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July 24, 2015

VIA eFILING

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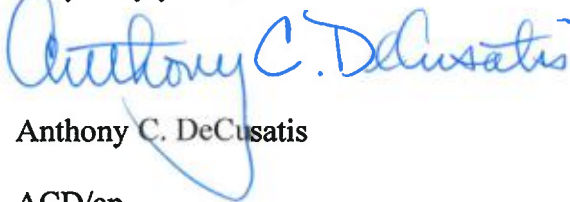
**Re: Pennsylvania Public Utility Commission v.
PECO Energy Company – Electric Division
Docket No. R-2015-2468981**

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matter is a **Motion of PECO Energy Company to Strike All or Portions of the Direct Testimony of the Environmental Defense Fund and the Keystone Energy Efficiency Alliance Energy Education Fund et al. (“Motion”)**.

As evidenced by the enclosed Certificate of Service, copies of the Motion have been served on the presiding Administrative Law Judge and counsel for all parties.

Very truly yours,



Anthony C. DeCusatis

ACD/ap
Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of a Motion of PECO Energy Company to Strike All or Portions of the Direct Testimony of the Environmental Defense Fund and the Keystone Energy Efficiency Alliance Energy Education Fund et al. (“Motion”), on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

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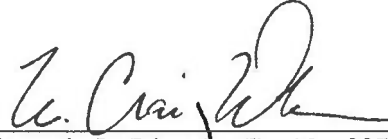
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Counsel for PECO Energy Company

Date: July 24, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	DOCKET NO. R-2015-2468981
	:	
PECO ENERGY COMPANY – ELECTRIC DIVISION	:	
	:	

**MOTION OF PECO ENERGY COMPANY TO STRIKE
ALL OR PORTIONS OF THE DIRECT TESTIMONY OF
THE ENVIRONMENTAL DEFENSE FUND AND
THE KEYSTONE ENERGY EFFICIENCY ALLIANCE
ENERGY EDUCATION FUND ET AL**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code § 5.103, PECO Energy Company (“PECO” or the “Company”) moves to strike the following:

1. The entirety of the Direct Testimony of Dick Munson¹ submitted on behalf of the Environmental Defense Fund (“EDF”) (the “EDF Direct Testimony”); and
2. Keystone Energy Efficiency Alliance Energy Education Fund, Natural Resources Defense Council and Clean Air Council (collectively, “KEEF”) Statement No. 1 (the Direct Testimony of Brendon Baatz), page 29, line 1, through page 36, line 22 and page 37, lines 8-11(the “KEEF Contested Portions”).

The EDF Direct Testimony and KEEF Contested Portions should be stricken and the proposals set forth therein should be excluded from consideration in this proceeding. By such testimony, EDF and KEEF are trying to interject into this case, which is statutorily limited in subject matter and time,² proposals that are not properly considered in a base rate proceeding but,

¹ Mr. Munson’s Direct Testimony has not been pre-marked with a statement number.

² See 66 Pa.C.S. §1308(d) defining a “general rate increase” and setting a statutory timeline for the issuance of a final order in such cases (“If, however, such an order has not been made at the expiration of such seven-month period, the proposed general rate increase shall go into effect at the end of such period”)

instead, should be raised only in the context of generic, statewide proceedings where all interested parties have proper notice and an opportunity to participate. Additionally, the issues EDF seeks to introduce are the subject of existing regulations, orders and administrative guidelines, which EDF impermissibly attempts to attack collaterally in this case. Moreover, to the extent the Pennsylvania Public Utility Commission (“Commission”) would entertain proposals like those offered by EDF, there are existing proceedings, at separate dockets, for generic, statewide consideration of some or all of the subject matters those proposals purport to address.

