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June 26, 2020

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

**RE: Agnes and Steve Atuahene v. PECO Energy Company**  
**PUC Docket No. C-2019-3012904**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Response of PECO Energy Company to Agnes and Steve Atuahenes' Motion to Strike* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Sincerely Yours,



Edward T. Fisher

EF/

Cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AGNES AND STEVE ATUAHENE,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012904
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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**RESPONSE OF PECO ENERGY COMPANY TO AGNES AND STEVE ATUAHENE’S  
MOTION TO STRIKE**

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PECO Energy Company (“PECO” or “Respondent”) hereby submits this Response to Agnes and Steve Atuahene’s (“Complainants”) Motion to Strike PECO’s Main Brief. Complainants’ Motion to Strike is completely baseless and yet another attempt by them to delay resolution of this matter. PECO is in full compliance with Judge Jones’ Briefing Order dated February 20, 2020 and 52 Pa. Code §§ 5.501 and 5.502.

It is not clear what “fatal irregularities and defects” PECO committed that Complainants are alleging in the Motion to Strike, other than that we did not include proposed findings of fact and conclusions of law – which were not required. Below, PECO will address Judge Jones’ Briefing Order dated February 20, 2020 and 52 Pa. Code §§ 5.501 and 5.502, and show that Complainants’ Motion to Strike should be denied in its entirety.

In Judge Jones’ Briefing Order dated February 20, 2020, Judge Jones specifically stated: “[t]he Briefs **may** contain proposed findings of fact and proposed conclusions of law as the content of the appendices to the Brief. The parties are to use their discretion as to whether to include in the appendices proposed ordering paragraphs. Other matters regarding the form and content of the briefs should comply with 52 Pa. Code §§ 5.501 and 5.502, which is attached as an Appendix to this Order.” *See* Briefing Order dated February 20, 2020 (emphasis added). Nowhere in the

Briefing Order does it require that PECO submit proposed findings of fact and conclusions of law, which was optional in the Briefing Order (to be submitted as Appendices to the Brief),<sup>1</sup> which PECO did not do, but PECO did include an Introduction, Factual History, Legal Argument and Conclusion in its 11-page Main Brief. This is all PECO was required to do. Furthermore, the Main Brief also complied with 52 Pa. Code §§ 5.501 and 5.502.

The relevant sections of 52 Pa. Code § 5.501 provide:

(a) Briefs must contain the following:

- (1) A concise statement or counter-statement of the case.
- (2) Reference to the pages of the record or exhibits where the evidence relied upon by the filing party appears.
- (3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.
- (4) A conclusion with requested relief.

(b) Briefs must also contain the following, if and as directed by the presiding officer:

- (1) A statement of the questions involved.
- (2) Proposed findings of fact with references to transcript pages or exhibits where evidence appears, together with proposed conclusions of law.
- (3) Proposed ordering paragraphs specifically identifying the relief sought.

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<sup>1</sup> Complainants site this language from the Briefing Order verbatim in their motion to strike, even underlining the “proposed findings of fact and proposed conclusions of law,” yet apparently ignore what Judge Jones actually said in the Briefing Order and ignore that the briefs "**may**" contain the sections, but are not required to contain them.

(d) Briefs of more than 20 pages must contain on their front leaves a table of contents with page references and a table of citations, which may be prepared without pagination.

52 Pa. Code § 5.501

PECO fully complied with 52 Pa. Code §5.501, as its Main Brief: included a concise counter-statement of the case in its Introduction in the Main Brief; referenced the pages of the record or exhibits where it relied on this evidence in the Main Brief; included an Argument section that included a general summary and then a summary for each subsection of its Argument section; and included a Conclusion with the relief requested. Furthermore, as PECO’s Main Brief was only 11 pages long, PECO, pursuant to §5.501(d), did not need to include either a table of contents or a table of citations. However, on June 2, 2020 and per Judge Jones’ request at the status conference – which the Complainants failed to attend, PECO submitted a Table of Authorities to Judge Jones. Judge Jones did not direct the parties to include a statement of the questions involved, proposed findings of fact, proposed conclusions of law, or proposed ordering paragraphs, and thus these elements were not required. Thus, PECO is in full compliance with 52 Pa. Code § 5.501.

Section 5.502 deals with filing and service of briefs and the relevant sections thereof provide the following:

(a) Service. Copies shall be served on the parties in accordance with § 1.59(b) and (c) (relating to number of copies to be served).

(b) Number of copies.

...

(2) Electronic filing.

(i) When the brief, including attachments, is 250 pages or less and does not exceed 5 megabytes, the filing user may file one electronic copy of the brief with the Commission and is not required to file a paper copy.

(c) Filing of briefs in nonrate proceedings.

(1) Initial brief. An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) Response brief. A party may file a response brief to the initial brief.

(d) Filing of briefs in rate proceedings.

(1) Main brief. A main brief may be filed by a party except as provided by agreement or by direction of the presiding officer.

(2) Reply brief. A party may file a reply brief to a main brief regardless of whether the party filed a main brief.

...

(f) Deadlines. Initial briefs, main briefs, responsive briefs and reply briefs shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 40 days after date of service of the notice of the filing of the transcript.

52 Pa. Code § 5.502.

While the Complainants summarily state that PECO failed to comply with § 5.502, they fail to state how. Accordingly, and on this basis alone, any allegations relating to §5.502 should be denied. Furthermore, and that defect aside, PECO complied with all aspects of §5.502, timely

filing its brief electronically with the Commission and serving the Complainants. As such, the Complainants' Motion to Strike should be dismissed.

Lastly, in their Motion to Strike, Complainants allege that PECO's "flagrant and [illegible] disregard of the Briefing Order and 52 Pa. Code § 5.501 satisfies the legal requirement to strike of [sic] its brief..." However, Complainants again fail to explain to what legal requirements they are referring and how PECO violated them. The Complainants misapply the law when stating that the Commission has no discretion and must grant their Motion; the Complainants' Motion is completely without merit as the Complainants have read into Judge Jones' Briefing Order and the Pennsylvania Code requirements that simply do not exist. As PECO complied with all parts of §5.501 and §5.502, in addition to Judge Jones' Briefing Order, the Complainant's Motion should be denied.

### CONCLUSION

Based on the foregoing, PECO respectfully requests that Complainants' Motion to Strike PECO's Main Brief be denied in its entirety.

Dated: June 26, 2020

Respectfully submitted,

**GRIESING LAW, LLC**



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AGNES AND STEVE ATUAHENE,	:	
	:	
Complainants,	:	
	:	
v.	:	Docket No. C-2019-3012904
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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**VERIFICATION**

I, Edward T Fisher, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Response of PECO Energy Company to Agnes and Steve Atuahenes' Motion to Strike are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: June 26, 2020

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Edward T Fisher

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AGNES AND STEVE ATUAHENE,	:	
	:	
Complainants,	:	
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v.	:	Docket No. C-2019-3012904
	:	
PECO ENERGY COMPANY,	:	
	:	
Respondent.	:	

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**CERTIFICATE OF SERVICE**

I, Edward T Fisher, hereby certify that I have this day served a copy of Response of PECO Energy Company to Agnes and Steve Atuahenes’ Motion to Strike in the above matter upon all interested parties via Email and by mailing a copy, properly addressed and postage prepaid to:

Agnes Atuahene  
Steve Atuahene  
7500 N. 21<sup>st</sup> Street  
Philadelphia, PA 19138  
[fas098@yahoo.com](mailto:fas098@yahoo.com)

DATED: June 26, 2020

Respectfully Submitted,



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