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JAN 22 2010

January 22, 2010

**VIA FEDERAL EXPRESS**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Petition Of PECO Energy Company Requesting A Declaratory Order To  
Terminate A Controversy Or Remove Uncertainty Regarding Application Of PECO's  
Rate Schedule GS For Public Utility Service Provided To Wireless Philadelphia,  
Docket No. P-2009-2109629**

Dear Secretary McNulty:

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 attached Certificate of Service, a copy of the Prehearing Memorandum has been served upon Administrative Law Judge Angela T. Jones and all parties. Pursuant to 52 Pa. Code §1.11(a)(2), the enclosed Prehearing Memorandum shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope.

Kindly time stamp the extra copy of the Memorandum we have enclosed and return to us in the postage-paid return addressed envelope provided. Thank you.

Very truly yours,



Kenneth M. Kulak  
Enclosures

c: Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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JAN 22 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

PETITION OF PECO ENERGY :  
COMPANY REQUESTING A :  
DECLARATORY ORDER TO :  
TERMINATE A CONTROVERSY OR :  
REMOVE UNCERTAINTY REGARDING : DOCKET NO. P-2009-2109629  
APPLICATION OF PECO'S RATE :  
SCHEDULE GS FOR PUBLIC UTILITY :  
SERVICE PROVIDED TO WIRELESS :  
PHILADELPHIA :

**PECO ENERGY COMPANY'S  
PREHEARING CONFERENCE MEMORANDUM**

**INTRODUCTION**

In preparation for the Prehearing Conference scheduled on January 26, 2010 by order of Administrative Law Judge Angela T. Jones, PECO Energy Company ("PECO") submits its Prehearing Conference Memorandum in the above-captioned proceeding.

**I. HISTORY OF THE PROCEEDING**

On May 22, 2009, PECO filed its *Petition Of PECO Energy Company Requesting A Declaratory Order To Terminate A Controversy Or Remove Uncertainty Regarding Application Of PECO's Rate Schedule GS For Public Utility Service To Wireless Philadelphia* (the "Petition"), which sought declaratory relief from the Pennsylvania Public Utility Commission (the "Commission") with regard to the decision of the Digital Impact Group ("DIG") to stop paying for electric service for 4,400 wireless internet nodes, antennas, and gateway devices (collectively, "WINs") mounted on streetlights throughout the City of Philadelphia (the "City").

As explained in PECO's Petition, each of the 4,400 locations is the site of an antenna utilized by DIG to provide wireless internet service. Each antenna is electrically connected to a

streetlight that is owned and operated by the City. Following extensive discussions between PECO, the City and DIG (previously known as “Wireless Philadelphia”) regarding the proper rate for electric service for the WINs prior to the installation and operation of the network, the City and DIG selected the “Wireless Philadelphia Rate GS Option” under which the City would continue to pay for unmetered electric service for its streetlights under PECO’s Philadelphia street lighting rate (“SL-P”) and DIG would pay for unmetered electric service under PECO’s GS (General Service) Rate. Service was thereafter provided, and paid for, under the Wireless Philadelphia Rate GS option until approximately June 2008, when the WIN network assets – owned by Earthlink, Inc., which provided services to DIG under contract – were sold to NAC. DIG has not paid any amount for electric service since June 2008.

On July 13, 2009, DIG filed an answer (the “Answer”) to PECO’s Petition. The City joined DIG in the Answer (collectively describing themselves as the “Wireless Entities”) and alleged that the City created and is actively involved in DIG and that DIG carries out purposes related to the functions of the City. DIG and the City requested an evidentiary hearing on PECO’s Petition and sought affirmative determinations that (i) the City can resell the lower-cost electric service it receives under Rate SL-P to DIG for operation of wireless networking equipment, (ii) DIG itself can take service under Rate SL-P, or (iii) if DIG must take service under Rate GS, DIG can avoid paying distribution charges associated with their 4,400 locations and instead pay a single fixed distribution charge as if DIG received electric service at only one location.

On August 3, 2009, PECO filed a Reply to New Matter, which addressed DIG and the City’s allegations in their Answer and opposed their request for affirmative relief. Concurrently, PECO filed a Motion for Judgment on the Pleadings, which explained that, as a matter of law

under its Electric Tariff, PECO's Rate SL-P was not available to the City or to DIG for wireless networking equipment and that Rate GS (including its distribution charges) was the proper tariff rate for DIG.

On December 15, 2009, this matter was assigned to the Office of Administrative Law Judge for hearings.

