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May 3, 2021

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

**VIA ELECTRONIC FILING**

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


Dear Secretary Chiavetta:

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

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Charis Mincavage

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

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## CERTIFICATE OF SERVICE

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

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Charis Mincavage

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated this 3<sup>rd</sup> day of May, 2021, in Harrisburg, Pennsylvania

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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Dated: May 3, 2021

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## **I. INTRODUCTION**

On September 20, 2020, PECO Energy Company ("PECO" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Tariff Gas – Pa. P.U.C. No. 4 ("Tariff No. 4"), requesting approval of an overall base rate increase of approximately \$68.7 million over its present revenues, to become effective on November 29, 2020.<sup>1</sup> On November 5, 2020, the Philadelphia Area Industrial Energy Users Group ("PAIEUG")<sup>2</sup> filed a Complaint in this proceeding. A Prehearing Conference was held on November 9, 2020, before Deputy Chief Administrative Law Judge ("ALJ") Christopher P. Pell.

After the submission of testimony in this proceeding, an evidentiary hearing was held on February 17, 2021, for the purposes of presenting testimony and performing cross-examination. On March 4, 2021, Main Briefs ("M.B.") were submitted in this proceeding, with Reply Briefs ("R.B.") submitted on March 16, 2021.

Deputy Chief ALJ Pell issued his Recommended Decision ("R.D.") on April 12, 2021, correctly finding that (1) PECO should receive an increase of \$23.9 million, or 35% of PECO's original request; (2) PECO's Average and Excess ("A&E") Cost of Service Study ("COSS") should be adopted; (3) PECO's rate allocation should be rejected; (4) any proposal to change the volumetric differentials in the rate designs for Transportation Service – Firm ("TSF") and Transportation Service – Interruptible ("TSI") should be rejected; and (5) the status quo should remain with respect to PECO's Universal Service Plan ("USP") cost allocation.

On April 26, 2021, PAIEUG received Exceptions ("Exc.") from PECO, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Bureau of

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

<sup>2</sup> PAIEUG's compilation is listed on the cover page of these Reply Exceptions.

Investigation and Enforcement ("I&E"), and CAUSE-PA. PAIEUG files these Reply Exceptions in order to specifically respond to: (1) OCA's Exception seeking to change and OSBA's Exception seeking to narrow the appropriate COSS to be applied in this proceeding; (2) OCA's Exception proposing to modify the correct rate allocation to be applied to all customer classes; (3) OSBA's Exception to apply unreasonable volumetric differentials for Rates TSF and TSI; and (4) OCA's and CAUSE-PA's Exceptions to inappropriately change the status quo for the allocation of USP costs. Each of PAIEUG's Reply Exceptions is set forth more fully below.

## II. REPLY EXCEPTIONS

### A. Reply Exception No. 1. The ALJ correctly recommended adoption of PECO's proposed average and excess ("A&E") methodology for the allocation of distribution main costs.

In the Recommended Decision, the ALJ correctly recognized that PECO's use of the A&E methodology for the allocation of distribution main costs in its COSS is reasonable and consistent with cost causation principles.<sup>3</sup> The primary objective of a COSS is to allocate costs among customer classes in the manner in which they are incurred.<sup>4</sup> The record of this proceeding demonstrates that peak demand is the primary driver of PECO's distribution main costs.<sup>5</sup> PECO's proposed A&E methodology includes an average demand component and an excess demand component, which add together to equal peak demand.<sup>6</sup> As recognized within the R.D., PECO's proposed A&E methodology most closely aligns with how PECO designs and incurs costs related to its distribution mains, and it is therefore the appropriate methodology to

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<sup>3</sup> R.D. pp. 404-405.

<sup>4</sup> See *Lloyd v. Pa. Publ. Util. Comm'n*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006) ("*Lloyd*"); see also *Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694 (Opinion and Order dated October 15, 2010), p. 63; see also *Pa. Pub. Util. Comm'n v. Metro. Edison Co. and Pa. Elec. Co.*, Docket Nos. R-00061366 and R-00061367 (Opinion and Order dated Jan. 11, 2007), p. 234.

<sup>5</sup> PECO Statement No. 6-R, *Rebuttal Testimony of Jiang Ding*, ("PECO Statement No. 6-R"), p. 7; PAIEUG Statement No. 1-R, *Rebuttal Testimony of Billie S. LaConte* ("PAIEUG Statement No. 1-R"), pp. 3-6.

<sup>6</sup> *Id.* The calculation is further weighted based on PECO's system load factor, which puts a higher weighting on excess demand, *i.e.*, the difference between peak and average demand, consistent with cost causation.

use in this proceeding. PAIEUG will respond to the Exceptions of OCA and OSBA regarding this subject below.

