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May 3, 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 Reply 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
*307956

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 Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 3rd day of May 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	:	

REPLY EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: May 3, 2021

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I. INTRODUCTION

On April 12, 2021, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Deputy Chief Administrative Law Judge Christopher P. Pell (ALJ Pell). In the R.D., ALJ Pell utilized the traditional ratemaking methodologies to evaluate the filing of PECO Energy Company – Gas Division (PECO or the Company). ALJ Pell held that PECO failed to prove by a preponderance of the evidence the justness and reasonableness of every element of its requested rate increase. Ultimately, ALJ Pell recommended that PECO should receive an increase in annual distribution revenues of no more than $23,892,217, or approximately 4% over present rate revenues. R.D. at 1. Exceptions to the R.D. were filed by PECO, the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) on April 26, 2021. The OCA submits these Reply Exceptions to address the Exceptions of PECO and to some extent, CAUSE-PA. The OCA has provided extensive discussions of the issues in its Main Brief and Reply Brief in this proceeding.

The OCA submits that ALJ Pell should have denied PECO's requested increase in its entirety for the reasons set forth in the OCA's Exceptions. Alternatively, if the Public Utility Commission (Commission) were to grant PECO an increase, ALJ Pell's R.D. should be approved, except as set forth in the OCA's Exceptions. The OCA submits, however, that ALJ Pell reached the right result on the other issues raised by PECO in its Exceptions.

II. REPLY EXCEPTIONS

Reply to PECO Exception No. 2: ALJ Pell Did Not Err in Removing from Rate Base the Company's Pension Asset. (R.D. at 48-49; OCA M.B. at 37-42; OCA R.B. at 15-17; PECO Exc. at 8-16)

In its Exceptions, PECO argues that ALJ Pell erred by rejecting the Company's request for rate base recognition of its 'Pension Asset.' See PECO Exc. at 8-16. PECO argues, *inter alia*, that the Pension Asset represents cumulative differences between the (1) the amount of pension costs the Commission's ratemaking methodology assumes should be included in PECO's plant accounts; and (2) the amount of pension costs actually included in PECO's plant accounts. PECO Exc. at 11. The Company claims that the Pension Asset of $35.1 million should be included in rate base and that, unless recognized for rate base treatment in this proceeding, it will never recover carrying costs on the investor-supplied funds. PECO Exc. at 11. The Company also excepts to ALJ Pell's characterization that the Pension Asset does not represent any real infusion of capital or funds. PECO Exc. at 12-13. PECO concludes that the ALJ failed to properly recognize that rate base treatment of the Pension Asset was previously approved by the Commission in several Duquesne Light Company (Duquesne) general rate increase proceedings. PECO Exc. at 15-16.

The Commission should deny PECO's Exception No. 2 and accept the recommendation of ALJ Pell. In the R.D., ALJ Pell stated in relevant part:

> I agree with both OCA and I&E that PECO's Pension Asset should not be included in PECO's rate base. In particular, I am persuaded by I&E's reasoning…I&E asserted persuasively that the pension asset is created due to the mismatch in GAAP accounting and ratemaking treatment of pension costs, and that there is no real infusion of capital or funds by the investors/stockholders that is eligible for return on investment. I also agree with I&E's assessment that the accumulated balance of the pension asset should not be categorized or described as a utility asset that is used and useful in providing utility services to ratepayers, and as such, should not be included as an eligible asset in the rate base claim to recover the associated carrying costs.

R.D. at 48.

The OCA submits that ALJ Pell correctly denied the Company's claim for rate base recovery for the reasons stated. The Pension Asset is merely an accounting mismatch that will reverse in future years and should not be included in rate base. Moreover, allowing such costs in rate base would permit rate base recovery on previous pension expense violating Commission precedent. Lastly, ALJ Pell properly dismissed the Company's reliance on previous settlements in Duquesne's general base rate proceedings.

It is undisputed that the Company's claim for the Pension Asset represents cumulative differences between (1) the portion of pension expense that the Company assumes to be capitalized for ratemaking purposes (*i.e.*, capitalization rate multiplied by the Company's cash contribution) and what is actually capitalized to the Company's plant accounts for financial accounting purposes (*i.e.*, capitalization rate multiplied by the Company's pension expense for financial reporting purposes). See PECO Exc. 10. The mismatch arises in any given year and can go either way, but cumulatively to date is an asset of $35.1 million that is booked to the Company's Account 186 – Miscellaneous Deferred Debits. OCA St. 2-SR at 12-13.

