



October 28, 2024

Via electronic mail

The Honorable Darlene Heep
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

The Honorable Marta Guhl
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

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

Dear Judge Heep and Judge Guhl:

Enclosed please find the **Reply Exceptions of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania** in the above referenced proceeding.

Copies are being served upon all parties and Your Honors, as indicated on the attached Certificate of Service.

If you have any questions, do not hesitate to contact me.

Sincerely,

/s/ Charlotte Edelstein
Charlotte E. Edelstein, Esquire
Attorney ID No. 334505

Enclosures

Cc: PA PUC Secretary's Bureau
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

R-2024-3046932

Office of Consumer Advocate
Office of Small Business Advocate
State Representative Christina Sappey
Alan McCarthy

C-2024-3048363
C-2024-3048456
C-2024-3048631
C-2024-3048497

v.

PECO Energy Company (Gas)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the **Reply Exceptions of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania** upon the parties of record in the above captioned proceedings in accordance with the requirements of 52 Pa. Code § 1.54.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

PECO Energy Company - Gas

Docket No. R-2024-3046932

**REPLY EXCEPTIONS OF THE COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

COMMUNITY LEGAL SERVICES, INC

*Counsel for the Coalition for Affordable Utility Services and Energy Efficiency in
Pennsylvania*

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I. Introduction

On August 30, 2024, PECO Energy Company – Gas Division (“PECO”), the Commissions 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. filed a Joint Petition for Non-Uniform Partial Settlement. The only issue reserved for further litigation by the parties to the settlement was PECO’s proposed Weather Normalization Adjustment (WNA). The parties filed Main Briefs on September 6, 2024 and Reply Briefs on September 12, 2024. In addition, the International Brotherhood of Electrical Workers Local 614 (IBEW) filed briefs opposing the Partial Settlement in its entirety.

On October 15, 2024, Administrative Law Judges (“ALJs”) Darlene Heep and Marta Guhl issued their Recommended Decision (“RD”) denying PECO’s proposed WNA. On October 22, 2024, PECO filed its Exceptions to the RD. Also on October 22, 2024, IBEW filed its Exceptions to the RD.

CAUSE-PA submits the following Reply Exceptions in response to Exception No. 1 filed by PECO and Exception No. 11 filed by IBEW. Both exceptions concern the ALJs recommendation that the Commission deny PECO’s proposal to implement a gas WNA.

II. Reply Exceptions

A. Reply to PECO Exception No. 1: The ALJs Properly Denied PECO's Proposed Weather Normalization Adjustment because it is Unjust, Unreasonable, and Contrary to the Interest of Customers and the Public.

In its Exception No. 1, PECO submits that the ALJs erred by recommending that the Commission reject PECO's proposed WNA. As determined by the ALJs, PECO's proposed WNA was not supported by the fact that other gas companies utilize WNAs, and would not achieve the vital policy goals of ensuring that customers receive understandable price signals and are incentivized to conserve energy.¹ Indeed, the ALJs found that PECO's WNA is not in the public interest, "particularly in the case of a company such as PECO that provides both electric and gas service."² In this scenario, PECO's proposed WNA would charge for higher gas costs when customers use less gas due to warmer weather, while at the same time enabling PECO to sell more electricity for corresponding cooling needs.³ Accordingly, the ALJs agreed with opponents of PECO's WNA, who identified the particularized harm the WNA would inflict on low income customers, concluding that there is no cost-of-service foundation for PECO's request, which is contrary to the public interest and neither reasonable nor just.⁴ As discussed in the sections that follow, PECO's Exception to the ALJs recommendation is without merit and should be denied.

¹ RD at 92-93.

² RD at 90.

³ RD at 90-91.

⁴ RD at 91-93.

1. *The ALJs properly concluded that PECO failed to demonstrate that its proposed WNA satisfied the alternative ratemaking factors set forth by the Commission in its Statement of Policy on Section 1330 at 52 Pa. Code § 69.3302.*

As discussed in CAUSE-PA's Main Brief, PECO's WNA proposal is an alternative ratemaking mechanism, and must be considered in reference to the Commission's policies regarding alternative ratemaking. Section 1330 of the Public Utility Code authorizes the Commission to review and approve utility proposals for alternative ratemaking mechanisms.⁵ In 2019, the Commission adopted a Distribution Rates Policy Statement implementing Section 1330.⁶ The Commission's Policy Statement enumerates factors for evaluation of alternative ratemaking mechanisms.⁷ The Policy Statement is intended to "promote the efficient use of electricity, natural gas and water through technologies and information."⁸ It states that, "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."⁹ It sets forth fourteen factors to evaluate whether an alternative ratemaking mechanism is just and reasonable.¹⁰ These factors include (among others): the effect on low income customers and customer assistance programs, the impact on efficiency and conservation programming, customer rate stability principles, whether the mechanism is understandable to customers, and alignment with cost causation principles.

