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November 9, 2015

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-2015-2468981**

Dear Secretary Chiavetta:

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

As shown on the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

Enclosures

c: Administrative Law Judge Angela T. Jones (via e-mail and First-Class Mail)
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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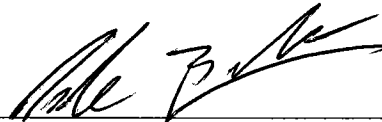
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Dated this 9th day of November, 2015, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-2015-2468981
PECO Energy Company :

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

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I. INTRODUCTION

On March 27, 2015, PECO Energy Company ("PECO" or "Company") filed Tariff Electric – Pa. P.U.C. No. 5 ("Tariff No. 5") with the Pennsylvania Public Utility Commission ("PUC" or "Commission") proposing an increase in annual electric operating revenues. On April 23, 2015, the Commission entered an Order suspending Tariff No. 5 until December 26, 2015, and assigning the proceeding to the Office of Administrative Law Judge for purposes of conducting hearings and issuing a Recommended Decision.

On May 11, 2015, Administrative Law Judge ("ALJ") Angela T. Jones presided over a Prehearing Conference. Pursuant to the schedule established at the Prehearing Conference, parties submitted direct, rebuttal, and surrebuttal testimony. Additionally, parties engaged in extensive settlement negotiations.

After multiple formal settlement meetings and additional informal negotiations, parties reached an unopposed settlement fully resolving the issues in this case. Accordingly, the Joint Petition for Settlement of Rate Investigation ("Joint Petition" or "Settlement") was filed with the Commission on September 10, 2015, by PECO, the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Bureau of Investigation & Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania ("CAUSE-PA"), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN et al"), the City of Philadelphia ("City"), the Keystone Energy Efficiency Alliance Energy Education Fund ("KEEF"), Clean Air Council ("CAC"), the Natural Resources Defense Fund ("NRDF"), the Alliance for Solar Choice ("TASC"), and the Environmental Defense Fund

("EDF") (collectively "Settling Parties").¹ Importantly, as set forth at pages 2 and 11 of the Joint Petition, PAIEUG and I&E did not join in, but also did not oppose, Paragraph 25 of the Joint Petition, which states that:

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

PAIEUG also submitted a Statement in Support affirming that, while it did not join in Paragraph 25, PAIEUG did not object to the inclusion of Paragraph 25 in the Settlement.

On October 28, 2015, the ALJ issued a Recommended Decision ("R.D.") in this case. While the ALJ recommended approval of the large majority of the Joint Petition, the ALJ also included a recommendation to modify Paragraph 25. *See* R.D. at 38-39, 41. Specifically, the R.D. recommended 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." *See* R.D., p. 39. To preserve the carefully crafted Agreement achieved by the Joint Petitioners, PAIEUG excepts to the modification proposed in the R.D. and requests that the Commission approve the Joint Petition without modification.²

¹ In addition to the Joint Petitioners, The General Service Administration ("GSA") authorized the Joint Petitioners to represent that it does not oppose the Settlement. *See* Joint Petition, p. 2, n. 1. Also, Mr. William B. Kazimer, a residential customer who intervened in the proceeding, subsequently filed a letter with the Commission's Secretary stating that he joined in the Settlement. *See* R.D., p. 10.

² PAIEUG additionally supports the Exception filed by PECO in response to the R.D.'s proposal to modify the Joint Petition.

II. EXCEPTIONS

A. Exception No. 1. The ALJ erred in finding that any party argued against Paragraph 25 of the Joint Petition. R.D. at 38.

The R.D. incorrectly suggests that PAIEUG argued against the language set forth in Paragraph 25 of the Joint Petition. This representation appears to reflect confusion arising, in part, from PAIEUG's Statement in Support. As clarified below, PAIEUG agreed to the inclusion of Paragraph 25 in the Joint Petition and offered additional explanation in a Statement in Support to illustrate the compromise achieved by PAIEUG's agreement to not oppose Paragraph 25 of the Joint Petition.

In reviewing the revenue decoupling provisions set forth in Paragraph 25 of the Joint Petition, the ALJ "...found compelling the arguments presented by those parties against the Settlement provision concerning the revenue decoupling collaborative." R.D. at 38. The ALJ's finding inadvertently overlooked the critical import of PAIEUG's position on Paragraph 25. While not joining in support of Paragraph 25, PAIEUG agreed to not oppose inclusion of Paragraph 25 as part of the Joint Petition. *See* R.D. at 35; *see also* PAIEUG Statement in Support, p. 5 (affirming that "PAIEUG declines to support the proposed revenue decoupling collaborative, but will not oppose preserving Paragraph 25 as part of the Settlement.").

To underscore the importance of its decision to not oppose inclusion of Paragraph 25 in the Joint Petition, PAIEUG filed a Statement in Support presenting its litigation position for purposes of illustrating the compromise achieved through Paragraph 25 of the Joint Petition.³ *See* PAIEUG Statement in Support, p. 5. Accordingly, PAIEUG requested approval of the Joint Petition, without modification. *See id.* at 6. The R.D.'s suggestion that PAIEUG argued against Paragraph 25 is therefore incorrect.

