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MAR 12 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

March 12, 2012

**VIA FEDERAL EXPRESS**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
400 North Street  
Harrisburg, PA 17105-3265

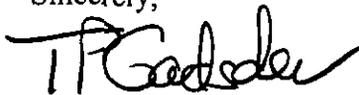
**Re:   Petition of PECO Energy Company for Approval of Its Default Service Program,  
      Docket No. P-2012-2283641**

Dear Secretary Chiavetta:

Enclosed for filing are an original and three copies of the **Prehearing Memorandum** of PECO Energy Company in the above-captioned matter. As evidenced by the Certificate of Service, a copy of the Prehearing Memorandum has been served upon Administrative Law Judge Dennis J. Buckley and all active parties. Pursuant to 52 Pa. Code §1.11(2), the enclosed Prehearing Memorandum shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope.

Also enclosed is an additional copy of this letter and the Prehearing Memorandum, which we request be date-stamped as evidence of filing and returned to us in the stamped, pre-addressed envelope provided.

Sincerely,



Thomas P. Gadsden

TPG/ap  
Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL OF ITS** : **DOCKET NO. P-2012-2283641**  
**DEFAULT SERVICE PROGRAM** :

**RECEIVED**

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**PREHEARING CONFERENCE MEMORANDUM OF  
PECO ENERGY COMPANY**

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MAR 13 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**TO ADMINISTRATIVE LAW JUDGE DENNIS J. BUCKLEY:**

Pursuant to the March 6, 2012 Prehearing Order issued by Administrative Law Judge Dennis J. Buckley (the "ALJ") and the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code § 5.222(d), PECO Energy Company ("PECO" or the "Company") hereby submits its Prehearing Conference Memorandum in the above-captioned proceeding.

**I. PROCEDURAL HISTORY**

On January 13, 2012, PECO filed the above-captioned petition (the "Petition") requesting that the Commission approve its second Default Service Program ("DSP II"), which is designed to ensure that its default service customers have access to an adequate and reliable supply of generation at the least cost over time. PECO currently provides default service pursuant to its Commission-approved default service plan that will expire on May 31, 2013 ("DSP I").<sup>1</sup>

The Petition requests that the Commission approve the proposed DSP II, including

<sup>1</sup> See *Petition of PECO Energy for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009) ("DSP I Order").

PECO’s procurement plan, contingency plans, and tariff changes to its existing default service rate design for default supply service for the period June 1, 2013 through May 31, 2015, as well as certain retail market enhancements, including its Opt-In Electric Generation Supplier (“EGS”) Offer Program and Customer Referral Programs. PECO also requests that the Commission specifically find, pursuant to 66 Pa.C.S. § 2807(e)(3.7), that: (1) DSP II includes prudent steps necessary to negotiate favorable generation supply contracts; (2) DSP II includes prudent steps necessary to obtain least cost generation supply on a long-term, short-term and spot market basis; and (3) neither PECO nor its affiliates have withheld from the market any generation supply in a manner that violates federal law. In addition, PECO requests that the Commission affirm PECO’s right to recover all of its default service costs in accordance with 66 Pa.C.S. § 2807(3.9) and approve PECO’s proposed revised supply master agreement and opt-in and referral program agreements with EGSs as affiliated interest agreements under 66 Pa.C.S. § 2102.

The Petition was served on the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Bureau of Investigation & Enforcement (“BI&E”), and counsel to the Pennsylvania-New Jersey-Maryland Interconnection LLC (“PJM”), as well as all of the electric generation suppliers (“EGSs”) registered in PECO’s certificated service territory. As of this date, Answers to PECO’s Petition have been submitted by the OSBA on February 2, 2012 and the OCA and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) on February 13, 2012. A Notice of Appearance was filed by I&E on February 7, 2012.

