>22</sup>

Arun Prabhakaran testified on behalf of the Urban Affairs Coalition. He indicated that PECO is an excellent corporate partner and has provided resources to expand economic opportunities and community outreach.<sup>23</sup>

Lauren Krivo testified that she is opposed to the rate increases and is concerned with affordability of rates for customers, especially low income and fixed income customers. She also noted that she is concerned about climate change and need to move away from fossil fuel usage. Lastly, she stated that electricity and gas are essential items for a person to be in their home.<sup>24</sup>

Alice Lu testified on behalf of Clean Air Council and indicated that the organization is opposed to the proposed rate increases. She also noted that PECO generates most of its energy from fossil fuels and with climate changes, utilities need to move away from fossil fuels for its energy. Ms. Lu also noted that there should be an expansion of energy efficiency programs, as well as programs for low-income and moderate-income customers.<sup>25</sup>

John Chin testified on behalf of the Philadelphia Chinatown Development Corporation. He stated that PECO needs to be able to provide safe and reliable utilities

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<sup>22</sup> Tr. 221-224.

<sup>23</sup> Tr. 229-233.

<sup>24</sup> Tr. 239-241.

<sup>25</sup> Tr. 251-254.

to its customers and he is in support of the rate increases. He also notes that PECO has low-income programs and grants to help customers afford their bills.<sup>26</sup>

Linnea Bond testified that she is concerned with the affordability of her utility bills and noted that there are many low-income customers who cannot afford another rate increase. Further, she stated that PECO should make more progress on moving away from fossil fuels and make use of more renewable energy.<sup>27</sup>

Phyllis Blumberg testified that she is concerned with climate changes and stated that PECO needs to use renewable energy.<sup>28</sup>

Julie Greenberg testified on behalf of POWER Interfaith. She indicated that she is opposed to the rate increases and that PECO should do more for customers who are low income, disabled or on a fixed income. She is also concerned about using more renewable energy to protect the environment.<sup>29</sup>

Tara Faik testified that she agreed with the prior statements from the people who opposed the rate increases.<sup>30</sup>

Dawn Hannah testified on behalf of Beyond Literacy, an adult education nonprofit that provides career-upskilling classes to residents from Philadelphia and surrounding counties, and said that she supported PECO's proposed rate increases. She

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<sup>26</sup> Tr. 258-263.

<sup>27</sup> Tr. 273-276.

<sup>28</sup> Tr. 280-284.

<sup>29</sup> Tr. 288-292.

<sup>30</sup> Tr. 295.

indicated that PECO was a good community partner and supported their community outreach.<sup>31</sup>

Mitchell Chanin testified that he is concerned about affordability and indicated that he knows many low-income people who are struggling to make ends meet. He also stated that PECO should expand its low-income programs and its energy efficiency programs. He also noted that PECO should move to more renewable energy to protect the environment.<sup>32</sup>

Shelia Ireland testified on behalf of Opportunities Industrialization Center Philadelphia. She indicated that any rate increases should take into account low income and vulnerable customers. She identified that PECO should increase its customer assistance program, increase its energy efficiency program, and move to renewable and sustainable energy.<sup>33</sup>

Emily Abendroth agreed with other witnesses regarding the need for more renewable and sustainable energy. She also notes that a rate increase will effect low-income customers the most, especially fixed charges.<sup>34</sup>

Karen Dunn testified that she was a part of the Philadelphia Workers' Benefit Council and was opposed to PECO's rate increases. She indicated that with

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<sup>31</sup> Tr. 326-328.

<sup>32</sup> Tr. 334-342.

<sup>33</sup> Tr. 347-351.

<sup>34</sup> Tr. 362-366.

hotter summers people need to have cooling and electricity. She is concerned with the affordability of rates.<sup>35</sup> Abdullah Idris also agreed with Ms. Dunn's testimony.<sup>36</sup>

Andrew States testified on behalf of Bucks County Community College and indicated that PECO was a good corporate partner and helped with community outreach.<sup>37</sup> Ryan Gordon agreed with Mr. States' statement. He indicated that he spoke on behalf of the Lower Bucks County Chamber of Commerce.<sup>38</sup>

Susan Morris indicated that she was against the rate increase because she was having issues paying her bills.<sup>39</sup>

Liz Robinson testified that she is concerned about climate change and wants PECO to move towards more renewable energy and sustainable policies.<sup>40</sup>

Harvey Chanin testified that he is opposed to the rate increase and specifically the fixed charges which the customer cannot control.<sup>41</sup>

Margaret Gannon testified that she is a sister from the ministry of St. Francis of Philadelphia in Chester, Pennsylvania. She indicated that PECO was a good

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<sup>35</sup> Tr. 375-379.

<sup>36</sup> Tr. 381-383.

<sup>37</sup> Tr. 413-414.

<sup>38</sup> Tr. 418-419.

<sup>39</sup> Tr. 423.

<sup>40</sup> Tr. 424-428.

<sup>41</sup> Tr. 433-434.

community partner and helped with individuals who are experiencing food and housing insecurity.<sup>42</sup>

Kartik Amernath testified on behalf of Boat Solar which is a non-profit devoted to clean and sustainable energy. He noted that members of his group are PECO customers. He indicated that he was opposed to the rate increase and stated that Philadelphia is one of the most energy burdened cities in the country. He noted that customers cannot afford a large rate increase due to rising costs.<sup>43</sup>

Mary Kay Owen testified that her budget billing has increased from \$159 to \$191 per month. She indicated that she is the only member of her household and that she is having problems affording her utility bills and is concerned about other customers on fixed incomes.<sup>44</sup>

Dennis Nelms testified that he opposes the weather normalization adjustment. He indicated that this is a charge for gas that the customer does not use. Mr. Nelms stated that the Company wants to charge customers for the effect of climate change and the resulting warmer weather which he noted was not fair.<sup>45</sup>

Susan Spathakes testified that the rate increases will impact her family and also the families that she works with at HELP MLP, a nonprofit legal services program and that partners with public health programs in southeastern Pennsylvania, primarily serving pregnant and parenting families with low incomes. She indicated that

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<sup>42</sup> Tr. 438-439.

<sup>43</sup> Tr. 442-444.

<sup>44</sup> Tr. 446-448.

<sup>45</sup> Tr. 451-454.

there are many low-income families who cannot afford rate increases and are already experiencing financial difficulties.<sup>46</sup>

Sherrie Cohen testified that she opposes the rate increases. She is concerned with affordability of her utility bills and moving towards renewable energy and sustainability.<sup>47</sup>

Cinthia Ibarra stated that she opposes the proposed rate increases. She indicated that PECO should make sure that rates are affordable for everyone and that the Company should be forced to move from fossil fuels towards renewable energy sources.<sup>48</sup>

Kevin Tracey testified that he is opposed to the weather normalization adjustment. He believes that it is unfair for customers to pay for the effects of climate change. Further, he stated that customers will have difficulty in calculating the weather normalization adjustment which will make it difficult to control or budget for lower income customers.<sup>49</sup>

Michael Gaugler stated that he supports some level of a rate increase for electric and gas rates. He wants to have gas service at his residence and supports PECO's program to extend gas service. He further indicated that he supports PECO enhancing its infrastructure to help prevent outages.<sup>50</sup>

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<sup>46</sup> Tr. 457-461.

<sup>47</sup> Tr. 462-466.

<sup>48</sup> Tr. 496-499.

<sup>49</sup> Tr. 504-507.

<sup>50</sup> Tr. 510-511.

Adam Shellhorse indicated that he agrees with the testimony of Ms. Ibarra and Ms. Greenspan.<sup>51</sup>

Peggy Greenfeld testified that PECO should avoid raising fixed charges in its rate increase. Ms. Greenfeld also stated that PECO should seek to reduce its costs and move towards renewable energy sources.<sup>52</sup>

Christina Chen indicated that the proposed rate increases are going to disproportionately affect low-income households. She stated that people are already dealing with inflated prices for food, housing and other necessities.<sup>53</sup>

Ron Celentano stated that he is opposed to the rate increases. He is a senior citizen with a fixed income and is concerned about the lower income customers. He also noted that there is an increase in the fixed charges which affect low-income households the most.<sup>54</sup>

Tanis Vanbuskirk agreed with the testimony of Mr. Celentano related to fixed income customers and he is opposed to the rate increase.<sup>55</sup>

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<sup>51</sup> Tr. 515-518.

<sup>52</sup> Tr. 520-521.

<sup>53</sup> Tr. 527-528.

<sup>54</sup> Tr. 530-534.

<sup>55</sup> Tr. 539-540.

Al Zone testified on behalf of the Elmwood Park Zoo which has partnered with PECO for community outreach and financial support. Mr. Zone indicated that PECO is a good corporate partner.<sup>56</sup>

Mark Boorse stated that he was testifying on behalf of Access Services which is a non-profit organization that deals with homeless outreach. He indicated that PECO has been a helpful corporate partner when it came to relocating a homeless encampment which was on PECO property.<sup>57</sup>

Carris Kocher testified that she opposes the rate increases. She indicated that PECO should offer customers a smart meter opt-out option.<sup>58</sup>

#### IV. FINDINGS OF FACT

1. PECO Energy Company (“PECO” or “the Company”) is a Pennsylvania public utility that furnishes service to approximately 500,000 gas customers throughout a 1,900 square mile area in southeastern Pennsylvania with a population of approximately 2.6 million people.<sup>59</sup>

2. On March 28, 2024, the Company initiated this rate case pursuant to 66 Pa.C.S. § 1308(d) by filing Tariff Gas – Pa. P.U.C. No. 6 (“Tariff No. 6”) requesting an increase in its gas distribution rates effective May 27, 2024.

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<sup>56</sup> Tr. 572.

<sup>57</sup> Tr. 581-583.

<sup>58</sup> Tr. 587-595.

<sup>59</sup> See PECO St. 1, p. 3.

3. With Tariff No. 6, PECO filed supporting data for a historic test year (“HTY”) ended December 31, 2023, a future test year (“FTY”) ending December 31, 2024 and a fully projected future test year (“FPFTY”) ending December 31, 2025.

4. The Pennsylvania Public Utility Commission (“Commission” or “PUC”) initiated an investigation of the Company’s existing and proposed rates by Order entered April 25, 2024.

5. The rate request was suspended by operation of law to December 27, 2024, pursuant to Section 1308(d) of the Public Utility Code.

6. PECO voluntarily agreed to and did request an extension of the suspension period until December 30, 2024.

7. In addition to PECO, parties to this matter are the Commission’s Bureau of Investigation and Enforcement (“I&E”), State Representative Christina D. Sappey, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Alan McCarthy, Local 614 of the International Brotherhood of Electrical Workers, AFL-CIO (“IBEW” or “Union”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), the Southeastern Pennsylvania Transportation Authority (“SEPTA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Trustees of the University of Pennsylvania and the Hospital of the University of Pennsylvania (collectively, “UPenn”), and Walmart Inc. (“Walmart”).

8. IBEW opposes the Joint Petition.

9. IBEW is a labor organization serving as the exclusive representative of approximately 1,430 PECO employees.<sup>60</sup>

10. Approximately 177 of the IBEW represented PECO employees work for the call center and thirty percent (30%) of the remaining portion work in the PECO-Gas division.<sup>61</sup>

11. IBEW and PECO have entered into two separate and comprehensive collective bargaining agreements (“CBAs”) governing the conditions, terms, and working conditions of PECO’s bargaining unit employees.<sup>62</sup>

12. PECO last filed for an increase in gas base rates in March 2022.<sup>63</sup>

13. In its initial filing in this case, the Company proposed an increase in total gas operating revenues of \$111 million based on data for a fully projected future test year (“FPFTY”) ending December 31, 2025 and also requested approval of a WNA as an alternative rate mechanism in accordance with Section 1330 of the Public Utility Code.<sup>64</sup>

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<sup>60</sup> Exh. IBEW-10 at 1–2; IBEW Main Brief at 1.

<sup>61</sup> *Exh. IBEW-10 at 1-2.*

<sup>62</sup> *Id.*

<sup>63</sup> PECO St. 1, p. 5; PECO Exhibit MJT-1, Sch. A-1

<sup>64</sup> *Id.*

14. PECO’s witnesses testified that between January 1, 2024 and December 31, 2025, the end of the FPFTY, PECO will have invested \$786 million in new and replacement gas utility plant.<sup>65</sup>

15. On a pro forma basis, PECO projected its gas distribution operations to produce an overall return on invested capital of 5.82% and a return on common equity of 6.90% for the FPFTY.<sup>66</sup>

16. Under the terms of the Settlement, PECO will be entitled to charge gas distribution base rates (the “Settlement Rates”), effective for service rendered on and after January 1, 2025, designed to produce an annual increase in gas operating revenues of \$78 million, in addition to the Distribution System Improvement Charge (“DSIC”) revenue of \$18 million that will be rolled into base rates.<sup>67</sup>

17. The Joint Petitioners agree that that the revenue level set forth in the Settlement is reasonable and in the public interest.<sup>68</sup>

18. Under the Settlement Rates, the bill for a typical Residential customer that uses 80 centum cubic feet (“ccf”) per month will increase by \$12.25 per month, from \$97.98 to \$110.23 (or 12.5%), including purchased gas costs, taxes and other surcharges.<sup>69</sup>

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<sup>65</sup> PECO St. 1, p. 5; PECO St. 2, pp. 3-4.

<sup>66</sup> PECO St. 2, p. 7; PECO Ex. MJT-1 Revised, Sch. A-1.

<sup>67</sup> Joint Petition, Paragraph 13, p. 5.

<sup>68</sup> Joint Petition, Section III, p. 16.

<sup>69</sup> Joint Petition, Appendix D.

19. By comparison, in the Company's initial filing, the bill for a typical Residential customer that uses 80 ccf per month would increase by \$16.15 per month, from \$97.98 to \$114.13 (or 16.5%), including purchased gas costs, taxes, and other surcharges.<sup>70</sup>

20. PECO initially proposed increasing the monthly residential customer charge for Rate GR from \$14.25 to \$19.38, a \$5.13 increase.<sup>71</sup>

21. The OCA recommended that the customer charge be increased to no more than \$15.70, as linked to the OCA's class revenue allocation recommendation.<sup>72</sup>

22. Under the Settlement, the Joint Petitioners agreed to a monthly residential customer charge for rate GR of \$15.70.<sup>73</sup>

23. The Company will not file for another general rate increase under Section 1308(d) for its gas operations prior to March 16, 2026 which will provide customers base rate stability for a period of at least two years.<sup>74</sup>

24. As a part of its rate request, PECO proposed a Weather Normalization Adjustment that would adjust rates for the months of October through May based on the difference between actual weather (measured in actual heating degree

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<sup>70</sup> Joint Petition, Appendix D.

<sup>71</sup> OCA St. 3 (Corrected) at 28, 34.

<sup>72</sup> *Id.* at 4, 28-35.

<sup>73</sup> Settlement at ¶ 17.