Additionally, Mr. Munson, on behalf of EDF, submitted testimony in the pending general base rate proceeding of PPL Electric Utilities Corporation (“PPL”) at Docket No. R-2015-2469275 et al. that is identical in substance to the EDF Direct Testimony in this case. PPL moved to strike that statement on the same grounds PECO is seeking its exclusion in this case. On July 14, 2015, Administrative Law Judge Susan D. Colwell issued a Sixth Prehearing Order granting PPL’s motion in limine to strike Mr. Munson’s written direct testimony and to exclude from the PPL case the proposals Mr. Munson put forth in his statement (“PPL Order”). A copy of the PPL Order is attached as Appendix A to this Motion. While Judge Colwell’s Order dealt only with Mr. Munson’s testimony, the well-accepted legal and administrative principles on which her decision is based are equally applicable to, and support granting, PECO’s Motion to Strike the KEEF Contested Portions.³

II. RELEVANT BACKGROUND

On March 27, 2015, PECO filed with the Commission Tariff Electric – Pa. P.U.C. No. 5 (“Tariff No. 5”). Tariff No. 5 reflects an increase in annual distribution revenue of

³ See Appendix A, pp. 7-10.

approximately \$190 million, or 4.4% of PECO's total Pennsylvania jurisdictional 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.

In accordance with the litigation schedule adopted by Administrative Law Judge Angela T. Jones (the "ALJ") in her May 14, 2015 Prehearing Conference Order #3, on June 23, 2015, EDF and KEEF⁴ each served direct testimony. The EDF Direct Testimony sets forth proposals regarding customer and third-party access to individual customers' energy usage data, the imposition of new "environmental and performance metrics" and a requirement for submission of "reports" on the Company's "integrated Volt/VAR Control projects." The KEEF Contested Portions propose that the Commission open a formal investigation to authorize "full revenue decoupling" for deregulated electric distribution companies ("EDCs") or, in the alternative, order PECO to initiate a working group to explore full revenue decoupling. For the reasons set forth below, the EDF Direct Testimony and KEEF Contested Portions should be stricken.

⁴ EDF and the constituents of KEEF filed Petitions to Intervene, which were granted. In its Petition to Intervene and Prehearing Conference Memorandum, EDF provided a precise of the issues of interest to it. By letter dated June 24, 2015, PECO notified the ALJ that, while it would not oppose EDF's intervention, it reserved "the right to object to the introduction of, and presentation of evidence regarding, certain of the issues identified by EDF that are not within the permissible scope of an electric distribution base rate proceeding and, in fact, are the subject of separate proceedings at different dockets."

III. THE EDF DIRECT TESTIMONY AND KEF CONTESTED PORTIONS SHOULD BE STRICKEN AND THE PROPOSALS SET FORTH THEREIN SHOULD BE EXCLUDED FROM THIS PROCEEDING

A. The Administrative Law Judge Has The Authority To Deny Admission Of Testimony That Is Outside The Scope Of This Proceeding

The Commission's regulations at 52 Pa. Code § 5.403(a) grant presiding officers "all necessary authority to control the receipt of evidence," including "[r]uling on the admissibility of evidence" and "[c]onfining the evidence to the issues in the proceeding." ALJs have employed this power, with the Commission's approval and affirmation, to exclude evidence that is outside the permissible scope of a proceeding and, in that way, to focus the evidence on the matters properly at issue.⁵ As previously explained, the authority conferred by 52 Pa. Code § 5.403(a) and the general principles discussed above formed the basis for the decision to strike the direct testimony of Mr. Munson in PPL's pending base rate proceeding (PPL Order, pp. 7-10).

⁵ See, e.g., *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 1994 Pa. PUC LEXIS 120 (Final Order entered July 26, 1994) at *158 ("The ALJ concluded as follows: 'I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .' We conclude that the ALJ properly found the matters raised by the OCA to be better placed in the pending rulemaking proceeding."); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) ("The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding."); See also *Joint Application of PECO Energy Company and Public Service Electric and Gas Company For Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corp.*, Docket No. A-110550F0160 (Initial Decision entered April 25, 2005 at pp. 8-9) (denying a Petition to Intervene where, among other things, the issues sought to be raised by petitioner were outside the scope of that proceeding); *Re Structural Separation Of Bell Atlantic-Pennsylvania, Inc. Retail And Wholesale Operations*, 2000 Pa. PUC LEXIS 59 (Final Order entered September 28, 2000) at *7-9 (affirming the decision of the Administrative Law Judge in that case to exclude certain evidence as "beyond the scope of the proceeding").