In addition, the following parties filed Petitions to Intervene:

OSBA	February 2, 2012
UGI Energy Services, Inc. d/b/a UGI EnergyLink (“UGIES”)	February 7, 2012

Dominion Retail, Inc. d/b/a Dominion Energy Solution ("DES") & Interstate Gas Supply, Inc. d/b/a IGS Energy ("IGS")	February 8, 2012
NextEra Energy Services, Pennsylvania, LLC and NextEra Power Marketing, LLC ("NextEra Entities")	February 10, 2012
Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), & West Penn Power Company ("West Penn") (collectively, "FirstEnergy Utilities")	February 10, 2012
Tenant Union Representative Network & Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN, et al.")	February 13, 2012
Retail Energy Supply Association ("RESA")	February 13, 2012
Philadelphia Area Industrial Energy Users Group ("PAIEUG")	February 13, 2012
OCA	February 13, 2012
Green Mountain Energy Company ("GMEC")	February 13, 2012
Direct Energy Services, LLC ("Direct Energy")	February 13, 2012
ChoosePA Wind.com ("ChoosePA Wind")	February 13, 2012
CAUSE-PA	February 13, 2012
FirstEnergy Solutions Corp. ("FES")	February 13, 2012
Exelon Generation Company, LLC and Exelon Energy Company ("ExGen")	February 13, 2012
Noble Americas Energy Solutions LLC ("Noble")	February 13, 2012
PPL EnergyPlus, LLC ("PPL EnergyPlus")	February 14, 2012
Washington Gas Energy Services, Inc. ("WGES") (filed a Petition to Intervene <i>Nunc Pro Tunc</i> )	February 17, 2012

On February 13, 2012, ExGen filed a Motion for Admission *Pro Hac Vice* of Thomas McCann Mullooly and Trevor D. Stiles.

On March 8, 2012, Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. filed a Petition to Intervene Out-of-Time.

## II. STATEMENT OF ISSUES

The issue before the Commission is whether DSP II is in the public interest and is consistent with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.* (the “Competition Act”), as amended by Act 129 of 2008 (“Act 129”), the Commission’s default service regulations at 52 Pa. Code §§ 54.181-54.189 (“Regulations”), and the Commission’s Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817 (“Policy Statement”).<sup>2</sup> The principal components of DSP II are described below.

### A. Default Service Procurement Class And Supply Portfolio Design

PECO has proposed the same four procurement classes as DSP I: Residential, Small Commercial, Medium Commercial, and Large Commercial and Industrial and has requested a waiver, to the extent necessary, from Sections 54.187(h)-(j) of the Commission’s Regulations in order to continue to use the proposed classes. While the default service product specifications are customized for each procurement class, the generation supply for the Residential, Small Commercial and Medium Commercial classes will consist of full service, load-following energy and energy-related products. With respect to the Residential class, PECO does not propose further procurement of block energy products. Instead, PECO proposes to create additional tranches of load supplied by full-requirements products as its DSP I block energy terms expire.

<sup>2</sup> See *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Final Rulemaking Order, Docket No. L-2009-2095604 (Order entered October 4, 2011); *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Final Policy Statement, Docket No. M-2009-2140580 (Order entered on September 22, 2011) (“*Second Default Service Policy Statement*”). The *Second Default Service Policy Statement* was published in the *Pennsylvania Bulletin* on February 25, 2012.

The generation supply for the Large Commercial and Industrial class will be procured by PECO directly from PJM energy markets.

**B. Competitive Bid Solicitation Process And Contingency Plans**

PECO proposes to procure its full-requirements default service products through a fair, non-discriminatory, and competitive request for proposals (“RFP”) process conducted by an independent third-party evaluator. PECO also proposes that NERA Economic Consulting, Inc. (“NERA”) serve as the independent third-party evaluator for PECO’s default supply solicitations, as it has done in DSP I. Finally, PECO proposes contingency plans to cover supply deficiencies resulting from either a supplier default or the receipt of insufficient bids to fill its competitive solicitations.

**C. Alternative Energy Portfolio Standards Act Requirements**

PECO proposes to continue to satisfy most of its requirements under the Alternative Energy Portfolio Standards (“AEPS”) Act, 73 P.S. § 1648.1, *et seq.*, by requiring each full-requirements default service supplier to transfer Tier I and Tier II alternative energy credits (“AECs”) to PECO corresponding to PECO’s AEPS obligations associated with the amount of default service load served by that supplier. PECO proposes to continue to allocate AECs obtained through its prior AEPS procurements towards suppliers’ AEPS obligations under the supply master agreement (“SMA”) in accordance with the percentage of load served by each supplier. PECO will retain a percentage of the AECs it has procured to meet the AEPS requirements associated with Large Commercial and Industrial class load and the remaining portion of PECO’s share of the Residential class load under DSP I.

