BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2018-3000164
Office of Consumer Advocate	:	C-2018-3001112
Office of Small Business Advocate	:	C-2018-3001043
Philadelphia Area Industrial Energy Users Group	:	C-2018-3001471
	:	
v.	:	
	:	
PECO Energy Company	:	

RECOMMENDED DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

F. Joseph Brady
Administrative Law Judge

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I. INTRODUCTION

In the base rate proceeding for PECO Energy Company (PECO), the active parties were able to reach a Partial Settlement of their disputes. PECO originally sought an increase of $82 million in annual distribution revenue in its initial filing with the Commission. Under PECO's proposal, the bill for a typical residential customer that uses 700 kWh per month would have increased by $3.28 per month, from $102.65 to $105.93 (or 3.2%). The Partial Settlement reached by the Parties is designed to produce an annual increase in electric operating revenues of $85.5 million, which is reduced to $14.9 million following the application of 2019 tax savings related to the Tax Cut and Jobs Act (TCJA). The revenue requirement is further adjusted to account for the roll-in of Distribution System Improvement Surcharge (DSIC) revenue for a net revenue increase of $24.9 million. Under the Partial Settlement, the bill for a typical Residential customer that uses 700 kWh per month will increase by $1.27, from $102.65 to $103.92 (or 1.2%). This decision recommends that the Commission approve the Joint Petition for Partial Settlement of PECO's base rate request.

As to the litigated issue, we recommend that PECO continue to allocate costs and to calculate its price-to-compare as previously approved by the Commission in prior default service and base rate proceedings, and as set out in its proposed tariff.

II. HISTORY OF THE PROCEEDING

On March 29, 2018, PECO filed proposed Tariff Electric-Pa. P.U.C. No. 6 (Tariff No. 6) to become effective May 28, 2018. Tariff No. 6 sets forth proposed rates designed to produce an increase in PECO's annual distribution revenue of approximately $82 million[1], or 2.2% on the basis of total Pennsylvania jurisdictional operating revenue.

At that time, PECO served the following Direct Testimonies along with, and in support of its filing: Direct Testimonies of Michael A. Innocenzo, PECO St. No. 1;

[1] PECO's proposed rate increase reflects $71 million in savings in 2019 from changes in the Federal Income Tax Law, effective January 1, 2018.

Phillip S. Barnett, PECO St. No. 2; Benjamin S. Yin, PECO St. No. 3; Scott A. Bailey, PECO St. No. 4; Paul R. Moul, PECO St. No. 5; Jiang Ding, PECO St. No. 6; Mark Kehl, PECO St. No. 7; and Richard A. Schlesinger, PECO St. No. 8.

On April 4, 2018, Carrie B. Wright, Esq., entered a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E).

On April 9, 2018, the Office of Small Business Advocate (OSBA) filed a Verification, Public Statement, a Notice of Appearance on behalf of Elizabeth Rose Triscari, Esq., and a formal Complaint. The Complaint was docketed at C-2018-3001043.

On April 10, 2018, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene in this proceeding.

On April 12, 2018, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance on behalf of Christy M. Appleby, Esq., Hayley Dunn, Esq., and Aron J. Beatty, Esq., and a formal Complaint. The Complaint was docketed at C-2018-3001112.

On April 17, 2018, the International Brotherhood of Electrical Workers, Local 614 (IBEW) filed a Petition to Intervene in this proceeding.

By Order entered April 19, 2018, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d), Tariff No. 6 was suspended by operation of law until December 28, 2018, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of PECO's existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission's April 19, 2018 Order, the matter was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge F. Joseph Brady.

On April 23, 2018, the Community Action Association of Pennsylvania (CAAP) filed a Petition to Intervene in this proceeding.

On April 26, 2018, the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed a formal Complaint. The Complaint was docketed at C-2018-3001471.

In compliance with the Commission's April 19, 2018 Order, PECO filed Supplement No. 1 to Tariff Electric No. 6 on April 27, 2018, to reflect the suspension of Tariff No. 6 until December 28, 2018.

On April 27, 2018, the Delaware Valley Regional Planning Commission (DVRPC) filed a Petition to Intervene in this proceeding.

On May 2, 2018, the Trustees of the University of Pennsylvania (UPenn) filed a formal Complaint. The Complaint was docketed at C-2018-3001636.

On May 3, 2018, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, TURN, *et al.)* filed a Petition to Intervene in this proceeding.

On May 3, 2018, Tesla, Inc. (Tesla) filed a Petition to Intervene in this proceeding.

On May 3, 2018, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, Walmart) filed a Petition to Intervene in this proceeding.

On May 4, 2018, the Retail Energy Supply Association (RESA) filed a Petition to Intervene in this proceeding.

On May 4, 2018, NRG Energy, Inc. (NRG) filed a Petition to Intervene in this proceeding.

In accordance with a Prehearing Conference Order dated April 20, 2018, PECO, I&E, OSBA, OCA, CAUSE-PA, IBEW, CAAP, PAEIUG, DVRPC, UPenn, TURN, *et al*., Tesla, Walmart, NRG, and RESA submitted prehearing memoranda to the presiding officers.

A dual location Prehearing Conference was held on May 8, 2018. Counsel for PECO, I&E, OSBA, OCA, CAUSE-PA, IBEW, PAEIUG, DVRPC, UPenn, TURN, *et al.,* Tesla, Walmart, NRG, and RESA participated.

No party opposed the Petitions to Intervene filed by Walmart, Tesla, TURN *et al*., IBEW, CAUSE-PA, and CAAP. Accordingly, we granted these parties' Petitions during the prehearing conference and memorialized their status as Intervenors in our May 10, 2018, Prehearing Order #1.

On May 16, 2018, the DVRPC submitted a letter to our attention requesting to withdraw its Petition to Intervene.

Also on May 16, 2018, PECO filed Answers opposing the Petitions to Intervene of RESA and NRG.

On May 18, 2018, the Laborers International Union of North America, Local 57 (LIUNA) filed a Petition to Intervene in this proceeding.

On May 24, 2018, Calpine Energy Solutions, LLC (Calpine) and ArcelorMittal USA, LLC (ArcelorMittal) filed their respective Petitions to Intervene in this proceeding.

On June 1, 2018, we issued Prehearing Order # 2 granting NRG's and RESA's Petitions to Intervene.

A total of six Public Input Hearings were held in this matter on June 6, 7, 12, 14, and 18, 2018. Forty-eight (48) PECO customers gave sworn testimony during the Public Input Hearings.

On June 12, 2018, PECO filed a Motion for Leave to File the Supplemental Direct Testimony of Richard A. Schlesinger.

On June 20, 2018, UPenn filed with the Commission its Petition of the Trustees of the University of Pennsylvania for Leave to Withdraw its Rate Complaint.

On June 26, 2018, West Norriton Township filed a formal Complaint. The Complaint was docketed at C-2018-3003149.

On June 26, 2018, we issued Prehearing Order # 3 granting PECO's Motion for Leave to File the Supplemental Direct Testimony of Richard A. Schlesinger.

On June 26, 2018, the following parties served Direct Testimony: OCA (Direct Testimonies of David Effron, OCA St. No. 1; David Habr, OCA St. No. 2; Clarence Johnson, OCA St. No. 3; and Roger Colton, OCA St. No. 4); I&E (Direct Testimonies of Christine S. Wilson, I&E St. No. 1; Anthony Spadaccio, I&E St. No. 2; Joseph Kubas, I&E St. No. 3; and John Zalesky, I&E St. No. 4); CAUSE-PA (Direct Testimony of Mitchell Miller, CAUSE-PA St. No. 1); Walmart (Direct Testimony of Gregory W. Tillman, Walmart St. No. 1); TURN *et al*. (Direct Testimony of Harry Gellar, TURN *et al*. St. No. 1); PAIEUG (Direct Testimony of Jeffry Pollock, PAIEUG St. No. 1); Tesla (Direct Testimonies of Patrick Bean, Tesla St. No. 1; Katherine Bell, Tesla St. No. 2); NRG (Direct Testimony of Chris Peterson, NRG St. No. 1); OSBA (Direct Testimony of Brian Kalcic, OSBA St. No. 1); ArcelorMittal (Direct Testimony of Paul J. Ciesielski, ArcelorMittal St. No. 1); and LIUNA (Direct Testimony of Esteban Vera, Jr., LIUNA St. No. 1).

By Initial Decision dated July 3, 2018, and issued on July 25, 2018, we granted DVRPC's and UPenn's respective Petitions for Leave to Withdraw.

Separately on July 3, 2018, ChargePoint, Inc. (ChargePoint) filed a Petition to Intervene in this proceeding.[2] Separately on that date, Reizdan B. Moore, Esq., on behalf of ChargePoint, filed a Motion for Admission *Pro Hac Vice*, pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a), on behalf of Scott Dunbar, Esq., requesting that he be admitted for purposes of representing ChargePoint in this proceeding.[3]

On July 17, 2018, RESA filed with the Commission its Petition for Leave to Withdraw Intervention in this matter.

On July 18, 2018, West Norriton Township filed with the Commission a letter requesting to withdraw its Complaint in this proceeding.

On July 24, 2018, the following parties served Rebuttal Testimony: PECO (Rebuttal Testimonies of John E. McDonald, PECO St. No. 1-R; Phillip S. Barnett, PECO St. No. 2-R; Benjamin S. Yin, PECO St. No. 3-R; Paul R. Moul, PECO St. No. 5-R; Jiang Ding, PECO St. No. 6-R; Mark Kehl, PECO St. No. 7-R; Richard A. Schlesinger, PECO St. No. 8-R; and Alan B. Cohn, PECO St. No. 9-R); TURN et al. (Rebuttal Testimony of Harry Gellar, TURN et al. St. No. 1-R); CAAP (Rebuttal Testimony of Susan Moore, CAAP St. No. 1-R); OSBA (Rebuttal Testimony of Brian Kalcic, OSBA St. No. 1-R); ChargePoint (Rebuttal Testimony of Michael K. Waters, St. No. 1-R); PAIEUG (Rebuttal Testimony of Jeffry Pollock, PAIEUG St. No. 1-R); and OCA (Rebuttal Testimony of Clarence Johnson, OCA St. No. 3-R).

On August 8, 2018, the following parties served Surrebuttal Testimony: PECO (Surrebuttal Testimonies of Jiang Ding, PECO St. No. 6-SR; and Richard A. Schlesinger, PECO St. No. 8-SR); NRG (Surrebuttal Testimony of Chris Peterson, NRG St. No. 1-SR); OCA (Surrebuttal Testimonies of David Effron, OCA St. No. 1-SR; David Habr, OCA St. No. 2-SR;

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[2] Pursuant to paragraph #5 of our Prehearing Order #1 issued on May 10, 2018, ChargePoint's Petition to Intervene was deemed granted as there were no objections to its Petition within three calendar days of filing.

[3] By Order dated July 24, 2018, we granted the Motion for Admission *Pro Hac Vice*.

Clarence Johnson, OCA St. No. 3-SR; and Roger Colton, OCA St. No. 4-SR); I&E (Surrebuttal Testimonies of Christine S. Wilson, I&E St. No. 1-SR; Anthony Spadaccio, I&E St. No. 2-SR; Joseph Kubas, I&E St. No. 3-SR; and John Zalesky, I&E St. No. 4-SR); CAUSE-PA (Surrebuttal Testimony of Mitchell Miller, CAUSE-PA St. No. 1-SR); PAIEUG (Surrebuttal Testimony of Jeffry Pollock, PAIEUG St. No. 1-SR); and TURN *et al*. (Surrebuttal Testimony of Harry Gellar, TURN *et al*. St. No. 1-SR).

By Initial Decision dated August 3, 2018, and issued on August 9, 2018, we granted RESA's and West Norriton Township's respective Petitions for Leave to Withdraw.

On August 15, 2018, Craig Williams, Esq., Counsel for PECO, contacted us on behalf of all the parties to inform us that the parties had reached a settlement on all but one issue. The remaining dispute concerned NRG's opposition to PECO's allocation of certain costs to residential distribution service and the effect of reallocating those costs to residential default service, with a commensurate reduction in the level of residential distribution charges. Mr. Williams advised that the parties had waived cross-examination on all witnesses with two exceptions: NRG intended to cross examine PECO Witness Alan B. Cohn and PECO intended to cross examine NRG Witness Chris Peterson. Mr. Williams further advised that the parties anticipated that only one hearing day would be necessary, and requested that the hearing be held on Tuesday, August 21, 2018. We subsequently emailed the parties to advise that the hearing would be held on Tuesday, August 21, 2018, and that the hearings scheduled for Monday, August 20, 2018 and Wednesday, August 22, 2018, were cancelled.

Also on August 15, 2018, LIUNA filed with the Commission its Petition for Leave to Withdraw Intervention in this matter.

The evidentiary hearing was held as scheduled on August 21, 2018. During the hearing, PECO presented its witness' rejoinder testimony, and also made its witness available for cross examination by NRG. NRG also presented its witness for cross-examination. All other party witnesses were excused from appearing at the hearing since no parties requested to cross examine them, and also because we did not have questions for them. PECO, OCA, I&E, OSBA, CAUSE-PA, CAAP, PAIEUG, TURN *et al.*, Tesla, Walmart, NRG, ArcelorMittal and ChargePoint each moved to have their witnesses' testimonies and exhibits entered into the record. As there were no objections, all parties' testimony and/or exhibits were admitted into the record during the hearing.

On August 28, 2018, the Joint Petition for Partial Settlement (Settlement) was filed along with Statements in Support by: PECO, I&E, OCA, OSBA, PAIEUG, CAUSE-PA, TURN, *et al*., CAAP, Tesla, ChargePoint, and Walmart (collectively, Joint Petitioners). Although ArcelorMittal, Calpine and IBEW did not sign the Settlement, the Joint Petitioners indicated in the Partial Settlement that ArcelorMittal, Calpine and IBEW authorized them to state their non-opposition to the Settlement.

On September 7, 2018, PECO, NRG, and OCA filed main briefs. On September 17, 2018, PECO, NRG, and OCA filed reply briefs.

By Initial Decision dated September 17, 2018, and issued on September 27, 2018, we granted LIUNA'a Petition for Leave to Withdraw Intervention in this matter.

III. FINDINGS OF FACT

1. PECO is an electric distribution company engaged in the business of providing electric distribution service to its customers. PECO St. 9R at 10.

2. On March 29, 2018, PECO filed Tariff No. 6 with the Commission.

3. Tariff No. 6 reflects an increase in annual distribution revenue of approximately $82 million, or 2.2% of PECO's total Pennsylvania jurisdictional operating revenues.

4. I&E is the prosecutory bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for

enforcing compliance with the state and federal motor carrier safety and utility safety laws and regulations. *Implementation of Act 129 of 2008 Organization of Bureau and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

5. Complainant OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

6. Complainant OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

7. Complainant PAIEUG is an *ad hoc* group of energy-intensive customers receiving electric service from PECO primarily under Rate HT.[4]

8. CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to, and maintain, affordable water, electric, heating and telecommunication services.

9. TURN, *et al*. is a not-for-profit advocacy organization composed of moderate and low-income tenants, a substantial number of whom are customers of PECO.

10. CAAP is a statewide association representing Pennsylvania's community action agencies that provide anti-poverty planning and community development activities for low-income communities and services to individuals and families.

11. Tesla is a developer and manufacturer of electric vehicles and electric vehicle charging stations, among other clean energy products and services.

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[4] The Members of PAIEUG are: Air Liquide Industrial U.S. LP, The Boeing Company, Building Owners and Managers Association of Philadelphia (BOMA), Drexel University, Einstein Healthcare Network, Evonik Corporation, GlaxoSmithKline, Kimberly-Clark Corporation, Magee Rehabilitation Hospital, Main Line Health, Merck & Co., Inc., Philadelphia College of Osteopathic Medicine, Philadelphia Energy Solutions, Saint Joseph's University, Temple University, Thomas Jefferson University, and Villanova University.

12. ChargePoint is an open electric vehicle (EV) charging network, with over 51,000 independently owned and operated Level 2 and DC fast charging spots, including stations deployed throughout Pennsylvania and in the service territory of PECO.

13. Walmart is a national retailer with approximately 26 stores and related facilities in PECO's service territory, taking delivery of over 77 million kWh annually from PECO on High-Tension Power ("HT") and General Service ("GS") rate classes.

14. On August 28, 2018, a Joint Petition for Partial Settlement was filed on behalf of PECO, I&E, OCA, OSBA, PAIEUG, CAUSE-PA, TURN, *et al.*, CAAP, Tesla, ChargePoint, and Walmart.

15. The settlement set forth in the Joint Petition resolves all issues in this proceeding except for a proposal by NRG Energy, Inc. ("NRG"), to reallocate over $100 million in distribution system costs to residential distribution customers receiving default service.

16. The active Parties agree that the settlement set forth in the Joint Petition is in the public interest as a reasonable resolution of their respective interests and should be approved.

<u>PECO's Provision of Default Service</u>

17. PECO provides default electric generation service to retail electric customers within its service territory who do not select an electric generation supplier ("EGS") or who return to default service after being served by an EGS that becomes unable or unwilling to serve them. PECO St. 9-R, p. 3.

18. Every customer who receives default service from PECO is a distribution service customer, and PECO provides electric distribution service without regard to whether a customer also receives default service. PECO St. 9-R, p. 3.

19. Default service exists for all customers, both shopping and non-shopping. PECO St. 9R at 10.

20. As a default service provider, PECO must stand ready to service 100% of customers' power needs on a moment's notice. OCA St. 3R at 3-4.

21. PECO does not own or operate the generation that provides default service, but instead acquires power through Commission approved solicitations. OCA St. 3R at 4.

22. PECO is required to procure a diverse set of long and short-term power, may not advertise default service or include value added services, or earn a profit on providing default service. OCA St. 3R at 4.

23. PECO makes no profit from providing default service to distribution customers or from standing ready to serve customers who return to default service after shopping with an EGS. PECO St. 9R at 9-10.

24. NRG witness Peterson seeks to reallocate $101 million of expense in PECO's Class Cost of Service Study as indirect and proposes to reallocate these costs from distribution service to default service. OCA St. 3R at 2; PECO St. 9R at 2.

25. NRG witness Peterson seeks to reallocate the following categories of costs: customer service expenses (customer assistance, information advertisement, and miscellaneous customer service), sales expenses (demonstrating & selling), A&G expenses (administrative salaries, office supplies & expense, outside services employed property insurance, injuries & damages, employee pensions & benefits, regulatory commission, duplicate charges – credit, miscellaneous general, and maintenance of general plant), and depreciation & amortization expense (relating to intangible plant, general plant, and common plant). PECO St. 9R at 13-14.

26. The direct costs of default service include the acquired power cost, the cost of compliance with the law, transmission and ancillary service costs, and the administration of operating the solicitation process. OCA St. 3R at 4-5; PECO St. 9R at 5.

27. Avoidable costs are those that do not occur when a customer leaves default service. OCA St. 3R at 3.

28. The indirect costs NRG witness Peterson seeks to allocate to default service are not avoided by PECO when a customer switches to an alternative supplier. OCA St. 3R at 3-4.

29. NRG witness Peterson did not identify any avoidable distribution costs that should be unbundled from PECO's distribution rates. OCA St. 3R at 8.

30. As a result of NRG's proposal, the price to compare (PTC) would increase by 1.25 cents per kWh, or 17.5%, from 7.11 cents per kWh to 8.40 cents per kWh. OCA St. 3R at 3.

31. As a result of NRG's proposal, PECO's proposed distribution energy rate would decrease by 0.7 cents per kWh, an 11% reduction in the Company's requested kWh charge. OCA St. 3R at 3.

32. Mr. Peterson's allocation inflates the PTC by allocating hypothetical costs to default service generation. PECO St. 9R at 14-15.

33. The Class Cost of Service Study is based on fully allocated costs. OCA St. 3R at 5.

34. Administrative & General (A&G) expense is the largest component of indirect costs that Mr. Peterson reallocates to default service. OCA St. 3R at 5.

35. A&G, by definition, is not directly allocable to any particular corporate function. OCA St. 3R at 5.

36. A&G includes upper management salary, general consulting and legal costs, pension and benefits, injuries and damages, and regulatory activities. OCA St. 3R at 5.

37. Most of the A&G expense accounts are classified by PECO's Class Cost of Service Study as salary and wage (S&W) related, and are therefore, allocated on the basis of salary and wages incurred for direct activities within the Class Cost of Service Study. OCA St. 3R at 5.

IV. PUBLIC INPUT HEARINGS

At the time of the prehearing conference, the OCA had received four legislative requests and three consumer requests for Public Input Hearings. During the Public Input Hearings, we received a fifth legislative request for a Public Input Hearing. These requests, along with opposition filed with the Secretary's Bureau, indicated sufficient public interest in these proceedings. Accordingly, six Public Input Hearings were held in five different counties (Delaware, Montgomery, Bucks, Philadelphia, Chester) and six different locations in PECO's service territory. In total, forty-eight (48) PECO customers offered sworn testimony at the following Public Input Hearings:

Date/Location	**Witnesses Testifying**
Wednesday, June 6, 2018 Delaware County Community College 901 Media Line Road Media, PA 19063 *6:00 p.m.*	None
Thursday, June 7, 2018 Worcester Township Community Hall 1721 Valley Forge Road Worcester, PA 19490 *6:00 p.m.*	8

Tuesday, June 12, 2018 Bucks County Community College 275 Swamp Road Newtown, PA 18940 *6:00 p.m.*	10
Thursday, June 14, 2018 Betsy Ross Room 801 Market Street Philadelphia, PA 19107 *10:00 a.m.*	15
Kingdom Life Community Center 6325 Frankford Avenue Philadelphia, PA 19135 *6:00 p.m.*	12
Monday, June 18, 2018 Penns Grove Middle School 301 South 5th Street Oxford, PA 19363 *6:00 p.m.*	3

Steven Kline is a Commissioner in Abington Township. Mr. Kline testified that the Abington Board of Commissioners opposes the rate increase due to concerns about PECO's actions in the aftermath of weather events that result in widespread outages. Mr. Kline requested that the rate increase be denied until PECO improves its response to large-scale outages.[5]

Bill Hoblin testified on behalf of Mission Kids Child Advocacy Center of Montgomery County (Mission Kids). Mr. Hoblin stated that PECO has been a generous and consistent corporate partner with Mission Kids. He testified that, in addition to monetary donations, PECO has provided laptops to Mission Kids and raised awareness about child abuse.[6]

Leroy James Watters testified about his concerns that all companies utilizing transmission wires and poles should communicate more effectively in order to maintain this

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5 Tr. 82-89.
6 Tr. 93-96.

infrastructure. Mr. Watters presented one exhibit, which was marked as Watters-1 and entered into the record.[7]

Laurie Bachman testified on behalf of Riverbend Environmental Educational Center (Riverbend). Riverbend is a non-profit organization that brings nature-based STEM education to middle school students. Ms. Bachman stated that PECO has been a steadfast partner and contributor to Riverbend. She testified that, through their partnership with PECO, Riverbend has been able to increase its mission to 17 schools in the greater Philadelphia area.[8]

William Kazimer testified about how the intervals between PECO's requests for rate increases have become shorter each time. He testified that PECO requested rate increases in 1989, 2010, 2015, and now in 2018.[9]

Marc Brier, Laura Jackson, John Magee, Kim Huynh, Marta Guttenberg, Ryan Leitner, Nelson Camp, Alice Maxfield, and Louise Willis testified as members and/or supporters of the Earth Quaker Action Team (EQAT). EQAT's general position is for PECO to increase its procurement of energy from renewable sources, specifically solar, in order to reduce pollution. EQAT also argues that a rate increase will place an undue burden on low income customers.[10]

Elena Baker testified on behalf of Montgomery County Community Action Development Commission (CATCOM), which provides services for low income individuals in Montgomery County. One of those programs is the Matching Energy Assistance Fund (MEAF), which provides grants to individuals to help them avoid their utilities being shut off. Ms. Baker testified that funds provided by PECO have allowed them to service approximately 210 households, which accounts for 450 people. Ms. Baker thanked PECO for their partnership.[11]

Larry Speilvogel testified that PECO has fallen behind in providing safe and reliable utility service at reasonable rates. Specifically, Mr. Speilvogel made the following

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7 Tr. 96-108.
8 Tr. 108-110.
9 Tr. 111-113.
10 Tr. 116-124, 158-161, 263-270, 282-284, 330-335, 348-353, 390-394, 395-398.
11 Tr. 127-130.

assertions: smart meters are unreliable; PECO should not be billing for a DSIC under its tariff; PECO does not show prior months' charges are estimated on bills; language concerning residential rates is confusing; lack of accountability of the Smart Ideas program; lack of notice about rate filings; PECO is providing customer contact information to electric suppliers; PECO charges sales tax to exempt customers; PECO Small Business Direct Install Act 129 Program overstates the estimated hours of lighting operation to make it look more attractive to install efficient lighting; and the monthly Home Energy Reports that PECO mails to customers are not reasonable for all customers.[12]

Tobias Bruhn testified on behalf of Bucks County Community College (BCCC). Mr. Bruhn stated PECO has been a valued industry partner with BCCC. Through this partnership, BCCC has created the gas distribution pipeline mechanic introduction program. PECO has also donated equipment and money to BCCC's engineering and STEM departments. PECO has also helped BCCC save nearly 25% on its energy bill by helping them convert from oil to natural gas.[13]

Peter Meyer testified that he believes PECO could save money on generation by acquiring or purchasing more energy from non-fossil fuel energy sources. Mr. Meyer asserts that PECO could use these savings to improve its distribution system.[14]

Richard Adams testified that he believes PECO still needs to make significant upgrades to its infrastructure in order to improve reliability. Mr. Adams requested a full audit of all PECO costs. Mr. Adams requests that PECO use updated materials to improve infrastructure.[15]

Steve Cickay testified that he is thankful for PECO's service, but he thinks any rate increase will be a burden on those with a fixed or low income. Mr. Cickay also testified that

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12 Tr. 149-153.
13 Tr. 155-157.
14 Tr. 163-166.
15 Tr. 170-183.

a large portion of PECO's budget should be dedicated to research and development of using renewable energy sources.[16]

Marissa Christie testified on behalf of United Way of Bucks County. Bill Golderer testified on behalf of United Way of Greater Philadelphia and Southern New Jersey. Ms. Christie and Mr. Golderer testified that PECO has been a trusted partner of the United Way for many years. PECO has helped support many United Way programs such as Stop the Bus, A Path Home, and Girls STEM.[17]

Harriet Vogler testified that PECO should print information about proposed rate increases and public hearings on bills.[18]

Dave Fleming testified on behalf of Shady Brook Farm (Shady Brook). Mr. Fleming thanked PECO for its years of support to Shady Brook.[19]

Sujan Ghosh testified that she has concerns about the reliability of service to her area.[20]

Beverly Sotterthwaite testified that she objects to the rate increase on the grounds that it would be unduly burdensome to customers living on a fixed income.[21]

Eric Miller testified on behalf of Keystone Energy Efficiency Alliance (KEEA). Mr. Miller testified that KEEA believes PECO's proposed rate increase will decrease the incentive for consumers to become more efficient because the proposal decreases volumetric rates and increases fixed distribution rates. Mr. Miller testified further that this type of rate

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16 Tr. 184-191.
17 Tr. 192-195, 270-273.
18 Tr. 197-200.
19 Tr. 200-204.
20 Tr. 204-207.
21 Tr. 227-230.

allocation also affects low volume users (*e.g.* apartments, condominiums), who tend to have lower incomes, more adversely than higher volume users (*e.g.* single homes).[22]

John Rowe testified on behalf of the Utility Emergency Services Fund (UESF), which provides assistance to low income families to restore utility service or prevent shut offs. Mr. Rowe testified that PECO has been an unwavering partner to UESF for the past 35 years, mainly by providing matches to UESF grants. Mr. Rowe testified that over the past five years, PECO's funds have provided assistance to more than 500 families.[23]

John Vergen testified that the rate increase will be a burden on low income customers already struggling.[24]

Duncan Wright testified that the Commission should make ensuring a clean environment their highest priority. Mr. Duncan would like PECO to increase its procurement of energy from renewable sources, specifically solar.[25] Similarly, Meenal Raval testified that there needs to be a more rapid transition to solar energy.[26]

Dainette Mintz testified on behalf of the Urban Affairs Coalition (UAC), which unites government and businesses with neighborhoods and individuals to improve quality of life. Ms. Mintz testified that PECO's partnership and financial support has been critical in sustaining the many programs at UAC.[27]

Loretta Payne testified that the rate increase should not be approved because wages have not increased while the cost of everything else has increased.[28]

Audra Wolfe, Marta Guttenberg, Camielle Turner, and Peter Winslow testified on behalf of Philadelphia Organized to Witness, Empower and Rebuild (POWER). They testified

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22 Tr. 231-237.
23 Tr. 237-242.
24 Tr. 243-246.
25 Tr. 248-254.
26 Tr. 255-256.
27 Tr. 257-262.
28 Tr. 273-277.

that POWER is against the rate increase because the fixed rate increase is unduly burdensome to low income customers.[29]

Ruth Baceore testified that PECO has failed to do enough in her community and the City of Philadelphia despite the charges on her electric bills going up.[30]

Pamela Henshall testified on behalf of the Greater Northeast Philadelphia Chamber of Commerce (Chamber). Ms. Henshall testified that PECO has been a valued partner and vital resource to the Chamber since its inception in 1922.[31]

Harvey Chanin and his son, Mitchell Chanin, testified that they are against the rate increase because it shifts costs from how much electricity a customer uses to a fixed cost on their distribution charges. They argued that this penalizes people who have invested in solar by decreasing their return on investment since some costs will go up no matter how much they decrease their energy usage. They also argued this will lead to more pollution as people will have less incentive to switch to clean energy such as solar. They further argued that this cost shift may cause people to use more electricity since they perceive their rate as going down.[32]

Stephanie Lin Capello testified on behalf of the Girl Scouts of Eastern Pennsylvania and their appreciation for PECO's ongoing support and investment.[33]

Harry Rothwell testified that he is against the rate increase because he believes it will contribute to climate change.[34]

Marcus Allen testified on behalf of Big Brothers and Sisters Independence Region (Big Brothers). Mr. Allen testified about the investment PECO has made to the community and how they have been a good corporate partner to Big Brothers. Mr. Allen testified that although

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[29] Tr. 277-294.
[30] Tr. 295-298.
[31] Tr. 315-318.
[32] Tr. 318-326.
[33] Tr. 327-330.
[34] Tr. 335-343.

he supports the rate increase, he would like PECO to consider subsidizing low income customers or consider income as a factor in determining the rates charged.[35]

Myles Gordon testified that he is against the rate increase for several reasons. He testified that PECO has a surplus of money and should find alternative ways to make energy. He testified that the public input hearings are not promoted enough. Mr. Gordon would like PECO to be audited by an outside firm.[36]

Pastor Danette Bolden-Ray testified on behalf of Kingdom Life Christian Center in opposition to the rate increase as it would be an undue burden on low income citizens.[37]

Pauline Blount testified that she is against the rate increase because she does not believe PECO has invested appropriately into increasing its procurement of energy from renewable sources in order to reduce pollution and combat poverty.[38]

Susan Patricia Guest testified that she is against the rate increase. Ms. Guest testified that she would prefer to see a smaller increase in the rate than the one proposed by PECO.[39]

Marin McDonald testified on behalf of Chester County Futures, which provides college access programming to economically disadvantaged youth in Chester County. Ms. McDonald testified that PECO's partnership and financial support has been a significant help to a variety of programs at Chester County Futures.[40]

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[35] Tr. 343-347.
[36] Tr. 354-361.
[37] Tr. 361-363.
[38] Tr. 364-367.
[39] Tr. 367-371.
[40] Tr. 387-390.