All parties other than the OCA submitted testimony in support of the A&E methodology.<sup>7</sup> In Exceptions, the OCA is the only party continuing to support the alternative peak and average ("P&A") methodology. The ALJ conducted an extensive analysis of both the A&E and P&A methodologies in the R.D. and ultimately determined that PECO's proposed A&E methodology should be approved.<sup>8</sup> The R.D. includes the following concise explanation of PECO's proposed A&E methodology:

Under the A&E method, the portion of the cost of mains equal to the system average load factor is allocated among the rate classes based on their average daily deliveries (annual deliveries divided by 365 days). The balance of mains costs is allocated based on excess demand, which is the amount by which the design peak demand exceeds average demand for each class. The excess demand is allocated among rate classes in proportion to each class' peak demand over its average demand.<sup>9</sup>

Because peak demand, rather than average demand, is the primary driver of PECO's distribution main costs, PECO's proposed A&E methodology is consistent with cost causation principles. A smaller percentage of main costs, equivalent to PECO's system average load factor, is allocated based on average demand, and the remaining percentage is based on excess demand, which represents the difference between the class's average and peak demand.<sup>10</sup>

PECO's proposed A&E methodology is consistent with Commission precedent, commonly used by Natural Gas Distribution Companies ("NGDCs") in the Commonwealth, and

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<sup>7</sup> R.D. pp. 272-274. In its Surrebuttal Testimony, OSBA recommended either a COSS utilizing an A&E methodology with a 50% weighting or an alternative A&E methodology using a system load factor weighting similar to PECO. OSBA Statement No. 1-S, *Surrebuttal Testimony of Robert D. Knecht*, ("OSBA Statement No. 1-S"), pp. 5-6.

<sup>8</sup> R.D. pp. 271-276, 404, and 405.

<sup>9</sup> *Id.* p. 271.

<sup>10</sup> *Id.* pp. 404, 405; PAIEUG Statement No. 1-R, p. 4; *see also* PECO Statement No. 6-R, p. 7 ("It is inappropriate and in conflict with cost causation principles to treat the cost of excess capacity as an incremental cost instead of the primary cost driver.").

endorsed through industry guidance. The Commission approved an identical methodology in PPL Gas Utilities Corporation's ("PPL Gas") 2007 base rate case.<sup>11</sup> PECO and other Pennsylvania NGDCs have relied on this methodology in prior rate case filings.<sup>12</sup> Both the American Gas Association and National Association of Regulatory Utility Commissioners have endorsed this methodology as well.<sup>13</sup>

The ALJ properly rejected the OCA's proposed P&A methodology identifying several concerns with the methodology as applied to PECO's system.<sup>14</sup> The P&A methodology results in a double counting of average demand in the calculation, which "creates an unacceptable bias in favor of low load factor customers who are major contributors to peak demands that drive the costs of mains."<sup>15</sup> Average demand is counted once within the average demand component of the calculation and again within the peak demand component of the calculation.<sup>16</sup> The record establishes that peak demand is the driver of PECO's main costs, while average demand is simply a byproduct.<sup>17</sup> The inequity associated with OCA's P&A methodology is further exacerbated by OCA's proposal to apply an equal weighting to peak and average demand, which

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<sup>11</sup> *Pa Pub. Util. Comm'n v. PPL Gas Utils. Corp.*, Docket No. R-00061398 (Opinion and Order dated Feb. 8, 2007), p. 176 ("*PPL Gas*") ("*PPL Gas* used and average and excess (A&E) method to allocate demand costs. The Company allocated 40% of demand costs based upon commodity usage and 60% based on excess demand (demand in excess of average demand) PPL Gas stated that the 40% for commodity was based upon system average load factors for 2004 and 2005 of 39.1% and 39.8% respectively....The excess demand was allocated using non-coincidental peak factors for each classification.").

<sup>12</sup> *Pa Pub. Util. Comm'n v. PECO Energy Company*, Docket No. R-2010-2161592 (Opinion and Order dated Dec. 16, 2010); *Pa Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. R-2020-3017206 (Opinion and Order dated Nov. 19, 2020); *Pa Pub. Util. Comm'n v. UGI Central Penn Gas, Inc.*, Docket No. R-2010-2214415 (Recommended Decision dated Jul. 15, 2011).

<sup>13</sup> PECO Statement No. 6-R, p. 6; PAIEUG Statement No. 1-R, pp. 4-5.

<sup>14</sup> R.D. pp. 274-276.

<sup>15</sup> *Id.* p. 274; *see also* PAIEUG M.B. p. 16.

<sup>16</sup> PAIEUG Statement No. 1-R, p. 6.

