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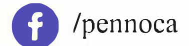 /pennoca

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April 26, 2021

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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cc: The Honorable Christopher P. Pell **(email only)**
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CERTIFICATE OF SERVICE

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

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

Dated this 26th day of April 2021.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2020-3018929
Office of Consumer Advocate	:	C-2020-3022400
Office of Small Business Advocate	:	C-2020-3022414
Philadelphia Area Industrial Energy Users Group	:	C-2020-3022745
	:	
v.	:	
	:	
PECO Energy Company – Gas Division	:	

EXCEPTIONS OF THE
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Dated: April 26, 2021

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I. INTRODUCTION

On September 30, 2020, PECO Energy Company – Gas Division (PECO or the Company) filed Tariff Gas – PA. P.U.C. No. 4 (Tariff No. 4) seeking approval from the Pennsylvania Public Utility Commission (the Commission) to increase its distribution rates pursuant to Section 1308(d) of the Public Utility Code. 66 Pa. C.S. § 1308(d). PECO is engaged in the business of furnishing natural gas service to approximately 534,000 residential, commercial, and industrial customers in several counties throughout southeastern Pennsylvania. In Tariff No. 4, PECO sought an increase in annual distribution revenues of $68.7 million for a fully projected future test year (FPFTY) ending on June 30, 2022. According to PECO's filing, the total monthly bill for an average residential customer using 80 Hundred Cubic Feet (Ccf) per month, would increase by $7.12, from $78.85 to $85.97 (9.03%).[1] If approved, PECO's rate increase would produce a 7.70% overall rate of return on its rate base, including a 10.95% return on common equity. PECO also proposed the following tariff revisions in its filing: (1) an increase in the residential customer charge from $11.75 to $16.00, or by 36.2%, (2) altering the terms and conditions for customer participation in PECO's Neighborhood Gas Pilot Rider, and (3) adoption of a new Theft/Fraud Investigation Charge.

The Office of Consumer Advocate (OCA) opposes any increase to PECO's rates as the Commonwealth as a whole, and particularly throughout PECO's vast service territory, is still firmly in the grip of the COVID-19 pandemic along with the impacts to the health of the citizenry and the local economy. In his Recommended Decision (R.D.), Deputy Chief Administrative Law

[1] These estimates were provided as part of PECO's initial filing. Please note that these estimates were based on PECO's initial proposal to allocate approximately $43.2 million of the proposed increase to the residential customer class. The Company's final litigation position, however, substantially differs in that PECO is now proposing to allocate approximately $65.4 million of the proposed increase to the residential customer class. This change is the result of an error in the Company's cost of service study (COSS) that was subsequently corrected. Accordingly, if PECO's request is approved in its entirety, the impacts to the average residential customer would be higher than initially claimed by the Company.

Judge Christopher P. Pell (ALJ Pell) concluded that "the pandemic alone is not sufficient reason to outright deny PECO's request for rate relief." R.D. at 17. Accordingly, ALJ Pell "examined the evidence and positions presented by PECO and the opposing parties with regard to PECO's cost of service and other ratemaking concerns raised using the traditional ratemaking methodologies." Id. Under a 'business as usual' approach, ALJ Pell finds that PECO has not met its burden of proving by a preponderance of the evidence the justness and reasonableness of every element of its requested increase. Rather, the R.D. recommends that PECO receive an increase in annual distribution revenue of $23,892,217, or approximately 4% over present rates. R.D. at 1.

At the outset, the OCA submits that ALJ Pell erred in allowing PECO any increase in rates. The Commission has broad discretion in determining whether rates are reasonable and can decide what factors it will consider in setting or evaluating a utility's rates.[2] Moreover, the Commission can deny a rate increase because of the pandemic if supported by substantial evidence.[3] As will be discussed in its Exceptions, the OCA submits that it has proffered substantial evidence pertaining to the impacts the pandemic has had on the Company's ratepayers, including low-wage, near-poor workers in particular, the highly speculative aspects of the Company's claims, and PECO's continued financial stability in the absence of any rate increase. Accordingly, ALJ Pell's decision to allow an increase should be rejected and PECO's rate increase should be denied in its entirety as recommended by the OCA.

In the alternative, if the Commission rejects the OCA's recommendation of no rate increase, the OCA respectfully requests that the Commission accept all other recommendations

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[2] Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Inc., Docket No. R-2020-3018835, *et al*., Opinion and Order at 44 (Pa. PUC Feb. 19, 2021) (quoting Popowsky v. Pa. Pub. Util. Comm'n, 683 A.2d 958, 961 (Pa. Commw. Ct. 1996)) (Columbia Gas).

[3] See Columbia Gas at 51.

provided by ALJ Pell in the R.D, other than certain areas raised in these Exceptions that the Commission should modify.

II. EXCEPTIONS

Exception No. 1: The R.D. Did Not Give Adequate Weight to the Circumstances of Consumers Facing Affordability Issues Due To The COVID-19 Pandemic. (R.D. at 15-17; OCA M.B. *passim*; OCA R.B. at *passim*).

In the R.D., ALJ Pell did not adopt the OCA's position that PECO should not receive a rate increase at this time. R.D. at 17. Rather, in his R.D., ALJ Pell relied on Columbia Gas asserting that the COVID-19 Pandemic alone is not sufficient reason to outright deny PECO's request for rate relief. Id. The R.D. states as follows:

> "The COVID-19 Pandemic has clearly had a tremendous negative impact on the citizens and businesses of Pennsylvania. However, pursuant to the Commission's decision in Columbia Gas, the pandemic alone is not sufficient reason to outright deny PECO's request for rate relief. With that in mind, I have carefully examined the evidence and positions presented by PECO and the opposing parties with regard to PECO's cost of service and other ratemaking concerns raised using the traditional ratemaking methodologies."

Id.

In Columbia Gas, the Commission stated that while it would continue to follow traditional ratemaking methodologies at this time, it is the Commission's responsibility to weigh the evidence presented regarding the impacts of the COVID-19 Pandemic. As the Commission stated:

> While these ratemaking norms provide a rational and methodical way to analyze and determine the utility's cost of service, they also permit the consideration and weighing of important factors or principles in setting just and reasonable rates, such as quality of service, gradualism and rate affordability. This is true in normal circumstances as well as extraordinary circumstances, such as this pandemic.[4]

The Commission also explained:

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[4] Columbia Gas at 48 (citing Equitable Gas Co. v. Pa. PUC, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979)).

> …it is our responsibility under the applicable legal and constitutional standards to weigh evidence and unique considerations related to the COVID-19 pandemic in setting just and reasonable rates, and our continued use of traditional ratemaking methodologies permit our consideration of important ratemaking principles, like gradualism and rate affordability, in relation to this pandemic. Moreover, the traditional ratemaking methodologies permit consideration of evidence presented regarding the risks, uncertainties, and impact of the COVID-19 global pandemic in determining various components of a utility's cost of service, or revenue requirement.[5]

The Commission did not set a precedent precluding the denial of a rate increase for all utilities during the COVID-19 Pandemic. Rather, the Commission must weigh the facts and evidence presented in each case regarding the effects of the COVID-19 Pandemic and the substantial customer hardships presented to determine whether a rate increase is warranted at this time.

The OCA submits, however, that ALJ Pell did not give full weight to the hardships faced by many of PECO's customers due to the COVID-19 Pandemic when evaluating PECO's need for a rate increase under traditional ratemaking methods. The OCA introduced substantial evidence of the impact the Pandemic has had on unemployment rates, income loss, and other economic indicators within Pennsylvania and the PECO service territory. OCA M.B. at 13-19; OCA R.B. at 4-8. This evidence should have been weighed more heavily when considering the Company's claims, and, for example, the Company's cost of equity claim in this proceeding.

Moreover, the OCA presented evidence in this proceeding that some of PECO's claims do not adequately reflect or recognize the current economic climate and the impacts of the pandemic. For example, PECO developed its test year budgets based upon a modified budgeting process from data and estimates that were done prior to the COVID-19 Pandemic. OCA M.B. at 32-35; OCA. R.B. at 11-13. There also several claims by the Company where it heavily relies on inflation

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[5] Id.

factors to justify substantial increases for certain expense categories, rather than rely on known and measurable data. See e.g. OCA M.B. at 48-51 and 55-56; OCA. R.B. at 24-28 and 30-32. Lastly, the OCA presented sufficient evidence that the Company's request to expand its residential EE&C spending is unnecessary and not needed. See e.g. OCA M.B. at 144-45; OCA R.B. at 78-81).