V. DESCRIPTION OF THE PARTIAL SETTLEMENT

PECO filed a Joint Petition for Partial Settlement on August 28, 2018. The Petition includes the terms of the Partial Settlement, including terms related to the revenue requirement, revenue allocation and rate design, residential and low-income customer issues, the fully projected future test year (FPFTY), quarterly earnings reports, PECO's DSIC, Act 40 of 2016 (Act 40), the Pilot Electric Vehicle Direct Current Fast Charger (EV-FC) Rider, the Federal Tax Adjustment Credit (FTAC), Rate HT High Voltage Discount, Capacity Reservation Rider (CRR) reporting, and vegetation management reporting. The Partial Settlement also included the following appendices:

Appendix A	Proposed Tariff (Settlement Rates)
Appendix B	Proof of Revenues
Appendix C	Residential and Low-Income Customer Issues
Appendix D	Gross Plant Costs
Appendix E	Rate Effects for Typical Customers in Each Major Rate Class

Additionally, statements in support of each party joining the Partial Settlement are attached to the Joint Petition for Partial Settlement.

VI. TERMS AND CONDITIONS OF THE PARTIAL SETTLEMENT

The Joint Petitioners have agreed to a Partial Settlement covering all but one issue raised in this proceeding.

The terms and conditions of the Partial Settlement are set forth fully below, beginning at numbered paragraph 15 through and including paragraph 32 of the Joint Petition for Partial Settlement filed on August 28, 2018. The Partial Settlement also includes the usual "additional terms and conditions" that are typically included in settlements. These terms, which, among other things, protect the parties' rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future rate cases by any particular position taken in this case. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petition itself.

The Joint Petitioners to the PECO Partial Settlement include I&E, OCA, OSBA, PAIEUG, CAUSE-PA, Turn *et al*., CAAP, Tesla, ChargePoint, and Walmart. Although ArcelorMittal, Calpine and IBEW did not sign the Partial Settlement, the Joint Petitioners indicated in the Partial Settlement that ArcelorMittal, Calpine and IBEW authorized them to state their non-opposition to the Settlement.

The settlement terms among the Joint Petitioners and PECO consist of the following terms and conditions:

Revenue Requirement

15. PECO will be permitted to charge, effective for service rendered on and after January 1, 2019, the Settlement Rates set forth in Appendix A. The Settlement Rates are designed to produce an annual increase in electric operating revenues of $85.5 million, which is reduced to $14.9 million following the application of 2019 tax savings related to TCJA. The revenue requirement is further adjusted to account for the roll-in of Distribution System Improvement Surcharge ("DSIC") revenue for a net revenue increase of $24.9 million as shown in the proof of revenues provided as Appendix B. The revenue requirement agreed upon above reflects a reduction to rate base for the excess Accumulated Deferred Income Taxes ("ADIT") amount (regulatory liability related to TCJA) as of the end of the FPFTY. The Company agrees to continue such treatment in future base rate filings until the entire amount has been refunded in future years.

Revenue Allocation And Rate Design

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

Rate	**Net Revenue[41]**	
	Increase	% Increase
Residential	$ 14,716,454	2.2%
Residential Heating	$ 4,016,155	2.9%
General Service	$ 3,031,316	1.3%
Primary Distribution	$ 146,143	1.8%
High Tension	$ 2,414,390	1.6%
Electric Propulsion	$ 220,575	3.1%
Lighting	$ 358,992	1.8%
Total	$ 24,904,024	2.0%

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

Rates R and RH	$10.00
Rate HT	$354.00

For Rates R, RH and HT, 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 adjusted, and the Variable Distribution Charges were scaled back, to produce the class revenues shown in the table in Paragraph 16, above.[42]

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41 Net Revenue increases include a revenue reduction related to the TCJA and additional DSIC revenue above 2018 levels.

42 Paragraphs 16 and 17 describe the principal elements of the rate structure and rate design incorporated in the Settlement Rates. While every effort has been made to ensure that the description is accurate, if any inconsistency is perceived between that description and the specific rates set forth in Appendix A, the latter shall take precedence.

Residential And Low-Income Customer Issues

18. The terms of the Joint Petitioners' agreement on issues concerning residential customers and low-income customers are set forth in Appendix C to this Joint Petition.

FPFTY Reports

19. PECO will provide the Commission's Bureau of Technical Utility Services ("TUS"), I&E, OCA, and OSBA with an update to PECO Exhibit BSY-2, Sch. C-2, no later than April 1, 2019, which should include actual capital expenditures, plant additions, and retirements by month from January 1, 2018 through December 31, 2018. Then, no later than April 1, 2020, another update of PECO Exhibit BSY-1, Sch. C-2 should be submitted showing actuals from January 1, 2019 through December 31, 2019. 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, 2019 to its projections in this case.

Quarterly Earnings Reports

20. The Joint Petitioners acknowledge the issue raised by I&E in I&E Statement No. 3, pages 54-68, regarding the manner in which utilities should present financial results of operations adjusted on a ratemaking basis for future plant additions in their Quarterly Earnings Reports (the "QER Issue") but do not agree on the substantive issue or relevance to this proceeding. In the event the Commission issues a final order that adopts the I&E position on the QER Issue in any proceeding in which the Commission states that the I&E position will be applied to all regulated utilities or via a secretarial letter after notice to PECO and an opportunity to be heard, PECO will not appeal the Commission's determination with respect to the QER Issue.

DSIC

21. PECO will not implement a DSIC during the calendar year ending December 31, 2019. The first DSIC in 2020 will be effective no earlier than April 1, 2020 based on DSIC-eligible expenditures during January and February 2020. In any event, the Company will not begin to impose a DSIC until the total aggregate gross plant costs (before depreciation or amortization) 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: $7,193.6 million, shown in detail in Appendix D.

22. In compliance with the Supplemental Implementation Order entered on September 21, 2016 at Docket No. M-2012-2293611, the amounts shown in Appendix D constitute 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 additions to be included in rate base in a fully projected future test year filing.

23. For all DSIC-related purposes, PECO's DSIC rate shall apply to the qualifying revenues set forth in the following table. The Nuclear Decommissioning Charge will be removed from base rates for the DSIC calculation. Additionally, the Non-Bypassable Transmission Charge, the State Tax Adjustment Surcharge ("STAS") and the FTAC will not be included in the DSIC calculation.

Qualifying Revenues for DSIC Rate

Qualifying Charges (Included in the DSIC)	**Non-Qualifying Charges (Excluded from the DSIC)**
Fixed Charge	Nuclear Decommissioning Cost (will be removed from base rates for the DSIC calculation)
Variable Distribution Charge	Non-Bypassable Transmission Charge
High Voltage Discount	State Tax Adjustment
Applicable Riders[43]	FTAC
Consumer Education	

24. PECO will charge the DSIC to Kimberly-Clark ("K-C"), a member of the Philadelphia Area Industry Energy Users Group, according to the following terms and conditions:

[43] Includes the Capacity Reservation Rider Charges, CAP Rider, Commercial and Industrial Direct Load Control Rider, Economic Development Rider, Investment Guarantee Rider Charges, Residential Direct Load Control Rider, Night Service Rider (GS, PD and HT rates), and Pilot Electric Vehicle Direct Current Fast Charger Rider.

(a) K-C's responsibility to pay the DSIC will be capped at a DSIC rate of 1.5% (of qualifying revenues set forth above in the Qualifying Revenues for DSIC Rate table) for K-C's Rate HT account.

(b) If PECO's DSIC goes above 1.5% while K-C is capped at 1.5%, PECO will forego surcharge recovery of amounts that would otherwise be charged to K-C, i.e. those amounts would not be recovered from other ratepayers through the DSIC. However, PECO would only forego surcharge recovery from K-C for amounts that exceed the cap (the DSIC rate of 1.5%). The full amount of PECO's DSIC-eligible plant investment will be rolled into base rates in the Company's next base rate case proceeding.

(c) The 1.5% cap for K-C will remain in effect until the implementation of new rates following PECO's next electric distribution base rate case proceeding.

(d) Additionally, the Joint Petitioners agree that the issue of whether or not any PECO customer(s) should be granted an exemption from DSIC charges under the transmission voltage provisions in the Commission's Final Implementation Order may be fully addressed, without prejudice, in PECO's next base rate case proceeding.

Act 40 of 2016 ("Act 40")

25. Section 1301.1(a), 66 Pa.C.S. § 1301.1(a), which was added to the Public Utility Code by Act 40 of 2016, provides, in relevant part, that a utility's federal income tax expense shall be calculated on a stand-alone basis for ratemaking purposes. As a consequence, consolidated tax adjustments would no longer be reflected in calculating income tax expense for ratemaking purposes. Section 1301.1(b), 66 Pa.C.S. § 1301.1(b), deals with the use of amounts representing a "differential" calculated by reference to Section 1301.1(a). The level of revenue requirement included in this Settlement reflects the resolution of the Joint Petitioners' positions regarding 66 Pa.C.S. § 1301.1 for this case. The Company submitted a calculation of what its consolidated tax adjustment would have been absent the enactment of Act 40 of 2016 in PECO Exhibit BSY-1, Schedule D-18, p. 3. The Company will continue to submit this calculation in future rate filings submitted with a test year that ends on or before December 31, 2025. The amount calculated by PECO was not contested by any party in this case.

Pilot Electric Vehicle Direct Current Fast Charger ("EV-FC") Rider

26. The Company will revise the EV-FC Rider to: (1) provide that the demand credit will be available for a 36-month term or until the Pilot concludes, whichever comes first; and (2) remove the following Rider provision: "The DCFC does not limit its compatibility to an exclusive subset of EVs via the use of proprietary charging networks or technology, including but not limited to communication protocols, connectors, or ports. (Exceptions will be made for DCFCs dedicated solely to workplace fleet charging.)"

27. The Joint Petitioners agree that Pilot participants will be required to provide data for all DCFCs connected to the PECO system and not separately metered in order to allow PECO to investigate the development of future DCFC rates. This data will include, for each DCFC: the number installed, the number of charging ports, the nameplate capacity (in kW), hourly and monthly usage (kWh), and the hourly and monthly demand (kW).

FTAC

28. The Company will revise the FTAC to refund the 2018 estimated TCJA savings of $68 million, which includes 2018 tax expense savings and the 2018 protected and unprotected Excess Deferred Income Taxes ("EDIT") consistent with the Company's proposed amortization periods, to customers on a bills-rendered basis beginning January 1, 2019. The amount of TCJA savings for each class will be determined based on the ratio of the estimated 2018 annual distribution revenues for each class multiplied by the $68 million total TCJA savings. The FTAC will be calculated for the residential, small commercial and streetlighting rate classes (Rates R, RH, GS, SLS, POL, AL, TLCL, SLE) to refund the 2018 TCJA savings over a one-month period in January of 2019, subject to reconciliation of revenues credited under the FTAC and the Company's actual 2018 TCJA savings after the end of the refund period. For the industrial classes (Rates HT, PD, EP), the FTAC will be calculated to refund the 2018 TCJA savings over a one-year period starting in January 2019, subject to reconciliation of revenues credited under the FTAC and the Company's actual 2018 TCJA savings after the end of the refund period. The amount being refunded to all rate classes will include interest accrued in 2018 using the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest Protection Law (41 P.S. §§ 101, et. seq.). No interest will be paid to customers on any amount of TCJA savings held by the Company in 2019 and refunded to customers.

Rate HT High Voltage Discount

29. PECO's increase in the Rate HT high voltage discount, as scaled back pursuant to the rate allocation agreed to in this proceeding, is adopted. PAIEUG's proposal to remove the demand caps on the Rate HT high voltage discount is adopted.

Capacity Reservation Rider ("CRR") Reporting

30. In the next base rate case, for each CRR customer added, the Company agrees to:

    1. Provide schedules showing the class, usage and billing details of that customer and a breakdown of the revenue received from that customer.

    2. Show the cost of the capacity being reserved and indicate the basis for determining the cost as either a system average or specific costs to serve each customer.

31. PECO will treat this information as highly confidential and will provide it pursuant to the terms of a Protective Order.

Vegetation Management Reporting

32. The Company agrees to submit annual reports to TUS, I&E, OCA, and OSBA that detail the number of ash trees removed per year and average cost per ash tree by year, along with a total breakdown of vegetation management expense by year. Yearly reporting will be submitted no later than April 1 of the following year until the next rate case is filed.

VII. LEGAL STANDARD/BURDEN OF PROOF

A. Legal Standard for Partial Settlement

The purpose of this investigation is to establish rates for PECO's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.[44]

A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service.[45] In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*,[46] and *Federal Power Commission v. Hope Natural Gas Co*.[47] In *Bluefield*, the United States Supreme Court stated:

> A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[48]

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44 66 Pa.C.S. § 1301.
45 *Pennsylvania Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa.Cmwlth. 1975).
46 262 U.S. 679 (1923).
47 320 U.S. 591 (1944).
48 262 U.S. 679, 692-93.

The Commission encourages parties in contested on-the-record proceedings to settle cases.[49] Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[50] In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners' statements in support did not necessarily address each and every aspect of the Settlement.

B. Burden of Proof for Litigated Issues

The public utility bears the burden of proof to establish the justness and reasonableness of its requested rate increase. As set forth in Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a):

> Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving

[49] *See* 52 Pa.Code § 5.231.

[50] *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

> any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.
> . . .

66 Pa.C.S. § 315(a):

> The Commonwealth Court has stated:
>
> Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.[51]

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a *prima facie* case, the party with the burden of proof must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary."[52] Furthermore, it is well-established that the "degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."[53] Additionally, the evidence must be substantial and legally credible, and cannot be mere "suspicion" or a "scintilla" of evidence.[54] Thus, a utility has an affirmative burden to establish the justness and reasonableness of its rate request.

However, as the Commonwealth Court has explained: "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."[55] Therefore, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some

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[51] *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). *See also, Brockway Glass v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

[52] *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1236 (Pa. 1983).

[53] *Lansberry v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

[54] *Lansberry*, 578 A.2d at 602.

[55] *Allegheny Center Assocs. v. Pa. Pub. Util. Comm'n*, 570 A.2d 149, 153 (Pa.Cmwlth. 1990).

evidence or analysis tending to demonstrate the reasonableness of the adjustment.[56] Furthermore, a party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof regarding that issue.[57]

VIII. DISCUSSION OF THE PARTIAL SETTLEMENT

A. Revenue Requirement

In its rate filing, PECO requested that it be permitted to increase its revenues by $82 million, based on a FPFTY ending December 31, 2019. Under PECO's proposal, the bill for a typical residential customer that uses 700 kWh per month would have increased by $3.28 per month, from $102.65 to $105.93 (or 3.2%), including default service generation, taxes, and other surcharges. The Partial Settlement reached by the Parties provides that PECO will be entitled to charge electric distribution rates (Settlement Rates), effective for service rendered on and after January 1, 2019, that are designed to produce an annual increase in electric operating revenues of $85.5 million, which is reduced to $14.9 million following the application of 2019 tax savings related to the Tax Cut and Jobs Act (TCJA). The revenue requirement is further adjusted to account for the roll-in of DSIC revenue for a net revenue increase of $24.9 million. This agreed-upon revenue requirement reflects a reduction to rate base for the excess Accumulated Deferred Income Taxes ("ADIT") amount (regulatory liability related to the TCJA) as of the end of the FPFTY. The net revenue increase of $24.9 million equates to 0.7% of PECO's total Pennsylvania jurisdictional operating revenues. Accordingly, under the Partial Settlement, the bill for a typical Residential customer that uses 700 kWh per month will increase by $1.27, from $102.65 to $103.92 (or 1.2%), including default service generation, taxes, and other surcharges.[58] PECO Statement in Support at 8-10.

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[56] *See, e.g.*, *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Telephone Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

[57] *Pa. Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*, R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).

[58] The increases originally proposed and those that would result from the Settlement Rates are set forth for the other major customer classes in Appendix E to the Joint Petition.

PECO maintains that the increase in customer rates and total annual operating revenues under the Settlement must be viewed in the context of the period since the Company's last increase in base rates became effective. PECO's current base rates were established by the *PECO 2015 Order*[59] and became effective on January 1, 2016. Consequently, if the Settlement is approved, PECO customers will have experienced no increase in distribution base rates in three years. Moreover, prior to its 2015 electric base rate case, PECO had not filed for an increase in electric distribution base rates since 2010. PECO Statement in Support at 10.

Since its current base rates were established in 2016, PECO notes that it has been successful in controlling the increase in its operating and maintenance ("O&M") expenses. When adjusted for major storms, PECO projects a 0.4% compound annual growth rate in O&M expense from 2016 through the end of 2019.[60] Notwithstanding its efforts to control O&M expenses, other factors, discussed below, have created the need for PECO to increase its electric distribution base rates. PECO Statement in Support at 10.

PECO notes that since the Company's current base rates became effective on January 1, 2016, it has invested approximately $0.9 billion in new and replacement electric distribution plants.[61] PECO further notes that it will invest approximately $1.0 billion in new and replacement electric distribution plants in 2018 and 2019 (*Id.*).[62] As a consequence, the Company's rate base will have increased by approximately 20% from $4.0 billion (as of December 31, 2016) to $4.8 billion (as of December 31, 2019).[63] PECO Statement in Support at 10-11.

As a result of the Company's recent investments, PECO maintains that its electric reliability has continued to outperform the Commission's preferred target level in 2015, 2016, and 2017 in each of the measures for which the Commission has established standards. As an example, PECO notes that the Company's average number of service interruptions was over 30%

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59 *Pa. Pub. Util. Comm'n v. PECO Energy Company – Electric Division*, Docket No. R-2015-2468981 (Order entered December 17, 2015).

60 PECO St. No. 2, pp. 5-7.

61 PECO St. No. 2, p. 2.

62 *Id*.

63 PECO St. No. 1, p. 5.

below the preferred benchmark level during this period and the average time customers were without power was 14% below the benchmark as measured by the following Commission reliability metrics:

- System Average Interruption Frequency Index ("SAIFI"): The average number of sustained interruptions per customer during a year was 0.85 interruptions (2015-2017) compared to the benchmark of 1.23 interruptions.

- Customer Average Interruption Duration Index ("CAIDI"): The average duration of interruptions that a PECO customer experiences during a year was 96 minutes (2015-2017) compared to the benchmark of 112 minutes.

- System Average Interruption Duration Index ("SAIDI"): The sum of all sustained customer interruption durations divided by the total number of PECO customers was 83 minutes (2015-2017) compared to the benchmark of 138 minutes.[64]

In addition, according to the Commission's annual reports on electric service reliability in Pennsylvania for 2014 to 2016, PECO was the only large electric utility in Pennsylvania with reliability performance better than its baseline score prior to restructuring (i.e., 1994-1998 five-year average of annual systemwide metrics) in every quarter from 2014 to 2016.[65] PECO maintains that these metrics are evidence of the Company's sound management of its electric distribution system. PECO Statement in Support at 11.

PECO also notes that, while the Company has been making substantial investments in new and replacement electric plant to maintain and enhance service to customers, its overall load growth has actually been negative. From 2016 to 2017, PECO's overall load growth declined by 0.5%, notwithstanding the fact that the number of customers has increased by 0.8% during the same period.[66] The decline in load growth occurred despite the addition of new customers due, in significant part, to energy efficiency and conservation measures that PECO

64 PECO St. No. 1, pp. 15-16.
65 *Id.* at p. 16.
66 PECO St. No. 2, p. 3.

implemented in response to the mandates imposed by Act 129 of 2008 ("Act 129").[67]
PECO Statement in Support at 11-12.

PECO maintains that these factors, namely, increased investment and declining load growth, have compromised the Company's ability to earn a fair return on its investment absent rate relief, notwithstanding its efforts to control its O&M expenses. On a *pro forma* basis, PECO's electric distribution operations are projected to produce an overall return on invested capital of 5.84%, and a return on common equity of only 7.30%, during the twelve months ending December 31, 2019.[68] PECO asserts that those return levels are inadequate, as pointed out by PECO witness Paul R. Moul in his direct testimony.[69] Absent rate relief, PECO's financial results would deteriorate even further in 2020 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 maintains that it is particularly important for the Company to maintain and possibly improve its credit ratings because the electric distribution function is extremely capital intensive.[70] PECO projects that it will need to invest approximately $2.5 billion in new and replacement electric delivery plant over the next five years (2018-2022).[71] Accordingly, PECO asserts that it is important for it to obtain the increased revenues that the Settlement will provide. PECO Statement in Support at 12.

Moreover, PECO asserts that in light of the standards consistently applied by the Commission, the Settlement carefully balances (1) the right of the Company and its investors "to earn a return on the value of the property which it employs for the convenience of the public" and "to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties" with (2) the right of customers to pay rates that are commensurate with "business undertakings which are attended by corresponding risks and uncertainties" without providing the utility "profits . . . realized or anticipated in highly profitable enterprises or

67 *Id*.
68 PECO St. No. 2, p. 4.
69 PECO St. No. 5.
70 PECO St. No. 2, p. 4.
71 *Id*. at p. 5.

speculative ventures."[72] That balance is ensured by the fact that parties legally obligated to protect consumers and the public interest vigorously investigated all aspects of the Company's proposed increase and concluded that the Settlement Rates are just and reasonable. Similarly, the Company carefully considered the proposed revenue increase in light of the obligation to its investors to secure a reasonable opportunity to earn a fair return, maintain the financial stability of its business, and obtain needed capital on reasonable terms. The Company concluded that the Settlement Rates satisfy those criteria. The careful balance of interests achieved by the Settlement avoids what could have been a significant expenditure of time, money and other resources by the parties and the Commission to individually resolve a number of issues and proposed adjustments that have now been subsumed by the interrelated compromises that led to the Settlement. Those savings are in everyone's interest and, in themselves, are another important reason why the Settlement promotes the public interest. PECO Statement in Support at 12, 14-15.

For its part, I&E notes that, based on its analysis of the Company's filing and discovery responses received, the rate increase under the proposed Settlement represents a result that is within the range of likely outcomes in the event that the case was fully litigated. The increase is appropriate and, when accompanied by other important provisions contained in the Settlement, yields a result that is both just and reasonable and in the public interest. I&E Statement in Support at 8-9.

I&E further notes that the additional revenue in this proceeding is base rate revenue and has been agreed to in the context of a Black Box settlement. A Black Box agreement does not specifically identify the resolution of any disputed issues. Instead, an overall increase to base rates is agreed to and parties retain all rights to further challenge all issues in subsequent proceedings. A Black Box settlement benefits ratepayers as it allows for the resolution of a proceeding in a timely manner while avoiding significant additional expenses. I&E is of the opinion that an agreement as to the resolution of each and every disputed issue in this proceeding would not have been possible without judicial intervention. The involvement of the ALJ would have added time and expense to

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[72] *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia,* 262 U.S. at 679 (1923).

an already cumbersome proceeding. Avoiding this necessity will benefit ratepayers by keeping the expenses associated with this filing at a reasonable level. The previous Chairman of the Commission 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."[73] I&E Statement in Support at 9-10.

I&E maintains that this increased level of Black Box revenue adequately balances the interests of ratepayers and the Company. PECO will receive sufficient operating funds in order to provide safe and adequate service while ratepayers are protected as the resulting increase minimizes the impact of the initial proposal. Mitigation of the level of the rate increase benefits ratepayers and results in rates that satisfy the regulatory standard requiring just and reasonable rates. As such, this element supports the standard for approval of a settlement as the resulting rates are just and reasonable and in accordance with the Public Utility Code and all pertinent case law. I&E Statement In Support at 10.

OCA notes that the agreed upon revenue increase is a substantial decrease from the amount originally requested by the Company. Similar to I&E, OCA explains that the Settlement represents a Black Box approach to the individual revenue requirement and return on equity issues. OCA maintains that Black Box settlements avoid the need for protracted disputes over the merits of individual revenue adjustments and avoid the need for a diverse, large group of stakeholders to attempt to reach consensus on a variety of financial numbers. The OCA submits that it is unlikely that the parties would have been able to reach a consensus on each of the disputed accounting and ratemaking issues raised in this matter, as policy and legal positions can differ widely. As such, the parties have not specified a dollar amount for each issue or

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[73] *See* Statement of Commissioner Robert F. Powelson, *Pa. Pub. Util. Comm'n v. Wellsboro Electric Company,* Docket No. R-2010-2172662 (Order entered January 13, 2011). *See also* Statement of Commissioner Robert F. Powelson, *Pa. Pub. Util. Comm'n v. Citizens' Electric Company of Lewisburg, Pennsylvania,* Docket No. R-2010-2172665 (Order entered January 13, 2011).

adjustment raised in this case. OCA asserts that attempting to reach an agreement regarding each adjustment in this proceeding would have likely prevented any settlement from being reached. OCA Statement in Support at 6.

