

**PECO ENERGY COMPANY
STATEMENT NO. 5**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS DEFAULT SERVICE
PROGRAM AND RATE MITIGATION PLAN

DOCKET NO. P- _____

DIRECT TESTIMONY

WITNESS: JOHN J. MCCAWLEY, P. E.

SUBJECTS: SUPPLY MASTER AGREEMENT,
RETAIL COMPETITION ISSUES

DATED: SEPTEMBER 10, 2008

TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE OF TESTIMONY 1

II. OVERVIEW OF THE SUPPLY MASTER AGREEMENT 4

III. PROVISIONS OF THE SUPPLY MASTER AGREEMENT 8

IV. RETAIL COMPETITION ISSUES 20

VI. CONCLUSION 24

1 **4. Q. Please summarize your prior professional experience.**

2 A. I have been employed by PECO and Exelon Corporation since 1984. Over that
3 period, I have held engineering and management positions in the areas of nuclear,
4 fossil fuel, and hydroelectric generation, corporate strategy, planning and budgeting,
5 and my current responsibilities described above.

6 **5. Q. What is your educational background?**

7 A. I hold a BS degree in Electrical Engineering from Lehigh University; an MBA from
8 Villanova University; and a MS Finance degree from Drexel University. I am also a
9 Registered Professional Engineer in the Commonwealth of Pennsylvania.

10 **6. Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to describe PECO's proposed supply master
12 agreement ("SMA" or "Agreement"), which is a standardized contract to be used
13 between PECO and each supplier who successfully bids to supply a portion of
14 PECO's default service load. I also describe PECO's existing programs supporting
15 retail competition and its new retail competition initiatives.

16 **7. Q. What exhibits are incorporated in your direct testimony?**

17 A. I am incorporating by reference a copy of the SMA, which is Appendix 1 of the
18 Requests for Proposal ("RFP") rules included in the testimony of Dr. Chantale
19 LaCasse of NERA Economic Consulting, Inc. ("NERA") (PECO Statement No. 4).
20 The SMA includes the following exhibits:

- 1 a. Form of Transaction Confirmation
- 2 b. Schedule for Independent Credit Requirement per Tranche
- 3 c. Form of Performance Assurance and Independent Credit Requirement
- 4 Letter of Credit
- 5 d. Sample PJM Invoice
- 6 e. Methodology for Calculation of Mark-to Market (MtM) Exposure
- 7 f. Form of Supplier Guaranty
- 8 g. Form of Legal Opinion for Foreign Seller / Guarantor
- 9 h. PECO and Supplier Notice Information
- 10 i. Alternative Energy Portfolio Standards Obligations
- 11 j. PJM Declaration of Authority
- 12

13 **8. Q. Please summarize your testimony.**

14 A. My testimony is divided into three parts. First, I provide an overview of the
15 respective duties of PECO and a supplier under the SMA, and discuss the
16 development of the SMA and the reasons why PECO uses a standardized contract for
17 all suppliers. Second, I review key sections of the SMA in detail, including how the
18 SMA deals with any contract default by a supplier and the credit requirements each
19 supplier must satisfy to protect PECO and its default service customers. Third, I
20 discuss PECO's existing programs relating to retail competition, including its
21 purchasing of the accounts receivable of electric generation suppliers ("EGSs"), and
22 PECO's new retail competition-related initiatives.

1 **II. OVERVIEW OF THE SUPPLY MASTER AGREEMENT**

2 **9. Q. Mr. McCawley, please provide an overview of the SMA.**

3 A. The SMA is a standard contract that sets forth the rights and obligations of PECO and
4 each supplier who successfully bids to serve a portion of PECO’s default service load.
5 Under the SMA, a supplier is obligated to supply “full requirements service” for a
6 specified percentage of default service load assigned to that supplier through PECO’s
7 competitive procurement process, and PECO is obligated to pay for this supply. As
8 defined by the SMA, “full requirements service” means the provision of all energy,
9 capacity, transmission other than Network Integration Transmission Service
10 (“NITS”), ancillary services, and any other services or products required to supply the
11 specified percentage of default service load to PECO, including transferring sufficient
12 alternative energy credits (“AECs”) to PECO so that PECO can satisfy its obligations
13 under Pennsylvania’s AEPS Act. The SMA is a “load following” contract, which
14 means that the amount of energy and other services and products a supplier must
15 provide will vary depending upon PECO’s actual default service load.

