



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

October 28, 2024

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission v.  
PECO Energy Company – Gas Division  
Docket No. R-2024-3046932  
**I&E Reply Exceptions**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Exceptions of the Bureau of Investigation and Enforcement in the above-captioned proceeding.

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

Sincerely,

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

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Enclosures

cc: Administrative Law Judge Marta Guhl (*via Electronic and First-Class Mail*)  
Administrative Law Judge Darlene Heep (*via Electronic and First-Class Mail*)  
Office of Special Assistants (*via Electronic Mail* – [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: October 28, 2024

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## **I. INTRODUCTION**

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

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

Hearings were held telephonically on August 8 and August 12, 2024.

On September 6, a Joint Petition for Non-Unanimous Partial Settlement was filed. The Joint Petitioners consisted of PECO, 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 Philadelphia Area Industrial Energy Users Group (PAIEUG), the Southeastern Pennsylvania Transportation Authority (SEPTA), and Walmart Inc. (Walmart) (collectively, the Joint Petitioners). The issue left for briefing was whether or not PECO's proposed Weather Normalization Adjustment (WNA) should be approved.

Additionally, IBEW Local 614 opposed the Non-Unanimous Settlement in its entirety. As such,

Main and Reply Briefs were filed by various Parties, along with Statements in Support of the Settlement from the Joint Petitioners.

On October 15, 2024 a Recommended Decision (RD), was issued by Administrative Law Judges Darlene Heep and Marta Guhl which recommended adoption of the Non-Unanimous Settlement with modification, and rejection of the WNA. Exceptions were filed by IBEW and PECO.

I&E now files these timely Reply Exceptions in response to the Exceptions raised by IBEW Local 614 and PECO.

## II. REPLY EXCEPTIONS

### 1. **Reply to IBEW Exception Nos. 1 and 2: The ALJ Applied the Proper Standard of Review to the Settlement (RD, pp. 35-36, and 73-75; IBEW Exceptions, pp. 2-4).**

IBEW's Exceptions 1 and 2 largely deal with the same topic; the proper standard of review for a base rate case settlement. Because these exceptions deal with the same topic, I&E will address them together rather than separately. In these Exceptions, IBEW indicates that the ALJs improperly applied the "just and reasonable standard." Further IBEW criticizes the ALJs for explaining that the Commission looks favorably upon rate case settlements and typically approves them. These criticisms are misplaced. While the ALJs note that they are bound by the Commission policy favoring settlements,<sup>1</sup> nowhere do they state this is the sole reason for approving the instant Settlement. However, when weighing the evidence, the ALJs must also acknowledge that there is longstanding Commission precedent and policy favoring settlements.

As explained in the I&E Statement in Support,<sup>2</sup> and the ALJ's Recommended Decision,<sup>3</sup>

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<sup>1</sup> RD, p. 73.

<sup>2</sup> I&E Statement in Support, pp. 5-6.

<sup>3</sup> RD, pp. 87-88.

this Commission looks favorably upon settlements and encourages the parties, where possible, to endeavor to settle cases. The following policy statement articulates general settlement guidelines and procedures for major base rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulations, 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>4</sup>

This policy highlights the importance of settlements in Commission proceedings. Regarding settlements, the ALJs explain that:

To approve a partial or nonunanimous settlement, the Commission must find that the settlement is reasonable and in the public interest. 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>5</sup>

The ALJs also acknowledged that the burden lies with the Company to establish the justness and reasonableness of its requested rate increase.<sup>6</sup> Further, the ALJs's recommendation that the Settlement be adopted is supported by prior Commission cases as it has previously endorsed the use of black box settlements:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. *See, Pa. P.U.C. v. Wellsboro Electric Co.*, Docket No. R-2010-2172662 (Final Order entered January 13, 2011); *Pa. P.U.C. v. Citizens' Electric Co. of Lewisburg, PA*, Docket No. R-2010-2172665 (Final Order entered January 13, 2011). Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue

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<sup>4</sup> 52 Pa. Code § 69.401.

<sup>5</sup> RD, p. 36.

<sup>6</sup> RD, p. 33.

requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases. For these reasons, we support the use of a "black box" settlement in this proceeding and, accordingly, deny this Exception.<sup>7</sup>

The prior Chairman of the Commission explained that black box settlements are beneficial in the context of rate proceedings precisely because of the difficulties in reaching an agreement on each component of a company's revenue requirement calculation, when he stated

determination of a company's revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company's cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. Black box settlements are an integral component of the process of delivering timely and cost-effective regulation.<sup>8</sup>

Importantly, the Commission policy favoring settlements does not mean that the requirement that a rate increase be supported by substantial evidence has been mitigated. As with many of its Exceptions, IBEW misinterprets the ALJs conclusions erroneously stating that the ALJs incorrectly relied on 52 Pa. Code § 5.232(d) for the proposition that a settlement must be supported by substantial evidence to be in the public interest. First and foremost, § 5.232(d) does in fact state that the presiding officer, or ALJ, will decide if a settlement is in the public interest.<sup>9</sup> Here the ALJs made a determination that the Settlement was in the public interest, so clearly, they have not run afoul of that provision. Further Commission precedent requires that a

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<sup>7</sup> *Pa. P.U.C. v. Peoples TWP LLC*, Docket No. R-2013-2355886, p. 28 (Order entered December 19, 2013).