<sup>74</sup> Joint Petition, ¶ 15.

days) and what the company considers to be normal weather (measured in normal heating degree days).<sup>75</sup>

25. When temperatures are warmer than whatever is determined to be “normal,” a WNA results in a higher bill.<sup>76</sup>

26. “Weather,” for the purposes of the WNA, is measured in Heating Degree Days (HDDs), or the number of degrees below 65 for each day in a billing period.<sup>77</sup>

27. PECO proposed a WNA with a 1% “deadband.”<sup>78</sup>

28. A deadband is a certain threshold in which the adjustment is not triggered if Actual Heating Degree Days (“HDDs”) are within the Normal HDDs.<sup>79</sup>

29. The proposed 1% deadband is inconsistent with the Commission’s history of applying a 3% deadband to NGDC’s.<sup>80</sup>

30. The 1% deadband proposed is arbitrary and allows PECO too much flexibility in determining normal weather and adjustments.”<sup>81</sup>

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<sup>75</sup> PECO St. 3 at 69.

<sup>76</sup> CAUSE-PA St. 1 at 67:5-6.

<sup>77</sup> OCA St. 6 at 7.

<sup>78</sup> PECO Gas St. 3, p. 69.

<sup>79</sup> I&E St. 3, p. 4.

<sup>80</sup> I&E St. 3, p. 6.

<sup>81</sup> *Pa. Pub. Util. Comm’n v. Columbia Gas, Inc.*, Docket No. R-2020-3018835, pp. 264-265 (Opinion and Order entered Feb. 19, 2021).

31. Low-income customers are disproportionately impacted by higher bills that could come with a WNA because a larger percentage of their income will need to be devoted to paying the increase.”<sup>82</sup>

32. PECO’s CAP operates to provide participants with the lower of their actual bill or their applicable percentage of income.<sup>83</sup>

33. For a CAP customer, during an unseasonably warm month, a WNA surcharge would either increase the customer’s actual bill amount, if lower than the percentage of income, or make it more likely that a customer would be charged at the percentage of income amount.<sup>84</sup>

34. WNA charges would be assessed against a CAP customer’s bill as if they were not enrolled in CAP and then the CAP discount would be applied.<sup>85</sup>

35. The application of the WNA in warmer than normal months would mean higher regular bills, and therefore a greater difference between actual cost and percentage of income bill that would need to be covered by CAP.<sup>86</sup>

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<sup>82</sup> CAUSE-PA St. 1 at 67:16-68:1.

<sup>83</sup> CAUSE-PA St. 1-SR at 7:8-10.

<sup>84</sup> CAUSE-PA St. 1-SR at 7:10-14.

<sup>85</sup> OCA St. 4 at 85.

<sup>86</sup> CAUSE-PA St. 1-SR at 7:14-16.

36. In December 2023, PECO Gas had an estimated 56,138 low-income customers who were not enrolled in CAP.<sup>87</sup>

37. 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.<sup>88</sup>

38. Calculating a monthly bill under PECO's WNA requires using a set of complex equations, which includes a separate model to determine whether temperatures have been unusually hot or cold.<sup>89</sup>

39. The WNA calculates the monthly bill by generating an artificial Weather Normalized Billing CCFs ("WNBC"), adding that to the Actual Monthly CCFs ("AMC") and then multiplying that by the Distribution Charge, essentially adding artificial usage to the customer's bill.<sup>90</sup>

40. A customer's inability to predict how much they will be charged based on usage would frustrate efforts to promote conservation and energy efficiency.<sup>91</sup>

41. PECO did not conduct any bill impact or stability analysis for customers related to the impact of the proposed WNA.<sup>92</sup>

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<sup>87</sup> CAUSE-PA St. 1 at 67:15-16.

<sup>88</sup> I&E St. 3, p. 2.

<sup>89</sup> CAUSE-PA St. 1-SR at 5.

<sup>90</sup> PECO St. 3 at 71.

<sup>91</sup> CAUSE-PA St. SR-1 at 4:14-18.

<sup>92</sup> OCA St. 6, Exhibit RN-4 at 5.

42. PECO Gas has not provided a sample bill containing the WNA to explain how the accuracy of the bill containing the WNA can be calculated considering the five variable equation which calculates the WNA charge.<sup>93</sup>

43. At the Public Input Hearings, multiple customers testified that the proposed WNA would be confusing and hard to explain.<sup>94</sup>

44. PECO provides customers who receive electric and gas service with a total bill for their utility service, such that a customer in arrears is at risk for termination of both services.<sup>95</sup>

45. The Company's budget billing plan is sufficient to minimize volatility in the monthly bills of enrolled customers, with less than 1% of all enrolled customers having a year-end balance.<sup>96</sup>

46. The WNA is more likely than not going to net the Company additional revenue each year that it would not receive absent the WNA.<sup>97</sup>

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<sup>93</sup> OCA St. 6 at 10.

<sup>94</sup> OCA St. 5 Supp. at 2:13-15.

<sup>95</sup> PECO St. 10-R at 23:9-12.

<sup>96</sup> OCA St. 4SR at 4.

<sup>97</sup> OCA St. 6 at 13.

47. PECO Gas’s use of a 30-year normalization period dilutes recent weather data – which, by and large, is warmer than less recent data – to create a higher “normal” number of Heating Degree Days (“HDDs”).<sup>98</sup>

48. As temperatures increase over time, creating warmer-than-normal weather, they are increasing during the heating season as well as the cooling season, resulting in ratepayers facing increased cooling costs in the summer.<sup>99</sup>

49. Given that PECO provides both electric and gas service, the extent to which recovery is limited for gas operations by a warmer-than-normal heating season, recovery will be substantial for electric operations during the cooling season, accenting the WNA as a PECO windfall that is not earned or cost justified.<sup>100</sup>

50. The WNA reduces incentives and rewards for consumers to conserve natural gas usage. Specifically, the WNA obscures price signals by adding an element to their bills which is disconnected from the cost of service – “normal” weather – that customers cannot control or determine with any accuracy.<sup>101</sup>

51. If customers do use less gas for non-weather-related reasons, a portion of that savings is given to the Company through the WNA if weather was warmer-than-normal, because the WNA is not crafted to delineate between why

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<sup>98</sup> OCA St. 6 at 16.

<sup>99</sup> OCA St. 6 at 10.

<sup>100</sup> *See* OCA St. 6 at 10.

<sup>101</sup> OCA St. 6 at 9.

customers' usage is lower than anticipated but to "adjust" usage to reflect "normal" weather.<sup>102</sup>

52. The addition of an unavoidable rate increase through a WNA which is affected by factors beyond the customer's control will interfere with customers' calculus to determine if reduced consumption or installation of energy efficiency measures will actually be cost-effective.<sup>103</sup>

53. Because of rising temperatures due to climate change, temperatures in upcoming years are likely to be warmer than normal.<sup>104</sup>

54. PECO Gas has failed to demonstrate that the WNA should be approved under the Commission's policy statement factors.<sup>105</sup>

55. Each of the material policy considerations demonstrates that the WNA is more likely to result in ratepayer harm and utility benefit without ratepayers being appropriately compensated for the significant risk they bear under the WNA. The Commission's policy factors establish that the WNA would not result in just and reasonable rates and should be denied.<sup>106</sup>

56. There is no direct cost-of-service foundation for the WNA which, instead of recovering costs in accordance with the Company's cost of service, provides

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<sup>102</sup> OCA Exh. RN-4 at 2-3.

<sup>103</sup> OCA Exh. RN-4 at 2-3.

<sup>104</sup> CAUSE-PA St. 1-SR at 5-6.

<sup>105</sup> See 52 Pa. Code § 69.3302(a).

<sup>106</sup> See 52 Pa. Code § 69.3302 (a) (1-14).

greater revenues for less usage, demonstrating that recovery under the WNA has an inverse relationship to the cost-of-service over the WNA's horizon of recovery.<sup>107</sup>

57. The four NGDCs which have received their WNA mechanisms did so as a result of unanimous settlement agreements.<sup>108</sup>

## V. LEGAL STANDARDS

### A. **General Rate Increase Proceedings**

A Company's request for a general base rate increase is governed by Section 1308(d) of the Code. Section 1308(d) of the Code provides the procedures for changing base rates, the time limitations for the suspension of the new rates, and the time limitations on the Commission's actions.<sup>109</sup>

Section 1301(a) of the Code mandates that "[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission."<sup>110</sup> A utility may obtain "a rate that allows it to recover those expenses that are reasonably necessary to provide service to

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<sup>107</sup> OCA Exh. ND-1-SD at 12.

<sup>108</sup> See *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 8, 2002); *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. Pub. Util. Comm'n v. UGI Utils., Inc. – Gas Div.*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023).

<sup>109</sup> 66 Pa.C.S. § 1308(d).

<sup>110</sup> 66 Pa.C.S. § 1301(a).

its customers[, ] as well as a reasonable rate of return on its investment.”<sup>111</sup> The Commission “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates” and “[t]he [Commission] has broad discretion in determining whether rates are reasonable.”<sup>112</sup>

The Commission is required to investigate all general rate increase filings.<sup>113</sup> The public utility seeking the increase has the burden of proof to establish the justness and reasonableness of every element of a public utility’s rate increase request.<sup>114</sup> Substantial evidence is required to meet that burden.<sup>115</sup>

In general rate increase proceedings, the burden of proof does not shift to parties challenging a requested rate increase. The utility’s burden of establishing the justness and reasonableness of its rate request is an affirmative one, and that burden remains with the public utility. There is no similar burden placed on parties to justify a proposed adjustment to the company’s filing.<sup>116</sup>

However, a public utility need not affirmatively defend every claim it has made in its filing, even those which no other party has questioned:

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<sup>111</sup> *City of Lancaster Sewer Fund v. Pa. Pub. Util. Comm’n*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002) (*City of Lancaster*).

<sup>112</sup> *Popowsky v. Pa. Pub. Util. Comm’n*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky II*).

<sup>113</sup> *Popowsky II*, 683 A.2d at 961.

<sup>114</sup> 66 Pa.C.S. § 315(a).

<sup>115</sup> *Lower Frederick Twp. v. Pa. Pub. Util. Comm’n*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

<sup>116</sup> *Berner v. Pa. Pub. Util. Comm’n*, 116 A.2d 738, 744 (Pa. 1955).

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.<sup>[117]</sup>

In other words, Section 315(a) of the Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.<sup>118</sup> The burden of proof must be on the party who proposes a rate increase beyond that sought by the utility.<sup>119</sup> The mere rejection of evidence contrary to that presented by the public utility is not an impermissible shifting of the evidentiary burden.<sup>120</sup>

Section 523 of the Public Utility Code, also requires the Commission to “consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates.”<sup>121</sup> 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.<sup>122</sup> As a result, the legislature has given the Commission discretionary authority to deny a proposed rate

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<sup>117</sup> *Allegheny Ctr. Assocs. v. Pa. Pub. Util. Comm’n*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (citation omitted); *see also Pa. Pub. Util. Comm’n v. Equitable Gas Co.*, 73 Pa.P.U.C. 310 (1990).

<sup>118</sup> 66 Pa.C.S. § 315(a).

<sup>119</sup> *Pa. Pub. Util. Comm’n v. Metro. Edison Co.*, Docket No. R-00061366, (Opinion and Order entered Jan. 11, 2007).

<sup>120</sup> *U.S. Steel Corp. v. Pa. Pub. Util. Comm’n*, 456 A.2d 686 (Pa. Cmwlth. 1983).

<sup>121</sup> 66 Pa.C.S. § 523(a).

<sup>122</sup> *Pa. Pub. Util. Comm’n v. Pa. Gas & Water Co.*, 61 Pa.P.U.C. 409, 415-16 (1986). *See also* 66 Pa.C.S. § 1501.

increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.”<sup>123</sup>

## B. Legal Standards for Settlements

Commission policy promotes settlements.<sup>124</sup> Generally, settlements lessen the time and expense that the parties must expend litigating a case and conserve precious administrative resources. Settlement results are often, to the parties, preferable to those achieved after a fully litigated proceeding.<sup>125</sup> The Commission has explained that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest.<sup>126</sup> In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest.<sup>127</sup> The Commission rarely rejects a settlement in a rate case.

Settlements must be found by substantial evidence to be in the public interest for the Commission to approve them and, to be in the public interest, involve compromise between the disparate positions of utilities and advocates.<sup>128</sup>

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<sup>123</sup> 66 Pa.C.S. § 526(a).

<sup>124</sup> See 52 Pa. Code § 5.231.

<sup>125</sup> See 52 Pa. Code § 69.401.

<sup>126</sup> *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

<sup>127</sup> *Pa. Pub. Util. Comm’n v. Windstream Pa., LLC*, Docket No. M-2012-2227108 (Opinion and Order entered Sept. 27, 2012); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

<sup>128</sup> 52 Pa. Code § 5.232(d).

To approve a partial or nonunanimous settlement, the Commission must find that the settlement is reasonable and in the public interest.<sup>129</sup> The standards for approving the terms of non-unanimous settlements are the same as those for deciding a fully contested case, i.e., the parties to the non-unanimous settlement must demonstrate that the proposed settlement is supported by substantial evidence and that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission’s orders and regulations.<sup>130</sup>

## VI. DESCRIPTION OF THE SETTLEMENT

The Joint Petition for Approval of Non-Unanimous Partial Settlement was filed on August 30, 2024. The Joint Petition included the agreement of PECO Energy PECO, I&E, OCA, OSBA, CAUSE-PA, PAIEUG, SEPTA, and Walmart (collectively, the “Joint Petitioners”), to resolve the issues raised in litigation by those parties. The Joint Petition includes:

- Appendix A: Proposed Tariff (Settlement Rates)
- Appendix B: Proof of Revenues
- Appendix C: Gross Plant Costs
- Appendix D: Rate Effects for Typical Customers in Each Major Rate Class

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<sup>129</sup> See *Pa. Pub. Util. Comm’n v. City of Bethlehem – Water Dep’t*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021) (*City of Bethlehem Water*).

<sup>130</sup> See 66 Pa.C.S. § 1301; *Pa. Pub. Util. Comm’n v. Pike Cnty. Light & Power Co. – Elec.*, Docket No. R 2020-3022135 (Order entered June 23, 2021) (*Pike County*); *City of Bethlehem Water*; *Pa. Pub. Util. Comm’n v. Pa.-Am. Water Co.*, Docket No. R-2020- 3019369 (Opinion and Order entered Feb. 25, 2021) (*Pennsylvania-American Water Co.*).

The Joint Petitioners filed Joint Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs in support of the Joint Petition as Appendix E. Each Joint Petitioner filed a Statement in Support. IBEW does not agree to the Joint Petition and filed Main and Reply Briefs, as well as a Statement in Opposition to the Settlement addressing its concerns.

