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MCDERMOTT, WILL & EMERY

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September 6, 2000

BY UPS NEXT DAY AIR

A-110550F0147

Secretary James McNulty
Pennsylvania Public Utilities Commission
Room B-20
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17120

RECEIVED

SEP 06 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

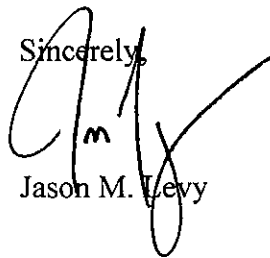
Re: PECO Energy Company Competitive Default Service Program Bidding

Dear Secretary McNulty:

Enclosed are an original and three (3) copies of the Petition for Reconsideration to be filed in the above-referenced matter as well as a Certificate of Service.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at 617-535-4069.

Sincerely,



Jason M. Levy

64

JML/sla

Enclosures

cc: Service List
Randy E. McCrea
Gregory Lawrence, Esq.

DOCUMENT
FOLDER

ORIGINAL

Before the
Pennsylvania Public Utility Commission

RECEIVED

SEP 06 2000

In Re: PECO Energy Company Competitive :
Default Service Program Bidding :

Docket No. A-110550 F0147

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Petition for Reconsideration

DOCKETED

SEP 19 2000

Shell Energy Services Co., L.L.C. ("Shell Energy") respectfully petitions the Commission to reconsider its Secretarial Letter issued on August 22, 2000 in the above-referenced matter pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.572. As demonstrated herein, Shell Energy has complied with each of the Commission's requirements for Competitive Default Service ("CDS") as contained in PECO Energy Company's ("PECO") April 6, 2000 Request for Proposal ("RFP"). Each of the five issues identified in the Secretarial Letter as justification for rejection of the bid were in fact fully addressed by Shell Energy. Specifically, Shell Energy submitted a conforming plan to provide generation and capacity, will abide by the relevant code of conduct, has agreed to a commercially reasonable "force majeure" clause, will accommodate changes to the CDS as set forth in the PECO/Unicom Settlement, and has provided detailed and appropriate financial information, all in accordance with the RFP. Shell Energy emphasizes that the RFP states that the CDS contract "will be awarded to the qualifying bidder offering the lowest price." Exhibit B at § S7, p. 5.

Accordingly, Shell Energy believes that careful consideration of both its August 11, 2000 Bid to provide CDS, and subsequent negotiations and commitments made by Shell Energy concerning its bid, compels the conclusion that Shell Energy's bid conformed in all material respects with the RFP, and that Shell Energy is entitled to be

awarded the right to provide CDS. This right will be subject to successful EDI integration testing, establishment of data protocols and information exchange with PECO, and the finalization of a definitive agreement between the parties approved by the Commission. Shell Energy also has been informed that PECO plans to go forward with the bilateral negotiation process at this time to attempt to select a CDS provider. Shell Energy is concerned that the bilateral negotiation process will undercut its ability to enforce its rights under the RFP as the rightful qualifying bidder and therefore requests expedited review of this Petition. Shell Energy also requests the Commission to stay the bilateral negotiations to the extent necessary to preserve Shell Energy's rights under the RFP. Finally, to the extent the Commission desires additional clarification of the information contained herein, Shell Energy is available to appear at hearing.

In support of this Petition, Shell Energy respectfully states as follows:

Summary of Argument

1. Shell Energy has met or exceeded all of the bid requirements set out in the RFP through its August 11 Bid, and supplementary discussions with the Commission Staff, PECO and the Office of Consumer Advocate ("OCA"). During the two weeks that Shell Energy discussed the bid with the Commission Staff, PECO, and the OCA, Shell Energy addressed each concern regarding the qualification of the Bid. Shell Energy further maintains that the bilateral negotiation process is unnecessary as Shell Energy has already provided the lowest priced qualified bid as outlined in the RFP.

2. Shell Energy received a Secretarial Letter on August 22, 2000 rejecting the August 11 Bid for the following stated reasons:

- Shell Energy did not provide an adequate plan to procure generation and capacity to serve the CDS customers with sufficient levels of reliability;
- Shell Energy refused to abide by the Commission's recently adopted Code of Conduct;
- Shell Energy's 'force majeure' clause would provide for a regulatory out in the event that PJM Operating Rules would change in any way;
- Shell Energy's most recent bid did not provide for changes to CDS as found in the PECO/Unicom Settlement;
- Shell Energy had refused to provide creditworthiness documents-- balance sheet and income statement--for its CDS subsidiary.

3. Shell Energy reiterates that it has already addressed each of these issues. Shell Energy provided to the Commission and the OCA by letter dated August 18, 2000, detailed and confidential material regarding its CDS load analysis, pricing projections, and supply plan to assure the Commission of its plan to provide reliable service to CDS consumers. Second, Shell Energy states that it will comply with the Commission's recently adopted statewide Code of Conduct. Third, the Commission Staff, PECO, and the OCA did not object to Shell Energy's insertion of a Force Majeure clause -- a standard clause in all commercial contracts -- each of those parties only disagreed on the specific wording of the clause, which Shell Energy agreed to negotiate with PECO. Fourth, Shell Energy complied with each requirement set forth in the April 6, 2000 RFP

which included all modifications to the CDS process found in the PECO/Unicom Settlement. Fifth, Shell Energy has provided documents necessary to prove its creditworthiness, including confidential financial information provided to the Commission and the OCA in the letter dated August 18, 2000.

4. Apparently, due to miscommunications or misunderstandings, Shell Energy's clarifications of these issues do not appear to have been taken into consideration when Shell Energy's August 11 Bid was reviewed. The process for reviewing CDS bids is defined by the RFP. Shell Energy fully believes that the Commission's intent has been to oversee this unique process in a manner that protects the rights of all bidders consistent with the terms of the RFP and the principles of a fair, nondiscriminatory process. See, e.g., Lutz Appellate Printers, Inc. v. Commonwealth, et al., 485 Pa. 559, 566 (1979) (state authorities subject to public bidding laws should exercise "sound discretion" in determining whether a lowest price bidder "qualifies" and thus should be awarded a public bidding contract pursuant to the terms of the bid). Thus, Shell Energy respectfully requests the Commissioners to review Shell Energy's August 11 Bid, along with the commitments reiterated below, in reconsidering the August 22 Secretarial Letter.

Background

5. On April 28, 1998, PECO filed its Joint Petition for Settlement of its Electric Restructuring Case (the "Settlement") (Docket Nos. R-00973953 and P-00971265). PECO modified its Settlement on March 24, 2000 by filing its Joint Petition for Settlement of its Application for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation (the "Merger Settlement") (Docket A-

110550F0147). Under Issue L, Paragraph 38 of the Settlement, and Paragraph 52 of the Merger Settlement, PECO described the procedures for a CDS bid process which require 20% of PECO's residential and commercial customers to be assigned a default service provider other than PECO, or an affiliate of PECO, by January 1, 2001. Paragraph 38 of the Settlement and Paragraph 53 of the Merger Settlement requires the Commission to establish and maintain terms and conditions for the CDS bidding.

6. On April 6, 2000, the Commission approved the RFP to provide CDS for 20% of PECO's electric residential customers as required by the Settlement and as modified by the Merger Settlement. The RFP established criteria to qualify bidders to serve as the competitive default service provider. Importantly, the RFP states that:

the Commission will determine the winning bid and award the right to serve as CDS provider. The bid *will be awarded to the qualifying bidder offering the lowest price* [emphasis added].

The April 6, 2000 RFP is attached as Exhibit A.

7. After the RFP issued, Shell Energy met with Commission Staff to discuss a potential "enhanced" CDS bid, which it submitted on June 1, 2000. While Shell Energy's June 1 bid did not conform in all respects to the form requested in the RFP, it proposed a more complex and enhanced bid that Shell Energy believed would inure to the benefit of Pennsylvania consumers. At that time, only one other entity submitted a bid in response to the RFP, which also did not conform to the form requested in the RFP. Throughout the month of July, Shell Energy sought opportunities to discuss its proposal with the Commission Staff and the OCA. Shell Energy did not speak directly with the Commissioners during this time because the June 1 Bid was before the Commission for consideration.

