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July 5, 2011

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RECEIVED

JUL 05 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Petition of PECO Energy Company for Expedited Approval of Its Default Service
 Program and Rate Mitigation Plan
 Docket No. P-2008-2062739**

Dear Secretary Chiavetta:

Enclosed for filing please find an original and three (3) copies of the **Prehearing Memorandum of PECO Energy Company** in the above-referenced matter. As evidenced by the attached Certificate of Service, a copy of the Memorandum has been served upon Administrative Law Judge Marlane R. Chestnut and all parties.

Kindly return a time-stamped copy of the Memorandum in the self-addressed envelope that is enclosed. Thank you.

Very truly yours,



Catherine G. Vasudevan

CGV/tp
Enclosures

c: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

DOCKET NO. P-2008-2062739

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PECO ENERGY COMPANY'S PREHEARING MEMORANDUM

I. INTRODUCTION AND HISTORY OF THE PROCEEDING

On April 5, 2011, PECO Energy Company ("PECO" or the "Company") petitioned the Pennsylvania Public Utility Commission (the "Commission") to amend the settlement of PECO's default service program (the "Settlement") for the provision of electric generation service after December 31, 2010 to permit the Company to credit or collect any Generation Supply Adjustment ("GSA") over or under recoveries plus associated interest for Procurement Class 1 (Residential) on an annual basis instead of quarterly. *See 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). The Company also requested approval of a proposed tariff supplement to implement the annual reconciliation proposal.

In its Petition, PECO explained that crediting/collecting GSA over/under recoveries on an annual basis will benefit residential customers by smoothing out the sales variability caused by factors such as customer shopping and weather seasonality, which can create significant swings in over/under recoveries from quarter to quarter that are not directly related to market price conditions. The Company will continue to file quarterly GSA rates for residential customers in order to reflect the projected market price of generation supply.

PECO served its Petition on the Pennsylvania Office of Consumer Advocate (“OCA”), the Pennsylvania Office of Small Business Advocate (“OSBA”), the Commission’s Office of Trial Staff (“OTS”) and all other parties to the Company’s default service proceeding. The Company also posted a copy of the Petition on its electric generation supplier website.

At the time of filing this Prehearing Memorandum, PECO has been served with Answers from the OCA, Direct Energy Services, LLC (“Direct Energy”), Dominion Retail, Inc. (“Dominion Retail”) and the Retail Energy Supply Association (“RESA”), all dated April 25, 2011.

II. STATEMENT OF ISSUES

The main issue before the Commission is whether the Company’s annual reconciliation proposal is in the public interest and consistent with the Commission’s default service regulations. Other parties to this proceeding have raised specific issues relating to the proposal, including: (1) the accuracy of the price signals from default service rates that reflect annual reconciliation; and (2) the potential for recovering annual under recoveries from former default service customers through PECO’s migration provision. PECO intends to work collaboratively with the parties to attempt to resolve these issues promptly. PECO notes that the OCA expressed support in its Answer for the Company’s annual reconciliation proposal.

III. WITNESSES

If the ongoing settlement discussions described in Section VI are unable to resolve all of the issues raised by other parties, the Company intends to present testimony by Alan B. Cohn to address the unresolved issues.

IV. PROPOSED SCHEDULE

In its filing, PECO requested that the Commission grant the Company’s Petition on or before the public meeting scheduled for June 9, 2011, so that appropriate over/under recoveries

could be incorporated into the Company's estimated Price to Compare for the fourth quarter (posted July 1, 2011) and the GSA for the fourth quarter (filed August 15, 2011).¹ In light of the Prehearing Conference date of July 6, 2011, PECO is proposing the revised procedural schedule provided below. PECO has discussed the procedural schedule with the other active parties to this proceeding and is prepared to finalize a schedule at the Prehearing Conference.

