

COMMONWEALTH OF PENNSYLVANIA



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April 15, 2024

Via Electronic Mail Only

The Honorable Eranda Vero
The Honorable Arlene Ashton
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Re: Petition of PECO Energy Company for
Approval of its Default Service Program for the
Period of June 1, 2025, through May 31, 2029
Docket No. P-2024-3046008

Dear Judge Vero and Judge Ashton:

Enclosed please find copies of the Office of Consumer Advocate's Motion to Dismiss Objections and Compel Answers to OCA Interrogatories Set 2, Questions 23 and 38 in the above-referenced proceeding.

Copies have been served upon the parties as evidenced by the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: Rosemary Chiavetta, PUC Secretary
Certificate of Service

CERTIFICATE OF SERVICE

Petition of PECO Energy Company for :
Approval of its Default Service Program for the : Docket No. P-2024-3046008
Period of June 1, 2025, through May 31, 2029

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Motion to Dismiss Objections and Compel Answers to Interrogatories Set 2, Questions 23 and 38 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. This document was filed electronically on the Commission's electronic filing system.

Dated this 15th day of April 2024.

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Dated: April 15, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for :
Approval of its Default Service Program : Docket No. P-2024-3046008
for the Period of June 1, 2025 through :
May 31, 2029 :

MOTION TO DISMISS OBJECTIONS AND TO COMPEL
ANSWER TO INTERROGATORIES
OF THE OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

AND NOW, before the Honorable Administrative Law Judge (ALJ) Erando Vero and Honorable Arlene Ashton, the Office of Consumer Advocate (OCA) files this Motion to Dismiss Objections and to Compel Answers to Interrogatories (Motion), pursuant to 66 Pa.C.S. § 333(g), 52 Pa. Code §§ 5.103, 5.331, and 5.342(g), and the ALJs' Prehearing Order issued on April 2, 2024, in this proceeding. In this Motion, the OCA requests that the ALJs enter an order that (1) dismisses the written objection filed by PECO Energy Company (PECO or the Company) on April 10, 2024, in this proceeding; and (2) compels PECO to provide the full and complete information requested in Interrogatories OCA Set 2, Question No.23, subparts c and e, and Question No. 38 on the grounds that the information sought in this interrogatory and its subpart is relevant and not privileged. In support thereof, the OCA states as follows:

II. BACKGROUND

1. On February 5, 2024, PECO filed its Petition for Approval of its proposed Default Service Program for the period of June 1, 2025 through May 31, 2029 (PECO DSP VI).
2. On March 1, 2024, the OCA filed an Answer to PECO's Petition.

3. On March 8, 2024, the ALJs held a telephonic prehearing conference. On April 2, 2024, the ALJs issued Prehearing Order #2, which, among other things, established a litigation schedule and discovery modifications that shortened the time periods for serving responses, objections, and motions to compel.

4. On March 14, 2024, the ALJs issued a Protective Order.

5. On March 26, 2024, the OCA issued its Set 2 Interrogatories (Set 2) to PECO.

6. On March 29, 2024, PECO and OCA counsel held a call where PECO orally objected to six of the OCA's Set 2 interrogatories, including Question No.23, subparts c and e and Question No. 38. PECO also provided its position by e-mail on March 29th. The OCA and PECO agreed to toll the time for filing of written objections by PECO, to allow for possible informal resolution of PECO's informal objections.

7. On April 5, 2024, OCA and PECO counsel conferred by telephone and e-mail. The OCA and PECO resolved some, but not all, of PECO informal objections. The OCA informed PECO that written objections should be filed, to set forth PECO's objections to OCA Set 2, Question No.23, subparts c and e, and Question No. 38. The OCA agreed the PECO written objections could be filed on April 10, 2024.

8. On April 10, 2024, PECO filed its written objections to OCA Set 2, Question No.23, subparts c and e, and Question No. 38. A copy of PECO's written objections is attached as Attachment A.

9. In accordance with paragraph 14 of the ALJs' Prehearing Order #2, the OCA files this Motion within three (3) calendar days of service of PECO's written objections, requesting that the ALJs dismiss PECO's objections and compel PECO to answer OCA Set 2, Question No. 23,Subparts c and 3, and Question No. 38.

III. LEGAL STANDARD

10. Section 333(d) of the Public Utility Code permits a party to a proceeding to “serve written interrogatories upon any other party for purposes of discovering relevant, unprivileged information.” 66 Pa.C.S. § 333(d). Under the Commission’s regulations, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.¹ 52 Pa. Code § 5.321(c). It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.*

11. The Commission applies the relevancy test liberally. *See Pa. P.U.C. v. The Peoples Natural Gas Co.*, 62 PaPUC 56 (Aug. 26, 1986). Relevancy depends upon the nature and the facts of the individual case. *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Commw. 2006) (*Koken*). Any doubts are to be resolved in favor of relevancy and permitting discovery. *Petition of the Borough of Cornwall for a Declaratory Order*, Docket No. P-2015-2476211 (Order entered Sept. 11, 2015) (citing *Koken at 1025*).

12. The burden is placed on the party objecting to discovery to establish that the information requested is not relevant or discoverable. *Id.*

13. Where there has been an objection filed to an interrogatory, the propounding party has the right to file a motion requesting that the presiding officer issue an order that dismisses the

¹ Section 5.321 outlines the scope of discovery as follows:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery 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 to the **claim or defense of another party**, including the **existence**, description, nature, content, custody, condition and location of any books, **documents**, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c) (emphasis added).

objection and compels an answer to the interrogatory. 66 Pa.C.S. § 333(d); 52 Pa. Code § 5.432(g). The consequence to the propounding party for failure to file a motion to compel is that the objected to interrogatory will be deemed withdrawn. 52 Pa. Code § 5.432(g). The motion to compel must include the interrogatory objected to and the objection. *Id.*

IV. MOTION TO COMPEL

14. It is the OCA's responsibility to protect the interests of PECO's consumers in matters that are properly before the Commission. In doing so, the OCA must inquire into any and all matters which may lead to the discovery of admissible evidence to support its recommendations to the Commission in this proceeding which concerns PECO's proposed plan for procurement of default service supply (DSP VI).

15. The OCA has the right to obtain discovery regarding any matter which is relevant to the subject matter involved in the proceeding and not privileged.

16. The subject matter of this proceeding is the Company's Petition to establish a new Default Service Program (DSP VI) to provide electric supply default service at least cost over the future four-year period. See, 66 Pa. C.S. § 2807(e). In relevant part, the subject matter includes PECO's proposal to continue elements of the Company's DSP V, as previously approved by the Commission, with four principal changes. See, PECO Petition ¶ 8 (Overview). The changes proposed by PECO include: (1) incorporation "of a reserve price for each of the 12-month and 24-month products for the Residential class," and (2) "implementation of a capacity price proxy and true-up mechanism." See, PECO St. 3 at 33-34; see also PECO St. 1 at 8; PECO St. 4 at 14-15.