<sup>8</sup> *See*, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662. *See also*, Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens' Electric Company of Lewisburg, PA*, Docket No. R-2010-2172665.

<sup>9</sup> 52 Pa. Code § 5.232(d).

settlement be supported by substantial evidence.<sup>10</sup> It is unclear to I&E exactly what issue IBEW is excepting to when it is clear that the ALJ is vested with the power to make a judgement as to whether the Settlement is in the public interest and supported by substantial evidence. Because the law is clear in this regard, both that the ALJ can determine if a settlement is in the public interest, and that the settlement must be supported by substantial evidence, to the extent the ALJs incorrectly cited to this regulation, which I&E submits they did not, it would not change the outcome of this proceeding.

In matters of non-unanimous settlements, however, the statements of the joining parties do hold weight. Particularly those of the Statutory Advocates, I&E, OCA and OSBA, who are generally involved in all base rate proceedings before this Commission. Regarding a Non-Unanimous Settlement in a 2021 Pennsylvania American Base Rate Case, the Commission explained that, “[w]e are further persuaded by I&E’s endorsement of the Settlement rates, based upon I&E’s thorough analysis of PAWC’s ratemaking claims in its base rate filings...”<sup>11</sup> I&E conducted the same type of analysis in the instant proceeding. Here, I&E, OCA, and OSBA all of whom conducted a thorough analysis of PECO’s claims have entered into the settlement and endorsed its approval. The statements made by these parties, and the others who have entered into the settlement, should hold weight with this Commission.

IBEW contends that the “standards and tone” the ALJs used in approaching the settlement are not legal standards.<sup>12</sup> However, this argument ignores the numerous cases and regulations the ALJs have cited to in recommending approval of this Settlement. As laid out above, in the I&E Statement in Support, and in the Recommended Decision there are numerous

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<sup>10</sup> *Pa. P.U.C. v. Pa. American Water Co.*, Docket No. R-2020-3019369 (Order entered February 25, 2021) pp. 37-38 and 46.

<sup>11</sup> *Id.* at 36.

<sup>12</sup> IBEW Exceptions, p. 3.

cases that set forth the Commission's standards and policies on the approval of settlements that come before it. The standards were appropriately followed.

It is clear the ALJs committed no errors of law in approving the Non-Unanimous Settlement. The appropriate standards were applied and the weight of the substantial evidence fell in favor of adopting the Non-Unanimous Settlement. Therefore, IBEW's Exceptions Nos. 1 and 2, must be rejected and the Commission should adopt the Non-Unanimous Settlement consistent with the RD.

**2. Reply to IBEW Exception No. 3: IBEW has misinterpreted the ALJs' discussion of 66 Pa. C.S. § 315(a) (RD, p. 74; IBEW Exceptions pp. 4-5).**

In its Exception No. 3, IBEW incorrectly proclaims that the ALJs found that "...a party cannot raise topics relating to the rate case unless it is raised by the utility in its rate application."<sup>13</sup> IBEW then goes on to state this would "implode" the ability of the parties to raise concerns that are supposed to be addressed by the Commission and afford the utility the ability to avoid topics of safety, efficiency and reasonableness simply to ensure other parties could not raise those issues.<sup>14</sup>

This is a gross mischaracterization of the ALJs actual discussion. In fact, the direct quote from the RD is:

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...<sup>15</sup>

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<sup>13</sup> IBEW Exceptions, p. 4.

<sup>14</sup> *Id.*

<sup>15</sup> RD, p. 74.

The ALJs were simply acknowledging that not every issue is an appropriate issue for a base rate case and that it cannot be expected that the utility will carry the burden of proof on an issue which it did not present. Rather than causing an “implosion” the ALJs discussion simply demonstrates the parameters that surround a base rate case to which the parties adhere. There are various types of proceedings involving regulated utility companies before this Commission which cover a broad range of issues that are not addressed in a base rate case. It appears the ALJs were simply noting the fact that another type of proceeding may be the more appropriate forum for the issues raised by IBEW.

Many issues IBEW notes would not be able to be raised under this finding such as safety, efficiency and reasonableness are often raised in base rate cases, including the instant case. I&E often raises safety concerns and other parties raise customer service concerns and a variety of other issues. These issues are reviewed and ruled on in the context of base rate cases. IBEW’s Exception is simply a misinterpretation of the ALJs discussion and should be rejected as such.