The OCA also presented substantial evidence that PECO will continue to be financially stable in the absence of any rate increase. For example, in the historic test year (HTY) as of June 2020, the Company indicated it was earning a rate of return of 7.61% at present rates. See PECO St. 3, Exh. MJT-3, Sch. A-1. Thus, PECO is financially stable at present, almost meeting its proposed rate of return of 7.70%. Moreover, even before making any adjustments to the Company's filing in this case, including the Company's claimed capital expenditures and expenses, as are necessary to set just and reasonable rates, the evidence demonstrates that PECO is projected to earn a 5.74% rate of return in the FPFTY ended June 30, 2022, which includes a return on equity of 7.40%. See PECO M.B. at 3; PECO St. 3, Exh. MJT-1 Revised, Sch. A-1. Accordingly, even accepting PECO's entire claim and denying a rate increase would still allow the Company the ability to sufficiently raise capital while recognizing the needs of ratepayers during the significant economic crisis and public health emergency. See also OCA R.B. at 2, 8, and 10.

In addition, as the OCA demonstrated, when adjusting the Company's claims and proposal consistent with the OCA's recommendations, PECO would over-earn above a market-derived return on equity of 8.75% as presented by OCA Witness O'Donnell in the FPFTY. See OCA M.B. at 9, 74-75, 78, 82-83, and 94-95; OCA R.B. at 2, 44-45, and 50-51. That is, the OCA thoroughly reviewed PECO's filing and discovered that the Company should be subject to a rate *decrease* of

approximately $11.4 million under the traditional ratemaking methods. OCA M.B. at 8; OCA R.B. at 3, 18. Accordingly, keeping rates at current levels will still allow the Company to earn above a market-derived return on equity above 8.75% on the pro forma FPFTY basis.

Lastly, as will be discussed in more detail in these Exceptions, the Company's proposed consumer protections during the COVID-19 Pandemic are not sufficient to provide relief to customers during this time. See OCA R.B. at 65-70. Accordingly, any increase in PECO's rates will disproportionately impact customers currently struggling to make ends meet, without sufficient protections in place to assist those customers.

For these reasons, the R.D. failed to consider the OCA's legally viable position that PECO's rate increase could and should be denied because of the Pandemic's impact on its customers. The OCA submits, however, that the substantial customer hardship caused by the COVID-19 Pandemic significantly outweighs PECO's need for an increase in this matter, especially considering the extreme lack of necessity for a rate increase in this case and the lack of any further assistance offered for customers. Therefore, the OCA respectfully requests that the Commission reject ALJ Pell's conclusion and, after considering the OCA's evidence, deny PECO a rate increase.

Exception No. 2: ALJ Pell Erred In His Decision To Reflect In Rate Base The Company's Fully Projected Future Test Year Plant Additions. (R.D. at 46-47; OCA M.B. at 32-37; OCA R.B. at 11-15)

In the Recommended Decision, ALJ Pell denied the OCA's adjustment to remove from PECO's rate base its planned plant additions for the FPFTY. R.D. at 46-47. ALJ Pell, however, adopted I&E's adjustment to remove from rate base a portion of PECO's natural gas reliability project, reducing rate base by $47,624,803. Id. In the R.D., ALJ Pell reasoned that the Company did not conclusively prove that it would meet its in-service dates. R.D. at 47. Notwithstanding, ALJ Pell did not adopt the OCA's adjustment for the following reason:

> However, I do not agree with the OCA's position that there is not any support for PECO's planned plant additions for the FPFTY. I do believe that there is sufficient evidence in the record to support an addition to rate base for planned plant additions in the FPFTY.

Id.

While the OCA agrees with ALJ Pell's decision to remove a portion of the natural gas reliability project from rate base, as proposed by I&E, that adjustment does not adequately recognize that PECO's projections fail to support the plant additions identified by the OCA's expert witness. The Commission has stated that it may disallow projected capital spending where supported by sound reasons:

> With respect to projected spending, for example, evidence of the changes, risks, and uncertainties created by this pandemic will continue to raise questions related to spending priorities in the FPFTY, both in terms of (1) O&M expense claims and (2) capital investments.
>
> ***
>
> Additionally, in the area of adjustments to rate base, the Commission has wide discretion. However, the adjustments must be supported by sound reasons.
>
> Because of the many variables involved, determining the reasonableness of spending priorities related to expenses and capital investments in the midst of the pandemic ultimately will become a matter of judgement for the Commission, governed by the evidence presented in the record and guided by this agency's regulatory expertise.[6]

Similarly, PECO has not met its burden. PECO is projecting that it will spend approximately $614 million in capital additions for the FTY and FPFTY. See PECO St. 3, Sch. MJT-1, Sch. C-2, Line 32; see also PECO St. 3, Sch. MJT-2, Sch. C-2, Line 32.[7] Upon

[6] Columbia Gas at 49-50 (adopting an adjustment to reduce Columbia Gas' net FPFTY plant additions by 22.7% after it failed to prove its prospective capital investments) (footnotes and citations omitted).

[7] More specifically, for the FTY ended June 30, 2021, the Company is projecting approximately $292 million in plant additions bringing its total plant in service claim to approximately $3.232 billion. See PECO St. 3, Sch. MJT-

investigation, the OCA's witness, Lafayette Morgan, determined that the Company's test year budgets are based upon the Company's five-year long-range plan (LRP) that was developed in June 2019 and completed in January 2020, well before the onset of the COVID-19 Pandemic. See OCA St. 2 at 8-9; see also OCA St. 2, App. B at 28. This calls into question the projected plant additions and their accuracy.[8]

Moreover, Company testimony indicated that its test year budgets were formulated during the middle of the COVID-19 Pandemic over a period of two months. See OCA St. 2, App. B at 28. No indication was made by the Company that the test year budgets were updated to reflect the effects of the COVID-19 Pandemic. See OCA St. 2 at 4-5; see also PECO St. 2-R at 3. Moreover, this abbreviated approach has not been shown to be accurate. See OCA St. 2 at 4.

Ultimately, the Company failed to produce sufficient evidence thorough discovery and in this proceeding to demonstrate the accuracy of the now stale projections. Mr. Morgan made repeated attempts to obtain the data upon which PECO's test year budgets were created, the specific instructions and guidance relied upon during PECO's budgeting process, and planned plant additions broken down by FERC plant account. See OCA St. 2 at 4, 14-15. The underlying budget information, guidelines and budgeting instructions, as well as a breakdown of plant additions by FERC account was not provided by the Company. Id. Rather, the high-level

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1, Sch. C-1, Column 4, Line 1. For the FPFTY ended June 30, 2022, the Company is projecting approximately $322 million in plant additions bringing the Company's total plant in service claim to approximately $3.538 billion. See PECO St. 3, Sch. MJT-1, Sch. C-1, Column 4, Line 1.

[8] As Mr. Morgan testified, the budget preparation date is critical because the events, circumstances, and related data from that period reflects circumstances and projections that are no longer accurate. OCA St. 2 at 9-10. Since the LRP was developed, sales of existing homes dropped substantially at the onset of the pandemic, unemployment rates surged, and Company operations were restricted. Id. This volatility can be material as a large portion of PECO's plant additions, for example, are based around new business connections, *i.e.* 12.9 percent of PECO's FPFTY plant projection activity. Id.

summary data that was provided showed some projects would not be completed until well after the end of the FPFTY. See OCA St. 2, App. B at 31.

In response, the Company has merely provided conclusory statements that it is on track to meet its planned plant addition targets and has suffered no continual or ongoing delays from the COVID-19 Pandemic. PECO St. 1-R at 4. The conclusory statements, however, are unsatisfactory and do not constitute substantial evidence. See e.g. Cain v. Unemployment Compensation Bd. of Review, 603 A.2d 699, 701 (Pa. Commw. Ct. 1992). In contrast, the OCA and I&E have demonstrated the Company's failure to provide sufficient evidence to support its planned plant additions, including the planned natural gas reliability station and other projects included in the Company's rate base claim. See e.g. Tr. at 213, I&E St. 3 at 11.

For these reasons, the OCA submits that the Commission should adopt the recommendation of the OCA to remove from rate base the Company's planned FPFTY plant additions. This would reduce rate base by $271 million.[9] OCA St. 2-SR, Sch. LKM-2, Pg. 2, Line 5. If adopted concomitant adjustments would also have to be made to reflect the Company's repair deductions for the Future Test Year (FTY) when calculating federal income tax expense (OCA St. 2-SR, Sch. LKM-31), as well as an adjustment to reduce the Company's annual depreciation expense claim (OCA St. 2-SR, Sch. LKM-27).

Exception No. 3: The ALJ Erred by Recommending that the Commission Accept the Company's Use of Inflation Escalation for Certain Expenses. (R.D. at 125-26, 130; OCA M.B. at 55-56, 61-62; OCA R.B. at 30-32; 37-39)

ALJ Pell erred by accepting the Company's inflation factor adjustments for PECO's claimed regulatory commission expense and property tax expense. Regarding the Company's claim for regulatory commission expenses (general assessments), the ALJ was persuaded by "the

[9] This adjustment is a net amount and includes within it corresponding adjustments to the Company's depreciation reserve and accumulated deferred income tax accounts. See OCA St. 2-SR, Sch. LKM-4.