<sup>17</sup> PECO Statement No. 6-R, p. 7; PAIEUG Statement No. 1-R, pp. 4-6 (discusses PECO's list of factors for sizing mains, which includes "projected customer demand on a design day for the distribution system," but has no reference to average demand at all).



does not comport with the manner in which PECO incurs distribution main costs and further overemphasizes average demand within the calculation.<sup>18</sup>

The OCA relies on the Commission's acceptance of the P&A methodology in a recent Columbia Gas of Pennsylvania, Inc. ("*Columbia*") base rate case,<sup>19</sup> but the ALJ correctly recognizes that the Commission's decision in the Columbia proceeding is not precedential with respect to this issue.<sup>20</sup> In *Columbia*, the Commission explicitly stated that it was unable to review the merits of the A&E methodology because no party presented it for consideration.<sup>21</sup> Instead, the Commission was required to decide among a customer/demand methodology, a P&A methodology, and an average of the two.<sup>22</sup> Because the Commission did not have an opportunity to compare the A&E and P&A methodologies in the Columbia case, the Commission's findings in that proceeding have no bearing on the outcome of this proceeding.

Although the OCA attempts to distinguish the prior Commission decisions that approved an A&E methodology,<sup>23</sup> it remains undisputed that Commission precedent exists supporting an NGDC's use of an A&E methodology with a system load factor weighting applied to average demand, which is identical to PECO's proposal here.<sup>24</sup> Accordingly, it would be wholly reasonable for the Commission to approve the same methodology for PECO.

In other words, based upon the aforementioned findings, the ALJ appropriately determined that the A&E methodology is the most appropriate COSS for purposes of PECO's natural gas system. Unfortunately, the OCA continues to raise the same arguments in Exceptions

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<sup>18</sup> PAIEUG Statement No. 1-R, pp. 3, 5-6.

<sup>19</sup> OCA Exc., p. 29.

<sup>20</sup> R.D. p. 274; *Pa. Pub. Util. Comm'n v. Columbia Gas of Pennsylvania, Inc.*; Docket No. R-2020-3018835 (Opinion and Order dated Feb. 19, 2021) ("*Columbia*").

<sup>21</sup> *Columbia* p. 214.

<sup>22</sup> *Id.* p. 215.

<sup>23</sup> OCA Exc., p. 30.

<sup>24</sup> *PPL Gas* p. 176.

that were properly rejected in the R.D. PAIEUG will respond to each of the OCA's arguments below, all of which should be disregarded by the Commission.

Initially, the OCA challenges the A&E methodology on the basis that it burdens low load factor customers who have more excess demand than high load factor customers.<sup>25</sup> As recognized by the ALJ, however, low load factor customers are driving PECO to incur additional distribution main costs, because their peak demand can exceed their average demand significantly.<sup>26</sup> PECO's proposed A&E methodology is reasonable because it allocates a larger percentage of costs to such customers as compared to higher load factor customers whose demand remains more stable over time, which in turn, does not cause PECO to incur additional costs to expand its distribution system.<sup>27</sup>

The OCA further contends that PECO's proposed A&E methodology is equivalent to allocating distribution mains entirely on the basis of peak demand, which is a methodology that has previously been rejected by the Commission.<sup>28</sup> To the contrary, PECO's proposed A&E methodology uses a system average load factor weighting to allocate costs based on average demand with the remainder of costs allocated based on excess demand.<sup>29</sup> PECO's use of system load factor weighting as part of the A&E methodology to determine the percentage of main costs that should be based on average demand is consistent with Commission precedent and industry standards.<sup>30</sup> As already stated, peak demand is the main driver of PECO's distribution main costs, but average demand is clearly recognized within PECO's proposed A&E methodology.<sup>31</sup>

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<sup>25</sup> OCA Exc., p. 26.

<sup>26</sup> R.D. p. 274.

<sup>27</sup> PAIEUG R.B., p. 11.

<sup>28</sup> OCA Exc., p. 27.

<sup>29</sup> PECO Statement No. 6-R, p. 7; PAIEUG Statement No. 1-R, pp. 3-6.

<sup>30</sup> PAIEUG Statement No. 1-R, pp. 5-6; *PPL Gas* p. 176.

<sup>31</sup> By contrast, OCA's proposal to apply a 50% weighting to the P&A methodology has no basis in cost causation and represents an overweighting of the average demand component of the calculation. PAIEUG Statement No. 1-R, p. 3.

The OCA's remaining challenges to PECO's proposed A&E methodology also are without merit. The OCA indicates that an A&E methodology is more appropriate for a water utility,<sup>32</sup> which is able to store water and discharge it during different periods but fails to recognize that PECO also has gas storage facilities.<sup>33</sup> In fact, the Commission previously approved an A&E methodology with a system load factor weighting for PPL Gas, which also had gas storage facilities.<sup>34</sup> In addition, the OCA continues to oppose PECO's decision not to allocate excess demand to interruptible customers<sup>35</sup> even though the OCA proposed not to allocate peak demand to interruptible customers as part of its P&A methodology for similar reasons.<sup>36</sup> Lastly, the OCA alleges that excess demand does not represent a class's contribution to peak demand but rather the class's usage pattern relative to average use.<sup>37</sup> However, the evidentiary record disputes this position and establishes that excess demand represents the excess of peak demand over average demand for each customer class, which provides a reasonable basis for allocating the majority of distribution main costs.<sup>38</sup>

Finally, PAIEUG will briefly respond to the OSBA's Excerptions regarding this issue. In its Exceptions, the OSBA does not take a position regarding either the A&E or the P&A methodology, but instead requests that the Commission identify which methodology should be used to allocate the distribution main costs of NGDCs moving forward, or alternatively, which factors should be applied in NGDC rate cases to evaluate whether a proposed methodology is reasonable.<sup>39</sup> As recognized by the Supreme Court, "allocation of costs is not a matter for the

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<sup>32</sup> OCA Exc., p. 26.