16 Consistent with the Commission’s requirements (52 Pa. Code § 54.185(d)(4)) that
17 PECO’s default service program be consistent with legal and technical requirements
18 of PECO’s regional transmission organization, PJM Interconnection, L.L.C. (“PJM”),
19 relating to the generation, sale, and transmission of electricity, the SMA requires a
20 supplier to undertake all scheduling and other actions necessary to deliver full
21 requirements service to PECO in accordance with both the terms of the SMA and
22 PJM’s rules and agreements. Each supplier must be a member in good standing with

1 PJM and maintain such status during the term of the SMA, as well as all other
2 regulatory approvals (including approvals required by the Federal Energy Regulatory
3 Commission) necessary to perform its obligations.

4 Under the SMA, PECO remains responsible for all distribution services to its default
5 service customers, as well as NITS and related costs that PECO will recover through
6 its current unbundled retail transmission rate.

7 The SMA includes detailed provisions relating to billing, supplier credit
8 requirements, default and termination, damages, indemnification, survival, and
9 dispute resolution, in addition to customary provisions relating to representations and
10 warranties by each party, confidentiality, and other obligations.

11 **10. Q. How did PECO develop the SMA?**

12 A. As part of its preparation of its default service plan, PECO reviewed supply
13 agreements filed with, pending before or otherwise approved by the Pennsylvania
14 Public Utility Commission (the "Commission") in other default service
15 procurements.¹ In addition, PECO reviewed supply agreements used by other utilities
16 in PJM.²

¹ See, e.g., *Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Pa. PUC Docket No. P-00072342; *In Re: Petition of Pennsylvania Power Company for Approval of Interim Default Service Supply Plan: Supply Procurement for Residential Customers*, Pa. PUC Docket No. P-00072305 ("Penn Power"); *Petition of PPL Electric Utilities Corporation For Approval of Competitive Bridge Plan*, Pa. PUC Docket No. P-00062227.

² See, e.g., *In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1, 2008*, N.J. BPU Docket No. ER07060379.

1 **11. Q. When is the SMA to be executed by PECO and a supplier?**

2 A. The execution of the SMA is addressed in the testimony of Dr. Chantale LaCasse of
3 NERA (PECO Statement No. 4), who describes the rules for bidders responding to
4 PECO's default supply RFP and the role of NERA as RFP manager. As explained by
5 Dr. LaCasse, a bidder must execute the SMA as part of the RFP process. If the bidder
6 is selected as a winning bidder, the bidder is required to execute a Transaction
7 Confirmation under the SMA which documents the bidder's supply obligations,
8 without negotiation or modification, within three days after Commission approval of
9 the results of a procurement under PECO's default service plan. A form of the
10 Transaction Confirmation is attached as Exhibit A to the SMA. If the supplier does
11 not execute a Transaction Confirmation within this time period, PECO is entitled to
12 liquidate the letter of credit that the supplier is required to supply with its bid, as
13 described in the RFP rules.

14 **12. Q. What is PECO's rationale for not entering into separate negotiations regarding**
15 **the SMA with individual suppliers?**

16 A. There are several reasons. First, PECO intends to treat each supplier equally, and a
17 standardized contract between PECO and each supplier is therefore appropriate.
18 Second, a standardized contract permits bidders to know the terms and requirements
19 for PECO's default supply well in advance of the bid due date, and to submit firm bid
20 prices knowing that those terms and requirements will not change. Permitting
21 variations and modifications of the SMA for each bidder would effectively change the
22 product being supplied, prevent NERA from conducting an "apples-to-apples"

1 comparison of different bid prices for the purpose of choosing the lower priced bids,
2 and undermine the Commission's review of the winning bid results.

