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November 17, 2010

Via Overnight Mail

Rosemary Chiavetta, Secretary
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PA PUBLIC UTILITY COMMISSION
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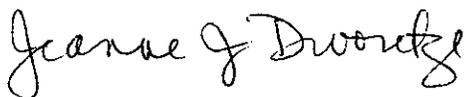
**Re: Petition of PECO Energy Company for Expedited Approval to Apply Banked
Alternative Energy Credits in AEPS Reporting Years 2011-2012 and 2012-2013
Docket No. P-00072260**

Dear Secretary Chiavetta:

Enclosed for filing are the original and eight (8) copies of the Petition of PECO Energy Company for Expedited Approval to Apply Banked Alternative Energy Credits in AEPS Reporting Years 2011-2012 and 2012-2013 in the above-captioned docket.

Kindly return a time-stamped copy of this cover letter in the self-addressed stamped enveloped that is enclosed. Please do not hesitate to contact me at 215-841-5974 should you have any questions regarding this filing.

Very truly yours,



Jeanne J. Dworetzky
Assistant General Counsel

Enclosures

cc: All Parties on the Attached Service List

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF (1) A :
PROCESS TO PROCURE : DOCKET NO. P-00072260
ALTERNATIVE ENERGY CREDITS :
DURING THE AEPS BANKING :
PERIOD AND (2) A SECTION 1307 :
SURCHARGE AND TARIFF TO :
RECOVER AEPS COSTS :

PETITION OF PECO ENERGY COMPANY FOR EXPEDITED
APPROVAL TO APPLY BANKED ALTERNATIVE ENERGY
CREDITS IN AEPS REPORTING YEARS 2011-2012 AND 2012-2013

PECO Energy Company ("PECO" or the "Company") hereby petitions the Pennsylvania Public Utility Commission (the "Commission"), pursuant to 52 Pa. Code § 5.41, for approval to apply non-solar, Tier I alternative energy credits ("AECs") obtained and "banked" during its "cost recovery period" under the Alternative Energy Portfolio Standard Act, 73 Pa. C.S. § 1648.1 *et seq.* ("AEPS" or "AEPS Act"), towards PECO's AEPS requirements in the first two full AEPS reporting periods following the end of its cost recovery period on January 1, 2011 (i.e., June 1, 2011-May 31, 2012 and June 1, 2012-May 31, 2013) instead of the seventeen month period specified in the Commission's AEPS regulations (i.e., January 1, 2011-May 31, 2011 and June 1, 2011-May 31, 2012).¹

As described in PECO's default service program for the period January 1, 2011 through May 31, 2013 ("Default Service Program"), PECO will satisfy its AEPS requirements by

¹ See 52 Pa. Code § 75.69(b) (providing that "[a]n EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in the reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.").

procuring AECs from wholesale energy suppliers as part of “full requirements” supply for its residential, commercial, and industrial default service customers, while also allocating banked AECs to meet AEPS requirements of the portion of residential load for which PECO procures block energy (the “PECO Share”) and to reduce the number of AECs that wholesale suppliers for all default service customers must provide.² As a result of its successful early AEPS procurements approved by the Commission in Docket No. P-00072260, the amount of non-solar Tier I AECs banked by PECO is now projected to exceed both the AEPS requirements of the PECO Share and the amounts already allocated in PECO’s default service procurements to reduce the AEC requirements of wholesale suppliers through May 31, 2012.

At the time of the Commission’s approval of PECO’s original petition for early procurement of non-solar Tier I AECs,³ the Commission’s proposed AEPS regulations permitted an electric distribution company (“EDC”) to apply AECs banked during its cost recovery period during the first two full, twelve-month AEPS reporting periods following its cost recovery period. Because the Commission’s final AEPS regulations require PECO to use credits banked during the AEPS reporting period in which its cost recovery period ends and the immediately following reporting period, PECO’s excess banked AECs will expire as of May 31, 2012 and will be unable to be used absent Commission approval to apply the excess AECs in a subsequent AEPS reporting period.

By permitting PECO to apply banked AECs to meet AEPS requirements during the first two full AEPS reporting years (i.e., twelve months) after its cost recovery period instead of the

² See Joint Petition for Settlement (the “Default Service Settlement”), ¶¶ 42-45, in *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009).

³ See *Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Credits*, Docket No. P-00072260 (Order entered December 26, 2007) (“*PECO AEPS I*”).

first seventeen months, PECO expects to be able to use all of its banked AECs and their full value will be realized for the benefit of its default service customers.

In support of this Petition, PECO states as follows:

I. BACKGROUND

1. PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal corporate office in Philadelphia, Pennsylvania. PECO provides electric delivery service to approximately 1.6 million customers and natural gas delivery service to approximately 475,000 customers in Southeast Pennsylvania.

