

**KEYES, FOX  
& WIEDMAN**  
— LLP —

August 6, 2015

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

**RE: Pennsylvania Public Utility Commission v. PECO Energy Company  
Docket R-2015-2468981, C-2015-2475585, C-2014-2477974**

Dear Secretary Chiavetta:

Please find enclosed for filing the *Answer of the Alliance for Solar Choice in opposition to Motion of PECO Energy Company to Strike portions of Steven Gabel's Direct Testimony and Certificate of Service* evidencing service upon parties of record in this proceeding.

Please contact me if you have any questions regarding this filing.

Sincerely,



Blake Elder  
Assistant  
Keyes, Fox & Weidman LLP  
401 Harrison Oaks Blvd., Suite 100  
919-825-3339  
belder@kfwlaw.com

cc: David Wooley  
Joseph Minott  
Service List R-2015-2468981

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al.	:	
	:	
v.	:	R-2015-2468981
	:	C-2015-2475585
PECO Energy Company	:	C-2014-2477974

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**ANSWER OF THE ALLIANCE FOR SOLAR CHOICE  
IN OPPOSITION TO MOTION OF PECO ENERGY COMPANY  
TO STRIKE PORTIONS OF STEVEN GABEL'S DIRECT TESTIMONY**

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**I. INTRODUCTION AND SUMMARY**

Pursuant to 52 Pa. code § 5.61 and Ordering Paragraph No. 6 of Prehearing Conference Order #3 dated May 4, 2015, The Alliance for Solar Choice (“TASC”) submits this Answer opposing the Motion of PECO Energy Company (“PECO”) to Strike portions (page 24, line 28 through page 33 line 7) of the Direct Testimony of Steven Gabel dated June 23, 2015 (“Motion to Strike”). Specifically PECO seeks to strike those portions of the direct testimony of Mr. Gabel proposing improvements to interconnection processes affecting customer-sited renewable energy systems. The motion asserts that such proposals are not properly considered in a base rate proceeding and can only be raised in generic, statewide proceeding. PECO also asserts that TASC is seeking to collaterally attack existing regulations orders and administrative guidelines. As explained below, PECO’s Motion to Strike must be denied. Pursuant to 52 Pa. Code §5.401(a) the direct testimony of Mr. Gabel is relevant and material to the proposal of PECO to significantly increase rates to

support its electric distribution system. Mr. Gabel's testimony seeks neither to collaterally attack existing rules nor to amend them. Rather he proposes actions to improve its customer service relating to customer access to the distribution system. This proposal is fully within the scope of this proceeding, in which PECO seeks to collect additional revenue from customers regarding that distribution system.

## **II. BACKGROUND**

1. On March 27, 2015 PECO filed proposed tariff electric-pa P.U.C. No. 5 to become effective on 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 PECO rate proposal was justified on the claim that the company needs to undertake significant upgrades and improvements in its distribution service. The rate increase would support a wide range of customer service functions incident to operating its distribution system and interfacing with its customers. The Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of PECO's proposed rates on March 27, 2015. TASC was granted intervention and submitted Direct Testimony on June 23, 2015. The testimony was resubmitted with minor corrections on July 31, 2015.

2. In his direct testimony Mr. Gabel proposed several actions to improve customer service for customers seeking to interconnect customer-sited renewable generation, including: 1) a commitment to provide permission to operate a customer-sited solar system within 10 days from the applicant's notification to PECO that it has successfully commission-tested the generator; 2) a commitment to

develop publically available maps of parts of the distribution system that have limited capacity to absorb additional customer-sited generation; 3) quarterly reporting on interconnection processing timelines; 4) a commitment to upgrade criteria used to determine if improvements in the distribution system are needed to interconnect solar distributed generation; 5) establish a central address for a Generator Interconnection Customer to submit an application; and, 6) a commitment to not differentiate between solar-only and solar-plus-battery installations, in regard to the requirements interconnection study and metering/monitoring equipment.

