

COMMONWEALTH OF PENNSYLVANIA



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October 28, 2024

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Exceptions in the captioned proceeding.

Copies will be served, as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Honorable Administrative Law Judge Darlene Heep (email only: dheep@pa.gov)
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Certificate of Service (as indicated)

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 28th day of October, 2024.

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Dated: October 28, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: October 28, 2024

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Replies to the Exceptions of PECO Energy Company – Gas Division (PECO or Company) and the International Brotherhood of Electric Workers, Local 614 (IBEW). For the reasons set forth herein, and in the OCA’s Main and Reply Briefs, Administrative Law Judges (ALJs) Darlene Heep and Marta Guhl’s Recommended Decision rejecting the proposed Weather Normalization Adjustment charge should be adopted by the Commission, and the Exceptions of PECO and IBEW concerning this issue should be denied.

II. REPLIES TO EXCEPTIONS

Reply to PECO Exception 1: ALJs Heep and Guhl correctly weighed the evidence presented in this proceeding to find that PECO’s proposed Weather Normalization Adjustment would not result in just and reasonable rates and, therefore, PECO’s request should be denied. R.D. at 90-93; OCA at M.B. at 11-41; OCA R.B. at 4-29.

ALJs Heep and Guhl correctly determined that the Weather Normalization Adjustment (WNA) mechanism proposed by PECO would not result in just and reasonable rates. R.D. at 90-93. The Recommended Decision only pertains to the WNA proposed by PECO; it does not address the WNAs proposed or implemented by other natural gas distribution companies (NGDCs) in Pennsylvania. *Id.* The Recommended Decision correctly determined that the WNAs implemented by other NGDCs, including that recently implemented by Peoples Natural Gas, carry no evidentiary weight with respect to the approval of PECO’s proposed WNA, and that those WNAs were implemented because of settlement agreements which carry no weight with respect to the WNA proposed by PECO. R.D. at 93 (citing *Bell Atl. – Pa., Inc. v. Pa. PUC*, 672 A.2d 352 (Pa. Cmwlth. 1995)). The ALJs correctly determined that records in other proceedings by other utilities are irrelevant to the issues presented by PECO in this proceeding and on this record.

PECO excepts to the finding that its proposal for the WNA is not supported by substantial evidence and argues that implementation would result in just and reasonable rates. PECO Exc. at 4-18. PECO specifically excepts to the findings of the Recommended decision that:

- There is no direct cost of service foundation for the WNA as recovery under the WNA has an inverse relationship to actual system usage, forcing PECO customers to pay for a product that they are not using.
- “PECO will benefit for and benefit from increased use of electricity for cooling” because “PECO provides both electric and gas service.”
- The WNA distorts price signals and reduces incentives to conserve energy and commodity consumption.
- “The WNA is a ‘particularized harm’ for low-income customers, leading to higher bills, accrual of arrearages and increased risk of termination” for both gas and electric service.
- Calculation of a bill including a “WNA would be complex and it will be difficult for a customer to predict how much they will be charged.”

Id.; R.D. at 90-93. Each of these findings in the Recommended Decision were fully supported by record evidence. PECO, however, did not except to particularly critical findings, such as the facts that PECO’s proposed “WNA is more likely than not going to net the Company additional revenue each year that it would not receive absent the WNA” and that the proposed 30-year weather “normal” will lead to a colder “normal” than a 10- or 20- year weather “normal” resulting in greater WNA charges. R.D. 27-32. These findings directly point to how the Company’s proposed WNA unfairly shifts risks to captive customers without providing commensurate benefit to PECO’s customers and were unaddressed and un rebutted by PECO in the record, in its briefs, or in its exceptions.

PECO’s failure to support its WNA proposal by a preponderance of the evidence was not excused because other NGDCs have employed WNAs. R.D. at 93. PECO’s Exception 1 continues to highlight the Company’s position that, because other NGDCs have implemented WNAs, the Company should be entitled to one as well. For the reasons set forth in the OCA’s Main and Reply Briefs, incorporated by reference as if fully set forth herein, in the well-reasoned Recommended

Decision, and reiterated in reply to PECO's Exception 1 below, the OCA respectfully requests that the Commission deny PECO's Exception 1. R.D. at 90-93; OCA at M.B. at 11-41; OCA R.B. at 4-29.