As OCA witness Morgan testified, however, the Company's Account 186 is not a capital investment account, but is rather comprised of current assets, which are generally not included in rate base. OCA St. 2—SR at 13. Indeed, the Company acknowledged that the Pension Asset does not get depreciated or amortized like a typical capital investment account. See OCA St. 2-SR at 14. As stated by Company witness Stefani:

> The pension asset on PECO's balance sheet represents cumulative cash contributions made by PECO in excess of PECO's cumulative pension cost and does not get amortized to expense. The change in the pension asset represents annual contributions paid by PECO to the pension trust and annual pension cost accounted for in accordance with ASC 715.

OCA St. 1, App. B at 9. [1]

Thus, as ALJ Pell correctly determined, the Pension Asset does not represent any future infusions of cash by the Company during the Company's test years, nor does is it relate to any utility property that is used and useful in providing utility service. See R.D. at 48; see also I&E M.B. at 17-18. Instead, it represents accounting differences from previous years that the Company is now improperly trying to earn a return on.

Moreover, the Commission has repeatedly disallowed rate base treatment for unamortized expense items.[2] The Company's claim is similar in that it seeks to earn a return on previous cash contributions to pension expense that were not actually capitalized. As OCA witness Morgan testified:

> Under past Commission ruling, no return is allowed to be earned on expenses, only on capital investments. Expenses are recovered on a dollar-for-dollar basis without profit. Hence, the attempt by the Company to include the Pension Asset in rate base is an attempt to earn a return on expenses and violate Commission rules.

OCA St. 2-SR at 17. This violates fundamental notions of ratemaking and previous Commission precedent. Accordingly, the Commission should not accept the Company's claim.

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[1] Conversely, the OCA raised a concern about the Company's ability to over-earn on the Pension Asset because it will not be depreciated like other assets included in rate base. As OCA witness Morgan testified:

> Under the Company's proposal, since the pension asset is not amortized (or depreciated), the pension asset amount (that was attributed to those projects) would remain virtually constant, while the actual net balance (plant minus accumulated depreciation) of those projects will decrease over time. The return earned on the unchanging balance will result in an over-recovery of the return if the Commission allows the Pension Asset in rate base.

OCA St. 2 at 19-20.

[2] See e.g. Pa. Pub. Util. Comm'n v. Pa. Power Co., Docket No. R-811510, *et al*., 1982 Pa. PUC LEXIS 154 at *117-18 (Pa. PUC Jan. 22 1982) (Penn Power 1982) ("The commonwealth court and this commission have ruled that a utility is not entitled to claim unamortized expenses (viz. for rate case, flood losses, deferred energy costs) as an addition to rate base when also making a claim therefore as part of its operating expenses."), Pa. Pub. Util. Comm'n v. Dauphin Consolidated Water Supply Co., Docket No. R-80061242, 1981 Pa. PUC LEXIS 80 at *6-7 (Pa. PUC Apr. 3, 1981).

Ultimately, the accounting mismatch that created the Pension Asset will reverse in future years when the pension expense for financial reporting purposes exceeds the pension contribution. See OCA St. 2 at 19. In other words, as I&E witness Patel testified, this accounting mismatch will change over time and ultimately resolve itself. I&E St. 1 at 49. For this reason, any Commission decision including the Pension Asset in rate base upsets this accounting process and unnecessarily inflates rate base. Id.

Lastly, ALJ Pell correctly dismissed the Company's reliance on settlements reached in Duquesne's previous base rate proceedings. As ALJ Pell stated:

> Moreover, PECO's reliance on three "black box" settlements in three Duquesne Light Company cases to support inclusion of pension contributions in rate base is not persuasive. As noted by I&E, "black box" settlements allow the parties to reach an amicable agreement which is a negotiated compromise on the part of all parties. Moreover, these negotiated settlements usually contain "Settlement Condition" language indicating that the settlement reflects a compromise of competing positions, that it does not necessarily reflect any of the parties' positions with respect to any issues raised in the proceeding, and that the terms and conditions of the settlement are limited to the facts of that specific case and are the product of compromise for the sole purpose of settling the case. Moreover, the "Settlement Conditions" typically advise that the settlement is presented without prejudice to the position any party may advance on the merits of the issues in future proceedings, and that the settlement does not preclude the settling parties from taking other positions in base rate proceedings of other public utilities.