Company's position that the Company's actual FTY increase of $288,000 (16%) over the HTY level of expense substantiates the Company's FTY claim of $2,197,000" and the Company's argument "that to use the actual 16% increase in the FPFTY would result in an even greater claimed expense." R.D. at 125–26. The ALJ found that "…the use of inflation factors that are not known or measurable is inappropriate…" however, the ALJ concluded "…in this instance, using the actual percentage increase in general assessments for the FTY to forecast PECO's regulatory commission expense for the FPFTY would exceed the Company's actual claim." Id. Further, the ALJ recommended that the Commission accept the Company's Property Tax expense. R.D. at 130. The ALJ agreed "with the Company's use of the 2.5% inflation factor to calculate its Property Tax expense" siding with the Company in finding that "this is not a blanket, across-the-board, inflation adjustment." Id.

The OCA maintains its position that adjustments based on inflation escalations "are not actually known and measurable." OCA M.B. at 55–56; OCA R.B. at 30–32. The Commission "has specifically held that inflation adjustments do not create known and measurable changes because not all expenses are affected by inflation and those that are affected by inflation experience inflation differently."[10] OCA Witness Lafayette K. Morgan reiterated this principle and testified that "the use of adjustments based on inflation escalations . . . are not actually known and measurable." OCA M.B. at 61; OCA R.B. at 38; OCA St. 2 at 41. Mr. Morgan recommended that the "costs should be based upon evidence or documentation that supports the Company's adjustments." OCA M.B. at 62; OCA St. 2 at 42. Therefore, the OCA continues to recommend an adjustment to remove the effect of the inflation escalation on the real estate tax component of the

[10] Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corporation, Docket No. R-00942991, 1994 Pa. PUC LEXIS 134 at *138 (Pa. PUC Dec. 6, 1994) (citing Pa. Pub. Util. Comm'n v. Pa. American Water Co., 71 Pa. PUC 210, 269 (1989)) (NFGD 1994).

property tax expense, which would reduce the Company's taxes other than income by $61,395. See OCA R.B., App. A, Table II.

Moreover, regarding the Company's claim for regulatory commission expense, the OCA disagrees with ALJ Pell's assessment that PECO's regulatory commission expense will increase by 16.6% between the FTY and FPFTY because it is speculative and not supported by evidence. R.D. at 125–26. Pursuant to Section 510 of the Public Utility Code, the general assessment for Commission operations can fluctuate from year to year depending on the Commission's budget and how that budget is allocated across each group of utilities.[11] Thus, any increase in general assessments between the HTY and FTY is not indicative of future increases. Rather, OCA witness Morgan reasonably adjusted the Company's claims to remove an inflation adjustment that is not supported by evidence and has previously been disallowed by the Commission. Therefore, the OCA recommends an adjustment to reflect the HTY level of regulatory commission expense, which results in an adjustment to reduce O&M expenses by $462,000. OCA St. 2, Sch. LKM-22.

Exception No. 4: ALJ Pell Erred In His Decision To Adopt I&E's Adjustment To The Company's Energy Efficiency and Conservation Budget. (R.D. at 130-31; OCA M.B. at 142-160; OCA R.B. at 78-81)

ALJ Pell recommended that the Company's proposal to increase its residential Energy Efficiency and Conservation budget from $2.008 million to $4.5 million be denied. R.D. at 130-131. ALJ Pell reasoned as follows:

> I agree with I&E that the Company should not be permitted an increase for its annual funding for its gas EE&C programs. The record reflects that past customer participation levels have not met projections and that program expenditures have been significantly less than the budgeted amounts. Because PECO has historically underspent its EE&C budget, I also agree with I&E's position that the Company should accommodate any and all new program costs within its existing budget. Moreover, I agree with I&E that the Company's projected increase in customer participation in the

[11] See 66 Pa. C.S. § 510.

> FPFTY is speculative, unreasonable, and not supported by historic participation levels.

R.D. at 130-131. In adopting I&E's position, ALJ Pell reduced the Company's claimed EE&C expenses by $1,772,500. R.D. at 131.

The OCA excepts to ALJ Pell's R.D. to the extent that it provides the Company an increase to its existing residential EE&C budget of approximately $720,000, contrary to the ALJ's stated recommendation.[12] Moreover, the OCA had other programmatic recommendations that were not adopted in the R.D., including, (1) requiring the Company adopt a residential portfolio consistent with the recommendation of OCA witness, Geoffrey Crandall, (2) that PECO should submit Evaluation, Measurement, and Verification (EMV) studies in future base rate cases to allow for a more thorough review of the Company's existing EE&C programs, and (3) that Company should establish a mechanism, similar to its residential programs, that will track unspent funds for its commercial EE&C programs and propose a method to return those funds to commercial customers expeditiously in its next base rate proceeding. OCA R.B. at 80-81.

With respect to the Company's proposal, the ALJ reasonably concludes that, "because PECO has historically underspent its EE&C budget…the Company should accommodate any and all new program costs within its existing budget." R.D. at 130. This conclusion is based on substantial evidence demonstrating that PECO has historically underspent its existing budget by a significant margin. See OCA St. 6 at 27-28; see also I&E St. 1 at 35 (demonstrating that on average PECO has not spent approximately 43.24% of its existing budget). The evidence also demonstrated that historic participation in the Company's existing program has been low. See I&E St. 1 at 35 (demonstrating a 3-year average participation count of 3,501 customers). For this reason, the OCA agrees with the ALJ that PECO should maintain its existing budget levels for its

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[12] $2,727,500 (allowance) - $2,008,000 (existing budget) = $719,500

EE&C programs. I&E's adjustment, however, would provide the Company a small increase to its EE&C budget, which the OCA submits is not supported. Thus, the Commission should adopt the recommendation of the OCA to maintain PECO's existing EE&C budget of $2.008 million. OCA M.B. St. 6 at 28-29.

The OCA also submits that its programmatic changes should be adopted by the Commission. First, the OCA submits that the Commission should require the Company to re-allocate its existing EE&C budget among a mix of existing and new programs in accordance with the recommendation of OCA witness Crandall. See OCA M.B. at 155; see also OCA St. 6 at 30. The evidence demonstrates that the Company's proposed EE&C portfolio is not cost-effective at worst and marginally cost-effective at best.[13] That is, if PECO's proposal is approved, the Company's total resource cost (TRC) test demonstrates that the Company's EE&C program would have a TRC value of anywhere slightly below or slightly above one. See OCA St. 6-SR at 9.

Mr. Crandall's recommended portfolio, however, contains a mix of existing and new programs that would be more cost-effective and has a TRC value well above one. See OCA St. 6-SR at 9. Adopting Mr. Crandall's EE&C portfolio would include a mix of residential rebate programs for efficient furnaces and smart thermostats, among others, and the Low-Income Safe and Efficient Heating Pilot as initially proposed by the Company. See OCA M.B. at 155; see also OCA St. 6 at 30. The Low-Income S&EHP, in particular, provides critical relief to those customers

[13] The difference comes down to whether or not the Company appropriately reflected the incremental costs associated with an electric commutated motor (ECM) fan in its TRC analysis. OCA M.B. at 152, see also OCA St. 6-SR at 5-6. According to the Mid-Atlantic Technical Resource Manual, efficient furnaces do not have electric savings unless equipped with an EMC fan. OCA St. 6-SR at 5-6. PECO included electric savings related to efficient furnaces in its TRC analysis, but did not reflect the incremental costs associated with the ECM fan, which is $98 per efficient furnace. Id. The Company contends that the cost of the ECM fan is already built into the efficient furnace cost and should not be reflected twice. Tr. at 206-208. The OCA submits that the Company's argument is incorrect as it properly reflected the incremental ECM fan costs when calculating the TRC values for its commercial programs. OCA St. 6-SR at 8. Nevertheless, the OCA submits that whether or not the ECM fan costs are reflected properly, PECO's proposal is marginally cost-effective and unsupported.

that are struggling during the COVID-19 Pandemic. OCA St. 6 at 33-34. For this reason, the OCA submits that the Commission should require the Company to re-allocate its existing EE&C budget consistent with the recommendation of OCA witness Crandall. See OCA St. 6 at 30.

Secondly, regarding EMV studies, OCA witness Crandall noted that the Company did not perform EMV studies for its existing programs, making it difficult to assess the effectiveness of the Company's existing programs. OCA St. 6 at 3. The OCA recommended, and the Company agreed, that it would perform the EMV studies and submit them during its next rate case filing for evaluation. OCA St. 6 at 37-38, see also PECO St. 9-R at 9-10. For that reason, the Commission should require that the Company perform these analyses and submit them during its next rate case proceeding.

Lastly, OCA witness Crandall noted that PECO proposed to continue its current practice of reconciling unspent residential EE&C funds and returning those unspent funds to customers through its universal service fund charge (USFC). See OCA St. 6 at 35-36. However, the Company acknowledges that its existing commercial EE&C programs had no such reconciliation mechanism. Id. Accordingly, Mr. Crandall recommended that "[i]f there are unspent funds, the procedure should ensure that those funds are credited back to commercial customers or used for the benefit of its commercial customers." Id. The Company agreed to implement this reconciliation mechanism. PECO St. 9-R at 10. Accordingly, the OCA submits that ALJ Pell erred by not adopting this recommendation, and the Commission should adopt this reconciliation mechanism for the Company's commercial EE&C programs.