## VII. TERMS AND CONDITIONS OF THE SETTLEMENT

The Settlement consists of the following terms and conditions, stated verbatim and for ease of reference retain the same paragraph numbers as they appear in the Settlement:

### **A. Revenue Requirement**

13. PECO will be permitted to charge, effective for service rendered on and after January 1, 2025, the Settlement Rates set forth in Appendix A. As shown on the proof of revenues set forth in Appendix B, the Settlement Rates are designed to produce an 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”). Those charges will be recovered in distribution rates and the DSIC rate will be reset to zero.

14. The Joint Petitioners agree that the Settlement Rates reflect the new, lower Pennsylvania Corporate Net Income Tax (“CNIT”) rate of 7.99% for the 2025 tax year, which is the FPPTY for this case. Additionally, the Settlement revenue requirement accounts for the impact of the decrease in the CNIT on the Company’s state Accumulated Deferred Income Tax (“ADIT”) in the FPPTY and the amortization of a regulatory liability over nine years until the end of 2031, related to the decrease of the CNIT rate. Future decreases in the CNIT rate for the post-2025 tax years will be addressed through the Company’s State Tax Adjustment Surcharge Clause or a future base rate case proceeding. The State Tax Adjustment Surcharge Clause related to CNIT rate reduction in 2025 will be reset to zero, except the reconciliation for prior years. The

Settlement reserves the rights of the Joint Petitioners to address any intervening change in state law governing the CNIT rates which occur between now and the Company’s next base rate case and to take any position there that they so choose.

**B. Gas Base Rate Stay-Out**

15. PECO will not file for another general rate increase under Section 1308(d) of the Public Utility Code for its gas operations prior to March 16, 2026.

**C. Revenue Allocation And Rate Design**

16. The Settlement Rates reflect the allocation of the annual net increase in gas operating revenue to each rate class agreed to by the Joint Petitioners, as set forth below:

Rate	Net Revenue <sup>131</sup>	
	Increase	% Increase
Residential (“GR”)	\$54,695,164	16.7%
General Service (“GC”)	\$19,599,334	16.0%
Outdoor Lighting (“OL”)	\$50	16.0%
Large High Load Factor (“L”)	\$0	0%
Motor Vehicle Service - Firm (“MV-F”)	\$62,983	10.3%
Motor Vehicle Service – Interruptible (“MV-I”)	\$0	0%
Interruptible Service (“IS”)	\$0	0%
Temperature-Controlled Service (“TCS”)	\$0	0%
Gas Transportation – Interruptible (“TS-I”)	\$484,166	4.5%

<sup>131</sup> Net revenue increases exclude an increase of approximately \$2,661,000 in operating costs recovered through the Company’s Gas Procurement Charge and Merchant Function Charge.

Gas Transportation – Firm (“TS-F”)	\$3,158,303	16.5%
Total	\$78,000,000	16.2%

17. The Settlement Rates reflect the agreement among the Joint Petitioners with respect to PECO’s monthly Fixed Distribution Service (Customer) Charges for Rates GR and GC, as follows:

Rates GR	\$15.70
Rate GC:	
Effective as of January 1, 2025	\$36.38
Effective as of January 1, 2026	
Small GC customers	\$29.36
Large GC customers	\$40.61

For Rates GR and GC, the Variable Distribution Charges were scaled back to produce the class revenues shown in the table in Paragraph 16 above. For all other rate classes, the Fixed Distribution Service Charges under the Settlement Rates were not adjusted from the original filing, and the Variable Distribution Charges were scaled back to produce the class revenues shown in the table in Paragraph 16 above.

18. The Settlement Rates reflect the agreement among the Joint Petitioners to the following declining block Variable Distribution Charges for Rate GC:

First 200 thousand cubic feet (“mcf”)	\$5.1985
Over 200 mcf	\$4.7485

19. The Settlement Rates reflect agreement among the Joint Petitioners on the rate design for the TS-I and TS-F classes set forth in the proof of revenues presented in Appendix B.

20. PECO will maintain the existing adjustment factor applied to Customer Assistance Program (“CAP”) costs recovered through its Universal Services Fund Charge (“USFC”) of 22% for bad debt and 5% for cash working capital, totaling 27%.<sup>132</sup>

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<sup>132</sup> Paragraphs 16 to 20 describe the principal elements of the rate structure and rate design incorporated in the Settlement Rates. While every effort has been made

#### **D. FPFTY Reports**

21. PECO will provide the Commission's Bureau of Technical Utility Services ("TUS"), I&E, the OCA, and the OSBA with an update to PECO Exhibit MJT-2, Sch. C-2, no later than April 1, 2025, which will include actual capital expenditures, plant additions, and retirements by month from January 1, 2024 through December 31, 2024. Then, no later than April 1, 2026, another update of PECO Exhibit MJT-1, Sch. C-2, will be submitted showing actuals from January 1, 2025 through December 31, 2025. In PECO's next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2025 to its projections in this case.

#### **E. DSIC**

22. The Company will not implement a DSIC during the calendar year ending December 31, 2025 (except to implement any reconciliation of DSIC amounts in accordance with the Supplemental Implementation Order referenced below). The first DSIC in 2026 will be effective no earlier than March 31, 2026 based on DSIC-eligible expenditures during January 1, 2026 to February 28, 2026. In any event, the Company will not begin to impose a DSIC until the total aggregate gross plant costs (before retirement, depreciation or amortization in 2024 and 2025) associated with the eligible property that has been placed in service exceed the following total aggregate plant costs claimed by the Company in the FPFTY: \$4,679,514 shown in detail in Appendix C.

23. In compliance with the Supplemental Implementation Order entered on September 21, 2016 at Docket No. M-2012-2293611, the amount of \$4,679,514 shown in Appendix C constitutes the baseline of gross plant balances to be achieved in order to restart charges under the Company's DSIC. This provision relates solely to the calculation of the DSIC during the time that the Settlement Rates are in effect and is not determinative for future ratemaking purposes of the projected plant

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to ensure that the description is accurate, if any inconsistency is perceived between that description and the specific rates set forth in Appendix A, Appendix A will take precedence.

additions to be included in rate base in a fully projected future test year filing.

24. For purposes of calculating its DSIC, PECO will use the equity return rate for gas utilities contained in the Commission's most recent Quarterly Report on the Earnings of Jurisdictional Utilities and will update the equity return rate each quarter consistent with any changes to the equity return rate for gas utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa.C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa.C.S. § 1358(b)(1).

## **F. Universal Service Programs**

### **(1) Customer Assistance Program**

25. PECO agrees to participate in the Department of Human Services ("DHS") data sharing program. Using the data provided by DHS through this program, PECO will participate in a manner consistent with the Commission's June 13, 2024 data sharing order at Docket No. M-2023-3038944. In addition, no later than 90 days following the effective date of the new rates established in this proceeding, PECO agrees to use data provided by DHS through this program to automatically recertify current CAP customers.

26. By July 1, 2025, PECO agrees to convene a stakeholder collaborative with its Universal Services Advisory Committee ("USAC") and any interested parties to this case to discuss how PECO could implement automatic enrollment of non-CAP Low-Income Home Energy Assistance Program recipients in CAP, including but not limited to: customer education, notice prior to automatic enrollment, treatment of shopping customers, and treatment of arrears for new enrollees. The collaborative will identify all costs for residential customers of any such implementation, including information technology and administrative costs, and potential adjustment to the CAP offset factor to take into account the additional costs of any automatic enrollment. The collaborative will meet at least one additional time before April 1, 2026. PECO will submit a report in this docket documenting the views of the collaboratives and PECO's recommendations no later than October 1, 2026.

**(2) Low-Income Usage Reduction Program (“LIURP”)**

27. Starting in 2025, PECO will include an additional \$500,000 in the Gas LIURP, which will increase the program costs from the as-filed annual budget of \$3.15 million to \$3.65 million. This additional amount will be recovered through the USFC mechanism, without applying any CAP cost offset factor.

**(3) Matching Energy Assistance Fund (“MEAF”)**

28. By March 1, 2025, PECO will file a compliance filing in its Universal Services and Energy Conservation Plan docket to reflect the following terms:

- a. PECO will amend its MEAF program to set maximum grants at \$1,250 per account.
- b. The customer will not be required to bring their total account balance to zero (including current charges) with the MEAF distribution. The MEAF grant must eliminate the total amount as stated on the Company’s termination notice(s) or as otherwise agreed to by PECO to avoid termination or to be restored, having already been terminated, excluding pre-program arrearage. If the grant amount does not bring the termination amount to zero, the customer will be required to make a payment and/or solicit other third-party grants to satisfy the remaining total amount due before receiving the MEAF grant.

29. PECO agrees that starting with the first quarterly USAC meeting in 2025, PECO will share the following information at each quarterly USAC meeting:

- a. The number of MEAF applications submitted, by county;
- b. The number of MEAF applications approved, by county;
- c. The number of MEAF applications denied, disaggregated by reason for denials;
- d. The average length of time for MEAF application processing, disaggregated by county. PECO will impose this data collection requirement on MEAF agencies no later than April 1, 2025 and will share such data beginning with the fourth quarter USAC meeting in 2025; and

- e. The amount of money available for MEAF assistance, by county.

30. By July 1, 2025, PECO agrees to do the following:

- a. PECO will update its website to provide additional information regarding: (1) the need for customers to contact MEAF agencies in order to submit MEAF applications to those agencies; and (2) the types of documentation that may be requested by a MEAF agency when a customer is applying for a MEAF grant.

- b. PECO agrees to improve its oversight of MEAF agencies as follows:

- (i) PECO will require MEAF agencies to advise PECO upon approval of MEAF applications and PECO will place termination holds on accounts with an approved application while MEAF funds are being processed.

- (ii) If a MEAF agency stops accepting or is unable to process MEAF applications within 10 business days and PECO is informed of the delay and the delay is validated with the agency, PECO will review the situation to determine what alternative options are available. The Company will place a 15-day termination hold on impacted, unprocessed accounts that have been identified by the MEAF agency.

**(4) Other PECO Commitments to Enhance Assistance to Low-Income Customers**

31. PECO will extend future use of speech analytics software to assist with the quality monitoring of calls involving, or potentially involving, universal service programs and other low-income customer issues.

32. As soon as feasible but no later than July 1, 2025, PECO will utilize confirmation of low-income status in its billing system to establish a customer's payment arrangement length of up to five years, pursuant to Chapter 14 of the Public Utility Code.

33. By July 1, 2025, PECO will seek review by the Commission of this additional language in its 10-Day Termination Notice: "you may be eligible for special assistance programs, such as CAP, which may stop termination of your service and/or include arrearage forgiveness" and within six months of approval, begin using the Notice containing the additional language.

34. As soon as feasible but no later than July 1, 2025, following disconnection and prior to reconnection, confirmed low-income customers who were identified as such in PECO's system prior to termination, and who are not currently enrolled in CAP, will, upon application and approval for enrollment in CAP as a first time CAP customer, have service reconnected at a reduced restoration amount and be enrolled in CAP upon reconnection.

35. While PECO is conducting its Cold Weather Survey, beginning in 2025, the Company will provide customers eligible for the Cold Weather Survey with a CAP application and a Universal Services Program Information Sheet (one pager).

## **G. Customer Service and Consumer Protection**

### **(1) Call Center Performance**

36. PECO will investigate any material issues with call handling that were identified in the 2022 Audit Report which have not been resolved by the actions PECO agreed to take in its implementation plan for the audit report. PECO will file a report on its investigation within six months of the effective date of the new rates established in this proceeding.

### **(2) Low-Income Customer Security Deposits and Disconnections**

37. PECO will, by April 1, 2025, review all accounts where a security deposit was previously collected from a verified, by PECO, low-income customer less than or equal to 250% of the Federal Poverty Level ("FPL"). If PECO determines it is holding a security deposit for a confirmed low-income customer (less than or equal to 150% FPL), PECO will refund the amount to the customer unless the customer has given explicit and informed consent for the deposit to be applied to the customer's account. Going forward, PECO will conduct this review on a quarterly basis.

38. PECO will implement by April 1, 2025, the following changes to its security deposit letter:

a. For new residential customers requesting a connection for service, PECO will include a message on the initial deposit letter informing these customers that they may be eligible for a deposit waiver if they contact PECO and verify their low-income eligibility of less than or equal to 250% FPL.

39. Within 12 months from the date rates go into effect, PECO agrees to conduct an assessment of the issues raised by OCA witness Roger Colton in his Direct Testimony (OCA Statement No. 4, pp. 67-70) and to meet with the OCA and CAUSE-PA to discuss PECO's efforts to ensure that Environmental Justice communities are not inadvertently disproportionately impacted by terminations of service or requests for security deposits.

### **(3) Language Access**

40. PECO agrees to continue its Limited English Proficiency stakeholder meetings as agreed to in the Joint Petition for Settlement at Docket No. R-2021-3024601 until the later of its next electric or gas base rate case filing. In the first meeting, which shall be scheduled to occur on or before July 1, 2025, the participants will discuss issues for consideration in any proposal to: (1) add taglines to residential customer bills; and (2) send shutoff notices that are both in English and Spanish.

### **(4) Payment Processing**

41. PECO will undertake a good faith effort to negotiate lower payment processing fees with third-party vendors when it negotiates its next contract (anticipated to be in 2028).

42. In its next base rate filing, PECO will: (1) provide, for the most recent 24 months available (a) the monthly number of residential payments by credit card and the fee charged per transaction and (b) the monthly number of residential payments by debit card and the fee charged per transaction; and (2) propose to eliminate all payment processing fees, including credit card and debit card fees imposed by third parties, when not using "MyAccounts", e.g., online "pay as guest" or phone payments or, if PECO fails to make this proposal it will provide detailed information supporting its decision.

## **H. Gas Safety**

43. PECO commits to improving the consistency and accuracy of leak reporting from the field. In this regard, PECO will provide more training and awareness of field personnel to improve the quality of leak reporting. The PECO Distribution Integrity Management Program

(“DIMP”) team also will perform quality audits of at least ten percent (10%) of leak repair reports received from the field.

44. PECO commits to building a new Power BI dashboard to better present and analyze risk at a more granular level. PECO also commits to adding more factors into the risk model such as cathodic protection status and population density. This will also be incorporated in the Synergi software when it is implemented.

45. PECO will continue identifying and locating inaccurate facilities.

46. PECO agrees to include more information in its brochures including the color coding of facilities.

47. PECO will continue to keep track of post construction quality audits containing a failed observation.

48. PECO will continue investing in technologies that facilitate mapping improvements and removal of potentially hazardous pipeline components.

49. PECO will schedule a meeting with Commission Pipeline Safety inspectors by August 10, 2025 to demonstrate how the above items were satisfied.

## **I. Customer Programs**

50. The Joint Petitioners agree to PECO’s original proposal to increase the budget for natural gas Energy Efficiency and Conservation Program measures by \$350,000 from \$2.727 million per year to \$3.077 million per year.

51. The Joint Petitioners agree to PECO’s originally proposed revisions to the Neighborhood Gas Pilot, Small Business Grant Program, and Gas Customer Safety Program.

