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January 8, 2016

VIA eFILING

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

**Re: Petition of PECO Energy Company for Approval of Its
Act 129 Phase III Energy Efficiency and Conservation Plan
Docket No. M-2015-2515691**

Dear Secretary Chiavetta:

Enclosed please find the **Prehearing Memorandum of PECO Energy Company** in the above-referenced matter. Copies have been served on Administrative Law Judge Angela T. Jones, Administrative Law Judge Darlene D. Heep and all parties of record in accordance with the attached Certificate of Service.

Very truly yours,



Jack R. Garfinkle

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
ACT 129 PHASE III ENERGY : Docket No. M-2015-2515691
EFFICIENCY AND CONSERVATION :
PLAN :

CERTIFICATE OF SERVICE

I hereby certify that I have this date served true and correct copies of the **Prehearing Conference Memorandum of PECO Energy Company** on the following individuals in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL AND
FIRST CLASS MAIL**

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Counsel for PECO Energy Company

Date: January 8, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PREHEARING MEMORANDUM OF PECO ENERGY COMPANY

INTRODUCTION

Pursuant to the December 23, 2015, Prehearing Conference Order of Administrative Law Judges Angela T. Jones and Darlene Davis Heep, PECO Energy Company (“PECO” or the “Company”) hereby submits its Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On November 30, 2015, PECO petitioned the Pennsylvania Public Utility Commission (the “Commission”) for approval of the Company’s Phase III Energy Efficiency and Conservation Plan (“Phase III Plan” or “Plan”) to achieve energy and demand savings in accordance with the requirements of Act 129 of 2008, 66 Pa.C.S. § 2806.1 (“Act 129” or the “Act”) and the Commission’s Implementation Order entered June 19, 2015 at Docket No. M-2014-2424864 (the “*Phase III Implementation Order*”). Specifically, PECO requested that the Commission: (1) find that the Phase III Plan satisfies the requirements of 66 Pa.C.S. § 2806.1(b)(1) and the *Phase III Implementation Order*, including those provisions mandating the implementation of programs designed to achieve the peak demand reduction and consumption reduction targets established for PECO and the energy savings carve-outs for the governmental, educational and non-profit (“G/E/NP”) and low-income customer sectors; and (2) approve a

supplement to PECO's Electric Service Tariff to implement a Section 1307 surcharge to recover Phase III Plan costs. PECO's Plan contains five energy efficiency ("EE") programs and three demand response ("DR") programs designed to satisfy the Company's Phase III energy and demand savings targets, stay within applicable cost limitations, and increase customer access to energy saving opportunities.

PECO served its Petition, Phase III Plan and supporting testimony on the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Commission's Bureau of Investigation and Enforcement ("I&E"), and all parties to the Company's Phase II Plan proceeding (Docket No. M-2012-2333992). PECO also posted copies of the filing on its website.

At the time of filing this Prehearing Memorandum, PECO has been served with a Notice of Intervention and Public Statement by OCA, dated December 10, 2015; a Petition to Intervene by The Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania ("CAUSE-PA"), dated December 17, 2015; a Notice of Intervention, Public Statement and Notice of Appearance by OSBA, dated December 18, 2015; a Petition to Intervene by Wal-Mart Stores East, LP and Sam's East, Inc. ("Walmart") on December 31, 2015; a Petition to Intervene by the Philadelphia Area Industrial Energy Users Group ("PAIEUG") on January 4, 2016; a Petition to Intervene by the Retail Energy Supply Association ("RESA") on January 4, 2016; and a Petition to Intervene by Nest Labs, Inc. ("Nest") on January 4, 2016.

II. STATEMENT OF ISSUES

The ultimate issue before the Commission is whether the Company's Phase III Plan meets the requirements of Act 129 and the *Phase III Implementation Order*. PECO has submitted direct testimony and exhibits with its Petition demonstrating that the Phase III Plan is

designed to meet Act 129 and *Phase III Implementation Order* requirements and also employ customer-centric programming that will improve customer access to energy savings opportunities.