Additionally, OCA maintains that, based on its analysis of the Company's filing, discovery responses received, and testimony by all parties, the revenue increase under the Settlement represents a result that would be within the range of likely outcomes in the event of full litigation of the case. The increase is reasonable and yields a result that is in the public interest, particularly when accompanied by other important conditions contained in the Settlement. The increase agreed to in the Settlement provides adequate funding to allow the Company to continue to provide safe, adequate, reliable and continuous service. As such, the OCA submits that the increase agreed to in this Settlement is in the public interest and in the interest of PECO's ratepayers, and should be approved by the Commission. OCA Statement in Support at 7.

For its part, OSBA notes that the agreed-upon net revenue increase provides obvious savings to ratepayers, while the revenues agreed to still allow PECO to operate its system for the benefit of ratepayers and shareholders alike. OSBA Statement in Support at 4. Similarly, PAIEUG maintains that the Settlement provides for rates that are just, reasonable and in the public interest. PAIEUG Statement in Support at 3.

B. Revenue Allocation and Rate Design

1. In General

PECO notes that every rate proceeding consists of two parts. First, the overall revenues to which a utility is entitled must be determined. Second, the process must determine how much of the total revenue requirement each rate class should bear. The allocation of revenue responsibility can be one of the more contentious parts of a rate proceeding because it is a "zero sum" exercise among the non-utility parties – any revenue responsibility not borne by a particular rate class must be borne by one or more other rate classes. While cost of service studies are the touchstone for reasonable allocations of revenue responsibility among rate classes,[74] the Commission has often stated that cost of service analyses must reflect the exercise of judgment and are as much a matter of art as of science.[75] For that reason, Pennsylvania appellate courts have repeatedly held that the Commission, in crafting a reasonable rate structure, is "invested with a flexible limit of judgment" and may establish just, reasonable and nondiscriminatory rates within a "range of reasonableness."[76] PECO Statement in Support at 18.

PECO maintains that establishing a reasonable revenue allocation requires a careful balancing of the countervailing interests of the non-utility parties representing the various customer classes. This aspect of a rate proceeding is well suited to achieving a reasonable overall outcome based on the give-and-take of the settlement process. PECO asserts that is what occurred in this case, resulting in a complete settlement of all contested issues involving revenue allocation and rate design among a wide array of parties representing the interests of residential, commercial, industrial and lighting customers. Accordingly, PECO maintains that the proposed revenue allocation and rate design terms contained in the Settlement are reasonable, appropriately balance the interests of the parties, and are in the public interest. PECO Statement in Support at 19.

Based on I&E's review of the cost of service studies presented in this proceeding, I&E views the Settlement to be within the range of reasonable outcomes that would result from full litigation of this case. As such, I&E maintains that these provisions are in the public interest. I&E Statement in Support at 11-12.

PAIEUG indicates that the Joint Petition specifically satisfies its concerns by reasonably allocating the proposed increase among customer classes. PAIEUG Statement in Support at 4.

Walmart maintains that the allocations and rates set forth in Appendix A and Appendix B to the Settlement incorporated in the Settlement Rates reflect significant negotiation

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74 *See Lloyd v. Pa. Pub. Util. Comm'n,, supra*.

75 *See Pa. Pub. Util. Comm'n. v. Philadelphia Suburban Water Co*., 75 Pa. PUC 391, 440 (1991).

76 *U.S. Steel Corp. v. Pa. Pub. Util. Comm'n.*, 37 Pa. Cmwlth., 173, 187, 390 A.2d 865, 872 (1978).

among the Joint Petitioners and reflect the Joint Petitioners' agreement with regard to rate structure, rate design and distribution of the increase in revenues in this proceeding. In general, the revenue allocations and rates as set forth in the Joint Petition reflect a reasonable compromise among competing interests to move towards cost of service. Walmart Statement in Support at 5.

2. Revenue Allocation

PECO notes that, although complete agreement could not be reached among all the Joint Petitioners with respect to either the Company's Cost of Service Study (COSS) study or the revisions and refinements to that study proposed by other parties, there was no dispute that a COSS study should be used as a guide, that rates should be designed to move all classes closer to their indicated cost of service, and that the Commission has long recognized that the movement toward cost of service should be tempered by the concept of gradualism in order to avoid large, disruptive, one-time increases to any particular customer class. That was the approach the Company employed to develop its proposed revenue allocation and rate design in this case, as explained by PECO witness Mark Kehl.[77] PECO Statement in Support at 16.

The allocation of the revenue increase under the Settlement Rates was subject to careful consideration and detailed negotiations among the Joint Petitioners. As a result, the Joint Petitioners were able to reach agreement on the allocation among customer classes of the revenue increase under the Settlement Rates that is depicted in Paragraph 16 of the Joint Petition. That allocation is within the range proposed by the Joint Petitioners and, more importantly, it provides for reasonable movement toward the system average rate of return by the various customer classes as measured by the Company's COSS study. Accordingly, the revenue allocation effected by the Settlement Rates and depicted in Paragraph 16 of the Joint Petition is consistent with the Commonwealth Court decision in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006). Moreover, as the Commonwealth Court recognized in pre-*Lloyd* decisions, which were not disturbed by its holding in *Lloyd*, "there is no single cost of service study or methodology that can be used to answer all questions pertaining to costs"[78] nor is there

[77] PECO St. No. 7, p. 3
[78] *Executone of Philadelphia, Inc. v. Pa. Pub. Util. Comm'n*, 415 A.2d 445, 448 (Pa. Cmwlth. 1980).

any "set formula for determining proper ratios among rates of different customer classes."[79] PECO Statement in Support at 16-17.

While settlement negotiations among parties representing a wide array of customer and stakeholder interests can, in itself, ensure a reasonable outcome, PECO believes that the revenue allocation under the Settlement Rates also comports with well-accepted ratemaking principles. PECO notes that the Joint Petitioners are in general agreement that the Settlement Rates make appropriate progress in moving all classes closer to their cost of service consistent with the principle of gradualism. PECO Statement in Support at 19.

OCA notes that its witness, Clarence Johnson, reviewed the Company's revenue allocation proposal and the Company's COSS upon which the Company's allocation was based. The OCA contested the Company's COSS in this matter and Mr. Johnson submitted a modified COSS, which he used in his analysis to develop a recommended allocation of any proposed revenue increase for the Company among its customer classes.[80] Based on his COSS, Mr. Johnson recommended that the residential class (Rate R) be allocated approximately $60,499,000 of the Company's proposed revenue increase with a proportional scale back.[81] The Company recommended an increase of $19.3 million for residential heating customers (Rate RH), and the OCA proposed to limit the increase to Rate RH customers to $16.9 million.[82] In addition to the Company and the OCA, I&E, OSBA, and PAIEUG also submitted allocation recommendations that placed more of the requested increase on residential customers. OCA Statement in Support at 9.

Based on the OCA's review of the cost of service studies presented in this proceeding and the varying revenue allocation proposals presented by other parties, the OCA views the Settlement to be within the range of reasonable outcomes that would result from the full litigation of this case. The Settlement allocation ensures reasonable movement of all classes relative to the system average rate of return under all cost studies presented in this case. The

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79 *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n.*, 409 A.2d 446, 456 (Pa. Cmwlth. 1979).

80 *See* OCA St. No. 3, Schedule CJ-1 (summarizing the results of the Company's COSS and Mr. Johnson's adjusted COSS).

81 OCA St. No. 3, Schedule CJ-2.

82 OCA St. No. 3, Schedule CJ-2.

OCA submits that the Settlement is reasonable, and when accompanied by other important conditions contained in the proposed Settlement, yields a result that is just and reasonable, in the public interest, and should be approved. OCA Statement in Support at 10.

OSBA notes that in its filing, PECO identified three specific principles that were used to develop the Company's proposed revenue allocation: 1) PECO's class cost-of-service study should be used as a guide; 2) the proposed revenue allocation should move all rate classes closer to their respective cost-of-service indications; and 3) customer impacts should be considered, so as to avoid assigning disproportionate increases (relative to the system average) to any of the Company's major rate classes.[83] However, OSBA witness Mr. Kalcic indicated in his direct testimony that PECO's proposed revenue allocation was problematic since it failed to move all classes closer to cost of service.[84] In particular, PECO's proposal would move rate classes HT and EP away from cost of service.[85] OSBA Statement in Support at 4-5.

In an effort to move all classes closer to cost of service and to avoid excessive rate increases, Mr. Kalcic proposed an alternative allocation of PECO's requested distribution rate increase. The OSBA's recommended revenue allocation, at PECO's full rate request, is shown in column 3 of Schedule BK-3.[86] Mr. Kalcic's recommended revenue allocation was derived via three steps. First, he assigned each rate class its cost-based increase as shown in PECO Exhibit JD-1, page 2 of 3.[87] Second, he adjusted the increases from Step 1 so that no class would receive an increase greater than 1.50 times the system average. This step limited the resulting increase to Rates RH and EP to 18.0% and provided approximately $5.6 million of rate relief to these classes (compared to their cost-based revenue levels). At the same time, however, Step 2 resulted in a $5.6 million revenue shortfall, which must be collected from PECO's remaining rate classes.[88] Third, Mr. Kalcic assigned the $5.6 million shortfall identified in Step 2 to Rates GS,

83 PECO Statement No. 7 at 3.
84 OSBA Statement No. 1 at 5.
85 *Id.*
86 *Id.* at 6, attaching Schedule BK-3.
87 *Id.* at 6.
88 OSBA Statement No. 1 at 6.

PD and L (*i.e.*, those classes targeted with increases below 10.0%), in proportion to their respective total cost of service at proposed rates.[89] OSBA Statement in Support at 5-6.

Table 1 (below) compares the parties' adjusted proposed increases for Rate GS customers to the Rate GS increase provided by the Joint Petition.

Table 1

Comparison of Parties' Proposed Rate GS Increases at
Joint Petition Revenue Level 1/
($000)

Class	***Per Joint Petition***	*PECO*	*OSBA*	*OCA*	*I&E*	*PAEIUG*
GS	**$14,796**	$14,169	$13,147	$24,716	$14,169	$13,454

Source: Joint Petition at Appendix B, page 1 of 8, and Schedule BK-1R.
1/ Parties' positions shown in Sch. BK-1R scaled to reflect the overall settlement increase of $89.995 million, before GSA/TSC, 2019 Tax Reform and DSIC adjustments.

As shown in Table 1, the settlement increase for Rate GS reflects a compromise among the parties, particularly with respect to the litigation positions of the OSBA and OCA. Had the Commission given equal weight to those two positions, the overall increase to Rate GS (assuming an overall increase of $24.9 million) would have been $18.931 million (the sum of $13.147 million plus $24.716 million, divided by 2), which is $ 4.135 million greater than provided by the Joint Petition. The OSBA concludes that the revenue allocation in the Joint Petition provides a meaningful benefit to small business customers, since it eliminates the litigation risk associated with the OCA's proposed increase to Rate GS customers. Therefore, the Joint Petition is in the best interest of PECO's small business customers. OSBA Statement in Support at 6-7.

PAIEUG indicates that the Joint Petition satisfies its concerns regarding PECO's originally proposed tariff changes by ensuring that customers served on Rate HT receive a net

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89 *Id.*

revenue increase of approximately $2.4 million, which translates to an increase of 1.6%.[90] PAIEUG Statement in Support at 4.

3. Rate Design

PECO notes that the Joint Petitioners' litigation positions regarding rate design differed somewhat from each other and from the Company's proposed rates. The principal area of disagreement related to the level of PECO's fixed distribution service charges (i.e., customer charges) and the customer charges for the Residential class. As explained by PECO witness Ms. Jiang Ding, PECO's proposed customer charge for the Residential class was supported by the same type of customer cost analysis that the Commission approved in PPL's 2012 base rate case[91] as the basis for the customer charges it adopted there.[92] As part of the Settlement, the Joint Petitioners have agreed that the Residential customer charge should be $10.00 per month in lieu of a charge of $12.50 per month proposed by the Company.[93] The Residential customer charge is fully supported by the detailed analysis of customer-related costs conducted by Ms. Ding, who followed the approach approved in PPL's 2012 base rate case. That analysis shows that the customer related costs for the total Residential class support a customer charge of $15.53 per month.[94] In addition, and consistent with the recommendation made by PAIEUG,[95] the Joint Petitioners have agreed that the Rate HT customer charge should be $354, which is also supported by the Company's customer-related cost analysis.[96] PECO Statement in Support at 17-18.

PECO maintains that the Settlement Rates reflect the need to recover the customer component of total cost of service in the customer charge, while recognizing that increases in the customer charges can impact low-usage customers. Accordingly, the Settlement Rates provide

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90 *See* Joint Petition, Paragraph 16.

91 *Pa. P.U.C. v. PPL Electric Utilities Corp.*, Docket No. R-2012-2290597 (Recommended Decision issued October 19, 2012), pp. 116-120; (Final Order entered December 28, 2012), pp. 124-132).

92 PECO St. No. 6-R, pp. 10-15.

93 Joint Petition, Paragraph 17 and Appendix A.

94 PECO Exhibit JD-5.

95 PAIEUG St. No. 1, p. 39.

96 PECO Exhibit JD-5.

for an increase in the Company's residential customer charge, but in a lesser amount than the customer charge the Company originally proposed. PECO Statement in Support at 19.

I&E notes that in this proceeding, PECO provided a summary of various costs related to the customer charge in its exhibit JD-5. I&E Witness Joseph Kubas specifically addressed PECO's proposal to increase the fixed monthly costs for the residential customer class and the general services customer class. I&E maintains that it is important to allow the utility to recover only those direct monthly costs that vary with the addition or loss of a customer through the Customer Charge. This charge provides the Company with a steady, predictable level of income that will allow for the proper maintenance and upkeep of the system. Establishing the proper customer charge protects ratepayers by ensuring that PECO is not being overcompensated. Moderating the requested increase in this proceeding also benefits ratepayers as it allows them to reap a greater portion of the benefit of conservation. Shifting costs to the volumetric portion of a customer's bill allows for the immediate realization of the benefit of conserving usage. Designing rates to allow customers to have greater control of their electric bills is in the public interest. I&E Statement in Support at 11.

I&E notes that PECO originally proposed to increase the Rate R monthly Customer Charge from its current rate of \$8.45 to \$12.50.[97] I&E disagreed with such a large increase in the fixed Customer Charge.[98] Under the Settlement, the Company agreed to set the residential Customer Charge at \$10.00 per month. I&E supports the Settlement, which moderates the increase in the Customer Charge for residential customers. I&E Statement in Support at 11.

OCA similarly disagreed with PECO's proposed increase in the fixed customer charge. The OCA submits that the Settlement customer charge more closely reflects appropriate customer costs. A cost-based customer charge provides necessary price signals to customers regarding conservation, and a higher customer charge can discourage energy conservation. OCA St. No. 3 at 32-33. The OCA submits that the residential rate design established through

[97] PECO Statement No. 7 at p. 8.
[98] I&E Statement No. 3 pp. 42-46.

the Settlement is reasonable and consistent with sound ratemaking principles. Combined with the lower revenue requirement increase than the Company sought, these rate design changes result in rates that are significantly below the rates originally proposed by the Company and within the range of likely outcomes in the event of full litigation of the case. OCA Statement in Support at 10.

PAIEUG indicates that the Joint Petition satisfies its concerns by establishing that Rate HT customers' monthly Fixed Distribution Service (Customer) Charge will be $354.00.[99] PAIEUG Statement in Support at 4.

CAUSE-PA also disagreed with PECO's proposed increase in the fixed customer charge. CAUSE-PA's witness Mr. Mitchell Miller explained in direct testimony, "adding additional costs to the fixed customer charge will have a disproportionate impact on low income, low use households, and works to undermine energy efficiency efforts."[100] Increasing the fixed monthly service charge limits customers' ability to reduce bills through conservation and consumption reduction, and undermines the goals of the Low Income Usage Reduction Program (LIURP).[101] High fixed fees also disproportionately impact low income consumers, who use less electric than their higher income counterparts.[102] If the fixed portion of a bill is high, those in smaller homes and apartments (which are more likely to be occupied by low income families) will pay a disproportionate share of the distribution costs. While CAUSE-PA believes the increase adopted in the settlement is still significant, CAUSE-PA also believes the settlement overall is in the public interest because the charge remains one of the lowest in the state,[103] and, most critically, the settlement provides necessary adjustments to universal service programs to help low income customers mitigate the impact of the increase, thereby protecting against inappropriate cost-shifting onto vulnerable low-income households. CAUSE-PA Statement in Support at 5-6.

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99 *See* Joint Petition, Paragraph 17.
100 CAUSE-PA St. 1 at 15.
101 CAUSE-PA St. 1 at 17-18.
102 CAUSE-PA St. 1 at 16-17; CAUSE-PA St. 1-SR at 4.
103 PECO St. 7, Exhibit MK-3.

Also, in regard to PECO's proposed increase to the fixed customer charge, TURN *et al*. indicates that the lesser increase will lower the burden of a rate increase on those households that are least able to afford it. Moreover, TURN *et al.* notes that PECO has committed to several improvements to customer service and to its low-income programs that will mitigate the remaining rate increase. TURN et al. Statement in Support at 4.

C. Residential and Low-Income Customer Issues

1. In General

Appendix C of the Joint Petition details the resolution of several significant residential and low-income customer issues, including: (1) the enrollment process for PECO's customer assistance program (CAP) and CAP credit maximums used by the Company; (2) the budget for PECO's LIURP and how LIURP funds should be targeted; (3) the process for determining low-income status for the purpose of winter termination protections; (4) the use of budget billing; (5) the process for ensuring that low-income customers are not assessed a security deposit; and (6) a language assessment of residents of PECO's service territory and development of a written policy regarding service to customers with limited English proficiency. PECO maintains that each issue was resolved through the collaboration of the Joint Petitioners on a practical, reasonable and innovative basis that, in all probability, could not have been achieved in a litigated proceeding. The resolution achieved by the Settlement is in the interest of low-income customers, other residential customers and the Company and, therefore, is also in the public interest. PECO Statement in Support at 20.

I&E notes that, although it took no position in this proceeding on the low-income customer issues addressed in paragraph 18 and Appendix C of the Settlement petition, paragraph 4 of Appendix C refers to a settlement reached with I&E in a separate docket (M-2018-2531404) related to winter terminations. I&E continues to fully support the agreement reached with PECO at that docket. I&E Statement in Support at 12.

OCA notes that the Settlement addresses many of the issues raised in the Direct Testimonies of OCA witness Roger Colton, TURN *et al.* witness Harry Geller, CAUSE-PA witness Mitchell Miller, and CAAP witness Susan Moore.[104] The Settlement addresses issues related to CAP enrollment; the CAP Credit maximum; LIURP spending; winter termination procedures; budget billing; security deposits; and limited English proficiency. The OCA submits that the proposed modifications are reasonable, in the public interest, and should be adopted. OCA Statement in Support at 11.

CAUSE-PA notes that its witness Mr. Miller explained in direct testimony that the provisions of PECO's current universal service programming were insufficient to resolve significant and substantial concerns about the continued affordability of electric service in PECO's service territory, and the corresponding need for assistance, if a rate increase were approved.[105] As Mr. Miller pointed out, "[t]here has been a marked and precipitous decline in CAP enrollment within PECO's service territory over the last few years."[106] Additionally, "there are more than 7,000 households who exceed their maximum CAP credits annually."[107] Mr. Miller also pointed out that PECO's LIURP program is "currently insufficiently funded to remediate the impact of the proposed rate increase."[108] CAUSE-PA maintains that the additional universal service program enhancements contained within this Settlement are critical to ensure that low income consumers are protected from some of the more severe financial consequences of a rate increase on this uniquely vulnerable population.[109] CAUSE-PA Statement in Support at 6.

According to TURN *et al*., fully one quarter of PECO's residential customers are estimated to be low-income.[110] TURN *et al*. notes that Paragraph 18, through its incorporation of Appendix C of the Joint Petition, sets forth several steps that PECO will take to ameliorate the effect of the rate increase on economically vulnerable customers, through improvements to the scope and reach of PECO's low-income programs, and additional customer service

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104 *See* Settlement at Appendix C.
105 CAUSE-PA St. 1 at 19-27.
106 CAUSE-PA St. 1 at 21-22; CAUSE-PA St. 1-SR at 6.
107 CAUSE-PA St. 1 at 21.
108 CAUSE-PA St. 1 at 25.
109 CAUSE-PA St. 1 at 7-18, 25.
110 TURN *et al.* St. 1 at 6.

improvements that will benefit these economically vulnerable customers. TURN *et al*. Statement in Support at 4.

2. Winter Termination Procedures

OCA witness Colton raised concerns regarding the Company's identification of confirmed low-income customers for the purposes of the winter termination moratorium.[111] The Settlement provides that the Company will:

> (a) include in its planned Tariff filing in Docket No. M-2018-2531404 at least the following provisions:
>
> - Adopt language that mirrors the language of Columbia Gas and/or the FirstEnergy companies providing greater flexibility in the documentation that will be accepted to establish income eligibility.
>
> - Allow income verification from CBOs.
>
> - Adopt language providing that any customer identified as confirmed low-income in the Company's records in the prior four years shall not be required to re-certify or re-verify income to gain the protections of the winter shutoff protections.
>
> - Adopt language providing that any customer having established income eligibility for cold weather protections within at least the 12 months preceding the start of the cold weather season shall not be required to re-certify or re-verify their income for that heating season.
>
> - Adopt language providing that income eligibility for the cold weather protections may be established using 30-day annualized income rather than being based solely on an annual income.[112]

OCA submits that these tariff modifications will potentially identify more confirmed low-income customers who may be eligible for winter termination protections under Chapter 14. The

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[111] OCA St. No. 4 at 29-34.
[112] Settlement at App. C, ¶ 4.

OCA further submits that modifications are in the public interest and should be adopted. OCA Statement in Support at 11-12.

CAUSE-PA maintains that this provision in the Settlement is critically important to the health, safety, and general welfare of our communities, as it enables low income households who would otherwise be terminated to be able to maintain service during the winter months. While CAUSE-PA still takes the position that utilities should accept any verification of income, including self-verification, as sufficient to invoke the protection of the winter moratorium, the changes agreed to in this proceeding make great strides in providing flexibility to low income customers at risk of termination. As such, CAUSE-PA maintains that this provision is in the public interest and should be approved. CAUSE-PA Statement in Support at 13.

TURN *et al.* notes that the winter moratorium protects vulnerable households from losing their heat in the wintertime.[113] This protection is critical for health and safety, but as noted by OCA witness Roger Colton, PECO has limited the ways in which customers can show that their incomes are at or below 250% of the Federal Poverty Level, which in turn limits access to the protections of the winter moratorium.[114] As PECO identifies in its rebuttal, this issue is the subject of an ongoing proceeding with I&E.[115] The Joint Petition acknowledges that ongoing proceeding, and PECO commits in this settlement to propose several additional tariff provisions that will expand how PECO confirms low-income status for the purpose of the winter moratorium. Importantly, TURN *et al*. notes that any party to this proceeding retains the rights to address these or other issues in that ongoing proceeding. TURN *et al.* Statement in Support at 10.

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113 TURN *et al.* St. 1R at 6.
114 OCA St. 4 at 30; TURN *et al.* St. 1R at 6.
115 PECO St. 7R at 17. That matter is docketed at M-2018-2531404.

3. CAP Enrollment

OCA witness Colton recommended that the Company utilize the resource of Community-Based Organizations for the purpose of accepting income verification.[116] Mr. Colton testified that "given the important role that Community-Based Organizations (CBOs) play in the lives of PECO customers, PECO should explicitly acknowledge and list verification provided by a CBO as an acceptable form of income verification."[117] The Settlement provides that PECO will accept income verification from CBOs provided that the CBO meets as an attendee at the Universal Services Advisory Group, and PECO has an agreement with the CBO regarding the scope of work to be provided.[118] The OCA submits that this will provide a significant benefit to low-income customers by allowing the agencies that work closely with customers to provide the income verification information on the customer's behalf. The OCA submits that this will help customers to streamline enrollment in the CAP. OCA Statement in Support at 12-13.

CAUSE-PA notes that, in order to remediate declining CAP enrollment in light of PECO's rate increase, the Settlement contains a number of provisions designed to make it easier for low income customers to be referred to and enroll in CAP. First in Appendix C, Paragraph 1, the Settlement requires PECO to accept certification by a CBO, subject to certain requirements, as confirmation of customer annual household gross income for purposes of CAP enrollment and verification of confirmed income status.[119] CAUSE-PA believes that this adjustment will help curb PECO's declining CAP enrollment by allowing customers to apply for CAP through CBOs without the need to duplicate efforts by being required to submit additional documentation to PECO. CAUSE-PA Statement in Support at 7-8.

In addition to diversifying enrollment options, Appendix C, Paragraph 1 also advances efforts to improve outreach to potentially eligible low-income consumers. Pursuant to the Settlement, PECO will actively solicit confirmed low-income customers with existing debt to

116 OCA St. No. 4 at 32-33.
117 OCA St. No. 4 at 32.
118 Settlement at App. C, ¶ 1.
119 Settlement at App. C, ¶ 1.

PECO who are not currently enrolled in CAP through mailings and outbound calls at least twice per year.[120] Also, within six months of the effective date of rates, PECO will revise its termination notice, subject to approval by the Commission's Bureau of Consumer Services, to include more specific language indicating that customers can avoid termination through payment agreements and CAP enrollment.[121] CAUSE-PA explains that this adjustment is designed to increase awareness by households facing termination of service of the assistance that may be available to them at the time they need it most. CAUSE-PA Statement in Support at 8.

TURN *et al.* notes that the improvements PECO commits to in the settlement will increase the portals through which customers can enroll in CAP and increase the visibility of CAP as an option for low-income customers. Using CBOs to confirm customer income for purposes of CAP enrollment will allow customers to have more access points to enroll in CAP. As Mr. Geller testified, CBOs physically located in PECO's service territory are "uniquely equipped to serve individuals in their communities[,]" one of the reasons the Commission's Policy Statement on Customer Assistance Programs encourages the use of such organizations.[122] TURN *et al*. Statement in Support at 6.

Similarly, PECO commits to actively solicit confirmed low-income customers with existing debt to enroll in CAP, and to revise termination notices to include more information about CAP. TURN *et al*. asserts that these efforts will increase the visibility of CAP to those customers who would most benefit from enrollment – and are most likely to be experiencing the impact of the rate increase – customers with back balances, and customers facing termination of service. TURN *et al*. Statement in Support at 6.

4. Maximum CAP Credit & LIURP Budget

The Settlement will provide for an increase to the maximum CAP credit by $200 per customer to address continuing affordability issues raised by TURN *et al.* witness Geller and

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120 Settlement at App. C, ¶ 1.
121 Settlement at App. C, ¶ 1.
122 TURN *et al.* St. 1 at 15; *see also* 52 Pa. Code § 69.265.

CAUSE-PA witness Miller.[123] In addition, the LIURP will be increased by $1 million per year. Both of these recommendations will address customers who have exceeded their maximum CAP credit and have difficulty reducing their usage. The Company will specifically seek to target the $1 million increase to those customers who have exceeded their maximum credit. The Settlement provision is consistent with OCA witness Colton's recommendation that the Company target a minimum percentage of high use, high CAP credit customers for LIURP treatment on an annual basis and specifically target those customers whose calculated Annual Credit exceeds the allowable maximum.[124] OCA submits that the targeting of LIURP dollars will help to mitigate costs for low-income customers and should be approved as in the public interest. OCA Statement in Support at 13.