As outlined below, the Commission's alternative ratemaking factors weigh against the approval of PECO's proposed WNA. The ALJ's correctly concluded that PECO's proposed

⁵ 66 Pa. C.S. § 1330.

⁶ See 66 Pa. C.S. § 1330(d) ("No later than six months after the effective date of this subsection, the commission, by regulation or order, shall prescribe the specific procedures for the approval of an application to establish alternative rates.").

⁷ 52 Pa. Code §§ 69.3301-.3302.

⁸ Id.

⁹ Id.

¹⁰ 52 Pa. Code § 69.3302(a).

WNA is not understandable to consumers and that “it will be difficult for a customer to predict how much will be charged.”¹¹ Even if PECO were to educate customers on what the WNA is,¹² knowledge that warmer winter weather may lead to higher bills still does not create understandable bill impacts. In fact, at the Public Input Hearings, multiple customers testified that the proposed WNA would be confusing and hard to explain.¹³ As noted by OCA witness Nelson, PECO did not conduct any analysis on whether the WNA would be understandable to customers.¹⁴

In her surrebuttal testimony, CAUSE-PA witness Marx explained that the proposed WNA would result in confusing and opaque charges, creating a scenario where customers cannot predict how much they will be charged based on usage.¹⁵ 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.¹⁶ This model uses a 30 year average for “normal” weather, and does not take into account the effects of climate change on weather patterns going forward.¹⁷ Under this system, it would be impossible for a customer to predict their monthly bill. In fact, customers could see their bills rise despite lower usage and not have enough information to understand why their bills are rising, nor have any understanding how they could control their monthly bills.

Furthermore, the ALJs correctly concluded that PECO’s “WNA is a disincentive for consumers to conserve.”¹⁸ The WNA calculates the monthly bill by generating Weather

¹¹ RD at 91.

¹² PECO St. 3 at 79:12-14.

¹³ OCA St. 5-SD at 2: 13-15.

¹⁴ OCA St. 6, Exhibit RN-4 at 7.

¹⁵ CAUSE-PA St. SR-1 at 4:14-18.

¹⁶ CAUSE-PA St. 1-SR at 5.

¹⁷ August 8th Hearing Transcript at 825:8-11.

¹⁸ RD at 92.

Normalized Billing Ccfs, adding that amount to the Actual Monthly Ccfs and then multiplying that by the Distribution Charge, essentially adding artificial usage to the customer's bill.¹⁹ When a customer invests in energy efficiency measures or participates in a usage reduction program, they expect that savings to be reflected on their monthly bills. However, artificially charging a customer for additional gas they did not actually use reduces the benefit of energy efficiency measures on that customer's monthly bills. The WNA thereby reduces that customer's incentive to employ energy efficiency measures or participate in a usage reduction program.

In order to implement an alternative ratemaking mechanism, the proposing utility must provide substantial evidence that the mechanism would result in just and reasonable rates. The ALJs correctly reason that the fact "that other Companies employ WNAs does not constitute substantial evidence that meets PECO's burden of proof."²⁰ PECO excepts to this reasoning, reiterating its arguments in briefs that the proposed WNA is "substantially similar to other Commission-approved WNAs of other NGDCs," and therefore, should also be approved.²¹ Multiple times throughout their exceptions, PECO points to the Commission's decision in the recent Peoples Natural Gas rate case, approving Peoples' proposed WNA, as a reason that the ALJs in this case should not have rejected PECO's proposed WNA in this case.²² However, the Peoples' WNA was approved as part of a settlement,²³ and settlements cannot be relied upon as

¹⁹ PECO St. 3 at 71.

²⁰ RD at 93.

²¹ PECO Exceptions at 17.

²² See, e.g., PECO Exceptions at 3, 5, 8, 9, 11, 13 (citing Pa. P.U.C. v. Peoples Natural Gas Co. LLC, Docket No. R-2023-3044549 (Order entered Sept. 12, 2024)).