Exception No. 5: ALJ Pell's Cost of Capital Recommendation Is Overstated and Does Not Reflect a Balancing of Ratepayers Interests. (R.D. at 211-216; OCA M.B. at 6-7, 73-126; OCA R.B. at 44-57, 63-64)

The OCA excepts to ALJ Pell's capital structure recommendation (53.38% equity, 46.62% debt), adoption of I&E's proxy group for determination of a cost of equity, and adoption of I&E's

10.24% equity cost rate, resulting in a recommended overall cost of capital of 7.26%. R.D. at 211-216. The OCA respectfully submits that the ALJ did not reach a reasonable balance of the interests of ratepayers and shareholders, as required by "legal and constitutional standards." OCA M.B. at 19-22, 73-78; OCA R.B. at 44-47; see Columbia Gas at 42-43, 47-48. Nor did ALJ Pell fully consider the current economic climate, which includes debt available at very low cost. OCA M.B. at 73-75, 80-81; OCA R.B. at 57; see Columbia Gas at 47-48. Also, ALJ Pell's recommendation under traditional ratemaking does not give adequate weight to the impact of the COVID-19 pandemic on PECO's consumers and service area. OCA M.B. at 74-75, 82, 90-94,180; see Columbia Gas at 47-48. ALJ Pell erred in approving I&E's 10.24% equity cost rate without full consideration of affordability and reasonableness.

The Commission should find that the cost of capital recommended by ALJ Pell, inclusive of I&E's 10.24% cost of equity rate, is excessive and not suited to current conditions. OCA M.B. at 73-75, 111-126; OCA R.B. at 63-65. If the Commission proceeds under a traditional ratemaking approach, the Commission should adopt a cost of equity no higher than 8.75%, applied to a 50% equity and 50% debt capital structure, resulting in an overall return of 6.30%. See, OCA M.B. at 73-75; OCA R.B. at 44-57.

A. ALJ Pell's Acceptance of the Company's Capital Structure, Based upon Commission Policy, Is Unreasonable.

The OCA excepts to ALJ Pell's recommended adoption of the Company's capital structure of 53.38% common equity and 46.62% long-term debt. R.D. at 211-213. The R.D. ignores important record evidence and fails to consider the impact of the Company's capital structure ratios on the affordability of rates. The 50% equity and 50% debt capital structure recommended by OCA witness O'Donnell is better suited to set just and reasonable rates and should be adopted. OCA M.B. at 78-81; OCA R.B. at 44-50.

ALJ Pell was guided in his determination by the Commission's PPL 2012[14] decision and the outcome of Columbia Gas. Id. at 212. Under this approach, the ALJ concluded that the Commission defers to the *Company's discretion* to propose a capital structure. Id. So long as the Company's proposed capital structure is within than the range of a barometer group, the ALJ concluded that the Commission will refrain from exercising *its discretion* to alter this part of the Company's cost of capital claim. Id.

Relying on a policy in place of consideration of the evidence in the context of legal standards is an unsound approach to setting just and reasonable rates. PECO must meet its burden of proof with substantial evidence pursuant to Section 315(a). See, OCA M.B. at 6-8; 66 Pa.C.S. § 315(a). The Company did not refute OCA witness O'Donnell's concern that utility forecasts of common equity ratios are subjective and tend to be overstated. OCA M.B. at 80, citing OCA St. 3 at 47.

Indeed, in rebuttal, Mr. Moul updated his cost of debt rate and cost of equity analyses, to reflect information through December 2020. OCA M.B. at 81-83, 114. However, the Company's "Capitalization and Related Capital Structure Ratios" set forth in PECO Exhibit PRM-1, Schedule 5 remained "estimated" for the FTY ending June 30, 2021 and FPFTY ending June 30, 2022. OCA R.B. at 48; see, PECO St. 5-R, PECO Exh. PRM-1, Sch. 5; see also, PECO M.B. at 55.

The OCA identified specific reasons why the Company's projected capitalization ratios should not be adopted. The Company's risk profile does not justify PECO's request for a higher equity ratio. OCA M.B. at 80; OCA R.B. at 50. The decrease in Federal Funds rate signals a decrease in the cost of capital for companies like PECO. OCA M.B. at 95. The current economic

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[14] Pa. Pub. Util. Comm'n. v. PPL Elec. Utils. Corp., Docket No. R-2012-2290597, Opinion and Order (Pa. PUC Dec. 28, 2012) (PPL 2012).

climate and the COVID-19 pandemic has increased the uncertainty associated with projected future common equity ratios. OCA R.B. at 48.

Most importantly, returns on common equity, paid in the form of dividends, are not tax deductible, and so on a pre-tax basis alone, common equity financing is "about 21% or more expensive than debt financing." Id. at 78-79; OCA R.B. at 47-49. If rates are set based upon a capital structure top-heavy with equity, then "customers will be forced to cover the higher income tax burden, which result in unjust, unreasonable, and unnecessarily high rates." OCA M.B. at 79, citing OCA St. 3 at 36-37; OCA R.B. at 50. ALJ Pell correctly denied PECO's management performance claim, based in part on the potential $3.2 million cost to ratepayers. However, the R.D. does not apply the same reasoning regarding affordability in its capital structure recommendation. Compare, R.D. at 211-13, 215-16.

Per the "range of reasonableness" policy test, ALJ Pell compared PECO's debt and equity ratios to the capital structures of barometer companies from financial reports through 2019 and determined no further review was needed. R.D. at 212-13. However, these barometer company capitalization ratios have not been the basis for setting rates for the respective companies.

The Commission should find more compelling the actual capital structure ratios approved by regulatory commissions for setting just and reasonable rates, as identified by OCA witness O'Donnell of 51.75% (2019 average) and 49.91% (15 year average). OCA M.B. at 81. If financial reported capitalization ratios are considered, the Commission should recognize that PECO's 53.38% equity ratio exceeds the average common equity ratio for the OCA proxy group (50.70%) and the common equity ratio of 50.40% for PECO's parent company Exelon. Id. Based upon these numbers, the Commission should determine that the Company's projected equity ratio is excessive and is not appropriate to set just and reasonable rates in this proceeding.

The OCA submits that ALJ Pell's capital structure recommendation is flawed and incorrect. The Company has not provided substantial evidence to support the reasonableness of its projections. The Commission should set rates based upon the OCA's recommended capital structure of 50% common equity and 50% debt based upon the record. OCA M.B. at 73-75, 78-81; OCA R.B. at 44-50.

B. The ALJ Erred in Accepting the I&E Cost of Equity Approach and 10.24% Cost of Equity Result.

The OCA excepts to the R.D.'s cost of equity recommendation of 10.24%. ALJ Pell recommended adoption of the I&E proxy group, the I&E DCF analysis, the I&E CAPM as a point of comparison, and I&E's recommended 10.24% cost of equity. R.D. at 214-215. ALJ Pell cited the recent approval of this methodology in Columbia Gas. Id. at 215. The R.D. is flawed by its mechanical approach and failure to question whether the resulting cost of equity of 10.24% results in rates which are affordable, when the cost of equity is 38 basis points (10.24% - 9.86%) higher than the allowed 9.86% return on equity in Columbia Gas. The OCA notes that the COVID-19 pandemic and its impact on utility ratepayers and local economies are still a concern. OCA M.B. at 73-75. Further, the I&E cost of equity is not reflective of current market conditions. Id. at 73-75, 124. The 10.24% cost of equity recommended by ALJ Pell is excessive and should not be adopted. Under a traditional ratemaking approach, the Commission should set the cost of equity at no higher than the 8.75% rate supported by OCA witness O'Donnell based upon a larger proxy group and application of the DCF Model with a CAPM analysis as a check. Id. at 73-95.

ALJ Pell's recommended adoption of I&E's proxy group, which is comprised of just seven companies, contributes to the R.D.'s recommendation of an excessive cost of equity. I&E witness Keller evaluated a small proxy group comprised of seven companies. OCA M.B. at 123-124. OCA witness O'Donnell acknowledged I&E's application of screening criteria but considered the

process subjective and the resulting seven company group too small and prone to data integrity issues. Id. at 124.

In contrast, OCA witness O'Donnell evaluated a larger group of companies than either the Company or I&E, providing more data points and a more robust analysis to support the OCA cost of equity recommendation of 8.75% for PECO. OCA M.B. at 73-75, 82-95, 180-182; OCA R.B. at 51-52. The different proxy groups evaluated by the Company and I&E contributed to their overstated cost of equity estimates of 10.70% and 10.24%, respectively. OCA M.B. at 123-126. The OCA cost of equity recommendation for PECO of 8.75% is soundly based upon Mr. O'Donnell's methodical evaluation of financial data and forecasts for all ten companies included in the *Value Line* gas group. OCA M.B. at 73-75, 82-95; OCA R.B. at 51-52.