CAUSE-PA witness Miller explained in his direct testimony that PECO's CAP program gives a fixed credit that is applied to a customer's monthly bill over the course of the year based on the seasonality of usage, which is designed to match higher credit amounts to months when customers are using more energy.[125] The annual amount of the credit is capped; however in its settlement of its last Universal Service and Energy Conservation Plan,[126] PECO committed to increasing the maximum credit by a percentage equal to the system-wide residential distribution rate increase.[127] Even with this increase, however, "there are more than 7,000 households who [will] exceed their maximum CAP credits annually."[128] Mr. Miller recommended that that PECO should permit households to seek exemptions from CAP credit maximums for all of the allowable reasons contained in the Commission's Policy Statement.[129] However, for the sake of administrative ease, the Settlement proposes to increase the maximum of all tiers by $200, in addition to the previously agreed upon maximum, which will capture the vast majority of those 7,000 households.[130] While maximum CAP credits are designed as a cost containment measure on CAP costs, by increasing the maximum to account for the rate increase,

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123 Settlement at App. C, ¶¶ 2, 3.
124 OCA St. No. 4 at 37-38.
125 CAUSE-PA St. 1 at 14.
126 *See PECO Energy Company's Revised 2016-2018 Universal Service and Energy Conservation Plan (USECP)*, Docket No. M-2015-2507139, filed February 17, 2017 (hereinafter "Revised 2016-2018 USECP"), at Addendum B at 32 of 54, ns. 8-9.
127 CAUSE-PA St. 1 at 14.
128 CAUSE-PA St. 1 at 14.
129 52 Pa. Code § 69.265(3)(vi); CAUSE-PA St.1 at 21.
130 Joint Pet., App. C at ¶ 2.

the settlement recognizes that, because of PECO's CAP design, certain CAP customers will need additional CAP credits to assist with maintaining affordability. CAUSE-PA maintains that this increase is in the public interest because it preserves affordability for PECO's most vulnerable customers and continues to maintain cost containment provisions of CAP. The remaining households who are still projected to exceed their maximum CAP credits will be targeted for energy efficiency remediation through PECO's LIURP program.[131] CAUSE-PA Statement in Support at 8-9.

TURN *et al*. notes that, in addition to improvements to CAP outreach and enrollment, PECO commits in the settlement to increase CAP credit maximums by an additional $200 per customer for each Federal Poverty Level (FPL) tier and for both Rate R and Rate RH.[132] As noted by CAUSE-PA witness Miller, there are approximately 7000 CAP customers who are already receiving the maximum CAP credits, and as such, the credit they receive does not adequately address their need.[133] These customers, despite being on CAP, are paying PECO rates in excess of the allowable percentage of income under the Commission's policy statement.[134] TURN *et al*. maintains that increasing the CAP Credit Maximum by an additional $200 dollars will make electricity more affordable for these vulnerable customers, and lower any impact of the rate increase on these households. TURN *et al*. Statement in Support at 7.

Regarding PECO's LIURP program, CAUSE-PA witness Miller testified that PECO's LIURP program was "currently insufficiently funded to remediate the impact of the proposed rate increase."[135] Mr. Miller recommended that PECO increase its LIURP funding by $2,100,700 per year, explaining that the increase in LIURP funds would allow PECO to remediate all of PECO's eligible households within 12-years, which is the LIURP maximum payback period.[136] The Settlement partially incorporates Mr. Miller's recommendation by committing PECO to increase its LIURP spending by $1 million per year.[137] While CAUSE-PA notes that it is not enough to remediate all homes within 12 years, this increase is squarely within

131 Joint Pet., App. C at ¶ 3.
132 Joint Petition, Appendix C, at ii.
133 CAUSE-PA St. 1 at 21.
134 CAUSE-PA St. 1 at 20; TURN *et al.* St. 1R at 5.
135 CAUSE-PA St. 1 at 25.
136 CAUSE-PA St. 1 at 27.
137 Joint Pet., App. C at ¶ 3.

the public interest, as it ensures that low income households are better able to access usage reduction services to reduce their energy burden. CAUSE-PA maintains that this increase in annual LIURP funds will help offset the negative impact of a rate increase on this particularly vulnerable population. CAUSE-PA Statement in Support at 9-10.

TURN *et al*. notes that LIURP assists households in lowering energy consumption through energy efficiency.[138] By doing so, LIURP mitigates the impact of a rate increase on low-income households with reduced consumption, and households will need less money to pay for essential electric service.[139] However, PECO's LIURP program has been conducting fewer jobs, and seen increasing costs per job, meaning fewer households each year are benefiting from the full possibility of LIURP services.[140] As Mr. Geller explained, this means that LIURP is not able to meet existing need for services at current rates, much less address additional need following an increase in rates.[141] TURN *et al*. maintains that an increase in funding will allow PECO to serve additional households, helping those additional households mitigate the impact of the rate increase on their household budgets. In addition, by allowing PECO the flexibility to spend money on health, safety and structural measures that would otherwise impede the ability of PECO to implement LIURP measures, this additional funding will expand the pool of customers who are able to benefit from LIURP services. TURN *et al*. Statement in Support at 8-9.

CAAP contended in its testimony that the proposed funding level for the Company's LIURP was insufficient to meet the need for LIURP services of the Company's low-income customers. The testimony of CAAP further supported the testimony submitted by CAUSE-PA to increase the level of annual LIURP funding. CAAP believes that the settlement as it relates to that issue – the level of LIURP funding – addresses its concerns and will provide a substantial benefit to low income customers by providing additional conservation measures to those customers that will result in lower energy use and utility costs for those vulnerable customers. CAAP further believes that those additional measures that promote conservation will benefit the public generally. CAAP Statement in Support at 2.

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138 TURN *et al.* St. 1 at 20.
139 TURN *et al.* St. 1 at 20.
140 TURN *et al.* St. 1 at 18-19.
141 TURN *et al.* St. 1 at 19.

5. LIURP Targeting

In addition to increased funding, CAUSE-PA witness Miller recommended that PECO use the additional funds to target non-CAP confirmed low income customers who will be the customers hardest hit by the rate increase.[142] Mr. Miller also recommended that the increased funding be allowed to be used to resolve related safety/health issues and structural issues that would otherwise prohibit or hamper LIURP measures in the home.[143] CAUSE-PA Statement in Support at 10.

The Settlement incorporates some of Mr. Miller's recommendations and states that the incremental LIURP funds may be used to resolve related safety/health issues and structural issues that would otherwise prohibit or hamper LIURP measures in the home.[144] It also requires PECO to initially target these funds to customers who exceed the applicable CAP Credit Maximum after the increase in the CAP Credit Maximums is implemented.[145] The Settlement allows PECO to retain discretion to evaluate each such residence and determine whether safety/health/structural work is necessary and whether performing such work is appropriate to allow LIURP measures to be implemented.[146] The Settlement also requires that PECO shall use its best efforts to spend these incremental LIURP funds.[147] For LIURP funds that are spent, PECO will recover those funds through the USFC, without offsets for working capital or receivables.[148] CAUSE-PA Statement in Support at 10-11.

CAUSE-PA asserts that together, these provisions ensure that the funding increases are prudently spent and allocated to gaps in PECO's existing LIURP. The targeting of LIURP funds will help mitigate the rate increase for those CAP customers who will exceed their CAP maximums. The increased flexibility related to safety/health/structural issues will allow many customers to benefit from increased energy efficiency who would otherwise have been prevented from receiving LIURP remediation. These provisions are in the public interest

142 CAUSE-PA St. 1 at 27.
143 CAUSE-PA St. 1-SR at 10.
144 Joint Pet., App. C at ¶ 3(a).
145 Joint Pet., App. C at ¶ 3(b).
146 Joint Pet., App. C at ¶ 3(b).
147 Joint Pet., App. C at ¶ 3(c).
148 Joint Pet., App. C at ¶ 3(d).

because they assist low income customers in reducing consumption, thereby mitigating the impact of the rate increase; they are targeted to households who experience significant need; and they provide needed flexibility to PECO to manage both the program and the program budget. CAUSE-PA Statement in Support at 11.

6. Security Deposits

During the course of discovery, PECO confirmed that it was holding $593,267 in security deposits for 3,451 confirmed low-income customers.[149] PECO has confirmed that it has returned those deposits.[150] PECO has agreed to complete monthly reviews of its customer accounts to identify deposits paid and assessed for customers who have: (1) verified their income is below 150% FPL within the past four years; or (2) received LIHEAP grants within the past two years and credit any collected deposits to their account.[151] CAUSE-PA is satisfied with the steps that PECO has taken to remediate this issue, and that PECO's continued efforts to ensure compliance with the provisions of Chapter 14 of the Public Utility Code are in the public interest. CAUSE-PA Statement in Support at 13. The OCA submits that the proposed procedures are appropriate and should be implemented. OCA Statement in Support at 13-14. TURN *et al*. maintains that, by returning the deposits it was holding, and committing to additional reviews of accounts, PECO commits to ensuring that CAP-eligible customers will not be inappropriately charged security deposits. TURN *et al*. Statement in Support at 11.

7. Limited English Proficiency

TURN *et al*. notes that PECO has committed to conduct a language needs assessment of the residents in its service territory. On the basis of that assessment, PECO commits to drafting and distributing for comment a written policy statement on how it intends to serve Limited English Proficient (LEP) customers.[152] As noted by TURN *et al*. witness Geller in his Direct Testimony, in describing customer service improvements, PECO specifically cited to

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149 CAUSE-PA St. 1 at 28.
150 Joint Pet., App. C at ¶ 6; see also CAUSE-PA St. 1-SR at 12-13.
151 Joint Pet., App. C at ¶ 6.
152 Joint Petition, Appendix C, at iv.

an increase in the number of bilingual Spanish-speaking agents, so as to be more responsive to Spanish speaking customers.[153] However, PECO does not currently have a written policy regarding language access for LEP customers, nor has PECO reviewed or completed a needs assessment regarding LEP.[154] TURN *et al.* Statement in Support at 11.

By conducting a language needs assessment and drafting a written policy statement regarding LEP customers, PECO will be able to ensure that the quality of service to LEP households across its service territory is adequate. This is particularly relevant in light of the increased need for interaction these houses may have with PECO as a result of any rate increase. As noted in Mr. Geller's direct testimony, LEP individuals are more likely to live in poverty than English-proficient individuals.[155] A written policy will help PECO ensure that it is providing information about billing, termination, and low-income programs to all of its customers. TURN *et al.* maintains that this will ensure that LEP customers are not additionally impacted by the rate increase. TURN *et al.* Statement in Support at 11-12.

The OCA submits that this Settlement provision will open an important dialogue about how to better communicate with limited English or non-English speaking customers and should be approved as in the public interest. OCA Statement in Support at 14.

8. Budget Billing

OCA witness Colton recommended that the Company expand its use of budget billing for low-income customers entering into a Deferred Payment Arrangement (DPA) because of the benefits to both low-income customers by levelizing seasonal variations in bills and to PECO because it will stabilize its receipt of revenue over the course of the year.[156] The Settlement provides that:

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153 TURN *et al.* Statement 1 at 23-24, *citing* PECO St. 1 at 19.
154 TURN *et al.* St. 1 at 24, citing PECO Responses to TURN-I-20 and TURN-I-21.
155 TURN *et al.* St. 1 at 27:2-3 n. 48.
156 OCA St. No. 4 at 17.

> PECO will inform them of the availability of budget billing, but will not require the customer to enroll in budget billing as a condition of obtaining the DPA. PECO will seek input from its Universal Service Advisory Committee about how to inform customers about the benefits of budget billing and deferred payment arrangements.

Settlement at App. C, ¶ 5. The OCA submits that the Settlement will provide low-income customers with more information about the potential benefits of budget billing to help the customers to levelize their payments and to address seasonal variations. The OCA submits that the input from the Universal Service Advisory Committee will provide valuable insight into how best to inform customers of the potential benefits. OCA Statement in Support at 12.

D. FPFTY Reports

In its initial filing, PECO developed its FPFTY revenue requirement employing plant-in-service balances and other rate base elements projected as of the end of the FPFTY (December 31, 2019). I&E proposed that the Company update PECO Exhibit BSY-2, Schedule C-2, and PECO Exhibit BSY-1, Schedule C-2 to include actual capital expenditures, plant additions, and retirements by month for 2018 and 2019, respectively.[157] I&E further requested that, for the Company's next base rate proceeding, PECO prepare a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2019, to its projections in this case.[158] PECO has agreed to provide such updates and comparisons, as set forth in more detail in Paragraph 19 of the Joint Petition. PECO Statement in Support at 20-21.

I&E notes that PECO used a FPFTY in its filing, and that the use of a FPFTY ending December 31, 2019, resulted in a claim of $325,063,000 for rate base associated solely with the FPFTY.[159] I&E witness Kubas discussed the potential conflict that can arise with the "used and useful" requirement for including investments in rate base.[160] Further, Mr. Kubas recommended that the Company provide interim reports until the filing of its next base rate case

157 I&E St. No. 3, pp. 23-24.
158 *Id.*
159 I&E Statement No. 3 p. 23.
160 I&E Statement No. 3 p. 6.

to allow the Commission to measure and verify the accuracy of PECO's projected investments in future facilities.[161] I&E Statement in Support at 12.

In response to I&E's concerns, in paragraph 19 of the Joint Petition PECO agrees to provide to I&E, OCA, OSBA, and the Commission's Bureau of Technical Utility Services (TUS) updates by April 1, 2019, setting forth its electric division's actual capital expenditures, plant additions, and requirements by month. Additionally, PECO will file an update providing these actual amounts, for the twelve months ending December 31, 2019, no later than April 1, 2020. I&E maintains that this provision is in the public interest as it ensures that the Commission will receive data sufficient to allow for the evaluation and confirmation of the accuracy of PECO's projections. I&E Statement in Support at 13. Similarly, OCA contends that this provision will provide valuable information that permits a comparison of projected spending versus actual spending and is, therefore, in the public interest. OCA Statement in Support at 14.

E. Quarterly Earnings Reports

In this proceeding I&E witness Kubas noted that the Company's Quarterly Earnings Report (QER), which he reviewed as part of this base rate filing, contained future plant projections for plant not yet in service. Mr. Kubas recommended that the Company not be allowed to include FTY or FPFTY plant in any future QERs.[162] While not specifically taking a position on whether it is appropriate to include FTY or FPFTY plant in a utility's QER, the Settlement provides that the Company will not appeal, after notice and opportunity to be heard, a Commission determination via final order or secretarial letter applicable to all utilities related to the determination of the QER issue. This provision was important to I&E as this issue was recently litigated in the UGI Utilities, Inc. – Electric Division base rate case at Docket R-2017-2640058. In that proceeding I&E specifically requested the Commission issue a Secretarial Letter applicable to all utilities addressing this issue. For that reason, it was important to I&E to continue to preserve this issue until a final determination is made by the Commission. Further, PECO's agreement not to appeal the Commission's final determination, after notice and

161 I&E Statement No. 3 pp. 23-24.
162 I&E Statement No. 3, pp. 55-61.

opportunity to be heard, gives I&E a level of certainty once that final determination is made. I&E Statement in Support at 13-14.

For its part, PECO noted that while the Joint Petitioners do not agree on the substantive issue or its relevance to this proceeding, it reiterated its agreement not to appeal the Commission's determination with respect to the QER issue if the Commission issues a final order that adopts I&E's position on the QER issue in any proceeding in which the Commission states that the I&E position will be applied to all regulated utilities or via a secretarial letter after notice to PECO and an opportunity to be heard. PECO Statement in Support at 21.

F. <u>DSIC</u>

The Settlement provides that PECO will not implement a DSIC during the calendar year ending December 31, 2019, and the first DSIC in 2020 will be effective no earlier than April 1, 2020. In any event, and in compliance with the Supplemental Implementation Order entered on September 21, 2016, at Docket No. M-2012-2293611, the Company will not begin to impose a DSIC until the total aggregate gross plant costs (before depreciation or amortization) associated with the eligible property that has been placed in service exceed the baseline of gross plant balances shown in Appendix D of the Joint Petition (which total $7,193.6 million). This provision relates solely to the calculation of the DSIC during the time that the Settlement Rates are in effect. PECO Statement in Support at 21.

I&E avers that this provision is in the public interest and benefits both PECO and its ratepayers. First, PECO benefits because it will have access to DSIC funding for necessary infrastructure improvements which helps to ensure PECO is able to meet its obligation to provide its customers with safe and reliable service. Second, customers will benefit because they will not need to fund the DSIC any earlier than April 1, 2020. In sum, 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. I&E Statement in Support at 14.

The OCA submits that this provision of the Settlement appropriately addresses PECO's DSIC and is in the public interest. OCA Statement in Support at 15. For its part, PAIEUG indicates that this provision satisfies its concerns. PAIEUG Statement in Support at 4.

Additionally, PECO notes that PAIEUG proposed modifications to PECO's DSIC, including that the DSIC exclude application to those customers who take service at a higher voltage level.[163] Under the Settlement, the Joint Petitioners agreed that the issue of whether or not any PECO customer(s) should be granted an exemption from DSIC charges under the transmission voltage provisions in the Commission's Final Implementation Order at Docket No. M-2012-2293611 may be fully addressed, without prejudice, in PECO's next base rate case proceeding. The Settlement also details the qualifying revenues to which the DSIC rate shall apply and the terms and conditions under which the DSIC will be applied to PAIEUG member Kimberly-Clark. PECO Statement in Support at 21-22.

PAIEUG indicates that the Joint Petition satisfies its concerns by ensuring that the following charges will be removed from base rates for the DSIC calculation: Nuclear Decommissioning Charge, Non-Bypassable Transmission Charge, State Tax Adjustment Surcharge (STAS), and Federal Tax Adjustment Credit (TAC).[164] The Joint Petition further satisfies its concerns by implementing a 1.5% cap on the DSIC that applies to Kimberly-Clark (K-C), a member of PAIEUG.[165] In the event that PECO's DSIC goes above 1.5% while K-C is capped at 1.5%, PECO will forego surcharge recovery of amounts that would otherwise be charged to K-C, *i.e.* those amounts would not be recovered from other ratepayers through the DSIC.[166] The 1.5% cap for K-C will remain in effect until the implementation of new rates following PECO's next electric distribution base rate proceeding.[167] PAIEUG Statement in Support at 4.

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163 PAIEUG St. No. 1, p. 41.
164 Joint Petition at Paragraph 23.
165 *Id*. at Paragraph 24.
166 *Id*.
167 *Id*.

G. Act 40 of 2016

Section 1301.1(a), 66 Pa. C.S. § 1301.1(a), which was added to the Public Utility Code by Act 40, provides that a utility's federal income tax expense shall be calculated on a stand-alone basis for ratemaking purposes. As a consequence, consolidated tax adjustments (CTAs) would no longer be reflected in calculating income tax expense for ratemaking purposes. Section 1301.1(b), 66 Pa. C.S. § 1301.1(b), deals with the use of amounts representing a "differential" calculated by reference to Section 1301.1(a). In this proceeding, the Company submitted a calculation of what its CTA would have been absent the enactment of Act 40 in PECO Exhibit BSY-1, Schedule D-18, p. 3. While the amount calculated by PECO was not contested by any party in this case, the OCA proposed that the amounts representing the "differential" be deducted from the Company's rate base.[168] Under the Settlement, the level of revenue requirement reflects the resolution of the Joint Petitioners' positions regarding 66 Pa. C.S. § 1301.1 for this case. PECO further notes that the Company will continue to submit a CTA in future rate filings with a test year that ends on or before December 31, 2025. PECO Statement in Support at 22-23. I&E maintains that this provision ensures the Parties to a future base rate proceeding will be provided with the necessary information. I&E Statement in Support at 15.

H. Pilot Electric Vehicle Direct Current Fast Charger (EV-FC) Rider

The OCA, OSBA, Tesla and ChargePoint all expressed support for PECO's proposed EV-FC Rider as a means to encourage the development of EV charging.[169] Some of these parties recommended that PECO remove the EV-FC Rider's restrictions on the use of proprietary technology[170] and collect data related to the Pilot to inform future rate design.[171] Finally, ChargePoint recommended that the term of the demand credit available to Pilot participants be extended beyond the thirty months proposed by the Company and that the

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168 OCA St. No. 1, pp. 18-19.

169 OCA St. No. 3, p. 34; OSBA St. No. 1, pp. 8-9; Tesla St. No. BB-1, pp. 4, 12; ChargePoint St. No. 1, p. 4.

170 OCA St. No. 3, p. 34; Tesla St. No. BB-1, pp. 4-5, 15-17.

171 OCA St. No. 3, p. 35; Tesla St. No. BB-1, p. 4; ChargePoint St. No. 1, pp. 6-7.

Commission initiate a statewide proceeding related to the appropriate role of utilities in EV charging.[172] PECO Statement in Support at 23.

Under the Settlement, the Company will revise the EV-FC Rider to (1) provide that the demand credit will be available for a thirty-six-month term or until the Pilot concludes, whichever comes first; and (2) remove the restriction on use of proprietary technology. The Joint Petitioners agree that Pilot participants will be required to provide data for all Direct Current Fast Chargers (DCFCs) connected to the PECO system and not separately metered in order to allow PECO to investigate the development of future DCFC rates. PECO Statement in Support at 23.

OCA notes that PECO's proposed rider encouraged the installation of commercial charging stations for electric vehicles. The rider could be applied to the charging of commercial fleets and retail stations for electric vehicles.[173] In PECO's proposed tariff filing, the tariff was not available to a public charging station that PECO believed to be using proprietary charging technology.[174] The Settlement proposes to revise the tariff to "not limit its compatibility to an exclusive subset of EVs via the use of proprietary charging networks or technology, including but not limited to communication protocols, connectors, or ports. (Exceptions will be made for DCFCs dedicated solely to workplace fleet charging.)"[175] The proposed revision adopts the OCA's and ChargePoint's recommendation. As OCA witness Johnson stated, "the retailer's choice of proprietary or open source technologies is a business model decision. Electric utility tariffs are required to be non-discriminatory in their application."[176] The OCA submits that the proposed tariff revision is reasonable, non-discriminatory, and should be approved as in the public interest. OCA Statement in Support at 15.

OSBA explains that PECO's proposed Pilot EV-FC Rider is intended "to support transportation electrification by encouraging the buildout of publicly available (or workplace

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172 ChargePoint St. No. 1, pp. 9-10, 13-14.
173 OCA St. No. 3 at 33.
174 OCA St. No. 3 at 34.
175 Settlement at ¶ 26.
176 OCA St. No. 3 at 34.

fleet) fast charging stations through reduced demand charges."[177] PECO is proposing to conduct a five-year pilot "in order to better understand the potential benefits and challenges associated with offering and serving public EV DCFC installations."[178] The proposed EV-FC Rider reduces a customer's demand charges by applying a fixed demand (kW) credit, initially equal to 50% of the combined maximum nameplate capacity rating for all DCFCs installed at a given location, to the customer's billed distribution demand. PECO reserved the right to reduce the size of the demand credit based on a comparison of measured demands before and after the DCFC installation.[179] The credit, as proposed, would be available for 30 months from the date of enrollment, or until the pilot concludes, whichever is less. OSBA Statement in Support at 7.

Of great significance to the OSBA, PECO did not propose recovery of any costs associated with the Pilot EV-FC Rider in this proceeding and, additionally, confirmed to OSBA that it is not proposing to defer the lost revenues associated with the proposed fixed demand credit for future recovery from ratepayers.[180] In the OSBA's view, the widespread deployment of EV charging stations/infrastructure at residential, commercial and industrial customer sites across the Commonwealth is unlikely to be achieved unless the private sector finds it profitable to participate in the EV charging station market. In that respect, it is important that any public utility involvement in the deployment of EV charging infrastructure not disadvantage private developers, and thereby impede the development of a competitive EV charging station marketplace.[181] OSBA posits that the private sector could not be expected to compete successfully with public utilities in building EV charging infrastructure if public utilities were to deploy ratepayer-funded EV charging stations, since in that scenario utility shareholders would not bear the same costs and business risks associated with EV charging station deployment as private developers.[182] While PECO is not proposing to build EV charging stations, the fact that PECO's proposed Pilot EV-FC Rider would not be ratepayer funded will help to ensure that the

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177 PECO Statement No. 8 at 30.
178 *Id.*
179 OSBA Statement No. 1 at 7.
180 OSBA Statement No. 1 at 8, attaching OSBA-I-9.
181 OSBA Statement No. 1 at 8.
182 *Id.* at 9.

program does not tilt the EV charging station playing field against private developers.[183] OSBA Statement in Support at 7-8.

Because the Settlement revisions expanding the length of the term of the demand credit and the eligibility of participants and providing for the sharing of information do not change PECO's proposal to not recover any costs associated with the Pilot EV-FC Rider in this proceeding and to not defer the lost revenues associated with the proposed fixed demand credit for future recovery from ratepayers, the OSBA concludes that the EV-FC Rider, as revised by the Joint Petition, is in the best interest of PECO's small business customers. OSBA Statement in Support at 9.

Tesla notes that it primarily sought permission to intervene in this proceeding to examine the effect of PECO's proposed Pilot Electric EV-FC Rider. Tesla maintains that, given its extensive expertise and experience with the impacts of electric utility tariffs and their relationship with the development of electric vehicle charging, Tesla was in a unique position to represent these interests. Tesla, Inc. Statement in Support at 6.

The Partial Settlement satisfies the specific concerns of Tesla related to the EV-FC Rider based on the proposed modifications by PECO set forth in the Petition because it appropriately addresses Tesla's concerns. The proposed modifications to the EV-FC Rider ensure that public interest in broader eligibility requirements for the EV-FC Rider is met by removing restrictions on the types of Public DCFC technology utilized by the customer. The proposed modifications provide a pathway for future DCFC rates because the EV-FC Rider leverages the collection of necessary load and billing data to design prospective EV charging specific delivery rates. In addition, although not an issue raised by Tesla, the proposed modifications provision that the demand credit will be available for a 36-month term or until the pilot concludes, whichever comes first, is appropriate and also in the public interest. Tesla, Inc. Statement in Support at 7.

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183 *Id.*

Tesla maintains that the proposed modifications will enable appropriate development of DCFC infrastructure in PECO's territory. The proposed modifications are consistent and support on-going policy initiatives in the Commonwealth supporting increased charging infrastructure deployment, including avoiding EVs demand charges on DCFC stations which can create adverse bill impacts without mitigation. The EV-FC Rider comports with rate design principles that enable economic development. Tesla, Inc. Statement in Support at 7.

Because the Joint Petition resolves the two issues raised by Tesla regarding the EV-FC Rider and furthers judicial efficiency, Tesla believes that the Joint Petition is in the best interest of PECO's potential EV-FC Rider customers. Accordingly, Tesla maintains that the Joint Petition is fair, just, reasonable, non-discriminatory, lawful, and in the public interest. Tesla, Inc. Statement in Support at 7-8.

ChargePoint indicates that its interest in this proceeding is limited to PECO's proposed Pilot EV-FC Rider. ChargePoint believes that the EV-FC Rider is a positive step to support transportation electrification in PECO's service territory and appreciates PECO proposing the Rider in its rate case. ChargePoint believes that utilities can and should play a critical role in supporting the deployment of EV charging infrastructure and in supporting customers (commonly known as "site hosts") who want to install EV charging stations on their property for the use of their employees, their customers, their tenants, and/or the public. ChargePoint Statement in Support at 1-2.

ChargePoint explains that one of the most significant challenges for site hosts installing EV charging stations, especially DCFC, which deliver large amounts of power for short duration charging, are demand charges. Because EV adoption is still in the early stages yet growing quickly, utilization rates of DCFCs can be relatively low when they are first installed. Regardless of total utilization, a DCFC site host on a commercial rate is typically required to pay a demand charge based on its highest instantaneous demand during the billing period. The impact of demand charges can, in some cases, deter prospective site hosts from installing DCFCs on their property. ChargePoint supports the EV-FC Rider because it provides some relief from demand charges to site hosts by providing a demand credit equal to 50 percent of the combined maximum nameplate capacity of all DCFCs connected to the site host's meter. ChargePoint believes that the EV-FC Rider will encourage more prospective site hosts to invest in DCFCs. ChargePoint Statement in Support at 2.

