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March 15, 2021

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Pennsylvania Public Utility Commission v. PECO Energy Company;  
Docket No. R-2020-3018929**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Reply Brief of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to these proceedings are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Charis Mincavage

Counsel to the Philadelphia Area Industrial Energy Users Group

Attachments

c: Deputy Chief Administrative Law Judge Christopher P. Pell (via E-Mail)  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Charis Mincavage

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated this 15<sup>th</sup> day of March, 2021, in Harrisburg, Pennsylvania

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3018929
	:	
PECO Energy Company	:	

**REPLY BRIEF OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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- Lloyd v. Pa. Publ. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006) ("*Lloyd*")
- Pa Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Opinion and Order dated Feb. 19, 2021)
- Pa Pub. Util. Comm'n v. PECO Energy Company*, Docket No. R-2010-2161592 (Opinion and Order dated Dec. 16, 2010)
- Pa Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-00061931 (Opinion and Order dated Sept. 28, 2007);
- Pa Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Opinion and Order dated Nov. 19, 2020)
- Pa Pub. Util. Comm'n v. PPL Gas Utils. Corp.*, Docket No. R-00061398 (Opinion and Order dated Feb. 8, 2007)
- Pa Pub. Util. Comm'n v. UGI Central Penn Gas, Inc.*, Docket No. R-2010-2214415 (Recommended Decision dated Jul. 15, 2011)
- Pa. Pub. Util. Comm'n v. Metro. Edison Co. and Pa. Elec. Co.*, Docket Nos. R-00061366 and R-00061367 (Opinion and Order dated Jan. 11, 2007)
- Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-2008-2028394 (Order entered Oct. 29, 2008).
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- Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Opinion and Order dated Dec. 28, 2012)
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- Pa. PUC, et al. v. PGW*, Docket Nos. R-2017-2586783 et al. (Opinion and Order entered November 8, 2017)
- PECO Energy Company – General Base Rate Filing for Gas Operations*, Docket No. R-2020-3018929 (filed Sept. 30, 2020)
- Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*; Docket No. R-2020-3018835
- Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996).
- United States v. Wells*, 519 U.S. 482, 496 (1997)
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- 66 Pa. C.S. § 1304
- 66 Pa. C.S. § 2203
- 66 Pa. C.S. § 316

## **I. INTRODUCTION**

### **A. Description of Company**

For a description of PECO Energy Company ("PECO" or "Company"), please see Section I.A. of PAIEUG's Main Brief submitted on March 3, 2021.

### **B. Procedural History**

For a more detailed procedural history, please see Section I.B. of PAIEUG's Main Brief submitted on March 3, 2021.

On September 20, 2020, PECO filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Tariff Gas – Pa. P.U.C. No. 4 ("Tariff No. 4"), requesting approval of an overall base rate increase of approximately \$68.7 million over its present revenues, to become effective on November 29, 2020.<sup>1</sup>

On March 3, 2021, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed its Main Brief ("Main Brief") and received Main Briefs from the following parties: PECO; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Bureau of Investigation and Enforcement ("I&E"); and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA").

Pursuant to the remaining procedural schedule, PAIEUG submits this Reply Brief to respond to certain arguments raised in Main Briefs.

### **C. Overview of PECO's Filing**

For an overview of PECO's filing, please see Section I.C. of PAIEUG's Main Brief submitted on March 3, 2021.

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<sup>1</sup> *PECO Energy Company – General Base Rate Filing for Gas Operations*, Docket No. R-2020-3018929 (filed Sept. 30, 2020) ("Rate Case Filing").



#### **D. Burden of Proof**

Please see Section I.D. of PAIEUG's March 3, 2021, Main Brief for a discussion of the burden of proof in this proceeding.

### **II. SUMMARY OF ARGUMENT**

PAIEUG's Main Brief thoroughly addresses the issues of concern raised by PAIEUG in this proceeding. As a result, PAIEUG's Reply Brief only responds to those specific issues raised in the other parties' Main Briefs that warrant more thorough discussion.<sup>2</sup>

To that end, PAIEUG responds to the argument presented by the OCA seeking to change PECO's proposed Cost of Service Study methodology by reiterating that the majority of parties in this proceeding agree that PECO's use of the Average and Excess methodology most appropriately addresses cost causation for purposes of PECO's system.<sup>3</sup> To that same end, the OSBA's proposal to modify the weighting for the average demand must be rejected, as this modification would be in direct contradiction with the manner in which PECO designs its system and incurs distribution main costs.<sup>4</sup>

Similarly, PAIEUG seeks to utilize this Reply Brief to correct two errors set forth in other parties' Main Briefs. Specifically, PECO claims that the Company's proposed rate allocation should be utilized because it moves all classes closer to cost. PECO's claim is erroneous, as it actually moves Rate Transportation Service – Firm ("TS-F") further from cost, resulting in an increase in the subsidization this class is already providing to other classes. Similarly, OSBA inaccurately analyzes PAIEUG's initial revenue allocation proposal rather than PAIEUG's revised revenue allocation proposal. Reviewing PAIEUG's revised revenue allocation proposal in

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<sup>2</sup> PAIEUG also supports OSBA's position, contrary to that proposed in PECO's Main Brief, that any difference between tariffed rates and discounted rates, for customers who have negotiated rate contracts that are deemed ineligible, should be recovered from PECO shareholders. *See* Section X.D.4, *infra*.

<sup>3</sup> *See* Section X.A., *infra*.

<sup>4</sup> *Id.*

correlation with OSBA's position on rate allocation in this proceeding shows that PAIEUG's rate allocation proposal meets OSBA's criteria with respect to what constitutes a just and reasonable allocation.<sup>5</sup>

In addition, Rates TS-F and Transportation Service – Interruptible ("TS-I") currently include different volumetric charges for customers using above and below 18 mmcf of natural gas per year. As part of this proceeding, OSBA seeks to modify this differential between the classes, however, neither OSBA nor PECO provide the appropriate analysis to support this change. As discussed more fully herein, PECO continues in its Main Brief to take conflicting positions regarding whether the OSBA's proposal is just and reasonable. Moreover, PECO attempts to argue that increasing large commercial and industrial customers' rates upwards of 50% does not violate the rules of gradualism.<sup>6</sup> Because of the inherent issues with and the unreasonable rates that could result from such a change, the OSBA's proposal should be rejected for purposes of this proceeding.

Finally, although PECO does not propose any changes to its current allocation of Universal Service Program costs, both OCA and CAUSE-PA seek to allocate these costs to all customers. As discussed more fully herein, contrary to the OCA and CAUSE-PA, neither the Natural Gas Choice and Competition Act nor caselaw precedent provide grounds for such a change. Similarly, CAUSE-PA misconstrues the applicability of the rate allocation process on Philadelphia Gas Works' system, as well the mandates set forth by the PUC. Moreover, the OCA has not provided any new or unusual arguments from those that the OCA set forth in Columbia Gas of Pennsylvania's most recent base rate proceeding.<sup>7</sup> For these reasons, the status quo for collection of USP costs on PECO's system must be maintained.

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<sup>5</sup> See Section X.B., *infra*.

<sup>6</sup> See Section X.D.2.c., *infra*.

<sup>7</sup> See Section X.C., *infra*.