8. Shell received a Secretarial Letter dated July 31, 2000 from Secretary James McNulty indicating that Shell Energy's bid was non-conforming (Attached as Exhibit B). The letter indicated that Shell Energy should contact the Commission Staff if Shell Energy was "willing to revise [its] proposal to meet the bid qualifications of the request for proposal." Thereafter, Shell Energy contacted Commission Staff to discuss modifying the bid to meet all qualifications of the RFP. After further discussions, Commission Staff faxed to Shell Energy on August 9, 2000 a "top-eleven" list of reasons why the Staff believed Shell Energy's June 1 Bid did not conform to the criteria set forth in the RFP. At the same time, the Commission extended the deadline for Shell Energy to refile its bid until August 11, 2000. In response, Shell Energy filed a revised bid with the Commission on August 11, 2000.

9. After Shell Energy filed its revised conforming bid with the Commission, PECO offered its opinion about the qualification of the second bid. On August 17, 2000, PECO circulated a list of "non-starters" and "areas of concern" regarding the August 11 Bid (Attached as Exhibit C). Although Shell Energy was concerned with PECO's substantial role in critiquing the bid, Shell Energy addressed the listed concerns in the interest of fulfilling the promise of the Settlement and reaching closure on the CDS award. To address the listed concerns, Shell Energy participated in a conference call on August 18, 2000 with Commission Staff, the OCA, and representatives of PECO. During this conference call, the participants discussed each of the "non-starters" and "areas of concern" including the Code of Conduct, Force Majeure, and CDS revision issues. At the same time, Shell Energy provided the Commission a confidential letter with detailed information regarding its CDS load analysis, pricing projections, and supply plan, as well

as its financial backing.¹ In further attempting to demonstrate the qualification of the August 11 Bid, Shell Energy later conferenced with the OCA on August 22, 2000.²

10. Notwithstanding these discussions and commitments, Secretary McNulty sent a Secretarial Letter to Shell Energy on August 22, 2000 indicating that “we are not satisfied that the second bid conforms with the Request for Proposal (RFP) to provide CDS” (Attached as Exhibit D). Secretary McNulty identified several reasons why “we are rejecting Shell Energy’s second bid as being non-conforming with PECO’s RFP”:

Generally, Shell has not provided an adequate plan to procure generation and capacity to serve the CDS customers with sufficient levels of reliability. Shell is refusing to abide by the Commission’s recently adopted ‘Code of Conduct.’ Shell’s ‘force majeure’ clause would provide for a regulatory out in the event that PJM Operating Rules would change in any way. Shell’s most recent bid does not provide for changes to CDS as found in the PECO/Unicom Settlement. Finally, among other issues, Shell has refused to provide creditworthiness documents--balance sheet and income statement--for its CDS subsidiary.

11. On August 25, 2000, Shell Energy sent a letter to the Secretary requesting guidance as to why Shell Energy’s August 11 Bid failed to conform to the RFP (Attached as Exhibit E).

Shell Energy Has Addressed Each of the Five Issues Cited in the August 22 Secretarial Letter and Its August 11 Bid Conforms in all Material Respects with the CDS RFP

12. Shell Energy respectfully contests the grounds provided in the August 22 Secretarial Letter for rejecting its August 11 Bid. Indeed, as noted above, Shell Energy has already addressed each of these issues and believes that it has successfully met the

¹ Shell Energy requests that the August 18 confidential letter and its bulk attachments be incorporated herein by reference, while maintaining its confidential status.

² Shell Energy spoke with Mr. Sonny Popowsky, the OCA, during this conference.

CDS RFP requirements. Importantly, the reasons set forth in the August 22 Secretarial Letter do not take into account discussions between Shell Energy, Commission Staff, the OCA, and PECO in which Shell Energy specifically agreed to comply with the bid qualifications at issue.

13. On August 18, 2000, Shell Energy discussed with Commission Staff and the OCA various questions and clarifications set out in the attached definitive list of “non-starters” and “areas of concern” regarding Shell Energy’s August 11 Bid. As Commission Staff instructed, Shell Energy also clarified its CDS bid with the OCA on August 22, 2000. During this, and previous conferences, Shell Energy agreed with and/or answered each of the comments listed in PECO’s attachment.

14. The issues cited by the August 22 Secretarial Letter for rejecting Shell Energy’s August 11 Bid were simply a recitation of the “non-starters” and “areas of concern” previously listed by PECO. The Secretarial Letter cited these reasons even though Shell Energy already addressed each of these concerns. Shell Energy sets forth all of PECO’s, the Commission Staff’s, and the OCA’s concerns again below to demonstrate to the Commission that Shell Energy’s August 11 Bid does in fact conform to the RFP and thus qualifies as the lowest-priced CDS bid.

The “Non-Starter” List

15. During conferences with Commission Staff, the OCA, and PECO as described above, Shell Energy addressed each and every point listed on the “non-starter” list. Even though Shell Energy questions the propriety of PECO’s involvement in issuing such demands, Shell Energy responded to each concern to ensure the Commission that its August 11 Bid qualified under the terms of the RFP.

16. **T-1; T4 – Objections to Shell Energy’s language regarding a customer’s inability to switch from Shell Energy because of arrearage in payment (Requests that Shell Energy revise its bid to clarify that Shell Energy will not provide billing/credit/collections services and to remove inconsistent language suggesting otherwise).**

During discussions with PECO and Commission Staff, Shell Energy agreed that customers in arrears can switch providers because Shell Energy will not provide billing/credit/collection services. At that time, Shell Energy agreed to remove any inconsistent language.

17. **T-11 – Objections to Shell Energy’s proposed “Code of Conduct.” Requests that Shell Energy comply with the newly enacted statewide Code of Conduct.**

Shell Energy attempted to clarify with the OCA that it agreed to comply with the newly enacted statewide Code of Conduct in its role as CDS provider. To the extent this was not clarified, Shell Energy reaffirms that position here.

18. **Appendix A: E(1) – Objections that Shell Energy’s clause regarding Changes in Laws of Governmental Authorities constituted an impermissibly broad “reopener.”**

The Commission Staff was concerned with what it considered a “reopener” in Shell Energy’s bid. The Staff indicated that it appeared that Shell Energy was attempting to avoid a rate cap on Provider of Last Resort prices. In response to the Commission Staff’s and PECO’s concern, Shell Energy clarified that it will not increase CDS rates above the then-applicable PECO Energy shopping credit for the CDS term or exercise the same rights as PECO under Section 38(e) of the 1998 Settlement and its current tariff, without seeking Commission approval.

19. **Appendix A: E(2) – Objections to Shell Energy’s language regarding indemnification by stating that any indemnification from PECO must be subject to the limitations contained in Rules 12.1 and 12.2 of PECO’s Electric Service Tariff and that Shell Energy must in turn indemnify PECO for claims arising from Shell Energy’s acts or omissions.**

On August 18, Shell Energy agreed with the above comments regarding indemnification.

20. **Appendix A: E(3) - Objections to language regarding Shell Energy’s ability to assign the Provider of Last Resort contract by stating that assignment to PECO’s affiliate was unacceptable and that no assignment may occur to other EGS without PECO’s consent.**

On August 18, Shell Energy agreed with the above comments regarding assignment.

21. **Appendix A: E(4) – Objections that Shell Energy’s Force Majeure clause was too broad and thus needed revision.**

Both the Commission Staff and PECO objected to the breadth of Shell Energy’s standard Force Majeure as originally drafted, even though a standard Force Majeure clause is an essential part of any commercial contract, and the RFP did not specifically prohibit such a clause. Importantly, during the August 18 conference call, neither PECO nor the Commission Staff objected to the inclusion of a Force Majeure clause; rather each only requested to negotiate the terms of the clause. Shell Energy, the Commission Staff, and PECO discussed revisions to the Force Majeure clause during their August 18 conference call. All three parties agreed that reasonable force majeure language would be acceptable. Shell Energy remains ready and willing to negotiate commercially reasonable force majeure language.