17. The Company has objected to portions of OCA Set 2, Question 23, Subparts (c) and (e) and all of OCA Set 2, Question 38.

PECO Should be Compelled to Answer OCA Set 2, Question 23, Subpart (c) and (e)

18. OCA Set 2, Question 23 references the Direct Testimony of PECO witness Scott G. Fisher and states (emphasis added):

Referencing page 11, footnote 16. Please provide:

- a. The dates on which the Commission has declined to authorize the bid results for these seven tranches.
- b. The procurement class (e.g., residential, small commercial) for each such tranche.
- c. *The recommendation (whether to approve or not) provided by PECO or its independent evaluator to the Commission.*
- d. The Commission's stated reasons for not approving these tranches (state the relevant reasons separately for each unapproved tranche).
- e. *All public and non-public documentation for (c) and (d) above.*

The Subparts (c) and (e) objected to by PECO are emphasized. These Subparts must be read in conjunction with the Interrogatory's focus on the "seven tranches" for which the Commission declined to authorize the bid results, as identified in Mr. Fisher's testimony, page 11, fn. 16 and framed by OCA Set 2, Question 23 subpart (a).

19. PECO objects to OCA-2-23, subparts (c) and (e), on the grounds that these interrogatories seek information and documents regarding bid data submitted in PECO's past DSP solicitations that PECO may not disclose under the rules and protocol (the "RFP Rules" and "RFP Protocol") governing its competitive request for proposals process for the procurement of default service supply conducted by National Economics Consulting, Inc. d/b/a/ NERA Economic Consulting (NERA), the Independent Evaluator appointed by the Commission for PECO's current (and fifth) DSP (DSP V). PECO Objections, ¶¶2-4.

20. PECO does not object on the grounds of relevancy, but rather based on the argument that the requested information cannot be released under the RFP Rules under "a cloak of confidentiality." PECO Objections, ¶¶5-6.

21. PECO's objections should be denied, and PECO should be required to answer OCA's Set 2, Question 23, subpart (c) and (e) because OCA Interrogatory 2-23 seeks relevant information. The information sought is related to the subject matter of this proceeding and is not privileged; accordingly, the OCA Interrogatory seeks information that is discoverable pursuant to Section 5.321 of the Commission's regulations. 52 Pa. Code § 5.321. PECO should be deemed to have waived any objection based upon relevance.

22. OCA-2-23 is directed at PECO witness Scott Fisher's discussion of the outcomes of past fixed-price, full requirements (FPRP) solicitations and Commission approval of bid results over the course of PECO DSP I, DSP II, DSP III, DSP IV, and DSP V. See, PECO St. 3 at 11-12, fn. 16. Mr. Fisher links his review of "lessons learned" from PECO DSP I, II, III, IV, and V procurements with his evaluation of PECO's proposed DSP VI. PECO St. 3 at 3-4, 11-12. The OCA interrogatory is relevant to the scope of Mr. Fisher's conclusions about supplier participation in prior PECO FPRP solicitations and the contract prices obtained relative to underlying market conditions, as summarized in PECO St. 3 at 3-4. Mr. Fisher is an independent consultant and partner with The Northbridge Group. PECO St. 3 at 1.

23. PECO acknowledges the OCA's narrow request for documentation of the recommendation, whether made by PECO or the Independent Evaluator, to the Commission regarding the seven tranches for which the Commission did not accept the bids, as set forth in OCA Set 2, Question 23, Subparts (c) and (e) and tied to the testimony of PECO witness Fisher. PECO Objections, ¶ 5. Yet PECO opines that the information requested by the OCA should not be produced, based in part upon consideration of the "substantial information about procurement results" provided to the OCA and other parties in this proceeding, some in redacted form. PECO Objections, ¶ 7. PECO's objection is not well-grounded. That the Company has replied to other

discovery posed by the OCA does not shield PECO from an obligation to reply to this specific OCA interrogatory. The Commission's discovery rules permit discovery of information that is likely to lead to discovery of admissible evidence. This PECO Objection ¶ 7 should be denied.

24. The ALJs have approved a Protective Order that provides for the handling of Confidential² and Highly Confidential Information.³ Nonetheless, PECO's Objections describe confidentiality provisions that apply to PECO's procurement of default service supply that, in PECO's view, put the information requested by the OCA Set 2, Question 23, Subparts (c) and (e) as outside the scope of what is discoverable for the purpose of this proceeding. PECO Objections, ¶¶ 2-7. These collective PECO objections based upon confidentiality should be denied, for the following reasons:

a. PECO's objection based upon confidentiality flows from PECO's flawed, alternative characterization of OCA Set 2, Question 23, Subparts (c) and (e) as seeking "information and documents regarding bid data submitted in the Company's past default service solicitations...." PECO Objections, ¶ 2. PECO states that NERA makes the recommendation to the Commission whether to approve or not the bid results in a "post-solicitation solicitation report." PECO Objections ¶ 5. PECO states the NERA post-solicitation report contains bidder and bid information that is subject to the confidential provisions of the "RFP Rules and RFP Protocol," specific to PECO's DSP procurement process. PECO Objections, ¶¶ 2, 3, 4, 5. PECO has created

² *Petition of PECO Energy for Approval of DSP VI*, Protective Order, ¶ 3 (Mar. 14, 2024). "A producing party may designate as 'CONFIDENTIAL' those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party or its clients to the risk of competitive disadvantage or other business injury."