A. Risk Is Not Borne Evenly Between the Company and Consumers Under a WNA and There Is No Ceiling on PECO's Potential WNA Revenues.

ALJs Heep and Guhl correctly described the proposed WNA as a "bonus to utilities" which would permit PECO to "reap the benefits of changing weather." R.D. at 92. This determination is supported by substantial evidence of record. The WNA is, indeed, a climate change surcharge assessed by the gas utility on its customers. *See* R.D. at 31 (citing CAUSE-PA St. 1-SR at 5-6).

While PECO claims that the WNA mutually benefits customers and the Company, PECO omits that the possibility the WNA will benefit customers is small and that the amount of benefit to customers and the Company is not equal, if such benefit were to materialize. PECO Exc. at 7. The formula for the WNA, itself, *theoretically* permits bi-directional benefits; however, weather data from the past 10 years demonstrates that weather is much more likely to be warmer-than-normal than colder-than-normal and, to the extent that weather is colder-than-normal, the magnitude of the deviation from the weather "normal" is much greater when weather is warmer than when it is colder.¹ OCA M.B. at 24-27; OCA R.B. at 11-14; OCA St. 6 at 14-16. PECO did not rebut the voluminous evidence presented by the OCA and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) which demonstrates this point, or except to the ALJs' finding of this fact. R.D. at 29. As a result, PECO's claims that the WNA offers mutual or bi-directional benefit is fundamentally undermined by the evidence demonstrating

¹ In evidence of this, weather data provided by PECO demonstrates that, if the WNA had been in effect for the last 10 years, in only two of those years would weather have been colder-than-normal, and the Company would have extracted an additional \$11 million per year on average, inclusive of the colder-than-normal years. OCA Exh. RN-3. During the two colder-than-normal years, the net credit amount was less than the average net charge amount of \$11 million per year. *Id.* Fewer than 10% of all heating degree days in the last 10 winters can be considered colder-than-normal, while 90% can be considered warmer-than-normal. OCA St. 6 at 13.

that the likelihood of benefit, and the magnitude of that benefit, weigh heavily in the favor of the Company and not consumers. The Recommended Decision, therefore, comports with the evidence of record.

Further, PECO's repeated statement that the WNA only permits the Company to earn the revenue authorized by the Commission in a base rate proceeding is simply false. PECO Exc. at 7, 13. First, a utility is not *guaranteed* to earn its authorized revenue requirement. *Fed. Power Com. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944); *Pa. Elec. Co. v. Pa. PUC*, 502 A.2d 130, 133-35 (Pa. 1985) (determining just and reasonable rates does not require setting rates which are guaranteed to ensure continued net revenues); OCA M.B. at 21-24; OCA R.B. at 15-18. PECO's assertion that the WNA benefits the Company by "stabilizing" the Company's revenues at its authorized revenue requirement – while certainly a benefit to the Company – defies this axiom of public utility regulation. PECO Exc. at 7. ALJs Heep and Guhl correctly dispel this argument by stating that "a utility is not guaranteed a return on its service that is not used." R.D. at 90.

Second, contrary to PECO's implicit contention, the WNA has no ceiling of recovery; PECO did not propose a reconciliation mechanism for its WNA, which means that there is no valid basis by which to argue that the WNA will "only be entitled to earn its Commission-approved revenue requirement under the WNA." PECO Exc. at 13. The weather "normal" used by PECO to determine its revenue requirement and rate design for the residential and commercial customers is based on class-level consumption and not based on customer level-consumption. OCA St. 6 at 19; OCA M.B. at 13. In this way, PECO can extract revenue from captive customers above and beyond its class-level revenue targets if each customer, individually, does not (1) have exactly average usage and (2) only changes their usage in direct proportion to changes in the weather. If a customer has usage greater than the average usage or does not directly and proportionally reduce their usage

in response to changes in weather, then that customer will pay more under the proposed WNA than if the WNA were applied – as it was designed to be applied – at the class level. OCA witness Nelson demonstrated the disconnection between class-level rate design and customer-level rate impact by describing the intra-class WNA charge differential for Philadelphia Gas Works (PGW) customers, which varied between \$25 per bill and \$120 per bill for the billing cycle observed. OCA St. 6SR at 17. Such variance is directly attributable to the different usage patterns of different customers within the same class. Much the same is reasonably projected to occur in PECO’s WNA, especially considering that PECO uses the same weather data as PGW. OCA M.B. at 25.