I&E's 10.24% recommended cost of equity is also overstated due to I&E witness Keller's application of the DCF. OCA M.B. at 123-127; OCA R.B. at 63-64. Mr. O'Donnell disagreed in particular with I&E's singular reliance on forecasted earnings growth rates and exclusion of consideration of historical growth rates. OCA M.B. at 125. As Mr. O'Donnell explained, forecasted earnings growth rates may tend to be overly optimistic as earnings growth is difficult to forecast. Id. The OCA approach to identification of an appropriate growth rate included examination of more types of growth rates, historic and forecasted, to temper this optimistic bias in earnings per share forecasted growth rates. Id. I&E's growth rate approach lacks this balance. Id.

The I&E CAPM analysis is flawed and so the 9.08% cost of equity result does not provide a meaningful check on the reasonableness of a proper DCF analysis. OCA M.B. at 125-126. Mr. O'Donnell identified differences as to how he and I&E witness Keller identified a risk-free rate (OCA: 1.61%, I&E: 1.23%) and beta (OCA: 89, I&E: 85). Id. Mr. O'Donnell faulted I&E witness

Keller's use of an overall market return of 10.46% to identify 9.23% as the I&E equity premium, a sharp contrast to the OCA's 4.25% to 6.25% equity premium range. Id. at 126. Mr. O'Donnell disputed the reasonableness of I&E's 10.46% overall market return as unrealistic "given the current economic circumstance, or even when examining market trends prior to the impacts felt by the COVID-19 pandemic." Id. I&E's 10.46% overall market return is also in excess of the forecasted market earnings of various market experts, as identified by OCA witness O'Donnell. Id.

ALJ Pell erred by recommending adoption of the I&E proxy group, the I&E cost of equity analyses, and I&E's 10.24% cost of equity result without evaluating the reasonableness of each decision and input. Neither I&E's approach nor the R.D. give consideration to the interests of PECO ratepayers and whether the mechanical results of I&E's approach result in affordable rates.

The Commission should adopt a cost of equity rate that is no higher than 8.75%, for the reasons set forth in the OCA briefs and testimony.

Exception No. 6: ALJ Pell Erred in his Decision to Deny the OCA's Proposed COVID-19 Emergency Relief Program. (R.D. at 264-266; OCA M.B. at 127-132; OCA R.B. at 65-70)

In his R.D., ALJ Pell recommends that the OCA's proposed COVID Emergency Relief Program (COVID-19 ERP) be denied. R.D. at 264-266. The ALJ's R.D. states:

> I agree with the Company that the consumer protection proposals of the OCA and CAUSE-PA are not necessary at this time. The record shows that the Company has been proactive in trying to help its customers throughout the duration of this pandemic. Moreover, when the Commission recently lifted the termination moratorium, it recognized that there have been improvements in Pennsylvania…
>
> Although the Commission lifted the moratorium on service terminations, the Commission implemented several modifications/protections to existing collection policies that shall apply to all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction until December 31, 2021.

R.D. at 265-266. The ALJ's decision also relies upon the determinations made in the Commission's Moratorium Order to conclude that the OCA's recommended COVID-19 ERP is not necessary at this time.[15]

The OCA submits that PECO's proffered consumer protections are limited and not sufficient to address the impact of the COVID-19 pandemic on low-wage customers. The OCA submits that the ALJ's determination ignores the fact PECO's current COVID-19 programs are primarily designed to assist *low-income* customers that qualify for the universal service programs. See, OCA R.B. at 67, 69. While assistance to low-income customers is important, the ERP is designed to extend *beyond* low-income customers who qualify for the existing universal service programs. The ERP is designed to address customers who are not economically self-sufficient and have been hard-hit by the COVID-19 pandemic, but whose income exceeds 150% of the FPL. The economic crisis is not limited to low-income customers, but extends to many moderate income households who have been greatly affected.

The OCA submits that the ALJ's R.D. does not provide any financial relief for customers that are not otherwise eligible for PECO's low-income programs. The ERP would provide a one-time credit, in an amount equal to 25% of the balance, or a maximum of $400, to eligible customers to help retire large arrearages and prevent termination. OCA M.B. at 128; OCA St. 5 at Sch. RDC-1, ¶ 2(b). While the payment arrangements provided for in the Moratorium Order are important, the Moratorium Order payment arrangements alone are not sufficient assistance.[16] The OCA's ERP proposal combined financial relief with a payment arrangement. The financial relief and the

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[15] Public Utility Service Termination Moratorium Proclamation of Disaster Emergency -COVID-19, Emergency Order, Docket No. M-2020-301922, Order (Pa. PUC Mar. 18, 2021) (Moratorium Order).

[16] The OCA notes that the Moratorium Order modifies the Commission's regulations for payment arrangements until December 31, 2021. Moratorium Order at 2; R.D. a 265.

payment arrangement operate together to address the needs of those customers that would otherwise fall in the gap between the customers that are eligible for low-income customer assistance programs and can have their entire arrears forgiven by participating in CAP, and the customers that can be economically self-sufficient. As Mr. Colton testified:

> It is not uncommon to consider the difference between households who are considered "poor" as per the PUC definition, and households who are insufficiently poor to be income-qualified for PECO Gas universal service programs, but who have insufficient resources to meet their day-to-day obligations (e.g., utility bill payments) during the pandemic.

OCA St. 5 at 28. The ERP proposal would provide much-needed economic relief to customers that have demonstrated an impact from the COVID-19 pandemic and are otherwise having challenges paying their arrearages.

The OCA submits that the Moratorium Order does not bar the utility or the Commission from providing further relief for customers in a base rate proceeding. In fact, Chairman Gladys Brown Dutrieuille and Vice Chairman David W. Sweet have previously expressed support for similar rate relief programs in a base rate proceeding. In particular, in the Columbia base rate proceeding, the Joint Statement of Gladys Brown Dutrieuille and Vice Chairman David W. Sweet expressed disappointment that Columbia did not propose an emergency rate relief program. The Joint Statement provided:

> While the Commission's action today substantially reduces the impact of Columbia's rate increase, we wish to express our disappointment that Columbia failed to propose any temporary pandemic relief within this proceeding. Such programs can be aimed to provide measured assistance to customers adversely affected by COVID-19…We encourage Columbia, and other utilities, to continually consider these types of offerings in the near future.[17]

[17] Pa. PUC v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2020-3018835, Joint Statement of Chairman Gladys Brown Dutrieuille and David W. Sweet at 3 (Feb. 18, 2021) (Joint Statement)

The OCA submits that the ALJ erred in his determination to deny the OCA's proposed ERP. PECO's current and proposed COVID-19 assistance does not recognize the need for assistance for low-wage and near-poor customers. The ERP is designed to extend beyond low-income customers that qualify for PECO's universal service programs. The OCA's proposed COVID-19 ERP would assist those near-poor, low-wage, low-income non-CAP residential customers that are struggling due to the public health and economic crisis. Such a program is crucial for customers that are struggling to make ends meet. The proposal provides important and needed relief for near-poor and low-wage customers and should be approved.

Exception No. 7: ALJ Pell Erred In His Decision To Adopt the Company's Cost of Service Study That Utilized The Average And Excess Method To Allocate Distribution Mains. (R.D. at 404-405; OCA M.B. at 162-175; OCA R.B. at 81-90)

ALJ Pell erred in his recommendation to adopt the Average and Excess (A&E) Cost of Service Study (COSS) offered by the Company in this proceeding. R.D. at 404. The Recommended Decision provided:

> I recommend that the Commission use the Average and Excess (A&E) COSS, as offered by the Company, in this base rate proceeding. I agree with the Company that this methodology is reasonable because it aligns with industry standards, Commission precedent, and cost causation.

R.D. at 404.

In his R.D., ALJ Pell further stated that PAIEUG's reasoning regarding the use of the system load factor to weight excess demand was also consistent with cost causation for PECO. R.D. at 404. In other words, ALJ Pell reasoned that heavily weighting the excess demand component recognizes that the each class's peak demand is more important than the average demand of each class. R.D. at 404-05. ALJ Pell than concluded as follows:

> While I recognize that the Commission recently noted in *Columbia Gas* that the Commission has consistently used the Peak and

> Average methodology (supported by the OCA in this proceeding) for NGDCs, the Commission did not rule out its use in future base rate proceedings:
>
>> Based on our review of the Orders proffered by the Parties, regarding the OSBA's position, we find that the Average & Excess is of no significance here in that none of the Parties have submitted this type of methodology for our consideration.
>
> Considering that the Commission has approved the use of the A&E methodology in the past as well as the language above, I cannot conclude that the A&E methodology is unacceptable.

R.D. at 405.