3 Third, as explained by Dr. LaCasse, the absence of negotiations with bidders with
4 respect to provisions of such agreements is standard practice in default supply
5 procurement.

6 **13. Q. Does PECO intend to use the SMA for the "spot" market portion of PECO's**
7 **default supply?**

8 A. Yes. As described by Mr. William Patterer (PECO Statement No. 2), PECO will seek
9 bids from suppliers for full requirements, load-following service for a portion of each
10 procurement class, with the prices for energy in the Transaction Confirmations of
11 successful bidders set to be the hourly prices of the PJM day-ahead wholesale energy
12 market during the term of delivery.

13 **14. Q. Why is PECO seeking full requirements service with spot energy pricing instead**
14 **of buying spot energy itself in PJM's markets?**

15 A. There are two primary reasons. First, the benefits of full requirements contracts (as
16 discussed by Mr. Webster and Mr. Fisher) continue to apply to contracts priced in
17 accordance with the PJM day-ahead energy markets: default suppliers will still be
18 obligated to provide all components necessary to serve the "spot" portion of each
19 procurement class, including the non-energy components (*e.g.*, capacity, ancillary
20 services and AECs) associated with that load. Second, PECO anticipates that it will
21 be easier to administer the supply for each procurement class if 100% of the supply is

1 under full requirements contracts, and PECO can avoid issues that may arise in trying
2 to integrate the procurement of energy for default generation by both PECO and its
3 suppliers.

4 III. PROVISIONS OF THE SUPPLY MASTER AGREEMENT

5 15. Q. Mr. McCawley, please explain Article 2 of the SMA, “Terms and Conditions of
6 Full Requirements Service”.

7 A. Article 2 sets forth the basic obligations of a supplier to provide full requirements
8 service, on a firm and continuous basis, and for PECO to accept such service and pay
9 the supplier. The specific price and other details of the full requirements service
10 provided by a supplier are described on the Transaction Confirmation, which is
11 incorporated into the SMA. The Transaction Confirmation will be prepared by PECO
12 based on the price and quantity of tranches bid and won by each successful bidder in
13 PECO’s procurement process, after Commission approval of the bid results.

14 The SMA also specifies how charges and credits imposed by PJM pursuant to PJM
15 agreements binding upon PECO and all suppliers will be allocated between PECO
16 and each supplier. This allocation is detailed on a sample PJM invoice included as
17 SMA Exhibit D, which specifically identifies which party is responsible for different
18 PJM invoice line item charges and credits. Under the SMA, both PECO and the
19 supplier agree that PJM will invoice each party in accordance with the PJM-assigned
20 responsibility for these costs or credits, or if necessary, allow PECO to effectively
21 assign these charges and credits through billing adjustments.

1 Article 2 also explicitly provides that PECO is responsible for the provision of NITS,
2 but the supplier will be responsible for all other new, non-NITS transmission costs
3 that PJM may impose in order for the supplier to deliver its percentage of default
4 service load to PECO. In addition, to the extent that PJM may allocate costs to PJM
5 members upon the default of another PJM member, the supplier will be responsible
6 for those costs to the extent PJM's allocation is based on PJM charges associated with
7 the specified percentage of PECO's default service load served by the supplier.

8 **16. Q. Please explain Article 3 of the SMA, "Scheduling, Forecasting, and Information**
9 **Sharing."**

10 A. Article 3 establishes that a supplier shall be responsible for scheduling requirements
11 service in accordance with its obligations under its agreements with PJM. Article 3
12 also expressly clarifies that PECO is not obligated to forecast the load that a supplier
13 must provide. As I have explained, it is the responsibility of the seller (under the
14 SMA and related PJM agreements) to "follow" the full requirements of PECO's
15 default service customers and provide the seller's specified percentage of those
16 requirements.