B. The ALJ Should Exercise The Authority Granted By The Commission's Regulations To Exclude The EDF Direct Testimony

i. Customer and third-party access to customer energy usage data

Mr. Munson's proposal in this area consists of three parts, which are summarized individually below:

Access to Energy Usage Proposal. Mr. Munson proposes that PECO adopt his Open Data Access Framework (EDF Exhibit DM-1), which he asserts was "originally developed by EDF and the Citizens Utilities Board ('CUB') for use in Illinois" and purportedly is designed to give customers "access to their retail electric consumption data in as short an interval as possible, with 15-minute intervals recommended" (p. 4). He also proposes that such data should be "delivered to customers in as close to real-time as practical in order to influence customer usage and deliver the greatest customer benefit." In that regard, he proposes that such information "be delivered within one hour of when the interval concludes, if practicable" (p. 4). Mr. Munson also requests that PECO file a proposal for data access using the Open Access Data Framework as the model within six months of the entry of a final order in this docket (p. 6).

Cost-Benefit Analysis. Mr. Munson requests that PECO perform a cost-benefit analysis for providing data directly from meters to in-home monitoring devices (e.g. energy displays, smart thermostats, etc.) (p. 5).

Green Button Initiatives. Mr. Munson requests that PECO utilize Green Button Initiatives to provide customers and customer-authorized third parties with data through the internet (p. 6).⁶

⁶ Mr. Munson apparently was not aware that PECO had implemented Green Button Initiatives in 2012. *See* PECO Statement No. 8-R, pp. 5-6.

Mr. Munson's testimony and the proposals set forth therein should be excluded from this proceeding for three principal reasons:

First, there is nothing in PECO's proposed – or for that matter, its existing – rates, rules or terms of service that pertain to the three proposals advanced by EDF in Mr. Munson's testimony. And, those proposals are not relevant to revenue requirement, rate structure and rate design, which properly encompass the principal scope of a general base rate proceeding. Furthermore, as a general base rate proceeding, this case is subject to the statutory timeline imposed by 66 Pa.C.S. §1308(d). *See* footnote 1, *supra*. The challenges of creating a complete and well-developed evidentiary record on the issues that are properly within the scope of this base rate proceeding should not be heightened by interjecting factually complex, but entirely extraneous, issues like those Mr. Munson seeks to introduce. By the same token, issues concerning customer and third-party access to customer usage data would not receive the thoughtful consideration they deserve if they are forced into a litigation schedule that was not designed or intended to accommodate them.

Second, customer and third-party access to customer usage information raises issues of statewide significance including, for example, the protection of customer privacy and the uniformity of processes and procedures required to meet the needs of energy generation suppliers (“EGSs”) that offer their products to customers of multiple utilities across the Commonwealth. As a consequence, proposals like Mr. Munson's should be considered only in the context of a generic, statewide proceeding that is properly identified (and captioned) as the vehicle for reaching regulatory decisions that affect the interests of stakeholders in the service territories of multiple utilities. Clearly, a general base rate case does not satisfy those criteria, because

customers and other possible stakeholders will intervene – or not – based on their perception of the effect that proposed changes in rates and tariff rules may – or may not – have upon them.