#### **D. Rate Design And Tariff Changes**

PECO proposes to recover default service costs through its Generation Supply Adjustment (“GSA”) mechanism. PECO will continue to adjust the cost of generation supply on a quarterly basis for customers with load requirements up to 500 kW, but is proposing an annual reconciliation of the over or under collection component of the GSA for Residential, Small Commercial and Medium Commercial customers to replace the existing quarterly reconciliation mechanism.

PECO is also proposing to collect all of its AEPS-related costs in the GSA. Currently, the Company recovers the cost of compliance with its obligations under the AEPS Act through both the GSA (in the costs paid to each full-requirements supplier for AECs transferred to PECO) and an AEPS Surcharge approved by the Commission for PECO’s separate procurements of Tier I solar and non-solar AECs.<sup>3</sup> Going forward, the Company proposes to include all of its AEPS compliance costs in the GSA and to eliminate the AEPS Surcharge from its tariff.

In addition to the foregoing, and consistent with prior Commission approvals, PECO is eliminating several expiring rate provisions from its tariff, including declining blocks and the Wind Energy Service Rider. Finally, PECO is proposing tariff changes relating to PJM auction revenue rights and cost recovery of PECO’s proposed retail market enhancements.

#### **E. Opt-In EGS Offer Program, Standard Offer Program, And New/Moving Customer Referral**

In its DSP II filing, PECO proposed an “opt-in” program in which EGSs bid to provide competitive retail electric service offers to PECO’s default service residential customers, and two

<sup>3</sup> See *Petition of PECO Energy Co. for Approval to Procure Solar Alternative Energy Credits*, Docket No. P-2009-2094494 (Order entered August 28, 2009); *Petition of PECO Energy Co. for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Credits*, Docket No. P-00072260 (Order entered December 26, 2007).

customer referral programs – a “Supplier of the Month” program in which EGSs compete to present monthly offers to default service residential customers and a program to encourage new and moving customers to select an EGS for generation supply. PECO is in the process of revising its proposals for these programs in light of new guidance from the Commission in its March 2, 2012 Order on an intermediate work plan in its *Investigation of Pennsylvania's Retail Electricity Market* proceedings.<sup>4</sup> At this time, PECO anticipates the following revisions:

***Opt-in Program.*** Participating EGSs will be required to offer a six-month product that is at least five percent less than PECO’s projected Price-to-Compare for June 1, 2013, instead of a 12-month product. The EGS offer may include a \$50 bonus payment to customers which shall be paid after offer acceptance and the completion of three billing cycles with electric generation service provided by the selected EGS. One hundred percent of PECO’s non-shopping, residential customers will be eligible to opt-in to this program for assignment to EGSs (excluding customers participating in PECO’s Customer Assistance Program), subject to a total participation limit of fifty percent of all such customers.

***Standard Offer Program.*** Instead of a “Supplier of the Month” program, PECO will offer a program in which customers may select a participating EGS of their choice or be randomly assigned to a participating EGS. Participating EGSs will be required to offer standard terms and conditions based on a twelve-month product priced at seven percent less than PECO’s Price-to-Compare in effect at the time of customer enrollment. EGS participation is voluntary, and the list of participating EGSs will be updated on a monthly basis.

***New/Moving Customer Referral.*** PECO originally proposed a New/Moving Customer Referral Program for residential customers, with revised and enhanced call center scripts to

<sup>4</sup> See *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Final Order, Docket No. I-2011-2237952 (Order entered March 2, 2012) (“*Intermediate Work Plan Order*”).

promote shopping and PAPowerSwitch.com and an updated “New/Mover” kit for use by the end of 2012. In the *Intermediate Work Plan Order*, the Commission directed the Office of Competitive Market Oversight to establish a working group comprised of electric distribution companies and other interested parties to develop appropriate call center scripts by the second quarter of 2012, with implementation no later than the fourth quarter of 2012. PECO intends to participate in the new working group to develop scripts for use in its call center by the end of 2012, and will also implement systems to transfer a customer caller to an EGS’ telephone number after completing steps required for initiation of distribution service for the customer.