## **J. Tariff Changes**

The Joint Petitioners agree to the Company's tariff changes set forth in Appendix A, subject to resolution of issues concerning PECO's proposed WNA mechanism

As additional Terms and Conditions, the Settlement provides as follows:

55. Each term and condition set forth in this Joint Petition, whether or not set out in a numbered paragraph, shown in a table or other graphic presentation, bolded, italicized or otherwise emphasized, or set forth in the body, a footnote, or parenthetical, or appendix, is a material consideration to the entry into this Settlement by the Joint Petitioners.

56. The Commission's approval of the Settlement will not be construed as approval of any Joint Petitioner's position on any issue, except to the extent required to effectuate the terms and agreements of the Settlement. Accordingly, this Settlement may not be cited as legal precedent in any future proceeding, except to the extent required to implement this Settlement.

57. It is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by any Joint Petitioner in this or any other proceeding, if it were fully litigated.

58. This Settlement is being presented only in the context of this proceeding in an effort to fully resolve the issues presented in this proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise. This Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement.

59. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify any terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties

within five (5) business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, will be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw the Settlement as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.

60. If the ALJs, in their Recommended Decision, recommend that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions with respect to any issues addressed by the Settlement. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement or any additional matters proposed by the ALJs in their Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.

#### VIII. OPPOSITION TO THE SETTLEMENT – IBEW

IBEW opposes the compromised rate increase and supports the requested overall rate increase requested by PECO of approximately \$111 million, subject to certain reductions. It also proposes alternative resolution of customer service issues and proposes that the Commission require PECO to file various reports.

As stated by IBEW:

PECO is the largest combined electric and gas utility in Pennsylvania, servicing more than 1.5 million residential and commercial customers; PECO's gas operations include over 7,300 miles of gas mains, approximately 480,000 gas services, 28 gate stations, over 300 regulator stations, and liquefied natural gas and propane-air peaking plants.

In addition to its gas infrastructure, PECO must also maintain a highly skilled workforce to continue providing its customers with safe and reliable service. This skilled labor comes at an attendant cost. PECO is competing for a talented workforce in all of its classifications. Without a comprehensive and smart approach to workforce development, PECO will be unable to meet the ongoing and incoming energy demands of our growing community.<sup>133]</sup>

A. Adequacy of the Settlement Rate Increase

IBEW supports the initial \$111 million dollar per year increase requested by PECO.<sup>134</sup> If PECO is insufficiently funded, IBEW avers, given historic inflation and interest rates, it will have a negative effect on PECO providing a competitive employment package and the Company will see a reduction in its highly skilled workforce. PECO will need to maintain and expand its pipeline of skilled natural gas workers to meet its goals of improving its system reliability and modernizing its grid.

Several proposals are made by IBEW with respect to the workforce. IBEW is proposing a rate increase beyond that sought by the utility in the Settlement and therefore it has the burden of establishing that the \$111 million increase is just and reasonable.<sup>135</sup> As the party proposing a rate increase beyond that sought by the utility, the burden of proof of establishing its case with substantial evidence rests with IBEW.<sup>136</sup>

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<sup>133</sup> IBEW Main Brief at 5.

<sup>134</sup> IBEW Main Brief at 4.

<sup>135</sup> *Pa. Pub. Util. Comm'n v. Metro. Edison Co.*, Docket No. R-00061366 (Opinion and Order entered Jan. 11, 2007).

<sup>136</sup> *Id.*

The concern of IBEW that PECO will be underfunded is belied by PECO's acceptance of the \$78 million compromised increase and there is no indication or substantial proof offered by IBEW that the operations of PECO will be negatively affected with the Settlement amounts, or that the lower than initially requested rate increase will damage the quality of service provided by PECO, or is not in the public interest. Concerns regarding the hiring of skilled labor and the job market are speculative. Therefore, the evidence does not support a recommendation that the Commission grant PECO a rate-increase higher than that agreed to by PECO in the Settlement.

B. Customer Service Representative (CSR) Issues

It is undisputed that in early 2024, PECO changed CSRs' customer service software from CIMS to "CC&B."<sup>137</sup> IBEW asserts that due to lack of sufficient training for PECO CSRs on the new software, the use of the new program itself has resulted in overcharging, failure to bill resulting in disconnections for lack of payment and other problems, such as mandatory overtime for CSRs. IBEW wants PECO to be required to provide additional training of CSR and CSR supervisors to alleviate these issues.

PECO does not deny that there have been customer service problems since the change in the customer service software. Some of the areas of concern include bill presentment and accuracy, summary bills issued, invoice delivery, confirmation of account additions and deletions.<sup>138</sup>

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<sup>137</sup> Exh. IBEW-8 at 13; PECO Main Brief at 20. PECO reference to the new system as CC&B rather than the IBEW CCMV will be used herein.

<sup>138</sup> PECO St. 10-R, pp. 27-28; PECO St. 10-SR, p. 4.

In the Settlement, PECO agreed that it will, as to Call Center Performance issues, investigate any material issues with call handling that were identified in a 2022 Audit Report that have not been resolved by the actions PECO agreed to take in its implementation plan for the audit report.

Every public utility has an obligation to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”<sup>139</sup> Customer Service issues are generally raised in a Formal Complaint filed with the Commission. However, Call Center Performance is a customer service issue that the Joint Petitioners have chosen to address in this Settlement. PECO has agreed in the Settlement to file a report on its investigation Call Center Performance within six months of the effective date of the new rates established in this proceeding. It will be recommended that a copy of the report on the investigation be provided to TUS and to the IBEW for review.

### C. Employment Operations Issues

IBEW supports the \$111 million rate increase rather than the Settlement Rate increase of \$78 million, arguing that PECO then address several staffing and personnel issues raised by IBEW. These include PECO’s Vacancy Rate, Budgeting and Workforce Planning Process, the PECO Employee Complement/Vacancy Rate, Wage and Salary Increases, a Union Contract Ratification Bonus and, as tied to the Employee Vacancy Rate, recovery of employee benefits expense and payroll taxes. IBEW also

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<sup>139</sup> 66 Pa.C.S. § 1501.

proposes that PECO use in-house personnel rather than outsource construction projects and hire additional contract coordinators.<sup>140</sup>

IBEW is correct in stating that, as a public utility, it is PECO's duty to provide safe and reliable service to its customers, and safe working conditions to its employees, pursuant to 66 Pa.C.S. § 1501. However, the Commission has recognized that its authority to interfere in the internal management of a utility company is limited.<sup>141</sup> The Commission is not empowered to act as a super board of directors for the public utility companies.<sup>142</sup> The Commission may intervene only where the evidence demonstrates an abuse of managerial discretion, and the public interest has been adversely affected.<sup>143</sup> The Commission must act within and cannot exceed its authority.<sup>144</sup>

The staffing and personnel decisions issues raised by IBEW are not within the purview of the Commission, especially within the confines of a rate case. The record does not support finding that there has been an abuse of managerial discretion or that PECO staffing decisions have or will have a negative impact upon the public interest.

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<sup>140</sup> IBEW Main Brief at 9-14.

<sup>141</sup> *See, e.g., Bell Tel. Co. of Pa. v. Driscoll*, 21 A.2d 912 (Pa. 1941); *N. Pa. Power Co. v. Pa. Pub. Util. Comm'n*, 5 A.2d 133 (Pa. 1939) (*N. Pa. Power Co.*); *Coplay Cement Mfr. Co. v. Pub. Serv. Comm'n*, 114 A. 649 (Pa. 1921).

<sup>142</sup> *N. Pa. Power Co.*

<sup>143</sup> *See Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket No. M-2018-2640802 (Opinion and Order entered Mar. 26, 2020) (The Commission determined that utility's employee residency requirements had a negative effect upon the service provided by the utility.).

<sup>144</sup> *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

Also, IBEW does not point to any specific safety, efficiency or adequacy matters that should and could be addressed by the Commission here. Even if issues of specific hazards or safe practices were present were present, this rate case is not the proper forum. Such matters would more properly be brought in a formal complaint under Section 1501.<sup>145</sup> Therefore, it will be recommended that these employment and personnel related proposals be denied.

#### D. Additional Reports

As IBEW notes, 66 Pa.C.S. § 504 gives the Commission the authority to require a public utility to “to file periodical reports, at such times, and in such form, and of such content, as the commission may prescribe and special reports concerning any matter whatsoever which the commission is authorized to inquire or to keep itself informed, or which it is required to enforce.”<sup>146</sup> IBEW proposes that the Commission require that PECO file additional reports, particularly, Workforce Planning Reports, Capital and Operating and Maintenance (“O&M”) Project Lists, Reconciliation of Rate Base and Operating Income Filing, and a Schedule of Affiliate Transactions.

##### 1. Annual Workforce Planning Report

IBEW asserts that an “Annual Workforce Planning Report” will help ensure that PECO receives the necessary costs to continue providing safe and reliable service and allowing the Commission and interested parties to track (1) PECO’s

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<sup>145</sup> See *Ackie v Phila. Gas Works*, Docket No. 2019-3013933 (Opinion and Order entered Sep. 15, 2022).

<sup>146</sup> IBEW Main Brief at 14.

workforce needs; (2) PECO’s hiring efforts; and retention trends; and (3) any challenges posed by the job market. In support, IBEW points to the Arizona Corporation Commission and Maryland Baltimore Gas and Electric Company’s (“BGE”) Minimum Filing Requirements.<sup>147</sup>

PECO responds that the Company should not be required to adopt a workforce planning report. PECO asserts that after adjusting for the significant COVID-19 impacts on the Company’s ability to hire and maintain workforce<sup>148</sup>, the Company historically has maintained an average vacancy rate of 2% and does not anticipate any difficulty reaching the projected headcounts for the FTY and the FPFTY.<sup>149</sup> PECO also states that Field Ops positions will be filled through Company “schools” being held in October 2024 and October 2025 and the CSR and administrative positions will be filled through standard recruiting efforts.<sup>150</sup>

The Workforce Planning Report enters into the area of personnel and employee management, which are areas outside of the confines of a rate case and, absent Section 1501 violations, beyond the authority of the Commission in general.

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<sup>147</sup> IBEW Main Brief at 15; Exhibit IBEW-4. IBEW references Arizona Corporation Commission as requiring a similar report. *See* Arizona Corporation Commission Decision No. 76374, pp. 65–66, 2017 Ariz. PUC LEXIS 46, at \*\*105–107 (Ariz. Corp. Comm’n Sept. 19, 2017).

<sup>148</sup> PECO Main Brief at 27, 31.

<sup>149</sup> PECO St. 1-SR, pp. 2-3.

<sup>150</sup> PECO Main Brief at 27, 32; PECO St. 2-R, pp. 2-4

## 2. Capital and O&M Project List Reports

IBEW also contends that a direct consequence of what it considers PECO's "poor workforce planning" is overuse of contracted labor and associated high costs, which are then categorized as "capital expenses."<sup>151</sup> IBEW requests that PECO be required to file a "Capital and O&M Project List Reports" in this docket and serve a copy of the same to all parties by May 30th of each year until its next rate application to enable PECO to track capital expenses and "ensure it reduces them as necessary."<sup>152</sup>

PECO asserts that such a report is inapplicable to its operations, duplicative and not necessary. In the BGE case, PECO notes, the utility sought and obtained Maryland PSC approval to implement a multi-year rate plan, which requires an annual reconciliation of forecasted and actual capital and O&M expenditures for Maryland PSC approval whereas PECO does not have and is not seeking approval of multi-year rates.<sup>153</sup>

Moreover, PECO states, the concerns IBEW seeks to address are currently subject to Commission review. First, under the Settlement, PECO will report to TUS on its actual capital expenditures, plant additions, and retirements in the FTY and FPFTY and, during the next rate case, the Company's actual expenditures will also be

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<sup>151</sup> Exh. IBEW-12 at 5; IBEW Main Brief at 17.

<sup>152</sup> IBEW references Maryland Public Service Commission approved the form of the 2024 Capital and O&M Project Lists and Operation Pipeline Project lists MD PSC Order No. 90480, p. 3 (MD PSC January 23, 2023) (*approving* Baltimore Gas and Electric Company's Minimum Filing Requirements in Case No. 9645 (ML 300339) dated November 30, 2022).

<sup>153</sup> PECO St. 3-R, p. 22.

subject to review.<sup>154</sup> Second, it is unnecessary for the Commission to require PECO to provide an annual filing like Exhibit IBEW-2 because the PECO is already required to file an annual asset optimization plan (“AAOP”), which includes information regarding capital project expenditures and capital work that it completed compared with the LTIP, forecasts for capital spending and workplans for future LTIP years.<sup>155</sup> It will be recommended that the Commission deny requiring PECO to file such a report.

### 3. Annual Reconciliation of Rate Base and Operating Income

IBEW acknowledges that in paragraph 19 the Non-Unanimous Settlement, PECO commits to preparing, in its next base rate proceeding, a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2025, to its projections in this case. The Union finds this “a step in the right direction” but not sufficient and urges the Commission to require an annual report available to all interested parties.<sup>156</sup> IBEW again notes that such a report was approved by the Maryland Public Service Commission<sup>157</sup> and provides transparency to the utilities projected versus actual costs.

PECO again asserts that, unlike the BGE case, PECO does not have and is not seeking approval of multi-year rates and therefore an annual reconciliation report

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> IBEW notes that such a report was approved by the Maryland Public Service Commission in MD PSC Order No. 89482, pp. 3–5, 17, 37–38 (MD PSC February 4, 2020), *affirmed* MD PSC Order No. 89678, p. 3 & n. 4 (MD PSC December 16, 2020). IBEW Main Brief at 18.

<sup>157</sup> MD PSC Order No. 89482, pp. 3–5, 17, 37–38 (MD PSC February 4, 2020), *affirmed* MD PSC Order No. 89678, p. 3 & n. 4 (MD PSC December 16, 2020).

similar to Exhibit IBEW-3 is entirely unnecessary.<sup>158</sup> Further, PECO notes, it will report to the TUS on its actual capital expenditures, plant additions, and retirements in the FTY and FPFTY, and the Company's actual expenditures be subject to review during the Company's next base rate case.<sup>159</sup> The report requested here appears duplicative and it will be recommended that the Commission not require such a report at this time.

#### 4. Schedule of Affiliated Transactions

IBEW submits that the Commission should require PECO to produce, on an annual basis, a Summary Schedule Affiliate Transactions report, similar to that of the Delmarva Power & Light Company Schedules of Affiliate Transactions of Delmarva Power & Light Company for the Year Ended December 31, 2023.<sup>160</sup> The Union asserts that such a report would shed some “much-needed light” on PECO's reliance on, amongst other things, the resources of the other members of the Exelon family of companies.<sup>161</sup> The Union submits that PECO be required to do the same in this docket and serve a copy of the same to all parties by May 30 of each year until its next rate application.<sup>162</sup> This reporting will ensure, IBEW asserts, that PECO is charging and being charged an appropriate amount; i.e., other Exelon companies are not charging

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<sup>158</sup> PECO Main Brief at 34.