It would be unfair to assume, contrary to fact, that interested parties will be on inquiry notice that a base rate proceeding for a single utility – from which they may not even receive service – could produce regulatory mandates directly affecting their personal or business interests. For precisely that reason, fundamental principles of due process dictate that Mr. Munson’s proposals should be considered only in the context of generic, statewide proceedings that, from their initiation, properly identify the subject areas they will address. In that way, all interested parties will have reasonable notice that administrative action is contemplated that could affect them, and they will be afforded a reasonable opportunity to participate. Moreover, only by establishing a proceeding that encourages the participation of all interested parties will the Commission obtain the full range of views needed to produce a well-developed record as the basis for an informed and well-reasoned decision supported by substantial evidence.

Third, the Commission has recognized that the issues Mr. Munson is trying to put in play should be addressed in generic, statewide proceedings and, in fact, is already doing so as part of its obligation to implement provisions of Act 129 requiring universal deployment of Advanced Metering Infrastructure (“AMI”) technology. In 2012, for example, the Commission directed the Electronic Data Exchange Working Group (“EDEWG”) to convene a web portal working group (“WPWG”) to develop standardized solutions for third-party acquisition of a customer’s usage data. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered December 6, 2012). On April 23, 2015, the Commission issued a Tentative Order proposing certain third-party access solutions that were developed as part of the WPWG’s efforts. *Submission of the Electronic Data Exchange Working Group’s Web Portal Working*

Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Use, Docket No. M-2009-2092655 (Tentative Order entered April 23, 2015). In fact, EDF, in conjunction with "Mission: data Coalition" (a coalition of technology companies), has filed comments in response to the Tentative Order. Thus, EDF is attempting to raise issues in this case that – as it is well aware – are being actively considered by the Commission in a separate, statewide proceeding. This factor alone is a sufficient basis for striking the EDF Direct Testimony.

ii. "Environmental and Performance Metrics" and Reporting on "Volt/VAR Control Projects"

Mr. Munson asks the Commission to require PECO to report on twenty environmental and performance metrics identified in EDF Exhibit DM-3.⁷ He contends that such reporting will "better enable the Commission and other stakeholders to determine whether the Company is managing its transmission and distribution investments in a prudent manner and that customers are receiving the promised benefits." EDF Direct Testimony, p. 7. Mr. Munson separately proposes imposing a requirement that PECO report on Volt/VAR control projects, even though such reporting is also included in his proposed "metrics." See EDF Exhibit DM-3, Metric 17.

For all of the reasons discussed in Section III.B.i, *supra*, reporting metrics like those Mr. Munson proposes are appropriately considered only in the context of a generic, statewide proceeding that will allow for the participation of all interested stakeholders. In fact, EDCs currently have numerous reporting requirements similar in nature to those Mr. Munson proposes. Those existing reporting requirements were developed in statewide proceedings and are embodied in existing regulations, orders and other administrative guidelines.

⁷ Although Mr. Munson's testimony states he is presenting twenty-one metrics, EDF Exhibit DM-3 lists only twenty.

Significantly, the Commission has already adopted standardized reporting requirements and other obligations to “establish standards and procedures for continuing and ensuring the safety and reliability of the electric system . . . [and] to provide a uniform method of assessing the reasonableness of electric service reliability.” 52 Pa. Code §57.191 (Electric Reliability Standards). The Commission took a similar approach when it developed the annual reporting requirements for EDCs subject to statutory obligations to deploy AMI technology. *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009). Consequently, Mr. Munson’s proposals are an improper collateral attack on existing, duly adopted regulations, orders and other guidelines. Moreover, to the extent such proposals would effect a departure from existing regulations, they could not be considered without first satisfying the formal notice and comment requirements imposed by the Commonwealth Documents Law⁸ and the requirement for review by the Independent Regulatory Review Commission imposed by the Regulatory Review Act.⁹

The impropriety of addressing Mr. Munson’s proposed reporting requirements in a base rate proceeding was summarized by Judge Colwell in the PPL Order (p. 10), as follows:

Similarly, each EDC in this Commonwealth is subject to performance metrics which were set according to regulations. Any challenge to these metrics must be done by formal complaint in a separate proceeding where it could be given sufficient time to develop a full and complete record, not rushed into the last few weeks before the formal hearings set for a base rate investigation.