In order to permit other parties to consider PECO’s revised programs and address the revised programs in their direct testimony, PECO proposes to file limited supplemental direct testimony describing the program revisions on March 16, 2012.

**F. Affiliate Relations**

PECO requests that the Commission approve the *pro forma* SMA and the EGS agreements associated with the Opt-In EGS Offer Program and Standard Customer Referral Program (submitted along with PECO’s direct testimony) as affiliated interest agreements as required under 66 Pa.C.S. §§ 2102 and 2807(e)(3.1). The Commission’s Regulations and Policy Statement permit affiliates of default service suppliers to participate in competitive procurements. Because PECO’s affiliates may participate in the proposed procurements, advance approval of the *pro forma* SMA and EGS agreements as affiliated interest agreements is appropriate.

### III. WITNESSES

As previously explained, on January 13, 2012, PECO submitted its Petition along with the testimony of the following witnesses:

- **Brian D. Crowe** - Mr. Crowe is Vice President, Energy Acquisition, for PECO. Mr. Crowe's business address is 2301 Market Street, Philadelphia, PA, 19103 and his telephone number is (215) 841-4141. His testimony provides an overview of PECO's DSP II and describes the notice provided to customers.
- **John J. McCawley** - Mr. McCawley is Director of Energy Acquisition for PECO. Mr. McCawley's business address is 2301 Market Street, Philadelphia, PA, 19103 and his telephone number is (215) 841-4141. He describes PECO's proposed default service procurement, implementation, and contingency plans for DSP II, and additional proposed initiatives to enhance retail competition.
- **Scott G. Fisher** - Mr. Fisher is a Principal of the NorthBridge Group, an economic consulting firm. Mr. Fisher's business address is 30 Monument Square, Suite 105, Concord, MA, 01742 and his telephone number is (781) 266-2646. Mr. Fisher provides an expert evaluation of PECO's proposed procurement plan, as well as a review of "lessons learned" under DSP I, which includes a quantitative analysis of the prices obtained in PECO's DSP I default service supply solicitations.

- **Dr. Chantale LaCasse** - Dr. LaCasse is a Senior Vice President of NERA. Dr. LaCasse's business address is 1255 23rd St. N.W., Washington, D.C., 20037 and her telephone number is (202) 466-9218. Dr. LaCasse testifies regarding the procedures for PECO's procurements and proposed changes in DSP II, as well as the role and responsibilities of NERA as proposed independent evaluator.
- **Alan B. Cohn** - Mr. Cohn is Manager, Revenue Analysis, Retail Rates, for PECO. Mr. Cohn's business address is 2301 Market Street, Philadelphia, PA, 19103 and his telephone number is (215) 841-4141. Mr. Cohn describes PECO's existing GSA, proposed revisions to default service cost recovery, and other tariff changes.

As noted previously, PECO intends to submit supplemental direct testimony on March 16, 2012 to address the Commission's *Intermediate Work Plan Order*. In addition, PECO may present additional witnesses in rebuttal of the direct testimony of other parties. However, such witnesses cannot be identified until other parties file their testimony and the issues raised in that testimony have been evaluated.

#### IV. DISCOVERY

To date, PECO has been served with 54 interrogatories, including numerous subparts. PECO will work with the other parties and the ALJ to develop a reasonable schedule for ongoing discovery. In addition, PECO proposes that the ALJ approve the Protective Order attached hereto as Appendix "A".

## V. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, PECO hereby designates the following entry for the service list in this proceeding:

Kenneth M. Kulak, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Phone: 215.963.5384  
Fax: 215.963.5001  
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## VI. PROPOSED SCHEDULE

PECO will cooperate with the ALJ and other parties in order to facilitate the orderly conduct and disposition of this proceeding. To that end, the Company proposed a schedule in its Petition, for this proceeding, but has revised that schedule in light of the January 26, 2012 Prehearing Conference Notice and subsequent discussions with the parties. In accordance with the nine-month period for approval of a default service plan under Section 2807(e)(3.6) of the Public Utility Code, PECO now proposes the following schedule:

January 13, 2012	Petition Filing
March 13, 2012	Prehearing Conference
March 16, 2012	PECO Supplemental Testimony
April 16, 2012	Other Parties Direct Testimony Due
May 8, 2012	Rebuttal Testimony Due
May 17, 2012	Surrebuttal Testimony Due (by 12:00 pm)
May 22-24, 2012	Hearings
June 18, 2012	Main Briefs
July 3, 2012	Reply Briefs

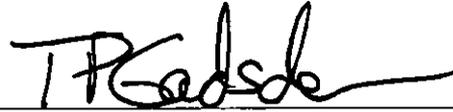
August 7, 2012	Recommended Decision
August 28, 2012	Exceptions
September 11, 2012	Reply Exceptions
October 11, 2012	Commission Order

All proposed dates for submission of testimony and briefs are for “in-hand” delivery, which may be satisfied by an e-mail or fax copy of the relevant documents. It is the Company’s understanding that the above schedule is acceptable to the OCA, OSBA, and I&E, provided that a telephonic conference for the sole purpose of the cross-examination of an OCA witness is conducted on May 21 due to a scheduling conflict of that witness and hearings commencing on May 22. PECO does not oppose this request.

**VII. CONCLUSION**

**WHEREFORE**, PECO Energy Company respectfully submits this Prehearing Conference Memorandum.

Respectfully submitted,



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Anthony E. Gay, Esquire (Pa. No. 74624)  
Jeanne J. Dworetzky, Esquire (Pa. No. 62389)  
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*For PECO Energy Company*

Dated: March 12, 2012

**APPENDIX A**

**PROPOSED PROTECTIVE ORDER**

**RECEIVED**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY        :**  
**FOR APPROVAL OF ITS DEFAULT                :** **DOCKET NO. P-2012-2283641**  
**SERVICE PROGRAM                               :**

**PROTECTIVE ORDER**

**IT IS ORDERED THAT:**

1. This Protective Order is hereby GRANTED and shall establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Such materials are referred to in this Order as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. For purposes of this Protective Order there are two categories of Proprietary Information: "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" protected material. 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. 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.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a party who meets the criteria of a "Reviewing Representative" as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Information deemed "CONFIDENTIAL" shall be provided to a "Reviewing Representative." For purposes of "CONFIDENTIAL" Proprietary Information, a "Reviewing Representative" is a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
- iii. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party; or
- iv. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party's positions in this docket.

6. Information deemed "HIGHLY CONFIDENTIAL" protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of "HIGHLY CONFIDENTIAL" protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate, pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
- iv. A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL protected material pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.431(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.431(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information pursuant to Paragraph 11. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services or advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent (excluding any person under Paragraph 6.i or 6.ii), or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation.

8. If an expert for a party, another member of the expert’s firm or the expert’s firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, that expert must: (1) identify for the parties each Restricted Person and all personnel in or associated with the expert’s firm that work on behalf of the Restricted Person; (2) take all reasonable steps

to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way adversely affect the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material.

10. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

11. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in paragraph 6 (i) through (iii) above, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is

reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above with respect to those materials. If no agreement is reached, the party seeking to have a person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

12. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information.

14. The Commission and all parties, including the statutory advocates and any other agency or department of state government will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 *et seq.*) until such time as the information is found to be non-proprietary.

15. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

17. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

18. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.

19. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, a providing party may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the receiving party shall certify in writing to the providing party that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the receiving party shall certify in writing to the providing party that no copies of materials containing the Proprietary Information have been retained.

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
Dennis J. Buckley  
Administrative Law Judge

**APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :  
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2012-2283641  
SERVICE PROGRAM :**

**NON-DISCLOSURE CERTIFICATE**

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_  
(the receiving party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER

DATE: \_\_\_\_\_

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY           :**  
**FOR APPROVAL OF ITS DEFAULT                :** **DOCKET NO. P-2012-2283641**  
**SERVICE PROGRAM                               :**

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served true and correct copies of the **Prehearing Memorandum on behalf of PECO Energy Company** upon the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

Honorable Dennis J. Buckley  
Administrative Law Judge  
Office of Administrative Law Judge  
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P.O. Box 3265  
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[debuckley@pa.gov](mailto:debuckley@pa.gov)

**RECEIVED**

MAR 1 2 2012

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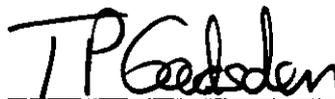
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