The Areas of Concern

22. **Q2(c) – Objections that, in order to enable the Commission to adequately assess reasonableness of Shell Energy’s supply plan risk, Shell Energy needed to specify relative percentages of supply to be arranged in advance versus that to be obtained on spot market.**

Shell Energy provided by letter dated August 18, 2000, detailed and confidential material regarding Shell Energy’s CDS load analysis, pricing projections, and supply plan to the Commission and the OCA. Shell Energy provided this information despite the fact that the RFP did not specifically require such detailed and confidential information. Even though Shell Energy provided this information, and affirmed that it can and will meet all reliability and renewable resource generation requirements set forth in the RFP, its bid was still rejected because, “Shell has not provided an adequate plan to procure generation and capacity to serve the CDS customers with sufficient levels of reliability.” However, the Commission Staff has not offered any explanation as to how Shell Energy’s plan is deficient. Shell Energy has provided the Commission with the information to confirm its ability to procure generation, and Shell Energy has affirmed that it can and will do so.

To the extent Shell Energy’s Plan is inadequate to Commission Staff, it appears that only entities owning generation or having long-term generation commitments can, in the Commission Staff’s view, serve the CDS load. This limits potential bidders primarily to utilities (or their affiliates) and is respectfully, in contradiction to the purpose of the CDS bid. Without revealing in this pleading the confidential material provided on August 18, a supplier that utilizes a variety of supply strategies, including longer-term commitments supplemented by spot-market purchasing, can serve CDS customers reliably and economically. It also bears repeating that it is ultimately PJM Interconnection’s responsibility to maintain the reliability of service to retail consumers.

Shell Energy would not have worked so diligently to make a first and second CDS bid if it could not provide reliable and economically viable service. It appears that Shell Energy's August 18 submission and the reality of its reliable supply plan was misunderstood or ignored in the decision to reject the CDS bid.

23. Q2(d) – Shell Energy needed to detail plans for obtaining required renewable supply.

The August 18, 2000 letter also sets forth the renewable supply plan.

24. Q(4)(g) – Shell Energy needed to provide balance sheets and to delineate the financial relationship to its parent.

In response to this request, Shell Energy provided to the Commission and the OCA a confidential copy of its "Revolving Credit and Cash Management Agreement." In addition, because Shell Energy is a wholly owned subsidiary of Shell Oil Company, Shell Energy provided the Commission with a copy of Shell Oil Company's most recent financial report. Because Shell Energy's financial statements are subsumed in Shell Oil Company's statements, Shell Energy is unable to provide more detailed information. It bears emphasis that it is unreasonable to reject Shell Energy's CDS bid because Shell Energy -- an EGS licensed by the Commission with a substantial level of revolving credit -- could not provide balance sheets in the specific form desired by the Commission Staff. The Commission Staff has apparently overlooked that, due to the nascent nature of the market, the RFP specifically anticipated participation by new entities that might not have the ability to provide their own financial track records. Thus, the RFP specifically stated that when bidders are unable to provide their own financial statements, the financial statements of parents (or grandparents) would suffice. See Exhibit B, § Q(4)(g), p. 2.

Thus, it would be inappropriate to disqualify Shell Energy because it provided financial information of its parent, as anticipated under the RFP.

25. Q7(a) – Shell Energy needed to clarify that use of an agent would not absolve Shell Energy from Chapter 56 compliance.

Shell Energy has already stated that it agrees that the use of an agent does not absolve Shell Energy from the requirements of Chapter 56.

26. S3 – Shell Energy needed to provide a required table showing rate comparisons.

Shell Energy has agreed to provide a rate comparison table; however, for the purposes of this Petition for Reconsideration, Shell Energy emphasizes that its CDS rates will match PECO's rates and rate structure.

27. T1; T6; Appendix A: A – Shell Energy needed to clarify what are “rights,” “credits,” and “benefits” referred to under Paragraph 38 of PECO's Settlement.

As Shell Energy discussed with Commission Staff and the OCA, Shell Energy will abide by PECO's Restructuring Settlements, as approved by the Commission, with regard to credits, benefits or rights, if any, available under these Settlements.

28. T7 – PECO maintained that the assignment of customers should not be 20% of each “strata” of customers as Shell Energy states.

During discussions, Shell Energy and PECO reached resolution regarding the technical aspects of assignment by strata and forward load.

29. Appendix B(2) – PECO stated that Shell Energy needed to comply with the Commission's approved methodology for PECO regarding any monthly pricing provision. PECO also stated that Shell Energy must clarify that it intends to track shopping credit.

See Answer to concern listed in Paragraph 26 above.

30. **Appendix B(2) -PECO stated that Shell Energy needed to delete the second and third sentences and “etc.”**

See Answer to concern listed in Paragraph 26 above.

31. **Appendix A(C) – PECO stated that it cannot provide Shell Energy with certain load forecast information as requested because forward load forecasts can only be derived by running normal temperatures through load curves.**

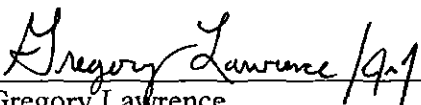
See Answer to concern listed in Paragraph 28 above.

32. The comments provided in Paragraphs 16-31 answer every concern posed by PECO and the Commission Staff regarding the qualification of Shell Energy’s August 11 Bid. More importantly, these comments fully answer all five of the reasons cited in the August 22 Secretarial Letter as to why Shell Energy’s bid was rejected. The CDS RFP makes clear that the bid must be awarded to “the qualifying bidder offering the lowest price.” Shell Energy clearly has offered the lowest price, and under a reasonable review of the facts, Shell Energy believes its August 11 Bid meets or exceeds all of the bid qualifications in the RFP.

33. Considering the above, Shell Energy believes that its bid has “won” the CDS RFP and the right to serve CDS customers. Shell Energy sincerely hopes that the Commission will reconsider the announcement rejecting the bid and, in turn, allow its CDS proposal to succeed. Shell Energy believes awarding it the CDS bid at this time is in the best interest of Pennsylvania consumers by providing stable prices while contributing to the further development of a competitive market. Shell Energy fully supports this CDS effort and the important part CDS plays in the Commonwealth’s successful implementation of retail electric competition.

WHEREFORE, Shell Energy respectfully requests the Commission to reconsider the August 22 Secretarial Letter rejecting Shell Energy's August 11 Bid and based on all the evidence presented, find that Shell Energy submitted a qualified bid and thus should be awarded the CDS RFP according to the terms of the RFP. In the interim, Shell Energy respectfully requests the Commission to stay the bilateral negotiation process to the extent necessary to allow determination of Shell Energy's rights to provide CDS under the RFP.

Respectfully Submitted,



Gregory Lawrence
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000

-- and --

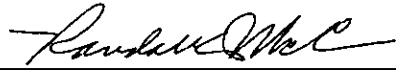
Jason M. Levy
McDermott, Will & Emery
28 State Street
Boston, MA 02109-3800
(617) 535-4000
Counsel for
Shell Energy Services Co., L.L.C.

Dated: September 6, 2000
BST99 1150238-2.058385.0014

Verification

I, Randall E. McCrea, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C. S. § 4904 (relating to unsworn falsification to authorities).

Dated: September 6, 2000



Randall E. McCrea
Manager Regulatory Affairs
Shell Energy Services Co., L.L.C.

(Original signature page to follow by mail)

**Before the
Pennsylvania Public Utility Commission**

Certificate of Service

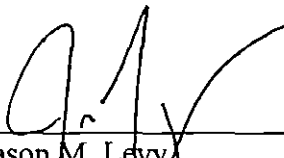
I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, via overnight mail in accordance with the requirements of 52 P. A. Code § 1.54.

Office of Trial Staff
Pennsylvania Public Utilities Commission
Putnick Building, Third Floor
901 North Seven Street- Rear
Harrisburg, PA 17102

Office of Small Business Advocate
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Harrisburg, PA 17101

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28 State Street
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(617) 535-4000

Counsel for
Shell Energy Services Co., L.L.C.