<sup>159</sup> *Id.*

<sup>160</sup> Exh. IBEW-1.

<sup>161</sup> Exh. IBEW-1. IBEW references The Delaware Public Service Commission approved the filing of a similar report, which is an exhibit in this case—Exh. IBEW-1—in DE PSC Order No. 5469, p. 8 & Attachment “A,” pp. 2–3, 202 P.U.R.4th 53, 2000 Del. PSC LEXIS 116, at \*\*16 & 31 (Del. P.S.C. June 20, 2000).

<sup>162</sup> IBEW Main Brief 19.

PECO inflated costs that do not reflect the value of what is being acquired by PECO and then passing those expenses on to ratepayers.<sup>163</sup>

IBEW notes that Delmarva Power & Light Co is required to report interactions between DPL and its unregulated affiliates as governed by the Cost Allocation Manual and Code of Conduct approved by the DE PSC in Order No. 5469 in PSC Docket No. 99-582.139. IBEW avers that the Delaware Code of Conduct requires DPL among other things, to report to the DE PSC, on an annual basis, all affiliated companies, contracts entered into with affiliated companies, transactions undertaken with affiliates without written contract, and data regarding affiliate transaction costs.<sup>164</sup>

PECO opposes this requirement, arguing that IBEW is recommending that the Commission require PECO to comply with regulatory requirements related to affiliate transactions and costs in a different jurisdiction.<sup>165</sup> PECO asserts that its affiliate agreements are subject to Commission review and approval and PECO's affiliate transactions are periodically audited by the Commission pursuant to 66 Pa.C.S. § 2102. PECO also avers that such affiliate-related transactions are subject to review in PECO's base rate cases. Further, PECO argues, if the Commission believes that annual reporting regarding affiliate transactions, similar to those required in Delaware, is

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<sup>163</sup> *Id.*

<sup>164</sup> PECO St. 3-R, p. 22. 139; *See In the Matter of the Application of Delmarva Power & Light Co., d/b/a Conectiv Power Delivery, For Approval of a Cost Acctg. Manual and a Code of Conduct*, Docket No. 99-582, 2000 WL 1035896 (Del.P.S.C.), 202 P.U.R. 4th 53 (Order No. 5469 June 20, 2000).

<sup>165</sup> PECO references the Cost Allocation Manual and Code of Conduct approved by the DE PSC in Order No. 5469 in PSC Docket No. 99-582 that requires such reporting. PECO Main Brief at 34; *See In the Matter of the Application of Delmarva Power & Light Co., d/b/a Conectiv Power Delivery, For Approval of a Cost Acctg. Manual and a Code of Conduct*, Docket No. 99-582, 2000 WL 1035896 (Del.P.S.C.), 202 P.U.R. 4<sup>th</sup> 53 (Order No. 5469 June 20, 2000).

necessary, that obligation should be established through a generic, statewide proceeding and be applicable to all utilities.

The Schedule of Affiliated Transactions Report proposed by IBEW is prudent and would provide information that could be illuminating and provide relevant cost information in a rate case. However, PECO raises a legitimate question: Is this the proper procedure through which to require such a report or should it be established through a proceeding in which it would be determined that the affiliated entities report would be required of all utilities? Although not a modification of the Settlement, it will be recommended that the Commission direct TUS to review the usefulness of requiring a Schedule of Affiliated Transactions Report.

## IX. STATEMENTS IN SUPPORT OF THE SETTLEMENT

Parties to the Settlement provided Statements in Support addressing various issues in the settlement

### A. Black Box Settlement and in the Public Interest

The Joint Petition is the result of a “Black Box” agreement, which does not specifically identify the resolution of certain disputed issues.<sup>166</sup> Instead, an overall increase to base rates is agreed to and Joint Petitioners retain all rights to further challenge all issues in subsequent proceedings. The Commission has determined that a “Black Box” settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely

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<sup>166</sup> *Pa. Pub. Util. Comm’n v. Venango Water Co., Docket No. R-2014-2427035 at 11 (Order entered June 11, 2015).*

manner while avoiding significant additional expenses.<sup>167</sup> Even though all details of the Settlement are now known in a Black Box settlement, I&E requests approval of the Joint Petition for Settlement because it believes that it meets all the legal and regulatory standards necessary for approval and is in the public interest.<sup>168</sup>

As PECO explains, the Joint Petitioners have neither agreed upon, nor identified, their individual assessments of the various subsidiary components of the overall revenue requirement upon which they settled. The Joint Petitioners' approach facilitates settlements by allowing parties to agree to an overall settled outcome that all parties find reasonable without abandoning or reversing their litigation positions on issues they deem important and thereby compromising their ability to present their arguments in other proceedings where settlement may not be possible.<sup>169</sup> For example, SEPTA noted that the Settlement critically resolved SEPTA's service-related issues.<sup>170</sup>

I&E states that issues it raised in its Prehearing Memo and testimony were satisfactory resolved through discovery and discussion with the company and are part of the Black Box resolution.<sup>171</sup> As PECO notes and references, the Commission has approved black box settlements of base rate increases for many large utilities.<sup>172</sup>

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<sup>167</sup> *Id.*

<sup>168</sup> *Pa. Pub. Util. Comm'n v. Venango Water Co.*, Docket No. R-2014-2427035 (Order entered June 11, 2015); *See* 52 Pa. Code §5.231; *see also Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

<sup>169</sup> *See* 52 Pa. Code §§ 5.231, 69.401.

<sup>170</sup> SEPTA St. S at 2.

<sup>171</sup> I&E St. S. at 14.

<sup>172</sup> *See* PECO St. S., p. 8, n. 9.

Walmart is satisfied that the Settlement allocation does not reflect any specific, unjustified, or discriminatory benefit to any single class of ratepayers, and while alternative allocations could have been achieved in concert with various parties' different proposals through further litigation, Walmart proffers that the Settlement will produce generally just and reasonable cost-based allocations for the limited time period until the Company's next rate case filing.<sup>173</sup> Walmart further believes that the Settlement produces a non-discriminatory result that is in the public interest and advances the Commission's policy favoring settlements.<sup>174</sup>

CAUSE-PA asserts that the terms of this proposed Settlement are in the public interest and should be approved without modification.<sup>175</sup>

OCA avers that, with the limited exceptions contained in the Settlement, this Settlement represents a “black box” settlement of all revenue requirement and return on equity issues. Black box settlements, OCA asserts, provide timely resolution of disputes without the significant expense of prolonged litigation, especially unlikely when the parties would have been able to reach consensus on each disputed accounting and ratemaking issue in this matter as policy and legal positions can differ widely.<sup>176</sup>

PAEUIG asserts that the Joint Petition reflects compromises on various positions presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding.<sup>177</sup>

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<sup>173</sup> Walmart St. S. at 3.

<sup>174</sup> Walmart St. S. at 3.

<sup>175</sup> CAUSE-PA St. S. at 18.

<sup>176</sup> OCA St. S. at 5-6.

<sup>177</sup> PAEUIG St. S. at 4.

B. Revenue Requirements (Joint Petition, ¶¶ 13-14)

PECO states that since the Company's current base rates became effective on January 1, 2023, the Company has continued to make substantial investments in its gas distribution system to ensure that customers can continue to receive safe and reliable service, noting that it will invest approximately \$786 million in new and replacement gas utility plant in 2024 and 2025. As it makes this investment, PECO avers, materials and contracting costs have escalated as a result of general inflationary trends and high interest rates.<sup>178</sup> PECO asserts that increased investment and rising financial costs, have compromised the Company's ability to earn a fair return on its investment absent rate relief. The Company notes that on a pro forma basis, PECO gas distribution operations are projected to produce an inadequate overall return on invested capital of 5.82%, and a return on common equity of only 6.90%, during the twelve months ending December 31, 2025.<sup>179</sup>

PECO asserts that absent rate relief, PECO's financial results would deteriorate even further in 2026 and thereafter and could jeopardize PECO's ability to appropriately invest in the infrastructure needed to maintain and improve its safety, reliability, and customer service levels. PECO asserts that because the gas distribution function is an extremely capital intensive venture, it necessary that the Company obtain the increased revenues in the Settlement in order to maintain and possibly improve its credit ratings.<sup>180</sup>

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<sup>178</sup> PECO St. 2, pp. 3-7.

<sup>179</sup> PECO St. 2, p. 7; PECO Ex. MJT-1 Revised, Sch. A-1. (PECO St. 5).

<sup>180</sup> PECO St. S. at 1-12.

Noting that many of SEPTA’s users are low income, SEPTA points out that the lower increase reached here keeps fare increases to a minimum, reducing the negative impact on SEPTA and its customers.<sup>181</sup>

I&E emphasizes that in this Settlement, the DSIC will be set to zero. Also, I&E notes, the Settlement Rate annual increase of \$78 million is close to the I&E recommended revenue requirement of \$75.1 million.<sup>182</sup>

Walmart also supports the revenue requirements terms as it is a lessor increase than originally sought.<sup>183</sup>

CAUSE-PA expert witness Elizabeth Marx, Esq. testified regarding the impact of a rate increase on low-income households that currently struggling to make ends meet.<sup>184</sup> Given that the Settlement rate increase is lower than initially requested and the Settlement includes “critical enhancements to universal service programs and customer protections” to “mitigate unaffordability,” discussed herein, CAUSE-PA finds that the settlement reasonably balances the interests of the parties.<sup>185</sup> CAUSE-PA also supports the Settlement because it is a decrease from the original proposal and a reduction in the revenue requirements lessens the impact of a rate increase on low-income customers.<sup>186</sup>

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181 SEPTA St. S. at 2-3.

182 I&E St. S. at 6.

183 Walmart St. S. at 3.

184 CAUSE-PA St. 1.

185 CAUSE-PA St. S, at. 5-6.

186 CAUSE-PA St. S. at 5.

OSBA finds that “a time when all types of utility service are becoming more expensive, and the results of the COVID-19 pandemic continues to impact customers, the significant reduction in the overall revenue increase provided by the *Settlement* will benefit all of PECO’s consumers, including the Company’s small business customers.”<sup>187</sup>

C. Stay-Out (Joint Petition, ¶ 15)

I&E notes that the Settlement provides a level of rate stability that otherwise available in a fully litigated case because it provides that PECO will not file another general base rate case prior to March 16, 2026.<sup>188</sup> PECO agrees, stating that this stay out provision will provide PECO customers with rate stability for at least approximately two years.<sup>189</sup>

CAUSE-PA supports this provision as imperative as a means of mitigating rate unaffordability and as one that will allow low- and moderate-income residential customers to access safe and reliable service with certainty that PECO will not file to increase costs for gas service prior to March 2026.<sup>190</sup>

Walmart also supports this provision, stating that it provides an additional benefit of temporary rate stability to the Company's customers.<sup>191</sup>

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<sup>187</sup> OSBA St. S. at 2.

<sup>188</sup> I&E St. S at 8.

<sup>189</sup> PECO St. S. at 15.

<sup>190</sup> CAUSE-PA St. S. at 6.

<sup>191</sup> Walmart St. S. at 2.

D. Revenue Allocation and Rate Design (Joint Petition, ¶¶ 16-20)

During these proceedings, PECO submitted a fully allocated class cost of service study (the “COSS”), which was prepared and sponsored by Company witness Jiang Ding<sup>192</sup> PECO states that the revenue allocation effected by the Settlement Rates and depicted in Paragraph 16 of the Joint Petition are a reasonable movement toward the system average rate of return by the various customer classes as measured by the Company’s COSS.<sup>193</sup>

One conspicuous feature of the Settlement is that the Residential (“GR”) Net Revenue percentage increase is 16.7% and the General Service (“GC”) increase is 16.0%.<sup>194</sup> OSBA explains that the PECO COSS demonstrated that the GC and Gas Transportation (“TS-I” and “TS-F”) were over-recovering their respective cost of service and GR was significantly under-covering its cost of service.<sup>195</sup> The Settlement, OSBA asserts, assigns the small business GC class and the TS-I class a less than system average revenue allocation and resulted in a negotiated assignment of greater than system average increase to the GR rate, a just and reasonable resolution.<sup>196</sup>

Also, OSBA notes, in its original filing, PECO proposed to maintain a uniform GC customer charge at \$36.38 per month in 2025 and to implement differentiated customer charges for large (\$40.61) and small (\$29.36) Rate GC

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<sup>192</sup> PECO St. 6 and accompanying exhibits.

<sup>193</sup> PECO St. S. at 16-17.

<sup>194</sup> Joint Petition at 6.

<sup>195</sup> OSBA St. 1, at 16, 18.

<sup>196</sup> OSBA St. S., at 4.

customers based on meter size on January 1, 2026. The OSBA agreed with this proposal and believes that it is a just and reasonable result.<sup>197</sup>

The Joint Petition also proposes rate design for the TS-I and TS-F classes, as set forth in Appendix B.<sup>198</sup> Specifically, PECO agreed to reduce the current volumetric rate differential for Rate TS-F from 2.1 to 2.0, instead of 1.49 as originally proposed.<sup>199</sup> In addition, PECO agreed to reduce the current volumetric rate differential for Rate TS-I no backup customers from 1.88 to 1.74, instead of 1.67 as originally proposed.

I&E points out that PECO proposed to increase the Rate GR monthly Customer Charge from \$10.50 to \$19.38 and, in the Settlement, the Company agreed to set the rate GR monthly Customer Charge at \$15.70 per month.<sup>200</sup> PECO avers that this residential customer charge is fully supported by the analysis of its expert witness Ms. Ding and provides PECO with a steady, predictable level of income that will allow for proper maintenance and upkeep of the system.<sup>201</sup>

PECO also notes that Paragraph 20 of the Settlement resolves issues between the OCA and PECO that pertain to the offset factor applied to reconcilable

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<sup>197</sup> OSBA St. S., at 3; Joint Petition, at ¶ 17.

<sup>198</sup> Joint Petition, at ¶ 19.

<sup>199</sup> Joint Proposed Findings of Fact, at ¶ 26.

<sup>200</sup> I&E St. S. at 8-9.

<sup>201</sup> PECO Exhibits JD-5, JAB-1;

Customer Assistance Program (“CAP”) costs recovered through the Company’s Universal Services Fund Charge.<sup>202</sup>

PAEIUG members receive service under TS-F and TS-I. Addressing rate increases under these schedules, PAEIUG notes that Rate TS-I will receive an increase of 4.5% and Rate TS-F will receive an increase of 16.5% and supports the Joint Petition as providing for a reasonable resolution of revenue allocation. It is the position of PAIEUG that the Joint Petition addresses rate design for these classes in a manner that recognizes the need for gradualism and minimizes rate shock.<sup>203</sup>

E. FPFTY Reports (Joint Petition ¶ D.21)

I&E proposed that the Company update PECO Exhibit MJT-2, Schedule C-2 by April 1, 2025, and PECO Exhibit MJT-1, Schedule C-2 by April 1, 2026, to include actual capital expenditures, plant additions, and retirements by month for 2024 and 2025, respectively.<sup>204</sup> PECO has agreed to provide such updates.<sup>205</sup> I&E witness Cline recommended that the Company provide interim reports until the filing of its next base rate case to allow the Commission to measure and verify the accuracy of PECO’s projected investments in future facilities.<sup>206</sup> As I&E witness Cline explained, “there is value in determining how closely PECO Gas’s projected investments in future facility comport with actual investments that are made by the end of the FTY and FPFTY.