³ Protective Order, ¶ 3. "A producing party may designate as 'HIGHLY CONFIDENTIAL' those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party determined that a heightened level of confidential protection with respect to those materials is appropriate. The parties shall endeavor to limit the information designated as "HIGHLY CONFIDENTIAL" protected material."

a false conflict. OCA Question 23, Subparts (c) and (d) could be answered subject to the protections afforded under the Protective Order in this proceeding with redactions that permit the OCA to review the NERA post-solicitation reports specific only to the seven tranches referenced in PECO consultant Fisher's testimony. The OCA Interrogatory's focus is on determining whether the Commission's determination to not approve the bid results for seven tranches followed or differed from NERA's recommendation as the Independent Evaluator for those specific solicitations. The clear focus of OCA-2-23, subparts (c) and (e) is on documentation of the "recommendation" and does not request identification of the bidder or bid price, contrary to the PECO Objection ¶ 2 characterization.

b. PECO's position that the RFP Protocols and RFP Rules confidentiality provisions preclude discovery of past procurements of default service supply, regardless of relevance to evaluation of the merits of PECO's Petition for Approval of DSP VI and regardless of the Protective Order, should be denied. PECO's Objection acknowledges that the RFP confidentiality protections give notice that protection of bidder specific information is not absolute but may be disclosed "if required by a federal, state, or local agency (including the Commission) or a court of competent jurisdiction." PECO Objection, ¶ 4, citing PECO Exhibit KO-1, § VII.4.5. The OCA contends this language in the RFP Rules allows the ALJs to permit discovery of PECO's prior solicitations of default service supply within the context of this proceeding given the OCA's right in this proceeding to discover relevant information. To conclude otherwise would unduly restrict the right of the OCA to discover relevant information in this proceeding and thus unreasonably impair the ability of the OCA to evaluate and provide informed testimony on the merits of PECO's proposed DSP VI, subject to the Protective Order.

c. Similarly, PECO's position that the RFP confidentiality provisions and the Commission's Policy Statement at 52 Pa. Code § 69.1807(7) elevate protection of auction processes over all other public interest considerations – including discovery of relevant information in this proceeding – is unsound. See PECO Objections, ¶¶ 4, 5, 6; 52 Pa. Code § 69.1807(7). PECO relies on a March 2012 ALJ order denying a RESA motion to compel in a different DSP proceeding, as “precedent” that the information sought by OCA “is not discoverable.” PECO Objection, ¶6, citing *Joint Petition of Metropolitan Edison Co., et al For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650 et al, Order Denying the RESA Motion to Compel (Mar. 16, 2012)(*March 2012 RESA Order*).⁴ To the contrary, the Commission's October 2012 Order in PECO's own DSP II proceeding supports grant of this OCA motion for the reasons explained immediately below. See, *Petition of PECO Energy for Approval of Its Default Service Program II*, Docket No. P-2012-2283641, Order (Oct. 12, 2012)(*DPS II Order*),⁵ [subsequent history omitted].

d. In the *DSP II Order*, the Commission accepted PECO proposed modifications to the RFP forms and the Supplier Master Agreement (SMA). The Commission next agreed:

In DSP II, a redacted copy of the Independent Evaluator's report to the Commission on each solicitation will be provided to PECO to assist in developing future improvements and implementing any contingency procurement, with an additional copy provided to the OCA. PECO St. No. 4 at 19-20; PECO St. No. 4-S at 2-3; PECO M.B. at 30.

DSP II Order, at 44. Indeed, the Commission directed that a copy be provided to the OCA. Clearly, Section 69.1807(7) of the Commission's guidelines for competitive bid solicitation processes and balancing of confidentiality with the public's need to know did not prevent PECO from agreeing to provide the OCA with redacted copies of future post-solicitation reports, nor

⁴ Copy available at <https://www.puc.pa.gov/pcdocs/1169371.docx>

⁵ Copy available at <https://www.puc.pa.gov/pcdocs/1194942.docx>

prevent the Commission from approving in the *PECO DSP II Order* that sharing of information with the OCA.

25. PECO's collective objections to the OCA Set 2, Question 23, Subpart (c) and (e) should be denied. PECO Objections, ¶¶ 2-7. PECO has acknowledged that the information requested by the OCA Interrogatory, specific to the seven tranches, would be contained in NERA post-solicitation reports to the Commission. PECO has previously committed to provide the OCA with redacted versions of NERA post-solicitation reports, as part of the process of improving PECO's DSP procedures. *PECO DSP II Order* at 43. PECO's Objections are without merit and, if granted, would unduly restrict the OCA's right to discover relevant information and unreasonably impair the OCA's ability to evaluate the Company's proposed DSP VI. The OCA would accept PECO's provision of the NERA post-solicitation reports to the Commission specific to the seven tranches, with supplier bid information redacted as to tranches other than the seven tranches at issue, in response to the OCA Set 2, Question 23, Subpart (c) and (e).

PECO Should be Compelled to Answer OCA Set 2, Question 38

26. OCA Set 2, Question 38 references the Direct Testimony of PECO witness Katie Orlandi and states:

Referencing page 13, lines 5 through 22.

- a. Please provide copies of each "Market Report" provided by NERA to the Commission since the beginning of DSP VI.
- b. Please provide copies of each "Final Report" provided by NERA to the Commission since the beginning of DSP IV.

The PECO DSP IV period started June 1, 2017. See, *Petition of PECO Energy for Approval of Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Order (Dec. 8, 2016)(*PECO DSP IV*).

27. PECO Objections to OCA Set 2, Question 38 are based upon a brief description in PECO Objections, ¶¶ 9 and 10 of the Market Report and the Final Report, including where to find the Market Report and Final Report descriptions in the Company's RFP Rules and RFP Protocols, in exhibits to PECO witness Orlandi's testimony. PECO Objections, ¶¶ 9, 10.

28. PECO Objections to OCA Set 2, Question 38 then incorporates by reference "the same reasons set forth" in PECO Objections ¶¶ 2-7 and "the confidentiality of the Market and Final Reports as described in paragraph 9 and the RFP Rules and RFP Protocols." PECO Objections, ¶ 11.

29. Again, PECO does not object on the grounds of relevancy, and, therefore, PECO should be deemed to have waived any objection based upon relevance.

30. PECO's objections to OCA Set 2, Question 38 should be denied, and PECO should be required to provide the requested Market Reports and Final Reports, for the period from June 1, 2017 to the present because OCA-2-38 seeks relevant information. The information sought is related to the subject matter of this proceeding and is not privileged; accordingly, the OCA Interrogatory seeks information that is discoverable pursuant to Section 5.321 of the Commission's regulations. 52 Pa. Code § 5.321.

31. The OCA Set 2, Question 38 seeks information related to the subject matter of this proceeding. This case concerns PECO's Petition for Commission approval of the Company's plan for procurement of default supply in the future. The Company's own Petition and pre-filed

testimony rely extensively on the Company's DSP V and earlier experiences. *See* PECO St. 1 at 4-6; PECO St. 3 at 3-11; PECO St. 4 at 4-8. Further, the Company has proposed two changes to its DSP procurement process: (1) incorporation "of a reserve price for each of the 12-month and 24-month products for the Residential class," and (2) "implementation of a capacity price proxy and true-up mechanism." PECO St. 3 at 33-34; see also PECO St. 1 at 8. PECO witness Katie Orlandi provides an overview of how the bidding process has worked under DSP V, the reports provided by NERA to the Commission, as PECO's Independent Evaluator including the Market Report and Final Report. PECO St. 4 at 8-13. PECO witness Orlandi describes the expected impact and benefits of the reserve price proposal on the results for solicitations for supply products for the Residential class. PECO St. 4 at 14-15. Ms. Orlandi is a managing director at NERA Economic Consulting, PECO's Independent Evaluator for each of PECO's DSP's. PECO St. 4 at 1. PECO should be deemed to have waived any objection to OCA Set 2, Question 38 based upon relevance.