Dated: September 6, 2000

Request For Proposal
PECO Energy Rules for Competitive Default Service
April 6, 2000

The purpose of this Request for Proposal (RFP) is to provide rules for the qualification of Competitive Default Service ("CDS") bidders, the selection of the winning bidder, and the terms and conditions of the provision of CDS under Issue L, Paragraph 38 of PECO Energy Company's Joint Petition for Settlement of its Electric Restructuring Case, as modified by PECO Energy Company's Joint Petition for Settlement of its Application for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicorn Corporation (Docket A-110550F0147).

Qualification of CDS Bidders

Q1. All interested CDS bidders will prepare a qualification package and submit that package to the PAPUC no later than May 12, 2000, and thereafter, on May 1 of the year prior to the first year of a new CDS term. Notice of the Commission's request for the qualification packages of CDS bidders has been posted in the Wall Street Journal, on the Power Marketer Internet Website and in the Philadelphia Inquirer. Future notices will be posted on or about March 1 of the year prior to the first year of a new CDS term. Copies of the CDS qualification packages will also be submitted by bidders to the Office of Consumer Advocate.

Q2. The qualification package must, at a minimum, include:

- (a) License to operate as an electric generation supplier in the Commonwealth of Pennsylvania;
- (b) FERC certification as a power marketer in the United States of America;
- (c) A description of the CDS bidder's proposed plan to provide the generation necessary to provide CDS;
- (d) A description of the CDS bidder's renewable resources and plan for ensuring that the renewable conditions of the settlement found at Paragraph 38(b) are met;
- (e) Any other information that the CDS bidder believes is relevant to the Commission in its determination of suitability for providing CDS service.

Each CDS, as a qualification for bidding, is required to prove that: it meets or exceeds the Pennsylvania-New Jersey-Maryland ("PJM") Interconnection's creditworthiness standards for the full amount of the estimated CDS load obligations; and, that it can secure the increased bonding amounts required for CDS.

Q3. To be eligible to bid, an electric generation supplier must meet all applicable obligations that PJM ascribes to a load serving entity and be a signatory of the PJM Reliability Assurance Agreement as amended and/or superseded.

Q4. The CDS bidder's qualification package must include:

(a) A description of any and all indictments or pending litigation by any federal, state or local jurisdiction relating to CDS bidder.

(b) A list of all criminal convictions within the last five years relating to CDS bidder.

(c) A list of all civil penalties, judgments, consent decrees and other sanctions within the last five years, as a result of any violation of any law, rule, regulation or ordinance in connection with its business activities relating to CDS bidder.

(d) A list of all actions occurring within the last five years which have resulted in revocations or suspension of any permit or authority to do business in any jurisdiction relating to CDS bidder.

(e) A list of all actions within the last five years that have resulted in the barring from public bidding related to CDS bidder.

(f) A list of all bankruptcy and other similar proceedings within the last five years related to CDS bidder.

(g) Financial statements adequate to properly present their current and expected future financial condition. At a minimum, income and balance sheets prepared not more than three months prior to the bid should be included. If the CDS is newly formed then the same should be submitted for parent and if necessary grandparent. Partnerships should submit the same information for all participants.

Q5. The CDS bidder's qualification package must include a description, in detail, of any situation in which the CDS bidder or any guarantor (either alone or as part of a joint venture), or a subsidiary of CDS bidder or any guarantor, defaulted or was deemed to be in noncompliance of its contractual obligations to deliver energy, explaining the situation, its outcome and all other relevant facts associated with the event described. The name, title and telephone number of the principal manager of the customer/client who asserted the event of default or noncompliance must also be listed.

Q6. The CDS bidder's qualification package shall include:

(a) A description of any instances in the last two (2) years in which any domestic affiliate or related entity of the CDS bidder has experienced any event listed in Q4, above associated with the sale of electricity.

(b) A description of any other present facts known to CDS bidder or guarantor that might reasonably be expected to adversely affect its ability to perform any aspect of CDS, including an instance in which any guarantor, or any officer, director, partner or member of the CDS bidder, has experienced any of the events listed in Q4, above and where the event reasonably could be expected to adversely affect the CDS provider's ability to perform any aspect of CDS.

Q7. CDS bidders must:

(a) Present a detailed plan and description of its data exchange capabilities.

(b) Perform functions including switching generation suppliers, call center activities related to generation supply, generation pricing, and related customer inquiries, EDI/EDEWG transactions, disputes and disputes resolution related to electric generation supply, and comply with PECO Energy's Electric Generation Supplier Coordination Tariff (Supplier Tariff).

Q8. PECO EDC will perform the following customer care functions: billing, credit, collections and notices, physical termination, restoration of service after a physical termination, maintenance and repair of PECO EDC-owned meters, reading of non-advanced PECO EDC-owned meters, administration of universal service programs (CAP, LIURP, CARES and Hardship), call center activities related to meter reading, billing and distribution system outages and emergencies, and discontinuance of service.

Q9. The CDS bidder warrants that all information provided to the Commission for the purpose of qualification is true, timely and accurate.

Q10. PECO EDC will make available general information related to its affected customer classes including the expected number of PLR customers by rate class and rate strata and the number of PLR customers who have previously selected an EGS. All bidders receiving the data shall provide affidavits that any customer information provided by PECO EDC for the purposes of preparing its CDS bid shall be used for that purpose only. PECO EDC will hold a technical conference on April 12, 2000 and thereafter, on April 1 of the year prior to the first year of a new CDS term, to answer questions related to CDS.

Selection of CDS Provider

S1. On or before May 12, 2000, and thereafter, on May 1 of the year prior to the first year of a new CDS term, bidders will submit bids to the PA PUC for energy and capacity and associated transmission service sufficient to serve twenty percent of

PECO's residential, residential heating and residential off peak customers. A copy of the bid package must be served on the Office of Consumer Advocate.

S2. The term of the bid must cover a three year period starting with January 1, 2001 12:00:01 am, and thereafter, on January 1 of the first year of a new CDS term. CDS for an individual customer will begin with the customers first meter read date after January 1, 2001 12:00:01 am and continue through the customer's first meter read date after December 31 of the last year of the term of years over which CDS service is bid.

S3. The CDS bidder must submit energy and capacity market pricing bids utilizing the exact block rate structure and rate design including any proportionality between rates and rate schedules for each affected customer class; that is, Rates R, RH, OP, and RT. Any bid deviating from this structure will be rejected. The CDS bidder will set forth a comparison of its rates that conforms to the "residential bill comparisons" data requirement. Comparisons should be tabular and show the difference, on both a dollar and percentage basis, between the CDS' bid price and PECO's comparable rates for each rate category. In any event prices may not exceed PECO Energy's Commission-approved PLR rates.

S4. CDS prices must be of a fixed rate for the term.

S5. PECO's EDC or divisions or PECO's divisional or affiliated EGSs may not bid (either directly or as a partner or participant in any business combination with a bidder) on CDS service.

S6. Any EGS or consortium of EGSs that (1) are not affiliated with PECO EDC, (2) are licensed by the Commission, (3) meet applicable terms, conditions and standards for CDS and (4) have met the qualifications to be a bidder, may bid to provide CDS.

S7. Not later than July 1, 2000, and thereafter, on July 1 of the year prior to the first year of a new CDS term, the Commission will determine the winning bid and award the right to serve as CDS provider. The bid will be awarded to the qualifying bidder offering the lowest price.

TERMS AND CONDITIONS OF SERVICE

T1. A customer assigned to CDS retains the right to elect a competitive EGS or return to PECO default provider of last resort at any time at no charge pursuant to Commission approved procedures.

T2. On or before October 15, 2000, and thereafter, by October 15 of the year prior to the first year of a new CDS term; the CDS provider will be responsible for notification of customers of their selection in the random lottery, the terms and conditions of CDS including the opportunity to return to PECO default provider of last

resort and a check off box to indicate such selection response to be returned to the CDS provider no later than November 15, 2000, and thereafter, no later than November 15 of the year prior to the first year of a new CDS term.