PECO conducted no bill impact analysis for how the WNA would affect customers on a per-bill basis. R.D. at 28; OCA St. 6 at 19; OCA St. 6SR at 16-17. The Company did not contest this fact when it was raised by the OCA prior to the close of the evidentiary record; rather, PECO contends that its analysis was sufficient because it was similar to the analysis provided by other NGDCs when proposing their WNAs. PECO Exc. at 9. However, this contention confuses other NGDCs’ WNA proposals with PECO’s, is necessarily irrelevant, and does not mean that the Company provided enough evidence to carry its burden of persuasion.

The Commission is not deciding on other NGDCs’ WNA mechanisms, only PECO’s, and the Company’s failure to provide a bill impact analysis means that it has no evidence to support its claims that the WNA will only permit the Company to recover its authorized revenues, will not result in excessive charges, and fairly shifts risks to captive customers. Because PECO did not propose a reconciliation mechanism if the Company collects more in rates than it would have in the event of “normal” weather and because the WNA is applied on a per-bill basis, there is no ceiling on recovery. Despite ample opportunity in its rebuttal and rejoinder cases to present evidence in support of this argument, the Company failed to do so, and its attempt to paint its

aspirational statements as evidence should be given little weight. In sum, PECO's claims that the WNA only guarantees its approved revenue requirement is demonstrably false based on the evidentiary record in this proceeding.

B. The Evidentiary Record Does Not Support PECO's Contention that It Must Recover its Commission-Authorized Revenues or its Ability to Provide Safe, Adequate, and Reliable Service, and to Attract the Capital Necessary to Fund this Service may Be Jeopardized.

PECO asserts that the ALJs erred in accepting the WNA because warmer-than-normal weather can result in challenges in recovering Commission-authorized revenues, potentially impairing PECO's ability to continue to maintain and enhance the safety and reliability of its system and attract the capital necessary to fund its investments. PECO Exc. 8. There is no evidence in the record that, absent the WNA, PECO will not be able to provide safe, reliable, or sufficient service. PECO has a significant history as a natural gas distribution company; the Company presented no evidence that its circumstances have changed, and that for some reason the strategies the Company employed during prior periods of warmer-than-normal weather in its extensive history are no longer sufficient to ensure the Company is able to continue providing safe, adequate, and reliable service. OCA M.B. at 22; OCA R.B. at 15-18. The Company's use of a fully projected future test year and distribution system improvement charge already permit it to recover costs that are not yet incurred and not yet fixed at the time rates are charged. *Id.*

The addition of the WNA will provide the Company with a greater revenue stream to recover as-of-yet unincurred or unfixed costs and remove the need for PECO to prudently plan its capital investment beyond the scope of its fully projected future test year and through its long-term infrastructure improvement plan. OCA M.B. at 18-20; OCA R.B. at 15-18; OCA St. 6SR at 10; R.D. at 91. As a result, the WNA effectively charges a customer for services that they are not receiving – by artificially inflating volumetric rates to mirror hypothetical consumption – or are

otherwise paying for through the rates established pursuant to a fully projected future test year or charged through a distribution system improvement charge. *Id.*; OCA Exh ND-1-SD at 12. This is an unacceptable deviation from cost-of-service ratemaking, under which customers should only pay for the natural gas consumed, and not the hypothetical amount of natural gas the customer would have consumed had PECO more accurately determined “normal” weather when designing rates.

