**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |  |  |
| --- | --- | --- |
| PECO Energy Company Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission’s Regulations with Respect to the Plan  | :::: | Docket No. P-2016-2573023 |

**PROTECTIVE ORDER**

On July 5, 2017, Harrison Breitman, Esquire, filed a Joint Motion for Protective Order (Joint Motion) on behalf of the Pennsylvania Office of Consumer Advocate (OCA), with PECO Energy Company (PECO), the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (I&E), Direct Energy, the Retail Energy Supply Association (RESA), the Coalition for Affordable Utility Service and Energy Efficiency (CAUSE-PA), and the Tenant Union Representative Network (TURN)(collectively Joint Petitioners) as joint signatory parties. The Joint Motion had an attached proposed protective order. It is noted that although the Joint Motion did not affirmatively state that no party objected to it, all of the parties to this proceeding are signatory parties to the Joint Motion. Upon consideration of the Joint Motion’s proposed protective order the undersigned directs the parties as ordered in the paragraphs below.

**THEREFORE;**

**IT IS ORDERED THAT:**

1. The Joint Petition is hereby granted with respect to all materials and information identified in Paragraphs 2 – 3 below.
2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the Parties to be of a proprietary or confidential nature and which are so designated by being stamped “Confidential Material.” Such materials will be referred to below as “Proprietary Information.”
3. This Protective Order applies to materials the Parties designate as “Confidential” which include materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury. Such materials include pricing, costing and market-sensitive materials, pricing or costing models, generation information, current or forecasted generation costs, and cash flow models/forecasts.
4. That Proprietary Information shall be made available to counsel for the Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument or for the purposes of discussing settlement in this proceeding. To the extent required for participation in this proceeding, counsel for a Party may afford access to Proprietary Information to outside experts (included below as a "reviewing representative") subject to the conditions set forth in the Protective Order.
5. Information deemed as “Confidential,” shall be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate and who is:

 (i) an attorney who has made an appearance in this proceeding for a party;

 (ii) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (i);

 (iii) an expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;

1. employees or other representatives of a Party appearing in this proceeding with significant responsibility for this docket.
2. However, the Reviewing Representative may not be a “Restricted Person.” For the purpose of this Protective Order, “Restricted Person” shall mean an officer, director, stockholder, partner, or owner of any competitor (or an affiliate thereof) of the Parties or an employee of such an entity if the employee's primary duties involve marketing or pricing of the competitor's products or services; 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 violation of 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 establishes a significant motive for violation.
3. 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, said expert must:

(1) identify for the Parties each Restricted Person and each expert or consultant;

(2) make reasonable attempts 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) give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the Parties or their customers if segregation of such personnel is impractical.

The Parties retain the right to challenge the adequacy of the written assurances that the Parties or their customers’ interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Pennsylvania Public Utility Commission (Commission).

1. Proprietary Information shall be treated by the Parties and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 10(a). Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall they 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.
2. Reviewing Representatives may not use information 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 5 above, the party shall seek agreement from the Party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 5 above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.
3. (a) Counsel of record for the Parties to this agreement is deemed to have executed a Non-Disclosure Certificate and, by receipt of the Proprietary Information, agrees to abide by the terms of this Protective Order. A Reviewing Representative other than counsel of record shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Stipulated Protective Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate (or is deemed to have executed such an agreement), the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Counsel for the OCA and I&E may share Proprietary Information with the Consumer Advocate or I&E Director, respectively, without obtaining a Non-Disclosure Certificate from the Consumer Advocate or I&E Director, provided, however, that the Consumer Advocate otherwise abides by the terms of this Protective Order. A copy of each 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 Stipulated Protective Agreement.

1. That the Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “Confidential.” 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. The Proprietary Information shall be served upon the parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “Highly Confidential Protected Material.”
2. That the Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. Section 66.1(2) until such time as the information is found to be non-proprietary.
3. That 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 Parties agree that they shall not seek to enter into the record any Proprietary Information without first notifying the party providing the Proprietary Information and seeking that party's agreement to admission. If the data is entered into the record, the Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.
4. That 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 13 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 Protective Order or pursuant to an order of the Commission or a court.
5. That 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.
6. That the Parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.
7. That Parties agree that information provided pursuant to this Agreement shall be used only for purposes of this proceeding and will not be used for any other purposes or in any other proceeding. Also, 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 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 the event that the party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the Parties, the party shall certify in writing to the other Party that the Proprietary Information has been destroyed.

Dated: July 6, 2017 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Angela T. Jones

 Administrative Law Judge

**APPENDIX A**

 **BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| --- | --- | --- |
| PECO Energy Company Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission’s Regulations with Respect to the Plan | ::::: | Docket No. P-2016-2573023 |

**NON-DISCLOSURE CERTIFICATE**

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the retaining party). The undersigned has read and understands the Protective Order and the required treatment of Proprietary Information. The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order.

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 SIGNATURE

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 NAME (Printed)

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 ADDRESS

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 EMPLOYER

**P-2016-2573023 - PETITION OF PECO ENERGY COMPANY FOR PILOT PLAN FOR AN ADVANCE PAYMENTS PROGRAM AND PETITION FOR TEMPORARY WAIVER OF PORTIONS OF THE COMMISSION'S REGULATIONS WITH RESPECT TO THAT PLAN**

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