3. Mr. Gabel's testimony shows that PECO's parent company (Exelon) recently agreed to implement many of these interconnection improvements in a case before the Maryland Public Utility Commission, as a condition of approval of the merger of Exelon and Pepco.

### **III. ANSWER**

4. PECO's motion does not assert grounds for relief as provided in 52 Pa. Code § 5.101. Clearly the Commission has jurisdiction over the subject matter of TASC's testimony and authority to grant relief sought by TASC. TASC's testimony contains no scandalous or impertinent matter. There is no allegation that TASC's pleading is insufficient or that TASC lacks of capacity to intervene or standing to participate in this matter.

5. PECO's motion also fails under standard rules regarding motions to strike. This Commission's preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small

Transportation Intervenors v. Equitable Gas Company, Docket No. C-00935435 (Order entered July 18, 1994). See also, Application of Pentex Natural Gas Company, 2012 Pa. PUC LEXIS 719, A-2012-228737.

6. As a general rule motions to strike are not favored. Wilson v. Am. Gen. Fin., Inc., 807 F. Supp 2d 291, 305 (W. Penn. 2011); 5C Charles Alan Wright And Arthur R. Miller, Federal Practice And Procedure § 1382. Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988)

7. PECO has an obligation to prove its revenue requirement by demonstrating that the costs incurred in making improvements to its distribution system are reasonable. PECO has requested substantial rate relief to invest hundreds of millions of dollars in its distribution system and enhance its customer services. As part of demonstrating the reasonableness of these costs (a fundamental element of a rate relief request) the utility should demonstrate that such costs are, at least in part, responsive to customer requests to interconnect on-site generation and make the PECO system more robust to do so. Just as it is reasonable to evaluate issues related to whether the costs that PECO is seeking to recover will enhance reliability or improve responsiveness to service calls, it is reasonable to evaluate

whether the rate relief will permit PECO to be responsive to customers' desires to invest in renewable generation, consistent with Pennsylvania policy.

8. As a matter of policy, Pennsylvania has adopted an Alternative Energy Portfolio Standard (AEPS) that incentivizes the growth of clean distributed generation, with a set-aside for solar PV. Therefore, revenue increases sought by the company should be consistent with improvements in systems and processes that facilitate this growth in an efficient manner.

9. TASC asserts that it is appropriate and reasonable for the Commission to consider ways to improve PECO's level of distribution service, and customer access to that system, as it considers the rate relief sought by the company. Mr. Gabel's proposals (with one exception concerning frequency of interconnection status reports) are not currently embedded in the Commission's interconnection rules and he does not address interconnection provisions that are being addressed by the Commission in other cases or in generic proceedings.

10. TASC asserts it is not unusual for issues such as this to be addressed outside the policy rulemaking process. Recently, in Maryland, New Jersey and Delaware, the respective utilities and Public Utility Commissions accepted changes to the existing interconnection processes in utility specific proceedings.

11. PECO's reference to the recent decision of Judge Colwell in the pending PPL rate case does not support the relief sought here. In that case there were ongoing proceedings addressing the same issues addressed in the testimony that was stricken from the PPL case. The issues addressed in Judge Colwell's decision involved proposals for customer access to usage data, distribution system

performance metrics, and deployment of Volt/VAR control projects, none of which are mentioned in TASC's testimony. Mr. Gabel's testimony in this case presents very specific and narrow proposals to improve the customer service function of the utility. The testimony is well developed and supported with experience from other nearby states.

12. Similarly, the "fairness" and due process arguments advanced by PECO are unavailing here. The proposals in Mr. Gabel's testimony do not affect a wide range of interests. He proposes actions PECO should take to improve communications and procedures affecting developers of distributed solar energy systems and their customers. No party would be harmed by a requirement that PECO improve its customer service affecting access to the distribution system energy.