Notwithstanding the above, the Commission has consistently determined that rate design for unavoidable rates – such as the proposed WNA, a distribution system improvement charge, or a customer charge – should not guarantee a utility’s return on *all* fixed costs so long as its revenue would be sufficient to provide safe, reliable, and adequate service. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2010-2215623 (Order entered Oct. 14, 2011) at 51-53 (rejecting Columbia’s proposal to include all fixed costs in an unavoidable customer charge). Further, PECO presented no evidence that it would be unable to compete in capital markets if it did not have additional WNA revenues.² OCA M.B. at 22-23; OCA R.B. at 17-18; I&E St. 2 at 10; R.D. at 90, 92 (finding that PECO’s combined gas and electric operations were diversified, presenting reduced revenue risk for investors without the need for a WNA). PECO has not demonstrated a need for an additional revenue guarantee to provide safe, adequate, and reliable service. 66 Pa. C.S. §§ 315(a). Absent such evidence, ALJs Heep and Guhl correctly determined that the proposed WNA

² While PECO is correct that the OCA did not quantify the impact that the Company’s combined electric and gas operations has on the cost of capital, this is largely because the Company provided no evidence regarding the impact of the proposed WNA on its cost of capital. PECO Exc. at 10; OCA M.B. at 22-23; OCA R.B. at 17-18. Expert testimony supports the fact that a company’s operations beyond the scope of regulated natural gas distribution operations influence the cost of capital for that company. I&E St. 2 at 10 (excluding Company proxy group member because less than 50% of its revenues come from regulated gas utilities). If PECO claims that the WNA is necessary for the Company to compete in capital markets, it bears the burden of production and persuasion on that claim, including the quantification of any benefit to the Company in capital markets if the WNA is approved. It is not the role of the OCA to make PECO’s case for it. OCA M.B. at 7; *Pa. PUC v. Pa.-American Water Co.*, 231 P.U.R. 4th 277, 2004 Pa. PUC LEXIS 29, *16-18 (Jan. 29, 2004) (holding that it is well-established that the burden of proof lies with the utility proposing a change to its rates and not to a challenger of those rates).

be denied. *See Pa. PUC v. Pa.-American Water Co.*, Docket Nos. R-2023-3043189 et al. (Order entered July 11, 2024) at 307-08 (rejecting a proposed alternative ratemaking mechanism because the utility failed to demonstrate a need for the revenue guarantee the mechanism would provide); OCA M.B. at n. 10, 40-41; OCA R.B. at 5-7.

C. Customers Who Conserve Will Pay Rates Higher Under the WNA Than if No WNA Were in Place.

The Recommended Decision accurately weighed the evidence presented to reach the reasoned conclusion that the WNA would reward PECO for the conservation of its customers. R.D. at 92. It is indisputable that, if weather is warmer-than-normal, the WNA charges on a customer's bill make the customer's bill higher than it would have been had there been no WNA in place, as evidenced by the way in which the WNA is calculated. OCA M.B. at 31-33; OCA R.B. at 25-26. While the Company is correct that the WNA does not impact the commodity portion of a customer's bill, the Company provides no reason that customers should not be entitled to collect *the entirety of the bill savings earned* through conservation efforts, not just those related to their commodity charges. PECO Exc. at 10. The distribution portion of a customer's bill is necessarily relevant to the customer's calculus in determining whether or not to invest in energy efficiency measures or to reduce consumption. OCA M.B. at 31-33; OCA R.B. at 25-26; OCA St. 4SR at 12 ("For customers already struggling to invest in energy efficiency measures, the increased, unavoidable portion of a customer's bill may make the difference between whether an investment is cost-effective or not."). PECO presented no evidence to counter this fact, instead continuing to imply that the distribution portion of a customer's bill is somehow less relevant to customers' assessment of the efficacy of their conservation measures.

By introducing a new, unavoidable portion of a customer's bill, the WNA distorts price signals. OCA M.B. at 31-33; OCA R.B. at 25-26; OCA St. 3 at 30. The Commission has

continuously established that effective rate design requires a utility to convey accurate price signals to customers through their bills. R.D. at 92; *see also Pa. PUC v. PECO Energy Co. – Gas Div.*, Docket No. R-2020-3018929 (Order entered June 17, 2021) at 275. PECO did not contest the idea that the WNA provides inaccurate price signals to consumers and, instead, only made the blanket factual conclusion that its proposed WNA would not disincentivize conservation, a conclusion which is unsupported by the record evidence in this proceeding. PECO Exc. at 11. PECO’s arguments regarding the proposed WNA’s impact on conservation are not based in record evidence and, therefore, should be given little weight. ALJs Heep and Guhl, by contrast, supported their determination that the WNA undermines the aims of traditional ratemaking and rate design by distorting price signals and “acting as a bonus to utilities and punishes the customers who conserve by penalizing them for that conservation” with substantial evidence and that determination should be adopted by the Commission. R.D. at 92.