²³ Pa. P.U.C. v. Peoples Natural Gas Co. LLC, Docket No. R-2023-3044549 (Order entered Sept. 12, 2024). Four other gas utilities that PECO points to also have WNA mechanisms resulted from unanimous settlement agreements. See 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. R2022-3035730 (Order entered June 15, 2023).

precedent by the PUC.²⁴ A WNA included in a settlement is also the result of concessions, negotiations, and other considerations among parties. One term of a negotiated settlement in an unrelated proceeding cannot simply be glommed onto this case, which involves different parties, myriad distinct considerations, and a completely separate hearing record.²⁵

In addition, PECO's proposed WNA can be distinguished from all of the other gas utility WNAs in Pennsylvania – PECO proposes using older weather data for its determination of “normal” weather, and a smaller deadband than any WNA implemented in Pennsylvania. As explained by OCA in its Reply Brief in this case:

While the Company's proposed WNA is similar in its goal to those approved by the Commission, as a result of settlement, of the other natural gas distribution companies (NGDCs) – meaning that the equation used to calculate WNA charges is similar to those currently in effect – it differs in substance. PECO Gas proposes to use a 30-year weather normal to determine what constitutes “normal” weather. A 30-year “normal” is more likely to have a higher number of heating degree days (HDDs) and, thus, result in greater WNA charges than a shorter weather “normal” period of 10, 15, or 20 years. PECO Gas failed to point out in its Main Brief that no other WNA currently in effect uses such a long weather “normal” period. Two NGDCs, UGI Utilities, Inc. – Gas Division (UGI) and National Fuel Gas Distribution Corp. (NFG), use 15-year weather “normal” periods, while Philadelphia Gas Works (PGW) and Columbia Gas of Pennsylvania, Inc. (Columbia) use 20-year weather “normal” periods.²⁶

Furthermore, even if PECO's proposed WNA was “substantially similar” to other WNAs, this does not mean that the record in PECO's rate case is substantially similar to the record in other rate cases where a WNA has been approved. It is based on the record of this specific case that the ALJs correctly found that “the record does not demonstrate that a WNA is in the public interest.”²⁷ For example, PECO points to the approval of Philadelphia Gas Works' (“PGW”)

²⁴ HIKO Energy, LLC v. Pa. PUC, 163 A.3d 1079, 1102-03 (Pa. Cmwlth. 2017) aff'd HIKO Energy, LLC v. Pa. PUC, 209 A.3d 246 (Pa. 2019).

²⁵ OCA addressed this point at length in its briefs. See OCA R.B. at 7-8.

²⁶ OCA R.B. at 9 (internal citations omitted).

²⁷ RD at 90.

WNA as evidence of the adequacy of PECO's analysis of the customer impacts of the proposed WNA.²⁸ Yet PGW's WNA, which has existed for decades, has been challenged in the past few years. In fact, the most recent Commission decision on PGW's WNA deferred consideration of the appropriateness of the WNA to PGW's next base rate case.²⁹ In addition, as explained in CAUSE-PA's Main Brief, many of the WNAs implemented in Pennsylvania service territories have in fact shifted all risk of changing weather from the utility onto consumers.³⁰ In recent years, this has almost always resulted in higher charges for residential consumers because when temperatures are warmer than normal, a WNA results in a higher bill.³¹

Because it would be improper to consider and/or rely upon the existence of other WNAs whose approvals were arrived at through different processes and on different records, the ALJs properly concluded that the existence of other WNAs does not constitute substantial evidence that PECO met its burden of proof to show that its proposed WNA was just and reasonable. In contrast, opponents of PECO's WNA have shown that it fails to satisfy the important policy objectives the Commission has identified in 52 Pa. Code § 69.3302 and so should be rejected by the Commission.

In addition, as explained in CAUSE-PA's Main Brief, many of the WNAs implemented in Pennsylvania service territories have in fact shifted all risk of changing weather from the utility

²⁸ PECO Exceptions at 9.

²⁹ Pa. P.U.C. v. Philadelphia Gas Works, P-2022-3034229, Opinion and Order at 31 (Sept. 21, 2023) (deferring the analysis of PGW's already existing WNA under Section 1330 of the Code and the Commission's Policy Statement to the next base rate proceeding).

³⁰ CAUSE-PA M.B. at 8. See also CAUSE-PA St. 1 at 67 (citing Pa. PUC v. Columbia Gas of Pa., Inc., R-2020-3018835, Columbia St. 3 at 17-18 (Submitted Apr. 24, 2020); Pa. PUC v. Philadelphia Gas Works, R-2017-2586783, PGW Annual WNA Reporting (filed Dec. 31, 2019; June 9, 2021; Jan. 6, 2022)).