Most EV charging takes place at home and at work, which can be incentivized to take place over longer periods of time that are more beneficial to the grid. DC fast charging complements, but does not replace, Level 2 charging. Faster charging increases EV driver range confidence, supports community charging in dense urban areas where home charging may not be accessible, and enables the electrification of light and heavier-duty fleets for municipal, state, and private entities. ChargePoint Statement in Support at 2-3.

PECO's original proposal allowed site hosts to take credits under the EV-FC Rider for a 30-month period or until the pilot period ended, whichever came first. ChargePoint's rebuttal witness, Michael K. Waters, agrees with other expert witnesses that DCFC site hosts on PECO's General Service commercial rate may not be able to economically offer public charging until utilization exceeds a 15 percent load factor.[184] Prospective smaller independent site hosts may also find that the economic challenges associated with demand charges serve as a high barrier for site hosts whose sole business is not EV charging.[185] ChargePoint requested and PECO, along with the other parties, agreed to a modification that extends the credit period to 36 months or until the pilot period ends, whichever comes first. ChargePoint maintains that this modification is mutually beneficial to PECO and site hosts. It will allow PECO to collect more comprehensive cost, load, and utilization data that can be used to identify unique needs and load profiles of its DCFC site hosts, and to design more effective DC fast charging rates that can benefit site hosts. The modification can also provide greater incentive to site hosts to install DCFCs, as well as offer more opportunities for burgeoning site hosts to emerge and enter the field. ChargePoint Statement in Support at 3.

ChargePoint asserts that the Joint Petition is fair and promotes the public interest. The EV-FC Rider tariff represents a reasonable policy for assessing utility charges for fast

[184] Rebuttal Testimony of Michael K. Waters on behalf of ChargePoint, Inc., p. 5, l. 22 – p. 6, ll. 1-3.
[185] *Id*. at 6, ll.8-11.

charging stations in order to encourage businesses to provide charging services to EVs. The tariff will help overcome barriers to DCFC deployment and help PECO collect more comprehensive data to develop DCFC specific rates.[186] Chief among the benefits of the EV-FC Rider is the fact that PECO will be able to use the load and billing data it collects from the EV-FC Rider to develop a longer-term rate solution to better support commercial customers seeking to deploy DCFCs. ChargePoint further asserts that these public benefits are fair and just and will be achieved without imposing costs on ratepayers as PECO has confirmed that it is not seeking to recover costs or foregone revenues from ratepayers. ChargePoint Statement in Support at 3-4.

I. Federal Tax Adjustment Credit

PECO proposed to refund 2018 tax savings related to the TCJA, which PECO projects to be approximately $68 million under its existing rates, through the FTAC.[187] While no party opposed the Company's FTAC, OCA, I&E and PAIEUG each recommended certain revisions. The OCA recommended that the Company consider beginning the refund in 2018 rather than waiting until 2019.[188] I&E recommended that the FTAC refund begin on the effective date of new base rates, be limited to one year with a one-month reconciliation thereafter, and utilize the residential mortgage lending rate to accrue interest.[189] Finally, PAIEUG recommended that PECO refund the entirety of the excess unprotected accumulated deferred federal income taxes (ADFIT) through the FTAC in one year, or, alternatively, use a four-year amortization period for ADFIT instead of PECO's proposed five-year amortization period.[190] PECO Statement in Support at 24.

Following discussions and negotiations, the Joint Petitioners achieved an agreement on the FTAC as detailed in Paragraph 28 of the Joint Petition. The Company will revise the FTAC to refund the 2018 estimated TCJA savings of $68 million, which includes 2018 tax expense savings and the 2018 protected and unprotected Excess Deferred Income Taxes (EDIT) consistent with the Company's proposed amortization periods, to customers on a bills-

186 *Id*. at 4, ll. 5-7.
187 PECO St. No. 8, pp. 4-6.
188 OCA St. No. 1, p. 39.
189 I&E St. No. 1, pp. 20-22.
190 PAIEUG St. No. 1, p. 14.

rendered basis beginning January 1, 2019. The FTAC will be calculated for the residential, small commercial and streetlighting rate classes to refund the 2018 TCJA savings over a one-month period in January of 2019, subject to reconciliation of revenues credited under the FTAC and the Company's actual 2018 TCJA savings after the end of the refund period. For the industrial classes, the FTAC will be calculated to refund the 2018 TCJA savings over a one-year period starting in January 2019, also subject to reconciliation. The amount being refunded to all rate classes will include interest accrued in 2018 using the residential mortgage lending rate. No interest will be paid to customers on any amount of TCJA savings held by the Company in 2019 and refunded to customers. PECO Statement in Support at 24-25.

I&E notes that in its Temporary Rates Oder at Docket No. M-2018-2641242, the Commission stated that Companies not in for base rate filings would be required to "…accrue interest at the residential mortgage lending rate specified by the Secretary of Banking…" I&E continues to believe that it is appropriate for all utilities to be consistent in returning the estimated TCJA savings. Therefore, it is appropriate for the 2018 portion to be refunded reflecting the residential mortgage lending rate as specified by the Commission. I&E Statement in Support at 16.

The OCA submits that these provisions are consistent with the Commission's Order addressing the TCJA, which provided that "tax savings and associated reductions in utility revenue requirements should be flowed back to consumers on a current basis."[191] The Commission's Order further provided that, with regard to utilities with pending base rate cases, the Commission "expects the public utility and the parties in each such proceeding to address the effect of the federal tax rate reduction on the justness and reasonableness of the consumer rates charged during the term of the suspension period and, in particular, whether a retroactive surcharge or other measure is necessary to account for the tax rate changes."[192] The OCA also notes that the interest provision of the proposed Settlement reflects the treatment of interest directed by the Commission for other utilities in its Order.[193] Accordingly, the OCA submits that

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[191] *Tax Cuts and Jobs Act of 2017*, Docket No. M-2018-2641242 (Temporary Rates Order entered May 17, 2018, at 15).
[192] *Id.* at 20-21.
[193] *Id.* at 18, 23.

it is appropriate that the parties to this proceeding agreed that the Company will timely refund the 2018 TCJA savings to customers via a negative surcharge. The OCA further submits that returning TCJA savings to customers as provided in the proposed Settlement is just and reasonable and in the public interest. OCA Statement in Support at 8.

PAIEUG indicates that the Joint Petition satisfies PAIEUG's concerns regarding PECO's originally proposed tariff changes. PAIEUG Statement in Support at 5.

Walmart notes that it advocated on behalf of a solution to address the net impact of the TCJA that (i) ensures the entire net benefit created by the TCJA is reflected in the revenue requirements and rates paid by an investor-owned utility's customers; (ii) supports the transfer of the benefits to customers as quickly as possible; and (iii) incorporates the rate-making principle of simplicity; avoiding the conflation of tax benefit with other rate-making and/or regulatory issues.[194] Walmart asserts that the Settlement terms set forth in Paragraph 28 of the Joint Petition regarding the FTAC, a reconcilable surcharge mechanism, are consistent with the principles Walmart advocated. Walmart Statement in Support at 5.

J. Rate HT High Voltage Discount

PECO proposed to increase the Rate HT high voltage discount, but retain the existing discount demand caps.[195] ArcelorMittal supported PECO's proposed rate design while PAIEUG recommended that PECO eliminate the discount demand caps.[196] Under the Settlement, PECO will increase the Rate HT high voltage discount, as scaled back pursuant to the rate allocation agreed to in this proceeding, and remove the demand caps on the Rate HT high voltage discount. PECO Statement in Support at 25.

For its part, PAIEUG indicated that the Joint Petition satisfies PAIEUG's concerns regarding PECO's originally proposed tariff changes by adopting: (1) PECO's increase in the Rate HT high voltage discount, as scaled back pursuant to the rate allocation agreed to in

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194 *See* Walmart Statement No. 1, Direct Testimony of Gregory W. Tillman, p. 8, lines 3 – 18.
195 PECO St. No. 7, pp. 10-11.
196 ArcelorMittal St. No. 1, pp. 7-8; PAIEUG St. No. 1, p. 39.

this proceeding; and (2) PAIEUG's proposal to remove the demand caps on the Rate HT high voltage discount. PAIEUG Statement in Support at 5.

K. Capacity Reservation Rider (CRR) Reporting

As noted by I&E, the primary impetus for the CRR, which was implemented in the Company's prior base rate case, is that PECO incurs expenses by continuously holding and maintaining capacity for DG customers whether or not that capacity is actually used. The costs for this load is not paid for by the DG customers, but rather is socialized over multiple classes of customers. Per the Settlement, the Company has agreed to certain reporting in its next base rate case. This information is largely that which I&E recommended in testimony that PECO provide in its next base rate case.[197] The CRR information gathered between the time of the instant base rate case and the Company's next base rate filing will allow a full evaluation of the viability of future proposals to address this subsidization.[198] Specifically, it will allow the Commission the opportunity to analyze the impact of the CRR, determine how effective the CRR is, and assess whether the revenue from the CRR customers is covering the cost to provide service. Therefore, I&E submits that this provision of the settlement is in the public interest. I&E Statement in Support at 16-17.

For its part, PAIEUG indicates that this provision of the Partial Settlement satisfies its concerns regarding PECO's originally proposed tariff changes. PAIEUG Statement in Support at 5.

L. Vegetation Management

The Emerald Ash Borer ("EAB") is an exotic, invasive insect pest that infests ash trees and kills the trees it infests.[199] The EAB has spread throughout the Commonwealth, including PECO's service territory, and will kill all or nearly all mature ash trees in that area.[200]

197 I&E Statement No. 3, pp. 52-53.
198 I&E Statement No. 3 SR at 7; Settlement Agreement Appendix D.
199 PECO St. No. 1-R, p. 5.
200 *Id*. at pp. 5-6.

PECO's claim for vegetation management expense reflected a substantial increase, above historic levels, in the number of ash trees removed in hazardous locations relative to PECO's distribution facilities.[201] PECO Statement in Support at 25-26.

PECO notes that, although the Settlement does not specify the revenue requirement specific to vegetation management or the Company's EAB program, the Company has agreed to submit annual reports to the Commission's Bureau of Technical Utility Services (TUS), I&E, OCA, and OSBA that detail the number of ash trees removed per year and average cost per ash tree by year, along with a total breakdown of vegetation management expense by year. Yearly reporting will be submitted no later than April 1 of the following year until the Company's next rate case is filed. PECO Statement in Support at 26.

In testimony, I&E had expressed some concern with the actual number of ash trees the Company would need to remove as a result of the emerald ash borer problem.[202] However, I&E did recognize "the Company's urgent need to address the emerald ash borer issue and the fact that there is uncertainty in the actual cost per ash tree removal…"[203] This provision of the settlement will serve to remove the uncertainty around the costs and number of trees that need to be removed because of the emerald ash borer. I&E maintains that this provision is in the public interest as it ensures that the Commission will receive data sufficient to allow for the evaluation and confirmation of the accuracy of PECO's projections related to management of this problem. I&E Statement in Support at 17-18.

OCA notes that the reports will provide the parties with important information regarding the continuing impact of the ash tree disease throughout the PECO service territory and should be approved as in the public interest. OCA Statement in Support at 16.

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201 *Id*. at p. 6.
202 I&E St. No. 1, p. 18.
203 I&E St. No. 1-SR, p. 26.

M. Recommendation

We find the proposed Partial Settlement to be reasonable and in the public interest. We therefore recommend approval without modification. The Partial Settlement represents a just and fair compromise of the serious issues raised in this proceeding. After substantial investigation and discovery, the settling parties have reached a reasoned accord on a broad array of issues resulting in just and reasonable rates for electric service rendered by PECO.

This Partial Settlement is a "black box" settlement. This means that the parties could not agree as to each and every element of the revenue requirement calculations. The Commission has recognized that "black box" settlements can serve an important purpose in reaching consensus in rate cases:

> We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. 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 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.[204]

It is also the Commission's duty to ensure that the public interest is protected. Therefore, there must be sufficient information provided in a settlement in order for the Commission to determine that a revenue requirement calculation and accompanying tariffs are in the public interest and properly balance the interests of ratepayers and the company.[205]

In reviewing the settlement terms and the accompanying statements in support, the Partial Settlement provides sufficient information to support the conclusion that the revenue

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[204] *Pa. Pub. Util. Comm'n v. Peoples TWP LLC*, Docket No. R-2013-2355886 at 27 (Opinion and Order entered December 19, 2013)(citations omitted).

[205] *See Pa. Pub. Util. Comm'n v. Pennsylvania Power Co.*, 55 Pa. PUC 552, 579 (1982); *Pa. Pub.Util. Comm'n v. National Fuel Gas Dist. Corp*., 73 Pa. PUC 552, 603-605 (1990).

requirement and other settlement terms are in the public interest. The downward adjustment to the proposed revenue requirement, the revenue allocations, the reduction in the proposed residential customer charge, along with all the other terms and conditions of the Partial Settlement together represent a fair and reasonable compromise. These reductions are particularly important to those residential ratepayers who offered testimony regarding the hardship they would incur due to PECO's proposed increases in rates. Similarly, the "Residential and Low-Income Customer Issues" portion of the Partial Settlement offers a reasonable resolution to address residential and low-income customer issues raised by the parties during this proceeding as well as the concerns raised by those who testified at the Public Input Hearings.

Also, of note, the Partial Settlement finds support from a broad range of parties with diverse interests. Each party represents a variety of interests. PECO advocates on behalf of its corporate interests. The OCA is tasked with advocacy on behalf of Pennsylvania consumers in matters before the Commission.[206] The OSBA represents the interests of the Commonwealth's small businesses.[207] The I&E is tasked with balancing these various interests and concerns on behalf of the general public interest. Each of these public advocates maintains that the interests of their respective constituencies have been adequately protected and they further represent that the terms of the Partial Settlement are in the public interest. Other interests were also represented, and they too support the Partial Settlement. These interests include public interest groups representing low-income customers (CAUSE-PA, TURN *et al*., and CAAP), large volume electricity users (PAIEUG and Walmart), and electric vehicle charging station operators (Tesla and ChargePoint). These parties, in a collaborative effort, have reached agreement on a broad array of issues, demonstrating that the Partial Settlement is in the public interest and should be approved.

Resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In addition, all parties will benefit by the reduction in rate case expense and the

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206 Section 904-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended,* 71 P.S. § 309-1.

207 Section 399.45 of the Small Business Advocate Act, Act of December 21, 1988, P.L. 1871, 73 P.S. § 399.45.

conservation of resources made possible by adoption of the proposed Partial Settlement in lieu of litigation. The acceptance of the Partial Settlement will negate the need for participation at in-person hearings or the filing of main and reply briefs on the issues contained in the Partial Settlement, exceptions and reply exceptions, and potential appeals. These savings in rate case expense serve the interests of PECO and its ratepayers, as well as the parties themselves.

For all of the foregoing reasons, we find the terms embodied in the Joint Petition for Partial Settlement are both just and reasonable and its approval is in the public interest. We recommend the Commission approve the Partial Settlement without modification.

IX. LITIGATED ISSUE

In accordance with the Commission's Rules of Practice and Procedures, 52 Pa. Code § 5.231, the parties engaged in settlement discussions. As a result of those discussions, the Joint Petitioners were able to reach a settlement in principle on all issues, with one exception. The single-issue remaining concerns NRG's proposal that PECO should adjust its cost allocations so that a portion of what it identified as indirect costs incurred to serve residential customers is reallocated from residential distribution service to only residential distribution service customers receiving default service.

A. Overview of NRG's Proposal To Reallocate Costs

NRG proposes an adjustment to PECO's cost allocations so that a portion of costs incurred to serve residential customers is reallocated from residential distribution service to residential default service. NRG maintains that this modification is necessary to begin to rectify the approach used by PECO through which it allocates all indirect costs associated with serving the residential classes to residential distribution service. By directing PECO to allocate a portion of indirect costs to residential default service, NRG asserts that the Commission would ensure that PECO's distribution charges more accurately reflect the costs of providing residential distribution service. Under NRG's proposal, these costs would be recovered through PECO's price to compare (PTC) for default service. NRG MB at 9; NRG RB at 7-8.

B. NRG's Position

1. Restructuring of the Electric Market.

As a result of the enactment of the Electric Competition and Choice Act in 1996 (Competition Act),[208] retail customers in Pennsylvania gained direct access to the competitive market for the generation and sale of electricity.[209] Prior to the passage of the Competition Act, electric utilities provided generation, transmission and distribution services to retail customers through bundled rates regulated by the Commission.[210] Under the Competition Act, the generation of electricity is no longer regulated as a public utility function, while the provision of transmission and distribution functions continue to be regulated as a natural monopoly. In order to facilitate electric choice, the EDCs, including PECO, were required to unbundle their rates to show separate charges for transmission, distribution and generation services.[211] NRG MB at 12.

To implement the Competition Act, the Commission required the EDCs to file restructuring plans that allocated costs to distribution, transmission and generation functions. An important component of the restructuring plans involved a determination by the Commission of the appropriate level of stranded costs for each EDC, which reflected the long-term investments in generation, transmission and distribution facilities to meet their obligation to serve customers within their defined service territories, and other transition costs. At the conclusion of the restructuring proceedings, the Commission issued orders addressing stranded cost recovery and other transition issues and establishing unbundled rates.[212] NRG MB at 12-13.

PECO set forth a proposal for unbundling its rates through its restructuring plan, which was addressed by the Commission in 1997. The Commission started with PECO's then existing bundled rate for transmission, distribution and generation services. From that amount,

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208 66 Pa. C.S. §§ 2801-2812.

209 66 Pa. C.S. § 2802(3).

210 66 Pa. C.S. § 2802(13).

211 66 Pa. C.S. §§ 2802(13) and (16).

212 *See, e.g., Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973953 (Order entered December 23, 1997) ("*1997 Restructuring Order*"). A relevant excerpt of the 1997 Restructuring Order is included in NRG Exhibit CP-5.

the Commission subtracted transmission and distribution costs to arrive at a number that represented the costs of generation services. To calculate a shopping credit, which is now known as the PTC, the Commission determined an appropriate level of stranded costs for recovery through the competitive transition charge and subtracted that amount from the costs of generation services. The resulting shopping credit was the amount that a customer could avoid paying to PECO by choosing an EGS to provide electric generation service.[213] NRG MB at 13.

2. PECO is Not Permitted to Recover Default Service Costs Through Distribution Rates.

The Commission has made clear on numerous occasions that the PTC charged by an EDC must reflect the costs of providing default service. In doing so, the Commission has stressed the importance of ensuring that such costs are not recovered through distribution charges. The Commission has also indicated that the remedy for fixing a scenario where default service costs are embedded in distribution rates is to reallocate those costs, so that distribution rates are decreased, and the PTC is increased. Finally, the Commission has confirmed that issues regarding proper recovery of default service costs should be examined in distribution rate proceedings. NRG MB at 14.

a. Default Service Regulations

The Commission's regulations establish requirements for the design of default service rates and the recovery of reasonable costs. Specifically, they require the PTC to "be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class."[214] The regulations further prohibit an EDC from recovering default service costs through the distribution rate. The Commission's rules also provide that when costs are reallocated from the distribution rate to the default service rate, they may not be recovered through the distribution

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213 *1997 Restructuring Order*.

214 52 Pa. Code § 54.187(e).

rate. Rather, the regulations mandate that "[t]he distribution rate shall be reduced to reflect costs reallocated to the default service rate."[215] NRG MB at 14-15.

b. <u>2007 Policy Statement</u>

The Commission clarified this requirement through its Default Service and Retail Electric Markets-Statement of Policy on May 10, 2007 ("Policy Statement") adopted on May 10, 2007, which addressed various elements of the default service regulatory framework, including default service program terms, electric generation supply procurement and competitive bid solicitation process.[216] Specifically, the Policy Statement lists the default service cost elements that should be included in the PTC.[217] NRG MB at 15.

These elements entail the costs for providing generation service, such as wholesale energy, capacity, ancillary, transmission and congestion costs, as well as applicable taxes and costs for alternative energy portfolio standard compliance. They also include supply management costs (i.e., bidding, contracting, hedging, scheduling and forecasting services), and A&G expenses related to those activities. In addition, the Policy Statement identifies several administrative costs for inclusion in the PTC, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system, and associated A&G expenses related to default service.[218] The Policy Statement also states that "EDC rates should be scrutinized for any generation related costs that remain embedded in distribution rates."[219] NRG MB at 15.

In adopting the Policy Statement, NRG argues the Commission indicated that while "utility rates were unbundled into transmission, distribution and generation components as part of the restructuring process, there is a significant concern on the part of the Commission and others that some generation costs have been improperly allocated, or 'embedded' in EDC

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215 *Id*.
216 52 Pa. Code §§ 69.1801-69.1817.
217 52 Pa. Code § 69.1808.
218 *Id*. at § 69.1808 (a).
219 *Id*. at § 69.1808 (b).

distribution rates."[220] The Commission noted that that it had not undertaken a full-fledged review of distribution rates with the goal of resolving this issue, citing the continued existence of rate caps that were agreed to in the restructuring settlements. With the impending expiration of rate caps, the Commission determined that no obstacles existed to taking this issue up for consideration. NRG MB at 15-16.

To that end, the Commission expressed the preference for this issue to be addressed in the next distribution rate case for each EDC. For those EDCs that did not initiate base rate cases by 2007, the Commission reserved the right to initiate a cost allocation proceeding to resolve the issue.[221] NRG MB at 16.

c. Other Commission Directives

The Commission has continued to recognize the possibility of the further unbundling of commodity costs from distribution rates to ensure that PTCs reflect all costs of default service. Specifically, during the Retail Markets Investigation in 2013, the Commission addressed comments suggesting a further unbundling of commodity costs from distribution rates. While declining to launch a generic review of this topic, the Commission noted that with respect to further unbundling, it "agrees with this concept and has strived to address these issues as they have arisen in distribution rate cases."[222] The Commission also stressed that it was not precluded from addressing the further unbundling of commodity costs and distribution rates in another proceeding in the future.[223] NRG MB at 16.

3. PECO's Distribution Rates Have Not Yet Been Fully Unbundled

NRG argues that despite the Commission's efforts to do so during the 1997 restructuring proceeding, PECO's rates were not fully unbundled at that time and the

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220 *Default Service and Retail Electric Markets, Docket* No. M-00072009 (Final Policy Statement entered May 10, 2007), 37 Pa. B. 5019 *("Policy Statement Order"),* at 8-9.

221 *Id.*

222 *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013) ("*RMI End State Order*"), at 21.

223 *RMI End State Order* at 21.

Commission indicated that it would continue to examine PECO's rates to determine if they include charges related to the provision of generation service. After the Commission reiterated its desire in 2007 to ensure that default service costs were not embedded in distribution rates, PECO filed a base rate case in 2010 during which it further unbundled some cash working capital and transmission expenses. However, NRG believes that those efforts fell short of accomplishing the Commission's goals of a full unbundling of PECO's rates. NRG MB at 17.

a. <u>1997 Restructuring Order</u>

In its restructuring plan filed on April 1, 1997, PECO presented its cost-of-service allocation study and functionalized cost study by class-of-service and a detailed analysis of functional assignment of costs among the production (generation), transmission and distribution functions. Upon review of PECO's cost allocation methodology, the Commission found that it was deficient because it failed "to properly assign certain general costs to generation and allocated 100 percent of those costs to transmission and distribution."[224] Finding that "PECO has misallocated costs," the Commission observed that PECO had assigned the vast majority of A&G, overhead and general plant expense to its transmission and distribution rates. As noted by the Commission, "this assignment occurred without regard to whether there is a continuing generation component in that cost."[225] Specific accounts identified by the Commission as having been improperly assigned only to transmission and distribution included: Account 920 (A&G Salaries); Account 921 (Office Supplies and Expenses); Account 923 (Outside Services Employed); and Account 935 (Maintenance of General Plant).[226] NRG notes that both the Commission and OCA were concerned that the transmission and distribution rates were too high because of these improper cost allocations.[227] NRG MB at 17-18.

The rationale offered by PECO's witness at that time was that if the costs could not be avoided as a result of the transition to competition and would still be incurred by the future EDC, then they should be recovered through regulated distribution rates. As to the A&G

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224 *1997 Restructuring Order* at 53.
225 *Id.* at 53.
226 *Id.* at 54.
227 *Id.* at 53, 60.

expense allocation, PECO made an effort during the rebuttal phase to use “work centers” to separately track costs as being associated with production, transmission, distribution, corporate central services and corporate center. However, PECO continued to propose that these costs be examined to determine whether the same overall cost levels were still appropriate for PECO after all customers could choose their EGS. If the answer was yes, PECO asserted that these costs should be recovered through regulated distribution charges.[228] NRG MB at 18.

In reviewing PECO’s revised proposal, the Commission noted that PECO had “still failed to include other accounts in its allocation, or failed to properly allocate sums from accounts which were included.”[229] Therefore, the Commission concluded that “PECO’s allocations still improperly allocate costs to its transmission and distribution services rather than properly reflecting that a generation component exists in those costs.”[230] Rejecting PECO’s revised proposal and “avoided cost” rationale, the Commission found that it must “ensure that there is an appropriate allocation of all costs among generation and transmission and distribution.”[231] In reaching its determination, the Commission was persuaded by the OCA witness that “[i]t is simply incorrect to allocate these dollars entirely to transmission and distribution” because “[u]nbundling costs should produce results that should look like what functional costs would be if PECO were to separate itself into functionally separate divisions. Clearly the generation division would require administrative and general services.”[232] NRG MB at 18-19.

As OCA’s witness further noted at that time, A&G expenses comprised a substantial percentage of the costs they were challenging, and that costs “in these accounts are not easily identifiable with particular operating functions. They include salaries and office supplies for personnel in administrative functions such as human resources, legal, or accounting. These activities contribute to the generation function as well as distribution and transmission.

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228 *Id.* at 55.
229 *Id.* at 56.
230 *Id.* at 54.
231 *Id.* at 57.
232 *Id.* at 58.

Generation planners and marketers make use of these administrative functions and expenses."[233] NRG MB at 19.

To address the shortcomings in PECO's proposal, the Commission adopted the methodology and adjustments that OCA had presented in surrebuttal testimony and reduced the transmission and distribution rate accordingly.[234] The Commission permitted PECO to recover the difference of $460 million through the competitive transition charge,[235] which was the mechanism that was used for the recovery of PECO's stranded costs and expired in 2010.[236] NRG MB at 19.

The Commission also highlighted a concern regarding the level of A&G expenses, which it said were not clearly generation (energy production) or clearly transmission and distribution (wires). However, since no party had presented any competing evidence relating to those cost levels, the Commission accepted them. In doing so, the Commission stated: "[w]e note, however, that nothing precludes any person from later challenging PECO's transmission and distribution rates under any applicable section of the Public Utility Code."[237] Similarly, the Commission did not modify PECO's proposed allocations for uncollectible, customer accounts, customer service and sales. Nonetheless, the Commission stressed that as functions continue to be unbundled, PECO's rates may be reexamined to determine if they provide for charges which encompass generation or other unbundled services.[238] NRG MB at 19-20.

b. <u>2010 and 2015 Base Rate Cases</u>

Following the Commission's issuance of the 2007 Policy Statement, PECO's next base rate case was filed in 2010.[239] Based on Mr. Peterson's review of public documents

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233 *Id.* at 60.
234 *Id.* at 59-61.
235 *Id.* at 62.
236 *See Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2008-2062739 (Order entered June 2, 2009).
237 *1997 Restructuring Order* at 50.
238 *1997 Restructuring Order* at 61.
239 *Pa. Pub. Util. Comm'n v. PECO Energy Company – Electric Division*, Docket No. R-2010-2161575 (Order entered December 21, 2010).

available for that proceeding, he noted that PECO implemented a Transmission Service Cost Rider, which provides for recovery of transmission costs through the PTC, rather than through distribution charges. These costs include network service charges, regional transmission enhancement plan charges and any other load-serving entity transmission-related charges. Also, during that case, the Commission approved Working Capital Riders, which reflect the working capital requirement associated with a portion of PECO's default generation supply and transmission costs. In addition, Mr. Peterson reviewed publicly available information from PECO's 2015 base rate proceeding and observed no further efforts to unbundle rates.[240] Therefore, NRG asserts that the transmission costs paid to PJM and the cash working capital requirements for generation and transmission costs appear to be the only items unbundled by PECO following the issuance of the 2007 Policy Statement. NRG MB at 20.