T3. The CDS provider is responsible for all administrative costs of switching the customer to CDS including notification. PECO shall establish, in conjunction with the EDEWG, a standard transaction to support CDS transactions no later than July 1, 2000, and thereafter, no later than July 1 of the year prior to the first year of a new CDS term. The rules and protocols imposed by PECO upon the CDS provider with respect to customers being added to the CDS, switching to the CDS or returning to the CDS shall be identical to the rules and protocols used by PECO with respect to its PLR customers, including not requiring any further notice beyond that which is required by section T2 above, and not requiring a ten-day waiting period.

T4. If a customer returns to the CDS provider for any reason, the customer will receive service from the CDS provider on the same terms and conditions and at the same rate available to other CDS customers.

T5. The CDS provider has an obligation to abide by all applicable regulations including but not limited to: Chapter 54 Electric Generation Customer Choice, Chapter 55 Noncarrier Rates and Practices, Chapter 56 Standards and Billing Practices for Residential Utility Service, and Chapter 57 Electric Service.

T6. The CDS provider shall be required to accept all customers assigned to CDS service.

T7. PECO EDC will make the initial random selection of customers to be assigned to CDS subject to the Commission's review and oversight.

T8. If, on September 1 of each year, the number of residential customers served by the CDS provider has fallen below 17%, a further random selection of customers shall be assigned to CDS service to restore the number of customers for the 20% level.

T9. The further random selection shall be chosen from the customers (not already assigned to CDS service) served by EGSs other than PECO.

T10. Unless otherwise delineated in this document, the CDS provider of last resort will assume all responsibilities and obligations associated with provider of last resort service that are specified by the Commission.

T11. The CDS provider will be subject to all competitive safeguards and code of conduct regulations established by the Commission. Solely for the purpose of applying any code of conduct or related Commission regulations, a CDS will be considered an EDC. No EGS affiliated with the CDS shall condition the sale of electricity upon the customer's agreement to return to PECO as the provider of last resort-default supplier.

T12. As a condition of CDS, the CDS provider will post a security bond of \$2,500,000. The proceeds of the bond will be used to facilitate the reversion of CDS customers to PECO PLR service resulting from a default by the CDS provider. This bond will be in addition to any licensing bond the EGS acting as CDS would have. In the event of a CDS provider default, all CDS customers will receive PLR service from PECO EDC for a period of not less than twelve months from the date of default.

T13. The CDS provider shall be subject to the terms and conditions of the PECO Supplier Tariff and Metering and Billing Specifications approved by the Commission in terms of its interactions with the PECO EDC.

T14. PECO EDC shall establish data protocols and information exchanges which allow the CDS to estimate its load obligations based upon the CDS customer list.

WDC99 312048-1.058385.0011



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

JULY 31, 2000

IN REPLY PLEASE
REFER TO OUR FILE

GREGORY K LAWRENCE ESQUIRE
MCDERMOTT WILL & EMERY
600 13TH STREET NW
WASHINGTON DC 20005-3096

Re: PECO CDS Program Bidding

Dear Mr. Lawrence:

We have reviewed your proposal to provide competitive default service (CDS) for a portion of the electric residential customers in PECO Energy Company's service territory.


The proposal you have submitted, however, does not conform to the bid qualifications contained in the request for proposal. The purpose of this letter is to inform you that your bid is non-conforming. In order for the Commission to award the bid to your company, the non-conforming portions of your bid must be removed.

Please notify Mr. John Miller of the Commission's Bureau of CEEP at 717-783-1546 within 72 hours whether you would be willing to revise your proposal to meet the bid qualifications of the request for proposal. If Mr. Miller cannot be reached, please contact Assistant Counsel Patricia Krise Burket at 717-787-3464.

If you cannot agree to modify your proposal, you will have the opportunity to participate in direct negotiations with PECO Energy Company to enter into a bilateral CDS agreement, pursuant to the terms of PECO Energy Company's merger settlement approved by the Commission on June 22, 2000. PECO Energy Company's Joint Petition for Settlement of its Application for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Docket A-110550F0147. A copy of the portion of the Joint Petition for Settlement relating to PECO's CDS Program is attached for your review. If you have questions concerning the CDS settlement provision please contact Ms. Delia Stroud at PECO Energy Company. Her number is 215-841-4257.

You will be notified by PECO Energy Company when the negotiations will begin. You should be notified on, or before (two weeks from the date of the Commission's letter.)

Very truly yours,


James J. McNulty
Secretary

Attachment

cc: Barbara Bruin, Executive Director
Veronica A. Smith, Deputy Executive Director
Kevin Cadden, Manager of Communications
Patricia Krise Burket, Assistant Counsel
John C. Miller, Jr., CEEP
Wayne Williams, FUS
Al Miller, PECO Energy Company
Judith W. Burow, Director of Regulatory Affairs and Market Analysis

Settlement shall remain in effect.

c. In the event that PECO is unable to reach agreement with any supplier on a CDS bilateral agreement by October 1, 2000, or in the event the Commission, by November 1, 2000, modifies, rejects or fails to approve any filed bilateral CDS agreement, and if, on January 1, 2001, less than 35% of all PECO's residential and commercial customers, by class, are obtaining generation service from an alternate EGS or PECO supplier affiliate or division, then PECO shall, as provided in the Company's 1998 Electric Restructuring Settlement, randomly assign, by class, to all licensed suppliers serving residential and/or commercial customers on its system, except PECO's divisional or affiliated EGSs, the percentage of such customers required to fulfill the January 1, 2001 thirty five (35%) market share threshold. Nothing contained herein shall absolve, limit or qualify PECO's obligation to randomly assign, by class, customers sufficient to achieve the 35% target, as set forth in Paragraph M. 39.a. of the 1998 Electric Restructuring Settlement. PECO shall assign said percentage of such customers among eligible suppliers in accordance with Commission-approved procedures. Any such assignment resulting from this process shall not require the assigned customers to pay generation rates in excess of the otherwise applicable shopping credits.

d. If, for reasons beyond PECO's reasonable control, the schedules outlined in Sections 53. a. and/or b., above, are not met, such that PECO is unable to select a CDS provider thereunder by January 1, 2001, then, for purposes of the assignment required by Section 53.c., above, the twenty percent (20%) of customers otherwise covered under Sections 53. a. and b. will nonetheless be included in calculating the required thirty-five percent (35%) market share threshold. Notwithstanding the above, in the event that, by September 1, 2000, a CDS provider

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Attachment

Shell Energy-CDS Bid "Non Starter" List

T-1; T4 – Customer's inability to switch because of arrearage to CDS provider (Shell must revise bid to clarify they will **not** provide billing/credit/collections services and remove inconsistent language that suggests otherwise).

T-11- Proposed "Code of Conduct" inadequate. Shell must comply with newly enacted statewide code (i.e. CDS provider may not share with affiliated EGS distribution system or custom information; must function independently from affiliate)

Appendix A – E (1-4) are unacceptable

No. 1 – constitutes a broad reopener

No. 2 – any indemnification from PECO must be subject to the limitations contained in Rules 12.1 and 12.2 of its Electric Service Tariff; Shell must in turn indemnify PECO for claims arising from Shell's acts or omissions

No. 3 – assignment to PECO PLR unacceptable; no assignment to other EGS without PECO's consent

No. 4 – Too broad; needs revision

Additional areas of concern:

Q2(c) – To enable PUC to adequately assess reasonableness of Shell's supply plan risk, Shell needs to specify relative percentages of supply to be arranged in advance versus that to be obtained on spot market

Q2(d)-- Need to detail plans for obtaining required renewable supply

Q(4)(g) – Need to provide balance sheets; delineation of financial relationship to parent

Q7(a)—Need to clarify that use of agent does not absolve Shell from Chap. 56 compliance

S3 – Need to provide required table showing rate comparisons

T1; T6; App. A; (A) Service – Need to clarify what are "rights," "credits", benefits" referred to under Paragraph 38 of the Restructuring Settlement

T7 – Assignment is not 20% of each "strata"

App. B(2) – As to any monthly pricing provision, Shell must agree to comply with the PUC's approved methodology for PECO. Need to clarify they intend to track shopping credit

App. B(3) – Need to delete second and third sentences and "etc."