32. PECO objects to the OCA Set 2, Question 38 interrogatory based upon consideration of the "substantial information about procurement results" provided to the OCA and other parties in this proceeding, some in redacted form. PECO Objections, ¶¶ 7, 11. PECO's objection is not well-grounded. That the Company has replied to other discovery posed by the OCA does not shield PECO from an obligation to reply to this specific OCA interrogatory. The Commission's discovery rules permit discovery of information that is likely to lead to discovery of admissible evidence. This PECO Objection ¶¶ 7, 11 should be denied.

33. PECO's Objections to the OCA Set 2, Question 38 request for copies of prior Market Reports and Final Reports should be denied. PECO Objections ¶¶ 2-7, 9, 11. First, ALJs have approved a Protective Order that provides for the handling of confidential and highly confidential information. Nonetheless, PECO's Objections to OCA Set 2, Question 38 allege that

confidentiality provisions included in the RFP Rules and RFP Protocols that apply to the procurement of default service supply put the information requested by the OCA Interrogatory outside the scope of what is discoverable in this proceeding. PECO Objections, ¶¶ 2-7, 9, 11. These collective PECO objections based upon confidentiality should be denied, for the following reasons:

a. PECO's Objection acknowledges that the RFP confidentiality protections give notice that protection of bidder specific information is not absolute but may be disclosed "if required by a federal, state, or local agency (including the Commission) or a court of competent jurisdiction." PECO Objection, ¶ 4, citing PECO Exhibit KO-1, § VII.4.5. The OCA contends this language in the RFP Rules allows the ALJs to permit discovery of PECO's prior solicitations of default service supply within the context of this proceeding given the OCA's right in this proceeding to discover relevant information. To conclude otherwise would unduly restrict the right of the OCA to discover relevant information in this proceeding and thus unreasonably impair the ability of the OCA to evaluate and provide informed testimony on the merits of PECO's proposed DSP VI, including the proposed addition of a reserve price to the procurement process. PECO proposes the reserve price as an improvement over PECO DSP V, yet, PECO would deny the OCA access to information in the Market Report and Final Report (also described as NERA's post-solicitation report).

b. Similarly, PECO's position that the RFP confidentiality provisions and the Commission's Policy Statement at 52 Pa. Code § 69.1807(7) elevate protection of auction processes over all other public interest considerations – including discovery of relevant information in this proceeding – is unsound. See, PECO Objections, ¶¶ 4, 5, 6, 9, 11; 52 Pa. Code § 69.1807(7). PECO relies on a March 2012 ALJ order denying a RESA motion to compel in a different DSP proceeding, as "precedent" that the information sought by OCA "is not

discoverable.” PECO Objection, ¶¶ 6, 9, 11, citing *March 2012 RESA Order*. To the contrary, the Commission’s October 2012 Order in PECO’s own DSP II proceeding is more probative and supports grant of this OCA motion. See, *DPS II Order*.

c. As noted above in OCA Motion ¶¶ 22, c and d, in the *DSP II Order*, the Commission approved PECO’s plan to provide the OCA with a redacted copy of the NERA post-solicitation reports during the DSP II term. *DSP II Order*, at 44. Clearly, Section 69.1807(7) of the Commission’s guidelines for competitive bid solicitation processes and balancing of confidentiality with the public’s need to know did not prevent PECO from agreeing to provide the OCA with redacted copies of future NERA post-solicitation reports, nor prevent the Commission from approving in the *PECO DSP II Order* that sharing of information with the OCA.

34. PECO’s collective objections to the OCA Set 2, Question 38 request for NERA’s Final Reports (post-solicitation reports) should be denied. PECO Objections, ¶¶ 2-7 9, 11. PECO has not alleged that the information requested by the OCA interrogatory is not relevant. Further, PECO’s claim that the confidentiality provisions of the RFP Rules and RFP Protocols preclude discovery, even under the Protective Order, is contradicted by *PECO DSP II*. PECO’s Objections to the OCA Interrogatory are without merit and, if granted, would unduly restrict the OCA’s right to discover relevant information and unreasonably impair the OCA’s ability to evaluate the Company’s proposed DSP VI, including the reserve price change that NERA Managing Director Orlandi states would be an improvement for the Company’s procurement of default service supply for the Residential class. These PECO’s objections should be denied.

35. The OCA would accept PECO’s provision of the NERA post-solicitation reports from June 1, 2017 forward with supplier bid information redacted, in response to the OCA Set 2, Question 38. Similarly, the OCA would accept redacted versions of the Market Report provided

by NERA to the Commission. The OCA's interest is to observe the formats of the Reports over time and variations in the data, even if the specific supplier name and bid data is redacted.

V. CERTIFICATION

36. The undersigned counsel for OCA certifies that they have attempted to resolve the Company's objections by undertaking the informal effort of participating in calls with PECO's counsel and the exchange of positions by e-mail. However, counsel for both sides were unable to reach a resolution.

VI. CONCLUSION

For the foregoing reasons, the OCA's Set 2, Question 23, subparts (c) and (e) and Question 38 request information that is relevant and not protected by privilege. The Company's position that the requested information cannot be made available, even under the Protective Order, should be denied. The OCA respectfully requests that the Presiding Officers grant this Motion to Dismiss Objection and Compel Response to Discovery and direct PECO Energy to answer the contested OCA Interrogatories, with certain redactions as discussed above, within three calendar (3) days from the date of the order.

Respectfully Submitted,

Barrett C. Sheridan

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April 15, 2024

ATTACHMENT

Morgan Lewis

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April 10, 2024

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120

Re: Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2025 through May 31, 2029
Docket No. P-2024-3046008

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding is the **Certificate of Service** evidencing service of **PECO Energy Company's Objections to the following Interrogatories**:

- 1. Energy Justice Advocates, Set III, Question No. 20**
- 2. Office of Consumer Advocate, Set II, Question Nos. 23(c), (e), and 38**

As indicated on the enclosed Certificate of Service, copies have been served upon all parties of record.