April 5, 2011	Petition Filing
July 6, 2011	Prehearing Conference
July 11, 2011	Settlement Conference
July 20, 2011	Company Direct Testimony Due
August 2, 2011	Other Parties' Rebuttal Testimony Due
August 12, 2011	Surrebuttal Testimony Due
August 23-24, 2011	Hearings
September 8, 2011	Main Briefs
September 15, 2011	Reply Briefs
October 5, 2011	Recommended Decision
October 27, 2011	Commission Order

V. PROPOSED DISCOVERY MODIFICATIONS

PECO herewith proposes modifications to the Commission's discovery regulations, which are attached as Exhibit "A" hereto, and a Protective Order, attached as Exhibit "B" hereto. The discovery modifications and Protective Order have been discussed with the other active parties to this proceeding and are substantially the same as those previously approved by presiding Administrative Law Judge Marlane R. Chestnut in PECO's recent electric rate

¹ PECO's Tariff requires that the GSA be filed 45 days before its effective date. PECO Tariff Electric Pa. P.U.C. No. 4, Third Revised Page No. 32.

proceeding at Docket No. R-2010-2161575. PECO is also prepared to engage in informal discovery as appropriate.

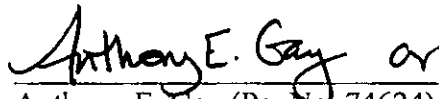
VI. POSSIBILITY OF SETTLEMENT

PECO is engaging in settlement discussions with the other parties in this proceeding in order to facilitate a timely and effective implementation of its annual reconciliation proposal. PECO is in the process of arranging a settlement conference for July 11, 2011, or as soon as possible thereafter.

VII. CONCLUSION

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

Respectfully submitted,



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July 5, 2011

Counsel for PECO Energy Company

EXHIBIT A

RECEIVED

JUL 05 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR EXPEDITED :
APPROVAL OF ITS DEFAULT : **DOCKET NO. P-2008-2062739**
SERVICE PROGRAM AND RATE :
MITIGATION PLAN :

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 five (5) calendar days of receipt. Responses may be served electronically but hard copies must follow by first-class mail, unless otherwise agreed to by the parties.
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 three (3) 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 two (2) 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 in writing within three (3) calendar days of service or answered within five (5) 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.

DBI/ 67627665.2

EXHIBIT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY	:	
COMPANY FOR EXPEDITED	:	
APPROVAL OF ITS DEFAULT	:	DOCKET NO. P-2008-2062739
SERVICE PROGRAM AND RATE	:	
MITIGATION PLAN	:	

PROTECTIVE ORDER

Upon consideration of the Motion for a Protective Order made by PECO Energy Company (“PECO”) and the parties participating in the July 6, 2011 Prehearing Conference in this matter:

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” absent agreement of the party producing the Proprietary Information. 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: _____, 2011

Marlane R. Chestnut
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR EXPEDITED :
APPROVAL OF ITS DEFAULT : DOCKET NO. P-2008-2062739
SERVICE PROGRAM AND RATE :
MITIGATION PLAN :**

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 FOR EXPEDITED :
APPROVAL OF ITS DEFAULT : **Docket No. P-2008-2062739**
SERVICE PROGRAM AND RATE :
MITIGATION PLAN :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the **Prehearing Memorandum of PECO Energy Company** in the above-captioned matter in the manner as set forth below, in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Honorable Marlane R. Chestnut
Administrative Law Judge
Pennsylvania Public Utility Commission
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RECEIVED

JUL 05 2011

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Counsel for PECO Energy Company

Dated: July 5, 2011

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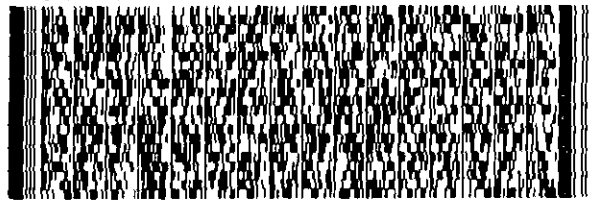
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PHILADELPHIA, PA 19103
UNITED STATES US

BILL SENDER

TO ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG PA 17120

REF: 72113-001515-1296



TO: CHIAVETA, R. PUC (CHIAVET
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2011 10:19:09 AM

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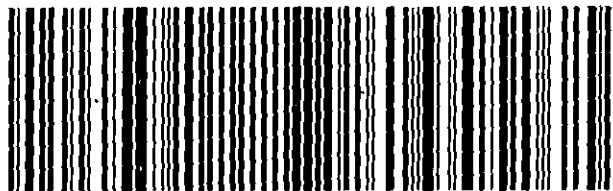
Morgan Lewis
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1701 Market Street
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TO: Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Part # 1561-48-434 INT2 03/11

ZN MDTA



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