App. A(c) – PECO only can provide forward load forecast derived by running normal temperatures through load curves



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 22, 2000

A-110550 F0147

Judith W. Burow
Director, Regulatory Affairs and Market Analysis
Shell Energy Services Company, L.L.C.
1221 Lamar, Suite 1000
Houston TX 77010

~~Re: RFP for PECO CDS Lite Service~~

Dear Ms. Burow,

Thank you very much for Shell's re-bid of the PECO Energy CDS Lite Program. Although much improvement was made over Shell's first, non-conforming bid, we are not satisfied that the second bid conforms with the Request for Proposal (RFP) to provide CDS.

Generally, Shell has not provided an adequate plan to procure generation and capacity to serve the CDS customers with sufficient levels of reliability. Shell is refusing to abide by the Commission's recently adopted "Code of Conduct." Shell's "force majeure" clause would provide for a regulatory out in the event that PJM Operating Rules would change in any way. Shell's most recent bid does not provide for changes to CDS as found in the PECO/Unicom Settlement. Finally, among other issues, Shell has refused to provide creditworthiness documents--balance sheet and income statement-- for its CDS subsidiary.

For these reasons, we are rejecting Shell's second bid as being non-conforming with PECO's RFP.

Pursuant to the Unicom/PECO merger settlement, para. 52 b¹, because no winning bidder was selected through the RFP process, PECO now is to engage in good faith negotiations with qualified suppliers to enter into a bilateral CDS agreement or agreements with one of more suppliers for the provision of electric generation and capacity to the twenty percent of PECO's residential customers included in the CDS auction. Under the settlement, PECO's divisional and affiliated EGSs may not participate in this process.

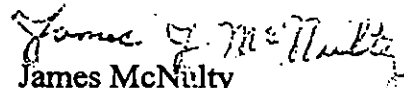
¹ The Joint Petition for Settlement that was adopted by Commission order entered June 22, 2000 in Application for PECO Energy Company, Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, Dkt. A-110550F0147.

Judith Burow
Page 2

August 22, 2000

If Shell Energy is interested in participating in bilateral negotiations to provide CDS, contact Al Miller at PECO at (215) 841-5760 for further information.

Sincerely,


James McNulty
Secretary

cc. Ms. V. A. Smith, Esq.
Ms. T. J. McCloskey, Esq.
Mr. G. Lawrence, Esq.
Mr. J. Miller, P.E.
Ms. P. K. Burket, Esq.
Mr. A. Miller, PECO Energy Company

Shell Energy Services Company, L.L.C.

An affiliate of Shell Oil Company



August 25, 2000

Via Express Mail

Secretary James McNulty
Pennsylvania Public Utility Commission
North Office Building
Commonwealth Avenue & North Street
Harrisburg, PA 17105-3265

Re: Shell Energy Competitive Default Service Provider Bid

Dear Mr. McNulty:

Today, I received a letter from you indicating that Shell Energy's second CDS bid was rejected as being "non-conforming with PECO's RFP." We contest the grounds for rejecting our bid cited in that letter. Indeed, as discussed below, Shell Energy has already addressed each of these issues and believes that it has successfully met the CDS RFP requirements.

Shell Energy remains very concerned that the CDS RFP bid process is vague and entirely subjective. The process also may be unduly influenced by the opinions of our direct competitor, PECO Energy. It appears that the CDS RFP process was intended from the outset to fail. Indeed, it is highly suspect that the only conforming CDS bidder -- Shell Energy -- would be turned away despite the fact that it matched PECO Energy's rates and rate structure, satisfied the underlying purpose and intent of the CDS process, and diligently answered all questions regarding its bid. Furthermore, it is unclear whether the Commissioners were afforded sufficient opportunity to consider Shell Energy's CDS bid, whether the bid was given sufficient consideration, and whether Shell Energy was afforded all process that is due. The treatment of our CDS bid also forces us to rethink our entry into the Pennsylvania markets.

Because of this uncertainty regarding the processing of the CDS bid, Shell Energy requests the Commission's guidance regarding the appropriate method to seek review of the decision to reject our CDS bid. In the alternative, however, Shell Energy respectfully requests formal reconsideration and/or rehearing of this decision and a short stay of any planned or on-going bilateral negotiations involving PECO Energy until this request is addressed by the Commission.

Shell Energy Addressed Questions Regarding the CDS Bid

On August 18, 2000, we discussed with Commission staff and the Office of Consumer Advocate ("OCA") various questions and clarifications set out in the attached definitive list developed by PECO Energy, regarding Shell Energy's "second" CDS bid.¹ As Mr. John Miller instructed, we also clarified our CDS bid with OCA on August 22, 2000. Because this is a unique process and the PECO CDS RFP is not clear in all respects, we appreciated the opportunity to address these questions and misunderstandings regarding the bid. Shell Energy essentially agreed with and answered each of the comments listed in PECO Energy's attachment. Herein, I will summarize the results of those discussions.

First, we address the "non-starter" list. Regarding T-1 and T-4, we agreed that customers in arrears can switch providers because Shell Energy will not provide billing/credit/collection services and, thus, we will remove any inconsistent language. Critically, regarding T-11, Shell Energy clarified with OCA that it *will comply with the newly enacted statewide Code of Conduct* in its role as CDS provider. Regarding Appendix A, Section E (1 and 4), *Shell Energy also clarified that it will not increase CDS rates above the then-applicable PECO Energy shopping credit for the CDS term or exercise the same rights as PECO Energy under Section 38(e) of the 1998 Settlement and its current tariff, without seeking Commission approval.* Shell Energy does not anticipate that this circumstance will arise. Finally, as we discussed on August 18, Shell Energy agreed with PECO Energy's comments regarding indemnification (Appendix A, E.2) and assignment (Appendix A, E.3). Thus, there is no reason to reject the CDS bid on these grounds.

Second, we address the "areas of concern" list. Regarding Q-2(c) and (d), Shell Energy provided by letter dated August 18, 2000, detailed and confidential material regarding Shell Energy's CDS load analysis, pricing projections, and supply plan. We provided this information despite the fact that the RFP did not specifically require such detailed and confidential information. Furthermore, it appears that Commission Staff's view is that only entities that own generation or have long-term generation commitments can serve reliably the CDS load. This limits potential bidders primarily to utilities (or their affiliates) and is in complete contradiction to the purpose of the CDS bid. Without revealing the confidential material provided on August 18, a supplier that utilizes a

¹ We remain very concerned regarding PECO Energy's substantial role in critiquing Shell Energy's CDS bid as a competitor. However, in the interest of fulfilling the promise of the PECO Energy 1998 Restructuring Settlement as modified by the PECO/Unicom Settlement, we honored requests made in those discussions.

variety of supply strategies, including longer-term commitments supplemented by spot-market purchasing, can serve CDS customers reliably and economically. It also bears repeating that it is ultimately PJM Interconnection's responsibility to maintain the reliability of service to retail consumers. Shell Energy would not have worked so diligently to make a first and second CDS bid if it could not provide reliable and economically viable service. It appears that Shell Energy's August 18 submission and the reality of its reliable supply plan was misunderstood or ignored in the decision to reject the CDS bid.

Shell Energy also provided a copy of our "Revolving Credit and Cash Management Agreement" (Q-4(g)). It is utterly unreasonable to reject our CDS bid because Shell Energy -- an EGS *licensed by the Commission* with a substantial level of revolving credit *from one of the largest companies in the world* -- could not provide competitively sensitive balance sheets. Again, it appears that under these circumstances, the CDS bid RFP process was intended to fail from its inception.