4. Qualifications of Mr. Peterson

During the hearing on August 21, 2018, PECO challenged Mr. Peterson's qualifications to testify as an expert witness due to a lack of experience with respect to public utility ratemaking, and moved for a ruling to have him disqualified from testifying as an expert witness in this proceeding.[241] The ALJs denied the motion and noted that Mr. Peterson would be accepted as the expert presented, and that his testimony would be given due weight based on his level of expertise.[242] NRG MB at 20-21.

The Commission adheres to the liberal standard of expert qualifications followed by the Pennsylvania Supreme Court: A person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue.[243] NRG MB at 21.

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240 *Pa. Pub. Util. Comm'n v. PECO Energy Company – Electric Division*, Docket No. R-2015-2468981 (Order entered December 17, 2015).

241 Tr. 477-478.

242 Tr. 482.

243 *See Pa. Pub. Util. Comm'n v. City of Bethlehem*, Docket Nos. R-943124 (Recommended Decision Jan. 20, 1995), *citing Ruzzi v. Butler Petroleum Co.*, 588 A.2d 1 (Pa. 1991); *Kuisis v. Baldwin-Lima-Hamilton Corp.*, 319 A.2d 914 (Pa. 1974); *Re Philadelphia Suburban Water Co.* (Philadelphia Suburban I), 49 Pa. PUC 354 (1975).

As a court-appointed expert witness in forensic accounting, NRG asserts that Mr. Peterson is fully qualified to opine on PECO's allocation of indirect costs wholly to residential distribution service when it operates an entirely different business of providing default service to residential customers, and to propose a method for allocating such costs to residential default service. In evaluating Mr. Peterson's level of expertise, it is important to view his experience and background on the key issues addressed in his testimony relating to the proper allocation of indirect costs to different segments of a business. His lack of personal experience specific to public utility ratemaking does not in any way diminish his expert witness status as a forensic accountant, which PECO did not challenge. Importantly, nothing about being a public utility shields PECO from following widely accepted accounting practices in the allocation of indirect costs to different functions of its business. NRG MB at 21, NRG RB at 15.

Mr. Peterson is a Principal of UHY Advisers, Inc. (UHY) and leads the Fraud and Forensic Accounting Group in the Michigan offices. He specializes in providing fraud investigation, forensic accounting and expert services in both the private and government sectors. He also has extensive experience with accounting matters, audits of financial statements, and other attest engagements. As a *cum laude* graduate of Grand Valley State University, with a Bachelor of Arts degree in Accounting, Mr. Peterson is a licensed Certified Public Accountant in Michigan, a Certified Fraud Examiner and a Certified Internal Auditor. NRG MB at 21-22.

Mr. Peterson's professional experience includes the provision of forensic accounting and expert witness services for litigation and alternate dispute resolution cases. He serves as a court-appointed forensic accountant and conducts examinations for asset misappropriations and fraudulent financial reporting. Other areas in which he has professional experience include internal investigations involving corruption and governance concerns; hidden asset discovery and recovery/damage mitigation for victims of fraud; assessment of financial internal controls; defense of professional malpractice claims for auditors and accountants; and defense of taxpayers in criminal investigations by the Internal Revenue Service.

Mr. Peterson has provided trial and deposition testimony in a number of proceedings. His testimony as an expert witness in those proceedings covered reports on fraud and forensic accounting examinations, internal audit investigations, and opinions on various accounting and auditing principles, standards and practices. Moreover, although no requirement exists for an expert witness to be well-versed on all aspects of utility ratemaking, Mr. Peterson took measures to ensure that his testimony on cost allocation issues was presented in a manner that is consistent with utility ratemaking principles and reflects an understanding of electric restructuring in Pennsylvania. NRG maintains that Mr. Peterson gained substantial familiarity with PECO's base rates and supporting data over the past year. NRG MB at 22-23, 25.

NRG also notes the fact that Mr. Peterson did not hold himself out as an expert witness on all issues related to the base rate proceeding. NRG maintains that, with the many nuances that are involved in utility ratemaking, no witness in this proceeding was presented in such a manner. Rather, each witness, each of whom testified at one point for the first time in a utility rate proceeding, focused on his or her area of expertise as it fits into the larger picture of the base rate case. NRG MB at 26, NRG RB at 16.

As to Mr. Peterson's reliance on counsel to provide background on the default service regulatory framework, the Commission's statements on unbundling and the Commission's order in PECO's restructuring proceeding,[244] NRG argues it is customary in Commission practice for expert witnesses to gain knowledge about the underlying legal principles from counsel. While it is not even necessary to rely on Mr. Peterson's testimony for those principles, they were included in his testimony to provide a backdrop for the reader so that his recommendations regarding proper cost allocation would not be set forth in a vacuum. NRG asserts that it is insignificant that Mr. Peterson could not, sitting on the stand, recall the details of the Standard Offer Program or PECO's proposals relating to microgrids and prepaid electric service. Rather, NRG contends that Mr. Peterson appropriately referred to those items in his testimony to explain why PECO's inclusion in the PTC of no regulatory and limited litigation costs (i.e. only related to the default service plan) was inadequate. NRG RB at 15-16.

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[244] *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973953 (Order entered December 23, 1997) ("*1997 Restructuring Order*").

In summary, NRG's position on Mr. Peterson is that based on his education, as well as his professional and practical experiences, Mr. Peterson has a reasonable pretension to specialized knowledge related to cost allocation. Specifically, as a court-appointed expert witness in forensic accounting, Mr. Peterson is fully qualified to opine on PECO's allocation of indirect costs wholly to residential distribution service when it operates an entirely different business of providing default service to residential customers. NRG maintains that Mr. Peterson has extensive experience performing cost allocation analysis for a variety of types of businesses, which fully qualifies him as an expert witness to address the proper allocation of indirect costs by PECO to different segments of its business. NRG MB at 27.

5. NRG's Alternative Cost Allocation.

a. PECO's Approach Is Flawed

NRG's position is that PECO's current approach to allocating indirect costs to residential default service is flawed, and that it has proposed an alternative approach that it claims would result in a reasonable level of indirect costs being allocated to residential default service. Although PECO provides distribution services and default generation services to several customer classes, the focus of Mr. Peterson's testimony was on PECO's distribution and default service for the residential (Rate R) and residential heating (Rate RH) classes, which are referred to throughout his testimony as the "residential" classes, customers or services. NRG St. No. 1 at 15. Mr. Peterson explained in response to the testimony of Mr. Clarence Johnson on behalf of OCA, that his analysis could be applied to commercial and industrial customer classes with similar outcomes, if the Commission so desires. NRG MB at 27.

As a result of the analysis he performed of the costs that are allocated to residential distribution and residential default service, Mr. Peterson produced a Utility Rate Study (Study) dated June 18, 2018. This Study examines PECO's residential rate allocations between distribution service and default service and contains the detail, calculations and schedules that he relied on and referred to in his testimony. It consists of: (i) a Narrative, which describes the purpose of the Study and summarizes the overall findings; (ii) Computations, which are set forth in Section I-Financial, Section II-Default Service (Price to Compare), and Section III-Distribution Service; and (iii) Appendices, which identify sources of information and additional support for the Study's findings. NRG MB at 27-28.

NRG argues that PECO allocates all indirect costs assigned to the residential customer classes to residential distribution service, and as a result, PECO's cost allocation analysis has fallen short by terminating the process at the customer class level without considering the need to allocate indirect costs within the residential classes as they relate to the provision of distribution service and default service. NRG further argues that PECO's approach is also a departure from the way that other businesses and organizations routinely allocate indirect costs to the entity's various segments or functions. NRG MB at 28.

b. PECO Allocates All Indirect Costs to Distribution Service

In his testimony, Mr. Peterson stated, "[a]lthough PECO provides a great deal of information about cost allocations between rate classes, details regarding the assignment of costs between distribution services and default generation services within the rate classes are not displayed in a specific schedule but must be derived from various portions of PECO's Cost of Service Study (COSS)."[245] Based on Mr. Peterson's analysis of PECO's COSS, NRG maintains that the only costs allocated to default service are direct costs related to Production and Transmission. These expense categories include the cost of purchasing power to provide service, direct expenses related to the purchasing of the power, the development of PECO's procurement plan, and transmission charges incurred when purchasing electricity from outside parties (*i.e.* PJM Interconnection LLC). Alan Cohn, testifying for PECO, confirmed that PECO does not allocate indirect costs within the residential rate classes as between distribution services and default generation services.[246] NRG MB at 28-29.

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245 NRG St. No. 1 at 15.

246 Tr. 451-452, 456.

c. From An Accounting Perspective, Indirect Expenses Must Be Allocated Across the Segments or Functions of the Business They Support

NRG challenges PECO's allocations of indirect expenses on the basis that they are fully embedded in distribution rates but reasonably support residential default service. NRG witness Peterson testified that "it is illogical, from an accounting perspective, to allocate all of these indirect expenses to distribution service. Particularly given that PECO provides default service to approximately 66 percent of the residential population in its service area, a reasonable portion of indirect costs must necessarily support its operations for residential default service customers."[247] NRG notes that this is the same point that OCA's witness made during PECO's 1997 restructuring proceeding with which the Commission agreed – "[i]t is simply incorrect to allocate these dollars entirely to transmission and distribution."[248] NRG MB at 30-31.

NRG maintains that allocation of shared costs to different businesses or business units is not a novel concept. Companies consistently allocate indirect expenses across business units and cost centers. Indirect costs are costs which cannot be identified with a particular service or product, including overhead costs, such as administrative and general expenses. Mr. Peterson testified that "[w]hile indirect costs cannot, by their nature, be attributed directly to certain aspects of PECO's operation, a reasonable level of administrative expenses are necessary to support any business' operations."[249] Fully allocated costs are the sum of direct costs plus an appropriate share of indirect costs. NRG MB at 31.

As support for his views as to the proper allocation of these indirect expenses, Mr. Peterson described the "concept of full absorption costing, which is a term of art in financial accounting that refers to the assignment of all reasonable costs to an activity. Full absorption costing typically involves allocations of common costs between activities."[250] Stated differently, the concept of full absorption costing is a guiding principle justifying cost allocation, not a specific methodology used for allocation. Following this guideline, all reasonable costs associated with a product or activity should be allocated, including indirect costs, which

247 NRG St. No. 1 at 17.
248 *1997 Restructuring Order* at 57, quoting OCA St. No. 4, p. 5.
249 NRG St. No. 1-SR (Rev) at 39.
250 NRG St. No. 1 at 18.

Mr. Peterson has also described as common or shared costs.[251] NRG MB at 31-32, NRG RB at 20-21.

d. The Effect of Allocating No Indirect Costs to Default Service Is That Customers Cannot Make Meaningful Comparisons

NRG maintains that the effect of PECO's practice of allocating no indirect costs to default service is that customers who are shopping for electric generation service in PECO's territory are being presented with offers from EGSs with which they cannot make apples-to-apples comparisons to PECO's PTC. If a customer chooses an EGS to provide generation supply service, the EGS sets the price that is paid and includes that price in a contract to which the customer agrees.[252] Also, the electric shopping website administered by the Commission encourages customers to review the PTCs of the EDCs when shopping for a new supplier. NRG contends that this is an unfair and misleading comparison when an EDC recovers certain costs through its distribution charges that are incurred to provide default generation service. NRG further contends that it also creates a framework where customers are not able to "compare prices and services on a uniform basis,"[253] or to make apples-to-apples comparisons. NRG St. No. 1 at 32. The Commission stressed the importance of providing information to consumers so that they can make accurate and fair comparisons to make informed shopping decisions.[254] NRG MB at 33-34.

Since an EGS is not providing distribution service, it has no other way of recovering costs from customers and therefore its prices must necessarily reflect all costs incurred to provide competitive generation service. The Commission has recognized that although the primary price signal provided to consumers is the EDC's PTC, the PTC is "often not correlated to wholesale energy markets and may move in directions opposite that of wholesale energy market trends" due to "reconciliation and the mix of contracts that EDCs use to

251 NRG St. No. 1-SR (Rev) at 26-27.
252 52 Pa. Code § 54.4(b)(10).
253 66 Pa. C.S. § 2807(d)(2); 52 Pa. Code § 54.1.
254 *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M 2013-2362961 (Order entered November 14, 2013) ("*Fixed Means Fixed Order*") at 28-29.

establish the PTC."[255] Not only does this present challenges to EGSs in operating in the retail market, the Commission has observed that it can also 'inhibit consumers' ability to make informed decisions due to the receipt of false or misleading price signals."[256] NRG asserts that these improper price signals leave consumers with an apples-to-cucumber comparison that is not consistent with the Competition Act or the Commission's objectives of creating a robust, competitive market. NRG MB at 34.

NRG argues that permitting PECO to continue operating with an artificially low PTC also enables it to attract and retain default service customers. Mr. Cohn testified that because PECO makes no profit from providing default service, it is not an area in which PECO seeks to "compete" with EGSs.[257] However, NRG and Mr. Peterson contend that if PECO is not seeking to compete with EGSs to provide generation service, it would seem that PECO would be indifferent to NRG's proposals to ensure that the PTC more accurately reflects the costs of providing default service. NRG further contends that providing default service positions PECO to provide additional services for which it can seek ratepayer funding that not only includes recovery of costs but the potential to earn a return on investment. For example, by offering a pre-pay product or a microgrid pilot, PECO has the opportunity to recover the costs of the program from all ratepayers. To make such proposals palatable, PECO is incentivized to both deepen and continue to build its long-term relationship with customers and to position itself as "the energy company." Therefore, portraying itself as the dominant provider of generation service (through default service) enables PECO to continue down the path of offering more and more ancillary services for which it can seek ratepayer recovery plus a return on investment. NRG MB at 34-35.

e. Review of PECO's Current Price-to-Compare Confirms Failure to Include All Required Costs

NRG argues that the list of components that are included in the PTC further demonstrates that indirect expenses incurred to operate a business have been omitted from

255 *RMI End State Order* at 12.
256 *RMI End State Order* at 12.
257 PECO Statement No. 9-R at 9-10.

PECO's methodology. As Mr. Peterson discussed, a functionally separate division of PECO providing default service would necessarily incur expenses that are not shown in this methodology, such as A&G expenses and costs for communications, accounting and finance, regulatory, human resources and IT infrastructure.[258] NRG MB at 35.

The administrative cost factor in PECO's PTC is very narrow and only reflects "the costs of the auction or Request for Proposal (RFP) monitor, consultants providing guidance on the development of the procurement plan, legal fees incurred gaining approval of the plan, and any other costs associated with designing and implementing a procurement plan."[259] The administrative cost factor was 0.00 cents per kWh from June through August 2017. Historically, it has been higher at 0.04 cents per kWh from June through August 2013 and 0.01 cents per kWh from December 2015 through February 2016. However, in all instances, the administrative cost factor did not account for a significant portion of the PTC.[260] NRG MB at 35-36.

NRG asserts that PECO's current PTC includes 0.005 cents per kWh for administrative costs, which totals only $118,314. PECO forecasts annual A&G costs of over $136 million for the residential rate class; $118,314 is less than 1 percent of the forecasted amount. NRG maintains that PECO's current PTC reflects negative administrative and general (A&G) expenses related to default service. NRG MB at 36.

Section 69.1808(a)(4) of the Commission's Policy Statement is very clear in identifying the administrative costs that should be included in the PTC. Indicating that the PTC "should be designed to recover all generation, transmission and <u>other related costs</u> of default service," this provision specifies those cost elements as including "[a]dministrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service."[261] Yet, according to Mr. Cohn, PECO only includes "administrative costs that are

[258] NRG St. No. 1 at 35.
[259] See NRG Exhibit CP-3 at N-11 (PECO's PTC Sample Calculation Methodology for June-August 2017, page 3).
[260] NRG St. No. 1 at 35.
[261] 52 Pa. Code § 69.1808(a)(4) (emphasis added).

associated with the wholesale power supply contracts," while not including administrative costs more broadly related to the provision of default service.[262] NRG MB at 36-37.

NRG asserts that by only including administrative costs that are directly associated with the procurement of wholesale power supply, PECO is inappropriately viewing the provision of default service as entailing only the procurement of energy for non-shopping customers. However, as evidenced by PECO's most recent default service proceeding, default service is broader than the procurement of energy.[263] For instance, as the default service provider, PECO implements retail market enhancements such as the Standard Offer Program. While PECO presented Cross Examination Exhibit 1 to show that some retail market enhancement costs may be recovered through the PTC, the fact remains that PECO indicated in testimony in this proceeding that no such costs are currently included in the PTC and that the PTC shows only $118,314 in administrative costs currently being recovered.[264] NRG MB at 37.

In serving default service customers, PECO necessarily incurs administrative costs in connection with numerous aspects of its business. Beyond procuring default service supply, PECO needs to rely on numerous resources to make default service available to consumers. For instance, PECO's current PTC includes zero costs for Education, Regulatory and Information System. This means that PECO is supposedly operating a business upon which over one million residential customers rely for generation supply service without incurring any IT costs. NRG argues that it is unfathomable to accept the notion that PECO incurs no IT costs to provide essential electricity services to two-thirds of its residential distribution customers. NRG MB at 38, NRG RB at 12.

As to the inclusion of zero IT costs in the current PTC, Mr. Cohn testified that only when IT costs relate specifically to implementation of the default service plan have they been included in the PTC.[265] NRG asserts that that standard is not consistent with the Policy Statement, which identifies IT costs for inclusion in the PTC and does not limit the inclusion of

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262 PECO Statement No. 9-R at 6.

263 *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Order entered December 8, 2016).

264 PECO Statement No. 9-R at 7; NRG Exhibit CP-20 (Rev); Tr. 447.

265 PECO Statement No. 9-R at 6.

such costs to only IT upgrades necessary to implement the default service plan. Rather, the Policy Statement indicates that IT costs "related to default service" should be included in the PTC. As Mr. Peterson testified, IT costs are an integral part of the ability of PECO to provide default service. NRG supports Mr. Peterson's view that a reasonable portion of PECO's IT costs should be included in the PTC since it would be impossible for PECO to provide default service to over one million customers without incurring IT costs. NRG MB at 38-39.

With respect to regulatory costs and litigation costs, Mr. Cohn's Rebuttal Testimony indicated that only those costs "associated with PECO's default service plans are recovered through the PTC," and identifies no other regulatory and litigation costs associated with the provision of default service.[266] Since PECO would necessarily incur some level of regulatory costs and additional litigation costs associated with the provision of default service that are not reflected in the PTC, Mr. Peterson opined that it is necessary to allocate a reasonable portion of those indirect costs to default service.[267] NRG MB at 39.

By including only regulatory costs and litigation costs that are associated with PECO's default service plans in its current PTC, PECO is overlooking the fact that it incurs other regulatory and litigation costs related to the provision of default service. For instance, PECO files comments with the Commission related to proposed retail market enhancements, including comments urging the Commission to keep EDCs in the default service role[268] and opposing an EGS proposal to implement supplier consolidated billing.[269] Both sets of comments related specifically to PECO's functions as a default service provider. NRG MB at 39.

f. <u>NRG's Proposal Properly Allocates Indirect Costs</u>

Mr. Peterson reallocated the indirect expenses in both default service and distribution service. The expenses that he deemed necessary to consider for reallocation total

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266 PECO Statement No. 9-R at 6.

267 NRG St. No. 1-SR (Rev) at 9.

268 *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (PECO Comments filed December 10, 2012).

269 *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016-2579249 (PECO Comments and Answer filed January 23, 2017).

$196,616,182, which is the sum of the amounts shown in NRG Exhibit CP-5 for Customer Service Expenses, Sales Expenses, A&G Expenses, Intangible Plant Expense, General Plant Expense and Common Plant Depreciation/Amortization in the column labeled "PECO Energy Company Total Residential Class."[270] Of the total indirect expenses that Mr. Peterson examined for reallocation, he recommended that $101,951,549, which is currently allocated entirely to distribution service, should be attributed to default service. This represents approximately 51.5 percent of the total pool of indirect expenses. NRG MB at 51.

Mr. Peterson arrived at this recommended level of $101,951,549 by considering three alternative methods for computing the amount of indirect expenses to be reallocated to PECO's default service. Allocation Method A allocates costs to "generation" or default service on the basis of residential default service revenues divided by total residential revenues. Allocation Method B allocates these costs on the basis of residential default service customers divided by total residential customers. Allocation Method C allocates these costs on the basis of a hybrid of Allocation Methods A and B. The results of the three allocation methods are shown in NRG Exhibit CP-7.[271] NRG MB at 51.

6. Effects of NRG's Proposal

a. Distribution Charges Should Be Decreased

NRG alleges that reallocating expenses to default service would reduce the distribution charges paid by customers on their monthly bills since they would be recovered by PECO through the PTC. The distribution charge is broken into fixed and variable (per kWh) elements on each customer's bill, with the fixed portion labeled as "Customer Charge" and the variable portion labeled as "Distribution Charges." Because of the manner in which PECO derives the fixed Customer Charge, Mr. Peterson recommended that PECO adjust the variable Distribution Charges to reflect the reallocation of expenses from distribution service to default service.[272] NRG MB at 62-63.

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270 NRG St. No. 1 at 23-24.
271 NRG St. No. 1 at 24-25.
272 NRG St. No. 1 at 37.

In adjusting the variable Distribution Charge, Mr. Peterson derived a reduction of the distribution charge per bill and calculated this amount to be .76 cents per kWh using his proposed Allocation Method C. This amount was calculated by dividing the total reallocated expense for each methodology by the total number of residential and residential heating bills (approximately 18.7 million for the FPFTY 2019). Under proposed Allocation Method C (hybrid), he further determined that the proposed adjustment to the variable distribution charge would result in an estimated reduction, on average, of $5.41 per monthly bill or $64.89 on an annual basis. NRG contends that this reduction would result in a fairer allocation between distribution service and default service. By lowering the distribution charges that are paid by both shopping and default service customers, shopping customers would no longer be subsidizing non-shopping customers through the payment of indirect expenses that are incurred by PECO in providing default service to those non-shopping customers. NRG MB at 64.

b. <u>PTC Should Be Increased</u>

NRG points out that it is not proposing that PECO be denied recovery of the amount of $101 million that Mr. Peterson has identified as being misallocated to distribution service. Rather, as Mr. Peterson explained, "similar to the way that the riders were developed during the 2010 distribution rate case to capture the transmission service charges and the cash working capital requirements," he proposed that PECO recover this amount through the PTC for default service.[273] Specifically, Mr. Peterson recommended that PECO be directed to adjust its PTC at the next quarterly adjustment following the issuance of an order in this proceeding to reflect the reallocation of these costs from distribution service to default service. NRG MB at 64-65, NRG RB at 25-26.

The effect of this recommendation is to reallocate approximately $101 million from residential distribution services to residential default service and increase PECO's PTC for residential default service by 1.25 cents per kWh. NRG maintains that this proposal is consistent with the Commission's regulations requiring an EDC's PTC to recover all default service costs

[273] NRG St. No. 1 at 31.

that are incurred to serve customers.[274] Further, in prohibiting EDCs from recovering default service costs through the distribution rate, the Commission's regulations require that costs recovered through the distribution rate be reallocated to the default service rate, with the distribution rate reduced accordingly.[275] NRG MB at 65.

Reviewing the PTC for June 2017 through August 2017, which was 7.11 cents per kWh, the effect on the PTC of adding 1.25 cents per kWh would be to increase it by 15 percent to 8.36 cents per kWh. Through Mr. Peterson's analysis, he observed that the Company's residential costs, number of annual residential customers served, and annual residential kilowatt hours used in its operating area are relatively stable for the years 2014 through 2017. Accordingly, he opined that the 1.25 cent per kWh increase is also applicable to PECO's current residential default service rate of 7.15 cents per kWh, which would rise by 14.9 percent to 8.40 cents per kWh. NRG MB at 65.

Mr. Peterson recognized that 1.25 cents may seem like a slight difference in price, and it is when talking about most products. However, in relative terms, it means that PECO's PTC is understated by 15 percent. NRG contends that that kind of price differential is fundamentally misleading to consumers when they are looking at prices on www.papowerswitch.com and deprives them of the information that is needed to compare prices and services on an accurate and fair basis. As consumers shop for generation supply, they are constantly reminded of the price and when this price is inaccurate by nearly 15 percent, many may choose not to make the switch. Accordingly, NRG maintains that PECO's default service customers are not being provided adequate information that is needed to enable them to make informed choices regarding the purchase of electricity services. Stated differently, they are unable to make apples-to-apples comparisons. NRG MB at 65-66, NRG RB at 10.

NRG argues that another factor identified by Mr. Peterson that demonstrates the importance of increasing PECO's PTC relates to costs recovered by PECO for its EE&C programs. During his review of PECO's COSS, he determined that $88.7 million of projected

274 52 Pa. Code § 54.187(e).
275 52 Pa. Code § 54.187(e).

customer assistance costs for its EE&C programs were removed from PECO's cost projections for the FPFTY 2019 through an elimination adjustment since EE&C costs are recovered through a surcharge mechanism pursuant to Act 129.[276] Of PECO's $99.8 million in customer assistance expenses, only $11 million has been allocated to distribution services. NRG MB at 66.

The $88.7 million of customer assistance costs excluded from PECO's cost projections includes $10.8 million that is allocated to Education, Awareness, and Marketing expenses.[277] NRG argues that these items may include advertising and other marketing activities that are branded using PECO's name. Accordingly, NRG asserts that PECO may be able to unfairly promote its brand name, and thereby its residential default service, under the guise of marketing the EE&C program. NRG MB at 66.

The significance of PECO's removal of $88.7 million from customer assistance expenses in its COSS in this proceeding is that this amount represents costs that PECO recovers through a surcharge on all customers, while some of these costs support PECO's default service operations. If these costs had remained in the COSS as being entirely allocated to distribution services, Mr. Peterson's recommended reallocation of costs to default service would have been much larger. Although Mr. Peterson did not propose any adjustments to account for these costs, NRG points out this issue as a way of emphasizing the importance of the Commission directing the adjustment of PECO's PTC for default service to reflect a reasonable portion of its indirect expenses so that it more accurately presents information that allows customers to make fairer comparisons between PECO's PTC and the prices charged by EGSs for competitive generation service. NRG MB at 66-67.

The outcome of implementing these recommendations is that the information received by residential customers will allow for more meaningful comparisons between PECO's PTC and the prices offered by EGSs. While the result will still not be a perfect apples-to-apples comparison, these adjustments would permit customers to compare prices and services on a more

276 66 Pa.C.S. §§ 2806.1 and 2806.2.
277 NRG Exhibit CP-15 (PECO Response to NRG-I-1).

uniform basis and enhance their ability to make informed choices regarding the purchase of electricity services. NRG MB at 67.

C. PECO's Position

1. PECO's Default Service Obligations.

As a Pennsylvania EDC, PECO serves as the default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Pennsylvania Public Utility Code.[278] As default service provider, PECO provides electric generation service to those customers who do not select an EGS or who return to default service after being served by an EGS that becomes unable or unwilling to serve them.[279] Every customer who receives default service from PECO is a distribution service customer, and PECO provides electric distribution service without regard to whether a customer also receives default service.[280] PECO must stand ready to provide default service at all times to all of its distribution customers. PECO MB at 6; PECO RB at 5.