R.D. at 49. The OCA agrees with ALJ Pell and PECO's reliance on these settlements should be soundly dismissed. Rate case settlements are the product of compromise and should not be afforded precedential value. To hold otherwise would have a chilling effect on the settlement process itself.

For the reasons stated above, the Commission should deny PECO's Exception No. 2 and adopt the recommendation of ALJ Pell to remove the Pension Asset from rate base.

Reply to PECO Exception No. 3: ALJ Pell Properly Concluded that PECO Failed to Prove It Will Meet Its Forecasted Employee Complement for the FPFTY. (R.D. at 56-60, 99-101, 121-22; OCA M.B. at 45-46; OCA R.B. at 18-24; PECO Exc. at 16-21)

In Exceptions, PECO reiterated the arguments it had made in briefs relating to employee headcount: that its employee headcount had reached 612 by the end of 2020, it is actively in the process of hiring 37 new employees by the end of the FPFTY, and that, had its Gas Mechanics School not been postponed due to the COVID-19 Pandemic, it would have had 635 employees by the end of 2020. PECO Exc. at 17. PECO further contends that utilities are in the best position to assess its staffing needs and that the Commission should not "lightly second-guess" a company's reasonable plan to fill its employee complement. Id. at 18 (citing to Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp., Docket No. R-2012-2290597 (Opinion and Order entered Dec. 28, 2012) PECO also attempts to distinguish its employee complement claim from that in the recent Columbia Gas case, which the Commission did not grant due to the lack of supporting evidence and Columbia Gas' actual hiring experience.[3] PECO Exc. at 19-20.

ALJ Pell was correct to find that PECO's projected headcount was not adequately supported and, as a result, he properly reduced PECO's Payroll Expense claim by $315,000 to reflect 604 employees, instead of 639 employees. R.D. at 121. In the R.D., ALJ Pell stated:

> Considering that the Company fell substantially short of its anticipated headcount for 2020, its projected headcount for the FPFTY is speculative at best. Moreover, adopting OCA's adjustment will lead to a reasonable and just rate, as ratepayers will not be paying for the costs of employees who have not been hired.

Id. The OCA submits that the R.D.'s adjustment was proper and reasonable because the Company's projected headcount of 639 was not supported by its historic data or the Company's

[3] See Columbia Gas at 71-72.

actual hiring experience. Similarly, the Company failed to provide job descriptions and proof of authorization for the projected additional 37 positions. OCA M.B. at 45-46; R.D. at 100-01.

In addition, the Company's claim that it had reached a headcount of 612 by the end of 2020 should not be accepted as an accurate indication of progress towards the FPFTY projected headcount or PECO's actual hiring experience because that number includes allocated employees[4] while its projected headcount of 639 employees by the end of the FPFTY does not. OCA St. 2 at 16; OCA M.B. at 45-46; R.D. 100-01. Thus, the Company's argument that the Commission should not "lightly second-guess" its projected headcount has no merit in this case because the Company has failed to prove that its projection is reasonable through both historic data, its actual hiring experience, and supporting documentation.

For the reasons provided above, the OCA submits that ALJ Pell's adoption of an employee headcount of 604 positions based upon the OCA's recommendation is reasonable and proper and should be accepted by the Commission.

Reply to PECO Exception No. 4: ALJ Pell Properly Adjusted PECO's Claimed Contracting and Materials Expense for the FPFTY. (R.D. at 60-61, 83-84, 102-04,122; OCA M.B. at 48-49; OCA R.B. at 24-26; PECO Exc. at 21-24)

PECO contends that Judge Pell erred in adopting the Contracting and Materials expense amount recommended by I&E because it "vastly underestimates the contracting and materials expense PECO will incur during the FPFTY." PECO Exc. at 21. Specifically, PECO claims that the adopted 3-year average calculation of the Company's contracting and materials expense is "skewed lower" due to the temporary effects during the early months of the COVID-19 Pandemic which were reversed later on. Id. at 24.

[4] Allocated employees are employees who spend all or a substantial portion of their time performing services for a subsidiary or an affiliated business.