The OCA submits that ALJ Pell erred in his conclusion to recommend adoption of the Company's A&E COSS. The Company's COSS is not consistent with cost causation, allocates distribution mains investment almost entirely based on 'excess' demand, unfairly burdens the residential and small commercial classes requiring them to subsidize the higher load factor customer classes, and is inconsistent with longstanding Commission precedent. Rather, the Commission should adopt the COSS performed by OCA's witness, Glenn Watkins, which relies on the Peak and Average (P&A) Method to allocate distribution mains investment. This better aligns with cost-causation principles, equally weights average and peak demand, and reflects the realities of how PECO's system is used.

The purpose of a cost of service study (COSS) is to appropriately allocate the common costs of a natural gas distribution company (NGDC) across customer classes in a manner that reflects differences in usage among the customer classes, cost causation, and the demands placed on the system during peak usage. OCA St. 4 at 4-5. Moreover, as the United States Supreme Court stated:

> But where, as here, several classes of services have a common use of the same property, difficulties of separation are obvious.

> Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.[18]

Accordingly, certain COSSs can produce significantly different results than other approaches. Thus, the Commission should exercise caution and carefully ensure that it selects a COSS that best represents how the system is used and the demands placed upon it. See OCA St. 4 at 4-5.[19]

At issue in this proceeding are two fundamentally different ways to allocate distribution mains investment that can produce different results: (1) the Company's A&E Method, and (2) the OCA's P&A Method. The Company's A&E Method utilizes three broad concepts:

- Average Demand = a class' total yearly throughput divided by 365. PECO St. 6 at 13; see also PECO St. 6, Exh. JD-6, Pg. 5, Column C.
- System Load Factor = the ratio of total average use to the coincident peak. In this case 25.2%. See PECO St. 6, Exh. JD-6, Pg. 5, Lines 11 and 21.
- Excess Demand = each class's non-coincident peak minus that class's average usage. See PECO St. 6, Exh. JD-6, Pg. 5, Column E.

The Company's A&E Method uses a demand allocator that weights average demand by the system load factor, *i.e.* 25.2 percent, and weights a class' excess demand by the concomitant value, i.e. 74.8%. According to the Company's A&E Method, the residential class is assigned 58.3% of distribution mains investment. See PECO St. 6, Exh. JD-6, Pg. 5.[20] Conversely, the firm transportation class, for example, is assigned 7.3 percent of distribution mains investment. Id.

There are three principle issues with the A&E Method used by the Company. First, excess demand is not the same as peak demand. As stated by OCA witness Watkins:

> Remembering that the "excess" portion is defined as each class's maximum NCP day demand minus its average day demand, classes with low load

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[18] Colorado Interstate Gas Co. v. Federal Power Comm'n, 324 U.S. 581, 589 (1945).

[19] See also Pa. Pub. Util. Comm'n v. Columbia Gas of Pa., Docket No. R-2020-3018835, Opinion and Order at 215, 217-219 (Pa. PUC Feb. 19, 2021).

[20] The OCA also notes that OSBA's witness, Robert Knecht, raised material concerns with how Ms. Ding estimated each class' peak demand. See OSBA St. 1 at 25-28. Accordingly, in response to these concerns, Mr. Knecht presented adjusted design day demand load factors for each customer class correcting his concerns, which was adopted by OCA witness Watkins in his COSS. See OCA St. 4-R at 8-10.

> factors (e.g., Residential and Small Commercial) tend to have high levels of this so-called "excess" demand and are assigned the vast majority of the "excess" portion. Conversely, classes with high load factors (e.g., Industrial), tend to have low levels of this so-called "excess" demand and are assigned little, to no, excess demand.

OCA St. 4 at 8. In other words, the Company is not measuring each class' contribution to peak demand, but rather is measuring a class' usage pattern relative to its average usage. This is a fundamentally different analysis than measuring each class' contribution to average and peak demands. For that reason, classes with relatively stable usage patterns throughout the year, *i.e.* high load factor customer classes, are assigned very little 'excess' demand. <u>See</u> <u>e.g.</u> OCA St. 4 at 8-9. Accordingly, using 'excess' demand to allocate distribution mains investment burdens the residential class because it has relatively low usage throughout the year and only peaks a few days out of the year.

As OCA witness Watkins testified, allocating distribution mains investment in this way is at odds with how natural gas distribution companies (NGDCs) operate their systems:

> For public utility industries that are able to produce and store their product within their distribution system such as the water utility industry, the A&E approach has intuitive appeal particularly as it relates to water production and storage facilities. This is because even though a water utility may design its water treatment facilities to meet its maximum peak <u>day</u> demands, this capacity may not be large enough to meet maximum <u>diurnal</u> (hourly) demands. Because a water utility can produce and treat water during off-peak periods and then store water, it can then have enough resources to meet these peak hourly loads. The A&E method (known as the Base Extra Capacity method in the water industry) recognizes class load diversity in that all classes do not peak at the same time and also recognizes that water can be stored such that classes with higher load factors (more consistent usage throughout the year) are not assigned the same level of costs as classes with less consistent usage (low load factors) and demand profiles.
>
> Such is not the case in the NGDC industry in that, for all intents and purposes, once gas is injected into the distribution system at the city gate, it cannot be stored and is consumed as gas flows through the distribution system. In other words, diversified class non-coincident demands have absolutely nothing to do with how natural gas distribution Mains are designed, operated, or how these costs are incurred.

> NGDC's distribution Mains are not designed or operated based on the sum of maximum loads over different days. In short, and at least with respect to NGDCs, the A&E method results in a distinct bias against low load factor customers (because excess demands are greater for low load factor customers than for high load factor customers) in favor of high load factor customers and is in no way correlated or related to how distribution Mains are operated.

OCA St. 4 at 10.

The second principle issue with the Company's A&E Method is that weighting this 'excess' demand by 74.8 percent is tantamount to allocating distribution mains investment entirely on the basis of peak demand. As Mr. Watkins stated in his testimony:

> As a matter of arithmetic, we can calculate the actual weights given to average demand (annual use) and peak demand. The following table provides the Company's weightings between average and peak demand:

TABLE 1-R

		Percent Weighting	
Party	Witness	Average	Peak
PECO	Ding	17.4%	82.6%
OSBA	Knecht	33.4%	66.6%
OCA	Watkins	50.0%	50.0%

OCA St. 4-R at 4 (footnotes omitted). As seen in the table above, when converting Ms. Ding's analysis from an A&E Method to a P&A Method, her analysis is akin to allocating distribution mains by 82.6 percent based on each class' contribution to peak demand. Such an adverse weighting is at odds with previous Commission precedent and should not be accepted by this Commission.[21]

[21] Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 at *123-24 (Pa. PUC Sept. 28, 2007) (rejecting PGW's COSS which allocated distribution mains on the basis of number of customers and peak demand and stating that a COSS should reflect both **annual and peak demands**) (PGW 2007).

The last major issue with Ms. Ding's A&E COSS is that it simply does not align with how PECO designs its system, nor does it appropriately reflect how PECO's system is used.[22] As Mr. Watkins testified, PECO evaluates mains investment not just based on peak throughput, but also on the annual margin revenues to be generated from that investment:

> When PECO evaluates a main extension proposal or project, it considers the maximum load that will be placed on the extension in its determination of the required size of Main as well as the annual margin revenue that will be generated from the usage of natural gas along the extension.

OCA St. 4 at 15. Moreover, Mr. Watkins also testified that there is no linear relationship between a main's peak capacity and the cost of that larger pipe to justify weighting 'excess' demand to such an extent:

> Because the allocation of Mains only concerns the assignment of the pipes costs, there is not a clear relationship between a main segment's capacity (peak load ability) and the cost of that pipe. The relevance of this is that an allocation method that only considers peak load by definition assumes there is a direct and perfectly linear relationship between load (capacity) and the cost of Mains. This assumption is clearly not accurate.

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[22] It should also be noted that Ms. Ding uses a modified A&E approach because she does not assign any excess demand to the interruptible class. OCA St. 4 at 18. As Mr. Watkins testified, it would be inappropriate to not assign any excess demand to the Interruptible classes when relying on the non-coincident peak (NCP):

> Conceptually, it is necessary to consider the NCP demands of Interruptible customers under the A&E approach since this methodology is based on the premise that class responsibility should be based upon the amount of each class's maximum demand regardless of when it occurs relative to its average use throughout the year. While it is true that Interruptible customers may be interrupted during system peak days ([coincident peak (CP)]), this is irrelevant under the A&E approach as excess demands are based on class NCP demands and not CP demands.

OCA St. 4 at 18-19.

Thus, the Commission has repeatedly stated that the allocation of distribution mains investment should reflect how that system is used 365 days a year, not just for one day out of the year.[23] See OCA St. 4-R at 15.

OCA witness Watkins' P&A Method, on the other hand aligns with the long-standing Commission precedent. As the Commission acknowledged in the recent Columbia Gas Order:

> Based on our review of the record, and as noted by the ALJ, we have consistently used the Peak & Average methodology for the allocation costs for NGDCs.