17 **17. Q. What is the term of the obligations of PECO and a supplier under the SMA?**

18 A. As provided in Article 5 ("Term and Survival"), each SMA commences on the
19 Effective Date, which will be shortly after a supplier is selected and approved in
20 accordance with the RFP rules. Each SMA will remain in effect until the completion
21 of all deliveries required by each Transaction Confirmation, unless terminated earlier
22 in accordance with the provisions of the SMA.

1 As explained by Mr. Patterer, PECO will conduct several procurements before and
2 after January 1, 2011. The SMA is designed to accommodate all term lengths
3 specified in the default service procurement plan, which can be as short as one year or
4 as long as three years and five months. PECO's intent is to end agreements on the
5 last day of the PJM planning year, *i.e.* May 31, so as to enable subsequent
6 procurements to be synchronized with the June 1 through May 31 PJM planning year.

7 The SMA also specifically identifies those provisions that will survive termination of
8 the SMA (*e.g.*, Article 10 ("Limitations on Liability")).

9 **18. Q. How does PECO determine whether a supplier has met its obligations to deliver**
10 **energy, capacity, and ancillary services under the SMA?**

11 A. Under the SMA, a supplier contractually agrees to become responsible for its
12 percentage of PECO's default service load and to meet all PJM energy, capacity,
13 ancillary service, and designated transmission responsibilities associated with that
14 load. Working with PJM, PECO and each supplier will make arrangements under
15 PJM's systems to establish retail load responsibility (*e.g.*, PJM energy schedules) for
16 the duration of that supplier's SMA. A supplier will fulfill its delivery obligations
17 under the SMA when it satisfies the delivery conditions established under those PJM
18 arrangements.

1 **19. Q. Does the SMA also address demand side response or energy efficiency programs**
2 **offered by PECO or third-party curtailment service providers (“CSPs”)?**

3 A. Yes. Because a supplier’s “full requirements” obligations are load-following and can
4 vary with PECO’s actual customer load, reductions in PECO’s default service load
5 resulting from demand-side response and energy efficiency programs will also result
6 in a reduction of the amount of load (but not the percentage of load) served by a
7 supplier. The SMA includes provisions in which suppliers acknowledge that
8 demand-side response and energy efficiency programs are now offered by PECO,
9 CSPs, and other third parties, and that new programs may be offered in the future.
10 PECO’s current demand-side management programs (including its interruptible rates)
11 are discussed in the testimony of Mr. Alan Cohn (PECO Statement No. 6), and its
12 new energy efficiency programs (which are the subject of a separate petition before
13 the Commission) are summarized by Mr. Webster (PECO Statement No. 1).

14 The SMA also includes provisions that allocate PJM charges for demand side
15 management programs consistent with the way in which such charges would be
16 allocated to load-serving entities in PJM. To the extent any PJM credits and charges
17 are created through a demand-side management program for a CSP, those credits and
18 charges will accrue to the entity providing the program (PECO acting as a CSP or the
19 third-party CSP) and will not accrue to suppliers.

20 **20. Q. What happens if PECO or a supplier does not fulfill obligations under the SMA?**

21 A. The SMA includes extensive provisions regarding default and damages. Article 12
22 (“Events of Default; Remedies”) sets forth the detailed circumstances that can give

1 rise to a default by a party, and then specifies the remedies that are available. With
2 respect to a supplier, the SMA includes provisions establishing that the failure of a
3 supplier to supply its specified percentage of PECO's default service load, or the
4 failure of a supplier (or its guarantor) to maintain certain credit requirements, will
5 constitute a supplier default under the SMA.

6 Upon an event of default and in the absence of a cure within applicable cure periods,
7 either party may pursue remedies at law or equity, suspend its performance, and/or
8 terminate the SMA. The SMA includes specific provisions establishing the
9 mechanism by which a non-defaulting party can declare an "early termination date"
10 of the SMA and calculate damages, which can include the difference between the
11 price of the generation to be delivered by the supplier and the price at which PECO or
12 the supplier were to buy (or sell) such generation (as applicable) during the term of
13 the SMA. Under Article 10 ("Limitations on Liability"), the SMA limits the amount
14 of damages only to direct damages, and precludes recovery of consequential and
15 punitive damages. Each party has a continuing obligation to mitigate damages.