Regarding the other listed "areas of concern," we agreed that the use of an agent does not absolve Shell Energy from the requirements of Chapter 56 (Q-7(a)); (2). Shell Energy also agreed to provide a rate comparison table; however, for the purposes of this letter, Shell Energy emphasizes that our CDS rates will match PECO Energy's rates and rate structure (S-3 and Appendix B(3)). As we discussed with Commission staff and the OCA, Shell Energy will abide by the PECO Energy Restructuring Settlements, as approved by the Commission, with regard to any credits, benefits or rights available under these settlements (T-1, T-6, Appendices A (A) and (B)(2)). Finally, during our discussions, Shell Energy and PECO Energy reached resolution regarding the technical aspects of assignment by strata and forward load forecasting (Appendices B(2), A(c)).

Conclusion

With the above comments, we believe that Shell Energy has "won" the CDS RFP and the right to serve CDS customers. For the reasons herein, Shell Energy respectfully requests Commission guidance and reconsideration/rehearing of the decision to reject the CDS bid.

As stated in our August 18 letter conveying the load and supply analysis, we sincerely hope that the Commission will reconsider the announcement rejecting the bid and, in turn, allow our CDS proposal to succeed. We believe awarding the CDS bid to Shell Energy at this time is in the best interest of Pennsylvania consumers by providing stable

prices while contributing to the further development of a competitive market. Shell Energy fully supports this CDS effort and the important part CDS plays in the Commonwealth's successful implementation of retail electric competition.

Sincerely,

Judith W. Burow
Director, Regulatory Affairs and Market Analysis

Attachment

Cc: Chairman John M. Quain
Vice Chairman Robert K. Bloom
Commissioner Nora Mead Brownell
Commissioner Aaron Wilson Jr.
Commissioner Terrance J. Fitzpatrick
Ms. V. Smith
Ms. T. McCloskey, Esq.
Mr. J. Miller
Mr. G. Lawrence, Esq.



PECO ENERGY

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Philadelphia, PA 19101-8699
215 841 5544
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Kristopher Keys
Henri P. Marcial
Kent D. Murphy
Jeffrey J. Norton
Mark B. Peabody
Roslyn G. Pollack
H. Alfred Ryan
Richard S. Schlegel
Jenny P. Shulbank
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Delia W. Stroud
Saundra M. Yaklin
Ronald L. Zack
Assistant General Counsel

ORIGINAL

Direct Dial: 215 841 4257
dstroud@peco-energy.com

September 18, 2000

James McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room 206
Harrisburg, PA 17105-3265

RE: PECO Energy Company's Competitive Default Service Program Bidding
Docket No. A-110550.F0147

Dear Mr. McNulty:

Enclosed for filing with the Pennsylvania Public Utility Commission is an original and three (3) copies of PECO Energy Company's Answer to Shell Energy's Petition for Reconsideration in reference to PECO Energy Company's Competitive Default Service Program Bidding.

Please date stamp and return the extra copy of this letter in the envelope provided as proof of filing.

Very truly yours,

Delia W. Stroud
Delia W. Stroud
Assistant General Counsel
DWS/jap

DOCUMENT
FOLDER

cc: Certificate of Service

RECEIVED

SEP 18 2000

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: PECO Energy Company's Competitive
Default Service Program Bidding

Docket No. A-110550.F0147

ANSWER TO PETITION FOR RECONSIDERATION

On September 6, 2000, Shell Energy Services Co., L.L.C. ("Shell Energy") filed a Petition for Reconsideration ("Shell Petition") in the above-captioned proceeding seeking reconsideration of the Commission's August 22, 2000 Secretarial Letter which had rejected as non-conforming Shell Energy's August 11, 2000 Competitive Default Service Bid ("CDS Bid"). In the interim, Shell Energy further requested the Commission to stay the CDS bilateral negotiation process currently underway.

In answer to the Shell Petition, PECO Energy Company ("PECO Energy") or ("the Company") responds as follows:

Shell Energy's CDS Bid, even as further revised pursuant to discussions with PECO Energy, the Office of Consumer Advocate, and Commission Staff, did not conform in all material respects with the April 6, 2000 Request for Proposal. In particular, Paragraph 18 of Shell Energy's Petition did not address the concerns regarding Shell Energy's proposal in Appendix A, Section E(1) entitled "Effect of Changes in Laws Governmental Authorities." That provision constituted, in effect, a broad reopener, as it would allow Shell Energy to revise the terms and conditions of its CDS service in the event of any change in applicable PJM business rules or in PECO Energy's tariff, that made provision of CDS less profitable for Shell. Shell Energy's proposed provision stated in pertinent part: "In the event of any changes in regulations, policies or legislation by local, state or federal governmental authorities, including a) any changes in applicable tariffs, rules, or protocols adopted by ISOs, RTOs, or PECO; . . . ; or c) any other action that would adversely impact the economics of the CDS proposal or the ability to provide benefits to CDS customer's, Shell Energy reserves the right to revise the terms and conditions of its CDS service." Shell Energy's clarification "that it will not increase CDS rates above the then applicable PECO Energy shopping credit for the CDS term or exercise the same rights as PECO under Section 38(e) of the 1998

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Settlement and its current tariff without seeking Commission approval," does not address the Commission's concern stated in the Secretarial Letter that Appendix A E(1) provides Shell Energy a regulatory out in the event PJM Operating Rules change in any way.

Furthermore, contrary to Shell Energy's mischaracterization, the "non-starter" list addressing areas of concern in Shell Energy's bid was not a "PECO" list, but a document which represented fully the views of Commission Staff and the OCA, and which was provided to Shell Energy to help them respond to those areas of concern.

Most importantly, PECO Energy received three generally conforming bids as a result of the bilateral CDS negotiation process. The Company has already initiated the next phase of the bilateral process by scheduling conference calls and face-to-face meetings with each of the three bidders. Based on these calls and meetings and a further evaluation of each bilateral CDS bid PECO Energy will then select one winning bidder with whom the Company will negotiate a definitive CDS Bilateral Agreement. Any negotiated bilateral agreement will be submitted on or before October 9, 2000 to the Commission for its review and approval. This process should be allowed to continue.

For the reasons stated above, PECO Energy respectfully requests that the Commission deny both Shell Energy's Petition for Reconsideration and its request for stay of the CDS bilateral negotiation process.

Respectfully submitted,

By: Delia W. Stroud
Delia W. Stroud, Assistant General Counsel
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-4257
(215) 568-3389 (fax)
dstroud@peco-energy.com

Dated: September 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document on the persons, listed below, via overnight mail in accordance with the requirements of 52 P.A. Code § 1.54.

Bernard A. Ryan, Jr., Esquire
Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 N. Second Street
Harrisburg, PA 17013

Tanya McCloskey, Esquire
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 1710-1923

Charles Hoffman, Esquire
Kandace F. Melillo, Esquire
PA Public Utility Commission
Office of Trial Staff
Pitnick Building
901 North 7th Street Rear
P.O. Box 3265
Harrisburg, PA 17105-3265

Jason Levy, Esquire
McDermott, Will & Emery
28 State Street
Boston, MA 02109-3800
Counsel for Shell Energy



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(215) 841-4257
(215) 568-3389 (fax)
dstroud@peco-energy.com

Date: September 18, 2000

DATE: September 19, 2000

SUBJECT: A-110550F0147

DOCKETED
SEP 19 2000

TO: Law Bureau

FROM: James J. McNulty, Secretary

LAF

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Application of PECO Energy Co., Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company; and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation.