Columbia Gas at 215. Accordingly, Mr. Watkins COSS weights each class's contribution to average and peak demand equally providing a fair basis to allocate distribution mains investment. For example, PECO's residential class contributes 49.84 percent of average day demand and 62.62 percent of peak demand and is then assigned 56.23 percent of distribution mains investment.[24] OCA St. 4-R, Sch. GAW-2R, Pg. 21. Similarly, the firm transportation class contributes 10.86 percent of average day demand and 7.44 percent of peak demand and is then assigned 9.15 percent

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[23] As the Commission stated:

> We conclude that we should retain our historic practice of allocating total distribution main costs based on each class' contribution to peak and annual requirements… NFGD's current system embodies numerous past and on-going augmentations to meet the continually changing requirements of its customers, and it is simply improper to look at the distribution system at a particular point in time

NFGD 1994, 1994 Pa. PUC LEXIS 134 at *318-21 (rejecting use of the NFGD's use of a method similar to the minimum system or zero-intercept method). The Commission also adopted the underlying Recommended Decision in Pa. Pub. Util. Comm'n v. Peoples Natural Gas Co. to utilize OCA's P&A Method, stating:

> The ALJs recognized that while the distribution system may have been designed to carry peak loads, it serves an equally useful purpose by moving volumes to customers throughout the year, not just on a couple of "peak days" per year. The ALJs, therefore, recommended that the peak and average method be given primary reliance in testing the appropriateness of revenue allocations.

Docket No. R-880961, *et al.*, 1989 Pa. PUC LEXIS 36 at *81 (Pa. PUC Jan. 27, 1989).

[24] (49.84% + 62.62%)/2 = 56.23%

of distribution mains investment.[25] Id. As stated above, Mr. Watkins' P&A Method is consistent with long-standing Commission precedent, equally weights each class' contribution to average and peak demand and reflects appropriate cost causation principles.

Moreover, while two Commission decisions in 2007 adopted an A&E Method, they should not be followed here. In Pa. Pub. Util. Comm'n v. PPL Gas Util. Corp., no P&A Method was presented to the Commission.[26] Rather, the Commission could only consider PPL's A&E Method.[27] See also OCA St. 4-R at 5.[28] Moreover, in Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, the Commission had to consider three COSSs: (1) a customer/demand COSS from the Company, (2) an A&E COSS that weighted both average and excess demand by 50 percent from I&E, and (3) a P&A COSS that weighted average demand by 80 percent and peak demand by 20 percent.[29] Finding that the "the allocation of distribution mains investment costs should be done using both *annual* and *peak* demands," the Commission selected I&E's A&E Method as the most reasonable option given the equal weighting of average and 'excess' demand.

The OCA submits that these two decisions should not be a means to overturn long-standing precedent of the Commission relying on the P&A Method. As the OCA has demonstrated in its Main Brief and Reply Brief, Mr. Watkins' COSS represents the most reasonable allocation method

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25 (10.86% + 7.44%)/2 = 9.15%

26 Pa. Pub. Util. Comm'n v. PPL Gas Util. Corp., Docket No. R-00061398, 2006 Pa. PUC LEXIS 107 at *176-78 (Pa. PUC Feb. 8, 2007) (PPL Gas 2007)

27 Id.

28 Mr. Watkins explained that he participated in PPL Gas 2007 and that he accepted Mr. Herbert's allocation of mains because his modified A&E approach was not materially different than the results that would be obtained under the P&A method utilizing a 50%/50% weighting between peak and average demands.

29 Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, Docket No. R-00061931, 2007 Pa. PUC LEXIS 45 (Pa. PUC Sept. 28, 2007) (PGW 2007).

of distribution mains investment that reflects how PECO's system is used 365 days a year. For these reasons, the Commission should adopt the COSS performed by Mr. Watkins.

Exception No. 8: ALJ Pell Erred In His Decision To Adopt I&E's Revenue Allocation Because It Relies On PECO's Average And Excess Cost Of Service Study. (R.D. at 404-405; OCA M.B. at 162-175; OCA R.B. at 81-90)

In the R.D., ALJ Pell adopted the revenue allocation of I&E, which proposes, *inter alia*, to allocate approximately $62,074,000 to the residential customers class. R.D. at 406. Notably, the R.D. did not adopt the Company's proposal, which would have decreased rates for Rates GC (General Commercial), TCS (Temperature Control Services), and TS-I (Transportation-Interruptible), among others. ALJ Pell stated as follows:

> I also agree with I&E and the OCA regarding the fairness of certain rate classes receiving rate increases, some excessively so, while other rate classes are receiving ate [sic] decreases. As such, I cannot recommend adoption of the Company's revenue allocation.

R.D. at 406. The OCA largely agrees with the findings of ALJ Pell, but disagrees to the extent he adopts I&E's position on revenue allocation because it relies on the Company's erroneous COSS. For the reasons stated above, the Company's COSS should not be used as a guide to determine cost allocation in this proceeding.

Rather, the OCA submits that the Commission should adopt the proposed revenue allocation of the OCA. Mr. Watkins revised revenue allocation was set forth in his Rebuttal Testimony and is as follows:

TABLE 3-R

OCA Revised "Business As Usual" Class Revenue Allocation

Rate Schedule	Current Distribution Revenue	Total Increase Before GPC & MFC Reduction[30]	GPC Reduction	MFC Reduction	Net Increase Amount	Net Increase Percent
GR	$233,528,109	$61,466,303	($693,000)	($800,000)	$59,973,303	25.68%
GC	$100,578,711	$0	($370,000)	($66,000)	($436,000)	-0.43%
OL	$423	$0			$0	0.00%
L	$75,475	$0			$0	0.00%
MV-F	$474,506	$135,266	($7,000)		$128,266	27.03%
MV-I	$5,022	$0			$0	0.00%
IS	$34,964	$9,967			$9,967	28.51%
TCS	$689,833	$0			$0	0.00%
TS-F	$16,719,224	$4,400,622			$4,400,622	26.32%
TS-I	$9,508,783	$2,710,632			$2,710,632	28.51%
Total Rate Revenue	$361,615,052	$68,722,789	($1,070,000)	($866,000)	$66,786,789	18.47%
Other Revenue	$1,528,291	$88,491			$88,491	5.79%
Total Company	$363,143,343	$ 68,811,280	($1,070,000)	($866,000)	$66,875,280	18.42%

OCA St. 4-R at 12.

The OCA's proposed revenue allocation is reasonable in that it is based on the COSS performed by Glenn Watkins, which utilizes the P&A Method to allocate distribution mains investment. Moreover, the OCA's proposed allocation keeps those rate classes that are currently paying above their cost to serve at existing levels, which is in accord with ALJ Pell's reasoning in the R.D. See R.D. at 406.[31] Lastly, the OCA's recommended revenue allocation is eminently fair

[30] Mr. Watkin's allocation of the revenue increase is before recognition of the Company's proposed reduction to the Gas Procurement Charge (GPC) and Merchant Function Charge (MFC). See PECO Exh. JAB-2, Pg. 44-45. These charges were previously unbundled by PECO and are now recovered through purchased gas costs. See Petition of PECO Energy Company – Gas Division – Pursuant to 66 Pa. C.S. 1308(a) For Approval of its Proposed Tariff Revisions, Docket No. P-2012-2328614, Order (Pa. PUC Apr. 18, 2013). Accordingly, while it may appear that there are certain decreases to customer classes, Mr. Watkins' revenue allocation merely preserves the impacts of the GPC and MFC flow through proposed by the Company.

[31] As Mr. Watkins testified, PECO's position to provide a rate decrease to certain classes in order to bring all classes to the system average rate of return is not reasonable at this time:

> Given the state of our economy, levels of unemployment, and ability of customers to pay their natural gas bills, a decrease to General Service customers' rates with corresponding increases to Residential customers' rates would not result in fair and reasonable rates for all ratepayers. As a result, and to the extent the

as it still assigns a large majority of the increase to the residential class, or approximately 89.3%, recognizing that the residential class is currently below the system average rate of return.[32] OCA St. 4 at 26.

The OCA does agree with ALJ Pell's recommendation to order a proportional scale back of rates if less than the full increase is granted. R.D. at 406. The OCA submits, however, that the OCA's recommended revenue allocation should be the basis for proportionally scaling back a smaller than requested rate increase. See OCA St. 4 at 29. Moreover, any proportional scale back should not be applied to rates that are not receiving an increase under the OCA's proposed revenue allocation, including Rates GC, OL (Outdoor Lighting), MV-I and TCS (before recognition of Gas Procurement Charges and Merchant Function Charges). Id.

Exception No. 9: ALJ Pell Erred in his Decision to Deny the Proposed Universal Service Cost Allocation to all Ratepayers. (R.D. at 407-408; OCA M.B. at 181-206; OCA R.B. at 95-113).

In his R.D., ALJ Pell recommends that the OCA's proposal to allocate the universal service costs to all ratepayers be denied. R.D. at 407-408. The R.D. states:

> The COVID-19 Pandemic has had harsh economic impacts on commercial and industrial as well as small business customers. When these economic conditions will improve is in doubt. Since these customers do not derive any direct benefit from the USP programs, I don't believe it is appropriate to change the manner in which PECO's USP costs are allocated. Accordingly, I recommend that the Commission deny the request to allocate PECO's USP costs to all customer classes.