16 **21. Q. Please explain the credit provisions of the SMA.**

17 A. The SMA contains several sections relating to the financial well-being and credit that
18 must be maintained by a supplier and its guarantor. The credit provisions are crucial
19 to ensuring that a supplier has the financial capability to meet its obligations under the
20 SMA so that PECO can supply its default service customers at prices determined by
21 the competitive procurement process over the duration of the delivery period. The
22 credit provisions of the SMA also attempt to reduce the financial exposure of

1 customers in the event that a supplier were to default on its obligations and PECO
2 were required to procure replacement generation for its default service customers,
3 under its contingency plans.

4 Under Article 14 (“Creditworthiness”), PECO may require a supplier to provide
5 credit in the form of “Performance Assurance.” Performance Assurance is based on
6 the creditworthiness of the supplier (and any guarantor of the supplier) and the total
7 obligations of the supplier to deliver default service supply to PECO under one or
8 more Transaction Confirmations. For those suppliers (or their guarantors) with
9 investment-grade credit (as defined in Section 14.3 of the SMA), PECO will “credit”
10 an amount – known as “unsecured credit” – towards a supplier’s Performance
11 Assurance requirements. If a supplier’s obligation exceeds the amount of “unsecured
12 credit,” then the supplier must provide PECO with the additional security of
13 Performance Assurance in the form of cash, a letter of credit (in the form attached as
14 SMA Exhibit C), or other collateral acceptable to PECO. This Performance
15 Assurance can be returned to the supplier as PECO’s financial exposure decreases.
16 The SMA includes provisions to verify supplier/guarantor tangible net worth and
17 subsequent credit rating changes to help ensure the appropriate amount of unsecured
18 credit is established.

19 **22. Q. How will PECO determine its exposure to a supplier under the SMA?**

20 A. As described in detail in Article 14, PECO will use the services of an independent,
21 third-party “pricing agent” to obtain forward market prices for energy in order to
22 perform, every business day, a “mark-to-market” calculation of financial exposure,

1 taking into account a supplier's obligations under the SMA and current forward
2 market prices for energy over the remaining delivery period. The resulting
3 calculation is multiplied by 1.1 to account for price changes in certain components of
4 the load-following full requirements service, including but not limited to changes in
5 capacity, ancillary services, transmission congestion, and alternative energy credits.

6 For spot contracts, where the supplier is obligated to provide full requirements service
7 with energy priced at day-ahead prices for energy in PJM's markets, the mark-to-
8 market calculation used for fixed-price contracts is not appropriate. PECO has
9 therefore established an initial exposure of US\$250,000 per tranche, which is then
10 adjusted monthly based upon a measure of actual load served and the remaining days
11 in the delivery period.

12 **23. Q. Does the SMA include other supplier credit requirements?**

13 A. Yes. For each tranche, or fixed percentage "slice" of default service load, which are
14 described in detail by Mr. Patterer (PECO Statement No. 2), PECO will also require
15 each supplier to provide "independent credit" in the form of cash or a letter of credit
16 in the amounts described in SMA Exhibit B. The amount of independent credit that
17 will be required is based on the number of months remaining in the delivery period of
18 each contract, and is separate from the Performance Assurance a supplier must
19 provide. The shorter the contract term, or time remaining, the lower the independent
20 credit requirement.

21 The independent credit requirement serves two purposes. First, it helps to reduce the
22 possibility that entities that are not sufficiently capitalized participate in the default

1 service supply solicitations. Second, in the case of supplier default, the independent
2 credit requirement helps to protect against increases in the cost of replacement power
3 between the time that a supplier last posts mark-to-market collateral and the time that
4 replacement power is procured. Similar to the “unsecured credit” allowance
5 discussed previously, the SMA provides for an independent credit “threshold” based
6 on similar credit quality guidelines. For spot contracts, PECO will not require
7 independent credit.