<sup>33</sup> PECO Statement No. 6, *Direct Testimony of Jiang Ding*, ("PECO Statement No. 6"), p. 12.

<sup>34</sup> *PPL Gas* pp. 176-178; *see also* PAIEUG R.B., p. 12.

<sup>35</sup> OCA Exc., p. 28.

<sup>36</sup> PAIEUG, R.B, pp. 11-12.

<sup>37</sup> OCA Exc., p. 26.

<sup>38</sup> PECO Statement No. 6, p. 13; *see also* OSBA Statement No. 1, *Direct Testimony of Robert D. Knecht* ("OSBA Statement No. 1"), p. 24.

<sup>39</sup> OSBA Exc., p. 4.

slide-rule. It involves judgement on a myriad of facts. It has no claim to an exact science."<sup>40</sup> Accordingly, it may be inappropriate for the Commission to develop a strict set of rules governing the allocation of distribution main costs in a COSS. To the extent the Commission is interested in exploring these broader policy questions, a separate generic proceeding could be initiated in which all interested stakeholders could participate. Regardless, the Commission should continue to recognize that important factual distinctions exist among utilities and between cases that might cause differing methodologies to be reasonable in future NGDC rate cases.

With respect to the instant proceeding, the evidentiary record clearly demonstrates that PECO's proposed A&E methodology should be approved consistent with the R.D. Apart from the OCA, all parties expressed support for PECO's proposed methodology in testimony. PECO's proposed A&E methodology is most consistent with cost causation principles based on how PECO designs and incurs costs related to its distribution mains and aligns with Commission precedent and industry practice. Accordingly, the Commission should uphold the R.D. and deny the OCA's and OSBA's Exceptions regarding this issue.

**B. Reply Exception No. 2: The ALJ correctly recommended adoption of I&E's proposed revenue allocation.**

If the Commission determines that a revenue increase for PECO is reasonable, the ALJ recommends that the Commission adopt I&E's proposed revenue allocation methodology as the basis for apportioning the increase among customer classes.<sup>41</sup> Although PAIEUG submitted an alternative revenue allocation methodology, PAIEUG agrees that I&E's methodology is reasonable. The main difference between PAIEUG's and I&E's proposed revenue allocation methodologies is the treatment of Rates GC and L. In short, PAIEUG moved Rates GC and L to

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<sup>40</sup> *Colorado Interstate Gas Co. v. Fed. Power Comm'n*, 324 U.S. 581, 589 (1945).

<sup>41</sup> R.D. p. 406.

the system average rate of return consistent with PECO's prior settlement commitments,<sup>42</sup> while I&E moved the classes closer, but not entirely, to the system average rate of return.<sup>43</sup> In the R.D., the ALJ reasoned that the significant rate increase and decrease required to move Rates L and GC, respectively, to the system average rate of return could not be accomplished fairly and in a manner that would avoid excessive increases to other classes.<sup>44</sup> In light of the ALJ's determination that moving Rates GC and L to cost in this proceeding would be unreasonable, the ALJ correctly determined that I&E's revenue allocation is the most reasonable revenue allocation proposal.

OCA was the only party to file Exceptions regarding this aspect of the R.D., which favored its own proposed revenue allocation instead of I&E's.<sup>45</sup> As addressed in PAIEUG's Reply Exception No. 1, OCA's proposed revenue allocation is based on a flawed COSS that utilizes a P&A methodology to allocate distribution main costs, which overemphasizes average demand in the calculation.<sup>46</sup> For the reasons discussed in the prior section, OCA's P&A methodology was properly rejected by the ALJ, and therefore, OCA's proposed revenue allocation also must be rejected.

Accordingly, the Commission should adopt I&E's proposed revenue allocation consistent with the R.D. As also indicated within PAIEUG's letter filing in this proceeding on April 26, 2021, PAIEUG identified a typo in the chart reflecting I&E's revenue allocation within the R.D. I&E's revenue allocation chart was included in its Surrebuttal Testimony, which it subsequently corrected in an Errata filing dated February 16, 2021. The R.D. inadvertently included the chart

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<sup>42</sup> PECO Statement No. 7-R, *Rebuttal Testimony of Joseph A. Bisti*, ("PECO Statement No. 7-R"), p. 12; *Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-2008-2028394 (Joint Petition for Settlement dated Aug. 21, 2008), pp. 5-6.