R.D. at 408.

Contrary to the evidence presented by OCA witness Colton, the ALJ erroneously concludes that commercial and industrial customers do not benefit from the universal service programs.- See,

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> Commission authorizes some overall increase in revenues as a result of this case, I recommend that Rate GC's rates remain at their current levels.

OCA St. 4 at 25-26.

[32] $61,466,303/68,811,280 = 89.3%

R.D. at 101-102; OCA M.B. at 198-203; OCA R.B. at 101-102; see also, OCA St. 5 at 84-90. The OCA submits that the ALJ's decision ignores the public good benefit of the programs. OCA witness Colton specifically identified the many benefits of the universal service programs to commercial and industrial customers. Some of the benefits identified by Mr. Colton include, *inter alia*, addressing utility payment problems; reducing housing abandonment; improving educational attainment; improving adverse health outcomes for payment-troubled customers; reducing the need for local government services such as public health services and public safety costs; increasing available income to be used in the retail economy that drives additional job creation, income generation, and economic activity; helping to off-set low wages paid by businesses; increasing employee productivity; decreasing employee turnover; and decreasing time missed from work due to family care responsibilities and illness. OCA M.B. at 184-198; OCA R.B. at 101-102; OCA St. 5 at 58-83.

In concluding that there are no direct benefits to commercial and industrial customers, the ALJ's decision specifically overlooks the testimony of OCA witness Colton. Mr. Colton testified:

> The argument that bearing their share of universal service costs "makes the business environment less sustainable" is contrary to all of the ways in which industrial and academic researchers have found to the contrary. Ms. LaConte's argument that transportation customers, including hospitals, "do not benefit" from the universal service programs is simply a restatement of her argument that "PECO's other customer classes do not receive the benefits of USFC. . ." (PAIEUG St. 1-R, at 12).
>
> In fact, Ms. LaConte's choice to use hospitals as an illustration of a type of customer who would be harmed by paying their share of PECO Gas' universal service costs is particularly misplaced. Hospitals have a disproportionate share of low wage workers who would be harmed by the lack of PECO Gas universal service programs. Moreover, hospitals have a disproportionately high share of total costs that are employee-related, the very costs that would be reduced by addressing the financial stress of its low-wage workers. Moreover, as discussed in my Direct Testimony, the provision of

> universal service programs helps ***improve*** the health outcomes of customers served through such programs. To the extent that hospitals may struggle with capacity shortages attributable to COVID-19, offering universal service programs to financially-stressed employees (just as offering other employee-based wellness programs) would benefit hospitals, not burden them, by helping to address the health problems contributing to their capacity issues.

OCA St. 5-SR at 28-29.

In this proceeding, OCA witness Colton presented new evidence that Mr. Colton had not previously raised in prior base rate proceedings. The new evidence specifically examined the impact of the allocation of universal service costs on businesses during the COVID-19 pandemic in response to PAIEUG witness LaConte. Mr. Colton found that the allocation of universal service costs in other states has not impacted the economic circumstances of businesses, even during COVID-19. In particular, OCA witness Colton compared the impact of the COVID-19 recession on key economic indicators in Ohio, a state that allocates universal service costs to all customers, and Pennsylvania. OCA St. 5-SR at 31-32. Mr. Colton testified about the Brookings Institute study that found no impact on the key economic indicators:

> Work from the Brookings Institute reinforces the conclusions from the above data. If Ms. LaConte were correct that the allocation of universal service costs to all customer classes is the factor that makes the difference in the economic recovery after COVID-19, we would be able to see that difference between Pennsylvania and Ohio, Pennsylvania's next-door-neighbor. Ohio allocates its universal service costs amongst all customer classes, while Pennsylvania does not. The Brookings Institute has compared the impact of the COVID-19 recession on key economic indicators in 53 very large metropolitan areas (with population over 1 million). The data for Ohio and Pennsylvania are set forth below. Brookings color-coded the "performance" of each metropolitan area. Red-shaded cells show weaker performance, while green-shaded cells show stronger performance. Grey-shading is in the middle.

Impact of the COVID-19 recession on key economic indicators (green = stronger, red=weaker, grey=middle)					
Metro area	Jobs	Unemployment Rate	Job Postings	Small Biz Hours	Small Biz Open
Cincinnati	-5.0%	-1.5%	+10.3%	-28.7%	-20.1%
Cleveland-Elyria	-8.2%	+2.5%	+0.9%	-24.3%	-23.5%
Columbus	-6.9%	+1.5%	+11.2%	-18.3%	-21.6%
Philadelphia-Camden-Wilmington	-7.3%	+3.3%	+24.0%	-38.9%	-32.5%
Pittsburgh	-7.5%	+1.8%	+32.0%	-38.4%	-30.3%

> As can be seen, Ms. LaConte's assertions are not borne out by the data. As can be seen from the above data, regarding jobs, unemployment rate, small business hours, and small business openings, the allocation of utility universal service costs is not the factor that drives economic metrics in a state or metropolitan area. The PUC's previous rejection of the argument that allocating universal service costs over all customer classes will harm Pennsylvania's business environment is supported by the data.

OCA St. 5-SR at 31-32 (footnote omitted).

The OCA submits that the ALJ's determination also ignores the economic impacts of the pandemic on low-wage and near-poor customers. In his testimony, OCA witness Colton acknowledged the challenges faced by businesses during the COVID-19 pandemic, but testified that the challenges experienced by businesses should not override the impact of COVID-19 on residential customers. Mr. Colton testified:

> There is no question that businesses in Pennsylvania are being adversely affected by the COVID-19 pandemic. Many businesses have been ordered to close, or to substantially curtail, their operations during this time of public health emergency. However, residential customers are also impacted by the economic difficulties but still are responsible for universal service costs. Many of the residential customers paying the costs of the program are also low-income or near poverty and experiencing a similar economic impact

> that businesses are experiencing. The economic difficulties faced by business during this health emergency is not reason, unto itself, to decline to allocate universal service costs amongst all customer classes for all the reasons I have outlined above.

OCA St. 5 at 83.

For the reasons set forth in the OCA's Main Brief and Reply Brief, as well as in these Exceptions, the OCA submits that universal service costs should be allocated to all customer classes. OCA M.B. at 181-206; OCA R.B. at 95-113. The OCA submits that the Commission should adopt the OCA and CAUSE-PA's proposal to allocate the costs of universal service programs to all customers.

Exception No. 10: ALJ Pell Erred In His Decision To Rely Solely On A Proportional Scale Back To Reduce PECO's Proposed Residential Customer Charge Increase. (R.D. at 408-409; OCA M.B. at 207-16; OCA R.B. at 113-118)

In his R.D., ALJ Pell stated that the Company's proposed 36% increase in the residential customer charge, from $11.75 to $16.00, violated principles of gradualism and is unavoidable. R.D. at 409. ALJ Pell stated in relevant part:

> I agree that a 36% increase to the customer charge violates the principle of gradualism. This monthly charge cannot be avoided or reduced. No matter what PECO customers do to try to bring their residential gas bills down, they must pay this customer charge or risk losing their gas service.

R.D. at 409. ALJ Pell, however, declined to adopt the OCA's recommendation to limit PECO's customer charge increase to $13.00 if PECO's full increase were to be granted. Rather, the R.D. concludes that a proportional scale back, if less than PECO's full increase is granted, should be applied to the residential customer charge and will address the gradualism concern. Id.

The OCA excepts to the decision of ALJ Pell to the extent it relies on a proportional scale back to address the overstatement of the customer charge. The OCA proffered substantial

testimony demonstrating the impacts any increase on the residential customer charge can have upon low-income customers. As stated by OCA witness Colton:

> What PECO Gas is doing is increasing the unavoidable fixed monthly customer charge, resulting in a disproportionately higher percentage bill increase, to those customers who can least afford to make their bill payments in the first instance. Not only does this place the continuation of service to these low-income customers in jeopardy, but this also causes PECO Gas to incur credit and collection costs that will, in turn, be passed on to all ratepayers in future rates.

OCA St. 5 at 37. Moreover, as Mr. Watkins' testified a 36% increase to the residential customer charge violates principles of gradualism and reduces a customer's incentive to conserve energy and control the cost of their bill. See OCA St. 4 at 30-31. This is particularly important as customers are currently struggling to make ends meet during the COVID-19 Pandemic. See OCA St. 1, *passim*.

Accordingly, the OCA recommends that the Commission limit any customer charge increase to $13.00, under the full rate increase request, and use the $13.00 amount as the starting point for any proportional scale back if less than the Company's full rate increase request is approved.

III. CONCLUSION

For the reasons set forth above, the OCA respectfully requests that the Recommended Decision be approved, except as set forth in these Exceptions.

Respectfully submitted,

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