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<sup>202</sup> Compare OCA Sts. 4, pp. 104-09 and OCA St. 4SR, pp. 6-9 with PECO St. 10, pp. 3-7; PECO St. 3-R, pp. 25-27; PECO St. 10-R, pp. 19-20; Tr. 822-24 (Trzaska).

<sup>203</sup> PAEIUG ST. S. at 4.

<sup>204</sup> I&E 21 St. 3, pp. 6-7.

<sup>205</sup> See Joint Petition ¶ 21; PECO St. 3-R, pp. 5-6.

<sup>206</sup> I&E St. 3 p. 9.

Determining the correlation between PECO’s projected and actual results will help inform the Commission and the parties in PECO Gas’s future rate cases as to the validity of the Company’s projections.”<sup>207</sup>

OCA notes 66 Pa.C.S. § 315(e), which states that whenever a utility utilizes a fully projected future test year (FPFTY) as the basis for its rate increase, the utility shall provide appropriate data evidencing the accuracy of the estimates of its FPFTY. The OCA asserts that this Settlement provisions requiring reporting of the capital expenditures, plant additions and retirements for the FTY is in the public interest because it is consistent with Section 315. Further, OCA states, this reporting requirement will permit parties to compare the accuracy of PECO’s projections to its actual expenditures.<sup>208</sup> OSBA agrees with the utility of such a report and also states that collection and presentation of such information will assist the OSBA in representing small business customers of the Company in the next rate case.<sup>209</sup>

F. NO DSIC during the calendar year ending December 31, 2025 (Joint Petition ¶ E.22)

PECO notes that Section 1358(b)(1) of the Code requires that a utility’s DSIC be reset to zero on the effective date of new base rates.<sup>210</sup> Section 1358(b)(2) specifies when, after such a “reset,” a utility may begin to charge a DSIC.<sup>211</sup> In its

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<sup>207</sup> I&E St. 3, p. 9.

<sup>208</sup> OCA St. S. at 8.

<sup>209</sup> OSBA ST. S. at 4; 66 Pa.C.S. 1358(b)(1).

<sup>210</sup> PECO St. S., at 21.g.

<sup>211</sup> **(b) Charge reset.--(1)** The distribution system improvement charge shall be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs previously recovered under the distribution system improvement charge.**(2)** After the reset date under paragraph (1), only the fixed costs of

Supplemental Implementation Order, the Commission has set forth its criteria for determining when a utility may charge a DSIC following a base rate “reset.”<sup>212</sup> The Settlement provides that the DSIC rate will be reset to zero, effective January 1, 2025, PECO will not implement a DSIC during the calendar year ending December 31, 2025 and the first DSIC in 2026 will be effective no earlier than March 31, 2026.<sup>213</sup>

I&E avers that this is in the public interest because ratepayers will have a defined period of time during which they will be relieved from paying any DSIC costs; however, even when the DSIC charge becomes effective, the customers will benefit from the assurance that improved infrastructure will facilitate safe and reliable service.<sup>214</sup>

OCA notes that \$4.679 million is PECO’s total aggregate plant costs claimed in the FPFTY ending December 31, 2025 and that as an “additional safeguard” to limit the imposition of DSIC related increases, the Company will not begin to impose a DSIC until the total aggregate gross plant costs (before retirement, depreciation or

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new eligible property that have not previously been reflected in the utility's rate base shall be reflected in the quarterly updates of the distribution system improvement charge.**(3)** The distribution system improvement charge shall be reset at zero if, in any quarter, data filed with the commission in the utility's most recent annual or quarterly earnings report show that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the distribution system improvement charge. 66 Pa.C.S. § 1358(b).

<sup>212</sup> Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Final Supplemental Implementation Order entered Sept. 21, 2016) (“Supplemental Implementation Order”).

<sup>213</sup> PECO St. S. at 21.

<sup>214</sup> I&E St. S., at 10-11.

amortization in 2024 and 2025) associated with the eligible property that has been placed in service exceed \$4,679,514.<sup>215</sup>

G. Universal Service Program (Joint Petition ¶ F.25-35)

CAUSE-PA recommended that PECO increase its Low-Income Usage Reduction Program (“LIURP”) by \$1,850,000 for a total of \$5,000,000.<sup>216</sup> PECO has agreed to increase its LIURP budget by \$500,000 from \$3.15 million to \$3.65 million, in response to the CAUSE-PA request.

While I&E states that a universal service proceeding is the proper forum for addressing this issue, I&E also finds that this additional funding to assist low-income ratepayers is a reasonable compromise.<sup>217</sup>

OCA supports this LIURP increase as a benefit to low-income customers and also believes that such a commitment by the Company could have only been achieved through a compromise in settlement, which weighs in favor of the public interest.<sup>218</sup>

CAUSE-PA specifically supports Paragraphs 25 and 26 of the proposed Settlement that requires PECO to participate in the Department of Human Services (DHS) data sharing program. As explained by CAUSE-PA, PECO will automatically recertify CAP customers without need for further action by the customer. CAUSE-PA

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<sup>215</sup> OSBA St. S. at 3.

<sup>216</sup> CAUSE-PA St. S., at 9-10; CAUSE-PA St. 1, at 33.

<sup>217</sup> I&E St. S. at 11.

<sup>218</sup> OCA St. S at 12.

believes that this term will decrease the number of CAP customers who face burdensome recertification requirements and will therefore decrease the number of customers removed from CAP for failure to recertify despite their ongoing eligibility for the program.<sup>219</sup>

CAUSE-PA also supports Paragraphs 28, 29, and 30 and view them as making significant changes in the Matching Energy Assistance Fund (“MEAF”) program. Among the changes, a required PECO compliance filing in its Universal Services and Energy Conservation Plan docket by March 1, 2025 will amend its MEAF program to set maximum grants at \$1,250 per account (raising it from \$500 per commodity) and remove the requirement that a customer bring their total account balance to zero (including current charges) with a MEAF grant in order to receive those funds.<sup>220</sup> Also, CAUSE-PA notes, there are additional reporting requirements and oversight requirements, which CAUSE-PA asserts will increase accessibility to the funds.<sup>221</sup>

OCA states that its witness Colton and OSBA witness Marx pointed out several concerns regarding the impact of rate increases on low-income customers. The provisions of this section, OCA asserts, address the concerns raised by the testimony and will help to mitigate the impact of the rate increases and provide protections for customers.<sup>222</sup> OCA also opposed the CAP offset initially proposed by PECO as it

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<sup>219</sup> CAUSE-PA St. S. at 8.

<sup>220</sup> CAUSE-PA St. S. at 10-11.

<sup>221</sup> *Id.*

<sup>222</sup> OCA St. S. at 9.

would ultimately affect the cash working capital portion calculations. In the Settlement, the CAP Offset remains unchanged.<sup>223</sup>

H. Customer Service and Consumer Protection (Joint Petition ¶¶ G.36-42).

Paragraph 36 requires PECO to investigate call handling issues revealed in its 2022 Audit Report. CAUSE-PA is in favor of all improvements in call handling and also supports the provisions that require PECO to review or terminations for any disparity in treatment, language access and payment processing fees.<sup>224</sup>

I. Gas Safety (Joint Petition ¶¶ H.43-49)

The provisions contained in the Gas Safety portion of the settlement were important issues for I&E. I&E championed a need for better method to analyze risk on a more granular level. As I&E witness Salamonski explained, having a less granular approach to threat categories may have an impact on pipeline replacement and public safety. A more granular approach helps to ensure that the riskiest assets are correctly prioritized and serves to protect public safety.

In this Settlement, PECO has agreed that it will commit to building a new Power BI dashboard to analyze risk at a more granular level and to add more factors into its risk model.<sup>225</sup> I&E also commends PECO for agreeing to continue to identify and locate inaccurate facilities in its mapping to further reduce risk to the public as well as color coding facilities and other changes in its brochures to assist in the identification

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<sup>223</sup> OCA St. S. at 10.

<sup>224</sup> CAUSE-PA St. S. at 15-18.

<sup>225</sup> I&E St. 4, p. 7.

of gas lines to reduce risk and identify areas of risky pipe that may need to be repaired or replaced.<sup>226</sup> I&E views these terms as a full and fair compromise that provides PECO, the Joint Petitioners, ratepayers, and the Commission with a resolution which is in the public interest.

J. Customer Programs (Joint Petition ¶¶ I.50-51)

OCA did not object to customer programs inclusion in the Settlement. I&E does not oppose the customer programs in the Settlement. CAUSE-PA and OSBA took no position on this section.

K. Tariff Changes (Joint Petition ¶¶ J.52)

I&E believes that the tariff charges are necessary and appropriate.

X. RECOMMENDATION - Non-Unanimous Partial Settlement

Given the policy statements and decisions of the Commission when there is a settlement in a rate case, there is very little occasion or room to modify a settlement or recommend that a settlement not be approved. This is particularly true where it is a Black Box settlement and all components of the settlement are not made public or known to the Commission or the presiding officers.

As PECO asserts, it is the Commission's long-standing policy, practice, and precedent, embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401, to strongly encourage parties to

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<sup>226</sup> I&E St. 4, pp. 26-27.

resolve contested proceedings through settlement. The Commission stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.”<sup>227</sup>

IBEW opposed the settlement and sought additional Customer Service Representative Training, employment and personnel actions and additional reporting requirements that it averred would aid and make more efficient the operations of PECO. However, a question is raised: Is a rate case the appropriate forum for such issues? As previously noted, Section 315(a) of the Code cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.<sup>228</sup> For most of its proposals, IBEW has not presented substantial evidence that would require modifying the Settlement to include its proposals.

As PECO asserts, the Settlement results in a reasonable revenue allocation that required a careful balancing of the countervailing interests of the non-utility parties representing the various customer classes, a give and take process and result.<sup>229</sup>

As CAUSE-PA states “[t]his Settlement was arrived at through good faith negotiation by all parties. As a whole, in light of the totality of facts and circumstances

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<sup>227</sup> PECO St. S. at 6.

<sup>228</sup> 66 Pa.C.S. § 315(a).

<sup>229</sup> PECO St. S. at 19-20, 23; See *Lloyd v. Pa. Pub. Util. Comm’n*, 904 A.2d 1010 (Pa. Cmwlth. 2006); *Pa. Pub. Util. Comm’n. v. Phila. Suburban Water Co.*, 75 Pa.P.U.C. 391, 440 (1991); *U.S. Steel Corp. v. Pa. Pub. Util. Comm’n.*, 390 A.2d 865, 872 (Pa. Cmwlth. 1978).

presented in this case, .... the proposed Settlement strikes an appropriate balance of the many and varied interests of the parties to the Settlement.”<sup>230</sup>

While the proposed Settlement does provide for a rate increase, which will have an impact in this time of inflation, the provisions within the settlement are just and reasonable as agreed to by the parties and, as the Settlement Rate is lower than the total initially sought by PECO, it will help mitigate the impact of increased rates on all households – especially those middle-income customers who pay their bills with no assistance.

The Settlement was reached after extensive discovery and examination of PECO’s filing and proposals. The parties reviewed detailed written testimony and clarified issues with oral rejoinder and cross-examination. Terms of the settlement provide a limited increase, less than PECO initially requested, and provides enhancements to customer service, gas safety and assistance to low-income customers.

It will be recommended that the Commission approve and grant the Joint Petition with a modest modification that a copy of the report concerning a review of the 2022 Customer Service Audit be provided to TUS and IBEW. Outside of the scope of the Joint Petition, it will be recommended that TUS review the utility of PECO filing a Schedule of Affiliated Transactions Report as discussed by IBEW.

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<sup>230</sup> CAUSPE-PA St. S. at 3.

XI. CONTESTED ISSUE - Weather Normalization Adjustment

PECO asks that the Commission authorize the Company to impose a WNA on its customers. A WNA is a mechanism that adjusts a customer’s bill due to variations from normal weather temperature.

A. Applicable Law

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. § 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 Commission may authorize the implementation of alternative ratemaking mechanisms, such as decoupling mechanisms like the WNA; however, in order to implement an alternative ratemaking mechanism, the proposing utility must provide substantial evidence that the specific mechanism, proposed by the utility, would result in just and reasonable rates.<sup>231</sup>

To determine “just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose” of the Commission’s policy and the policy laid out in Section 1330, the Commission, in a policy statement, developed 14 factors to be considered.<sup>232</sup>

Section 1330 does not waive the Public Utility Code’s burden of proof requirements, or the Administrative Agency Law’s requirement that the decisions of Commonwealth agencies – including the Commission – be supported by substantial

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<sup>231</sup> 66 Pa.C.S. §§ 315(a), 1330.

<sup>232</sup> 52 Pa. Code § 69.3302(a).

evidence.<sup>233</sup> In determining whether the WNA proposed here is just and reasonable, the Commission looks at various consideration, as follows:

**§ 69.3302. Distribution rate considerations.**

(a) In determining just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose and scope of this statement of policy and the objectives of 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities), the Commission may consider, among other relevant factors, the following:

(1) How the ratemaking mechanism and rate design align revenues with cost causation principles as to both fixed and variable costs.

(2) How the ratemaking mechanism and rate design impact the fixed utility's capacity utilization.

(3) Whether the ratemaking mechanism and rate design reflect the level of demand associated with the customer's anticipated consumption levels.

(4) How the ratemaking mechanism and rate design limit or eliminate interclass and intraclass cost shifting.

(5) How the ratemaking mechanism and rate design limit or eliminate disincentives for the promotion of efficiency programs.

(6) How the ratemaking mechanism and rate design impact customer incentives to employ efficiency measures and distributed energy resources.

(7) How the ratemaking mechanism and rate design impact low-income customers and support consumer assistance programs.

(8) How the ratemaking mechanism and rate design impact customer rate stability principles.

(9) How weather impacts utility revenue under the ratemaking mechanism and rate design.

(10) How the ratemaking mechanism and rate design impact the frequency of rate case filings and affect regulatory lag.

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<sup>233</sup> 2 Pa.C.S. § 704.

(11) If or how the ratemaking mechanism and rate design interact with other revenue sources, such as Section 1307 automatic adjustment surcharges, 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments), riders such as 66 Pa.C.S. § 2804(9) (relating to standards for restructuring of electric industry) or system improvement charges, 66 Pa.C.S. § 1353 (relating to distribution system improvement charge).

