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July 29, 2015

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Answer of KEEF in Opposition to Motion of PECO to Strike Direct Testimony of Brendon Baatz. All parties have been served in accordance with the attached Certificate of Service.

Sincerely,



Sarah C. Stoner

SCS/dsc

Enclosure

cc: The Honorable Angela T. Jones (w/encl.)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served, on behalf of KEEA Energy Education Fund et al., a copy of the Answer of KEEF in Opposition to Motion of PECO to Strike Direct Testimony of Brendon Baatz, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

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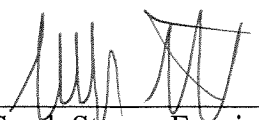
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Sarah Stoner, Esquire

Date: July 29, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE KEYSTONE ENERGY EFFICIENCY ALLIANCE ENERGY
EDUCATION FUND IN OPPOSITION TO MOTION OF PECO ENERGY COMPANY
TO STRIKE DIRECT TESTIMONY OF BRENDON BAATZ**

I. INTRODUCTION AND BACKGROUND

Pursuant to 52 Pa. Code § 5.61 and Ordering Paragraph No. 6 of Prehearing Conference Order #3 dated May 4, 2015, the Keystone Energy Efficiency Alliance Energy Education Fund (“KEEF”) submits this Answer opposing the motion of PECO Energy Company (“PECO”) to strike portions of the Direct Testimony of Brendon Baatz dated June 23, 2015 (“Motion to Strike”). Specifically, PECO seeks to strike those portions of the direct testimony of Mr. Baatz proposing that, instead of the current and likely future efforts by PECO to increase the amount of its costs recovered in fixed charges, a proceeding be implemented to design a full revenue decoupling mechanism. PECO supports its Motion to Strike with the incredulous claim that Mr. Baatz’s proposal is not within the scope of this proceeding because PECO did not propose revenue decoupling in this case and revenue decoupling is not a utility-specific issue.¹ As explained below, PECO’s Motion to Strike must be denied. Consistent with 52 Pa. Code § 5.401(a), the direct testimony if Mr. Baatz is relevant and material as it offers a long-term

¹ Motion to Strike at 11.

potential solution to address both the need for PECO to seek increases to its fixed cost customer charges (as it is doing in this case) and the impact of PECO's proposals within the context of PECO's statutorily required energy efficiency and conservation ("EE&C") requirements as set forth in 66 Pa. C.S. § 2807(f).²

II. BACKGROUND

1. On March 27, 2015, PECO filed proposed Tariff Electric-Pa. P.U.C. No. 5 to become effective May 26, 2015, containing proposed changes to rates, designed to produce an increase in PECO's annual distribution revenue of approximately \$190 million, or 15.6% above existing distribution revenues. The Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of PECO's existing and proposed rates, rules and regulations on March 27, 2015. KEEF intervened in the proceeding on June 1, 2015. In accordance with the litigation schedule set forth by Administrative Law Judge Angela Jones, KEEF served joint direct testimony with the Natural Resources Defense Council ("NRDC") and the Clean Air Council ("CAC") on June 23, 2015.³

2. In the direct testimony of Mr. Baatz, he sets forth a proposal to implement a stakeholder process to evaluate a revenue decoupling mechanism for PECO. The consideration of such a mechanism was proposed to respond to PECO's proposed increase to fixed customer charges and its assertion that if distribution related costs are recoverable in commodity charges it risks not recovering its approved revenue requirement due to reduced usage.

² This statutory section is commonly referred to as Act 129.

³ KEEF St. No. 1.

3. The Commission's regulations encourage the use of written testimony and written testimony is subject to the same rules of admissibility as if orally presented.⁴ Pursuant to 52 Pa. Code § 5.401 only relevant and material evidence is admissible and the presiding officer is granted "all necessary authority to control the receipt of evidence."⁵ The Commission's regulations allow for liberal construction to "secure the just, speedy and inexpensive determination of every action or proceeding."⁶

4. For the reasons more fully explained below, the direct testimony of Mr. Baatz is both relevant and material and not otherwise objectionable, and PECO's Motion to Strike must be denied.