8 **24. Q. Does the SMA impose any additional obligations on PECO if its credit rating**
9 **were to drop below investment grade?**

10 A. Yes. In the event that PECO’s credit rating were to drop below a level established by
11 the SMA, the SMA provides that a supplier can require PECO to make bi-weekly
12 payments instead of a monthly payment for the default service provided (Section
13 14.10).

14 **25. Q. Does the SMA include provisions relating to PECO’s obligations under the**
15 **AEPS Act?**

16 A. Yes. Under the AEPS Act, an increasing percentage of the electricity sold to retail
17 customers in Pennsylvania by default service providers like PECO and by EGSs must
18 be derived from alternative energy sources. The AEPS Act, also known as “Act
19 213,” divides qualifying alternative energy sources into two categories designated as
20 Tier I and Tier II. Tier I includes energy derived from solar photovoltaic, solar
21 thermal, wind, low-impact hydro, geothermal, biomass, coal mine methane,
22 biologically derived methane gas, and fuel cells. Tier II includes energy derived from

1 waste coal, distributed generation systems, demand-side response and energy
2 efficiency, large-scale hydropower, municipal solid waste, integrated coal gasification
3 technology, and wood pulp residue. The Act also includes a separate “solar set-
4 aside” in the Tier I obligations that can only be satisfied through energy derived from
5 solar photovoltaic or solar thermal power. Compliance with AEPS requirements is
6 measured using “alternative energy credits,” or AECs; one AEC is equal to the
7 attributes of one megawatt-hour of qualified alternative energy resource generation.

8 PECO’s AEPS obligations have been deferred during PECO’s transition period, but
9 beginning January 1, 2011, PECO will need to comply with the Act 213 requirements
10 in place for the reporting year that runs from June 1, 2010 through May 31, 2011.

11 From January 1, 2011 through May 31, 2011, PECO will require AECs from Tier I
12 resources equal to 3% of its default service sales, with 0.0203% of these Tier I sales
13 met with AECs derived from solar resources. In addition, PECO will require AECs
14 from Tier II resources equal to 6.2% of its default service sales. These percentage
15 obligations will then increase through 2020, as provided in Act 213.

16 Under the SMA, a supplier will be required to provide PECO with Tier I and Tier II
17 AECs equal to the AEPS requirements (including the solar set-aside) associated with
18 that supplier’s specified percentage of PECO’s default service load for each reporting
19 year (June 1- May 31). AECs can be transferred by suppliers to PECO anytime
20 during a reporting year using the PJM Generation Attribute Tracking System (“PJM-
21 GATS”). Suppliers will owe damages to PECO upon any failure to transfer sufficient
22 AECs by deadlines specified in the SMA.

1 26. Q. How does the SMA address the possibility of a supplier not providing sufficient
2 AECs to PECO?

3 A. PECO will monitor each supplier's compliance with its obligations to transfer
4 sufficient AECs to PECO using PJM-GATS, and the SMA provides that a supplier
5 will be obligated to pay PECO damages equal to the AEPS alternative compliance
6 payment PECO will be required to pay as a result of that supplier's failure to deliver
7 AECs.

8 Under the AEPS Act, PECO is obligated to pay \$45 for each AEC it does not obtain
9 to satisfy its Tier I and Tier II non-solar obligations; with respect to solar, PECO is
10 required to pay a penalty for undelivered solar AECs equal to 200% of the average
11 market value of solar renewable energy credits in PJM. The SMA requires a supplier
12 to pay \$45 per undelivered Tier I and Tier II non-solar AEC, and a value for
13 undelivered solar AECs which will be specified at the time of each default supply
14 procurement in order to take into account the greater potential for fluctuation in the
15 solar AEC alternative compliance payment. In the event that the Commission sets an
16 alternative compliance payment different than \$45 for non-solar AECs or determines
17 that the solar AEC compliance payment is greater or less than the value specified in
18 the applicable Transaction Confirmation, suppliers will be required to pay (or be
19 refunded) the difference between the damages paid under the SMA and the actual
20 penalty amounts determined by the Commission.