<sup>43</sup> *See id.*; *see also* PAIEUG M.B., pp. 24-25.

<sup>44</sup> R.D. pp. 405-406.

<sup>45</sup> OCA Exc., pp. 31-33.

<sup>46</sup> *See* PAIEUG M.B., p. 26.

from I&E's testimony without incorporating the corrections from the Errata filing.<sup>47</sup> The Final Order should reflect these corrections to accurately reflect I&E's proposed revenue allocation.

**C. Reply Exception No. 3: The ALJ's rejection of OSBA's changes to the TSF and TSI rate designs based on rate shock concerns is reasonable.**

In the R.D., the ALJ rejects OSBA's proposed changes to the rate designs for Rates TSF and TSI because such changes would create significant rate shock to certain customers and violate principles of gradualism.<sup>48</sup> The only party to file Exceptions regarding this issue was OSBA. For the following reasons, and as stated in PAIEUG's Motion to Strike, filed simultaneously with these Reply Exceptions, the OSBA's Exception on this issue should be disregarded and given no weight by the Commission.

In this proceeding, OSBA proposed to shrink the volumetric differentials within Rates TSF and TSI for customers above and below 18 mmcf.<sup>49</sup> PAIEUG submitted evidence into the record of this proceeding establishing that large Rate TSF customers would experience a 56.2% increase in rates if OSBA's proposal is approved.<sup>50</sup> No party presented any evidence refuting this fact. PECO implicitly acknowledged the accuracy of PAIEUG's calculation by subsequently arguing that a 56.2% increase in rates was not unreasonable because PECO had not filed a rate case since 2010.<sup>51</sup> Although given ample opportunity through testimony and cross-examination, OSBA chose to ignore PAIEUG's testimony and exhibits regarding this issue entirely until Exceptions.

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<sup>47</sup> See R.D. p. 406.

<sup>48</sup> *Id.* p. 411.

<sup>49</sup> OSBA Statement No. 1, p. 53-56.

<sup>50</sup> PAIEUG Statement No. 1-S, *Surrebuttal Testimony of Billie S. LaConte*, ("PAIEUG Statement No. 1-S"), p. 7; *see also* PAIEUG Exhibit BSL-2S.

<sup>51</sup> PECO M.B., p. 121.

When evaluating this proposal, the ALJ properly rejected OSBA's requested change based on concerns of rate shock.<sup>52</sup> The Commission often relies on principles of gradualism when setting utility rates to avoid rate shock to any customer class.<sup>53</sup> Rate shock occurs when a significant rate increase is imposed on customers in one case rather than phasing it in over a series of cases consistent with principles of gradualism.<sup>54</sup> A 56.2% increase in rates in a single rate case is a clear violation of gradualism principles, which would inevitably lead to rate shock for impacted customers.<sup>55</sup>

In an unequivocal violation of Commission's rules of practice and procedure, in its Exceptions, OSBA raises new factual claims related to the veracity of PAIEUG's testimony and exhibits explaining the 56.2% increase associated with OSBA's proposal.<sup>56</sup> OSBA's discussion includes no citations to the record and cites to a new, unverified exhibit attached to its Exceptions.<sup>57</sup> PAIEUG has concerns regarding the accuracy of OSBA's claims, but PAIEUG is unable to submit discovery to OSBA or cross-examine OSBA's witness regarding these claims.<sup>58</sup> As further discussed within PAIEUG's Motion to Strike, OSBA's Exceptions that raise new factual claims must be stricken from the record and given no weight by the Commission.

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<sup>52</sup> R.D. p. 411.

<sup>53</sup> See, e.g., *Sharon Steel Corporation v. Pa. Pub. Util. Comm'n*, 468 A.2d 860 (Pa. Commw. Ct. 1983); *Barasch v. Pa. Pub. Util. Comm'n*, 515 A.2d 651 (Pa. Commw. Ct. 1986); see also *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Commw. Ct. 2006).

<sup>54</sup> *Lloyd* at fn. 14 ("To mitigate both forms of rate shock, the remedy is 'gradualism,' i.e., phasing in rates or closing rate differentials over a longer period of time allowing consumers to gradually make the adjustments in the 'elastic' part of their spending so as to pay for increased utility costs, not to mention lessening the pressure on the Commission and the utilities to dampen rate increases.")

<sup>55</sup> PAIEUG R.B., pp. 26-27.

<sup>56</sup> OSBA Exc., pp. 7-8, Appendix A.

<sup>57</sup> See *id.*

<sup>58</sup> For example, OSBA's new calculations refer to a 4% rate increase for Rate TSF, but I&E's revenue allocation (reflecting I&E's corrections from its Errata filing) indicates Rate TSF would experience a 16.4% rate increase. OSBA may be trying to capitalize on a typo in the R.D. to try to undermine PAIEUG's calculations regarding the rate impact of OSBA's proposed Rate TS-F changes, but PAIEUG cannot be certain because it had no opportunity to cross-examine OSBA's witness.