### **III. OVERALL POSITION ON RATE INCREASE REQUEST**

PAIEUG offers no reply on this issue at this time.

### **IV. RATE BASE**

#### **A. Fair Value**

PAIEUG has no reply on this issue at this time.

#### **B. Utility Plant in Service**

PAIEUG has no reply on this issue at this time.

#### **C. Depreciation Reserve – Annual/Accumulated**

PAIEUG has no reply on this issue at this time.

#### **D. Additions to Rate Base**

PAIEUG has no reply on this issue at this time.

##### **1. Projected Plant Additions**

PAIEUG has no reply on this issue at this time.

##### **2. Pension Asset**

PAIEUG has no reply on this issue at this time.

##### **3. Uncontested Items**

PAIEUG has no reply on this issue at this time.

#### **E. Conclusion**

### **V. REVENUES**

#### **A. Forfeited Discounts**

PAIEUG has no reply on this issue at this time.

### **VI. EXPENSES**

#### **A. Payroll and Payroll Related Expense**

PAIEUG has no reply on this issue at this time.

**B. Contracting and Materials Expense**

PAIEUG has no reply on this issue at this time.

**C. Outside Services (including Exelon Business Service Company Charges)**

PAIEUG has no reply on this issue at this time.

**D. Other Post-Employment Benefits Expense**

PAIEUG has no reply on this issue at this time.

**E. Costs to Achieve Exelon/PHI Merger**

PAIEUG has no reply on this issue at this time.

**F. Regulatory Commission Expense (General Assessments)**

PAIEUG has no reply on this issue at this time.

**G. Research and Development Expenses**

PAIEUG has no reply on this issue at this time.

**H. Employee Activity Costs**

PAIEUG has no reply on this issue at this time.

**I. Travel, Meals and Entertainment**

PAIEUG has no reply on this issue at this time.

**J. Membership Dues**

PAIEUG has no reply on this issue at this time.

**K. Injuries and Damages**

PAIEUG has no reply on this issue at this time.

**L. Property Taxes**

PAIEUG has no reply on this issue at this time.

**M. Energy Efficiency and Conservation Program Costs**

PAIEUG has no reply on this issue at this time.

**N. Rate Case Expense Normalization**

PAIEUG has no reply on this issue at this time.

**O. Regulatory Initiatives**

PAIEUG has no reply on this issue at this time.

**P. Manufactured Gas Plant Remediation Expense**

PAIEUG has no reply on this issue at this time.

**Q. Depreciation Expense**

PAIEUG has no reply on this issue at this time.

**VII. TAXES**

PAIEUG has no reply on this issue at this time.

**VIII. RATE OF RETURN**

**A. Introduction**

Per below, PAIEUG has no reply on this issue at this time.

**B. Capital Structure**

PAIEUG has no reply on this issue at this time.

**C. Cost of Long-Term Debt**

PAIEUG has no reply on this issue at this time.

**D. Common Equity Cost Rate**

PAIEUG has no reply on this issue at this time.

**E. Business Risks and Management Performance**

PAIEUG has no reply on this issue at this time.

**F. Other Parties' Equity Cost Rate Recommendations and Principal Areas of Dispute**

PAIEUG has no reply on this issue at this time.

## **IX. CUSTOMER PROGRAMS AND MISCELLANEOUS ISSUE(S)**

### **A. Recommendations Related to the COVID-19 Emergency**

PAIEUG offers no reply on this issue at this time.

### **B. Universal Service Programs**

PAIEUG has no reply on this issue at this time.

### **C. Neighborhood Gas Pilot Rider**

PAIEUG has no reply on this issue at this time.

### **D. Energy Efficiency and Conservation Programs**

PAIEUG has no reply on this issue at this time.

### **E. Quality of Service**

#### **1. Distribution Integrity Management Program**

PAIEUG has no reply on this issue at this time.

#### **2. Leaks and Excavation Damage**

PAIEUG has no reply on this issue at this time.

## **X. RATE STRUCTURE**

### **A. Cost of Service**

#### **1. PECO Revised Gas Cost of Service Study**

PECO's proposed class cost of service study ("CCOSS"), which utilized an average and excess ("A&E") methodology with a system load factor weighting to allocate distribution main costs, should be accepted by the Commission and used to inform the class revenue allocation in this proceeding. As indicated within PECO's and PAIEUG's Main Briefs, this methodology is reasonable because it aligns with industry standards, Commission precedent, and cost causation.<sup>8</sup> Both the American Gas Association and the National Association of Regulatory Utility

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<sup>8</sup> See PECO Main Brief, pp. 98-100; see also PAIEUG Main Brief, pp. 12-13.

Commissioners authorize this methodology.<sup>9</sup> The Commission has approved the use of an A&E methodology by Natural Gas Distribution Companies ("NGDCs"), as well as a system load factor weighting, and this methodology is often relied on by NGDCs for cost allocation of distribution mains.<sup>10</sup> In acknowledgment of the reasonableness of this methodology as applied to PECO, all parties to this proceeding, other than OCA, submitted testimony in support of PECO's proposed A&E methodology.<sup>11</sup>

Most importantly, an A&E methodology using a system load factor weighing is the most consistent with cost causation for PECO. Pursuant to *Lloyd* and related Commission precedent, a CCOSS must have its foundation in cost of service and allocate costs to classes based on the manner in which they are incurred.<sup>12</sup> Peak demand drives PECO's distribution system planning, and therefore, PECO incurs distribution main costs based on each class's peak demand.<sup>13</sup> The average demand component of the A&E calculation represents the class's average throughput.<sup>14</sup> The excess demand component equals the design peak demand minus the average demand.<sup>15</sup>

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<sup>9</sup> PECO Statement No. 6-R, *Rebuttal Testimony of Jiang Ding*, ("PECO Statement No. 6-R"), p. 6; PAIEUG Statement No. 1-R, *Rebuttal Testimony of Billie S. LaConte*, ("PAIEUG Statement No. 1-R"), pp. 4-5.

<sup>10</sup> *Pa Pub. Util. Comm'n v. PPL Gas Utils. Corp.*, Docket No. R-00061398 (Opinion and Order dated Feb. 8, 2007), pp. 176-178 ("*PPL Gas*"); *Pa Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-00061931 (Opinion and Order dated Sept. 28, 2007); *see generally Pa Pub. Util. Comm'n v. PECO Energy Company*, Docket No. R-2010-2161592 (Opinion and Order dated Dec. 16, 2010); *Pa Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Opinion and Order dated Nov. 19, 2020); *Pa Pub. Util. Comm'n v. UGI Central Penn Gas, Inc.*, Docket No. R-2010-2214415 (Recommended Decision dated Jul. 15, 2011).

<sup>11</sup> In its Surrebuttal Testimony, OSBA recommended either a CCOSS utilizing an A&E methodology with a 50% weighting or an alternative A&E methodology using a system load factor weighting similar to PECO. OSBA Statement No. 1-S, *Surrebuttal Testimony of Robert D. Knecht*, ("OSBA Statement No. 1-S"), pp. 5-6. In its Main Brief, OSBA backed off from its support for an A&E methodology using a system load factor weighting based on its perception that Commission precedent no longer supports such a methodology. OSBA Main Brief, p. 11. As discussed herein, OSBA's perception of Commission precedent is incorrect and the Commission's approval of PECO's proposed A&E methodology is reasonable and consistent with Commission precedent and cost causation.

