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November 9, 2015

**VIA eFILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v.  
PECO Energy Company – Electric Division  
Docket No. R-2015-2468981**

Dear Secretary Chiavetta:

Enclosed is the **Exception of PECO Energy Company (“Exception”) to the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on October 28, 2015** in the above-referenced matter.

As evidenced by the enclosed Certificate of Service, copies of the Exception have been served upon the Administrative Law Judge and all parties of record. In addition, as directed, a courtesy copy has been e-mailed to the Commission’s Office of Special Assistants. Should you have any questions, please contact me directly at 215.841.5974. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig Williams", written over a horizontal line.

W. Craig Williams

cc: Per the Certificate of Service (w/encls.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. R-2015-2468981</b>
<b>PECO ENERGY COMPANY - ELECTRIC DIVISION</b>	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Exception of PECO Energy Company to the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on October 28, 2015** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Date: November 9, 2015

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. R-2015-2468981</b>
	:	
<b>PECO ENERGY COMPANY - ELECTRIC DIVISION</b>	:	

**EXCEPTION OF  
PECO ENERGY COMPANY**

**To The Recommended Decision Of  
Administrative Law Judge Angela T. Jones**

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Dated: November 9, 2015

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## I. INTRODUCTION

On March 27, 2015, PECO Energy Company (“PECO” or the “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) Tariff Electric – Pa. P.U.C. No. 5 (“Tariff No. 5”) proposing an increase in annual electric operating revenues. By Order issued April 23, 2015, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of PECO’s existing and proposed rates, rules and regulations. Accordingly, Tariff No. 5 was suspended by operation of law until December 26, 2015. This case was then assigned to Administrative Law Judge Angela T. Jones (“ALJ”) for purposes of conducting hearings and issuing a Recommended Decision.

Accompanying Tariff No. 5, the Company filed all of the supporting information required by the Commission’s regulations (52 Pa. Code § 53.52 *et seq.*) for an historic test year ended December 31, 2014, a future test year ending December 31, 2015 and a fully projected future test year (“FPFTY”) ending December 31, 2016. The Company’s supporting information included the prepared direct testimony of eight initial witnesses and the various exhibits sponsored by them. A single statement of supplemental direct testimony was served on May 22, 2015.

Various parties intervened and actively participated in the ensuing proceedings. In accordance with the procedural schedule established at the May 11, 2015 Prehearing Conference, direct testimony was filed by other parties on June 23, 2015, and rebuttal and surrebuttal testimony was filed on July 21 and August 4, 2015.

Extensive negotiations were conducted by the parties to try to achieve a settlement of some or all of the issues in this case. As a result of those negotiations, an unopposed settlement (“Settlement”) was reached that resolves all of the issues in this case. Accordingly, a Joint



Petition for Settlement of Rate Investigation (“Joint Petition”) was filed with the Commission on September 10, 2015 by the following signatories:

PECO

Bureau of Investigation & Enforcement (“I&E”)

Office of Consumer Advocate (“OCA”)

Office of Small Business Advocate (“OSBA”)

Philadelphia Area Industrial Energy Users Group (“PAIEUG”)

Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania (“CAUSE-PA”)

Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al*”)

City of Philadelphia (“City”)

Keystone Energy Efficiency Alliance Energy Education Fund (“KEEF”)

Clean Air Council (“CAC”)

Natural Resources Defense Fund (“NRDC”)

The Alliance for Solar Choice (“TASC”)

Environmental Defense Fund (“EDF”)

The General Service Administration authorized the Joint Petitioners to represent that it does not oppose the Settlement.<sup>1</sup> Mr. William B. Kazimer, a residential customer who intervened in the proceeding, submitted a letter to PECO, which PECO served on all parties and the ALJ, stating that he joined in the Settlement.<sup>2</sup> Additionally, as set forth at pages 2 and 11 of the Joint Petition, I&E and PAIEUG did not join in, but also did not oppose, the term of the Settlement set forth in Paragraph 25 of the Joint Petition, which states as follows:

On or before March 1, 2016, PECO will hold a collaborative open to all interested participants to seek input regarding revenue decoupling. All participants reserve their right to raise any and all arguments and positions in the collaborative, or to the

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<sup>1</sup> See Joint Petition, p. 2, n. 1.