In addition, OSBA claims its analysis that purportedly supports changes to the volumetric changes for Rates TSF and TSI was un rebutted.<sup>59</sup> To the contrary, the Company submitted contradictory testimony regarding whether any change to the rate designs of Rates TSF and TSI are reasonable. Despite accepting OSBA's proposed changes to the volumetric differentials within these rates,<sup>60</sup> the Company's Witness Ding offered other testimony disputing OSBA's position that Rates TSF and TSI reflect unreasonably large rate differentials for customer above and below annual volumes of 18 mmcf.<sup>61</sup> Witness Ding further explained that the current rate differentials in Rates TSF and TSI are justified based on a number of factors, including "total connected load and concurrent load, the customer's location(s), and the manner in which the customer operates its equipment."<sup>62</sup> Accordingly, it remains unclear whether OSBA's proposed volumetric differentials are reasonable and cost-based.<sup>63</sup>

It is an undisputed fact within the evidentiary record, however, that OSBA's proposal will result in a 56.2% rate increase for large Rate TSF customers using above 18 mmcf of natural gas per year. The ALJ properly rejected OSBA's proposal because it violates principles of gradualism and creates rate shock. Although PAIEUG did not conduct a similar rate analysis for Rate TSI, the reasonableness of the rate design changes for Rates TSF and TSI remain in doubt. As discussed in the prior paragraph, PECO provided conflicting testimony regarding whether or not OSBA's proposed changes to the rate design for Rates TSF and TSI are cost-based and reasonable.<sup>64</sup>

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<sup>59</sup> OSBA Exc., p. 5.

<sup>60</sup> PECO Statement No. 7-R, p. 15.

<sup>61</sup> PECO Statement No. 6-R, pp. 23-24.

<sup>62</sup> *Id.*

<sup>63</sup> As indicated in PAIEUG's briefs, PAIEUG was unable to receive timely working data from PECO to conduct its own analysis. PAIEUG M.B., pp. 37-38.

<sup>64</sup> *Id.* p. 37.



The current rate designs for Rates TSF and TSI are included in PECO's tariff, and as such they are deemed *prima facie* reasonable.<sup>65</sup> In light of both the Rate TSF rate shock concerns and the contradictory evidentiary record regarding the reasonableness of the rate design changes, the Commission should adopt the ALJ's recommendation and reject OSBA's proposed changes to Rates TSF and TSI and the current volumetric differentials within these rates should remain in place. If, after further examination of this issue, PECO determines that such changes are warranted, PECO should instead propose such changes in its next rate case in a manner that adheres to principles of gradualism and prevents rate shock.

**D. Reply Exception No. 4: The ALJ Correctly Finds that the Status Quo for Allocation of USP Costs Should Remain.**

In the R.D., the ALJ correctly recommends that CAUSE-PA and OCA's request to modify the status quo with respect to the allocation of PECO's USP costs be rejected based upon cost causation analysis, as non-residential customers cannot benefit from participation in PECO's USP.<sup>66</sup> OCA and CAUSE-PA except to this finding, and the support for this claim stems from a reiteration of arguments presented in OCA's and CAUSE-PA's Main Briefs and rejected by the ALJ in the R.D.<sup>67</sup> For the reasons set forth below, the ALJ correctly determines that, in line with cost-causation principles, because non-residential customers cannot benefit from PECO's USP, these customers should not be made to pay the costs associated with PECO's USP.<sup>68</sup> Importantly, the ALJ prudently recognizes that, within the context of the continuing COVID-19 pandemic, which has severely impacted businesses, violating cost causation principles in order

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<sup>65</sup> 66 Pa.C.S. § 316 ("Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby."); *see also Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996).

<sup>66</sup> R.D. p. 408.

<sup>67</sup> CAUSE-PA Exc. pp. 23-29; OCA Exc. pp. 33-37.

<sup>68</sup> *See* Section II.D.1, *infra*.

change the status quo would only create additional hardship for these customers.<sup>69</sup> Moreover, in making this recommendation, the ALJ appropriately adheres to previous PUC precedent.<sup>70</sup>