The OCA submits that the Company was underspending on contracting and materials expenses well-before the COVID-19 Pandemic and the Company's use of an inflation factor in determining an increase in this expense area is inappropriate. OCA M.B. at 48-49; R.D. at 122. Therefore, ALJ Pell was correct in adopting I&E's contracting and materials expense calculation as it more closely reflects PECO's history of actual spending in 2017, 2018, and 2019. R.D. at 122. ALJ Pell further concluded:

> Although the Company asserts that its reduced contracting and materials expenses in 2020 was the result of work stoppages due to the COVID-19 pandemic, I agree with I&E that it would be speculative at best to assume that the pandemic will not have any impact on the Company's projects in the FTY and the FPFTY and that the Company will be able to spend its entire budgeted amount for those periods.

Id. The Company's significantly-increased contracting and materials expense claim is unreasonable and unjustified and the Commission should therefore accept I&E's reasonable 3-year average calculation.

Reply to PECO Exception No. 6: ALJ Pell Properly Concluded that PECO's Claim for OPEB Expense Should Be Normalized Over a Period of Three Years. (R.D. at 64-66, 86-88, 106-07, 124; OCA M.B. at 53-54; OCA R.B. at 28-29; PECO Exc. at 26-28)

PECO claims that ALJ Pell erred in adopting the OCA's recommendation to normalize the Company's OPEB expense over a 3-year period, resulting in a reduction of $486,000 to the Company's claim. R.D. at 124. PECO contends that its OPEB expense is projected to increase upon the expiration of the amortization period of a prior service credit in 2021. PECO Exc. at 27.

PECO's concerns, however, were resolved in the recommendation by the OCA because the 3-year normalization period uses actual and estimated OPEB costs from 2020-2022. See CONFIDENTIAL OCA St. 2-SR, Sch. LKM-13; see also, OCA M.B. at 53-54. In other words, it properly captures the anticipated increase in OPEB expense in 2021, while also reflecting a

normalized level of OPEB expenses which can fluctuate for many reasons from year to year. R.D. at 124. For these reasons, the OCA submits that ALJ Pell's recommendation on OPEB expense is reasonable and should be adopted by the Commission.

Reply to PECO Exception No. 7: ALJ Pell Properly Concluded that PECO's Claim for Injuries and Damages Expense Should Be Normalized Over a Period of Three Years. (R.D. at 72-73, 112-14, 128-29; OCA M.B. at 59-60; OCA R.B. at 35-37; PECO Exc. at 28-29)

In its Exceptions, PECO argued that ALJ Pell erred by recommending that PECO's claim for its Injuries and Damages expense be normalized over a period of three years. PECO Exc. at 28-29. PECO argued that the historical three-year average is unreasonable because "it would reflect a clear aberration in 2019 – a negative $9,000 expense – which was the result of an actuarial update." Id. at 29. PECO also argued that "[t]he negative amount at issue for injuries and damages is precisely the type of aberration that normalization attempts to avoid being reflected in rates, as it would unreasonably skew the Company's three-year average downward." Id.

The Commission should deny PECO's Exception No. 7 and accept the recommendation of ALJ Pell. In the Recommended Decision, ALJ Pell stated in relevant part:

> While it appears that the one-year negative $9,000 expense is an aberration, I agree with the OCA that normalization is the appropriate methodology for calculating this expense for the FPFTY. While this one year will undoubtedly have an impact on the average, I do agree with the OCA that this is the best approach to smooth out the effects of this expense that occurs at regular intervals but in irregular amounts.

R.D. at 129.

The OCA submits that ALJ Pell correctly found that the Injuries and Damages expense should be based on the most recent three years of actual expenses. The ratemaking technique of normalization is "used to smooth out the effects of an expense item that occurs at regular intervals, but in irregular amounts, and is a proper adjustment to make the test year expense representative

of normal operations."[5] In the present case, OCA Witness Lafayette K. Morgan testified that "the amount included in the cost of service for Injuries and Damages is significantly higher than previous years." OCA M.B. at 60; OCA R.B. at 36; OCA St. 2 at 30. Mr. Morgan further testified that no single year is representative of the normal level of Injuries and Damages because this expense fluctuates from year to year. Id. While the Company argues that the -$9,000 expense was an abnormality, it provides no evidence that suggests that abnormalities such as this one will not happen again, which is why normalizing the expense is the most appropriate method of calculating the expense. Accordingly, the OCA recommends that the Commission should reject PECO's claim and should normalize the Injuries and Damages Expense.