If you have any questions, please call me directly at 215.963.5384.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosure

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

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April 10, 2024

VIA ELECTRONIC MAIL

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**Re: Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2025 through May 31, 2029
Docket No. P-2024-3046008**

Dear Counsel:

Enclosed please find **PECO Energy Company's Objections to the Interrogatories of the Office of Consumer Advocate, Set II, Question Nos. 23(c), (e), and 38**, in the above-captioned proceeding.

Very truly yours,



Kenneth M. Kulak

KMK/tp

Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : **Docket No. P-2024-3046008**
THE PERIOD FROM JUNE 1, 2025 :
THROUGH MAY 31, 2029 :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of **PECO Energy Company's**
Objections to the Interrogatories of: (1) Energy Justice Advocates, Set III, Question No. 20;
and (2) Office of Consumer Advocate, Set II, Question Nos. 23(c), (e), and 38, on the following
persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: April 10, 2024

Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2024-3046008
SERVICE PROGRAM FOR THE PERIOD OF :
JUNE 1, 2025, THROUGH MAY 31, 2029**

**OBJECTIONS OF PECO ENERGY COMPANY TO THE INTERROGATORIES
(SET II) OF THE OFFICE OF CONSUMER ADVOCATE**

Pursuant to 66 Pa. C.S. § 333(d) and 52 Pa. Code § 5.342, PECO Energy Company (“PECO”) hereby objects to Second Set of Interrogatories (“Set II”) Nos. 23, subparts (c) and (e), and 38 propounded by the Office of Consumer Advocate (“OCA”) on March 26, 2024. A copy of the Interrogatories is attached as Appendix A and incorporated herein by reference.

1. OCA Set II Interrogatory No. 23, states as follows:

Referencing page 11 [of the Direct Testimony of PECO witness Scott G. Fisher], footnote 16. Please provide:

- a. The dates on which the Commission has declined to authorize the bid results for these seven tranches.
- b. The procurement class (e.g., residential, small commercial) for each such tranche.
- c. The recommendation (whether to approve or not) provided by PECO or its independent evaluator to the Commission.
- d. The Commission’s stated reasons for not approving these tranches (state the relevant reasons separately for each unapproved tranche).
- e. All public and non-public documentation for (c) and (d) above.

2. PECO objects to OCA Set II Interrogatory No. 23, subparts (c) and (e), because they seek information and documents regarding bid data submitted in the Company’s past default service solicitations that PECO may not disclose under the rules and protocol (the “RFP Rules” and “RFP Protocol”) governing its competitive requests for proposals process for the

procurement of default service supply conducted by National Economic Consulting, Inc. d/b/a NERA Economic Consulting (“NERA”), the Independent Evaluator appointed by the Pennsylvania Public Utility Commission (the “Commission”) for PECO’s current (and fifth) default service program (“DSP V”).¹

3. The RFP Rules and RFP Protocol were approved by the Commission for use in PECO’s current default supply procurements in the *DSP V Order*. A copy of both the RFP Rules and the RFP Protocol is included in PECO’s initial filing in this proceeding, with blacklines to the RFP Rules and RFP Protocol approved by the Commission for DSP V. *See* PECO Statement No. 4 & Exhibits KO-1 through KO-4.

4. In accordance with the Commission’s Policy Statement at 52 Pa. Code § 69.1807(7), the RFP Rules and RFP Protocol developed with and administered by NERA contain extensive confidentiality provisions that prevent PECO and NERA from releasing information provided by bidders, including the bidder identity and the amount of awarded supply. *See* PECO Exhibit KO-1, §§ VI.1.2, VII.4 & Appendix 12; PECO Exhibit KO-2, §§ II, III, XI, XIII, XIV, XV. Bidder data and information submitted in response to a request for proposal (“RFP”) may be disclosed only if required by a federal, state, or local agency (including the Commission) or a court of competent jurisdiction. *See* PECO Exhibit KO-1, § VII.4.5. In accordance with the Commission’s October 12, 2010 Secretarial Letter² governing disclosure of default service solicitation results and the RFP Protocol approved by the Commission in the *PECO DSP V Order*, NERA does release certain specific information about the results of a procurement, including the average weighted price of winning bids, but other information is not made publicly

¹ *See Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Opinion and Order entered December 3, 2020) (“*PECO DSP V Order*”).

² *See Re: Disclosure of Default Serv. Solicitation Results and Creation of a Default Serv. Rate Calculation Model*, Docket No. M-2009-2082042 (Secretarial Letter issued Oct. 12, 2010).

available.³

5. OCA Set II Interrogatory No. 23, subparts (c) and (e), request information about PECO's default service solicitations that cannot be released under the RFP Rules and, in some cases, is not even provided to PECO. Specifically, these interrogatories ask for: (1) the recommendation (whether to approve or not) provided to the Commission for the seven fixed-price full requirements tranches for which the bid results were not approved (2) all public and non-public documentation for the recommendation and the Commission's stated reasons for not approving those tranches. PECO does not provide recommendations for bid approvals or rejections; that is solely the responsibility of the Independent Evaluator. Those recommendations are provided in NERA's post-solicitation report which discloses the names of winning and losing bidders, the percentage of the available load that each supplier was awarded, and other information submitted by bidders in response to the RFP. Given the confidential provisions of the RFP Rules and the RFP Protocol, PECO cannot produce this information even under the "Confidential Information" or "Highly Confidential Information" provisions of the Protective Order in this proceeding⁴ and therefore objects to OCA Set II Interrogatory No. 23, subparts (c) and (e).

6. Moreover, in FirstEnergy Pennsylvania Electric Company's ("FE-PA's") second default service proceeding, the presiding Administrative Law Judge granted FE-PA's objection and dismissed the Retail Energy Supply Association's Motion to Compel with respect to an interrogatory that would have required FE-PA to produce information about the results of historical default service auctions, including disaggregated bid information with fictitious labels.

³ See PECO Exhibit KO-2, §§ XIII and XV.B. The information released for PECO's default service procurements to date is available at www.pecoprocurement.com (see "Previous Results" in the "Background" section of the website).

⁴ Protective Order, *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3046008 (Order entered March 14, 2024) ("Protective Order")

As in this proceeding, FE-PA was prohibited from releasing the requested bid information under the Commission's approved rules governing its default service auctions. In sustaining the objection, the ALJ found that the auction rules impose "a cloak of confidentiality" to prevent disclosure of bid information that would "compromise the integrity of future auction processes."⁵ Accordingly, there is clear precedent that the information sought in OCA Set II Interrogatory No. 23, subparts (c) and (e), is not discoverable for the reasons set forth in Paragraph Nos. 4 and 5 above.