D. Most Low-Income Customers Are Not Enrolled in PECO’s Customer Assistance Program and It Is Not Sufficient Protection from Increased Rates Under the WNA.

Significant evidence was presented by the OCA and CAUSE-PA to demonstrate that the WNA will have a disproportionate impact on PECO’s low-income customers. OCA M.B. at 27-31; OCA R.B. at 22-25; OCA St. 4 at 83-88; OCA St. 4SR at 3-6; CAUSE-PA St. 1 at 66-68; CAUSE-PA St. 1SR at 3-10. The Recommended Decision gave greater weight to the data and facts provided by the OCA and CAUSE-PA than to PECO’s aspirational statements and unsupported factual conclusions. R.D. at 92-93.

Despite ample evidence presented in this proceeding that PECO undercounts its low-income population, PECO continues to contend that its customer assistance program (CAP) is sufficient to protect low-income customers from the inevitable rate increases under the proposed WNA. PECO Exc. at 11-12. While PECO may enroll many confirmed low-income customers in

CAP, the Company excludes a significant number of low-income customers that meet the Commission's definition of "confirmed low-income customer," as stated in the Commission's regulations. Tr. 894; 52 Pa. Code § 62.2; OCA St. 4 at 35-38. If the Company were to determine its CAP participation rate based off of the total population of customers that have made verbal statements or provided income documentation to the Company that those customers earn at or below 150% of the federal poverty level, then its CAP enrollment rate would be approximately **44.8%** at the time of the close of the record. Tr. 896-97. This percentage is representative of *only* those customers that have provided earnings information to the Company; it does not include *all* low-income customers in PECO's service territory and is *substantially* underinclusive. OCA St. 4 at 15. The Company's overestimation of its CAP participation rate, as a result, should be given little weight when assessing the impact that the WNA will actually have on PECO's low-income customer population.

Further, low-income customers are less likely to be able to lower monthly bills through reducing consumption or energy efficient investments than non-low-income customers. OCA M.B. at 28; OCA R.B. at 25-26; OCA St. 4SR at 5. The increased funding for PECO's low-income usage reduction program (LIURP) agreed-to in the settlement in this proceeding does little to affect the increased WNA costs borne by *all of* PECO's low-income customers. PECO Exc. at 13. The WNA charge is unavoidable and cannot be reduced unless a customer eliminates their usage entirely during winter and shoulder months. The addition of an uncontrollable and unpredictable charge to customers' bills necessarily disproportionately impacts those customers who have less agency to control their own bills through energy efficiency investments or reducing consumption and are more likely to be payment troubled, as well as those who rely extensively on budgeting to

afford their monthly bills. OCA M.B. at 17-18; OCA R.B. at 25-26; OCA Exh. NAD-1-SD at 12-14; OCA St. 4 at 85.

Finally, PECO's assertion that its proposed WNA would not have a greater impact on low-income customers than those WNAs which have been implemented by NGDCs in Pennsylvania is irrelevant. PECO Exc. at 13. The Commission is not evaluating *any* WNAs in this proceeding other than that proposed by PECO. OCA R.B. at 22. The Recommended Decision did not need to make such a finding, nor did the parties in this proceeding need to present such evidence.³ PECO bore the burden of proof to demonstrate that its proposed WNA would have no disproportionate and detrimental impact on low-income customers. The Company failed to meet that burden, instead claiming that its CAP is sufficient protection for low-income customers and attempting to shift its evidentiary burden. OCA R.B. at 22-23; 66 Pa. C.S. § 315(a) ("In any proceeding . . . involving any proposed or existing rate of any public utility . . . the burden of proof to show that the rate involved is just and reasonable *shall be upon the public utility.*") (emphasis added). ALJs Heep and Guhl correctly found that the aspirational statements and factual conclusions presented by PECO were less weighty than the data, facts, and evidence presented by the OCA and CAUSE-PA.