<sup>12</sup> *Lloyd v. Pa. Publ. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006) ("*Lloyd*"); *Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694 (Opinion and Order dated October 15, 2010), p. 63; *see also Pa. Pub. Util. Comm'n v. Metro. Edison Co. and Pa. Elec. Co.*, Docket Nos. R-00061366 and R-00061367 (Opinion and Order dated Jan. 11, 2007), p. 231.

<sup>13</sup> PECO Statement No. 6-R, p. 7; PAIEUG Statement No. 1-R, p. 4.

<sup>14</sup> PECO Statement No. 6, *Direct Testimony of Jiang Ding*, ("PECO Statement No. 6"), p. 13.

<sup>15</sup> *Id.*; *see also* PECO Exhibit JD-6R, p. 5.

Using a system load factor weighting properly signals that the excess demand component of the calculation should be more heavily weighted because a class's peak demand is more important than its average demand when PECO is designing its distribution system.<sup>16</sup> Therefore, PECO's proposed A&E methodology most closely aligns with cost causation principles and should be approved by the Commission.

## **2. Opposing Party Recommendations**

As noted above, OCA is the only party to oppose the use of an A&E methodology for the allocation of distribution main costs.<sup>17</sup> Instead, OCA recommends a peak and average ("P&A") methodology.<sup>18</sup> As discussed more fully in PAIEUG's Main Brief, the P&A methodology is flawed because it overemphasizes average demand in the calculation and is inconsistent with cost causation principles for PECO.<sup>19</sup> Although the Commission approved a P&A methodology in a recent Columbia Gas of Pennsylvania rate case, a P&A methodology is not supported by the evidentiary record of this proceeding and should be rejected.<sup>20</sup> In this section, PAIEUG will address the issues raised in OCA's Main Brief related to OCA's proposed P&A methodology and PECO's proposed A&E methodology. In short, nothing in OCA's Main Brief warrants the Commission accepting OCA's proposed P&A methodology. PECO's proposed A&E methodology with a system load factor weighting remains the most reasonable methodology based on how PECO incurs costs related to its distribution system.

The P&A methodology double counts average demand in the allocation of costs among the customer classes. This double counting occurs because class average demand is counted both

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<sup>16</sup> PECO Statement No. 6-R, p. 7; PAIEUG Statement No. 1-R, pp. 3-5.

<sup>17</sup> OCA Main Brief, p. 165.

<sup>18</sup> *Id.* at 167-168.

<sup>19</sup> See PAIEUG Main Brief, Section X.A.2.

<sup>20</sup> *Pa Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835 (Opinion and Order dated Feb. 19, 2021) ("*Columbia*").



within the average component of the calculation and the peak component of the calculation.<sup>21</sup> In addition, the P&A methodology further overemphasizes average demand by applying a 50% weighting to both the average and peak components of the calculation.<sup>22</sup> By contrast, the A&E methodology avoids this double counting because the two components of the calculation, average demand and excess demand, add together to equal peak demand.<sup>23</sup> PECO's proposed A&E methodology also uses a system load factor weighting, which weights excess demand more heavily consistent with cost causation. Because the P&A methodology significantly overemphasizes average demand within the calculation, the P&A methodology manufactures a result that benefits low load factor classes and penalizes high load factor classes.<sup>24</sup>

Although OCA contends PECO's proposed A&E methodology has similar issues because it relies heavily on excess demand,<sup>25</sup> the A&E methodology is consistent with cost causation principles while the P&A methodology is not. PECO designs its system based on peak day demand and incurs additional distribution main costs to respond to peak demand.<sup>26</sup> By weighting the A&E methodology more heavily based on excess demand, which represents the difference between design peak demand and average demand, PECO is recognizing that peak demand is the driver of its distribution main costs.<sup>27</sup> By contrast, average demand is not included on the list of factors used by PECO for distribution system planning.<sup>28</sup> Double counting average demand with the P&A

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<sup>21</sup> PAIEUG Main Brief, p. 16.

<sup>22</sup> *Id.* at 17. OSBA presented two A&E methodologies for the Commission's consideration: one applies a 50% weighting to the average and excess components of the calculation, and another applies a system load factor weighting similar to PECO. *Id.* at 18. OSBA's methodology using a 50% weighting should be rejected for the same reasons that OCA's P&A methodology should be rejected. *See id.* at 17-18.

<sup>23</sup> PECO Statement No. 6, p. 13; *see also* PECO Exhibit JD-6R, p. 5.

<sup>24</sup> PAIEUG Statement No. 1-R, p. 6; PECO Statement No. 6-R, p. 8; OSBA Statement No. 1-R, *Rebuttal Testimony of Robert D. Knecht*, ("OSBA Statement No. 1-R"), p. 7.

<sup>25</sup> OCA Main Brief, p. 166.

<sup>26</sup> PECO Statement No. 6-R, p. 7.

<sup>27</sup> PAIEUG Main Brief, p. 12; PECO Statement No. 6, p. 13; *see also* PECO Exhibit JD-6R, p. 5.

<sup>28</sup> PAIEUG Main Brief, p. 17; PAIEUG Statement No. 1-R, pp. 5-6.

methodology and using a 50% weighting for average demand result in average demand being too heavily weighted in the calculation in a manner that is inconsistent with cost causation.<sup>29</sup> Simply put, the P&A methodology inflates the weighting for average demand to favor certain classes over others contrary to cost causation while PECO's proposed A&E methodology more heavily weights excess demand, not to favor one class over another, but because it is consistent with cost causation.<sup>30</sup>

By way of further example, where a class's average demand remains constant over time, they will have little to no excess demand and the class's average demand will be approximately equal to its peak demand. Therefore, PECO is not required to build a larger distribution system or incur additional distribution main costs as a result of the class since its system is already sized to meet the peak demand of this class.<sup>31</sup> By contrast, if a class's average demand is significantly smaller than its peak demand, PECO is required to build additional distribution mains capable of meeting a higher capacity in order to meet this class's peak demand.<sup>32</sup> This class will have higher excess demand because its average and peak demand vary more significantly.<sup>33</sup> An A&E methodology with a system load factor weighting correctly recognizes that this class should be allocated a larger percentage of main costs because its excess demand is causing PECO to build a larger system to accommodate this class's peak demand.<sup>34</sup>

OCA also appears to misunderstand how the excess component of the PECO's proposed A&E methodology is calculated, which results in OCA mistakenly advocating for excess demand to be allocated to interruptible customers.<sup>35</sup> Excess demand represents "the excess of design peak

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<sup>29</sup> PAIEUG Main Brief, p. 16.

<sup>30</sup> *Id.* at 16-17.

<sup>31</sup> *See id.* at 18.

<sup>32</sup> *See id.*

<sup>33</sup> *See, e.g.,* OSBA Statement No. 1-S, pp. 6-7.

<sup>34</sup> *See id.*; *see also* PAIEUG Main Brief, p. 18.