7. PECO notes that in response to other discovery requests, PECO (with NERA's assistance) is providing (or has already provided) substantial information about procurement results in a manner that has not compromised the confidentiality of data the OCA now seeks. In particular, the OCA (and all other parties to this proceeding, consistent with the Protective Order) have received the following information:

- The number of suppliers that participated in each residential (fixed-price full requirements, or "FPFR") solicitation since DSP I.
- The number of suppliers that won at least one tranche in each residential FPFR solicitation since DSP I.
- The number of suppliers that participated in each small commercial FPFR solicitation since DSP I.
- The number of suppliers that won at least one tranche in each small commercial FPFR solicitation since DSP I.
- The number of tranches awarded to each bidder in each solicitation since DSP IV.
- The number of tranches provided by each supplier for each default service rate period for each customer class since DSP IV.
- The number of winning bids per solicitation in DSP V.
- The number of bidders eligible to submit bids in each DSP V solicitation.
- The average bid prices used to establish the average weighted price of each product in DSP V that is published by the Commission.
- Average winning bid price and associated number of tranches per product and supplier with supplier name redacted in DSP V.

⁵ See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650 et al. (Order Denying the Retail Energy Supply Association's Motion to Compel entered Mar. 16, 2012), p. 6; see also *id.*, pp. 3-8.

8. OCA Set II Interrogatory No. 38, states as follows:

Referencing page 13, lines 5 through 22 [of the Direct Testimony of PECO witness Katie Orlandi]. Please provide:

- a. Please provide copies of each “Market Report” provided by NERA to the Commission since [June 1, 2016].
- b. Please provide copies of each “Final Report” provided by NERA to the Commission since [June 1, 2016].

9. The Market Report is prepared by NERA prior to each DSP V solicitation for default service supply and provided solely and confidentially to the Commission. The Final Report, which is prepared by NERA after each solicitation, is provided confidentially to the Commission to evaluate the solicitation and thereafter only in redacted form to PECO.

10. The Market Report is described in the RFP Protocol, and the Final Report is described in both the RFP Rules and RFP Protocol. *See* Exhibits KO-1 and KO-3, § VII.3 and Exhibits KO-2 and KO-4, §§ XIII, XV.B & XV.C.

11. PECO objects to OCA Set II Interrogatory No. 38 for the same reasons set forth in Paragraph Nos. 2-7 above and the confidentiality of the Market and Final Reports as described in paragraph 9 and in the RFP Rules and RFP Protocol.

Respectfully submitted,



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Dated: April 10, 2024

For PECO Energy Company

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA



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March 26, 2024

Via Electronic Mail Only

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Re: Petition of PECO Energy Company for
Approval of its Default Service Program for
the Period of June 1, 2025, through May 31,
2029

Docket No. R-2024-3046008

Dear Counsel:

Enclosed you will find Interrogatories of the Office of Consumer Advocate, Set 2, in the above-referenced proceedings.

In accordance with the Commission's Rules of Practice and Procedure, as modified during the March 8, 2024 Prehearing Conference, we request PECO Energy Company provide verified answers to these inquiries within ten (10) days of service. Also, please forward the verified answers as they are completed, rather than waiting until the responses to the full set are completed.

We would appreciate it if you would communicate any objections you may have to these interrogatories as soon as possible.

Brooke E McGlinn, Esquire
Kenneth M. Kulak, Esquire
Maggie Curran, Esquire
March 26, 2024
Page 2

We also request that you send a copy of the answers directly to our group e-mail, as listed below:

OCA2024PECODSP@paoca.org

If you have any questions, please call us. By copy of this letter, copies of these interrogatories have been served upon all parties. A certificate of service showing service of these interrogatories on all parties has been filed with Secretary Chiavetta of the Pennsylvania Public Utility Commission as required by 52 Pa. Code §5.341(b).

Sincerely,



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Enclosures:

cc: PUC Secretary Rosemary Chiavetta, (Letter and Certificate of Service Only)
Certificate of Service

CERTIFICATE OF SERVICE

Petition of PECO Energy Company for :
Approval of its Default Service Program for : Docket No. P-2024-3046008
the Period of June 1, 2025, through May 31,
2029

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Interrogatories to PECO Energy Company, Set 2, 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. This document was filed electronically on the Commission's electronic filing system.

Dated this 26th day of March, 2024.

SERVICE BY E-MAIL ONLY

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Dated: March 26, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for :
Approval of its Default Service Program for : Docket No. P-2024-3046008
the Period of June 1, 2025, through May 31, :
2029 :

INTERROGATORIES
OF THE
OFFICE OF CONSUMER ADVOCATE
SET 2

Pursuant to 52 Pa. Code § 5.341, the Office of Consumer Advocate hereby propounds the following Interrogatories to PECO Energy Company, to be answered by those officers, employees, agents, or contractors who have knowledge of the requested facts and who are authorized to answer on behalf of the Company. Each interrogatory is to be verified by the responding witness in accordance with 52 Pa. Code § 5.342(a)(6).

DATED: March 26, 2024

Instructions

- 1) These interrogatories shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed.
- 2) Restate the interrogatory immediately preceding each response.
- 3) Identify the name, title, and business address of each person(s) providing each response.
- 4) Provide the date on which the response was created.
- 5) Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term “PECO Energy Company.”, “PECO”, “the Company”, or “you” as used herein includes PECO Energy Company, its attorneys, agents, employees, contractors, or other representatives, to the extent that the Company has the right to compel the action requested herein.
- 6) Provide a verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness’ knowledge, information and belief.
- 7) As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word “document” or “workpaper” includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium, including computerized memory, magnetic, electronic, or optical media, regardless of origin, and whether or not including additional writing thereon or attached thereto, and may consist of:
 - a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
 - b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
 - c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

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Items 1 through 12 reference the Direct Testimony of PECO witness Ms. Sulma Dalessio

