

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Docket No. R-2010-2161575

PECO Energy Company – Electric Division

**THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP
STATEMENT IN SUPPORT OF
THE JOINT PETITION FOR PARTIAL SETTLEMENT**

The Philadelphia Area Industrial Energy Users Group ("PAIEUG"), by and through its counsel, submits that the terms of the Joint Petition for Partial Settlement ("Joint Petition" or "Partial Settlement") concurrently filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") in the above-captioned proceeding reflects a partial settlement among the Joint Petitioners with respect to PECO Energy Company's ("PECO" or "Company") March 31, 2010, filing of Supplement No. 2 to Tariff Electric – Pa. P.U.C. No. 4, which sought to increase PECO's total annual operating revenues by \$316.4 million, effective May 30, 2010.

As a result of settlement discussions, PECO, PAIEUG, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), Pennsylvania Communities Organizing for Change, Inc. ("PCOC"), the International Brotherhood of Electrical Workers Local 614, AFL-CIO ("IBEW"), Dominion Retail, Inc. ("Dominion Retail"), the City of Philadelphia ("City"), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN, et al."), Citizens for Pennsylvania's Future ("PennFuture"), and the Commercial Group ("CG") (collectively, the "Joint Petitioners"), have agreed upon the terms embodied in the foregoing

Joint Petition. PAIEUG offers this Statement in Support to further demonstrate that the **Partial Settlement** is in the public interest and should be approved without modification.

BACKGROUND

1. On March 31, 2010, PECO filed Supplement No. 2 to Tariff Electric – Pa. P.U.C. No. 4, which contained proposed changes in rates, rules, and regulations calculated to produce an increase of approximately \$316.4 million in total operating revenues. PECO's filing also proposed the elimination of the Night Service Riders ("**NSRs**") related to Rates HT (High – Tension Power), PD (Primary – Distribution Power), and GS (General Service), as well as the Large Interruptible Load Rider ("**LILR**") that is currently available to Rate HT customers. In addition, PECO proposed certain modifications to the Auxiliary Service Rider ("**ASR**"), resulting in a customer taking supplementary or back-up service obtaining distribution service through the customer's standard rate.

2. On May 20, 2010, PAIEUG submitted a Complaint in the **above-captioned** proceeding. PAIEUG's Complaint explained that, under PECO's proposed allocation of its requested revenue increase, large commercial and industrial customers ("**C&I**") will **experience** substantial increases in their distribution rates, resulting in the large C&I customer **class** contributing revenues to PECO in excess of their cost to serve. **PAIEUG's** Complaint **also** explained that PECO's proposed tariff modifications, including changes to the **NSRs** and **ASR**, may have an adverse impact on the Company's large **C&I** customers. As noted in its **Complaint**, PAIEUG members receive electric service from PECO, including service under Rate HT **and** Rate PD, and use substantial volumes of electricity in their operations. As a result, PAIEUG members were concerned that the proposed increase and tariff changes may have an adverse impact on their operational processes and cost of doing business.

3. In accordance with the Commission's policy encouraging negotiated settlement of contested proceedings, the Joint Petitioners engaged in discussions to resolve the issues raised by the various parties. These negotiations resulted in the Partial Settlement, which proposes a resolution of almost all outstanding issues between the Joint Petitioners in this proceeding as set forth below.

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4. The Commission has a strong policy favoring settlements. As set forth in the Commission's regulations, "[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa. Code § 69.391; see also 52 Pa. Code § 5.231. Consistent with the Commission's policy, the Joint Petitioners engaged in negotiations in an effort to settle the issues raised by the complainants. These ongoing discussions produced the foregoing Partial Settlement.

5. The Joint Petitioners agree that approval of the proposed Partial Settlement is overwhelmingly in the best interest of the parties involved.

6. The Joint Petitioners agree that the Company should be authorized to file a tariff supplement containing the rates set forth in the Joint Petition.

7. The Joint Petitioners agree that the \$225.0 million rate increase achieved in the Joint Petition is just, reasonable, and in the public interest.

8. The Joint Petitioners agree that this resulting rate increase should be allocated pursuant to the terms of the Partial Settlement.

9. The Joint Petition is in the public interest for the following reasons:

- a. As a result of the Joint Petition, expenses incurred by the Joint Petitioners and the Commission for completing this proceeding will be less than they would have been if the proceeding had been fully litigated.

- b. Uncertainties regarding further expenses associated with possible appeals from the final order of the Commission are avoided as a result of the Joint Petition.
- c. The Joint Petition results in an increase in **PECO's** rates by **\$225.0 million**, or approximately 5% (based on total electric operating revenues), in lieu of the **\$316.4 million**, or **7%** increase originally requested.
- d. The Joint Petition provides a just and reasonable means by which to allocate the resulting rate increase.
- e. The Joint Petition reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding.
- f. The Joint Petition is presented without prejudice to any position any party may advance in **future** proceedings involving the Company.

10. The Joint Petition specifically satisfies the concerns of PAIEUG by reasonably allocating the proposed increase among customer classes and implementing a movement of each rate class closer to the Company's actual cost to serve. In addition, the Joint Petition **satisfies PAIEUG's concerns** regarding **PECO's** originally proposed tariff changes by:

- a. Allowing the NSRs for Rates HT, PD, and GS to remain in place until ~~the~~ the Company's next electric distribution base rate case and establishing a demand charge for the HT, PD, and GS NSRs that reflects the ~~same~~ percentage increase in the HT demand charge. Continuing the NSRs is consistent with cost causation and the Commission's policy on Energy **and** Efficiency Conservation under Act **129**. **See** PAIEUG Statement No. 1 (Direct Testimony and Exhibits of Stephen J. Baron), at **17-20**. Limiting the percentage increase in the demand charge for the HT, PD, and **GS** NSRs to the percentage increase in the HT demand charge results in a

more reasonable increase than PECO's proposal, consistent with the concept of gradualism. Id. at 20.

- b. Phasing in the distribution rate for customers taking service under the LILR rate over a three-year period (i.e., 50% of the full HT rate in 2011, 75% in 2012, and 100% in 2013) to mitigate the rate impact on such customers. Id. at 21-22.
- c. Phasing in the ASR rate for back-up and maintenance power over a three-year period @, 33% of the full HT rate for 2011, 66% for 2011, and 100% for 2013) to mitigate the rate impact on such customers. Id. at 23-24.

11. PAIEUG supports the foregoing Joint Petition because it is in the public interest; however, in the event that the Joint Petition is rejected by the Administrative Law Judge or the Commission, PAIEUG will resume its litigation position, which differs from the terms of the Joint Petition.

12. As set forth above, PAIEUG submits that the Partial Settlement is in the public interest and adheres to Commission policies promoting negotiated settlements. The **Partial Settlement** was achieved **after** numerous negotiations. While Joint Petitioners have invested **time** and resources in the negotiation of the Joint Petition, this process has allowed the parties, as well as the Commission, to avoid expending the substantial resources that would have been required to fully litigate this proceeding while still reaching a just, reasonable, and non-discriminatory result. Joint Petitioners have thus reached an amicable resolution to this dispute as embodied in the Partial Settlement. Approval of the Partial Settlement will permit the Commission and **Joint**

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Petitioners to avoid incurring the additional time, expense, and uncertainty of further current
litigation in this proceeding. See 52 Pa. Code § 69.391.
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WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that Administrative Law Judges **Marlane R. Chestnut** and **Christopher Pell**, and **the Pennsylvania Public Utility Commission**, approve the foregoing Joint Petition for Partial Settlement without modification.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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