In addition, Mr. Munson does not attempt to explain how each of his recommended metrics would allow the Commission to evaluate the management of an EDC’s distribution

⁸ 45 P.S. §1201 et seq.

⁹ *See* 71 P.S. §745.5(a)

facilities. He also fails to define the “promised benefits” he alleges customers might obtain. Those are the kinds of complex, fact-sensitive topics that are best considered – and should only be considered – in a generic proceeding that, unconstrained by the time limitation imposed on a general base rate proceeding, could be explored in the depth and detail that the Commission deserves – and should demand – for such sweeping proposals. The same is true of the proposed reporting requirement for Volt/VAR control projects that Mr. Munson discussed separately. His proposal consists of a single sentence with no explanation of why it should be considered in this case or, for that matter, how it could conceivably relate to EDC distribution rates. The PPL Order highlighted the absence of any development of this proposal as a further reason to strike Mr. Munson’s testimony: “There is not so much as an explanation of what a Volt/VAR control project is, let alone whether it could possibly be relevant to this proceeding.” *Id.* at 10.

Moreover, certain of Mr. Munson’s proposed metrics, such as the number of customers enrolled in peak time rebate, real time pricing and other dynamic rates, relate to products offered by EGSs and are simply not relevant to the management of an EDC’s distribution system. Simply stated, they are not just beyond the scope of an EDC’s base rate case, they are beyond the scope of any proceeding involving EDCs inasmuch as they involve products and services that EDCs do not provide.

In sum, the EDF Direct Testimony focuses exclusively on matters which are not properly addressed in a general base rate proceeding, and, therefore, the EDF Direct Testimony should be stricken in its entirety, and the proposals set forth therein should be excluded from consideration in this case.

C. The ALJ Should Exercise The Authority Granted By The Commission's Regulations To Exclude The KEEF Contested Portions

The KEEF Contested Portions recommend that the Commission open a formal investigation with the stated goal of authorizing “full revenue decoupling” for deregulated EDCs or, in the alternative, order PECO to initiate a “working group” to explore “full revenue decoupling.” The KEEF Contested Portions should be stricken because PECO did not propose revenue decoupling in this case; revenue decoupling is not a utility-specific issue but, rather, a policy matter of statewide significance and broad, multi-utility stakeholder interest; and even KEEF concedes that revenue decoupling should be considered in either a separate formal docket or a “working group” – presumably as a precursor to the initiation of a separate docket at some point in the future.¹⁰ In either case, testimony proposing revenue decoupling or proposing a process to eventually reach that goal is not properly within the scope of this case. Accordingly, applying the principles and precedent discussed in Section III.B.i., *supra*, the KEEF Contested Portions should be stricken and the revenue decoupling proposals set forth therein should be excluded from this case.

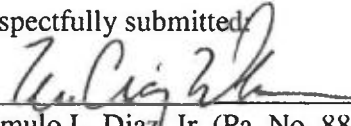
IV. CONCLUSION

For the reasons set forth above, the ALJ should issue an order finding and determining that the EDF Direct Testimony and KEEF Contested Portions should not be admitted into the evidentiary record, and the proposals set forth therein should be excluded from consideration because they relate to matters that are outside the scope of this proceeding and attempt to raise issues that should properly be addressed in separately-initiated, generic proceedings of statewide scope that afford proper notice and opportunity to be heard to all potentially interested parties.

¹⁰ Similarly, the Office of Consumer Advocate (“OCA”), through its witness, Mr. Effron, submitted testimony stating that revenue decoupling is not an appropriate issue to consider in this, or any other, base rate case. *See* OCA Statement No. 3-R, p. 11.

Moreover, EDF's proposals also constitute an improper collateral attack on existing regulations, orders and other Commission guidelines and seek to interject into this case matters already before the Commission in other dockets.

Respectfully submitted,



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Dated: July 24, 2015

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