E. Record Evidence Demonstrates That WNAs Are Confusing to Customers Despite the Fact That WNAs Have Been Implemented in Pennsylvania Previously.

PECO presented no evidence to support its claim that the WNA is, in any way, understandable to consumers. Instead, PECO claims that the fact that the proposed WNA "is not new to...customers in the Commonwealth" is sufficient evidence that its proposed WNA will not be confusing to PECO's customers. This claim rings hollow. By way of example, accounting for

³ If such a burden did exist, it would be impossible to meet and, as such, should be rejected as an erroneous conclusion of law.

tax law changes on customer rates by accounting for “excess” or “deficient” Accumulated Deferred Income Taxes (ADIT) as a result of the Tax Cuts and Jobs Act of 2017 is about as old as the first WNA in Pennsylvania but is likely patently confusing and seemingly arbitrary to the average consumer. There is nothing simple about the algebraic equation needed to determine the WNA charge month-in and month-out. The OCA also presented significant evidence – unrebutted by PECO – that natural gas customers are consistently confused by the WNA concept. OCA M.B. at 33-34; OCA R.B. at 11-14; OCA St. 6SR at 12. Public input hearing testimony from this case demonstrates that PECO’s customers are confused by the proposed WNA and was relied upon in the Recommended Decision to conclude that the WNA is likely to cause customer confusion. OCA Exh. ND-1-SD at 12-14; R.D. at 9, 29, 83.

Further, PECO’s assertions that it will develop materials to educate customers on the WNA and will develop a communication and outreach strategy are also not evidence that customers will understand the WNA. PECO Exc. at 14. ALJs Heep and Guhl did not need to give weight to assertions that are not supported by evidence, as PECO has failed to produce any materials or strategies. OCA M.B. at 38; OCA R.B. at 13-14; Tr. 834 (PECO has not provided any educational materials regarding the WNA).

PECO, once more, argues that the evidence it presented in this proceeding is sufficient because opposing parties failed to produce evidence that its WNA is somehow less understandable comparison to other WNAs currently in effect in Pennsylvania. PECO Exc. at 14-15. That is not the burden of proof in this proceeding. 66 Pa. C.S. § 315(a); 2 Pa. C.S. § 704. The practices of other NGDCs which have implemented WNAs are not relevant. PECO, in requesting its WNA, could have produced sample educational materials to demonstrate that *its* customers, not those of other NGDCs with WNAs, would be able to understand its WNA. It failed to do so and attempts

to shift its burden. Such burden shifting is contrary to law and should be given little weight. Further, PECO, in requesting its WNA, could have provided a sample bill that demonstrated that customers would be able to verify the accuracy of their bill without the need to pore over the Company's tariff or other documents. *See* 52 Pa. Code § 56.15. Unless and until it produces one, it cannot meet its burden of proof that customers will be able to determine their WNA charge based on their bill. OCA M.B. at 36-38. ALJs Heep and Guhl did not err by reaching a conclusion supported by evidence of record in this proceeding. R.D. at 91.

It defies logic for a customer to be charged for a product they are not actually consuming but that the Company predicted they would have consumed if weather were "normal." PECO undertook the burden to demonstrate that it will be able to help its customers overcome this logical leap when it proposed to implement a WNA. PECO could have met its burden by producing evidence that it would adequately (1) educate its customers by producing its proposed education materials and (2) bill in accordance with Commission regulations by producing proposed bills that permit customers to verify the accuracy of their bill without the need to hunt through the Company's tariff or other public documents. It did neither. *See* 66 Pa. C.S. § 315(a); 2 Pa. C.S. § 704. ALJs Guhl and Heep weighed the evidence of record to correctly determine that the proposed WNA is likely to confuse PECO's customers. R.D. at 92.

F. Section 1330's Permission to Implement a WNA Does Not Alleviate PECO's Burden to Support its Proposal with a Preponderance of the Evidence.