³ PAIEUG's Statement in Support is discussed in further detail in Exception No. 2.

B. Exception No. 2. The ALJ's proposal to modify the Joint Petition would conflict with an unopposed Settlement among a broad group of stakeholders and should therefore be denied. R.D. at 38.

Notwithstanding the ALJ's well-intentioned R.D., the Commission should not upset the balance of issues addressed in the Joint Petition by modifying the unopposed Settlement. As further discussed in the Exceptions contemporaneously filed by PECO, the ALJ's proposal materially differs from the revenue decoupling collaborative agreed to by the Joint Petitioners. *See* R.D. at 38. The Commission should consider the diversity of stakeholders represented in this proceeding and decline to adopt a modification that would undermine the complex and comprehensive agreement of the Joint Petitioners.

Parties to the Joint Petition discussed a variety of potential resolutions to the issues in this case, including the revenue decoupling matter, and developed a specific proposal designed to balance the positions of each Joint Petitioner. *See* Joint Petition, pp. 6, 12-13. As customary for Joint Petitions filed with the Commission, the Joint Petitioners included a provision authorizing any Settling Party to withdraw from the Settlement if the Commission were to modify the Joint Petition. *See id.* at 33. Adoption of the ALJ's recommendation would shatter the result of intricate and complex negotiations conducted among fourteen Joint Petitioners and GSA.⁴

The R.D. 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." R.D. at 38. Further, the R.D. states that "[p]erhaps the Office of

⁴ GSA actively participated in Settlement negotiations and, while declining to sign the Joint Petition, consented to non-opposition.

Competitive Market Oversight might be directed to lead the collaborative and provide a report to the Commission in six month intervals." *Id.* at 39.

This modification significantly expands the scope of the collaborative agreed to by the parties pursuant to Paragraph 25 and should be denied by the Commission. Paragraph 25 contemplated a voluntary collaborative organized by PECO that would not bind or obligate any party to submit a formal report to the Commission. *See* Joint Petition, p. 11. To the contrary, the modification set forth in the R.D. would appear to mandate participation by all EDCs and NGDCs in the Commonwealth. *See* R.D. at 38. Further, the proposed modification would involve direction from the Commission's Office of Competitive Market Oversight ("OCMO"). *See id.* at 39. Finally, the R.D. would necessitate a formal report to OCMO. *See id.* PAIEUG considers these modifications to be material and inconsistent with the Joint Petition. Because the Joint Petition is the result of numerous collaboration among stakeholders, any modifications thereto should be denied.

By way of additional clarification, the proposed modification should not be approved out of any intention to address matters raised in parties' Statements in Support. The R.D. indicated that the modification would alleviate concerns that it would be "inefficient to implement a collaborative regarding just PECO" because revenue decoupling implicates statewide issues.⁵ *See* R.D. at 38. While PAIEUG appreciates the ALJ's concerns regarding efficiency, the R.D. misinterprets PAIEUG's comments. For example, while PAIEUG's Statement in Support observed that revenue decoupling issues are appropriately discussed on a statewide basis, this point was made out of concern that such issues exceed the applicable scope of base rate proceedings, a point that PAIEUG would have pursued in litigation, but agreed to withdraw in

⁵ Importantly, the R.D. does not make any findings that the provisions of Paragraph 25 are unjust or unreasonable. *See* R.D. at 38. Rather, the R.D.'s findings seem focused on efficiency issues. Because none of the terms in Paragraph 25 are unjust or unreasonable, the R.D.'s proposed modifications are unnecessary.

order to support the Joint Petition. *See* PAIEUG Statement in Support, p. 5. Similarly, the modification overlooks the fact that PAIEUG's Statement in Support recounted its litigation position opposing *any* further consideration of revenue decoupling issues by the Commission, which was another position set aside by PAIEUG for purposes of Settlement. *See id.*

Other parties also expressed differing perspectives on the revenue decoupling collaborative in testimony and negotiations, each of which were intricately incorporated into the final resolution set forth in Paragraph 25. *See* Tr. at 354-355 (evidencing PECO's withdrawal of a Motion to Strike testimony on revenue decoupling issues pursuant to adoption of the Joint Petition). Given the varying litigation positions developed on this issue by Joint Petitioners, the Commission should avoid modifications to Paragraph 25, particularly when the R.D. does not specifically find Paragraph 25 to be unjust or unreasonable. *See* R.D. at 38.

Approval of the R.D.'s recommended modification would unnecessarily throw the unopposed Joint Petition into jeopardy. Accordingly, PAIEUG concurs with PECO's Exception and submits that the Commission should not adopt a proposed modification that would launch a mandatory statewide proceeding above and beyond the agreement reached by the Joint Petitioners in this base rate proceeding.

III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission grant the Exception of the Philadelphia Area Industrial Energy Users Group and approve the Joint Petition without modification.

Respectfully submitted,

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