**3. Reply to IBEW Exception No. 6: The ALJ Properly Adopted the Gas Safety Terms Outlined in the Settlement. (RD, p. 122-126; IBEW Exceptions pp. 7-8).**

The ALJ appropriately properly recommended the adoption of the gas safety terms set forth in the Settlement as part of the overall recommendation that the Settlement be adopted.<sup>16</sup> I&E’s Gas Safety Division was vested with the authority to enforce the safety regulations found in 49 CFR § 192. In this proceeding, I&E presented the testimony of its Gas Safety Engineer, Martin Salamonski. The term to which IBEW seemingly objects is PECO’s agreement to keep track of post construction quality audits that contain a failed observation.<sup>17</sup> IBEW takes issue with the portion of the ALJs’ Recommended Decisions which notes that many of the issues

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<sup>16</sup> RD pp. 73-75.

<sup>17</sup> IBEW Exceptions, p. 8.

raised by IBEW are outside of the Commission’s purview.<sup>18</sup>

Regarding post-construction quality audits, IBEW’s Main Brief explains its position that “IBEW Local 614 requests that PECO be required to ameliorate the need for post-construction quality audits by conducting the work in-house rather than outsourcing it.”<sup>19</sup> However, as the ALJs have explained, the Commission has very limited authority to interfere with the day-to-day internal management of a utility.<sup>20</sup> As the ALJs explain, the Commission cannot act as a super board of directors and can only intervene if there has been abuse of managerial discretion where the public interest has been adversely affected.<sup>21</sup> Here, IBEW has not alleged abuse of managerial discretion, but rather a preference for having bargaining unit employees perform the work. I&E further disagrees with the notion in IBEW’s Main Brief that if PECO conducted the work fully in-house, not audits would be necessary. I&E submits audits would be beneficial no matter who the work was being performed by. Again, IBEW’s point goes to the day-to-day management of utility operations; a matter in which the Commission does not typically involve itself.

I&E, along with its witness, and PECO worked together to carefully craft these terms that serve to protect customer safety. I&E believes PECO’s efforts towards gas safety are commendable and I&E supports the terms of the settlement as being in the public interest. PECO has committed to meeting with the pipeline safety inspectors by August 10, 2025, to discuss the items contained in the settlement. Because I&E is the entity vested with ensuring gas safety regulations are followed, these discussions help to ensure that I&E safety inspectors are aware of the steps PECO is taking to ensure the terms of the settlement are satisfied. I&E

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<sup>18</sup> RD, pp. 52-52.

<sup>19</sup> IBEW MB, p. 13.

<sup>20</sup> RD, p. 52.

<sup>21</sup> *Id.*

presented extensive safety testimony in this proceeding. In consideration of the testimony presented by I&E and PECO and the settlement negotiations, I&E supports these settled upon 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.

Therefore, I&E recommends the Commission adopt the ALJs' Recommended Decision and adopt the gas safety terms as contained in the settlement.

**4. Reply to IBEW Exception No. 10: The ALJ Appropriately Recommended Adoption of the Settlement Based on Substantial Evidence. (RD, p. 73-75; IBEW Exceptions, pp. 10-11).**

IBEW has again misconstrued the Recommended Decision stating that the “..ALJs erred in adopting the Joint Petitioners’ conclusory statements as ‘substantial evidence’ that the Non-Uniform Settlement was in the public interest.”<sup>22</sup> This statement is inherently misleading given that there was a very extensive record upon which the ALJs based their decision that the Settlement achieved in this proceeding was in the public interest.

The Commission encourages settlements, which eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion.<sup>23</sup> The request for approval of the *Joint Petition for Settlement* is based on the I&E conclusion that the Settlement Agreement meets all the legal and regulatory standards necessary for approval. “The prime determinant in the consideration of a proposed Settlement is whether or not it is in the public interest.”<sup>24</sup> The Commission has recognized that a settlement “reflects a compromise of the positions held by the parties of interest, which, arguably fosters and promotes the public interest.”<sup>25</sup> The Settlement Agreement

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<sup>22</sup> IBEW Exceptions, p. 10.

<sup>23</sup> *Pennsylvania Public Utility Commission v. Venango Water Co.*, Docket No. R-2014-2427035, 2015 WL 2251531, at \*3 (Apr. 23, 2015 ALJ Decision) (adopted by Commission via Order entered June 11, 2015); *See* 52 Pa. Code § 5.231.

<sup>24</sup> *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 PA PUC 1, 22 (1985).