As default service provider, PECO is required to file a plan with the Commission that sets forth how PECO will meet its default service obligations, including a strategy for procuring generation supply and a rate design to recover the costs of providing default service.[281] Pursuant to the Commission's default service regulations,[282] PECO's default service plan must include, *inter alia*: (1) a default service procurement plan that sets forth PECO's strategy for procuring generation supply and complying with Pennsylvania's Alternative Energy Portfolio Standards Act, 73 P.S. § 1643.1 *et seq*. ("AEPS" or "AEPS Act"); (2) an implementation plan identifying the schedule and other details of PECO's proposed competitive procurements for default supply, with forms of supplier documents and agreements and an associated contingency plan; and (3) a rate design plan to recover all reasonable costs of default service.[283] The

278 66 Pa.C.S. § 2807(e).
279 66 Pa.C.S. § 2807(e)(3.1).
280 PECO St. 9-R, p. 3.
281 66 Pa.C.S. § 2807(e)(3.6).
282 52 Pa. Code § 54.181 *et seq*.
283 52 Pa. Code § 54.185.

Commission reviews PECO's default service plans and approves a plan if it is consistent with the Public Utility Code and the Commission's regulations. To date, the Commission has approved four PECO default service plans, with the current plan in effect until May 31, 2021.[284] PECO MB at 6-7.

PECO maintains that NRG's discussion of PECO's default service obligations in its Main Brief largely consisted of a discussion of various Commission orders relating to the restructuring of the electric industry in Pennsylvania and the development of Pennsylvania's retail electric market. PECO noted that NRG also acknowledged that the Commission reviewed and approved PECO's distribution rates in 2010 and 2015 but asserted that "PECO's distribution rates have not yet been fully unbundled."[285] PECO maintains that there is nothing in the Commission's Orders to support NRG's contention that PECO's distribution and default service rates have yet to be unbundled, and NRG provides no citation to support this claim. PECO RB at 6-7.

2. <u>Procurement of Default Service and the Price-to-Compare</u>.

In accordance with the default service plans approved by the Commission, PECO conducts competitive procurements and enters into wholesale power contracts and associated services for three different default service customer classes: Residential, Small Commercial (up to 100 kW annual peak demand and lighting customers), and Medium/Large Commercial (greater than 100 kW annual peak demand). PECO MB at 7.

The principal procurement feature of PECO's wholesale power contracts for residential customers receiving default service is the use of fixed-price, full requirements supply contracts. Under these contracts, winning bidders in PECO's competitive procurements are responsible for assuming, managing, and covering the financial costs and risks associated with electricity supply for a percentage of residential customers, including all required energy,

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284 PECO St. 9-R, p. 3; *see generally* Opinion and Order, *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, P-2016-2534980 (Order entered December 8, 2016).

285 NRG Main Br., p. 17.

capacity, and ancillary services, as well as alternative energy credits required for compliance with the AEPS Act. Each wholesale power supplier must satisfy this obligation, regardless of how much market prices or generation costs may increase during the delivery period and regardless of the default service load level (since the supplier is serving a percentage of whatever the default service load is at any given time). PECO MB at 7-8.

PECO recovers the default service costs for each customer class through a class-specific generation supply adjustment (GSA) charge and a transmission service charge (TSC) set forth in its electric tariff. The price per kilowatt-hour charged under each GSA and the TSC is the PTC for the applicable customer class and is updated at least quarterly as required by the Commission.[286] PECO recovers all of the costs of the wholesale power contracts in the PTC as well as default service administrative costs (including the cost of an independent evaluator to oversee the procurement process), working capital, information technology costs, and regulatory and litigation costs associated with PECO's default service plan.[287] In accordance with the Commission's regulations, PECO is prohibited from recovering costs of default service in distribution rates, and its PTC is audited annually by the Commission.[288] PECO notes that it is not permitted to make a profit from the provision of default service. PECO MB at 8; PECO RB at 5-6.

As PECO witness Alan B. Cohn explained, more than 90% of the amounts recovered through the residential PTC are paid directly to wholesale suppliers by PECO's Energy Acquisition team, or "EA." EA is responsible for the PECO service territory load's interaction with wholesale electric markets, electric and gas choice coordination responsibilities, payments and associated accounting for PECO natural gas supply, transportation, and storage contracts, and wholesale default supply purchase agreements. Mr. Cohn further explained that, in the electric sector, EA manages all of the accounting and administrative functions associated with the continuous delivery of electric energy from the wholesale energy market operated by PJM Interconnection, Inc. (PJM) to PECO's electric distribution system customers, whether they shop with an EGS or receive default service. PECO MB at 8-9; PECO RB at 6.

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286 52 Pa. Code § 54.187(h).

287 *See* 52 Pa. Code. § 54.187(e); 52 Pa. Code § 69.1808.

288 *See* 52 Pa. Code §§ 54.187(e) & (f); 66 Pa.C.S. § 1307(d).

PECO notes that nineteen employees work in the EA team, and the largest group supports electric and gas customer choice. It is EA's responsibility to match each distribution customer's wholesale load responsibility to their retail provider (whether that is one of over 100 electric generation suppliers or nine wholesale default suppliers) and provide that information daily to PJM for proper PJM billing. PECO MB at 9; PECO RB at 6.

Despite the large amount of revenue paid to default service suppliers, PECO maintains that EA's arrangements for payments to suppliers are straightforward. Monthly invoices of default service suppliers are automatically generated, reviewed by one EA employee, and approved for payment in accordance with PECO's established payment procedures. Because the work performed by the EA team supports both shopping and non-shopping customers, who can choose to shop at any time, PECO includes the costs of the EA team in distribution rates. EA costs are not separately allocated to customers receiving default service, and EGSs are not charged for services provided on behalf of EGSs. PECO notes that it does not operate a separate "default service division" or "business line." PECO MB at 9; PECO RB at 6.

3. Qualifications of Mr. Peterson.

PECO notes that the Commission "abide[s] by the Pennsylvania Supreme Court's standard that a person qualifies as an expert witness if, through education, occupation or practical experience, the witness has a reasonable pretension to specialized knowledge on the matter at issue."[289] PECO asserts that NRG Witness Chris Peterson's lack of the required specialized knowledge was demonstrated during this proceeding. Accordingly, PECO maintains that Mr. Peterson's testimony regarding cost allocation of utility expenses in this rate proceeding, as well as various opinions he offered regarding default service, prior Commission decisions, PECO filings in other Commission proceedings, and advertising by PECO, should be given no weight at all. PECO MB at 10.

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289 Order, *Manes v. PECO Energy Co.,* Docket No. C-20015803, pp. 3-4 (Opinion and Order entered June 14, 2002) (citing *Ruzzi v. Butler Petroleum Co.*, 588 A.2d 1 (Pa. 1991)).

a. Mr. Peterson Has No Relevant Utility Experience.

PECO argues that, aside from his work for NRG relating to PECO's distribution rates in preparation of the Peterson Study, Mr. Peterson's entire experience with respect to electric, gas and water utility companies was limited to accounting work involving legal fees at the Macomb County Public Works Department in Macomb County, Michigan, which builds water, sewer, and drainage systems.[290] In order to perform his work for NRG, he testified that he engaged a third-party energy consultant, whose relevant experience and role in the Peterson Study was not established.[291] After explaining that he also relied on four other employees at the accounting firm with which he is associated who had some utility experience, Mr. Peterson admitted that the experience of those employees was limited to only three other engagements, none of which involved investor-owned utilities or default service, and that he had not worked on any of those engagements himself.[292] PECO contends that Mr. Peterson's specific lack of expert ratemaking knowledge and experience was further demonstrated by his incorrect assertion that PECO earns a return on distribution charges,[293] as well as by his acknowledgment on cross-examination that he was unaware of the standard practice of utilities in allocating indirect costs.[294] PECO MB at 10-11.

PECO does not dispute that that Mr. Peterson has knowledge of cost allocation in other industries. However, PECO maintains that this knowledge is not the legal requirement. PECO contends that Mr. Peterson must have specialized knowledge of the matter at issue which, in this case, involves utility rates, utility cost causation, and the provision of default service.[295] Moreover, PECO maintains that Pennsylvania law and the Commission's precedent require that Mr. Peterson have sufficient specialized knowledge of the utility costs he wants to allocate. PECO RB at 7-8.

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[290] Tr. 473-74.
[291] NRG St. 1-SR, pp. 1-2.
[292] Tr. 517 and PECO Cross-Examination Exhibit No. 2.
[293] NRG St. 1-SR, p. 33.
[294] Tr. 473 & 517-18.
[295] *See Manes v. PECO Energy Co*., Docket No. C-20015803 (Opinion and Order entered June 14, 2002).

b. Mr. Peterson Has No Personal Knowledge Of Several PECO Programs To Support His Opinions About Those Programs.

PECO notes Mr. Peterson's admission that he relied upon counsel to explain many aspects of Pennsylvania's utility and default service regulatory framework, including what the PTC is intended to recover, the Commission's statements on unbundling of commodity and distribution costs, and a 1997 order restructuring PECO's generation and distribution operations.[296] When asked about his reference to PECO's Standard Offer Program to support his own statement that "default service is broader than the procurement of energy," Mr. Peterson was unable to explain anything at all about the Standard Offer Program.[297] Similarly, PECO notes that despite testifying that the PTC should include costs associated with other PECO proposals before the Commission relating to microgrids and prepaid electric service because those proposals "would have a direct impact on the competitive market and the provision of default service to customers," Mr. Peterson did not know any details of those proposals he cited, and he admitted under cross examination that he had not looked at any of those cited proceedings and instead relied on counsel for that testimony.[298] PECO MB at 11-12.

c. Mr. Peterson Has No Experience To Support His Opinions Regarding Advertising Or Branding.

PECO contends that Mr. Peterson repeatedly alleged that PECO used default service or its Commission-mandated energy efficiency programs to "unfairly promote its brand name"[299] and made additional assertions that PECO was "incentivized" to "build its long-term relationship with customers" and was "portraying itself as the dominant provider of generation service (through default service) . . . ."[300] PECO notes that on cross-examination, Mr. Peterson acknowledged that he was not an expert in consumer advertising or branding, but that he believed he had seen an unspecified reference by PECO to itself as "your energy company." He did not provide any evidence to support his belief, nor did he provide any instance where PECO

296 Tr. 475.
297 NRG St. 1-SR, p. 7; Tr. 487-88.
298 NRG St. 1-SR, pp. 9-10; Tr. 491-94.
299 *See* NRG St. 1, p. 37; NRG St. 1-SR, p. 36.
300 NRG St. 1-SR, p. 18.

claimed to be "the dominant provider of generation service."[301] Accordingly, PECO maintains that Mr. Peterson lacked both the personal knowledge and specialized knowledge sufficient to support his proposal regarding PECO's distribution rates and his opinions on other aspects of PECO's operations and programs. PECO MB at 12

4. NRG's Alternative Cost Allocation.

a. Mr. Peterson's Proposal is Inconsistent With Principles of Utility Cost Allocation.

PECO witness Jiang Ding described the uncontested principles PECO applied in developing its cost of service study and selecting allocation factors for distribution system costs:

> The central element in performing a COS study is the determination of allocation factors based on causal relationships between, on the one hand, customer demands, load profiles and usage characteristics, and, on the other hand, the costs incurred by the Company to meet customers' service requirements imposed by those demands, load profiles and usage characteristics. The primary goals in selecting allocation factors are:
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> 1. The appropriate recognition of cost causality;
> 2. The stability of study methods and their consistent application over time, so that trends in the direction of class revenues relative to cost of service can properly be discerned from case to case; and
> 3. Completeness, such that the COS study captures all of the costs that each class imposes on the distribution system.[302]

PECO argues that Mr. Peterson's proposal to reallocate over $100 million of distribution system costs based on default service revenues and the number of customers receiving default service under Methodology C entirely fails to meet these bedrock principles for two major reasons. PECO MB at 13.

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301 *See* Tr. 496-97.
302 *See* PECO St. 6, pp. 6-7.

First, Mr. Peterson's allocation reflected no assessment of the actual costs of PECO's provision of default service, which PECO maintains is an unsurprising result in light of Mr. Peterson's admission at hearing that he prepared his report before discovery in this proceeding.[303] PECO argues that Mr. Peterson never sought to determine whether the costs he proposed to allocate were actually caused by any default service function. Moreover, Mr. Peterson testified that asking about different default service functions performed by PECO employees would be "outside of the scope of what I was requested to do."[304] PECO MB at 13-14; PECO RB at 10-11.

PECO notes that after explaining that virtually all of the default service revenue received from customers was paid directly to wholesale suppliers in accordance with their power supply contracts, Mr. Peterson continued to insist on allocating nearly half of PECO's $52 million in FPFTY employee salaries and pension expense to customers receiving default service using his 43% default service revenue ratio, because he believed that portion of administrative salaries and other administrative expenses somehow "must be incurred to support PECO's default service operations."[305] He did not explain why so many employees or expenses are required. Later, Mr. Peterson appeared to conclude that actual labor costs do not matter at all, as it is "immaterial whether any direct salary and wage cost is for default service."[306] PECO MB at 14.

Moreover, Mr. Peterson asserted that call center costs – which PECO assigned to all distribution customers based on a weighted average of residential, small commercial, and industrial customers[307] – should instead be divided, with 66% allocated to customers receiving default service. However, PECO maintains that Mr. Peterson did not provide any basis to conclude that call center costs are driven by the number of customers receiving default service.[308] PECO MB at 14-15.

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303 Tr. 485.
304 Tr. 472.
305 NRG St. 1-SR, pp. 27-28 and Tr. 468-71.
306 NRG St. 1-SR, pp. 43-44 (emphasis added).
307 *See* PECO St. 6, pp. 23-24.
308 Tr. 441-42 & 498.

Second, Mr. Peterson's choice of default service-based ratios for the allocation of such costs as PECO's physical buildings and employee salaries does not correspond with cost causality. Mr. Cohn described how Mr. Peterson's allocations would lead to PECO losing money as more customers shop, since PECO would continue to incur the costs that Mr. Peterson proposed to allocate to default service customers. These losses would increase as PECO continues to promote retail competition in accordance with Commission requirements and more customers shop for electricity. Mr. Peterson acknowledged that he had not determined what might happen under his proposal at different levels of shopping by distribution customers, and he could only offer a "guess" as to the effect of a five-percent change in customer shopping.[309] PECO MB at 15.

PECO argues that Mr. Peterson's assertion that his proposed reallocation is necessary because PECO witness Ding did not "take the additional step" of allocating costs between distribution service and default service is only a restatement of his assumption that there are costs allocated to distribution operations that are caused by the provision of default service. Mr. Peterson admits that he does not know of any United States utility that allocates indirect expenses to default service as he has proposed, and PECO asserts that nothing in his testimony demonstrates that his proposed allocators better reflect the actual causation of PECO's costs of service described by Ms. Ding. PECO MB at 15; PECO RB at 11.

b. Mr. Peterson's "Separate Operating Division" Argument Does Not Justify His Reallocation of Distribution System Costs.

In the absence of any actual causation analysis, Mr. Peterson contends that his allocation of between 43% and 66% of various distribution system costs to customers receiving default service is still appropriate because PECO would "necessarily incur these types of expenses" if it "were to operate a separate functional division that provides default service."[310] Having assumed that PECO would incur $100 million in various costs if it were to operate a separate division providing default service, Mr. Peterson argues that PECO's distribution operations and its provision of default service should be treated as "separate operating divisions"

309 Tr. 502-03.
310 NRG St. 1-SR, p. 3.

to support his proposal. PECO maintains that the Commission should reject his argument. PECO MB at 16.

As a factual and legal matter, default service is not an "operating division" or "business line" of PECO. PECO is an EDC in the business of distributing electricity to its customers, and default service is for all distribution customers who have not chosen an EGS or whose EGS ceases to provide generation service to such customers. PECO is required to provide this service for all of its distribution customers under Pennsylvania law and the Orders of this Commission, and it must do so without profit and in accordance with the Commission's requirements. The provision of actual generation service for delivery to customers is contracted to wholesale suppliers and administered by PECO's EA team as Mr. Cohn described. PECO MB at 16.

PECO notes that in support of his contention that the provision of default service must nevertheless be treated as a separate division of PECO, Mr. Peterson relies heavily on a 1997 decision of the Commission regarding PECO's restructuring following the enactment of the Electricity Generation Customer Choice and Competition Act (the "Competition Act")[311] in which the Commission agreed with the OCA that PECO's administrative expenses should be allocated as if PECO were to separate its generation and distribution business into "functionally separate divisions."[312] PECO argues that this reliance is entirely misplaced. As both Mr. Cohn and OCA witness Clarence Johnson explained, the 1997 decision involved a very different company, with two distinct business groups.[313] At that time, the generation business had thousands of employees (twice the number of distribution operations employees) and significant income on a standalone basis.[314] The 1997 Restructuring Order makes clear that "references to generation mean that sector of PECO's operations related to the production of energy."[315] Moreover, the Commission approved allocation of administrative expenses between generation and distribution based upon a labor allocator in 1997, and that decision provides no support for

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311 66 Pa.C.S. § 2801 *et seq*.

312 Opinion and Order, *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement*, Docket No. R-00971265 (Order entered December 29, 1997), p. 58.

313 PECO St. 9-R, p. 12 & OCA St. 3R, p. 7.

314 Tr. 443.

315 1997 Restructuring Order, p. 49.

allocation of administrative expenses based on default service revenues or the number of customers served as Mr. Peterson advocates. PECO MB at 16-17; PECO RB at 12.

PECO further argues that Mr. Peterson's implicit suggestion that the Commission has neglected its policy of ensuring that default service costs are not included in distribution rates in the absence of a consideration of his proposal is unfounded.[316] In approving PECO's distribution rates, the Commission has a fundamental obligation to consider whether PECO's rates are just, reasonable, and in accordance with the law.[317] This obligation applies even in the context of a settlement; as the Commission explained in approving the settlement of PECO's 2015 distribution rate proceeding, "[d]espite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest."[318] PECO MB at 17-18.

PECO notes that, although Mr. Peterson takes the position that businesses typically allocate costs across business lines using his "widely accepted" allocators of revenue and number of customers,[319] he acknowledged that he did not know of any utility in the United States that provides default service through a separate division or allocates indirect expenses as if it operates a separate default service division as he proposed. While Mr. Peterson suggests that Pennsylvania should be the first state to require his allocation methodology to continue its role as a national leader for retail electric choice,[320] he provides no evidence that such an action would, in fact, be consistent with responsible leadership. PECO maintains it is not. Allocating costs to default service that artificially inflate the PTC is fundamentally inconsistent with principles that should guide the development of a competitive retail electricity market. PECO argues that the Commission should reject Mr. Peterson's suggestion that responsible "leadership" would require the Commission to put a "thumb on the scale" to drive the PTC above the level that is justified

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316 *See* NRG St. 1-SR, pp. 12-13.
317 66 Pa.C.S. § 1308(c).
318 Opinion and Order, *Pa. Pub. Util. Comm'n v. PECO Energy Company*, Docket No. R 2015-2468981 (Order entered December 17, 2015), p. 8.
319 *See*, *e.g.*, NRG St. No. 1-SR, pp. 5 & 34.
320 NRG St. 1-SR, p. 20.

by sound and well-accepted cost-allocation principles that have been approved by the Commission in numerous base-rate and default-service proceedings. PECO MB at 18.

Although NRG contends that changes to PECO's business since restructuring are "of no consequence,"[321] PECO maintains that its operations as a default service provider today are clearly not analogous to its prior operations related to the production of energy. Instead of employing thousands of employees to operate and support generation plants, PECO now only solicits and manages the contracts whereby wholesale suppliers provide default service supply to customers. In addition, Pennsylvania law and the Commission's regulations prescribe the manner in which PECO may recover its default service costs. While the Commission has made clear that default service costs are not to be included in distribution rates, this requirement does not mean that a hypothetical company structure should be imposed for the purpose of allocating costs between default service and distribution service. PECO asserts that NRG's claim that the cost allocation discussion in the 1997 Restructuring Order is "as valid today as [it was] over twenty years ago"[322] is wrong. The Order does not relate to default service rates and should not now be applied to allocate default service costs in light of the significant changes to PECO's operations and the existence of a statutory and regulatory framework for the recovery of default service costs. PECO RB at 12-13.

5. Effects of NRG's Proposal.

In his written testimony, Mr. Peterson asserted that his proposal would have no "net effect" on PECO's operations because he believed that PECO would recover all of the costs it currently incurs.[323] At hearing, however, Mr. Peterson acknowledged that he had done no "sensitivity analysis" regarding the effects of his proposal to increase the PTC and could only "guess" as to what level of customer shopping would make his proposed cost allocation unreasonable.[324] PECO MB at 19.

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321 NRG Main Br., p. 44.
322 NRG St. 1, p. 10.
323 NRG St. 1-SR, pp. 33-34.
324 Tr. 503.

PECO witness Cohn explained that if all customers decide to shop, PECO would not recover any of its distribution expenses allocated to default service by Mr. Peterson, even though all those distribution costs would remain. And while Mr. Peterson suggested that such a result would be "dramatic," he provided no evidence as to what customers are likely to do if the price of default service is increased by 15%. PECO maintains that Mr. Peterson's failure to consider the effects of shopping on his cost allocation is a significant omission and further undermines his proposal and expertise. PECO MB at 19.

6. Additional Issues.

In support of his proposed cost allocation, Mr. Peterson argues that PECO is "motivated" to include indirect expenses in distribution costs because "PECO earns a rate of return on distribution charges."[325] In addition, in response to Mr. Cohn's explanation that PECO does not compete to provide generation service and makes no profit from default service, Mr. Peterson suggests that PECO should be "indifferent" to his proposal but instead remains motivated to provide default service to make other programs that earn a return on investment more "palatable."[326] Mr. Peterson also asserts that PECO should be including other expenses in the PTC, including regulatory, litigation, and education expenses, on the grounds that PECO's other programs have an impact on default service and PECO's energy efficiency and conservation (EE&C) programs provide an opportunity to educate customers about default service.[327] PECO MB at 19-20.

PECO maintains that the Commission should reject all of Mr. Peterson's arguments. PECO does not earn a return on distribution charges. And while PECO does not earn a profit on default service, it cannot be indifferent to a proposal that will misallocate distribution system costs and result in losses to PECO as customers shop. PECO contends that Mr. Peterson offered no evidence to support his contentions regarding PECO's other proposals and programs, conceding that he was unfamiliar with the regulatory proposals on which he based

325 NRG St. 1-SR, p. 18.

326 *Id.*

327 NRG St. 1-SR, pp. 11-12.

his opinion and could not identify any instance where PECO portrayed itself as "the dominant provider of generation service (through default service)" as he claimed.[328] PECO MB at 20.

Regarding Mr. Peterson's statement that PECO's EE&C programs "give PECO an opportunity to educate consumers about default service" and "unfairly promote its brand name,"[329] PECO contends that this suggests that customers cannot distinguish between education and marketing of EE&C programs and default service, and that some EE&C costs, therefore, must support PECO's default service operations. For those programs that Mr. Peterson cited as having a "direct impact" on the provision of default service and about which Mr. Peterson admitted he had no working knowledge,[330] PECO argues that NRG continues to recite Mr. Peterson's testimony without any additional, credible record evidence. PECO maintains that these additional arguments and assertions by NRG are entirely unsupported and merit no weight in this proceeding. PECO RB at 14.

Regarding NRG's astonishment that PECO's current PTC reflects negative A&G expenses, arguing that it would be impossible for such a significant business enterprise to have a negative A&G expense,[331] PECO contends that NRG's astonishment appears to be based on a misunderstanding of the actual components of PECO's PTC and related Commission orders. PECO RB at 14.

First, as shown in NRG Exhibit CP-20, A&G expense is just one of many subcategories of "Administrative Cost," and the total PTC Administrative Cost is positive. Second, the negative A&G expense component is not evidence of improper cost allocation, but rather evidence of a revenue credit to customers related to customer-funded investments in the Standard Offer Program. As explained in the Company's Tariff, the PTC's Administrative Cost includes costs incurred to implement retail market enhancements directed by the Commission that are not recovered from EGSs or through another rate, and not only administrative costs associated with wholesale supply contracts as NRG contends. Customers have paid for certain

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328 *See* NRG St. 1-SR, p. 18, Tr. 493-94 & Tr. 496-97.
329 NRG Main Br., pp. 40 & 66.
330 Tr. 487-88 & 494-94.
331 *See* NRG Main Br., p. 36.

Standard Offer Program costs through the Administrative Cost component of the PTC.[332] When the Company receives revenues from its Standard Offer Program vendor, it credits those revenues back to customers through the PTC to offset Standard Offer Program costs.[333] This revenue credit to customers is reflected in the negative A&G expense shown in NRG Exhibit CP-20.[334] PECO RB at 14-15.

D. OCA's Position

1. PECO's Provision of Default Service.

PECO's default service is required under the Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 *et seq*., as confirmed and modified by Act 129 of 2008 (Act 129). Pursuant to Act 129, PECO is obligated to serve under standards designed to meet the policy goal of ensuring "adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time."[335] OCA MB at 8.

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332 *See Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P 2012-2283641 (Order entered June 13, 2013), pp. 9-10 (approving PECO's proposal to recover any Standard Offer Program costs remaining after the per customer acquisition fee paid by participating EGSs as follows: 50% from the purchase of receivables ("POR") discount and 50% from residential and small commercial default service customers); *see also Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014), pp. 16-19, 60 (approving continuation of the Standard Offer Program, including the cost recovery mechanisms approved by the Commission in DSP II); *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Order entered December 8, 2016), pp. 18-20, 67 (approving continuation of the Standard Offer Program, including the cost recovery mechanisms approved by the Commission in DSP III).

333 *Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014) (approving settlement provision requiring that any fees received from any Standard Offer Program third-party servicer under contract to PECO be used to reduce the implementation costs of certain call script changes prior to reducing other Standard Offer Program implementation or operating costs).

334 As PECO explained in its Main Brief, the Commission also regularly audits PECO's PTC. *See* PECO Main Br., p. 8. Mr. Peterson was unaware of the Commission audits, despite the Commission's release of audit reports to the public. Tr. 506; *see*, *e.g.*, Secretarial Letter, *Generation Supply Adjustment Audit for the Twelve-Month Periods Ended December 31, 2014, December 31, 2013, and December 31, 2012*, Docket No. D-2015-2521461 (Letter issued March 16, 2017) (noting Commission approval for release of audit to the public).

335 Preamble to Act 129, 2008 Pa. Laws 129; 66 Pa. C.S. § 2807(e).

OCA witness Johnson explained that Act 129 subjects PECO to certain requirements as follows:

> In its role as default service provider, PECO must be prepared to meet the requirements of serving 100% of residential customers at any time. As such, PECO's costs are not avoidable as PECO must stand ready to serve at all times.
>
> In addition, the default service provider acquires power through open auctions, is required to procure a diverse set of long and short-term power, may not advertise default service or include value added services, or earn a profit on providing the service. PECO does not own or operate the generation which provides default service, but instead acquires power through Commission approved solicitations. The law permits PECO to recover its reasonable costs of providing default service.[336]

Of critical importance, it is the default service provider, PECO, that must stand ready to service 100% of residential customers' power needs on a moment's notice.[337] Accordingly, PECO's costs are built for that type of service. Because PECO must stand ready to provide default service to even those customers that receive electric generation supply, if an EGS abruptly ceases to provide service or if an EGS customer suddenly elects to return to default service, none of the costs identified by NRG are avoidable. Therefore, the OCA contends that none of these costs can be reallocated to default service. OCA MB at 8-9; OCA RB at 4, 6.

Additionally, PECO witness Cohn clarified that default service is part of PECO's distribution service; it is not a separate "operating division" as NRG witness Peterson claims. PECO witness Cohn stated:

> PECO is an electric distribution company in the business of distributing electricity to its customers. Default service is not a separate "operating division," but a service to distribution customers in the form of electric generation provided by wholesale suppliers under Commission-approved contracts with PECO to meet the electricity needs of those customers who have not chosen an EGS or whose EGS decides to cease providing service to such

336 OCA St. 3R at 3-4 (footnote omitted); *see also* 66 Pa. C.S. § 2807(e).
337 OCA St. 3R at 4.

> customers. PECO customers are not distribution customers **or** default service customers; they are distribution customers who may or may not receive default service, which PECO provides at its cost and without profit in accordance with the requirements of the Commission.[338]

OCA MB at 9.