2. On November 30, 2004, Governor Edward G. Rendell signed the AEPS Act into law. As of its effective date on February 28, 2005, an alternative energy portfolio standard was established in Pennsylvania. The AEPS Act requires a certain increasing percentage of electricity sold to retail customers in Pennsylvania by EDCs and electric generation suppliers (“EGSs”) to be derived from alternative energy sources as defined in the Act. An EDC’s compliance with this requirement is measured using AECs. An alternative energy credit is equal to one-megawatt hour of qualified alternative energy generation, and may be purchased, traded and owned separately from the underlying energy that generates the credit. *See generally*, 73 P.S. § 1648.3.

3. The AEPS Act has several components, including (1) a timetable and associated yearly percentage requirements which EDCs and EGSs must satisfy, as well as an exemption period (the “cost recovery period”) linked to an EDC’s transition (or stranded cost recovery) period established under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 *et seq.*; (2) provisions under which EDCs may “bank” AECs for future compliance; and (3) a provision which allows EDCs to fully recover all AEPS-related costs for

generation from alternative energy sources and/or AECs from their retail customers pursuant to a Section 1307 surcharge.

4. On July 17, 2007, Governor Rendell signed into law several amendments to the AEPS Act (*see* 2007, July 17, P.L. 114, No. 35). Under the AEPS Act as amended, for retail default service generation sales between January 1, 2011 and May 31, 2011, PECO will be required to procure AECs from Tier I resources (e.g., wind, geothermal, biomass) equal to three percent (3%) of the electricity sold by PECO to retail customers in Pennsylvania, including an amount of AECs from solar photovoltaic (“solar PV”) systems equal to .0203% of PECO’s retail sales, as well as AECs from Tier II resources equal to 6.2% of the electricity sold by PECO to retail customers in Pennsylvania. These percentage requirements increase annually until 2020, with the Tier I requirement increasing to 8%, the solar PV requirement, as a subset of the Tier I requirement, increasing to 0.5% and the Tier II requirement increasing to 10%.

5. The AEPS Act includes an express provision addressing the time periods in which an EDC can bank AECs for future use:

An electric distribution company or an electric generation supplier [during the cost recovery period] may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this act. . . . All credits banked under this subsection shall be available for compliance with [Tier I and Tier II requirements] for no more than two reporting years following the conclusion of the cost-recovery period.

73 P.S. § 1648.3(e)(7).

6. In order to implement the AEPS Act, the Commission issued several implementation orders and proposed regulations that addressed a variety of issues, including the

banking of AECs during an EDC's cost recovery period. In its second implementation order,⁴ the Commission specifically addressed the reporting years in which an EDC could use banked AECs:

The Commission finds merit in a proposal suggested by the Energy Association in its comments to the Implementation Order . . . Specifically, the Energy Association proposes letting an EDC or [EGS] choose which two reporting years it intends to use any credits banked during the cost-recovery period. Under this proposal, an EDC could therefore delay the use of these credits to the first full reporting year after its exemption period expires. This would provide for a full two years in which to use credits, without violating the prohibition on using credits in more than two reporting periods. No party objected to this proposal in the reply comments filed with the Commission.

We find that such an interpretation comports with the intent of the General Assembly. Therefore, we will allow EDCs and EGSs to defer the application of banked energy credits until the first two full, consecutive, reporting years after the conclusion of their respective exemption periods. For example, PECO's exemption period expires on December 31, 2010, during Year 5 of the compliance schedule. See Implementation Order. Under our initial interpretation of the Act, PECO would have had to use any banked credits during Years 5 or 6. With our revised interpretation, PECO may now elect to use any banked credits for up to two consecutive compliance years within Years 5, 6 and 7. We find that this revision serves the public interest by providing EDCs and EGSs with more incentives to take advantage of reasonable procurement opportunities that might present themselves during their respective exemption periods.

Implementation Order II, pp. 6-7.

⁴ *Implementation of the Alternative Energy Portfolio Standards Act*, Docket No. M-00051865 (Order entered July 18, 2005) ("Implementation Order I").

7. Subsequently, on July 20, 2006, the Commission proposed regulations to implement the AEPS Act. With respect to banking, the proposed regulations were consistent with *Implementation Order II*:

(b) An EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in either:

(1) The reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.

(2) The first 2 full, 12 month reporting periods for which compliance with § 75.31 is required after the expiration of the cost-recovery period.

Proposed Regulations, § 75.41(b).