**1. The ALJ Correctly Recognizes that Allocation of PECO's USP Costs Should Adhere to Cost Causation Principles.**

As the ALJ prudently recognizes, non-residential customers do not directly benefit from PECO's USP, as non-residential customers cannot partake in PECO's USP.<sup>71</sup> The OCA and CAUSE-PA except to this finding, contending that the ALJ's observation is erroneous; however, neither CAUSE-PA nor the OCA has presented evidence showing otherwise.<sup>72</sup> Both parties continue to identify emanations from benefits to residential customers in an attempt to claim benefits to commercial and industrial customers.<sup>73</sup> However, no party has argued—nor can any party argue—that these supposed benefits to non-residentials come from their involvement or access to the USP because, as discussed in PAIEUG's Main Brief, non-residential customers are ineligible for PECO's USP.<sup>74</sup> This ineligibility with respect to PECO's USP leads to the conclusion that non-residentials cannot enjoy any direct benefit from PECO's USP, and nothing argued by CAUSE-PA or the OCA changes this fact. Consequently, as correctly determined in the R.D., because the costs of PECO's USP are incurred solely to serve the residential class, cost-causation principles mandate that the residential class fund this USP.<sup>75</sup>

CAUSE-PA also excepts to the ALJ's recommendation concerning allocation of USP costs by relying on the misguided notion that, because residential customers do not "energy poverty" residential customers should not be required to be the sole class funding PECO's USP.<sup>76</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> See Section II.D.2, *infra*.

<sup>71</sup> R.D. p. 408.

<sup>72</sup> CAUSE-PA Exc. pp. 23-29; OCA Exc. pp. 33-37.

<sup>73</sup> CAUSE-PA Exc., p. 27; OCA Exc, pp. 34-35.

<sup>74</sup> PAIEUG M.B., p. 30.

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

<sup>76</sup> CAUSE-PA Exc., p. 23.

Contrary to CAUSE-PA's claim, the focus in this proceeding is on the customer classes benefitting from PECO's USP.<sup>77</sup> In other words, cost-causation requires that customers benefitting from PECO's USP should be the customers responsible for the costs of the USP—*i.e.*, cost-of-service, which is also well recognized by PUC precedent.<sup>78</sup>

The OCA and CAUSE-PA also except to the ALJ's recommendation on allocation of USP costs, contending that the ALJ's recognition of the economic impacts of the ongoing COVID-19 pandemic on non-residential customers ignores the economic impacts of the COVID-19 pandemic on residential customers.<sup>79</sup> This argument, however, conveniently glosses over the fact that residential customers, prior to the pandemic, had been responsible for the costs associated with PECO's USP. Unfortunately, OCA and CAUSE-PA's proposal to change the status quo, during an ongoing and destabilizing pandemic, would result in *additional* costs on non-residential customers for a program from which they cannot partake. Doing so would compound the problems non-residentials already face from the COVID-19 pandemic, which the ALJ prudently recognized.

The OCA, relying on studies supposedly examining the economic impact of USP allocation during the COVID-19 pandemic in other states, attempts to argue that changing the status quo with respect USP cost allocation would not compound the pandemic's economic impact on non-residential customers.<sup>80</sup> However, the study the OCA presents does not actually examine the effects of allocating USP costs to non-residential customers during the COVID-19 pandemic.<sup>81</sup> Instead, the study merely identifies the impacts of the COVID-19 pandemic on

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<sup>77</sup> PAEIUG M.B., p. 30.

<sup>78</sup> *Id.*

<sup>79</sup> CAUSE-PA Exc., pp. 25-26; OCA Exc., pp. 34-35.

<sup>80</sup> OCA Exc., pp. 35-36.

<sup>81</sup> OCA Exc., pp. 35-36; OCA Statement No. 5-SR, Surrebuttal Testimony of Roger D. Colton ("OCA St. No. 5"), pp. 31-32.

some key economic indicators in a number of cities, including Philadelphia and Pittsburgh.<sup>82</sup> Using the study, the OCA compares Ohio's and Pennsylvania's performances with respect to the key economic indicators listed.<sup>83</sup> In doing so, the OCA suggests that because Ohio, which allocates USP costs to all customer classes, appears to have out-performed Pennsylvania in most areas, allocating USP costs to all customer groups in Pennsylvania will not affect non-residential customers.<sup>84</sup> The OCA's conclusion regarding the study, however, ignores several factors, including: (1) how Ohio has handled the COVID-19 pandemic versus how Pennsylvania has addressed the COVID-19 pandemic as it relates to business and industry; (2) the impact of data from areas in Pennsylvania outside of Philadelphia and Pittsburgh; and (3) whether Ohio's application of USP costs on a statewide basis (*i.e.*, macro level) would be applicable to application of USP costs on PECO's natural gas system (*i.e.*, a micro level). Simply stated, the comparison the OCA attempts to put forward here does not hold much weight. Specifically, the OCA attempts to utilize an overarching and generalized study to support specific claims on PECO's system – *i.e.*, at best, OCA offers nothing more than an apples to oranges comparison.

Accordingly, because non-residential customers derive no direct benefit from PECO's USP and in light of the continuing effects of the COVID-19 pandemic, the ALJ's recommendation to retain the status quo for allocation of PECO's USP costs should be adopted.