1 **27. Q. Will suppliers be allocated any AECs procured independently by PECO?**

2 A. Yes. To the extent PECO obtains AECs through the procurement approved by the
3 Commission in Docket No. P-00072260 or any additional approved AEC
4 procurements, PECO will first equitably allocate those AECs by customer load group
5 in proportion to the MWh contribution of each customer group to PECO's total
6 default service load. In order for bidders to adjust their prices accordingly for this
7 reduction in their AEC supply obligations under the SMA, PECO will provide
8 bidders with a binding estimate of the AECs that PECO will apply to supplier
9 obligations as part of the RFP process and prior to submission of any bids. PECO
10 will not transfer AECs to suppliers, but the amount of AECs that suppliers must
11 transfer to PECO will be proportionately reduced by the amount of AECs allocated to
12 suppliers by PECO.

13 **28. Q. How does PECO pay suppliers under the Agreement?**

14 A. Article 7 ("Billing and Settlement") of the SMA sets forth detailed provisions for
15 monthly billing and payment of amounts due under the SMA. Article 7 also provides
16 that both PECO and each supplier agree to permit PJM to invoice the party
17 responsible for PJM charges as set forth in the SMA. Because the amount of energy
18 actually delivered to retail customers is determined through a retail load settlement
19 process (described in detail in PECO's Commission-approved Electric Generation
20 Supplier Coordination Tariff), Article 7 includes provisions for adjustments of
21 payments by PECO to reflect the actual retail load served by a supplier. The parties

1 are required to cooperate with respect to taxes, and indemnify each other to the extent
2 a party pays a tax which is the responsibility of the other party.

3 **29. Q. How are disputes resolved under the SMA?**

4 A. In billing disputes, a party must pay any undisputed amount and disputes must be
5 promptly addressed in good faith. All statements of amounts due become final within
6 120 days of the date of such statement unless a dispute is presented. The SMA also
7 includes general provisions requiring the parties to engage in informal discussions
8 prior to initiating formal legal proceedings, where permitted by law.

9 **30. Q. Can PECO or a supplier assign its rights under the SMA?**

10 A. The SMA cannot be assigned by either PECO or a supplier without the consent of the
11 other party, with certain exceptions. A party is entitled to assign the SMA to its
12 affiliate, or to an entity who acquires the assigning party, but the assignee must agree
13 in writing to be bound to the terms of the SMA and deliver other assurance to PECO.
14 In addition, a party may pledge the agreement as part of financing arrangements.

15 **31. Q. Please explain the “force majeure” provisions of Article 11.**

16 A. “Force Majeure” is a standard concept under many agreements, including wholesale
17 electric supply agreements, which addresses the effects of events that the parties to an
18 agreement could not anticipate (*e.g.*, a terrorist attack on a facility, or an earthquake).
19 Under Article 11, a party who is experiencing a Force Majeure event must provide
20 notice to the other party, act expeditiously to resume performance, and exercise all
21 commercially reasonable efforts to mitigate or limit damages to the other party.

1 phasing out demand charges and block rates. When coupled with PECO's existing
2 retail competition programs, these new features should improve opportunities for
3 retail competition at the end of PECO's transition period. In addition, PECO is a full
4 participant in the Commission's new Retail Markets Working Group ("RMWG") and
5 anticipates expanding its support for retail competition through the following
6 initiatives:

7 ***Expanding Customer Referral Opportunities.*** PECO believes that customers should
8 be given basic information about their ability to choose alternative suppliers, along
9 with their pricing and service offerings compared to PECO's default service. PECO
10 is therefore planning periodic promotion of electric choice to both residential and
11 commercial customers through its Energy@Home and Energy@Work newsletters
12 starting in 2008, as well as convening supplier information sessions regarding
13 customer referral options.