Subsequently, on December 21, 2009, the City of Philadelphia issued a press release stating that it intended to purchase the existing wireless network assets owned by NAC and used by DIG. A copy of the press release is attached as Exhibit A. As set forth in the press release, the City anticipates that the "transaction closing process" for its purchase may take up to 150 days. The press release does not address DIG or its future status.

## **II. STATEMENT OF ISSUES**

As set forth in PECO's Petition, the issue before the Commission is the application of Rate GS to DIG. While PECO believes that this issue can be resolved on the basis of the pleadings and the clear language of its Electric Tariff, PECO is cognizant of the ALJ's conclusion in the December 24, 2009 Prehearing Conference Order ruling that certain factual issues are in dispute. PECO therefore withdraws its pending Motion for Judgment on the Pleadings.

PECO does note, however, that the scope of this proceeding should be limited to the broad issue raised in its Petition – that is, whether PECO properly applied its Rate GS to service provided to DIG. PECO recognizes that there may be related factual and legal arguments that fall within that general scope. For example, the Wireless Entities have alleged (Answer, pp. 15-16) that PECO's Rate SL-P was also available to either the City or DIG for this service. PECO

recognizes that, in determining whether or not it properly applied its Rate GS, it is relevant to inquire whether other rates were available for the service provided. Therefore, PECO recognizes that discussion of the availability and application of Rate SL-P will properly be within the scope of this proceeding. Similarly, as stated in PECO's Petition, PECO recognizes that the scope of this proceeding involves the questions of whether, under its existing tariff, service to the Facilities should properly involve one, or multiple, fixed distribution charges (Petition, pp. 15-18) and, to a limited extent, issues related to whether PECO's existing tariff allows it charge two customers for services that are delivered over the same distribution facilities (Petition, pp. 18-20).

There is at least one issue contained in the pleadings of the Wireless Entities, however, that is not properly within the scope of this proceeding. Several of the allegations and claims made by the Wireless Entities do not go to the question of which of PECO's existing rates apply to the electric service provided, or more generally, to the proper application of PECO's existing tariff. Rather, these allegations and claims go to the question of whether PECO's rates, as embedded in the existing tariff, are unjust and unreasonable. For example, at pages 22-23 of the Wireless Entities' Answer, they allege that:

PECO's charges are unreasonable as applied to DIG. By treating each WIN as a distinct PECO customer for billing purposes, PECO is collecting distribution charges that bear no reasonable relationship to the underlying cost of the service being rendered. In fact, for the month of April 2008, the fixed distribution service charge constituted more than 68% of the total bill for that month. This distribution charge is excessive, unjust and unreasonable – especially considering that PECO is already recovering from the City a fixed distribution charge for delivery to the same delivery point, the street light itself.

This set of allegations does not go to the question posed by PECO's Petition – that is, whether it is properly applying its existing rates to the service provided by it to the Wireless Entities. Rather, they challenge whether those existing rates are themselves just and reasonable. If the City and DIG wish to challenge one or more of PECO's Commission-approved rates they cannot, as here, simply stop paying the entire electric bill. Instead, they must file a separate complaint with the Commission, where they will have the burden of proof of demonstrating that PECO's Rate GS is unjust or unreasonable. *See, e.g., C & D Technologies, Inc. v. Pennsylvania Power & Light Co.*, 100 Pa. P.U.C. 1 (Order entered February 4, 2005) (“[A] complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.”) (citing *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. Ct. 1981)). The scope of this proceeding is therefore properly limited to whether PECO properly applied its Rate GS to DIG and related issues regarding the application of PECO's existing tariff and rates.

### III. WITNESSES

PECO anticipates presenting Mr. Scott Neumann, Senior Engineer, PECO Energy Company. PECO expects that Mr. Neumann will provide factual testimony with regard to the current status of the outstanding account balance of DIG and other facts in controversy in this proceeding. In addition, Mr. Neumann will provide expert testimony regarding the application of PECO Energy's rates to the service in question. The Company may present additional witnesses to address the direct testimony of other parties; however, such witnesses cannot be identified until the direct testimony of such parties is reviewed and evaluated.

#### IV. SCHEDULE OF THE PROCEEDING

Given the limited evidentiary scope of this proceeding, the well-developed pleadings, and the pending sale of NAC assets to the City of Philadelphia, PECO proposes an expedited schedule to resolve the tariff dispute at issue in this proceeding as follows:

January 26, 2010	Prehearing Conference
February 5, 2010	PECO Direct Testimony Due
February 15, 2010	Other Parties' Direct Testimony Due
February 22, 2010	Rebuttal Testimony
February 24-25, 2010	Hearings
March 5, 2010	Main Briefs
March 12, 2010	Reply Briefs
March 31, 2010	Recommended Decision

#### V. PROPOSED DISCOVERY PROCEDURES AND PROTECTIVE ORDER

PECO proposes modifications to the Commission's discovery regulations, attached as Exhibit "B" hereto, and a Protective Order, attached as Exhibit "C" hereto. The discovery modifications and Protective Order are similar to those previously approved by the presiding Administrative Law Judge (ALJ Marlane R. Chestnut) in PECO's recent Smart Meter and Energy Efficiency and Conservation proceedings.<sup>1</sup> PECO respectfully requests that Administrative Law Judge Jones approve the discovery modifications and enter the proposed Protective Order for use in this proceeding.