13. TASC has reviewed the scope of the pending Advance Notice of Final Rulemaking Order (referenced at page 8 of PECO's Motion to Strike). We disagree that the proposals in Mr. Gabel's testimony overlap in any way with the issues before the Commission in that proceeding.<sup>1</sup> That case primarily addresses: size limits on systems eligible for net metering; AEPS Portfolio obligations; Virtual Net Metering; and, changes to various definitions. We do not see anything in the Proposed Rulemaking Order that overlaps with proposals in Mr. Gabel's testimony. See list of interconnection issues addressed at page 3-4 of that Order.

14. Finally, TASC believes that to grant the Motion to Strike would unnecessarily constrain the Commission in its statutory mission. Rate cases present

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<sup>1</sup> *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (Order entered April 23 2015).

an opportunity for the Commission to tailor requirements to the circumstances of a particular utility and to experiment with emerging concepts that respond to the ever-changing nature of markets, customer needs and technology in the electric sector. We believe that the interconnection issues in this case will not take up significant hearing time and will present the Commission with important issues that could improve the customer service of this distribution company.

#### **IV. CONCLUSION**

For the reasons explained above TASC urges the Commission to deny PECO's Motion to Strike Portions of the Direct Testimony of Steven Gabel.

Respectfully submitted,



Joseph Otis Minott, Esq.  
Counsel of Record for  
The Alliance for Solar Choice  
135 South 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
215-567-4004 Ext. 116  
joe\_minott@cleanair.org  
Pa Bar Registration No. 36463



David R. Wooley, Esq.  
Of Counsel  
Keyes, Fox & Weidman LLP  
436 14<sup>th</sup> Street, Suite 1305  
Oakland, CA 94612  
(510) 314-8207  
[dwooley@kfwlaw.com](mailto:dwooley@kfwlaw.com)

August 6, 2015



CERTIFICATE OF SERVICE

RE: Pennsylvania Public Utility Commission v. PECO Energy Company  
Docket R-2015-2468981, C-2015-2475585, C-2014-247794

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 6th day of August 2015.

SERVICE BY FIRST CLASS U.S. MAIL, POSTAGE PREPAID  
*(eServed as a courtesy, if email available)*

Hon. Angela T. Jones  
Administrative Law Judge  
PA Public Utilities Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 1910  
*(also served electronically)*

Romulo L Diaz Jr.  
Jack R Garfinkle  
W Craig Williams  
PECO Energy Company  
2301 Market Street  
PO Box 8699  
Philadelphia PA 19101-8699  
[romulo.diaz@exeloncorp.com](mailto:romulo.diaz@exeloncorp.com)  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)  
[craig.williams@exeloncorp.com](mailto:craig.williams@exeloncorp.com)  
*PECO Energy Company*

Julie Holvik  
U.S. General Services Administration  
The Strawbridge Bldg, Suite 9088  
20 N 8<sup>th</sup> Street  
Philadelphia, PA 19107-3191

Elizabeth Rose Triscari  
Daniel G Asmus  
Office of Small Business Advocate  
300 North Second Street  
Commerce Building, Suite 102  
Harrisburg PA 17101  
[etriscari@pa.gov](mailto:etriscari@pa.gov)  
[dasmus@pa.gov](mailto:dasmus@pa.gov)

Kathleen Barksdale  
Leonard E Lucas III  
United States General Services Admin  
801 Broadway, Suite 113  
Nashville, TN 37203

Michael Panfil  
Environmental Defense Fund  
1875 Connecticut Avenue, NW  
Suite 600  
Washington DC 20009  
*Environmental Defense Fund*

William Kazimer  
3121 West Germantown Pike  
Eagleville, PA 19403

SERVICE BY eService only

Thomas P. Gadsden  
Brooke E McGlinn  
Catherin G. Vasudevan  
Anthony C DeCusatis  
Mogan Lewis & Brockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
[tdden@morganlewis.com](mailto:tdden@morganlewis.com)  
[bmclinn@morganlewis.com](mailto:bmclinn@morganlewis.com)  
[cvasudevan@morganlewis.com](mailto:cvasudevan@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)