The Recommended Decision made all findings of fact sufficient to support its conclusion that the Company's proposed WNA failed to demonstrate that it would result in just and reasonable rates under the Commission's policy statement regarding alternative ratemaking mechanisms. R.D. at 92; *see also* 52 Pa. Code § 69.3302. PECO's argument to the contrary ignores the fact that

ALJs Heep and Guhl individually addressed each of the relevant policy factors. PECO Exc. at 16.

Regarding each policy factor, ALJs Heep and Guhl concluded:

- The proposed WNA has no direct cost-of-service foundation and has an inverse relationship to cost of service, whereby customers are charged more for consuming less natural gas than the Company projected due to warmer than normal weather. R.D. at 32, 91 (citing OCA Exh. ND-1-SD at 12 and OCA St. 6SR at 10); *see* 52 Pa. Code § 69.3302(a) (factors 1, 3, 4, and 7 weigh in favor of approval where the alternative ratemaking mechanism maintains a connection between rates and the utility’s cost of service); *see also* OCA M.B. at 14-15, 18-21.
- The proposed WNA reduces incentives for customer conservation efforts. R.D. at 28, 29-31, 92 (citing CAUSE-PA St. 1-SR at 5-6; OCA St. 6 at 10; OCA Exh. RN-4 at 2-3); *see* 52 Pa. Code § 69.3302(a) (factors 5 and 6 weigh in favor of approval where the alternative ratemaking mechanism maintains customers’ incentives to conserve energy); *see also* OCA M.B. at 16, 31-33.
- The proposed WNA presents “a ‘particularized harm’ to low-income customers, leading to higher bills, accrual of arrearages and increased risk of termination” for both gas and electric services. R.D. at 27, 92 (citing CAUSE-PA St. 1 at 67; CAUSE-PA St. 1-SR at 7); *see* 52 Pa. Code § 69.3302(a) (factor 7 weighs in favor of approval where the alternative ratemaking mechanism does not detrimentally impact low-income customers); *see also* OCA M.B. at 16, 27-31; OCA R.B. at 22-26.
- Customers’ month-to-month bill stability – in the absence of budget billing – will be decreased under the proposed WNA and the Company conducted no bill impact analysis to support the conclusion that bills would be stable and not substantially increase. R.D. at 28-29 (citing CAUSE-PA St. 1-SR at 4; OCA St. 4SR at 4; OCA Exh. RN-4 at 5); *see* 52 Pa. Code § 69.3302(a) (factor 8 weighs in favor of approval where the alternative ratemaking mechanism does not affect customer bill stability); *see also* OCA M.B. at 16-17, 34-37; OCA R.B. at 26-27.
- The proposed WNA would have a net negative impact on ratepayers while providing a bonus to PECO’s revenues. R.D. at 29-30, 92 (citing OCA St. 6 at 13, 16); *see* 52 Pa. Code § 69.3302(a) (factor 9 assesses the impact of the alternative ratemaking mechanism on the utility’s revenues).
- PECO’s WNA was not proposed with sufficient customer protection measures and is likely to result in customer confusion. R.D. at 26, 28-30 (citing I&E St. 3 at 6; CAUSE-PA St. 1-SR at 4, 5; OCA St. 5 Supp. at 2; OCA St. 6 at 10); *see* 52 Pa. Code § 69.3302(a) (factors 12 and 13 assesses the impact of the alternative ratemaking mechanism on the utility’s revenues); *see also* OCA M.B. at 17-18, 33-38.

As cogently summarized by ALJs Heep and Guhl, “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.” R.D. at 31. This finding is amply supported by evidence, and the ALJs cited extensively to the record to reach the well-reasoned conclusion that each relevant policy factor weighed against implementation of the proposed WNA. *Compare with* PECO Exc. at 16. PECO’s testimony in support of these policy factors was not founded in data or facts supporting the conclusory statements contained therein and, when scrutinized and compared to the ample evidence supporting the OCA’s and CAUSE-PA’s testimony rebutting PECO’s averments, is correctly assigned little weight. *See* OCA Exh. RN-4; OCA St. 6SR at 10-15.