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<sup>1</sup> See Docket Nos. M-2009-2123944 & M-2009-2093215.

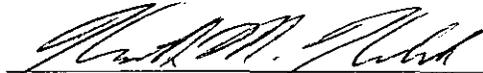
## VI. POSSIBILITY OF SETTLEMENT

PECO has conducted settlement meetings with DIG, the City, and NAC in an attempt to resolve the issues presented in this proceeding. PECO remains ready and willing to continue these discussions but anticipates at this time that a Commission determination of the applicability of the Rate GS tariff to DIG will be necessary to resolve this matter.

## VII. CONCLUSION

WHEREFORE, PECO Energy Company submits this Prehearing Memorandum and respectfully requests that the Administrative Law Judge approve the schedule proposed herein and proposed discovery modifications attached as Exhibit "B", and issue the proposed Protective Order attached as Exhibit "C."

Respectfully submitted,



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SECRETARY'S BUREAU

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January 22, 2010

*Counsel for PECO Energy Company*

**EXHIBIT A**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

# **CITY ANNOUNCES INTENTION TO PURCHASE WIRELESS NETWORK INFRASTRUCTURE**

December 21, 2009

Municipal wireless network will enhance public safety, government efficiency, and provide free internet in targeted public spaces

Philadelphia, December 16 – The City of Philadelphia announced today its intention to purchase the existing wireless network assets from the Network Acquisition Company (NAC), the first in a series of steps towards creating a multi-purpose public safety and municipal wireless network that will improve government operations as well as providing free internet to citizens in targeted public spaces. The City is exercising an option, contained within an agreement signed in August 2009, to purchase the assets from NAC for the low price of \$2 million.

“Acquiring these assets is a major step forward for the city,” said Chief Technology Officer Allan Frank. “With this investment we will have the capability to build a robust public safety and municipal network, enhancing public safety and government operations, at the same time as achieving long-term savings for the taxpayer. This is a win-win for Philadelphia.”

With the build out of this network the City of Philadelphia will be a national model for how to operate and economically leverage a broadband network for the benefit of its citizens. Over the next several years, improvements will be made to the network to support the following:

## **Enhanced Public Safety**

- Enhance video surveillance capabilities through real time crime surveillance and faster deployment of field officers
- Enable data transmission for field officers and increase access to crime information in the field
- Provide another communication option for officers in the field

## **Improved Government Efficiency**

- Enable use of handheld devices by field workers to file reports and access information
- Improve deployment of workers and productivity due to the fact that workers will spend more time in the field than in the office

## **Reduced Operating Expenses**

- Allow the City to reduce vendor costs for data communications by reducing network and Internet requirements
- Reduce operating budget as workers are deployed more efficiently and with better access to real-time information
- Further reduce the City fleet from improved worker deployment and routing

In addition to the City government use, every effort will be made to reach out to other key City institutions to leverage the network to improve their services to Citizens. Already discussions have begun around how the network can be used by local transportation and utilities for field use.

In order to build a public safety network and realize the full benefits of acquiring these wireless assets the City would need to make capital investments to upgrade and build out the existing infrastructure. Over a five year period from Fiscal Year 2011 through Fiscal Year 2015 the City would invest close to \$17 million in Capital Funding to build out

both its existing core fiber network as well as the wireless mesh network acquired from NAC. This initial investment will allow the City to realize close to \$9 million in operating expenses over a five year period as well as significant other savings. By Fiscal Year 2012 operational savings will outweigh expenses and by Fiscal Year 2015 the net savings over the five year period will total almost \$350,000. Without acquiring these existing assets the City would have to spend in excess of \$30 million and several more years in order to create from scratch a capability like this.

In order to complete the acquisition of the network assets, the transaction closing process may take as much as 150 days, including getting City Council approval for the transfer of 25 operating leases for the existing towers around the City which host the wireless radio equipment. During this time, the City's Division of Technology is working with NAC to transition operation of the network and to identify both immediate operational cost savings and technical improvements. It is expected that the network will start to be used in a pilot mode as early as this Spring as the City implements handheld and public safety applications requiring broadband connections.