Charis Mincavage  
Elizabeth P Trinkle  
Adeolu A Bakare  
McNees Wallace & Nurick LLC  
P O Box 1166  
100 Pine Street  
Harrisburg PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[etrinkle@mwn.com](mailto:etrinkle@mwn.com)  
[lcharleton@mwn.com](mailto:lcharleton@mwn.com)  
[abakare@mwn.com](mailto:abakare@mwn.com)  
*PAIEUG*

Elizabeth R Marx  
Patrick Cicero  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
[emarxpulp@palegalaid.net](mailto:emarxpulp@palegalaid.net)  
*CAUSE - PA*

John Finnigan  
Environmental Defense Fund  
128 Winding Brook Ln.  
Terrace Park OH 45174  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
*Environmental Defense Fund*

Robert W Ballenger  
Thu B Tran  
Community Legal Services Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[ttran@clsphila.org](mailto:ttran@clsphila.org)  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
*TURN, Action Alliance*

Josie B H Pickens  
Community Legal Services  
1410 West Erie Avenue  
Philadelphia, PA 19140  
[jpickens@clsphila.org](mailto:jpickens@clsphila.org)  
[jhyman@clsphila.org](mailto:jhyman@clsphila.org)  
*TURN, Action Alliance*

Christy Appleby  
Brandon Pierce  
Aron J Beatty  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor Forum Place  
Harrisburg PA 17101  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[bpierce@paoca.org](mailto:bpierce@paoca.org)  
[abeatty@paoca.org](mailto:abeatty@paoca.org)

Heather Langeland  
Environmental Defense Fund  
200 First Ave., Ste 200  
Pittsburgh PA 15222  
[langeland@pennfuture.org](mailto:langeland@pennfuture.org)  
*Environmental Defense Fund*

Logan Welde  
Benjamin Hartung  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Suite 300  
Philadelphia, PA 19103  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
[bhartung@cleanair.org](mailto:bhartung@cleanair.org)

J Barry Davis  
Scott J Schwarz  
Jocelyn G Hill  
Sandra McManus  
City of Philadelphia Law Department  
1515 Arch Street 16<sup>th</sup> Floor  
Philadelphia PA 19102  
[j.barry.davis@phila.gov](mailto:j.barry.davis@phila.gov)  
[scott.schwarz@phila.gov](mailto:scott.schwarz@phila.gov)  
[jocelyn.g.hill@phila.gov](mailto:jocelyn.g.hill@phila.gov)  
[sandra.d.mcmanus@phila.gov](mailto:sandra.d.mcmanus@phila.gov)

Mark Szybist  
Natural Resource Defense Council  
1152 15th St. NW, Ste. 300  
Washington DC 20005  
[mszybist@nrdc.org](mailto:mszybist@nrdc.org)

Joseph Otis Minott  
Clean Air Council  
135 S. 19<sup>th</sup> Street, Ste. 300  
Philadelphia, PA 19103  
[Joe\\_minott@cleanair.org](mailto:Joe_minott@cleanair.org)

Sarah C. Stoner  
Daniel Clearfield  
Deanne O'Dell  
Eckhart Seamans  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
*KEEA Energy Education Fund*

Jennedy S Johnson  
Colin Scott  
Philip Kirchner  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
PO Box 3265  
Harrisburg PA 17105-3265  
[jennejohn@pa.gov](mailto:jennejohn@pa.gov)  
[colinsscott@pa.gov](mailto:colinsscott@pa.gov)  
[phikirchne@pa.gov](mailto:phikirchne@pa.gov)

Dated this 6<sup>th</sup> day of August 2015.

*Blake Elder*

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Blake Elder  
Assistant  
KEYES, FOX & WIEDMAN LLP  
401 Harrison Oaks Blvd, Suite 100  
Cary, NC 27513