Any similarity between the Company’s proposed WNA and the WNAs implemented by other NGDCs is irrelevant. *See* PECO Exc. at 17; R.D. at 93; OCA R.B. at 7-8, 14-15, 19. The Commission, in this proceeding, is charged with determining whether PECO has proven by a preponderance of the evidence that its proposed WNA would result in just and reasonable rates. PECO’s continuous attempts to deflect from this standard and liken its proposed WNA to those currently in effect are contrary to law, ignore the substantial differences between its proposed WNA and those currently in effect⁴, and reek of entitlement. Further, contrary to PECO’s argument, the Company’s proposal to cap WNA revenues during the month of May by limiting WNA charges to 100% of billed distribution revenue is insufficient to distinguish its proposal from

⁴ Notably, the OCA presented evidence to demonstrate that PECO’s proposed WNA is differentiable from other WNAs because, among other reasons, (1) it uses older weather data than the WNAs currently in effect, (2) it uses the same weather data as Philadelphia Gas Works and proposes to include the month of May during the WNA’s effective period, (3) uses a smaller deadband than WNAs currently in effect, and (4) would not be implemented as a result of a settlement agreement. OCA R.B. at 9-11. These first three reasons are sufficient to demonstrate that PECO’s proposed WNA presents a demonstrable risk of inordinate WNA charges during warmer-than-normal weather.

those of other WNAs currently in effect because the cap was proposed in oral rejoinder without supporting evidence which demonstrated that it would have a cognizable effect on limiting bill impacts from the WNA. PECO Exc. at 16-17; Tr. 826-27; OCA R.B. at 11, n. 5 (describing why the proposed cap in May is an illusory customer protection).

As concisely stated by ALJs Heep and Guhl, “there is no requirement that a utility will be granted its proposed alternative ratemaking mechanism.” R.D. at 90. The Recommended Decision correctly determined that, in this case, and based on this evidentiary record, PECO’s proposed WNA failed to meet the policy factors established in Section 69.3302(a) of the Commission’s regulations and should not be implemented.

G. Overall, ALJs Heep and Guhl Correctly Determined that the Proposed WNA Would Not Result in Just and Reasonable Rates.

In sum, PECO failed to support its proposed WNA by a preponderance of the evidence in this proceeding and would not be supported by substantial evidence if adopted by the Commission. 66 Pa. C.S. § 315(a); 2 Pa. C.S. § 704. The Recommended Decision meticulously combed the record in its review of the evidence presented, and supported its ultimate conclusion that the WNA should be denied with numerous citations to record evidence. R.D. at 25-32, 90-93. ALJs Heep and Guhl’s well-reasoned decision to deny the requested WNA is supported by substantial evidence and should be adopted by the Commission. For these reasons, as fully set forth above and in the OCA’s Main and Reply Briefs, the OCA respectfully requests that PECO’s Exception 1 be denied as unsupported by record evidence.

Reply to IBEW Exception 11: ALJs Heep and Guhl correctly weighed the evidence presented in this proceeding to find that PECO’s proposed Weather Normalization Adjustment would not result in just and reasonable rates and, therefore, PECO’s request should be denied. R.D. at 90-93; OCA at M.B. at 11-41; OCA R.B. at 4-29.

IBEW’s Exception 11 argues that the WNA was fully supported by evidence of record. IBEW Exc. at 11. For the reasons set forth in its reply to PECO’s Exception 1 and its Main and

Reply Briefs, the OCA supports the conclusion of the Recommended Decision that PECO failed to meet its burden of proof to establish that the proposed WNA would result in just and reasonable rates and incorporates those replies as if set forth fully herein. ALJs Heep and Guhl correctly determined that the WNA would not provide ratepayers with bill stability, the fact that other WNAs have been approved is not evidence that PECO's proposal should be approved, and that PECO failed to produce evidence that the WNA would not inequitably shift risk to consumers. R.D. at 90-93. As such, and for the reasons stated *supra*, the OCA respectfully requests that IBEW's Exception 11 be denied.

III. CONCLUSION

For the reasons herein and articulated in the OCA's Briefs, the OCA respectfully requests that the Commission deny PECO Exception 1 and IBEW Exception 11 and adopt the Recommended Decision of ALJs Heep and Guhl denying the proposed WNA as fully supported by substantial evidence.

Respectfully submitted,

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