1. Referencing page 6, lines 10 through 11.
 - a. Please provide the number of customers, for residential class and commercial class separately, that have been referred to participating EGSs under the Standard Offer Program each calendar month from August 2013 through the most recent month available.
 - b. Please provide the number of customers, for residential class and commercial class separately, that have signed up with participating EGSs under the Standard Offer Program each calendar month from August 2013 through the most recent month available.
2. Please provide the number of customers, for residential class and commercial class separately, that have been referred to participating EGSs more than once since January 2019.
3. Referencing page 7, lines 10 through 12. Has PECO assessed the advantages, disadvantages, benefits, or costs of employing a procurement process (such as a reverse auction) other than a request for proposals? If so, please provide the findings of such assessments.
4. Referencing page 14, lines 16 through 18. Please explain the rationale underlying the use of one percent spot market purchases as part of the overall residential default service supply portfolio.
5. Referencing page 15, lines 17 through 19. For each solar AEC procurement conducted by PECO during the term of DSP V, please provide:
 - a. The date of the procurement.
 - b. The products solicited (e.g., delivery of solar AECs for a specific year, delivery of AECs for a block of years, location specification regarding the generation site).
 - c. The number of zonal and in-state solar AECs targeted.
 - d. The number of unique offerors bidding on each product.
 - e. The number of zonal and in-state solar AECs offered.
 - f. The minimum, median, average, and maximum price offered for each product.
 - g. The minimum, median, average, and maximum price accepted for each product.
 - h. The number of solar AECs purchased from a subsidiary or an affiliate of PECO, or a subsidiary or an affiliate of PECO's parent company.
6. Referencing page 18, lines 3 through 8. Please provide estimates of:
 - a. Administrative costs of conducting additional RFPs for a Residential TOU customer procurement group.
 - b. Costs associated with modifying PECO's energy accounting system software to add a Residential TOU customer procurement group.
 - c. Implementation time associated with modifying PECO's energy accounting system software to add a Residential TOU customer procurement group.

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7. Referencing page 20, line 14 through page 21, line 9. Please provide a list of:
 - a. All GSIBs that, as far as PECO is aware, cannot participate in PECO's residential default service solicitations but would do so if Appendix I is added to the SMA.
 - b. All GSIBs that have participated in at least one of PECO's default service solicitations under DSP I through DSP V, but currently cannot participate in PECO's residential default service solicitations unless and until Appendix I is added to the SMA.
 - c. All non-GSIB entities which bid on at least one residential FPFR solicitation during the term of DSP IV.
 - d. All non-GSIB entities which bid on at least one residential FPFR solicitation during the term of DSP V.
8. Referencing page 24, lines 5 through 21. Does PECO have counterparty arrangements in place to be able to solicit and procure energy-only blocks (e.g., contract symbols PCP and PCO on the Intercontinental Exchange) within five business days in the event of a contingency?
9. Referencing page 26, lines 1 through 4. For the accepted bids in the four solicitations conducted in 2021 and 2022 combined, please provide:
 - a. Average price of a solar AEC from solar generating facilities located within PECO's service area.
 - b. Average price of a solar AEC from solar generating facilities which are not located within PECO's service area.
10. Referencing page 27, lines 3 through 9. Please explain the basis for PECO proposing the RFP/SOTP approach outlined in this section of Ms. Dalessio's testimony as a method to procure PECO zone solar AECs rather than simply using two separate RFPs for solar AECs – one for PECO zone and one for in-state.
11. Referencing page 27, lines 17 through 19. Will solar AECs be allocated to customer classes based on energy usage (kilowatt-hours) or peak load (kilowatts) of each customer class?
 - a. Please reconcile the referenced section of the testimony with the following statement from the Petition (page 14, paragraph 28): "PECO will continue to allocate AECs obtained through its AEC procurements to suppliers in accordance with the **peak load** of each customer class and the percentage of load served by each supplier." (emphasis added)
12. Referencing page 28, lines 10 through 13. It seems that the contingency approach of requiring FPFR suppliers to provide any solar AECs for the shortfall below the 32,000 sought by PECO through the RFP/SOTP process would result in added risk to suppliers. The added risk, in turn, may induce the FPFR supply bidders to provide higher bids to compensate them for incurring that risk. Is that perspective correct? Please explain.

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Items 13 through 20 reference the Direct Testimony of PECO witness Ms. Megan A. McDevitt.

13. Referencing page 3, line 19 through page 4, line 1.
 - a. Does PECO agree that PECO can adjust residential default service rates semi-annually (instead of quarterly) under the Commission's regulations? If not, please explain why PECO disagrees.
 - b. Please explain why PECO is proposing to adjust residential default service rates quarterly when FPFs terminate and commence, and over/undercollection reconciliations are conducted, on a semi-annual schedule?
14. Referencing page 6, line 15 through page 7, line 4. Please provide:
 - a. Monthly over/undercollections for the residential class since the start of DSP V through the most recent month available.
 - b. A breakdown of monthly (if not available, quarterly or semi-annual) over/undercollections for the residential class into (i) the difference between actual and projected supply costs, and (ii) billing cycle lag, for the same time period as in (a) above.
 - c. Residential E-Factor rates since the start of DSP IV.
15. Referencing page 10, lines 12 through 18.
 - a. Please provide your basis for stating that "most customers who enrolled in PECO's TOU rates during that period took action to shift consumption away from peak hours" and provide all analyses conducted by or for PECO supporting this assertion.
 - b. If all of PECO's residential default service customers were on the TOU rates since September 2021, how much would they, as a class, save (or pay more) compared to the entire class being on PECO's standard default service rates? Please provide the data separately for each calendar month through the most recent month available.
16. Referencing page 11, lines 1 through 4.
 - a. Please provide the number of PECO's residential customers with smart meters as of the most recent date available.
 - b. Please provide the number of PECO's residential default service customers with smart meters as of the most recent date available.
 - c. Please provide the number of PECO's residential default service customers with smart meters who are eligible for TOU rates as of the most recent date available.
17. Referencing page 12, lines 6 through 10. Are PECO's default service generation TOU rate periods aligned with PECO's distribution TOU rate periods? If the answer to the foregoing is no:
 - a. Please describe the differences between the generation and distribution TOU periods.
 - b. Please explain why generation and distribution TOU periods are not aligned.
18. Referencing page 13, lines 5 through 12. What would PECO's current TOU multipliers be if PECO would recognize that PECO allocates capacity costs to load-serving entities in its zone based exclusively on usage during summer months (June-September), through a

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procedure known as five PJM coincident peaks (or 5CP), and would calculate two sets of TOU multipliers, one for the summer season (June 1 through September 30) and one for the non-summer season (October 1 through May 31)?

19. What is the avoidable annual cost of offering TOU rates to residential and small commercial customers for DSP VI?
20. What is the TOU rate administrative cost included in PECO's total default service cost for each year in DSP V? Please describe:
 - a. How this cost is allocated between residential and small commercial customers.
 - b. How this cost is recovered from customers, including identification of customer groups (shopping vs. default service) and customer classes.

Items 21 through 36 reference the Direct Testimony of PECO witness Mr. Scott G. Fisher.