<sup>35</sup> OCA Main Brief, pp. 166-167.

demand over average demand."<sup>36</sup> Interruptible customers do not contribute to peak demand at the time of design day peaks.<sup>37</sup> Therefore, PECO properly chose not to allocate excess demand to interruptible customers whose service is interrupted during design peak days.<sup>38</sup>

OCA further contends that the P&A methodology is more consistent with Commission precedent and references the Commission's recent decision in *Columbia* approving a P&A methodology.<sup>39</sup> As already addressed in PAIEUG's Main Brief, a different evidentiary record exists in this proceeding, which demonstrates that PECO's proposed A&E methodology is more consistent cost causation based on how PECO plans and incurs costs related to its distribution system.<sup>40</sup> In addition, the Commission did not have an opportunity to review the reasonableness of an A&E methodology in *Columbia* because no party presented a CCROSS using an A&E methodology.<sup>41</sup> Due to these distinguishing factors, *Columbia* should not control the outcome of this proceeding.

The Commission previously approved an NGDC's use of an A&E methodology with a system load factor weighting in *PPL Gas*.<sup>42</sup> Similar to PPL Gas in that case, PECO uses gas storage facilities, which supports the use of an A&E methodology by OCA's own reasoning.<sup>43</sup> OCA explains that water utilities are good candidates for the A&E methodology because they can store water during off-peak periods for future use during peak periods.<sup>44</sup> Because PECO uses gas storage facilities, it is a good candidate for the A&E methodology similar to PPL Gas.

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<sup>36</sup> PECO Statement No. 6, p. 13; *see also* PECO Exhibit JD-6R, p. 5.

<sup>37</sup> PECO Main Brief, p. 103.

<sup>38</sup> *Id.*; *see also* OSBA Statement No. 1-S, p. 10.

<sup>39</sup> OCA Main Brief, p. 169.

<sup>40</sup> PAIEUG Main Brief, pp. 19-20.

<sup>41</sup> *Columbia* at 214.

<sup>42</sup> *PPL Gas* at 176-178.

<sup>43</sup> *See generally id.*; *see also* PECO Statement No. 6, p. 12.

<sup>44</sup> OCA Main Brief, p. 166.

PECO's proposed A&E methodology using a system load factor weighting represents the most reasonable cost allocation methodology for PECO's distribution mains. This methodology best reflects how PECO conducts its system planning, the current components of PECO's distribution system, including storage, and the manner in which PECO incurs costs related to its system. PECO's methodology is supported by industry leaders and consistent with Commonwealth Court and Commission precedent.<sup>45</sup> Accordingly, the Commission should approve PECO's CCOSS, including its proposed A&E methodology

## **B. Revenue Allocation**

### **1. PECO Revised Revenue Allocation**

In its Main Brief, PECO improperly characterizes its proposed revenue allocation as moving all rates closer to their cost of service when, in actuality, PECO proposes to move Rate TS-F away from its cost of service.<sup>46</sup> PECO Exhibit JAB-1 Revised clearly demonstrates that Rate TS-F is the only class with a relative rate of return that moves away from the system average rate of return under PECO's proposal.<sup>47</sup> As discussed in PAIEUG's Main Brief, PECO's proposed revenue allocation to Rate TS-F violates Section 1304 of the Public Utility Code, which requires NGDCs not to "establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service."<sup>48</sup> PECO offers no cost-based justification for its inappropriately discriminatory treatment against Rate TS-F.<sup>49</sup> Accordingly, PECO's proposed

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<sup>45</sup> *Lloyd* at 1020; *PPL Gas* at 176-178; *see generally Pa Pub. Util. Comm'n v. PECO Energy Company*, Docket No. R-2010-2161592 (Opinion and Order dated Dec. 16, 2010); *Pa Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Opinion and Order dated Nov. 19, 2020); *Pa Pub. Util. Comm'n v. UGI Central Penn Gas, Inc.*, Docket No. R-2010-2214415 (Recommended Decision dated Jul. 15, 2011).

<sup>46</sup> PECO Main Brief, p. 114.

<sup>47</sup> PECO Exhibit JAB-1 Revised.

<sup>48</sup> 66 Pa. C.S. § 1304; *see also* PAIEUG Main Brief, pp. 21-23.

<sup>49</sup> *See* OSBA Statement No. 1-S, p. 12.

revenue allocation must be rejected based on its unreasonable proposed rate increase to Rate TS-F.

## 2. Opposing Party Alternative Revenue Allocations

As discussed in detail in PAIEUG's Main Brief, PAIEUG's proposed revenue allocation offers the most balanced revenue allocation solution, which moves all classes closer to their cost of service, adheres to the Public Utility Code and Commission precedent, and acknowledges principles of gradualism.<sup>50</sup> The only rate class to which PAIEUG did not apply principles of gradualism was Rate L for two important reasons: (1) Rate L is paying significantly below its cost of service; and (2) PECO's 2008 rate case settlement required PECO to propose to move Rate L to its cost of service in this proceeding.<sup>51</sup> Making an exception to principles of gradualism for Rate L is consistent with *Lloyd*, in which the Commonwealth Court held that principles of gradualism "do not justify allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time."<sup>52</sup> Continuing the cross-subsidization of Rate L by other classes would violate *Lloyd* and contradict the intent of PECO's 2008 settlement, which was approved by the Commission.

The only party to specifically set forth opposition to PAIEUG's proposed revenue allocation in the Main Brief stage was OSBA, but OSBA's analysis is wholly inaccurate because OSBA was responding to PAIEUG's original revenue allocation presented in Direct Testimony rather than PAIEUG's revised revenue allocation included with its Surrebuttal Testimony.<sup>53</sup>

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<sup>50</sup> PAIEUG Main Brief, pp. 24-25.

<sup>51</sup> PECO Statement No. 7-R, *Rebuttal Testimony of Joseph A. Bisti*, ("PECO Statement No. 7-R"), p. 12; *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-2008-2028394 (Joint Petition for Settlement dated Aug. 21, 2008), pp. 5-6.

<sup>52</sup> *Lloyd* at 1020.

<sup>53</sup> See PAIEUG Exhibit BSL-3; see also PAIEUG Exhibit BSL-1S.

OSBA claims that PAIEUG is proposing a rate increase for Rate GC,<sup>54</sup> when PAIEUG is actually proposing a rate decrease.<sup>55</sup> OSBA also challenges the decision to cap all rate increases at 1.25 times the system average increase citing that the rule-of-thumb in Pennsylvania rate cases is to cap increases at 1.5 times the system average increase.<sup>56</sup> In PAIEUG's proposed revenue allocation included in its Surrebuttal Testimony, PAIEUG caps all rate increases at 1.5 times the system average increase consistent with OSBA's recommendation.<sup>57</sup> Ironically, based on OSBA's support for a decrease to Rate GC and a cap on rate increases of 1.5 times the system average, OSBA appears to support PAIEUG's proposed revenue allocation in this proceeding. Therefore, OSBA's opposition to PAIEUG's proposed revenue allocation should be disregarded.

PAIEUG's proposed revenue allocation remains the most reasonable revenue allocation proposal presented in this proceeding. Consistent with *Lloyd* and related Commission precedent, it moves all classes closer to their cost of service while ending the prolonged cross-subsidization of Rate L, which is also consistent with PECO's prior settlement commitments.<sup>58</sup> Therefore, PAIEUG's proposed revenue allocation should be adopted by the Commission.

### **3. Scale Back of Rates**

PAIEUG's position regarding this issue was fully addressed in its Main Brief.<sup>59</sup> If the Commission does not approve PECO's full revenue increase, the Commission should approve a proportional scale back of rates based on PAIEUG's proposed revenue allocation.