³¹ CAUSE-PA St. 1 at 67:5-6.

onto consumers. In recent years, this has almost always resulted in higher charges for residential consumers because when temperatures are warmer than normal, a WNA results in a higher bill.

2. The ALJs Properly Concluded that the WNA is Inappropriate in Part Because PECO Has Both Electric and Gas Operations.

PECO excepts to the ALJs' conclusion that the WNA is not in the public interest because PECO provides both electric and gas service.³⁴ PECO argues that UGI Utilities, which has both electric and gas operations, has previously had a WNA approved.³⁵ PECO's comparison to UGI is inappropriate for several reasons. Unlike PECO's proposed WNA, UGI's WNA, like the other WNAs currently in effect, was approved as part of a comprehensive settlement.³⁶ In addition, UGI's WNA was specifically approved as a pilot, with extensive reporting requirements and allowances for all parties to challenge future continuation of the pilot.³⁷

Furthermore, concerns regarding a WNA's impact on dual service UGI customers were not squarely raised or addressed in the UGI settlement. By contrast, this case includes record evidence that indicates dual service customers will be uniquely harmed by PECO's proposed WNA, given PECO's practice of combined billing and arrears, as well as shutting off both gas and electric service simultaneously for dual service customers. As noted in CAUSE-PA's Main Brief,³⁸ PECO witness Jaqueline F. Golden stated in her rebuttal testimony that "PECO provides customers who receive electric and gas service with a total bill for their utility service," and that "a customer in arrears is at risk for termination of both services."³⁹ For these reasons, the

³⁴ RD at 90; PECO Exceptions at 9.

³⁵ PECO Exceptions at 10.

³⁶ Pa. P.U.C. v. UGI Utils., Inc. – Gas Div., Recommended Decision, Docket No. R-2021-3030218 (Jul. 28, 2022).

³⁷ Id. at 34; 53 ("OCA points out that this allows for a temporary testing of the WNA alternative ratemaking mechanism without any commitment to its permanence if OCA and other parties in opposition to it decide to challenge it in the next rate case.").

³⁸ See generally CAUSE-PA Main Brief at 10-11.

³⁹ PECO St. 10-R at 23:9-12.

existence of a pilot WNA agreed to in Settlement for a different gas and electric utility, where the impact of how electric and gas service intertwine was not investigated, should not be dispositive when considering the facts on the record in the litigated aspect of this proceeding. The ALJs correctly considered this record evidence in concluding that PECO's proposed WNA was not in the public interest.

3. The ALJs Properly Found That the WNA Would Be a Particularized Harm for Low-Income Customers

PECO additionally disputes the ALJ's conclusion that the WNA would be particularly harmful to low-income customers.⁴⁰ Specifically, PECO states that PECO's CAP participation rate is higher than that of other gas utilities and that CAP customers are protected from any negative impacts of the WNA. As a result, PECO argues, the proposed WNA would not have any greater negative impact on low-income customers than other gas utilities where WNAs have been approved.⁴¹

PECO relies heavily in its exceptions on the idea that it has a uniquely high CAP participation rate. However, the ALJs properly weighed the evidence and gave weight to arguments from OCA and CAUSE-PA that PECO's reported CAP participation rates are inflated.⁴² As explained in testimony by CAUSE-PA witness Elizabeth Marx, PECO's definition of "confirmed low-income customers" does not accurately reflect the actual number of low-income PECO customers. PECO defines "confirmed low-income customers" as "customers who in the last two years have provided verified financial information at or below 150% FPL, and/or

⁴⁰ PECO Exceptions at 11.

⁴¹ PECO Exceptions at 12-13.

⁴² RD at 92-93; RD at 93 n.286 ("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.")

enrolled in CAP, and/or received a LIHEAP grant.”⁴³ In contrast to PECO’s narrow definition of “confirmed low-income customer,” PECO’s “unconfirmed low-income customer”⁴⁴ numbers and the number of estimated low-income customers give a fuller picture of how PECO’s low-income customer population will be disproportionately impacted by a WNA. As detailed in CAUSE-PA’s Main Brief, for the many low-income customers who are not enrolled in CAP,⁴⁵ a significant way to control energy costs is by reducing usage.⁴⁶ Because the WNA is not charged in relation to income and is substantially decoupled from usage,⁴⁷ the increased cost that non-CAP customers would face with a WNA during warmer than normal months would exacerbate the economic instability of PECO’s low-income customers and significantly limit their ability to control their costs.⁴⁸ For these reasons alone, the ALJs properly concluded that the proposed WNA would have a disproportionately negative impact on low-income customers, a consideration in the Commission’s Distribution Rates Policy Statement.⁴⁹

However, the analysis does not stop at low-income customers not enrolled in CAP. Factor 7 of the Distribution Rates Policy Statement requires the Commission to consider the impact of the proposed WNA on low-income customers and how the proposed WNA would support Customer Assistance Programs.⁵⁰ PECO argues that CAP customers will be protected from any

⁴³ CAUSE-PA St. 1 at 11.