21. Referencing page 9, line 8. Please explain why 2-year FPFR products are listed in two separate bullets (60% under the first bullet and 3% under the second bullet) in the "Residential" column instead of being combined in a single bullet.
22. Referencing page 10, line 22. Please provide:
 - a. The number of suppliers that participated in each residential FPFR solicitation since DSP I.
 - b. The number of suppliers that won at least one tranche in each residential FPFR solicitation since DSP I.
 - c. The number of suppliers that participated in each small commercial FPFR solicitation since DSP I.
 - d. The number of suppliers that won at least one tranche in each small commercial FPFR solicitation since DSP I.
23. Referencing page 11, footnote 16. Please provide:
 - a. The dates on which the Commission has declined to authorize the bid results for these seven tranches.
 - b. The procurement class (e.g., residential, small commercial) for each such tranche.
 - c. The recommendation (whether to approve or not) provided by PECO or its independent evaluator to the Commission.
 - d. The Commission's stated reasons for not approving these tranches (state the relevant reasons separately for each unapproved tranche).
 - e. All public and non-public documentation for (c) and (d) above.
24. Referencing page 12, lines 1 through 5. Please provide the analysis conducted by Mr. Fisher for each FPFR product solicitation in a live Excel spreadsheet, with all formulae and references intact. Please show the contribution of each individual cost component separately and show how each cost component is calculated from raw data and underlying inputs and assumptions in live Excel spreadsheet format, with all formulae and references intact.
25. Referencing page 12, lines 10 through 11. Please explain how Mr. Fisher would separate the "residual compensation" in an FPFR auction into its "other costs not quantified individually"

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- and “other risks not quantified individually” components for the purpose of quantifying the threshold risk premium in the application of PECO’s proposed reserve price approach.
26. Referencing page 12, footnote 17. Please explain why Mr. Fisher analyzed only the pricing of residential FPF products, and not the pricing of small commercial FPF products.
 27. Referencing page 13, lines 7 through 12. Please confirm that both “reported peak load contribution values” and “the corresponding megawatt-hour load values” used in Mr. Fisher’s analysis were for default service customers and not for all PECO customers. Please state the respective sources of these datasets (e.g., www.pecoprocedure.com, PJM website).
 28. Referencing page 14, footnote 22. Please state Mr. Fisher’s source of “PECO’s historical ancillary services costs” and provide such data in a live Excel spreadsheet with all formulae and references intact.
 - a. Please state all PJM billing line items included in the “ancillary services.”
 29. Referencing the chart in page 18. The far-left column of numbers shows the absolute calculated residual compensation of the winning bids and the far-right column shows the calculated residual compensation as a percent of total winning bids. Please indicate, in either percentage terms or absolute terms, the level at which Mr. Fisher would begin to consider the margin to be unreasonable. Please provide the basis for that assessment.
 30. Referencing page 21, lines 11 through 13. What is the period of time for which the bidders need to hold open their bids?
 31. Referencing page 22, lines 5 through 10. Is it Mr. Fisher’s contention that PECO’s default service load increased when prevailing market prices rose and PECO’s default service load decreased when prevailing market prices declined? If yes, please provide all analyses supporting this observation or conclusion.
 32. Referencing pages 30-31. Please provide the following for each calendar month from June 2017 through the most recent month available:
 - a. The number of residential customers that switched from default service to an EGS supplier;
 - b. The number of residential customers that switched to default service from an EGS supplier;
 - c. The number of residential customers taking default service at the end of the month; and
 - d. The total number of residential customers at the end of the month.
 33. Referencing page 34, footnote 48. Please identify all sections of the referenced document which demonstrate FirstEnergy Pennsylvania utilities’ incorporation of a reserve price in their default service solicitations. Please explain the similarities and differences between FirstEnergy Pennsylvania utilities’ incorporation of a “reserve price” in their default service solicitations and the approach proposed by PECO for DSP VI.
 34. Referencing page 34, footnote 49. Please identify all sections of the referenced document which demonstrate Duquesne Light Company’s incorporation of a reserve price in its default service solicitations. Please explain the similarities and differences between

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Duquesne Light Company's incorporation of a "reserve price" in its default service solicitations and the approach proposed by PECO for DSP VI.

35. Referencing page 34, line 6. Please explain the similarities and differences between the four major Maryland utilities' incorporation of a "reserve price" in their default service solicitations and the approach proposed by PECO for DSP VI.
36. Referencing page 34, footnote 51. Please identify all sections of the referenced documents which demonstrate each Ohio utility's incorporation of a reserve price in its default service solicitations. Please explain the similarities and differences between each Ohio utility's incorporation of a "reserve price" in its default service solicitations and the approach proposed by PECO for DSP VI.

Items 37 through 42 reference the Direct Testimony of PECO witness Ms. Katie Orlandi.

37. Referencing page 6, lines 12 through 15.
- a. For each FPFR auction conducted by PECO since DSP IV, please provide the number of tranches awarded to each bidder.
 - b. For each default service rate period and for each customer class, please provide the number of tranches provided by each supplier since the start of DSP IV.
38. Referencing page 13, lines 5 through 22.
- a. Please provide copies of each "Market Report" provided by NERA to the Commission since the beginning of DSP IV.
 - b. Please provide copies of each "Final Report" provided by NERA to the Commission since the beginning of DSP IV.
39. Referencing page 14, lines 3 through 5. Please explain why PECO is proposing to calculate a reserve price only for residential FPFR products, and not for small commercial FPFR products.
40. Referencing page 14, lines 8 through 16.
- a. Please state and explain all facts observed by PECO or its consultants in PECO's FPFR solicitations that led PECO to propose this new reserve price approach. Please provide all internal and external reports, correspondence, and documentation which recommended the introduction of a reserve price in DSP VI.
 - b. Does Ms. Orlandi or PECO believe that any bids accepted in any residential FPFR product auction since the beginning of DSP IV would have been rejected under the proposed reserve price approach? If yes, please list all such bids and procurements.
 - c. Please explain how the appropriate level of the risk premium to be included in the reserve price will be determined.
 - d. Please explain how all other costs identified on pages 15 through 17 of Mr. Fisher's direct testimony, as well as additional categories of other costs that may be included in the reserve price determination, will be estimated.
 - e. For each residential FPFR product procurement conducted during the term of DSP V, please calculate the reserve price which would have applied under the reserve

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price calculation methodology being proposed for DSP VI. Please provide your response with all inputs, assumptions, and calculations in a live Excel spreadsheet with all formulae and references intact.

41. Referencing page 14, line 17 through page 15, line 8. Please explain why PECO is not proposing to recommend the rejection of all bids above the established reserve to the Commission (as opposed to its proposal to recommend the rejection of bids to the point where the weighted-average price of accepted bids does not exceed the reserve price).
42. Referencing page 15, lines 9 through 14. Please explain why PECO is not proposing to protect non-residential customers “from prices that may exceed the level they may be willing to pay for the benefits of fixed- price full requirements products in cases where bids on average appear outside of a reasonable range given then-current market conditions.”