

## Appendix 9 - Standard Pre-Bid Letter of Credit

[On Issuing Bank's Letterhead]

### IRREVOCABLE STANDBY LETTER OF CREDIT

\_\_\_\_\_ (“Date of Issuance”)

Letter of Credit No. \_\_\_\_\_

Beneficiary:

PECO Energy Company (“PECO”)  
c/o NERA Economic Consulting, Inc. (“NERA”)  
Independent Evaluator  
[Address]

Applicant:

[Name of RFP Bidder]  
[Address]

1. We, \_\_\_\_\_ (the “Issuing Bank”), hereby establish this Irrevocable Standby Letter of Credit (this “Letter of Credit”) in your favor in the amount of USD \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [designate Issuing Bank’s location for presentments] and expiring at 5:00 PM (New York, NY time<sup>1</sup>) on \_\_\_\_\_ [no earlier than ten (10) business days after the Bid Date] (the “Expiration Date”), unless terminated earlier in accordance with the provisions of Paragraph 9 hereof.
2. This Letter of Credit is issued at the request and for the account of \_\_\_\_\_ (including its successors and assigns, the “Bidder”). This Letter of Credit may be drawn by presenting the documents required by paragraph 3 hereof, including your certificate stating that:
  - a) “the Bidder has made a material omission or misrepresentation in the Part 1 Proposal or the Part 2 Proposal submitted in connection with this solicitation”; or
  - b) “the Bidder has disclosed information relating to its Proposal publicly or to any other party before the PUC has rendered its decision on the results of the solicitation”; or
  - c) “the Bidder has one or more Bids approved by the PUC and the RFP Bidder fails to execute all Transaction Confirmations in the timeframe required by the Default Service SMA or fails to meet the creditworthiness requirements of the Default Service SMA upon execution of the Transaction Confirmation(s)”.

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern Time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly, here and in Paragraphs 5 and 9.

3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to the Issuing Bank at \_\_\_\_\_ [U.S. address], (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of PECO, and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of PECO.
  
4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: \_\_\_\_\_, and confirmed by telephone to us at the following number: \_\_\_\_\_. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
  
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM (New York, NY time) on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM (New York, NY time) on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM (New York, NY time) on any Business Day.
  
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
  
7. Unless otherwise hereafter designated in writing to us by an Authorized Officer of PECO, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to PECO pursuant to the following instructions:

PECO Energy Company  
 Account No.: \_\_\_\_\_  
 Bank: \_\_\_\_\_  
 Bank's Address: \_\_\_\_\_  
 \_\_\_\_\_

ABA Routing No.: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.
9. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 3 hereto together with the original of this Letter of Credit returned for cancellation, or (c) 5:00 PM (New York, NY time) on the Expiration Date.
10. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practices for Documentary Credits - 2007 revision, ICC Publication No. 600, or any successor publication thereto (the "UCP"). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
11. Article 36 of the UCP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Article 36 of the UCP as it applies to this Letter of Credit is hereby further modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

12. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or Senior Vice President or any Assistant Treasurer.

"Bids" shall mean the price offers submitted by the Applicant in response to PECO Energy Company's RFP for Default Service.

"Bid Date" shall mean the day on which the Bidder may submit Bids in the solicitation.

"Bidder" shall mean an entity that has successfully completed the Part 1 Proposal, and that submits the Part 2 Proposal.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fedwire system.

“Default Service SMA” shall mean the Default Service Supply Master Agreement by which PECO can contract for supply with winners from this solicitation.

“Independent Evaluator” shall mean the administrator of PECO Energy Company’s RFP for Default Service.

“PUC” shall mean the Pennsylvania Utility Commission.

“Proposal” shall mean a response by the Applicant to PECO Energy Company’s RFP for Default Service in a solicitation, including the Part 1 Proposal and the Part 2 Proposal.

“Transaction Confirmation” shall mean an agreement pursuant to the Default Service SMA that documents certain terms of a transaction between the Applicant and PECO Energy Company.

13. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the Independent Evaluator.
14. We, the Issuing Bank, certify that as of the Date of Issuance our senior unsecured debt is rated “A” or better by Standard & Poor’s, or “A2” or higher from Moody’s Investors Service.
15. This original Letter of Credit has been sent to the Independent Evaluator at [address] (as per Bidder’s instructions, the Independent Evaluator holds the Letter of Credit for the benefit of PECO). The aggregate amount paid to PECO during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of PECO. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of PECO or an Authorized Officer of the Independent Evaluator on behalf of PECO.

Very truly yours,  
[Issuing Bank]

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Annex 1 TO LETTER OF CREDIT**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: [Issuing Bank]  
[Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit. The amount to be received by PECO is (USD) \$\_\_\_\_\_.
3. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in as much as the Bidder has \_\_\_\_\_ [state a reason from conditions (a) - (c) of Paragraph 2 of the Letter of Credit].
4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

PECO Energy Company

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_[Bidder]

**Annex 2 to Letter of Credit**

**SIGHT DRAFT**

Amount: \$ \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

At sight, pay to the order of PECO Energy Company the sum of  
\_\_\_\_\_ U.S. Dollars.

Drawn under Irrevocable Letter of Credit No. \_\_\_\_\_ of  
\_\_\_\_\_ [identify Issuing Bank] dated  
\_\_\_\_\_, 200\_\_.

To: \_\_\_\_\_ [Issuing Bank]  
\_\_\_\_\_ [Address]  
\_\_\_\_\_

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

**Annex 3 to Letter of Credit**

**CERTIFICATE OF CANCELLATION**

\_\_\_\_\_, 20\_\_

To: [Issuing Bank]  
[Address]

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. \_\_\_\_\_

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

PECO Energy Company

By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Bidder]