14 ***Supporting Common Supplier Coordination Tariffs.*** PECO understands that certain
15 EGSs seek standardization of supplier tariffs across EDCs. For this reason, PECO
16 recommends that the RMWG establish a sub-working group to propose a common
17 format for supplier coordination tariffs (taking into account certain areas that will
18 vary between EDCs, including metering).

19 ***Appointing A Retail Choice Ombudsman.*** PECO supports naming of a PECO
20 employee as retail choice ombudsman responsible for responding to questions from
21 competitive retail suppliers, monitoring competitive market complaints, and
22 facilitating informal dispute resolution. PECO will be officially designating an

1 individual for this role. In addition, PECO intends to participate in the RMWG's
2 work to propose the roles and responsibilities of the Commission's own retail choice
3 ombudsman.

4 **35. Q. What programs does PECO plan to continue in its efforts to support retail**
5 **competition?**

6 A. PECO administers a variety of programs that support retail competition, including
7 compilation and release of customer information to EGSs, purchase of EGS
8 receivables, "bill ready" billing, and a dedicated hotline for retail suppliers to ask
9 questions or resolve issues. PECO intends to continue these programs and will
10 consider additional changes to these programs based upon the RMWG's work and
11 recommendations.

12 **36. Q. Please explain how PECO presently makes customer information available to**
13 **EGSs.**

14 A. As a threshold matter, I note that EDCs have dual obligations with respect to
15 customer information and data access, which are sometimes at odds. The first is to
16 assure the privacy of customer information where it is desired and the second is to
17 provide customer information to EGSs in order to promote a robust electric choice
18 marketplace by facilitating EGS sales and marketing efforts. PECO believes that its
19 current program balances customer and EGS interests appropriately.

20 PECO currently offers customers three levels of release of their information: release
21 name and address, release everything, or release nothing. PECO maintains a

1 customer eligibility list that includes their released information. New customers are
2 asked at the time they set up their account to designate their desired release level. In
3 addition, a customer may contact PECO and change its information release level at
4 any time.

5 Should a customer choose to release all of its information, the eligibility list will
6 contain customer account number, name, address, rate class, rate code, load profile,
7 12 month usage, 12 months of demand (if applicable) and capacity and transmission
8 peak load contribution values. The amount of information provided on an individual
9 account will be consistent with the release level the customer chooses. These lists are
10 currently updated and posted five times throughout the year to PECO's EGS supplier
11 web interface (*i.e.*, the SUCCESS website).

12 **37. Q. Does PECO also assist EGSs in billing customers?**

13 A. Yes. PECO offers three separate billing options: separate EDC/EGS billing, also
14 known as dual billing, whereby PECO and the EGS will separately send their bills
15 directly to the customer; Consolidated EGS billing (where the EGS will bill for all
16 charges, an option not used since the beginning of electric choice); and Consolidated
17 EDC billing, the most popular option. Consolidated EDC billing is a "bill ready"
18 service in which PECO transmits meter data to the EGS, the EGS calculates its
19 customers charges, and transmits those charges electronically to PECO which then
20 bills customers along with PECO charges.

1 **38. Q. What does PECO do to assist EGSs with account collection?**

2 A. Since the inception of electric choice in Pennsylvania, PECO has been offering a
3 “purchase of receivables” (“POR”) program that is very favorable to EGSs. Under
4 PECO’s program, PECO pays the EGS, dollar-for-dollar, all undisputed EGS charges
5 billed by PECO regardless of whether or not the customer has paid PECO for the
6 charges. Moreover, PECO also remits the amount owed to the EGS if the customer
7 disputes the PECO charges on its bill. In addition, PECO does not consider a claim
8 of inability to pay a dispute for purposes of paying the EGS. The POR program
9 facilitates the ability of EGSs to serve low-income or poor credit customers. While
10 the POR program, like other initiatives described above, have been in existence for
11 years, they will become more valuable in the post transition period as default service
12 rates are established at prevailing market prices and EGSs have greater opportunities
13 to serve customers in PECO’s service territory.

14 **V. CONCLUSION**

15 **1. Q. Does this conclude your direct testimony?**

16 A. Yes.