Reply to PECO Exception No. 8: ALJ Pell Correctly Adopted a Five-Year Normalization Period for PECO's Claim for Rate Case Expense Based on PECO's Historical Filing Frequency. (R.D. at 76-78, 96-97, 116-17, 131; OCA M.B. at 63-64; OCA R.B. at 39-40; PECO Exc. at 29-31)

In its Exceptions, PECO argued that ALJ Pell erred by adopting a five-year normalization period for PECO's claim for rate case expense based on PECO's historical filing frequency. PECO Exc. at 29-31. PECO argued that "[t]he ALJ failed . . . to address PECO's unrefuted record evidence concerning its plan to make over $1 billion in capital investments over the next few years." PECO Exc. at 30. PECO further argued that it "provided evidence of substantial planned investments, which, when combined with even marginal year-over-year increases in O&M expenses, would not reasonably permit the Company to delay a rate filing for five years." Id.

The Commission should deny PECO's Exception No. 8 and accept the recommendation of ALJ Pell. In the Recommended Decision, ALJ Pell stated in relevant part:

> I agree with I&E and OCA that the Company's rate case expense should be normalized over a five-year period. In the recent

[5] Pa. Pub. Util. Comm'n. v. Total Environmental Solutions, Inc., Docket No. R-00072493, et al., 2008 Pa. PUC LEXIS 42 at *98 (Pa. PUC May 23, 2008).

> Columbia Gas case, the Commission indicated that "the normalization period should align with the historic data rather than the Company's assertion" as to when it is likely to file their next base rate case. Since 2010, PECO gas has filed two base rate cases, with the first case being filed in 2010 and the second case being filed in 2020. Based on the PECO's filing history, the appropriate length of time for normalization for the Company's rate case expense is five years.

R.D. at 131.

The OCA submits that ALJ Pell correctly found that the rate case expense should be normalized over a five-year period. The Commission has consistently held that rate case expenses are normal operating expenses, and normalization should, therefore, be based on the historical frequency of the utility's rate filings.[6] In recent cases, the Commission reiterated that the normalization period is determined, "by examining the utility's actual historical rate filings, not upon the utility's intentions."[7] Speculation about the timing of future filings cannot be relied on to determine the proper normalization period.[8] Here, the Company's position to normalize its rate case expense over three years does not accurately reflect the Company's filing history. Thus, the OCA recommends that the rate case expense be normalized over a five-year period.

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[6] Popowsky v. Pa. Pub. Util. Comm'n, 674 A.2d 1149, 1154 (Pa. Commw. Ct. 1996), Pa. Pub. Util. Comm'n v. Columbia Water Co., Docket No. R-2008-2045157, 2009 Pa. PUC LEXIS 1423 (Pa. PUC May 28, 2009) (CWC 2008); City of Lancaster (Sewer Fund) v. Pa. Pub. Util. Comm'n, 793 A.2d 979 (Pa. Commw. Ct. 2002) (Lancaster 2002); Pa. Pub. Util. Comm'n v. West Penn Power Co., Docket No. R-901609, 1990 Pa. PUC LEXIS 142 at *108-110 (Pa. PUC Dec. 13, 1990).

[7] Pa. Pub. Util. Comm'n v. City of Lancaster, Docket No. R-2010-2179103, 2011 Pa. PUC LEXIS 1685 (Pa. PUC Jul. 14, 2011) (Lancaster 2011); Pa. Pub. Util. Comm'n v. Metropolitan Edison Co., Docket No. R-00061366, 2007 Pa. PUC LEXIS 5 (Pa. PUC Jan. 11, 2007); Pa. Pub. Util. Comm'n v. City of Dubois – Bureau of Water, Docket No. R-2016-2554150, Opinion and Order at 65 (Pa. PUC May 18, 2017) (City of Dubois).

[8] See e.g. Lancaster 2011.

Reply to PECO Exception No. 9: ALJ Pell Did Not Err by Including the Residential Customer Charge in Any Proportional Scale Back of Rates in this Proceeding. (R.D. at 408-09; OCA M.B. at 207-16; OCA R.B. at 113-118; PECO Exc. at 31-32)

PECO excepts to the R.D. because it included the residential customer charge in any scale back of rates in this proceeding. PECO Exc. at 31-32. PECO argues that its residential customer charge proposal reduces the disparity between its current customer charge and a cost-based customer charge, that traditional ratemaking methodology dictates that a utility be permitted to recover fixed customer costs through the fixed customer charge, and that its proposed increase is consistent with principles of gradualism. PECO Exc. at 31-32.