<sup>2</sup> See Recommended Decision, p. 10.

Commission, including opposing the implementation of decoupling in whole or in part.

On October 28, 2015, the Commission's Secretary issued the ALJ's Recommended Decision in this case. The ALJ recommended that the Commission grant the Joint Petition and adopt the Settlement subject to a "modification" to Paragraph 25 that is described at pages 38-39 and set forth in Ordering Paragraph 5 of the Recommended Decision.<sup>3</sup> To the extent the ALJ's recommendation regarding Paragraph 25 of the Joint Petition would represent a "modification" of the Settlement's terms, PECO takes exception to that recommendation on the grounds set forth below.

## II. EXCEPTION

PECO respectfully notes the following Exception to the Recommended Decision:

### **Recommended Decision, Pages 38-39, And Ordering Paragraph No. 5 At Page 41:**

The Recommended Decision recommends that Paragraph 25 of the Joint Petition be "modified to direct a collaborative be opened no later than March 1, 2016, to include all EDCs and NGDCs in the Commonwealth of Pennsylvania and any other interested parties to explore the adoption of revenue decoupling as a mechanism to enable EDCs and NGDCs to recover revenues when sales volumes fluctuate."<sup>4</sup> Substantially the same language is incorporated in Ordering Paragraph 5 of the Recommended Decision. Additionally, the Recommended Decision states that "[p]erhaps the Office of Competitive Market Oversight might be directed to lead the collaborative and provide a report to the Commission in six month intervals."<sup>5</sup> Those provisions are not, however, included in any of the Ordering Paragraphs.

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<sup>3</sup> *Id.* at 41.

<sup>4</sup> *Id.* at 38.

<sup>5</sup> *Id.* at 39.

To the extent that the recommended “modification” is inconsistent with Paragraph 25, it should not be adopted. The Settlement represents a carefully crafted compromise on a variety of issues<sup>6</sup> and, for that reason, was submitted for approval “without modification” and upon the condition that a modification by the Commission could permit a Joint Petitioner to withdraw from the Settlement.<sup>7</sup> The Settlement submitted for Commission approval is, in its totality, a reasonable, well-balanced resolution of this case and, therefore, is in the public interest. The Commission should not take any action that could upset the careful balance achieved by the settling parties and, thereby, create an unwarranted risk that the many benefits of the Settlement as a whole could be lost. Moreover, if the ALJ’s suggestions regarding the possible involvement of the Office of Competitive Market Oversight (“OCMO”) and imposition of a reporting provision are interpreted as a recommendation to depart from the Settlement’s terms, they also should not be adopted for the reasons discussed above and in Section III, *infra*.<sup>8</sup>

### III. ARGUMENT

#### A. The Joint Petition Should Be Granted And The Settlement Should Be Approved Without Modification

Paragraph 32 of the Joint Petition sets forth the basis on which the Joint Petitioners entered into the Settlement:

This Settlement is being presented only in the context of this proceeding in an effort to fully resolve the issues presented in this

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<sup>6</sup> See Joint Petition, ¶¶ 11, 29, 30-32.

<sup>7</sup> Joint Petition, ¶ 33.

<sup>8</sup> PECO has been advised by PAIEUG and the OSBA that they are filing an Exception and a letter, respectively, that support PECO’s Exception. PECO has also been advised by CAUSE-PA and TURN *et al* that they are filing letters urging the Commission to approve the Settlement without modification. The OCA has advised PECO that it is filing a letter indicating that, while it is not submitting Exceptions, it does not oppose PECO’s Exception. I&E, GSA, the City, CAC and EDF have authorized PECO to represent to the Commission that they do not oppose PECO’s Exception. TASC has indicated to PECO that TASC takes no position for or against PECO’s Exception.

proceeding in a manner that is fair and reasonable. The Settlement is the product of compromise.