In the *Phase III Implementation Order* (p. 57), the Commission established a consumption reduction target for PECO of 1,962,659 MWH, or 5.0% of the Company’s 2009/2010 baseline, for the five-year term of the Phase III Plan (June 1, 2016 through May 31, 2021). A minimum of 5.5% of each electric distribution company’s (“EDC”) total consumption reduction target must be obtained from the low-income sector, and at least 3.5% of the overall target must be obtained from the G/E/NP. *Phase III Implementation Order* (pp. 68-69, 76). The *Phase III Implementation Order* (p. 35) also established PECO’s peak demand reduction target for program years 2017-2020 as an average annual potential savings of 161 MW. As shown in the summary below, PECO’s Phase III Plan is designed to exceed each target level while remaining within the budget cap established by 66 Pa.C.S §2806.1(g), which, for PECO provides for budgeted Phase III expenditures totaling \$427.4 million for the five-year term of its Plan. A summary and overview of the five-year targets and PECO’s five-year forecast for its Phase III Plan is set forth in the table below:

	Five-Year Target	Five-Year Forecast	% of Target	% of Portfolio
Total MWH Savings	1,962,659	2,100,875	107%	N/A
Total Spending	\$427,385,830	\$427,385,830	100%	N/A
Low-Income MWH Savings	107,946	123,991	115%	6%
G/E/NP MWH Savings	68,693	275,018	400%	13%
Demand Response ¹	161	171	106	N/A

¹ Four -Year Average MW Savings (Program Year 2017 through – Program Year 2020).

III. WITNESSES

PECO submitted the direct testimony of the following witnesses with its Petition and Phase III Plan:

PECO Statement No. 1, Direct Testimony of Kathleen A. Lentini. Ms. Lentini is the Director of Energy and Marketing Services for PECO, and her testimony provides an overview of the Phase III Plan;

PECO Statement No. 2, Direct Testimony of Nicholas DeDominicis. Mr. DeDominicis is the Manager of Evaluation, Measurement and Verification for PECO, and his testimony provides a description of the Phase III EE and DR programs and discusses the competitive bid requirement for Phase III conservation service provider contracts;

PECO Statement No. 3, Direct Testimony of Toben E. Galvin. Mr. Galvin is a Director in the Energy Practice at Navigant Consulting, Inc., and his testimony describes the development of the Phase III Plan; and

PECO Statement No. 4, Direct Testimony of Richard A. Schlesinger. Mr. Schlesinger is PECO's Manager of Retail Rates, and his testimony discusses the Phase III Plan's cost recovery mechanism and tariff.

PECO may present additional witnesses to address the direct testimony of other parties; however, such witnesses cannot be identified until the direct testimony of other parties is served on PECO and evaluated.

IV. PROPOSED SCHEDULE

The parties have tentatively agreed upon the following proposed schedule:

January 4, 2016	Due Date for Answers/Comments/Recommendations
January 12, 2016	Prehearing Conference
January 21, 2016	Other Parties' Direct Testimony
January 29, 2016	Rebuttal Testimony
February 2, 2016	Evidentiary Hearing
February 12, 2016	Initial Briefs
February 19, 2016	PECO Reply Comments and/or Revised Plan

V. PROTECTIVE ORDER

PECO respectfully requests that the Administrative Law Judges approve its proposed Protective Order, attached as Appendix A, for use in this proceeding. The proposed Protective Order is substantially similar to the Protective Order entered by Administrative Law Judge Jones in PECO's most recent base rate proceeding (Docket No. R-2015-2468981).

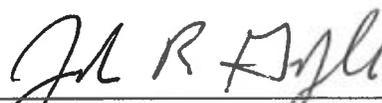
VI. POSSIBILITY OF SETTLEMENT

PECO intends to engage in settlement discussions and informal resolution of issues to the extent other parties are amenable to such discussions.

VII. CONCLUSION

WHEREFORE, PECO Energy Company submits this Prehearing Memorandum and respectfully requests that the Administrative Law Judges approve the proposed schedule herein and issue the proposed Protective Order attached as Appendix A.

Respectfully submitted,



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January 8, 2016

Counsel for PECO Energy Company

APPENDIX A
PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF ITS	:	
ACT 129 PHASE III ENERGY	:	DOCKET NO. M-2015-2515691
EFFICIENCY AND CONSERVATION	:	
PLAN	:	

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 5.365(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(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. Counsel for the Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Protective Order.

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: _____, 2016

Angela T. Jones
Administrative Law Judge

Darlene Davis Heep
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
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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: _____