(12) Whether the alternative ratemaking mechanism and rate design include appropriate consumer protections.

(13) Whether the alternative ratemaking mechanism and rate design are understandable to consumers.

(14) How the ratemaking mechanism and rate design will support improvements in utility reliability.

(b) In any distribution rate filing by a fixed utility under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) that proposes an alternative ratemaking mechanism and rate design, the fixed utility shall explain how these factors impact the distribution rates for each customer class.<sup>[234]</sup>

It is a primary concern of the Commission that alternative ratemaking is, in some way, rooted in the cost of service.<sup>235</sup> As is stated 52 Pa. Code § 69.3301, “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.”

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<sup>234</sup> 52 Pa. Code § 69.3302.

<sup>235</sup> 52 Pa. Code §§ 69.3301, 69.3302(a).

## B. Discussion

IBEW supports the PECO WNA proposal. OCA, CAUSE-PA and OSBA oppose the WNA. I&E neither opposes nor supports the WNA but raises questions regarding its implementation.

### 1. PECO

In support of its request to employ a WNA, PECO first states that WNAs have been in place in the Commonwealth for over a decade, referencing companies that are authorized to use this additional billing device. PECO also states that amounts paid to the Company by customers is based on volumetric rates and because actual weather will vary, what is collected by the Company will not exactly match the volumetric cost recovery authorized by the Commission. PECO contends that if the temperatures are colder than “normal,” customers will pay more than the authorized revenue and if the temperature is warmer than normal, it will result in customers paying less than the authorized revenue. PECO avers that this will negatively affect its ability to attract capital necessary to fund its investments and impair its ability to maintain and enhance the safety of its system.<sup>236</sup>

With implementation of the PECO WNA proposal, “weather,” will be measured in Heating Degree Days (HDDs), or the number of degrees below 65 for each day in a billing period. “Normal weather” will be determined by averaging the annual number of Normal Heating Degree Days (NHDDs) for the past 30 years, updating each year with data from the previous year.<sup>237</sup>

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<sup>236</sup> PECO St. S. at 11 (citing PECO St. 3, pp. 67, 79-80).

<sup>237</sup> PECO Gas St. 3R at 14.

PECO also contends that such an additional charge will not be unfair to customers because the WNA will provide credits to customers when weather is colder than “normal” and that the Company will benefit from certainty in revenue when the weather is warmer than “normal.”<sup>238</sup> PECO also argues that low income customers will not be impacted by the WNA and will be protected from bill increases if the weather is colder than normal and provide them with greater billing predictability and stability than budget billing alone.<sup>239</sup>

PECO further contends that consideration of the factors of the Commission policy statement regarding alternative distribution ratemaking, support the WNA, specifically:

(i) the WNA will better align distribution revenues with cost causation principles, appropriately accounting for customer variation in usage due to weather; (ii) the WNA does disincentivize energy efficiency as the WNA mechanism only addresses variations due to weather; (iii) customers will continue to be incentivized to employ energy efficiency measures and distributed energy resources as the WNA mechanism will not impact savings from non-weather related reductions in usage; (iv) CAP customers will not be disproportionately impacted by the WNA mechanism; (v) the WNA will improve rate stability in customer billing and mitigate volatility in monthly costs; (vi) the WNA will insulate customers from higher bills during colder-than-normal months; (vii) the WNA is understandable as it is not a new concept to gas customers in Pennsylvania or the broader regulated utility industry and PECO will develop appropriate educational materials and customer service training; and (viii) the

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<sup>238</sup> PECO ST. S. at 12 citing PECO St. 3-R, pp. 11-2.

<sup>239</sup> PECO St. S. at 14.

WNA will improve reliability by ensuring the Company recovers its cost of service.<sup>[240]</sup>

## 2. IBEW

IBEW supports the WNA. The Union asserts that the WNA mechanism will further two goals. They are (1) providing customers with more predictability in their billing and (2) providing PECO greater certainty in its ability to earn distribution revenues authorized the Commission. IBEW further argues that PECO alone should not bear the full risk of climate change, and that PECO is entitled to recover its costs.<sup>241</sup>

## 3. OCA

Opposing the WNA, OCA notes that the proposed WNA would adjust the monthly bills of residential and small and medium sized commercial customers “for the quantity of gas which the Company *projected* they would use based on predicted “normal” weather for that month.”<sup>242</sup> As aptly described by OCA, PECO Gas’s stated purpose of the WNA is to smooth the Company’s revenues to seek to ensure that the Company earns its entire revenue requirement established in this case despite declining usage, which may or may not stem from weather-related reasons.<sup>243</sup> With the WNA, a customer would be charged “for the quantity of gas the Company believes the customer hypothetically would have used had the weather been as cold as the Company

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<sup>240</sup> PECO Main Brief at 16 (citing PECO St. 3 p. 75-79) (footnotes omitted).

<sup>241</sup> IBEW Main Brief at 6.

<sup>242</sup> OCA St. 6 at 6 (emphasis added).

<sup>243</sup> OCA Main Brief at 3 (citing PECO Gas St. 3 at 66- 67).

anticipated; the inverse is true for weather that is colder than the Company anticipated, resulting in a credit on customers' bills."<sup>244</sup>

OCA maintains that the adjustment and equation that PECO proposes to use does not take into consideration usage unrelated to weather, negating any savings that would be achieved through conservation or energy efficiency measures taken by the customer. The equation that is proposed for the WNA is as follows:

$$\text{adjusted usage} = \text{baseload usage} + \left[ \frac{(\text{"normal weather"} \pm (\text{"normal weather"} * 0.01))}{\text{actual weather}} * (\text{actual usage} - \text{baseload usage}) \right] - \text{actual usage}$$
$$\text{WNA} = \text{adjusted usage} * \text{distribution charge}$$

A customer would be charged extra if the weather is warmer than “normal,” whatever that may be, because the formula assumes that the lower usage is due to the weather.<sup>245</sup>

OCA further submits that the proposed WNA fails to meet factors 1,3,4 and 14 of 52 Pa. Code § 69.3302(a). Unlike the FPFTY and DSIC, WNA recovery is unlimited, without a definitive endpoint, many company costs that impact the WNA are not fixed, it provides greater recovery for less usage, which OCS categorizes as the ‘inverse’ of relationship of cost of service over the WNA horizon of recovery.<sup>246</sup>

As far as factor 8, OCA submits that budget billing, which is currently available to PECO customers, already addresses any concerns about greatly fluctuating bills for PECO customers.<sup>247</sup> Furthermore, OCA asserts, PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy

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<sup>244</sup> OCA St. S. at 3 (citing PECO Gas St. 3 at 15).

<sup>245</sup> OCA St. S. at 4-5.

<sup>246</sup> OCA Main Brief at 15.

<sup>247</sup> 52 Pa. Code § 69.3302(a)(8) (How the ratemaking mechanism and rate design impact customer rate stability principles.).

statement factor 9.<sup>248</sup> According to OCA expert testimony, the WNA is more likely than not going to net the Company additional revenue each year that it would not receive absent the WNA.<sup>249</sup>

Additionally, OCA finds the parameters of the proposed WNA unacceptable. PECO Gas’s use of a 30-year normalization period further exacerbates this problem by diluting recent weather data – which, by and large, is warmer than less recent data – to create a higher “normal” number of HDDs. OCA notes that if PECO Gas is permitted to implement the proposed WNA, it would be relying on the oldest weather data of any NGDC which has implemented a WNA in Pennsylvania, each of which utilize either a 15-year average or 20-year average.<sup>250</sup> This, OCA asserts, demonstrates that under factor 9 of the Commission’s policy considerations, weather will impact utility revenue positively while having a net negative impact on ratepayers.

OCA submits that PECO Gas has failed to demonstrate that the WNA should be approved under the Commission’s policy statement factors 12 and 13.<sup>251</sup> Customers are also likely to be confused by the WNA, states OCA, noting that all four witnesses who testified regarding the WNA during the Public Input Hearings testified that the WNA was confusing, frustrating, and would make it more expensive.<sup>252</sup>

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<sup>248</sup> 52 Pa. Code § 69.3302(a)(9).

<sup>249</sup> OCA St. 6 at 13.

<sup>250</sup> See OCA Main Brief at 17 (referencing *Pa. PUC v. Phila. Gas Works*, Docket No. R-00017034 (Order entered Aug. 9, 2002); *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2012-2321748 (Order entered May 23, 2013); *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022); *Pa. PUC v. Nat’l Fuel Gas Dist. Corp.*, Docket No. R-2022-3035730 (Order entered June 15, 2023)).

<sup>251</sup> 52 Pa. Code § 69.3302(a)(12), (13).

<sup>252</sup> OCA Exh. ND-1-SD at 12-14.

OCA also pointed out that 52 Pa. Code § 56.15 requires bills to explain how to verify the accuracy of the bill amount and that in these proceedings, PECO Gas has not provided a sample bill containing the WNA to explain how the accuracy of the bill can be calculated considering the five variable equation which calculates the WNA charge. OCA also provided testimony that “An equation with five variables cannot feasibly be used for budgeting or predicting bills. A person can create a visual representation of an equation that has three variables at the most.”<sup>253</sup>

Finally, OCA notes that PECO Gas acknowledged during the hearing that the company has not provided any educational materials which could alleviate concerns that the WNA will be accurately and adequately explained to the subjected customers.<sup>254</sup> OCA submits that PECO Gas’s proposed WNA should not be implemented because “enforcing an alternative ratemaking mechanism which misleads and takes advantage of consumers would not result in just or reasonable rates, and consumer legibility is a critical component of the Commission’s analysis under factors 12 and 13 of its policy statement.”<sup>255</sup>

#### 4. CAUSE-PA

CAUSE-PA contends that PECO has not met its burden of demonstrating that the proposed WNA is just, reasonable or in the public interest. It challenges PECO’s claim that the WNA would both provide PECO with greater certainty in earning distribution revenues and provide customers with more predictability in billing

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<sup>253</sup> OCA St. 6SR at 6.

<sup>254</sup> Tr. 834.

<sup>255</sup> OCA Main Brief at 19.

and protection from the impacts of high bills during winter months. CAUSE-PA presented testimony showing that, in practice, WNAs simply shift weather risks from the company and shareholders to consumers.<sup>256</sup>

Given climate change, CAUSE-PA submits, it is inevitable that the temperatures will rise and the WNA will result in higher bills.<sup>257</sup> Also, CAUSE-PA avers, PECO’s proposal includes a 30-year weather “normal” period that shifts risk to the customers.<sup>258</sup> As detailed by CAUSE-PA witness Mr. Nelson, the Company’s own analysis showed that had the WNA been in effect over the last 10 years, the residential class would have been surcharged between \$94 and \$110 million dollars.<sup>259</sup>

CAUSE-PA also asserts that the WNA will have an unjust and unreasonable impact on Dual Gas and Electric Customers. Expert witness testimony was that a WNA will more likely than not result in higher bills, increasing the probability that at-risk customers will lose both gas and electric service for nonpayment.<sup>260</sup> The organization also posits that the WNA would negatively impact CAP customers by increasing the cost of the program and through the Universal Service Fund Charge, increase the bills of non-CAP customers, and prevent residential customers from receiving the savings benefit of warmer winters.<sup>261</sup>

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<sup>256</sup> CAUSE-PA Main Brief at 8 (referencing CAUSE-PA St. 1 at 67).

<sup>257</sup> CAUSE-PA Main Brief. at 9.

<sup>258</sup> OCA St. 6-SR at 9, 11.

<sup>259</sup> CAUSE-PA St. 1-SR at 5-6. 38 Id. (citing Pa. DEP, Pa. Climate Action Plan, at xi, fig. ES-1 (Sept. 2021)); OCA St. 6 at 12-13; CAUSE-PA St. 1 at 67:6-9.

<sup>260</sup> CAUSE-PA Main Brief at 10-11; CAUSE-PA St. 1-SR at 7:1-6.

<sup>261</sup> *See* CAUSE-PA Main Brief at 12-13 (referencing OCA St. 4; CAUSE-PA St. 1 and 1-SR).

According to CAUSE-PA’s testimony, the calculations of the WNA requires use of a complex equation and frustrate any effort to predict monthly charges.<sup>262</sup> Further, CAUSE-PA states, in accordance with OCA’s concern, a WNA charges customers already struggling to afford service for gas they did not use, reduces incentives to conserve, and creates confusion regarding the impact of energy efficiency investments.<sup>263</sup> CAUSE-PA notes that in 2023, PECO terminated gas to 20,767 households for nonpayment, and involuntarily terminated PECO’s confirmed low-income customers at a rate of 20.9%.<sup>264</sup>

Moreover, CAUSE-PA avers, the proposed WNA violates Cost Causation principles of alternative rate design methodology.<sup>265</sup> By this effective surcharge for gas not used, the WNA allocates costs that were never incurred by PECO. There is also no relationship between costs incurred by PECO and warmer weather when there is reduced use of gas.<sup>266</sup>

## 5. OSBA

OSBA asks the Commission to reject PECO’s proposed WNA. OSBA notes the public opposition to a WNA expressed at the Public Input Hearings.

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<sup>262</sup> CAUSE-PA St. 1-SR at 5; CAUSE-PA St. SR-1 at 4:14-18

<sup>263</sup> CAUSE-PA Main Brief at 13-14; CAUSE-PA St. SR-1 at 4:14-18.

<sup>264</sup> CAUSE-PA St. 1 at 17:11-14; 52 Pa. Code § 69.3302(a)(5); PECO St. 3 at 71.

<sup>265</sup> *See* 52 Pa. Code § 69.3302(a)(1).

<sup>266</sup> CAUSE-PA Main Brief at 14 (citing CAUSE-PA St. 1-SR at 5; CAUSE-PA St. 1 at 66:17-67:6).

The COVID Pandemic, OSBA states, “crushed” small businesses, in addition to the supply chain problems and rampant inflation present today, forcing some small businesses to close.<sup>267</sup> OSBA notes that PECO already employs a FPFTY as well as a DSIC. OSBA submits that it is unreasonable to allow PECO to also employ the WNA.<sup>268</sup>

## 6. I&E

I&E does not directly oppose the WNA but submits that it requires scrutiny if it is approved because a WNA is a departure from traditional ratemaking. Particularly, it allows the Company to adjust a customer’s base rate bill, which was calculated based on Commission approved rates, outside the scope of a base rate case.<sup>269</sup> I&E submits that 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.

## 7. Alternative WNA Measures

I&E and OSBA requested that if the Commission approves PECO’s WNA, it should modify PECO’s WNA to include certain conditions.

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<sup>267</sup> OSBA Main Brief at 4.