III. ANSWER

5. In his direct testimony, Mr. Baatz discussed PECO's request to increase fixed customer charges for all rate classes and explained that PECO's proposals are inappropriate and should be rejected.⁷ In addition to showing that PECO's proposal is not cost justified, Mr. Baatz explained how PECO's proposed increase to fixed customer charges will have the effect of increasing electricity consumption which is the opposite goal of Act 129, as well as how PECO's

⁴ 52 Pa. Code § 5.412.

⁵ 52 Pa. Code §§ 5.401; 5.403(a). In 1993, the Commission reviewed the definition of relevant evidence as follows: "Pennsylvania defines relevant evidence as that which tends to establish some fact material to the case, or which tends to make a fact at issue more or less probable." *Commonwealth v. Scott*, 480 Pa. 50, 54 389 A.2d 79, 82 (1978), appeal after remand 496 Pa. 188, 436 A.2d 607 (1981). Relevance generally involves a two-part test of materiality and probative value. McCormick, Evidence, § 185 at p. 773 (4th ed., 1992). In Pennsylvania, relevant evidence is generally admissible absent some specific defect warranting exclusion. *Clark v. Essex Wire*, 361 Pa. 60, 63 A.2d 35 (1949); *Engle v. West Penn Power Company*, 409 Pa. Super 462, 598 A.2d 290 (1991), appeal denied, 605 A.2d 334 (1992)." *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, PUC Docket No. C-00924416, Opinion and Order entered June 4, 1993.

⁶ 52 Pa. Code § 1.2(a); *see also*, 52 Pa. Code § 1.2(c).

⁷ KEEF St. No. 1 at 4-19.

apparent goal to recover more and more of its revenue requirement through fixed charges will cause serious harm to low income and low use customers.⁸ As this testimony is clearly relevant and material, PECO – correctly – does not seek to strike it.

6. Mr. Baatz also offered a proposal to address the issues he identified through a process to design a revenue decoupling mechanism for PECO. Revenue decoupling generally disconnects a utility's recovery of its authorized revenue requirement from its realized level of sales so that it may recover all of its authorized costs even if sales decline, regardless of reason.⁹ Mr. Baatz explained that his revenue decoupling proposal was being made in direct response to the claims in PECO's testimony suggesting that a large amount of PECO's distribution related costs are "fixed" and should be recovered in a fixed cost per month because if the costs are recoverable in commodity charges it risks not recovering its approved revenue requirement due to reduced usage:

Q. You have explained why, in your view, recovering customer costs through increased fixed customer charges is inconsistent with realizing the benefits of increased conservation and energy efficiency and, instead, PECO should collect these costs through kWh charges. Does this approach create certain risks for the utility?

A. Yes, I recognize that my recommendations could potentially increase the risk of revenue recovery for PECO. But there are other ways that PECO and the Commission can address this issue in a manner that is fair both to the utility and its customers. One possible method would be to institute full revenue decoupling.¹⁰

⁸ KEEF St. No. 1 at 19-28.

⁹ KEEF St. No. 1 at 4-5, 29-36

¹⁰ Id. at 29, lines 1-11.

7. After describing how a decoupling mechanism works to permit an electric utility to recover its revenue requirement in the face of increasing reduced demand without imposing unfair and unreasonable customer charges, Mr. Baatz discussed general guidelines and concepts for a decoupling mechanism, and recommended that the Commission direct PECO to engage with stakeholders with the goal of adopting a full revenue decoupling mechanism.¹¹ The direct testimony of Mr. Baatz in this regard is directly relevant and material to PECO's proposed increase in fixed customer charges and should not be stricken.

8. PECO offers two basis in support of its Motion to Strike this testimony. First, PECO states that it did not propose revenue decoupling in this proceeding. Second, PECO states that revenue decoupling is not a utility-specific issue and should be considered in some other proceeding.¹² PECO's Motion to Strike must be denied for the following reasons.