While the OCA excepts to the ALJ's decision to rely exclusively on the scale back to reduce the Company's proposed customer charge, the OCA agrees with ALJ Pell that it is appropriate to include the residential customer charge in any scale back of rates if less than PECO's full increase is granted. See OCA Exc. at 37-38. Contrary to the Company's arguments, "ratemaking norms…permit consideration and weighing of important factors…in setting just and reasonable rates, such as…gradualism and rate affordability."[9]

In this proceeding, ALJ Pell appropriately recognized that a 36 percent increase to the residential customer charge does not reflect principles of gradualism. R.D. at 409. Moreover, ALJ Pell properly concluded that the fixed customer charge cannot be avoided by customers or reduced. Id. These findings were supported by the extensive testimonies of OCA witnesses, Glenn Watkins and Roger Colton. See OCA St. 4, *passim*, OCA St. 5, *passim*. Mr. Colton, in particular, testified at great length concerning the disproportionate impact any increase to the fixed customer charge will have upon low-income, near-poor ratepayers. OCA St. 5 at 37.

[9] Columbia Gas at 48 (adopting the ALJ's recommendation to disallow any increase to the residential customer charge).

For this reason, it was reasonable and well within the discretion of ALJ Pell to include the residential customer charge in any scale back of rates if less than PECO's full increase is granted. As the OCA stated in its Exceptions, however, any increase to the residential customer charge should be capped at $13.00, and any proportional scale back should start from that amount, as recommended by OCA witness Watkins. See OCA St. 4 at 31.

Reply to PECO Exception No. 11: ALJ Pell Properly Denied PECO's Claim for a 25 Basis Points Adder to the PECO's Return on Equity. (R.D. at 215-216; OCA M.B. at 73-75, 95-111, 127-132; OCA R.B. at 57-63; PECO Exc. at 32-35)

According to PECO, ALJ Pell "noted" the Company's testimony regarding management performance but gave it no "consideration." PECO Exc. at 32-35, citing 66 Pa.C.S. § 523(a). PECO faulted the ALJ for finding I&E's position persuasive grounds for denial of PECO's request for an additional 25 basis points in equity return pursuant to Section 523. Id. at 34.

The OCA disagrees. The ALJ properly recommended denial of the Company's claim, consistent with Section 523(a) and record evidence. ALJ Pell was particularly persuaded by I&E's position but also agreed with "the OCA, and the OSBA that PECO should not be awarded 25 basis points for superior management performance." R.D. at 216. Section 523(a) states that the Commission "shall consider, *in addition to all other relevant evidence of record*, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this title."[10] R.D. at 194-197; OCA M.B. at 98-100 (legal framework).

ALJ Pell properly considered – as other relevant evidence – the potential $3.2 million impact of the Company's claim on ratepayers "for the Company to provide … service that is required by the Public Utility Code and regulations." R.D. at 216. Moreover, OCA witnesses O'Donnell and Colton analyzed and countered the Company's claim, providing further support for

[10] 66 Pa.C.S. § 523(a) (emphasis added).

the R.D. OCA M.B. at 100-111, 127-132; OCA R.B. at 57-63. The adverse impact of the COVID-19 Pandemic on PECO consumers described by OCA witnesses Rubin and O'Donnell is especially relevant support for the ALJ's determination. OCA M.B. at 12-18, 96-99; see Columbia Gas at 134-135. The Company referenced the COVID-19 pandemic only to claim its pandemic response as an example of management performance – a claim which OCA witness Colton refuted. See, R.D. at OCA M.B. at 127-132. Accordingly, the recommendation of ALJ Pell is soundly supported.

For all of these reasons, the Commission's determination of just and reasonable rates should not include any additional basis points in equity return for management performance, consistent with the recommendation of ALJ Pell.

Reply to PECO Exception No. 12: ALJ Pell's Recommendation to Require the Company to Reevaluate the Terms for Several Negotiated Rate Customers Should Be Upheld. (R.D. at 414-16; OCA M.B. at 219-21; PECO Exc. at 35-36)

PECO excepts to ALJ Pell's recommendation that PECO provide an update to the competitive alternative analysis for any negotiated rate customer that has not had their alternative fuel source verified for a period of 5 years or more at the point when PECO files a base rate case. PECO Exc. at 35-36. In the event the Commission accepts the recommendation of ALJ Pell, PECO requests that the Commission clarify that the other parties' recommendation related to negotiated gas service (NGS) are not adopted. Id.