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<sup>54</sup> OSBA Main Brief, p. 17.

<sup>55</sup> PAIEUG Main Brief, p. 24; *see also* PAIEUG Exhibit BSL-1S.

<sup>56</sup> OSBA Main Brief, p. 17.

<sup>57</sup> PAIEUG Statement No. 1-S, *Surrebuttal Testimony of Billie S. LaConte*, ("PAIEUG Statement No. 1-S"), p. 5.

<sup>58</sup> *Lloyd* at 1020; *see also Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Opinion and Order dated Dec. 28, 2012), pp. 118-119 (Dec. 28, 2012); *Pa. Pub. Util. Comm'n v. Metro. Edison Co. and Pa. Elec. Co.*, Docket Nos. R-00061366 and R-00061367 (Opinion and Order dated Jan. 11, 2007), p. 231; *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-2008-2028394 (Order entered Oct. 29, 2008).

<sup>59</sup> PAIEUG Main Brief, pp. 28-29.

### **C. Allocation of Universal Service Program Costs**

In their Main Briefs, OCA and CAUSE-PA continue to argue that the Commission should change the status quo with respect to cost allocation of PECO's Universal Service Programs ("USP"). In its Main Brief, PAIEUG has already described in detail the reasons the PUC must reject CAUSE-PA and OCA's proposal to spread costs of PECO's USP program across all customer classes.<sup>60</sup> To reiterate, allocating costs to all customer classes would violate cost-causation principles, compound the economic hardships commercial and industrial customers are experiencing due to the COVID-19 pandemic, and ignore recent PUC precedent.<sup>61</sup> As a result of PAIEUG's extensive discussion in its Main Brief and in an effort to avoid repetition, PAIEUG's Reply Brief responds solely to specific arguments raised by CAUSE-PA and the OCA in their Main Briefs, as detailed below.

#### **1. The Natural Gas Choice and Competition Act Provides No Grounds for Changing the Status Quo with Respect to the Collection of USP Costs.**

Both OCA and CAUSE-PA point to Section 2203(6) of the Natural Gas Choice and Competition Act ("Competition Act" or "Act") as a basis for a change in the status quo of USP cost collection. According to OCA and CAUSE-PA, because the statute does not state that recovery of USP costs should come from a certain class, the statute must support the allocation of these costs to all classes.<sup>62</sup>

Upon further review of the statute, however, Section 2203(6) has no relevance to a determination of whether PECO's USP costs should be collected from all ratepayers. Initially, the Competition Act provided the basis for the restructuring of the natural gas industry to allow

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<sup>60</sup> PAIEUG Main Brief, pp. 29-36.

<sup>61</sup> *Id.*

<sup>62</sup> OCA Main Brief, pp. 182-183; CAUSE-PA Main Brief, pp. 43-44.

residential and small commercial customers the opportunity to shop for natural gas supply.<sup>63</sup> In fact, as the very title of the relied upon statutory provision indicates, Section 2203 provides "[s]tandards for restructuring the gas utility industry."<sup>64</sup> Considering that the Competition Act was enacted in 1999, the natural gas markets have been restructured for almost twenty years.<sup>65</sup> Thus, the statutory provisions meant to guide the Commonwealth in its efforts to restructure the natural gas utility industry are not relevant to the current discussion of whether PECO's USP program costs should be collected from all customer classes.

CAUSE-PA and OCA also point to a lack of guidance in Section 2203(6) to argue that, because the provision does not require collection of USP costs from any specific rate class, the provision supports allocation of USP costs to all rate classes.<sup>66</sup> In actuality, Section 2203(6) does not address collection of PECO's USP costs, much less whether such costs should be collected from a specific rate class.<sup>67</sup> The Supreme Court of the United States has frequently cautioned against interpreting legislative silence as guidance, holding that "[l]egislative silence is a poor beacon to follow in discerning the proper statutory route."<sup>68</sup> The absence of a provision's guidance on any action should not, therefore, be used as an affirmative right to engage or to not engage in an action. Accordingly, even if Section 2203(6) of the Act were applicable, the fact that the provision contains no language indicating from which classes USP costs should be collected cannot be used to affirmatively state that USP costs must be collected from all ratepayers.

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<sup>63</sup> 66 Pa. C.S. § 2203.

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

<sup>65</sup> *Id.* at § 2201.

<sup>66</sup> CAUSE-PA Main Brief, p. 43; OCA Main Brief, p. 182.

<sup>67</sup> *See* 66 Pa. C.S. § 2203(6).

<sup>68</sup> *Zuber v. Allen*, 396 U.S. 168, 185 (1969); *see also United States v. Wells*, 519 U.S. 482, 496 (1997) ("it is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law[.]")



CAUSE-PA also contends that, because the Competition Act prohibits recovery of consumer education costs from industrial customers, the Act's lack of a specific provision prohibiting class recovery for USP costs from the industrial class indicates support for CAUSE-PA's proposal.<sup>69</sup> For the same reasons discussed above—*i.e.*, that lack of a provision's guidance on a certain action cannot be used to support engaging in that action—CAUSE-PA's argument here falls short.

Additionally, CAUSE-PA, in a feeble attempt to find a statutory basis to allocate USP costs across all customer classes, uses the term "non-bypassable" incorrectly. Contrary to CAUSE-PA's claims, "non-bypassable refers to the issue of whether a customer can avoid paying for a particular charge by switching from utility gas supply to competitive natural gas supply."<sup>70</sup> In fact, the recovery mechanism for USP charges is already non-bypassable, as PECO USP costs are currently collected from shopping and non-shopping residential customers equally.<sup>71</sup> Contrary to CAUSE-PA's claim, whether or not a charge is bypassable is wholly unrelated to interclass allocation or public benefits.<sup>72</sup>

Accordingly, and contrary to the arguments of the OCA and CAUSE-PA, the Competition Act does not provide, much less require, that PECO's USP costs should be collected from all customers. As such, this argument must be rejected by the Commission.

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<sup>69</sup> CAUSE-PA Main Brief, pp. 43-44.

<sup>70</sup> OSBA Statement No. 1-R, p. 25.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

**2. Caselaw Precedent Provides No Grounds for Changing the Status Quo with Respect to the Collection of USP Costs.**

*a. The Commonwealth Court's decision regarding the recovery of SEF costs has no bearing on the allocation of USP costs.*

CAUSE-PA contends that, because the Commonwealth Court of Pennsylvania ("Commonwealth Court") addressed the recovery of Sustainable Energy Fund ("SEF") program costs, such precedent should be used as a guiding principle with respect to the allocation of PECO's USP costs.<sup>73</sup> Upon further review, however, SEF programs are not the same as PECO's USP. As such, the resulting cost allocation cannot be reviewed under the same lens.

In 2006, the Commonwealth Court reviewed various issues on appeal from PPL Electric Utilities Corporation's ("PPL") distribution and transmission rate case, including the funding of PPL's SEF.<sup>74</sup> PPL's SEF is a fund that was instituted to promote development and the use of renewable and clean energy technologies, as well as energy conservation and efficiency.<sup>75</sup> As such, PPL's SEF was available to all rate classes. Conversely, PECO's USP is "a cost incurred to serve [the residential] class,"<sup>76</sup> as, under PECO's Tariff, the residential customer class is the only class that can receive assistance from the Company's low-income programs.<sup>77</sup> Although CAUSE-PA attempts to utilize *Lloyd* as precedent for the allocation of USP costs among all customers, USP programs are inherently different than SEF programs.<sup>78</sup> As such, the decision in *Lloyd*

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<sup>73</sup> CAUSE-PA Main Brief, pp. 44-45.