OCA maintains that NRG witness Peterson's allocation proposal is based on a misunderstanding of the requirements of Act 129 and PECO's distribution service. OCA further maintains that NRG's characterization of default service is fundamentally flawed; default service exists for all customers, both shopping and non-shopping. The OCA submits that a proper understanding of the concept of default service is of critical importance, particularly here where NRG proposes an unprecedented and dramatic shift in the allocation of PECO's costs based on a flawed understanding of the requirements of default service. OCA MB at 9; OCA RB at 4-5.

2. Qualifications of Mr. Peterson.

The OCA notes that NRG witness Peterson proposed a reallocation of $101 million of what he characterizes as indirect expense to default service generation, despite not having ever allocated public utility costs for ratemaking purposes.[339] OCA MB at 10.

3. NRG's Alternative Cost Allocation.

a. NRG's Proposal Ignores PECO's Role as a Default Service Provider and Shifts Costs That Are Not Avoidable.

OCA contends that NRG witness Peterson's reallocation of what he claims are "indirect" costs instead seeks to reallocate direct costs. Only avoidable costs, that is costs that PECO avoids when a customer switches to an EGS, are properly allocated to the PTC. PECO's default service costs are not avoidable because the Company must stand ready to serve both shopping and non-shopping customers at all times. As such, NRG witness Peterson does not

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[338] *Id*. (emphasis in original).
[339] Tr. at 476.

identify any avoidable costs of providing default service. In particular, NRG witness Peterson seeks to reallocate the following costs: customer service expenses (customer assistance, information advertisement, and miscellaneous customer service), sales expenses (demonstrating & selling), A&G expenses (administrative salaries, office supplies & expense, outside services employed, property insurance, injuries & damages, employee pensions & benefits, regulatory commission, duplicate charges – credit, miscellaneous general, and maintenance of general plant), and depreciation & amortization expense (relating to intangible plant, general plant, and common plant). OCA MB at 10.

OCA witness Johnson explained that PECO quantifies and collects from default service customers the direct expense of providing default service. OCA witness Johnson stated:

> These costs include the acquired power cost, the cost of compliance with the law, transmission and ancillary service costs, and the administration costs of operating the solicitation process. Mr. Peterson has not identified any avoidable costs of providing default service which are improperly recovered from customers of competitive EGS providers.[340]

Further, PECO witness Cohn explained that "all PECO customers – whether they receive electric generation supply from EGSs or from PECO – are distribution customers, and responsibility for distribution business costs should not vary based upon receipt of default service."[341] As PECO witness Cohn stated, "the distribution business costs Mr. Peterson proposed to allocate to default service customer are not a function of the number of distribution customers that receive default service or the amount such customers pay for default service."[342] OCA MB at 11.

In addition, PECO witness Cohn noted that "it would be inappropriate to allocate fixed costs to default service in a manner that would result in the company losing money as more people shop for power."[343] Since NRG proposes to allocate unavoidable costs to default service, OCA contends that these costs would remain when customers switch from default service to an

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340 OCA St. 3R at 4-5.
341 PECO St. 9R at 14.
342 PECO St. 9R at 16-17.
343 Tr. at 442.

EGS and, if all customers switched to an EGS, PECO would not recover the costs to provide distribution service. OCA MB at 11; OCA RB at 9.

Accordingly, OCA contends that NRG witness Peterson's proposal is illogical. PECO must stand ready to serve 100% of customers at all times. OCA maintains that PECO's default service costs are unavoidable and, therefore, remain the same when customers shop. OCA further maintains that distribution costs in rates cannot be added to the PTC as NRG witness Peterson proposes. OCA MB at 11-12.

b. NRG's Proposal Contains Other Flaws and Inconsistencies.

OCA witness Johnson identified several flaws and inconsistencies in his analysis of NRG witness Peterson's proposed allocation. In particular, OCA witness Johnson explained that NRG witness Peterson's proposed allocation is inconsistent with the structure of the COSS and the COSS classification of indirect costs.[344] OCA witness Johnson explained why NRG witness Peterson's recommendation is inconsistent with the structure of PECO's COSS, as follows:

> First, Mr. Peterson limits his allocation recommendation to only the R and RH classes. The CCOSS is based on fully allocated costs. PECO's default service has commercial and industrial customers, but Mr. Peterson does not explain why the re-allocation of indirect costs is limited to residential customers. Second, Mr. Peterson's allocation process is not consistent with the classification of indirect costs in the CCOSS. The classification procedure is an intermediate step for determining whether costs should be allocated based on demand, energy, customers, or an internal composition of factors.[345]

OCA MB at 12.

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344 OCA St. 3R at 4-6.
345 OCA St. 3R at 5.

Additionally, OCA witness Johnson offered the following explanation for why NRG witness Peterson's recommendation is inconsistent with the COSS allocation of indirect costs:

> A&G expense is the largest component of indirect cost which Mr. Peterson re-allocates to default service. A&G expense, by definition, is not directly allocable to any particular corporate function. A&G includes upper management salary, general consulting and legal costs, pension and benefits, injuries and damages, and regulatory activities. Most of the A&G expense accounts are classified by PECO's COSS as salary and wage (S&W) related, and are therefore, allocated on the basis of salary and wages incurred for direct activities within the [COSS]. For example, A&G costs are assigned to customer accounting based on customer accounting salaries as a percent of total direct wage and salary expense. The A&G costs assigned in this manner to customer accounting are then allocated on the customer accounting allocation factor (*i.e.*, customer allocation). Mr. Peterson reallocates A&G expense to residential default service without any consideration of the classification of the A&G costs as S&W-related. Based on the logic of PECO's [COSS], any allocation of this A&G expense to the generation function should follow S&W incurred for the direct costs of providing default service. Because the bulk of direct costs of acquiring default power consists of actual power expense and consultant expense, it is not clear that any direct S&W expense is incurred in the provision of default service, meaning that no S&W-related A&G expense is allocable to the default service program function. Moreover, Mr. Peterson's procedure for re-allocating A&G expense based on customers or revenues assumes a fixed allocation to Rate R and RH which is unaffected by the change in allocation basis. If Mr. Peterson seeks to replace the S&W classification with a hybrid customers-revenue classification, the amount of A&G expense allocated to each customer class should change—but it does not under his method.[346]

OCA MB at 12-13.

OCA witness Johnson further explained that PECO's default service is a pure pass through expense:

[346] OCA St. 3R at 5-6 (footnote omitted).

> PECO does not generate the power or own the facilities that produce the power. PECO conducts auctions to procure the power and passes the power costs through to default service customers. Typically, such pass through costs are not included in the calculation of allocation factors for most A&G expense items in the [COSS]. If O&M expense is utilized as the A&G classifier instead of S&W, the O&M allocator generally excludes purchase power and fuel. Given that most of the default service cost is a pure pass through of purchased power, the magnitude of this re-allocation appears to be unreasonable.[347]

OCA MB at 13.

As PECO witness Cohn stated, the "primary goal in cost allocation is appropriate recognition of cost causality."[348] NRG witness Peterson "has not shown that the costs he allocates are caused by or even vary with his chosen allocators."[349] Therefore, OCA maintains that NRG's proposed allocation is inconsistent with the structure of the COSS and the COSS classification of indirect costs.[350] OCA MB at 13-14.

c. NRG's Proposal Is Not supported By The Unbundling Proceeding.

NRG witness Peterson referred to the Commission's Order in the 1997 unbundling proceeding, or the restructuring proceeding, as well as the OCA testimony relied upon by the Commission in that proceeding to support his recommendation to allocate indirect costs to default service generation.[351] OCA submits that neither the unbundling proceeding nor the OCA's testimony in that proceeding support NRG's proposal here. OCA MB at 14. OCA notes that in the *Restructuring Order*, the Commission stated:

> When we refer to the unbundling of PECO's rates, we are splitting the existing and approved single rate which encompasses all of PECO's services into its separate components of generation, transmission and distribution. As we discuss the different

[347] OCA St. 3R at 6-7.
[348] Tr. at 442.
[349] *Id*.
[350] OCA St. 3R at 4-6.
[351] *Application of PECO Energy Co. for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. P-00971265, 1997 Pa. PUC LEXIS 51 (Order entered December 23, 1997)(*Restructuring Order*); NRG St. 1 at 9-10, 18, Exh. CP-4.

> components of distribution service, references to generation will mean that sector of PECO's operations related to the production of energy. Contrasted to this is PECO's transmission and distribution function which encompasses those services used to transport and deliver the energy produced.[352]

The Commission further noted, that "[t]he shopping consumer pays only the T&D rate . . . to the EDC when purchasing generation in the competitive market."[353] As PECO witness Cohn explained, PECO no longer has a generation business and "all PECO customers – whether they receive electric generations supply from EGSs or from PECO – are distribution customers."[354] Therefore, OCA maintains that it is not appropriate to rely on the *Restructuring Order* to advocate that distribution service to EGS customers should be separated from distribution service to default service customers. OCA RB at 7.

OCA contends that even if the *Restructuring Order* was related to NRG's proposal, it would not support NRG's proposal. The *Restructuring Order* established distribution only rates.[355] Accordingly, there are no costs of default service improperly included in distribution rates as NRG suggested. As PECO witness Cohn testified, all of the Company's costs related to default service, including those identified in the Commission's policy statement at 52 Pa. Code § 69.1808, are properly in the PTC.[356] OCA RB at 7-8.

OCA asserts that the unbundling proceeding separated generation from transmission and distribution; it did not divide costs with an understanding of what it would cost to provide default service. Further, as PECO witness Cohn stated, "the Commission was addressing the actual separation of PECO's generation business which had thousands of employees and generated significant income on a stand-alone basis and the distribution business, not a hypothetical separation of functions PECO performs as a distribution Company."[357] OCA MB at 14.

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352 *Restructuring Order* at 74.
353 *Id.* at 64.
354 PECO St. 9R at 12, 14.
355 *Restructuring Order* at 65-66.
356 PECO St. 9R at 5-8.
357 Tr. at 443.

PECO witness Cohn also testified that, in the unbundling proceeding, "the Commission at the time agreed with testimony of a witness for the [OCA] that the unbundling of generation, transmission, and distribution rates in restructuring 'should produce results that should look like what functional costs would be if PECO were to separate itself into functionally separate divisions.'"[358] PECO witness Cohn explained:

> What Mr. Peterson ignores in his discussion of the 1997 Restructuring Order is that at the time, PECO was a very different company – one that included generation operations with twice the employees of its distribution operations. The 1997 Restructuring Order reflects the Commission concern regarding the allocation of administrative expense between two different business groups with significant administrative requirements. Notably, the allocator adopted by the Commission to address the administrative expense of PECO's generation and distribution operations was neither revenues nor customers, nor some hybrid of the two, as Mr. Peterson proposes in this proceeding; instead, the Commission allocated administrative expense based upon the number of employees working in generation and operations.
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> Twenty years later, PECO does not have a generation business and is no longer at the beginning of the restructuring era. And PECO's rates and those of other EDCs have been subject to scrutiny in both default service proceedings and in distribution rate proceedings where the Commission has "strived to address" the need to ensure that the PTC reflects all costs of default service.[359]

OCA MB at 15.

Further, OCA argues that the OCA's testimony in the unbundling proceeding is not applicable to this proceeding as NRG witness Peterson suggests. OCA witness Johnson explained:

> Unlike purchase power acquired for default service, these generation plants incurred significant labor costs, which in turn requires significant indirect costs for employee benefits and supervision. The OCA's testimony in that case proposed a labor allocation for A&G expense, which is comparable to the S&W

[358] PECO St. 9R at 11.
[359] PECO St. 9R at 12 (footnotes omitted).

> allocation method used for most A&G expense in the current [COSS]. Because the generation plants were labor intensive, 66% of direct labor expense was associated with generation at the time. However, as previously noted, little if any wage cost is incurred for default service.[360]

OCA MB at 15-16.

Accordingly, OCA maintains that neither the Commission's Order in the 1997 unbundling proceeding nor the OCA's testimony in that proceeding support NRG witness Peterson's proposal to allocate indirect costs to default service generation in this proceeding. OCA MB at 16.

4. Effects of NRG's Proposal.

a. NRG's Proposal Results In The Recovery of Costs From Default Service Customers That Is Not Supported By Commission Policy Or Pennsylvania Law.

OCA notes that NRG witness Peterson's recommendation to allocate indirect costs to default service generation would increase the PTC by 1.25 cents per kWh, or 17.5%, from 7.11 cents per kWh to 8.40 cents per kWh. OCA maintains that this significant increase in the PTC does not reflect PECO's cost of providing default service. OCA MB at 16.

Pursuant to the Customer Choice Act, PECO is permitted "to recover on a full and current basis . . . all reasonable costs incurred under this section and a commission-approved competitive procurement plan."[361] The costs "under this section" are the costs of providing default service. In addition, as PECO witness Cohn explained, PECO is not permitted to earn a profit for providing default service.[362] OCA MB at 16.

PECO witness Cohn also discussed the Commission's policy statement regarding default service and retail electric markets, 52 Pa. Code § 69.1808. PECO witness Cohn

[360] OCA St. 3R at 7 (footnote omitted).
[361] 66 Pa. C.S. § 2807(e)(3.9).
[362] PECO St. 9R at 4.

explained that, in this Policy Statement, the Commission identified the types of costs that should be recovered from a default service customer. PECO witness Cohn further explained that PECO's PTC includes each of these types of costs identified in the policy statement.[363] OCA MB at 17.

In addition, PECO witness Cohn testified that the costs NRG witness Peterson proposed to reallocate were "properly functionalized and assigned to distribution customers."[364] OCA agrees with PECO that "all PECO customers – whether they receive electric generation supply from EGSs or from PECO – are distribution customers, and responsibility for distribution business costs should not vary based upon receipt of default service."[365] PECO witness Cohn noted that Mr. Peterson's allocation inflates the PTC by allocating hypothetical costs to default service generation.[366] The OCA notes that an increased PTC will likely result in increased EGS prices, thereby harming both non-shopping and shopping customers. OCA MB at 17-18; OCA RB at 10.

PECO is permitted only to recover the cost of providing default service and is not permitted to earn a profit on default service. In this regard, the Commonwealth Court has provided: "[A] utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to gain a profit from its customers under the guise of recovering operating expenses."[367] OCA notes that the Pennsylvania Supreme Court has similarly stated that, "the Commission has no authority to permit, in the rate-making process, the inclusion of hypothetical expenses not actually incurred."[368] OCA MB at 18.

Accordingly, OCA maintains that NRG's proposal to allocate indirect costs to default service generation is inconsistent with sound ratemaking principles and PECO should not

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363 *See* PECO St. 9R at 5-8
364 PECO St. 9R at 14.
365 PECO St. 9R at 14.
366 PECO St. 9R at 14-15.
367 *Cohen v. Pa. Pa. Pub. Util. Comm'n*, 468 A.2d 1143, 1150 (Pa. Cmwlth. 1983) (citations omitted).
368 *Barasch v. Pa. Pub. Util. Comm'n*, 493 A.2d 653, 655 (Pa. 1985).

be permitted to artificially inflate the PTC and recover hypothetical costs under NRG's proposal. OCA MB at 18.

5. NRG's Policy Argument Should Be Rejected.

As PECO witness Cohn pointed out, "Mr. Peterson cannot identify a single U.S. electric utility that provides residential default service through a separate default service division, nor can he identify any electric utility that allocates indirect expenses associated with residential default service using any of the approaches he has recommended in this proceeding."[369] NRG argues that Pennsylvania should take the lead in adopting the allocation methodology proposed by NRG witness Peterson. OCA contends that this argument is flawed. OCA RB at 10.

The OCA notes that this is a policy argument rather than a legal argument supporting the basis for NRG's legal claim, which is that PECO improperly allocated "indirect" costs to distribution service. The OCA submits that the Commission should reject NRG's policy arguments and reject NRG's proposal to reallocate "indirect" costs to default service in its entirety. OCA RB at 10-11.

E. Recommendation

NRG has proposed reallocating approximately $101 million dollars of costs from PECO's residential distribution customers to those PECO distribution customers receiving default service. NRG maintains that such a reallocation would ensure that PECO's distribution charges more accurately reflect the costs of providing residential distribution service. We disagree. We find that PECO is properly allocating costs for the provision of default service.

As a general rule, the Public Utility Code provides in pertinent part that PECO, as an EDC, shall operate "in a manner sufficient to provide safe and reliable service to all

[369] PECO St. 9R at 11.

customers connected to the system."[370] Additionally, the Code places an obligation on PECO requiring it to serve all of its distribution customers with generation supply service:

> [I]f a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan.[371]

In short, default service exists for all customers, both shopping and non-shopping, and as noted by both PECO and the OCA, the Code requires PECO to stand ready to service 100% of customers' power needs on a moment's notice.

As PECO witness Cohn testified, PECO meets this obligation through its nineteen-member Energy Acquisition team. The Energy Acquisition team is responsible for PECO's interaction with wholesale electric markets, electric choice coordination responsibilities, and all of the accounting and administrative functions associated with delivery of electric energy from the wholesale energy market to PECO's electric distribution customers, regardless of whether they shop with an EGS or receive default electric service through PECO. Additionally, PECO's Energy Acquisition team is responsible for matching each distribution customer's load responsibility to their retail provider, be it an EGS or PECO as the default service provider. Since the team's functions support both shopping and default customers, who PECO noted can become default service customers at any time, PECO appropriately includes the costs associated with the Energy Acquisition team's functions in distribution rates.[372]

During this proceeding, PECO witness Cohn testified generally that PECO calculates its PTC as follows:

> PECO recovers the costs of default service for each customer class through a class specific generation supply adjustment (GSA)

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370 66 Pa. C.S. § 2807(a).
371 *Id*. at § 2807(e)(3.1).
372 Tr. 439-441.

> charge and a transmission service charge (TSC) set forth in its electric tariff. The price per kilowatt-hour charged under each GSA and the TSC is the "Price to Compare," or "PTC," for the applicable class and is updated at least quarterly as required by the Commission.[373]

The Commission identified in a policy statement the types of costs that should be recovered from default service customers. Specifically, the Commission stated as follows:

> (a) The PTC should be designed to recover all generation, transmission and other related costs of default service. These cost elements include:
>
> (1) Wholesale energy, capacity, ancillary, applicable RTO or ISO administrative and transmission costs.
>
> (2) Congestion costs will ultimately be recovered from ratepayers. Congestion costs should be reflected in the fixed price bids submitted by wholesale energy suppliers.
>
> (3) Supply management costs, including supply bidding, contracting, hedging, risk management costs, any scheduling and forecasting services provided exclusively for default service by the EDC, and applicable administrative and general expenses related to these activities.
>
> (4) Administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service.
>
> (5) Applicable taxes, excluding Sales Tax.
>
> (6) Costs for alternative energy portfolio standard compliance.[374]

PECO witness Cohn testified that PECO's PTC includes each of these types of costs.

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[373] PECO St. 9R at 4-5.
[374] 52 Pa.Code § 69.1808(a).

Specifically, Mr. Cohn explained that all of the costs of the wholesale power supply contracts, including the costs of energy, transmission, congestion, and alternative energy portfolio standards (AEPS) compliance are included in the PTC.[375] Additionally, supply procurement and administrative costs that are associated with PECO's wholesale power supply contracts, including the costs of a default service independent evaluator to oversee the procurement process and a charge for working capital, are also included in the PTC.[376] Mr. Cohn also indicated that regulatory and litigation costs associated with PECO's default service plans are also recovered through the PTC.[377]

Regarding the inclusion of information technology (IT) costs in the PTC, Mr. Cohn testified that they are included when the IT costs relate specifically to the provision of default service.[378] Regarding education costs, Mr. Cohn explained that costs associated with educating customers about retail market enhancements not paid for by EGSs may be included in the PTC.[379] However, the PTC does not include costs associated with educating customers about the benefits of shopping for electricity; those costs are recovered from all distribution customers.[380]

Based on the foregoing, the PTC currently includes all costs incurred by PECO in providing default service. PECO makes no profit from providing default service to distribution customers or from standing ready to serve customers who return to default service after shopping with an EGS.[381] It should also be noted that, to date, the Commission has approved the PTC in four PECO default service plans (DSP), with the current plan in effect until May 31, 2021.[382]

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375 PECO St. 9R at 4.
376 *Id*. at 5.
377 *Id*.
378 *Id*. at 6.
379 *Id*. at 7.
380 *Id*.
381 PECO St. 9R at 9-10.
382 PECO's DSP, effective January 1, 2011 through May 31, 2014, was approved by the Commission in *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2008-2062739 (Order entered June 2, 2009); PECO's DSP II, effective June 1, 2013 through May 31, 2015, was approved by the Commission in *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P 2012-2283641 (Order entered October 12, 2012); PECO's DSP III, effective June 1, 2015 through May 31, 2017, was approved by the Commission in *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2014-2409362 (Order entered December 4, 2014); PECO's DSP IV, effective June 1, 2017

Although prior approval of PECO's PTC is not conclusive to a determination in this proceeding as to whether the PTC is lawful, just and reasonable, we do find the Commission's prior approval of PECO's PTC computation to be persuasive.

Nevertheless, NRG argues that in addition to the foregoing costs, a portion of PECO's fixed costs should also be allocated to the PTC. Although Mr. Peterson acknowledged that he has never allocated public utility costs for ratemaking purposes,[383] he proposed reallocating approximately $101 million dollars of fixed costs to default service. The fixed costs he seeks to reallocate include: customer service expenses (customer assistance, information advertisement, and miscellaneous customer service), sales expenses (demonstrating & selling), A&G expenses (administrative salaries, office supplies & expense, outside services employed property insurance, injuries & damages, employee pensions & benefits, regulatory commission, duplicate charges – credit, miscellaneous general, and maintenance of general plant), and depreciation & amortization expense (relating to intangible plant, general plant, and common plant).[384]

However, we agree with the OCA that only avoidable costs, which are those costs that PECO avoids when a customer switches to an alternative supplier, are properly allocated to its PTC. The fixed costs NRG witness Peterson seeks to allocate to default service are not avoided by PECO when a customer switches to an alternative supplier. As noted by OCA witness Johnson, PECO does quantify and collect from default customers the direct expense of providing default service, and these costs include the acquired power cost, the cost of compliance with the law, transmission and ancillary service costs, and the administrative costs of operating the solicitation process. Mr. Peterson has not identified any costs that can be considered avoidable.[385] If Mr. Peterson's allocation method were followed, PECO would run the risk of not being reimbursed for costs it incurs as the customers' distribution company. PECO witness Cohn was particularly convincing on this point:

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through May 31, 2021, was approved by the Commission in *Petition of PECO Energy Company for Approval of its Default Service Program,* Docket No. P-2016-2534980 (Order entered December 8, 2016).

383 Tr. at 476.

384 PECO St. 9R at 13-14.

385 OCA St. 3R at 4.

> Under Mr. Peterson's allocation method, if all customers became default service customers, large amounts of PECO distribution system costs (including depreciation and amortization for general, common and intangible plant) would need to be recovered from those customers. Alternatively, if all of PECO's customers decide to shop (which they are free to do), PECO would not recover any distribution business expenses under Mr. Peterson's allocation method that are allocated to default service even though all the costs would still remain with PECO.[386]

We also agree with PECO witness Cohn that the primary goal in cost allocation is appropriate recognition of cost causality, and that Mr. Peterson has not shown that the costs he has proposed reallocating to default service are caused by, or even vary with, his chosen allocators.[387] The costs that Mr. Peterson proposes reallocating are not caused by customers being default customers, but rather, by them being distribution customers, which all default customers are as well. PECO would incur the same costs to distribute electricity even if every customer shopped for electricity and there were no default customers. If this scenario became an actuality and PECO did not have any default customers, under Mr. Peterson's proposed cost allocation, PECO would not be able to recover a significant amount of costs it incurs to distribute electricity to those customers. Therefore, we find that the costs that NRG proposes reallocating to default service are properly included in PECO's distribution rates and not the PTC.

Additionally, we note that PECO's Cost of Service Study is based on fully allocated costs, and PECO provides default service to commercial and industrial customers in addition to the residential class. However, as noted by OCA's witness Johnson, Mr. Peterson's allocation recommendation is limited to only PECO rate R and rate RH classes, yet he provides no explanation for why he proposes reallocating costs to only PECO's residential customers.[388]

Furthermore, we are not persuaded by NRG's reliance on the 1997 unbundling proceeding[389] in support of its proposal. The unbundling proceeding separated generation from transmission and distribution. The proceeding did not divide costs with an understanding of

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386 PECO St. 9R at 17.
387 Tr. at 442.
388 OCA St. 3R at 5.
389 *Application of PECO Energy Co. for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. P-00971265, 1997 Pa. PUC LEXIS 51 (Order entered December 22, 1997).

what it would cost to provide default service. As further noted by Mr. Cohn, the Commission was addressing the actual separation of PECO's generation business, which had thousands of employees and generated significant income on a stand-alone basis, from PECO's distribution business. The Commission was not addressing a hypothetical separation of functions that PECO performs as a distribution Company.[390] Based on the purpose of the 1997 unbundling proceeding, we agree with PECO and OCA that NRG's reliance on the 1997 unbundling proceeding is misplaced.

Accordingly, we recommend that PECO continue to calculate its price-to-compare as previously approved by the Commission in prior default service and base-rate proceedings, and as set out in its proposed tariff.

X. <u>CONCLUSIONS OF LAW</u>

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 1308(d).

2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

3. The Joint Petition for Partial Settlement is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

4. The rates, terms and conditions contained in PECO Energy Company's base rate filing of March 29, 2018, as modified by the Partial Settlement, are just, reasonable and in the public interest and are in accord with the rules and Regulations of the Commission and the provisions of the Public Utility Code. *See* 66 Pa.C.S. § 315(a); 52 Pa.Code §§ 69.2703(a), (b).

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390 Tr. at 443.

5. The burden of proof in a ratemaking proceeding is on the public utility. *See* 66 Pa.C.S. § 315(a); *Lower Frederick Twp. v. Pa. Pub. Util. Comm'n*, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). *See also*, *Brockway Glass v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

6. PECO has met its burden of proof and demonstrated that the costs at issue in the calculation of its PTC are properly allocated between default service and distribution service.

XI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the rates, rules and regulations contained in Tariff Electric-Pa. P.U.C. No. 6 not be permitted to be placed in effect;

2. That the Joint Petition for Partial Settlement filed at Docket No. R-2018-3000164 on August 28, 2018, by PECO Energy Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Philadelphia Area Industrial Energy Users Group, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, the Community Action Association of Pennsylvania, Tesla, Inc., ChargePoint, Inc., and Walmart Stores East, LP and Sam's East, Inc. be approved without modification;

3. That NRG Energy, Inc.'s proposed modification to the allocation of costs between distribution service and default service be denied;

4. That upon entry of the Commission's Order approving the Joint Petition for Partial Settlement, PECO Energy Company shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition and changes to rates, rules and regulations as set forth in Appendix A of the Joint Petition, to become effective upon at least one (1) days' notice, for service rendered on and after January 1, 2019, which tariff supplement increases PECO Energy Company's rates so as to produce an annual increase in electric operating revenues of $85.5 million, which is reduced to $14.9 million following the application of 2019 tax savings related to the Tax Cuts and Jobs Act. The revenue requirement is further adjusted to account for the roll-in of Distribution System Improvement Charge revenue for a net revenue increase of $24.9 million as shown in the proof of revenues provided in Appendix B of the Joint Petition;

5. That the Formal Complaint filed by the Office of Consumer Advocate at Docket No. C-2018-3001112 be deemed satisfied and marked closed;

6. That the Formal Complaint of the Office of Small Business Advocate at Docket No. C-2018-3001043 be deemed satisfied and marked closed;

7. That the Formal Complaint of the Philadelphia Area Industrial Energy Users Group at Docket No. C-2018-3001471 be deemed satisfied and marked closed; and

8. That upon Commission approval of the tariff supplement filed by PECO Energy Company in compliance with the Commission's Order, this proceeding be marked closed.

Date: October 9, 2018

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge

/s/
F. Joseph Brady
Administrative Law Judge