<sup>25</sup> *Pennsylvania Public Utility Commission v. C S Water and Sewer Associates*, 74 PA PUC 767, 771 (1991).

in the instant proceeding protects the public interest in that a comparison of the original filing submitted by the Company and the negotiated agreement demonstrates that compromises are evident throughout the Joint Petition. The previous Chairman of the Commission has commented on Black Box settlements and stated that the “[d]etermination of a company’s revenue requirement is a calculation that involves many complex and interrelated adjustments affecting revenue, expenses, rate base and the company’s cost of capital. To reach an agreement on each component of a rate increase is an undertaking that in many cases would be difficult, time-consuming, expensive and perhaps impossible. *Black Box settlements are an integral component of the process of delivering timely and cost-effective regulation.*”<sup>26</sup>

In reaching this conclusion, the ALJ simply found that PECO had met its burden of establishing that the Settlement was in the public interest, while noting that there is long-standing Commission precedent which encourages parties before the Commission to work to achieve a settlement. As explained before, because the nature of settlements reflect compromise on the part of the parties involved, they inherently promote the public interest.<sup>27</sup> The ALJs laid out the legal standards and burden of proof in the Recommended Decision.<sup>28</sup> It seems abundantly clear that that ALJs were aware that the evidence supporting the Settlement must be substantial. The ALJs were not limited to the Statements in Support provided by the Joint Petitioners, but were provided an entire evidentiary record upon which to base their recommendation. Inherent in IBEW’s Exception is the notion that the ALJs would not have used the full record when making their determination. This allegation is simply unfair. Additionally, the Commission will also

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<sup>26</sup> See Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Wellsboro Electric Company*, Docket No. R-2010-2172662 (Order entered January 13, 2011). See also Statement of Commissioner Robert F. Powelson, *Pennsylvania Public Utility Commission v. Citizens’ Electric Company of Lewisburg, Pennsylvania*, Docket No. R-2010-2172665 (Order entered January 13, 2011) (emphasis added).

<sup>27</sup> *Pa. P.U.C. v. C S Water and Sewer Associates*, 74 PA P.U.C. 767, 771 (1991).

<sup>28</sup> RD, pp. 33-35.

have the entire evidentiary record to review when making its determination. Further, the ALJs, also must acknowledge that there is Commission precedent that favors settlements. It seems clear that the ALJ correctly applied the substantial evidence standard and simply acknowledged that there is Commission case law and policy that favors settlements. The ALJs committed no error by acknowledging the statements made by the Joint Petitioners that the Settlement was in the public interest.

Because the ALJs applied the appropriate legal standards, IBEW Exception No. 10 must be rejected and the Commission should adopt the ALJs' recommendation that the Settlement be approved.

**5. Reply to IBEW Exception No. 11 and PECO Exception No. 1: If Approved, PECO's WNA Should Include a 3% Deadband (RD, p. 76-93; IBEW Exceptions, p. 11; PECO Exceptions pp. 4-18).**

In their Recommended Decision, the ALJs recommended denial of PECO's request for a WNA.

As the RD correctly notes, I&E does not directly oppose the WNA but submits that it requires scrutiny as a departure from traditional ratemaking. Further, I&E recommended that if a WNA is implemented a 3% deadband, rather than the 1% deadband proposed by the Company, should be imposed.<sup>29</sup>

In response to the Exceptions filed by PECO and IBEW related to this issue, I&E simply reiterates the recommendation that a 3% deadband be imposed if the Commission allows PECO's request for a WNA. This is consistent with established Commission precedent. In a 2021 Columbia Order, the Commission agreed with the Administrative Law Judge's finding that "the 3% deadband is a reasonable provision, because it allows for a range of what is considered

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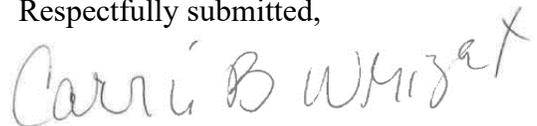
<sup>29</sup> I&E St. No. 3, pp. 4-5.

‘normal’ weather in which the Company’s Commission-approved rates would be applied without adjustment.<sup>30</sup> Therefore, if PECO is granted a WNA, the Commission should impose a 3% deadband.

### III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission deny the Exceptions of IBEW Local 614 and approve the Non-Unanimous Settlement in the instant proceeding as recommended by Administrative Law Judges Darlene Heep and Marta Guhl. Further, if the Commission approves a WNA in this proceeding, a 3% deadband must be imposed

Respectfully submitted,



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Dated: October 28, 2024

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<sup>30</sup> *Pa. P.U.C. v. Columbia Gas*, Docket No. R-2020-3018835, (Order entered February 19, 2021), pp. 264-265.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Exceptions** dated October 28, 2024, in the manner and upon the persons listed below:

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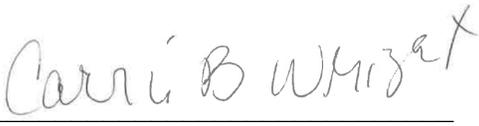
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