Paragraph 32 echoes an earlier provision of the Joint Petition, which states that “[t]he Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein.”<sup>9</sup>

Paragraph 25 of the Joint Petition, which was quoted in its entirety in Section I, *supra*, embodies the foregoing settlement principles. It represents a compromise of the positions taken by several of the Joint Petitioners in their testimony and in pleadings submitted in this case and, as such, was carefully tailored to achieve the agreement – or non-opposition – of all the parties to this case.<sup>10</sup> In fact, as noted in the Recommended Decision,<sup>11</sup> the witness who submitted testimony jointly on behalf of KEEF, CAC and NRDC offered a broader proposal, which included, as one alternative, a formal, Commission-sponsored investigation of revenue decoupling for electric distribution companies (“EDCs”). Various parties submitted testimony in opposition to that proposal.<sup>12</sup> However, through diligent negotiations, with give and take on all sides, the specific language of Paragraph 25 was developed as a term which most parties could support and no party would oppose.

Paragraph 25 would create a vehicle for *all* “interested participants” (i.e., a group that is not restricted to the parties of record in this case) to openly and candidly explore the issue of

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<sup>9</sup> Joint Petition, ¶ 29.

<sup>10</sup> While I&E and PAIEUG did not join in Paragraph 25 of the Joint Petition, neither did they oppose it. *See* Recommended Decision, p. 35. Although I&E and PAIEUG set forth in their respective Statements in Support of the Settlement the reasons why they did not join in Paragraph 25 of the Joint Petition, it would not be correct to characterize those statements as “arguments presented by those parties *against* the Settlement provision concerning the revenue decoupling collaborative.” *See* Recommended Decision, p. 38 (emphasis added). No party opposed Paragraph 25.

<sup>11</sup> Recommended Decision, p. 34.

<sup>12</sup> PECO also filed a Motion to Strike portions of the KEEF, CAC and NRDC testimony, which it subsequently withdrew when agreement and non-opposition was obtained with respect to the specific language in Paragraph 25. However, as PECO made clear, its withdrawal of its Motion to Strike was without prejudice to its ability to re-submit its Motion if the Settlement were rejected or modified. *See* Tr. 354-355.

revenue decoupling outside of a proceeding conducted under the auspices of the Commission. As such, the collaborative contemplated by Paragraph 25 would be able to proceed without requiring participants to divulge their respective positions to the Commission while, through the exchange of information and robust debate in the course of the collaborative, those positions could be evolving over time. In contrast, as explained below, the Recommended Decision appears to contemplate a much different kind of “collaborative” that more closely resembles the type of Commission-sponsored proceeding, with mandatory “reporting,” that garnered substantial opposition in the exchange of written testimony – and PECO’s Motion to Strike – that occurred prior to reaching the Settlement based on the language in Paragraph 25 of the Joint Petition.

The Recommended Decision<sup>13</sup> expressed concern that it would be “inefficient to implement a collaborative regarding just PECO” because revenue decoupling is a policy matter with statewide implications; “all Pennsylvania electric distribution companies can benefit from the collaborative;” and it may be “burdensome” for public advocates and for KEEF, CAC and NRDC to try to address this issue on a utility specific basis.<sup>14</sup> While acknowledging that an attempted modification of the Joint Petition would risk upsetting “a balance of issues negotiated and compromised by all parties involved” and could cause a “catastrophic result of no resolution to the case as a whole,”<sup>15</sup> the ALJ proposed “in the alternative, that the collaborative be directed to include all EDCs and Natural Gas Distribution Companies (NGDCs) in the Commonwealth of

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<sup>13</sup> Recommended Decision, p. 38.

<sup>14</sup> It should be noted that neither the public advocates nor KEEF, CAC or NRDC contended that Paragraph 25 would prove burdensome to them. *See* Recommended Decision at pages 34-35.