#### About NAC

Network Acquisition Company LLC (NAC), the company that acquired the former EarthLink Wi-Fi network in the City of Philadelphia. NAC is a private company

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**EXHIBIT B**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PETITION OF PECO ENERGY</b>	:	
<b>COMPANY REQUESTING A</b>	:	
<b>DECLARATORY ORDER TO</b>	:	
<b>TERMINATE A CONTROVERSY OR</b>	:	<b>DOCKET NO. P-2009-2109629</b>
<b>REMOVE UNCERTAINTY REGARDING</b>	:	
<b>APPLICATION OF PECO'S RATE</b>	:	
<b>SCHEDULE GS FOR PUBLIC UTILITY</b>	:	
<b>SERVICE PROVIDED TO WIRELESS</b>	:	
<b>PHILADELPHIA</b>	:	

**PROPOSED DISCOVERY PROCEDURE MODIFICATIONS**

1. When an interrogatory, request for production, request for admission or motion is served after 12:00 p.m. on a Friday or the day before a holiday, the appropriate response period is deemed to start on the next business day.
2. The response period for replying to written interrogatories, requests for production and requests for admissions is seven (7) calendar days of receipt. Responses may be served electronically but hard copies must follow by first-class mail.
3. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within one (1) calendar day of receipt and in writing within two (2) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.
4. Motions to dismiss objections and to compel response shall be filed with the Commission and served on the Administrative Law Judge and the other parties within three (3) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within three (3) calendar days after filing of the motion.

5. If the objections are not resolved, counsel will alert the presiding officer by e-mail of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so.
6. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
7. Requests for admission shall be deemed admitted unless objected to within two (2) calendar days of service or answered within seven (7) calendar days of service.
8. Pursuant to 52 Pa. Code §5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the Administrative Law Judge, although a certificate of service may be filed with the Commission's Secretary.
9. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

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**EXHIBIT C**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PETITION OF PECO ENERGY</b>	:	
<b>COMPANY REQUESTING A</b>	:	
<b>DECLARATORY ORDER TO</b>	:	
<b>TERMINATE A CONTROVERSY OR</b>	:	<b>DOCKET NO. P-2009-2109629</b>
<b>REMOVE UNCERTAINTY REGARDING</b>	:	
<b>APPLICATION OF PECO'S RATE</b>	:	
<b>SCHEDULE GS FOR PUBLIC UTILITY</b>	:	
<b>SERVICE PROVIDED TO WIRELESS</b>	:	
<b>PHILADELPHIA</b>	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order made by PECO Energy Company ("PECO"):

IT IS ORDERED THAT:

1. The Motion is hereby granted with respect to 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 is able to justify a heightened level of confidential protection with respect to those materials. 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. An attorney for a public 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. An attorney for a public 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." 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 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 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, upon request, the party shall certify in writing to the other Party that the Proprietary Information has been destroyed.

Date: \_\_\_\_\_, 2010

\_\_\_\_\_  
Angela T. Jones  
Administrative Law Judge

**APPENDIX A**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY** :  
**COMPANY REQUESTING A** :  
**DECLARATORY ORDER TO** :  
**TERMINATE A CONTROVERSY OR** : **DOCKET NO. P-2009-2109629**  
**REMOVE UNCERTAINTY REGARDING** :  
**APPLICATION OF PECO'S RATE** :  
**SCHEDULE GS FOR PUBLIC UTILITY** :  
**SERVICE PROVIDED TO WIRELESS** :  
**PHILADELPHIA** :

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 REQUESTING A  
DECLARATORY ORDER TO  
TERMINATE A CONTROVERSY OR  
REMOVE UNCERTAINTY REGARDING  
APPLICATION OF PECO'S RATE  
SCHEDULE GS FOR PUBLIC UTILITY  
SERVICE PROVIDED TO WIRELESS  
PHILADELPHIA** : : : : : : :  
: **Docket No. P-2009-2109629**

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of PECO Energy Company's Prehearing Memorandum on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC AND HAND DELIVERY**

Honorable Angela T. Jones  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
[angeljones@state.pa.us](mailto:angeljones@state.pa.us)

**RECEIVED**  
JAN 22 2010  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**VIA ELECTRONIC & FIRST CLASS MAIL**

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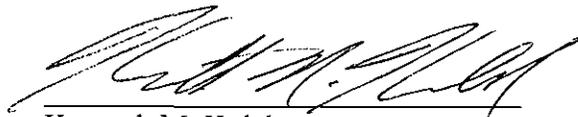
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JAN 22 2010  
PA PUBLIC UTILITY COMMISSION  
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Date: January 22, 2010