<sup>268</sup> *Id.*; OSBA St. 1, at 26-27

<sup>269</sup> I&E Main Brief at 5.

a. Deadband

PECO proposes a WNA with a 1% “deadband.”<sup>270</sup> A deadband is a certain threshold in which the adjustment is not triggered if Actual HDDs are within the Normal HDDs.<sup>271</sup> I&E witness Ethan Cline recommended that if PECO’s request for a WNA is approved, a 3% deadband be implemented.<sup>272</sup> As Mr. Cline notes, his recommendation maintains consistency with the existing WNA’s of Columbia Gas, National Fuel Gas, and UGI Gas.<sup>273</sup> Additionally, witness Cline recommended that PECO 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;
- (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 opposes the I&E recommendation of a 3% deadband, PECO witness Trzaska 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.”<sup>274</sup> I&E witness Cline countered that 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-

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<sup>270</sup> PECO Gas St. 3, p. 69.

<sup>271</sup> I&E St. 3, p. 4.

<sup>272</sup> I&E St. 3, pp. 4-5.

<sup>273</sup> I&E St. 3, p. 6.

<sup>274</sup> PECO Gas St. 3-R, pp. 19-20.

established Commission precedent of applying a 3% deadband to NGDC's WNAs. This standard established by the Commission, Cline states, 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.<sup>275</sup>

I&E also points to a 2021 Columbia Gas Order where the Commission agreed with the finding of the Administrative Law Judge 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.”<sup>276</sup>

b. WNA proposal amendments – OSBA

OSBA opposes implementation of the WNA but proposes that if the Commission allows this additional charge to be levied upon PECO customers, the Commission should do so while imposing certain restrictions: They are:

- i. PECO’s WNA will not apply when actual Heating Degree Days for any billing period are below 100 Heating Degree Days. This is to avoid the problems encountered with the Philadelphia Gas Works WNA which resulted in extreme charges in May of 2022.
- ii. PECO shall be required to continuously monitor small business’s implied heating usage per degree day. allow PECO and the parties to ascertain 1 At the time of this writing. 2 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.

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<sup>275</sup> I&E St. 3-SR at 3.

<sup>276</sup> *Pa. P.U. C. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, Order entered February 19, 2021, pp. 264-265).

- iii. PECO's return on equity should be reduced as the Company has less distribution revenue 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.
- iv. 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. This would bring full disclosure to customers as well as an explanation that would be in the public interest.<sup>277</sup>

## XII. RECOMMENDATION – WNA

While regulations allow consideration of alternative rate mechanism proposed by a utility company, as noted by OSBA, the operative word in Section 1330(a)(1) is "may."<sup>278</sup> There is no requirement or guarantee that a utility will be granted its proposed alternative ratemaking mechanism. Here, the request should be denied.

As stated by OCA, a WNA is a departure from traditional ratemaking in that it allows the Company to adjust a customer's bill outside of the scope of a rate case, with no firm limits, based on what the Company determines in "normal" weather at the time.<sup>279</sup> A utility is not guaranteed a return on its service that is not used. There is nothing indicating that the use of the WNA mechanism helps to alleviate the need for even higher rate requests in the Base Rate Cases. The record does not demonstrate that a WNA is in the public interest, particularly in the case of a company such as PECO

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<sup>277</sup> OSBA Main Brief at 5-6.

<sup>278</sup> OSBA Main Brief at 4.

<sup>279</sup> OCA Main Brief at 13.

that provides both electric and gas service. When the weather is warmer than “normal,” PECO will charge for and benefit from increased use of electricity for cooling.

Other considerations against a WNA are that Calculating the bill with WNA would be complex and it will be difficult for a customer to predict how much will be charged.<sup>280</sup> The budget billing program already available with PECO service provides a method by which a customer can even out bills throughout the year and more easily predict monthly charges.

There is no basis upon which to justify imposing such a charge upon PECO customers. As OSBA witness Ewen stated, “while a WNA mechanism reduces utility risk and therefore should reduce the utility cost of capital, it is difficult to identify any reduction in allowed utility rates of return associated with adoption of WNA mechanisms in Pennsylvania.”<sup>281</sup>

Supported by expert testimony and exhibits, OCA is correct in stating:

While the Company claims many of its costs are fixed, no costs are truly fixed beyond the FPFTY, and those costs which appear to be fixed beyond the test year – which, in reality, are not yet fixed – are recoverable through the DSIC. Therefore, there is no direct cost-of-service foundation for the WNA which, instead of recovering costs in accordance with the Company’s cost of service, provides greater revenues for less usage, demonstrating that recovery under the WNA has an inverse relationship to the cost-of-service over the WNA’s horizon of recovery.<sup>[282]</sup>

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<sup>280</sup> CAUSE-PA St. SR-1 at 4-5.

<sup>281</sup> OSBA St. 1 at 26.

<sup>282</sup> OCA St. 6SR at 10; OCA Exh. ND-1-SD at 12.

Utility Companies are in a business affected by weather. That weather changes. A company such as PECO, which provides both electricity for cooling appliances as well as both electricity and gas for heating, receives income no matter the weather. If there is a colder than normal winter, usage of its services increase. If it is a warmer than usual summer, the usage of its services increase. It is the nature of a utility to have fluctuating usage of its services dependent on the weather. A WNA would act as a bonus to utilities and punishes the customers who conserve by penalizing them for that conservation. The company will reap the benefit of changing weather on its electric or gas side and it is unreasonable to force customer to bear the risk. Moreover, while there is a general push that customers conserve energy usage, the WNA is a disincentive for consumers to conserve, contrary to factors 5 and 6 of 52 Pa. Code § 69.3302(a).<sup>283</sup> Also, Two goals of traditional ratemaking and rate design are 1) that customers understand what costs of service their bill contributes towards, or “price signals,” and 2) that the customer be incentivized to conserve energy and reduce their commodity consumption.<sup>284</sup> The WNA proposed does not achieve either goal.

Also, as noted by CAUSE-PA witness Golden,<sup>285</sup> the WNA is a “particularized harm” for low income customers. leading to higher bills, accrual of arrearages and increased risk of termination, for both services, a consideration under

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<sup>283</sup> (5) How the ratemaking mechanism and rate design limit or eliminate disincentives for the promotion of efficiency programs.

(6) How the ratemaking mechanism and rate design impact customer incentives to employ efficiency measures and distributed energy resources. 52 Pa. Code § 69.3302(a).

<sup>284</sup> *Pa. Pub. Util. Comm’n v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 at 275 (Opinion and Order entered June 22, 2021) (*PECO Gas 2021*).

<sup>285</sup> CAUSE-PA St. 1-SR at 7:1-6.

factor 7 of 52 Pa. Code § 69.3302.<sup>286</sup> Further, that other Companies employ WNAs does not constitute substantial evidence that meets PECO’s burden of proof here.<sup>287</sup>

Continued use of alternative rate-making tools begs the question, “Where does it end?” Mr. Nelms correctly stated at the June 13 Public Input Hearing that the WNA is essentially a charge for a product which customers do not use.<sup>288</sup> Nothing in the record established that such a charge is in the public interest or that it is reasonable or just.

### XIII. OVERALL RECOMMENDATION

We recommend that the Commission: 1) deny the request of PECO to implement a Weather Normalization Adjustment because it is unjust, unreasonable and contrary to the interest of customers and the public, 2) modify the Settlement Agreement to require PECO to provide a copy of its review of its customer service report to IBEW, 3) direct TUS to review the efficacy of a PECO Report on Affiliated Companies as proposed by IBEW and 4) deny remaining requests of IBEW as more

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<sup>286</sup> (7) How the ratemaking mechanism and rate design impact low-income customers and support consumer assistance programs. 52 Pa. Code § 69.3302(a)(7).

Negating any argument that the CAP program protects low-income Customers from the harsh effects of a WNA, OCA witness testimony was that PECO Gas enrolls only a fraction of its low-income customers into the CAP program. OCA St. 4SR at 6. Notably, no consideration is given to middle-income customers who cannot benefit from CAP or get any relief from a WNA.

<sup>287</sup> *Bell Atl. – Pa., Inc. v. Pa. Pub. Util. Comm’n*, 672 A.2d 352 (Pa. Cmwlth. 1995).

<sup>288</sup> Tr. 451.

appropriately raised in another proceeding or not within the authority of the Commission.

#### XIV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 1301, 1308(d).

2. The Commission “has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility’s rates.” *Popowsky v. Pa. Pub. Util. Comm’n*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996).

3. Section 1301(a) of the Code mandates that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.” 66 Pa.C.S. § 1301(a).

4. A utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.” *City of Lancaster Sewer Fund v. Pa. Pub. Util. Comm’n*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

5. A public utility seeking a rate increase has the burden of proof to establish the justness and reasonableness of each element of its request. 66 Pa.C.S. § 315(a). The evidence necessary to meet that burden must be substantial. *Lower Frederick Twp. v. Pa. Pub. Util. Comm’n.*, 409 A.2d at 505 (Pa. Cmwlth.1980).

6. In general rate increase proceedings, the burden of proof does not shift to parties challenging a requested rate increase and the burden of establishing the justness and reasonableness of its rate request is an remains with the public utility.

*Berner v. Pa. Pub. Util. Comm'n*, 116 A.2d 738, 744 (Pa. 1955).

7. The Commission must 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. 66 Pa.C.S. § 523.

8. 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. *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 61 Pa.P.U.C. 409, 415-16 (1986); *See also* 66 Pa.C.S. § 1501.

9. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.

10. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013). In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Windstream Pa., LLC*, Docket No. M-2012-2227108 (Opinion and Order entered Sept. 27, 2012); *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991).

11. Substantial evidence supports finding that the Joint Petition for Non-Unanimous Partial Settlement, with a minor modification, is reasonable, in the public interest and involved compromise between the disparate positions of utilities and advocates. 52 Pa. Code § 5.232(d). *See Pa. Pub. Util. Comm'n v. City of Bethlehem – Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered Apr. 15, 2021).

12. The rates agreed upon in this Settlement are just and reasonable, in the public interest and in accordance with Commission orders and regulations *See* 66 Pa.C.S. § 1301; *Pa. Pub. Util. Comm'n v. Pike Cnty. Light & Power Co. – Elec.*, Docket No. R 2020-3022135 (Order entered June 23, 2021); *Pa. Pub. Util. Comm'n v. Pa.-Am. Water Co.*, Docket No. R-2020- 3019369 (*Opinion and Order entered Feb. 25, 2021*).

13. The burden of proof is on PECO to show, by a preponderance of the evidence that its proposed WNA is just and reasonable. *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, 233 A.3d 936, 939 (Pa. Cmwlth. 2020); 66 Pa.C.S. §§ 315(a), 1308(a); *Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc.*, Docket No. R-2022-3031211 (Order entered Dec. 8, 2022) at 107. Check citation.

14. The Commission has a “duty to set ‘just and reasonable’ rates, reflecting a ‘balance of consumer and investor interests.’” *Popowsky v. Pa. Pub. Util. Comm'n*, 665 A.2d 808, 811 (1995); 66 Pa.C.S. § 1301.

15. In determining just and reasonable rates, the Commission has discretion to determine the proper balance between interests of ratepayers and utilities. *Popowsky v. Pa. Pub. Util. Comm'n*, 665 A.2d 808, 811 (1995); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 561 A.2d 1224, 1226 (1989); *Pa. Pub. Util. Comm'n v. Pa. Gas & Water Co.*, 424 A.2d 1213, 1219 (1980).

16. In determining the justness and reasonableness of rates the “PUC is obliged to consider broad public interests in the rate-making process.” *Popowsky v. Pa. Pub. Util. Comm’n*, 665 A.2d 808, 811 (1995) (citing *Pa. Elec. Co. v. Pa. Pub. Util. Comm’n*, 502 A.2d 130, 134 (1985)).

17. PECO’s WNA proposal is an alternative ratemaking mechanism and must be considered in reference to the Commission’s policies regarding alternative ratemaking. 66 Pa.C.S. § 1330.

18. Evaluating the WNA under the 14 factors in the Commission Policy Statement on alternative rate-making mechanisms, the evidence does not support finding that WNA proposed is just and reasonable. 52 Pa. Code § 69.3302(a).

19. PECO’s proposed WNA would unjustly and unreasonably tie access to electric service to an alternative rate mechanism that has nothing to do with electric usage. 66 Pa.C.S. §§ 315(a), 1308(a).

20. PECO has failed to meet its burden of proof to demonstrate that its proposed WNA is just, reasonable, and in the public interest. 66 Pa.C.S. §§ 315(a), 1308(a); *NRG Energy, Inc. v. Pa. Pub. Util. Comm’n*, 233 A.3d 936, 939 (Pa. Cmwlth. 2020).

## XV. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the testimony and exhibits in the Joint Stipulation for Admission of Testimony and Exhibits filed on August 14, 2024 are admitted into the record.
2. That the Joint Petition for Non-Unanimous Partial Settlement filed on August 30, 2024, by PECO Energy Company – Gas Division, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Pennsylvania Area Industrial Energy Users Group, the Southeastern PA Transportation Authority and Walmart, Inc., be granted, and the Settlement be adopted, with modification.
3. That the PECO Energy Company – Gas Division be required to provide a copy of its investigation report regarding the customer service Audit Report 2022 to the International Brotherhood of Electrical Workers, Local 614 and the Commission’s Bureau of Technical Utility Services within 10 days of filing.
4. That PECO Energy Company – Gas Division not be permitted to place into effect the rates, rules, and regulations contained in Tariff Gas– Pa. P.U.C. No. 6 regarding its cost recovery base rates for gas service revenues within its service territory.

5. That PECO be authorized to file a tariff or tariff supplement containing rates, rules and regulations, consistent with the findings herein, and Appendices attached to the Joint Petition for Non-Unanimous Partial Settlement, including the recoupment surcharge set forth in Appendix A, to produce an annual increase in gas distribution base rate operating revenues of \$78 million for service rendered on and after January 1, 2025.

6. That the \$78 million increase shall be in addition to base distribution rates after the roll-in to those rates of \$18 million in Distribution System Improvement Charge revenue, as shown in the Proof of Revenues in Appendix B.

7. That PECO's tariffs and/or tariff supplements may be filed to become effective on at least one day's notice after entry of the Commission's Order approving the Settlement.

8. That the request of PECO Energy Company to implement a Weather Normalization Adjustment be denied.

9. That upon acceptance and approval by the Commission of the tariff supplements and proof of revenues filed by PECO Energy Company, the following formal complaints at the respective docket numbers be dismissed and marked closed by the Commission's Secretary's Bureau:

Complainant(s)	Docket Number
Office of Consumer Advocate	C-2024-3048363
Office of Small Business Advocate	C-2024-3048456
State Representative Christina Sappey	C-2024-3048631

Alan McCarthy  
Philadelphia Area Industrial Energy Users Group

C-2024-3048497  
C-2024-3048881

10. That upon Commission approval of the tariff or tariff supplement filed by PECO Energy Company – Gas Division in compliance with the Commission’s Opinion and Order, the investigation at Docket No. R-2024-3046932, be marked closed.

Date: October 15, 2024

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/s/  
Darlene Davis Heep  
Administrative Law Judge

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/s/  
Marta Guhl  
Administrative Law Judge