<sup>15</sup> Recommended Decision, p. 38

Pennsylvania and any other party that has interest in the issue.”<sup>16</sup> Specifically, the

Recommended Decision states:

I recommend that the Joint Petition for Settlement of Rate Investigation be modified to direct a collaborative be opened no later than March 1, 2016, to include all EDCs and NGDCs in the Commonwealth of Pennsylvania and any other interested parties to explore the adoption of revenue decoupling as a mechanism to enable EDCs and NGDCs to recover revenues when sales volumes fluctuate.<sup>17</sup>

As previously discussed, Paragraph 25 of the Joint Petition specifically provides that “PECO will hold a collaborative open to *all interested participants*” (emphasis added). Nothing in the language of that provision would preclude other EDCs or NGDCs – or any other “interested participant” – from participating in the collaborative and providing input as they deem appropriate. By the same token, Paragraph 25 did not – nor could it – require “all EDCs and NGDCs in the Commonwealth” to participate in that collaborative.

The Recommended Decision, in contrast, appears to recommend that all EDCs – including PECO – and all NGDCs be expressly “directed” to participate in a single, statewide collaborative on revenue decoupling conducted under the Commission’s auspices and also appears to contemplate “reporting” by the collaborative to the Commission at regular intervals.<sup>18</sup> Consequently, the Recommended Decision would impose the kind of state-wide, Commission-sponsored proceeding that the KEEF/CAC/NRDC witness offered as one of his proposed alternatives. As previously explained, that alternative proposal was opposed by a number of parties to this case, which led to the development of the specific, carefully drafted language in Paragraph 25.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 38-39

The Commission has authority to open a separate docket to initiate a state-wide proceeding under its own auspices to explore revenue decoupling, should it choose to do so,<sup>19</sup> and certainly could have done so before now. Nonetheless, it would not be proper for the Commission to attempt to modify a discrete provision in the Settlement of this distribution base rate case to interject matters that are well beyond the jurisdictional scope of this proceeding. Simply stated, a single term of a settlement in a single base rate case for a single utility should not be used as the procedural vehicle to launch a state-wide proceeding.

**B. Modifying The Settlement In The Manner Recommended In The Recommended Decision Would Not Be Consistent With The Commission's Policy, Practice And Precedent Favoring Settlements**

For the reasons set forth above, modifying the terms of the Settlement in the manner recommended in the Recommended Decision would impermissibly stretch the boundaries of lawful administrative authority by requiring non-parties to participate in a collaborative that has its origin in the settlement of a single base rate case. At the same time, it would unduly disrupt the terms of a carefully crafted settlement and, for that reason, would not be consistent with the Commission's long-standing policy, practice and precedent, embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401, strongly encouraging parties to resolve contested proceedings by settlement. Indeed, in its Policy Statement, the Commission stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding." That is certainly true with respect to this Settlement, where the Joint Petitioners, through compromise and agreement, were able to craft innovative and creative solutions that it is unlikely could have

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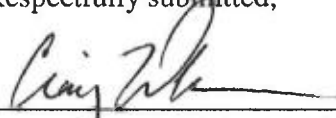
<sup>19</sup> See, e.g., 66 Pa.C.S. § 331(a).

been achieved in the absence of the Settlement.<sup>20</sup> Those creative solutions could be threatened by an attempted modification of the Settlement for all the reasons the ALJ acknowledged in the Recommended Decision.<sup>21</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Commission should grant PECO's Exception, decline to accept the recommendation to modify the Settlement as set forth in the Recommended Decision, and approve the Settlement in accordance with its terms without modification.

Respectfully submitted,



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*Counsel for PECO Energy Company*

Dated: November 9, 2015

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<sup>20</sup> See Recommended Decision, p. 37, lauding the Joint Petitioners for achieving a "creative solution" to the transition from PECO's Customer Assistance Plan to its Fixed Credit Option for low-income customer assistance.

<sup>21</sup> See Recommended Decision, p. 38, noting that "the Settlement is a balance of issues negotiated and compromised by all parties involved" and that "the balance may be disrupted and cause a catastrophic result of no resolution to the case as a whole if the issue regarding the decoupling collaborative is modified." See also Joint Petition ¶ 33 ("If the Commission should . . . modify any terms or conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five (5) business days following entry of the Commission's Order . . .")