⁴⁴ CAUSE-PA St. 1-SR at 14 n.27 (noting that PECO defines an unconfirmed low-income customer as “a customer that has provided a verbal statement of income but has not provided physical documentation of income”).

⁴⁵ CAUSE-PA St. 1 at 67:15-16. In December 2023, for example, PECO gas had an estimated 56,138 low-income customers who were not enrolled in CAP. Id.

⁴⁶ CAUSE-PA M.B. at 13.

⁴⁷ PECO St. 3 at 71-73.

⁴⁸ CAUSE-PA St. 1-SR at 7:1-6. Even before rate increases and the negative effects of a WNA, PECO Gas customers are already struggling to afford service. 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%. CAUSE-PA St. 1 at 17:11-14.

⁴⁹ 52 Pa. Code §§ 69.3302.

⁵⁰ Id.

bill increases due to the WNA.⁵¹ This is contrary to record evidence – and glosses over the impact to PECO’s Customer Assistance Program as a whole. As detailed in CAUSE-PA’s Main Brief, in addition to non-CAP low-income customers, the proposed WNA would also negatively impact individual CAP customers, and impact the CAP program as a whole:⁵²

Each month, PECO CAP customers are charged the lower of their actual bill or their applicable percentage of income payment amount. While the WNA would not increase a CAP customer’s percentage of income amount, 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.

A WNA would also impact CAP by increasing the cost of the CAP program for non-CAP customers. WNA charges are assessed against a CAP customer’s bill as if they were not enrolled in CAP and then the CAP discount is applied. These CAP discounts, the difference between a customer’s actual usage bill and that customer’s percentage of income payment amount, are paid for by residential customers through the Universal Service Fund Charge. This means that non-CAP customers would be absorbing the WNA charges assessed against CAP customers’ bills in the form of a larger CAP shortfall. 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 the CAP shortfall.⁵³

CAUSE-PA urges the Commission to consider in its analysis, as the ALJs did, the disproportionate harm PECO’s proposed WNA will have on low-income customers, as well as the impact to the Customer Assistance Program as a whole. CAUSE-PA submits that the ALJs correctly found the WNA would result in an unacceptable and “particularized harm” for low income customers and so should not be approved.

⁵¹ PECO Exceptions at 12.

⁵² CAUSE-PA M.B. at 12-13.

⁵³ Id. (internal citations omitted).

B. Reply to IBEW Exception No. 11: The ALJs Properly Found That the WNA Is Not Just and Reasonable.

IBEW states in its exceptions that the record does not include evidence of how other WNA mechanisms have harmed ratepayers.⁵⁴ Although of questionable relevance, this assertion is incorrect. For example, OCA cited PGW's history of over-collecting \$12 million in WNA charges.⁵⁵ OCA witness Ron Nelson pointed to multiple sources demonstrating that other Pennsylvania WNAs have been confusing and frustrating for customers.⁵⁶ Furthermore, also as detailed by Mr. Nelson, PECO'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.⁵⁷ CAUSE-PA witness Elizabeth Marx testified to the fact that other Pennsylvania WNAs have tended to result in higher charges for residential customers and shifted risk from the utility to the customer.⁵⁸ Based on the evidence in the record, the ALJs properly concluded that a WNA is not just and reasonable and is not in the public interest.⁵⁹ IBEW's Exception disregards this record evidence and so should be denied by the Commission.

III. Conclusion

For the reasons set forth, CAUSE-PA respectfully requests that the Commission deny PECO Exception No. 1 and IBEW Exception No. 11.

⁵⁴ IBEW Exceptions at 11.

⁵⁵ OCA Main Brief at 25, citing Pa. PUC v. Phila. Gas Works, Docket Nos. R-2022-3034229 et al (Order entered Sept. 21, 2023) (PGW Emergency Petition regarding tariff adjustments to remove the month of May from its WNA).

⁵⁶ OCA St. 6SR at 12.

⁵⁷ OCA St. 6 at 13.

⁵⁸ CAUSE-PA St. 1 at 67.

⁵⁹ RD at 93.

Respectfully submitted,
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