8. On March 15, 2007, PECO submitted its petition for approval (*PECO AEPS I*) to voluntarily procure up to 450,000 non-solar Tier I AECs for future AEPS compliance through two separate procurements and to recover the costs of those procurements and future AEC procurements through a Section 1307 surcharge. In order to provide flexibility to alternative energy project developers in light of the emerging renewable energy markets and the intermittent nature of renewable resources, the AEC Purchase and Sale Agreement that PECO proposed to use with alternative energy developers included a provision that permitted developers to meet annual contract requirements early by “rolling over” excess AECs generated in one contract year to satisfy requirements in the following contract year:

3.6 Excess AECs. In the event that Seller shall generate from the Facility and possess AECs in excess of the Contract Amount during any Contract Year, Seller shall have the right to Deliver such excess AECs to PECO during the first Quarter of the subsequent Contract Year, to be applied towards Seller’s obligations to Deliver AECs in that subsequent year, provided that

Seller shall provide notice to PECO of its intent to apply such excess AECs no later than June 30 of the subsequent Contract Year in which the excess AECs are created. Such excess AECs must be delivered no later than July 31 of such year. Except as provided in this Section, PECO shall have no obligation to purchase any AECs in excess of the Contract Amount generated in any Contract Year.⁵

9. PECO's *AEPS I* petition also specifically included a request to be able to apply banked AECs during the first two full consecutive *AEPS* reporting periods, as permitted under the *Proposed Regulations*.⁶ The Recommended Decision approving the *AEPS I* petition also specifically noted the ability of PECO to apply AECs through 2013.⁷

10. On December 26, 2007, the Commission entered an order in *PECO AEPS I*, approving PECO's petition (including its form AEC Purchase and Sale Agreement) with certain modifications. As the *Proposed Regulations* had not been finalized, PECO sought, and received, a waiver from the Commission's final *AEPS* regulations should those regulations be inconsistent with its procurements.⁸

11. Subsequently, in March 2008 and January 2009, PECO conducted two procurements in compliance with the Commission's December 26, 2007 Order. The Commission approved the results of those procurements, and PECO entered into several five-year contracts for a total annual delivery of 452,000 non-solar Tier I AECs. The AECs obtained

⁵ See *PECO AEPS I* Petition, ¶ 14 & Form Alternative Energy Credits Purchase and Sale Agreement, § 3.6.

⁶ See *PECO AEPS I* Petition, ¶ 19 ("Consistent with *AEPS* Implementation Order II and the *AEPS* Rulemaking Order, PECO requests that the Commission approve PECO's banking of all AECs procured through the RFP process for compliance use during any two consecutive compliance years between January 1, 2011 and May 31, 2013."). A copy of the Petition is attached as Exhibit A.

⁷ See *PECO AEPS I* Recommended Decision (entered August 21, 2007), p. 7.

⁸ See *PECO AEPS I* Final Opinion and Order, ¶ 4 (providing "[t]hat PECO Energy is granted a waiver from any final regulations issued by the Commission concerning compliance with the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1, *et seq.*, to the extent such regulations are inconsistent with the Request for Proposals or Alternative Energy Credit Purchase and Sales Agreement prior to or during the term of any agreement entered into by PECO Energy Company.").

through these procurements are being “banked” in accordance with the AEPS Act for application to PECO’s future AEPS requirements.⁹

12. On September 25, 2008, the Commission entered an order adopting final AEPS regulations, which included a different rule with respect to the use of credits banked during an EDC’s cost recovery period. Specifically, Section 75.69 of the Commission’s regulations provides:

§ 75.69. Banking of alternative energy credits.

....

(b) An EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in the reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.

(c) Alternative energy credits acquired by EDCs and EGSs not used within the time limits identified in subsections (a) and (b) shall be retired within the alternative energy credits registry and not available for the compliance requirements of this chapter.

52 Pa. Code § 75.69.

13. Thus, under the Commission’s final AEPS regulations, PECO is required to use all of its non-solar Tier I banked AECs to meet AEPS requirements prior to May 31, 2012 instead of May 31, 2013, as permitted under the *Proposed Regulations* that were pending when the Commission approved the *PECO AEPS I* Petition.

⁹ On March 3, 2009, PECO filed a Petition seeking approval to procure 8,000 solar photovoltaic AECs (“SAECs”) annually over ten years to satisfy a portion of PECO’s solar requirements under the Act. *Petition of PECO Energy Company for Approval to Procure Solar Alternative Energy Credits*. Docket No. P-2009-2094494 (Order entered August 28, 2009) (“*PECO AEPS II*”). Following Commission approval, PECO conducted its first SAEC procurement during the fall and winter of 2009-2010 and entered into several ten-year contracts to procure 8,000 SAECs annually. PECO is not seeking to extend the banking period for any SAECs.

II. THE COMMISSION SHOULD PERMIT PECO TO APPLY ITS BANKED AECs TO AEPS REQUIREMENTS IN AEPS REPORTING YEARS 2011-2012 AND 2012-2013

14. By this Petition, PECO is requesting approval to apply non-solar Tier I AECs banked pursuant to its Commission-approved procurements in the first two full AEPS reporting periods after its cost recovery period.