<sup>74</sup> See *Lloyd*.

<sup>75</sup> *Id.* at 1024.

<sup>76</sup> PAIEUG Statement No. 1-R, p. 12.

<sup>77</sup> *Id.*; see also OSBA Statement No. 1-R, p. 24.

<sup>78</sup> As discussed more fully in PAIEUG's Main Brief, *Lloyd* also requires that principles of cost causation must be followed for purposes of ratemaking. PAIEUG Main Brief, p. 29. Although commercial and industrial customers do not benefit from USP, OCA has continued to argue that cost causation principles would not be violated if cross class recovery were to occur. To that end, the OCA attempts to compare fire hydrants to USPs by noting that fire hydrants serve all persons, have been found to be a public good, and the costs of these hydrants are spread to all customers. OCA Main Brief, p. 199. In making such an argument, however, the OCA fails to recognize that, unlike USPs, fire hydrants are used to serve residential, commercial, and industrial customers alike. USPs, on the other hand, are put in place for the sole benefit of residential customers and only residential customers are eligible to partake in these programs. Therefore, while large commercial and industrial customers can receive the benefits of a fire hydrant (and

regarding SEF funding cannot automatically transfer to this proceeding. Accordingly, CAUSE-PA's attempt to apply the Commonwealth's decision regarding SEF program costs to USP costs in the instant matter must be rejected.

*b. CAUSE-PA misconstrues PGW's practices regarding cost allocation of its USP in an effort to contend the PECO should follow PGW's method with respect to its USP.*

In order to support its proposal to reallocate USP costs to all customer classes, CAUSE-PA contends that, because Philadelphia Gas Works ("PGW") has cross-class recovery of its USP costs, PECO should do the same.<sup>79</sup> CAUSE-PA is mistaken in its characterization of PGW's allocation of USP costs. CAUSE-PA states that PGW recovers USP costs from all customer classes; however, PGW recovers USP costs *only* from firm customers.<sup>80</sup>

CAUSE-PA also relies on a PUC determination in PGW's 2017 base rate case, in which the Commission upheld PGW's cost allocation structure for its USP, to support the position that PECO should follow PGW's USP cost allocation.<sup>81</sup> Specifically, CAUSE-PA uses the PUC's determination to uphold PGW's allocation of USP costs to all of its firm customers as support for CAUSE-PA's general position that USP programs supposedly benefit the commercial and industrial classes.<sup>82</sup>

CAUSE-PA is mistaken in its reliance on the *PGW Order* to support its position because PGW is a uniquely situated utility, as the Commission recognized in that very order. In the *PGW Order*, the Commission specifically noted the unique nature of PGW, including the fact that PGW

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pay for these benefits, as well), these same customers have no access to USPs. The OCA's analogy here is, therefore, ineffective.

<sup>79</sup> CAUSE-PA Main Brief, p. 45

<sup>80</sup> *Id.*

<sup>81</sup> *Pa. PUC, et al. v. PGW*, Docket Nos. R-2017-2586783 et al. (Opinion and Order entered November 8, 2017) ("*PGW Order*").

<sup>82</sup> CAUSE-PA Main Brief, p. 45.

had a history of allocating its universal service costs to all firm customers "prior to coming under [PUC] regulatory authority[.]"<sup>83</sup> The Commission also indicated that another reason the PUC continues to approve "PGW's unique allocation of universal service costs" is because "PGW is unique in that it is a large, municipal natural gas utility situated within the City of Philadelphia and serves more low-income customers than any other jurisdictional gas utility."<sup>84</sup> Accordingly, the Commission's determinations concerning allocation of USP costs on PGW's system should not serve as any sort of indicator for PECO.

CAUSE-PA's attempt to use PGW as an example of the Commission's past acceptance of recovering USP costs from all customer classes, and as an acceptable model for PECO to follow, therefore, fails on two fronts: (1) PGW is unique in comparison to other NGDCs; and (2) PGW does not recover USP costs from all of its customers. The Commission must, therefore, reject CAUSE-PA's claims to the contrary.

*c. The Final CAP Policy Statement does not require PECO to allocate USP costs to all customers.*

CAUSE-PA misstates the Commission's discussion in the *Final CAP Policy Statement*<sup>85</sup> in an effort to find support in its position that PECO somehow failed to address the issue of cross-class recovery of USP costs in the instant case.<sup>86</sup> Specifically, CAUSE-PA implies that the Commission was mandating every utility to set forth a proposal to recover USP costs from all customers in their next base rate case.<sup>87</sup> The Commission made no such mandate. The PUC, in the *Final CAP Policy Statement*, advised utilities "to be prepared to address CAP cost recovery in

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<sup>83</sup> *PGW Order* at 74.

<sup>84</sup> *Id.*

<sup>85</sup> *2019 Amendments to Policy Statement on Customer Assistance Program 52 Pa. Code § 69.261-69.267*, Docket No. M-2019-3012599, Final Policy Statement and Order (Opinion and Order entered November 5, 2019) ("*Final CAP Policy Statement*").

<sup>86</sup> CAUSE-PA Main Brief, p. 42.

<sup>87</sup> *Id.*

utility-specific rate cases."<sup>88</sup> Nothing in this statement mandated utilities to set forth a proposal in their next base rate case allocating USP costs across all customer classes.

CAUSE-PA also requests that the Commission require PECO to file, within a year of this proceeding, a proposal to recover costs of the USP from all rate classes.<sup>89</sup> To reiterate the point made above, the Commission did not mandate utilities to propose changing the status quo of cost allocation for their USPs. The Commission has merely indicated that utilities should be prepared to address said proposals.<sup>90</sup> PECO, by proposing to maintain the present cost allocation for its USP, has addressed the issue of cost allocation for its USP and has, therefore, complied with the PUC's mandate. Accordingly, CAUSE-PA's request to require PECO to file a proposal for cross-allocation of USP costs in a future proceeding should be rejected because PECO has already complied with the Commission's mandate.

*d. The Commission's determination in Columbia confirms that the status quo for cost allocation of PECO's USP should remain in place.*

As PAIEUG discussed in its Main Brief, the Commission maintained the status quo for cost allocation of Columbia's USP in *Columbia*,<sup>91</sup> in part because the evidence presented by the OCA and CAUSE-PA was insufficient to outweigh the weight of evidence presented by parties opposing cross-recovery of USP costs.<sup>92</sup> The OCA contends that additional record evidence has been submitted in this proceeding, warranting the Commission to change its position from that determined in *Columbia*.<sup>93,94</sup> Upon closer inspection, however, the OCA's additional record

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<sup>88</sup> *Final CAP Policy Statement*, p. 97.

<sup>89</sup> CAUSE-PA Main Brief, p. 42.

<sup>90</sup> *Columbia* at 259.

<sup>91</sup> *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*; Docket No. R-2020-3018835

<sup>92</sup> PAIEUG Main Brief, pp. 32-34.