ALJ Pell's decision, however, is supported by ample record evidence presented by OCA, I&E, and OSBA, as well as recent Commission precedent. For example, as Mr. Watkins testified, several of the existing negotiated rate customers currently served by PECO have not had their rates reevaluated for an extended period of time. OCA St. 4 at 32; see also OSBA M.B. at 33-34; I&E M.B. at 71-73. Moreover, the Commission recently held in Columbia Gas:

> Rather, we agree with the ALJ and I&E that it is important to periodically analyze competitive alternatives to ensure that the rates of the flex-rate customers are not discounted lower than is necessary to avoid the customer choosing the alternative supply. As I&E witness Mr. Cline indicated, this analysis is needed to provide an accurate and up-to-date analysis of competitive alternatives to show the flex rate is necessary and reasonable and to ensure that flex-rate customers make the maximum contribution to fixed costs. I&E St. 3-SR at 5. We especially agree with the ALJ and I&E that providing excessive discounts to customers is not in the public interest and would be harmful to both the Company and its customers, since the other customers would be required to make up the lost revenues when flex-rate customers pay less than tariff rates

Columbia Gas at 240. Thus, ALJ Pell's decision was appropriate and should be upheld by the Commission.

To the extent the Commission declines to adopt the recommendation of ALJ Pell, however, the OCA's recommendation regarding Rate NGS customers should still be adopted. At the very least, the OCA recommended that the Commission require the Company to reevaluate the terms and rates for each of the three negotiated rate contracts identified in the Direct Testimony of OCA witness Watkins and present those findings upon filing its next rate case. OCA M.B. at 219-221; see also OCA St. 4 at 33-34. PECO, likewise, agreed with the recommendation of the OCA. See PECO M.B. at 126; see also PECO St. 7-R at 23.

Reply to CAUSE-PA Exception No. 2: ALJ Pell Was Correct In Not Approving CAUSE-PA's Proposal To Change PECO's CAP Energy Burdens In This Proceeding. (R.D. at 266-267; CAUSE-PA Exc. at 10-17; OCA M.B. at 133-138; OCA R.B. at 71-75)

In its Exceptions, CAUSE-PA argues that the ALJ erred in his determination to not approve CAUSE-PA's proposal to change PECO's energy burdens in this proceeding. CAUSE-PA Exc. at 10-17. CAUSE-PA argues that the CAP rates approved in the R.D. are unjust and unreasonable, contradict the Commission's universal service obligations, and are contrary to public policy. Id. at 12-16. CAUSE-PA also argues that the R.D. violates a Commission-approved Settlement. Id. at 16.

CAUSE-PA's argument that the law requires the Commission to revise PECO's energy burdens in this proceeding is in error. See, CAUSE-PA Exc. at 10-16.[11] The OCA submits that CAUSE-PA seeks to isolate consideration of the energy burdens from the other aspects of the Universal Service and Energy Conservation Plan (USECP). Unlike other rates, CAP customers receive a discount paid for by all other residential ratepayers. CAUSE-PA only seeks to examine the rate that CAP customers are charged and does not examine the rate in the context of the full CAP program, including the costs borne by other residential ratepayers. As the Commission noted in the Columbia Gas base rate proceeding, the CAP Policy Statement does not consider the energy burdens in a vacuum.[12] The need for additional cost controls, such as changes to the minimum payments or maximum CAP credits, must be evaluated as a part of the USECP. The CAP Policy Statement requires an evaluation of whether additional cost controls such as minimum payment terms, consumption limits, high usage treatments, and maximum CAP credits – to name a few- are needed as well.[13]

CAUSE-PA also argues that the R.D. violates a Commission-approved Settlement. CAUSE-PA Exc. at 16. The Settlement raised in CAUSE-PA's Exceptions is currently the subject of a Formal Complaint pending before the Commission (TURN v. PECO, Docket No. C-2020-3021557). The OCA notes that in TURN, the ALJ recently issued an R.D. that concluded that PECO's current energy burdens do not violate the Settlement.[14] Any final Commission

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[11] The OCA notes that the issue of the appropriate energy burdens for PECO's USECP are currently the subject of two on-going proceedings. See, Tenant Union Representative Network v. PECO Energy Co., Docket No. C-2020-3021557 (TURN); PECO Energy Company 2019-2024 Universal Service and Energy Conservation Plan, Docket NO. M-2018-3005795.