15. As part of the settlement of its Default Service Program, all banked AECs are allocated to PECO's procurement classes based upon estimated default service retail sales. *See* Default Service Settlement, ¶ 44. With respect to the residential class, the Default Service Settlement also provides that twenty-five percent (25%) of PECO's residential load – the PECO Share – will be served through forward block energy contracts procured by PECO and balanced through the spot energy markets administered by PJM Interconnection, L.L.C. *See id.* ¶ 18. PECO is required to meet the AEPS requirements associated with the PECO Share using banked AECs allocated to the residential class, with any banked AECs remaining then allocated to the full requirements suppliers of the remaining 75% of the residential class default service load. *See id.* ¶ 45.

16. Pursuant to the Default Service Settlement, PECO has allocated a total of 738,067 non-solar Tier I AECs among its procurement classes, as follows: residential “full requirements” (265,107); residential PECO Share (147,313); small commercial (119,000); medium commercial (108,669); and large industrial (97,977). The obligations of full requirements suppliers to provide AECs are reduced by these allocated AECs, which PECO applies directly to its AEPS requirements and does not transfer to suppliers.

17. As a result of the “rollover” clause under its non-solar Tier I AEPS contracts, however, PECO now estimates that it will have over 237,000 banked AECs that will expire on

May 31, 2012 unless PECO is permitted to use them to meet future AEPS requirements. If the AECs are allowed to expire, PECO and its customers will receive no benefit from these AECs and the early AEC procurements. At a weighted average contract price of \$20.42 per credit, the cost of these AECs is estimated at \$4.8 million.

18. PECO recognizes that it may be possible to sell its banked Tier I non-solar AECs that expire on May 31, 2012. However, PECO would then be required to purchase nearly 150,000 additional AECs through a competitive procurement process to satisfy AEPS requirements for the PECO Share during the June 1, 2012-May 31, 2013 AEPS reporting period. Both the sale of the expiring AECs and the purchase of new AECs would incur significant additional transaction costs for PECO's customers that can be entirely avoided if PECO is permitted to apply its banked AECs in the June 1, 2012-May 31, 2013 AEPS reporting period.

19. PECO believes the application of its banked AECs in the first two full twelve-month AEPS reporting periods is consistent with its original *PECO AEPS I* petition and the waiver provided by the Commission, but seeks confirmation from the Commission before applying any banked credits. Should the Commission disagree regarding the scope of the original waiver, PECO respectfully requests that the Commission now grant a waiver to permit PECO to apply its banked AECs in the June 1, 2011-May 31, 2012 and June 1, 2012-May 31, 2013 AEPS reporting periods for the benefit of its default service customers.

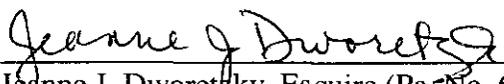
III. REQUEST FOR EXPEDITED APPROVAL

20. PECO requests that the Commission approve this Petition no later than the public meeting presently scheduled for February 10, 2011. This request for expedited treatment is necessary so that PECO has clarity as to whether it should either apply, or defer, its banked credits towards its AEPS requirements during the June 1, 2010-May 31, 2011 AEPS reporting period well before the end of that reporting period.

IV. CONCLUSION

Based upon the foregoing, PECO respectfully requests that the Commission grant this Petition and enter an order on an expedited basis permitting PECO to apply alternative energy credits "banked" during its cost recovery period under the AEPS Act to meet AEPS requirements in AEPS reporting periods June 1, 2011-May 31, 2012 and June 1, 2012-May 31, 2013 instead of January 1, 2011-May 31, 2011 and June 1, 2011-May 31, 2012.

Respectfully submitted,


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November 17, 2010

Counsel for PECO Energy Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Petition of PECO Energy Company for :
Approval of (1) A Process to Procure :
Alternative Energy Credits During the :
AEPS Banking Period and (2) A Section :
1307 Surcharge and Tariff to Recover :
AEPS Costs :

Docket No. P-00072260

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the Petition of PECO Energy Company for Expedited Approval to Apply Banked Alternative Energy Credits in AEPS Reporting Years 2011-2012 and 2012-2013, in the manner indicated below, in accordance with the requirements of 52 Pa. Code §1.54.

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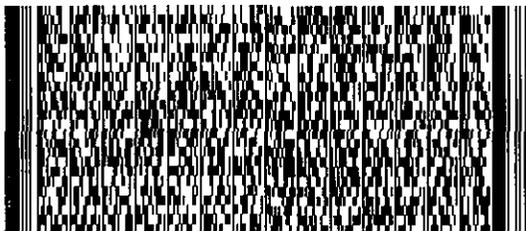


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