## **2. The ALJ's Recommendation Comports with Pennsylvania and PUC Precedent.**

CAUSE-PA and the OCA also except to the ALJ's recommendation with respect to the allocation of USP costs on the grounds that the recommendation is supposedly contrary to

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

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

Pennsylvania and PUC precedent.<sup>85</sup> Specifically, CAUSE-PA continues to contend that the Natural Gas Choice and Competition Act ("Competition Act" or "Act") and the Commission's *Final CAP Policy Statement*<sup>86</sup> support adopting a proposal to shift USP costs to non-residential classes.<sup>87</sup> Contrary to CAUSE-PA's arguments, however, the ALJ's recommendation is consistent with both PUC and Pennsylvania precedent. As more fully discussed in PAIEUG's Main and Reply Briefs, neither the Act nor the *Final CAP Policy Statement* provide support for CAUSE-PA's proposal.<sup>88</sup> Moreover, OCA's claim of new evidence in this proceeding warranting a different outcome than that set forth by the PUC in the *Columbia* proceeding also does not contain the requisite weight.

Although CAUSE-PA claims that the Competition Act requires the non-bypassable collection of USP costs, the purpose of the Competition Act was to restructure the natural gas utility industry in the Commonwealth. Because the natural gas industry has been "restructured" for approximately two decades, a claim of non-bypassability related to the Competition Act is irrelevant to the determination of whether PECO's USP costs should be collected from all ratepayers in this proceeding.<sup>89</sup>

In addition, CAUSE-PA seemingly contends that recovery of CAP costs from all rate classes is not being considered in the instant proceeding, thereby in violation of the PUC's *Final CAP Policy Statement*.<sup>90</sup> Specifically, CAUSE-PA implies that the *Final CAP Policy Statement* requires adoption of proposals to recover CAP costs from all ratepayer classes, when, in actuality, the *Final CAP Policy Statement* merely indicates that it is appropriate to consider such

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<sup>85</sup> CAUSE-PA Exc., pp. 24 – 26; OCA Exc., pp. 34-35.

<sup>86</sup> *2019 Amendments to Policy Statement on Customer Assistance Program 52 Pa. Code § 69.261-69.267*, Docket No. M-2019-3012599, Final Policy Statement and Order (Opinion and Order entered November 5, 2019) ("*Final CAP Policy Statement*").

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

<sup>88</sup> PAIEUG M.B., pp. 32-34; PAIEUG R.B., pp. 17-18.

<sup>89</sup> PAIEUG R.B., pp. 16-17.

<sup>90</sup> CAUSE-PA Exc., pp. 24 – 25.

proposals in rate case proceedings.<sup>91</sup> In this proceeding, all parties had ample opportunity to present arguments on the prudence of allocating USP costs to all rate classes. The OSBA, PAIEUG, PECO, CAUSE-PA and the OCA all presented their arguments on this point, and all arguments were considered by the ALJ in formulating the recommended decision. Recovery of a specific CAP program, PECO's USP, is in fact being considered in the instant proceeding, in accordance with PUC precedent. Simply because the ALJ did not agree with CAUSE-PA that a change in status quo should occur does not mean that the issue has not been fully considered.

The OCA also appears to except to the ALJ's recommendation, claiming that the further evidence the OCA has presented in the instant matter warranted the ALJ to recommend acceptance of OCA's proposal concerning allocation of USP costs.<sup>92</sup> Specifically, the OCA relies on the study concerning the impacts of the COVID-19 pandemic on some key economic indicators in Ohio and Pennsylvania, which was not included in the evidence presented in the most recent Columbia proceeding,<sup>93</sup> to suggest that the instant record contains enough to reach a different result than the Commission's decision in *Columbia*.<sup>94</sup> As discussed in Section II.D.1, *supra*, however, the study does not lend itself to an interpretation that USP costs should be allocated to all ratepayers. No evidence presented can change the fact that non-residential customers cannot participate in PECO's USP, derive no direct benefit therefrom, and should not, therefore, be made to bear the costs of the USP.

Accordingly, the ALJ, in line with PUC and Pennsylvania precedent, including the principles of cost-causation, correctly recommended that the status quo for cost allocation of PECO's USP remain. Further, the ALJ prudently recognized that it would be inappropriate to

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<sup>91</sup> *Final CAP Policy Statement*, at n. 150.

<sup>92</sup> OCA Exc., pp. 34-35.

<sup>93</sup> *Columbia*, p. 44.

<sup>94</sup> OCA Exc., pp. 34-35.


shift USP costs to non-residentials while these customer classes are impacted by the ongoing COVID-19 pandemic. For these reasons, CAUSE-PA's and OCA's Exceptions on this issue should be denied by the Commission.

**III. CONCLUSION**

**WHEREFORE**, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission adopt the Administrative Law Judge's recommendations with respect to the appropriate Cost of Service Study, the resulting rate allocation, the continuation of the status quo for the collection of universal service costs, and the rejection of any changes to the volumetric differentials for Rates TSF and TSI.

Respectfully submitted,

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By 

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