<sup>93</sup> OCA Main Brief, p. 184.

<sup>94</sup> The OCA also continues to argue that spreading costs to all customers will increase employee productivity and, therefore, boost businesses' productivity as well. OCA Main Brief, p. 192-198. However, as PAIEUG explained in its Main Brief, and as the Commission has recognized in *Columbia*, businesses are already struggling due to the

evidence seems to be a brief analysis of the poverty and poor housing stock, as opposed to just discussing poverty, which was the sole factor discussed in *Columbia*.<sup>95</sup> Moreover, this discussion does nothing to tip the scale in the OCA's favor since the information provided by the OCA does not specifically address housing stock, but rather, focuses on the relative age of homes.<sup>96</sup> Contrary to the OCA's contention, the evidence presented in the instant matter is effectively no different than what was presented in *Columbia*.

Accordingly, because neither Commission nor Pennsylvania precedent supports a change in the status quo of cost allocation for USP costs, and because PGW is a uniquely situated entity which cannot serve as a model for other Pennsylvania natural gas utilities, OCA and CAUSE-PA's arguments to the contrary should be rejected, and the Commission must maintain the status quo for cost allocation of PECO's USP.

**3. Other States' Methods of Cost-Recovery for USP Should Not Inform the Commission's Determination in this Proceeding.**

The OCA and CAUSE-PA also attempt to justify allocating USP costs to non-residential customer classes by pointing to other states' cost-recovery methods for their respective USPs.<sup>97</sup> According to CAUSE-PA and the OCA, other states have allocated cost responsibility of USPs to all customer classes.<sup>98</sup> However, the fact that some other states may assign costs to non-residential classes is not sufficient to abandon the well-settled and long adhered-to principles of cost causation by allocating USP costs to customer classes that receive no direct benefit from these programs. Further, other states' cost recovery methods should not inform the Commission's decision because

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economic impacts of the ongoing COVID-19 pandemic. PAIEUG Main Brief, pp. 34. Piling additional costs onto businesses will only exacerbate these effects. In other words, increasing a business' productivity will be moot if the business is no longer open.

<sup>95</sup> OCA Statement No. 5, pp. 62-64.

<sup>96</sup> *Id.*

<sup>97</sup> CAUSE-PA Main Brief, pp. 47-48; OCA Main Brief p. 202.

<sup>98</sup> *Id.*

Pennsylvania has its own distinct set of realities informing Pennsylvania utilities' methods of cost recovery for USPs. Therefore, whether other states have allocated USP costs to non-residential classes is of no significance to this proceeding. The Commission should, therefore, reject this contention, and uphold the status quo for cost allocation in PECO's USP.

**4. Assuming *Arguendo* the Commission Modifies PECO's USP Cost Recovery, the OCA's Proposed Cost Allocation Methodology Should Be Rejected.**

Assuming *arguendo* that the Commission chooses to modify PECO's USP cost recovery, PAIEUG's proposed cost allocation methodology should be adopted, as it continues to be the only allocation methodology that limits the hardships to all customers. As discussed in PAIEUG's Main Brief, the OCA proposes that costs be allocated on a "competitively neutral basis" and that the allocation should be based on "the percentage of revenue provided by each customer class at base rates."<sup>99</sup> As is evident, the OCA's cost allocation proposal is very general and lacks any specifics, including the possible ramifications of the proposal on the various rate classes.

OCA contends that PAIEUG's proposed cost allocation methodology should be rejected because it would supposedly result in non-residential customers "pocketing" benefits generated by PECO's USP without paying for the costs of the program.<sup>100</sup> As previously discussed in PAIEUG's Main Brief, and reiterated in herein, non-residential customers receive no benefit from, and are not eligible to participate in, PECO's USP program.<sup>101</sup> OCA's contention, therefore, fails in this respect.

The OCA also claims that PAIEUG's cost allocation proposal would cause unnecessary complexity as compared to OCA's proposal.<sup>102</sup> To the contrary, PAIEUG's proposal to implement

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<sup>99</sup> OCA Statement No. 5, p. 90; PAIEUG Main Brief, p. 35.

<sup>100</sup> OCA Main Brief, p. 205.

<sup>101</sup> PAIEUG Main Brief, pp. 29-32.

<sup>102</sup> OCA Main Brief, pp. 205-206.

a flat cost across all customer classes is a simple solution to cost allocation that has the added benefit of ensuring that no one class suffers from paying disproportionate costs. Despite the OCA's protests concerning PAIEUG's proposed cost allocation, at the very least, PAIEUG's proposal recognizes the potential disparate impacts on the various customer classes and, accordingly, proposes that no customer pay more than \$10.85 per year in an effort to ensure no undue hardships are imposed on any one customer class.<sup>103</sup>

Accordingly, because CAUSE-PA and the OCAs various contentions fail, there is no support for adopting the proposal to recover USP costs from all customers. The Commission must, therefore, maintain the status quo for allocation of PECO's USP.

#### **D. Tariff Structure**

##### **1. Residential Customer Charge**

PAIEUG has no reply on this issue at this time.

##### **2. Non-Residential Customer Rate Design**

###### *a. Rate GC Customer Charge*

PAIEUG has no reply on this issue at this time.

###### *b. Rate GC Declining Block Volumetric Charge Differential*

PAIEUG has no reply on this issue at this time.

###### *c. Rate TS-F and TS-I Volumetric Charge Differential*

As discussed more fully in PAIEUG's Main Brief, the Commission should reject OSBA's proposed changes to the volumetric differentials within Rates TS-F and TS-I.<sup>104</sup> Other than restating what was already presented in testimony, OSBA offers no additional support for this

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<sup>103</sup> PAIEUG Main Brief, p. 35; PAIEUG Statement No. 1-R, p. 13.

<sup>104</sup> *Id.* at 36-39.



proposal in its Main Brief.<sup>105</sup> PECO's Main Brief, which purports to support OSBA's proposal, continues to reflect conflicting views and inaccuracies, which will be addressed below.<sup>106</sup> Neither party has met their burden of proof that the volumetric differentials for Rates TS-F and TS-I should be modified in this proceeding.

PECO continues to take conflicting positions regarding whether the rate differentials for Rate TS-F and TS-I customers using above and below 18 mmcf should be modified. In Rebuttal Testimony, PECO's Witness Ding disagrees with OSBA's position that Rates TS-F and TS-I reflect unreasonably large rate differentials for customer above and below annual volumes of 18 mmcf explaining that these rate differentials are justified based on a number of factors, including "total connected load and concurrent load, the customer's location(s), and the manner in which the customer operates its equipment."<sup>107</sup> By contrast, PECO's Witness Bisti accepts OSBA's proposal to shrink the volumetric differentials within the rates, but offers no additional evidentiary support for the proposal.<sup>108</sup> PECO's Main Brief fails to resolve this conflict in PECO's position. Although PECO continues to express support for OSBA's proposal,<sup>109</sup> PECO acknowledges that different factors justify different rate treatment for Rate TS-F and TS-I customers who use above and below 18 mmcf.<sup>110</sup> PECO fails to offer any analysis of why OSBA's proposal to shrink the volumetric differentials is reasonable in light of these justifiable differences in rate treatment for large and small Rate TS-F and TS-I customers.