9. First, the fact that PECO did not raise revenue decoupling in its case in chief is not a valid basis on which to bar this testimony from the record. As noted, the standard for admission of evidence is whether the evidence is relevant and material, not whether or not it was raised by the party initiating the proceeding. For example, the Commission's discovery rules make clear that discovery is available

regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery, or the claim or defense of another party...¹³

KEEF has properly raised the prospect of a decoupling mechanism as a defense; a far better alternative to constant increases in fixed charges that will not frustrate customer efforts to

¹¹ KEEF St. No. 1 at 35.

¹² Motion to Strike at 11.

¹³ 52 Pa. Code § 5.321(c).

conserve and employ distributed energy. Accordingly the testimony is relevant and material and therefore admissible.

10. Moreover, from a policy perspective, if parties are unable to present proposals intended to mitigate the need for rate increases in base rate proceeding, the result would be detrimental to the public interest by destroying the ability of interested stakeholders to affect positive change or raise concerns about issues raised by utilities in matters before the Commission and, in fact, the testimonies of the other parties contain numerous instances in which the party has made proposals that were not contained in PECO's case in chief.¹⁴ In this case, PECO proposes to raise fixed customer charges unreasonably and without justification and KEEF has offered a proposal to mitigate the need to increase those fixed customer charges both in this case and in future cases. As such, KEEF's proposal is relevant and material and PECO's Motion to Strike must be denied.

11. Second, PECO utilizes KEEF's measured and reasonable recommendation (i.e. that revenue decoupling be considered in a collaborative to work out the details before implementation) as a basis to deny any consideration of the recommendation. Following PECO's logic, one can presume that if KEEF had recommended that PECO implement revenue decoupling in this proceeding immediately and without a process to make sure it is properly structured, then PECO would not have moved to strike the proposal (at least on this ground). KEEF could have easily submitted such testimony. The fact that KEEF, sensitive to permitting the ability of all parties – including PECO – to address the proposal after the main work of the

¹⁴ PAIEUG Direct Testimony, p. 21; TASC Direct Testimony, p. 26-33; Turn et al. Direct Testimony, p. 13; EDF Direct Testimony, p. 7.

rate case was completed called for a stakeholder process to work out the specifics of revenue decoupling does not negate the relevancy or materiality of KEEF's testimony.

12. Moreover, there is no support for PECO's claim that revenue decoupling is not a "utility-specific issue." Essentially, PECO is claiming that implementing revenue decoupling in one service territory cannot go forward until statewide policies are developed. While uniform statewide policies regarding issues such as revenue decoupling may be preferable for reasons of convenience, there are already numerous differences among Pennsylvania's electric distribution companies regarding a variety of issues. Adopting the narrow viewpoint espoused by PECO would deny benefits to a significant portion of ratepayers and stymie the future development of forward-looking solutions to very real problems.

13. Finally, the effect of granting PECO's Motion to Strike will be to remove from the Commission's consideration a proposal that could help alleviate future rate increases. Rate case proceedings are of significant importance to all stakeholders and the Commission has the duty to ensure that any such approved rate increases are just and reasonable and in the best interests of the public. Removing a tool from the Commission's consideration at this stage of the proceeding and without any basis to do so would be a disservice to the public. Ultimately, the presiding officer – in the first instance – and the Commission – as the ultimate decision maker – will need to judge KEEF's proposal and make a decision on whether or not to accept it. Removing consideration of the proposal at this juncture serves no legitimate purpose.¹⁵ As KEEF's testimony regarding its proposal is both relevant and admissible, there is no basis upon which to grant PECO's Motion to Strike.

¹⁵ Accord, *Merz White Way Tours v. PUC*, 201 A. 2d. 446 (Pa. Super. 1964) (If testimony is admissible and relevant, its weight is for the Commission to decide.)

IV. CONCLUSION

For the reasons explained above, KEEF urges the Commission to deny PECO's Motion to Strike portions of the direct testimony of Brendon Baatz.

Respectfully submitted,



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