[12] Columbia Gas at 161.

[13] 52 Pa. Code § 69.265(3).

[14] The OCA notes that Exceptions to that decision are due on May 3, 2021.

determination regarding the issues in the TURN proceeding should be addressed in that proceeding.

The OCA submits that the ALJ correctly deferred the issues identified by CAUSE-PA to be resolved as a part of the Company's USECP as the OCA Reconsideration Order[15] provided that changes to the energy burdens should be considered as a part of the utility-specific Universal Service and Energy Conservation Plan. OCA Reconsideration Order at 10-11. Thus, any proposed changes to the energy burdens should be considered as a part of the USECP. See OCA M.B. at 133-138; OCA R.B. at 71-75.

Reply to CAUSE-PA Exception No. 4: ALJ Pell Correctly Determined that PECO Should Maintain its Existing EE&C Budget and PECO Can Accommodate the Request of CAUSE-PA Within its Existing Budget. (R.D. at 130-31; OCA M.B. at 142-60; OCA R.B. at 78-81; CAUSE-PA Exc. at 19-22)

CAUSE-PA excepts to the ALJ's recommendation to adopt I&E's adjustment to the Company's proposed expansion to its natural gas energy efficiency and conservation (EE&C) program, reducing the Company's claim by $1.722 million. CAUSE-PA Exc. at 19-20. CAUSE-PA states that the R.D. failed to indicate which portion of the proposed programming should be scaled back to achieve the reduced funding amount and that ALJ Pell did not address CAUSE-PA's recommendations to PECO's EE&C programs to address low-income customer participation in these programs.[16] See CAUSE-PA Exc. at 19-21; see also CAUSE-PA St. 1 at 47-48. Accordingly, CAUSE-PA recommends that rather than reducing funding for PECO's EE&C

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[15] 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-69.267, Docket No. M-2010-3012599, Order at 10-11 (Feb. 6, 2020) (OCA Reconsideration Order) (Feb. 6, 2020).

[16] CAUSE-PA's three proposals are as follows: (1) Allow all PECO customers with income at or below 150% FPL to participate in its low income EE&C program, including both homeowners and tenants; (2) include additional opportunities within PECO's general residential program for low income consumers to access energy efficient equipment without any customer contribution; and (3) require PECO to host a collaborative meeting to develop a specific plan for coordinating voluntary EE&C programs with other related programs available to PECO's low income customers. CAUSE-PA St. 1 at 47-48.

program, PECO should use the additional $1.772 million to implement the recommendations of CAUSE-PA. CAUSE-PA Exc. at 20. In the event that the Commission adopts the recommendation of ALJ Pell, CAUSE-PA submits that the Commission should Order PECO to implement PECO's Low-Income Safe and Efficient Heating Program (Low-Income S&EHP), as modified by CAUSE-PA, within its allotted budget. Id.

ALJ Pell properly concluded in the R.D. that PECO should maintain its existing EE&C budget and should not be permitted to receive an increase to its annual funding amount. R.D. at 130. Likewise, as set forth in the OCA's Exceptions, the OCA agrees with ALJ Pell, but excepts to the extent ALJ Pell provides a modest increase to the Company's EE&C budget by relying on the adjustment of I&E. See OCA Exc. at 11-14. Thus, for the reasons stated previously, the Commission should deny CAUSE-PA's request to grant PECO its proposed EE&C budget increase.

As demonstrated, the Company has historically underspent its existing EE&C budget in previous years and has had low customer participation. R.D. at 130. Accordingly, the Company should be able to accommodate the requests of CAUSE-PA within its existing budget. Moreover, the OCA supports the Low-Income S&EHP. Indeed, the proposed EE&C portfolio recommended by OCA witness Crandall recommends approval of the Company's proposed Low-Income S&EHP within its existing budget. See OCA St. 6 at 33-34.

III. CONCLUSION

For the reasons set forth above and in its Exceptions, Main Brief, and Reply Brief, the Office of Consumer Advocate respectfully requests that the Public Utility Commission deny the Exceptions of the other Parties as set forth above.

Respectfully submitted,

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