In response to PAIEUG's opposition to OSBA's proposal based on the 56.2% rate increase that it would impose on large Rate TS-F customers, PECO claims that a 56.2% increase does not

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<sup>105</sup> OSBA Main Brief, pp. 24-27.

<sup>106</sup> PECO Main Brief, pp. 120-121.

<sup>107</sup> PECO Statement No. 6-R, pp. 23-24.

<sup>108</sup> PECO Statement No. 7-R, p. 15.

<sup>109</sup> PECO Main Brief, p. 121.

<sup>110</sup> *Id.* at 110-111.

constitute rate shock because PECO has not filed a rate case for natural gas customers since 2010.<sup>111</sup> PECO's position represents a fundamental misunderstanding of the definition of rate shock. Rate shock occurs when a significant rate increase is imposed on customers in one rate case rather than phasing it in over a series of rate cases consistent with principles of gradualism.<sup>112</sup> A 56.2% rate increase to large Rate TS-F customers in a single rate case is the very definition of rate shock.

The current volumetric differentials in Rates TS-F and TS-I are *prima facie* reasonable because they are included in PECO's tariff.<sup>113</sup> PECO did not offer any evidentiary support establishing that OSBA's modified volumetric differentials are consistent with PECO's cost of service data. As discussed in PAIEUG Main's Brief, PECO also failed to provide adequate data to OSBA to inform its proposal and to PAIEUG to conduct its own independent analysis regarding the reasonableness of OSBA's proposal.<sup>114</sup> The evidentiary record does not establish that the current volumetric differentials in Rates TS-F and TS-I are unreasonable or that OSBA's proposed modified differentials are more reasonable. Accordingly, the current volumetric differentials within Rates TS-F and TS-I are presumptively reasonable and should remain in place. To the extent the Commission believes further analysis regarding this issue should occur, this issue should be reserved for consideration in a future PECO rate case, and PECO should be directed to share

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<sup>111</sup> *Id.* at 121.

<sup>112</sup> *Lloyd* at fn. 14 ("To mitigate both forms of rate shock, the remedy is 'gradualism,' i.e., phasing in rates or closing rate differentials over a longer period of time allowing consumers to gradually make the adjustments in the 'elastic' part of their spending so as to pay for increased utility costs, not to mention lessening the pressure on the Commission and the utilities to dampen rate increases.")

<sup>113</sup> 66 Pa.C.S. § 316 ("Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby."); *see also Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996).

<sup>114</sup> While PECO did provide proof of revenue data in Excel format, PAIEUG requested monthly load factor data by size, which was only provided in PDF format. *See* PECO Main Brief, p. 121; *see also* PAIEUG Statement No. 1-S, p. 7.

all necessary data with parties to support the current rate differentials or any proposed changes to the differentials at the outset of the proceeding.

*d. Elimination of Rate IS Margin Sharing*

PAIEUG has no reply on this issue at this time.

*e. Elimination of Rate IS, MV-I and TCS*

PAIEUG has no reply on this issue at this time.

**3. DSIC Cost Allocation**

PAIEUG has no reply on this issue at this time.

**4. Negotiated Gas Service**

In its Main Brief, PECO notes that the Company's current Commission-approved tariff permits PECO to offer negotiated (*i.e.*, discounted) gas service to customers under specified circumstances.<sup>115</sup> As part of this proceeding, I&E, OCA, and OSBA contend that PECO did not establish that certain negotiated rate customers are still eligible to receive such service.<sup>116</sup> To that end, OSBA recommends that, if certain customers are deemed not eligible for discounted rates, PECO's shareholders should bear the difference between tariffed rates and discounted rates for these customers; however, PECO claims that such a recommendation would violate shareholders' right to a fair return.<sup>117</sup>

In response, PAIEUG would note that the customers at issue have entered into good faith, negotiated rate contracts with PECO and have budgeted for the term of such negotiated rate contracts accordingly. As such, if the PUC determines that such discounted rate is not appropriate, these customers should not be required to bear the difference between the negotiated rate and the

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<sup>115</sup> PECO Main Brief, p. 125.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 127-128.

tariff rate, as to do such would be unjust, unreasonable, and inappropriately discriminatory to such customers. Rather, PAIEUG supports OSBA's position that PECO shareholders should be responsible for such costs.

#### **5. Theft/Fraud Investigation Charge**

PAIEUG has no reply on this issue at this time.

#### **E. Summary and Alternatives**

As discussed more fully herein, PECO's use of the A&E methodology for CCOSS provides the most appropriate basis for determining class revenues and costs, as the A&E methodology most closely resembles PECO's system. Conversely, the OCA's proposed CCOSS and OSBA's proposed changes to PECO's A&E CCOSS must be rejected, as they would be in direct contradiction with the way in which PECO designs its system and incurs distribution main costs.

PECO's resulting revenue allocation, however, must be rejected. While PECO proposes to move all of the other classes move closer to their cost to serve, Rate TS-F, which is already above its cost to service, would be moved farther away from cost under PECO's proposal. Rather, PAIEUG's proposed rate allocation appropriately moves all customer classes, including TS-F, closer to their cost to serve while also recognizing the parameters implemented in PECO's previous base rate proceedings. To that end, if PECO is granted less than its requested rate increase, a proportionate scale back based upon PAIEUG's rate allocation would be the most just and reasonable basis upon which to allocate any rate increase among the classes.

In addition, Rates TS-F and TS-I currently include different volumetric charges for customers using above and below 18 mmcf of natural gas per year. As part of this proceeding, OSBA seeks to modify this differential between the classes, however, neither OSBA nor PECO provide the appropriate analysis to support this change. Moreover, because this change could result in larger customers facing significant rate shock (*i.e.*, upwards of 50%), the PUC should not

allow for such a change until at least PECO's next base rate proceeding, at which time all parties should be provided ample opportunity to review the information needed to determine whether such a change is just and reasonable.

Finally, although PECO does not propose any changes in its current allocation of USP costs, both OCA and CAUSE-PA seek to allocate these costs to all customers. As noted herein, nothing argued by either OCA or CAUSE-PA in their Main Briefs requires a change in this allocation. Rather, the PUC should allow for the status quo to continue with respect to the allocation of these program costs.

## **XI. CONCLUSION**

**WHEREFORE**, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Only grant PECO a requested rate increase in the amount necessary, if any, to ensure just and reasonable rates for all PECO customers;
- (2) Accept PECO's proposed Class Cost of Service Study based upon the Average & Excess methodology for purposes of this proceeding;
- (3) Allocate any resulting rate increase based upon PAIEUG's rate allocation proposal, as it appropriately moves all customer classes closer to their cost to serve;
- (4) If PECO is granted less than its requested rate increase, scale back PAIEUG's rate allocation proposal for purposes of implementing any approved rate increase;
- (5) Reject OSBA's proposal to modify the differential between TS-F and TS-I customers;
- (6) In the alternative, reject OSBA's proposal for purposes of this proceeding and require PECO to address this issue in its next natural gas base rate proceeding, along

with requiring PECO to provide the analysis and information needed for the parties to determine whether such a change is warranted; and

- (7) Reject OCA's and CAUSE-PA's proposals to modify PECO's allocation of universal service program costs, and instead, retain the status quo of collecting these costs only from the residential class.

Respectfully submitted,

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