Attached is a copy of a Petition for Reconsideration of the Secretarial Letter Issued on August 22, 2000, filed by Shell Energy Services Co., L.L.C., in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS

laf

A Partnership Including
Professional Corporations
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
www.mwe.com

Boston
Chicago
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Miami
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Gregory K. Lawrence
Attorney at Law
glawrence@mwe.com
202-756-8330

MCDERMOTT, WILL & EMERY

DOCUMENT
FOLDER

September 22, 2000

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SEP 22 2000

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

By Express Mail and Facsimile

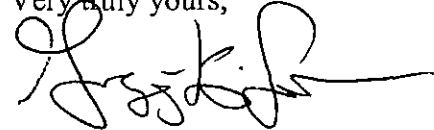
James S. McNulty, Secretary
Office of the Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
North Office Building
North Street and Commonwealth Avenue
Harrisburg, PA 17105-3265

RE: *PECO Energy Company CDS Program Bidding*, Docket No. A-110550 F0147

Enclosed for filing please find an original and 14 copies of Shell Energy's Response to PECO Energy's Answer in the above-referenced case.

If you have any questions regarding this filing, please contact me.

Very truly yours,



Gregory K. Lawrence

Attorney for
Shell Energy Services Co., L.L.C.

cc: Service List
Enclosure .

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Before the
Pennsylvania Public Utility Commission

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In Re: PECO Energy Company Competitive : Docket No. A-110550 F0147
Default Service Program Bidding :

SEP 22 2000

RESPONSE OF SHELL ENERGY SERVICES CO.,

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

On September 6, 2000, Shell Energy Services Co., L.L.C. ("Shell Energy") filed a

Petition for Reconsideration ("Petition") in the above-captioned proceeding seeking reconsideration of the Commission's August 22, 2000 Competitive Default Service Bid ("CDS bid"), including a finding that Shell Energy's bid conformed in all material respects with the RFP, and that Shell Energy is entitled to be awarded the CDS contract. On

September 18, 2000, PECO Energy Company ("PECO") filed an Answer to the Petition.

In order to clarify the record and facilitate the Commission's review in this matter, Shell Energy files this brief response to PECO's Answer.

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In that Answer, PECO raises only a single issue that, in its view, could prevent the Commission from granting Shell Energy the CDS contract. Specifically, PECO takes issues with Paragraph 18 of the Petition (referencing Appendix A, Section E(1), "Effect of Changes in Laws Governmental Authorities"). Answer at 2.

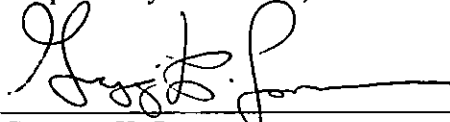
In response to PECO's Answer, Shell Energy withdraws Section E(1) of Appendix A and Paragraph 18 of the Petition.

Critically, this action directly and completely addresses PECO's only reason expressed in its Answer for the Commission to deny the Petition regarding reconsideration of the CDS bid rejection. With this in mind, the Commission should give substantial and dispositive weight to the fact that, with this Response, Shell Energy has addressed

completely the totality of PECO's concerns and, therefore, it is fair to say that PECO does not oppose Shell Energy's CDS bid. Therefore, the Commission has before it, unopposed by PECO, our August 12 CDS bid as clarified by the Petition and this Response.

WHEREFORE, Shell Energy respectfully requests the Commission to reconsider the August 22 Secretarial Letter rejecting Shell Energy's August 12 CDS bid and find that Shell Energy submitted a qualified bid and thus should be awarded the right to provide CDS according to the terms of the RFP.

Respectfully Submitted,



Gregory K. Lawrence
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000

Counsel for
Shell Energy Services Co., L.L.C.

Dated: September 22, 2000

**Before the
Pennsylvania Public Utility Commission**

Certificate of Service


I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, via overnight mail in accordance with the requirements of 52 P. A. Code § 1.54.

Office of Trial Staff
Pennsylvania Public Utilities Commission
Putnick Building, Third Floor
901 North Seven Street- Rear
Harrisburg, PA 17102

Office of Small Business Advocate
Commerce Building, Suite 1102
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Harrisburg, PA 17101

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Harrisburg, PA 17101-1923

Delia Stroud, Esq.
Al Miller, Director of Rates and Regulatory Affairs
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101



Gregory K. Lawrence
600 13th Street, N.W.
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(202) 756-8000

Counsel for
Shell Energy Services Co., L.L.C.

Dated: September 22, 2000

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3300, HARRISBURG, PA 17105-3260

IN REPLY PLEASE
REFER TO OUR FILE

September 29, 2000

Thomas P. Hill, Jr., Vice President
Regulatory and External Affairs
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

DOCKETED
OCT 04 2000

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00 OCT -2 AM 11:04
PA.P.U.C.
SECRETARY'S BUREAU

Re: Nuclear Decommissioning Trust Funds and Expense Obligations

Dear Mr. Hill:

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By letter dated July 19, 2000 directed to Secretary McNulty, PECO Energy Company seeks confirmation of its obligations relating to the transfer of nuclear decommissioning trust funds and nuclear decommissioning expense obligations to the to-be formed generation company (GENCo). Your letter has been referred to the Law Bureau for response.

As you note, the Commission's June 22, 2000 Order approved the Joint Petition for Settlement of PECO's corporate restructuring and merger with Unicom, at Docket No. A-110550F0147. Consistent with the Commission's May 14, 1998 Order approving the Company's Restructuring Settlement, at Docket No. R-00973953, the June 22, 2000 Order provided for the transfer of all of PECO's nuclear assets and liabilities to the GENCo, including all assets and liabilities associated with the nuclear decommissioning obligations relating to PECO's nuclear generation.

The Joint Petition for Settlement on the merger application includes specific provisions addressing the recovery of nuclear decommissioning expenses through regulated rates. It also sets forth a sharing mechanism between customers and shareholders if the actual expenditures prove to be less than the balance in the existing funds.

As I understand, PECO now seeks confirmation that the funds collected in regulated rates for nuclear decommissioning should be transferred to the GENCo for the sole purpose of being deposited in the appropriate funds in the same manner in which PECO is currently required to make such deposits. The reason for PECO's request is to assure that the nuclear decommissioning trust funds continue to receive advantageous tax treatment. You explain that absent a continuation of this favorable tax treatment, the amount of funding required for the decommissioning of the nuclear generation stations subject to PECO's recovery mechanism would likely increase substantially.

Mr. Thomas P. Hill, Jr.
Page Two
September 29, 2000

The Commission's approval for the transfer of all nuclear assets and liabilities, including those associated with PECO's nuclear decommissioning obligations, encompasses the requirement that the nuclear decommissioning funds collected in PECO's regulated rates be transferred to the GENCo. That transfer should be for the sole purpose of depositing those monies in the appropriate trust funds to ensure their availability to fulfill nuclear decommissioning obligations associated with the nuclear generation assets transferred to the GENCo. The transfer of these funds to the GENCo is consistent with the Commission's Orders and leaves all provisions of the underlying settlement agreements intact and unchanged.

I trust this satisfies your request. If you have any questions, please contact Karen Oill Moury at 717-772-8883.

Very truly yours,



Bohdan R. Pankiw
Chief Counsel

cc: Secretary McNulty
Chairman Quain
Vice Chairman Bloom
Commissioner Brownell
Commissioner Wilson
Commissioner Fitzpatrick
Bureau Director Rosenthal
Deputy Chief Counsel Moury

PECO ENERGY

PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-8699
215 841 5544
Fax 215 568 3389

James W. Durham
Senior Vice President
and General Counsel

Edward J. Cullen, Jr.
Deputy General Counsel

Sandra H. Byrne
Legal Administrator

Paul R. Bonney
Jessica N. Cone
Todd D. Cutler
Susan Sciamanna Foehl
Amy E. Frank
Viina Waldron Gaston
Gregory Golazeski
John C. Halderman
Conrad O. Kattner
Kristopher Keys
Henri P. Marcial
Kent D. Murphy
Jeffrey J. Norton
Mark B. Peabody
Roslyn G. Pollack
H. Alfred Ryan
Richard S. Schlegel
Jenny P. Shulbank
Ward L. Smith
Lynn R. Steen
Delia W. Stroud
Saundra M. Yaklin
Ronald L. Zack
Assistant General Counsel

ORIGINAL

Direct Dial: 215 841 4257

October 18, 2000

By Overnight Delivery

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Commonwealth Avenue and North Street
Harrisburg, PA 17105-3265

DOCUMENT FOLDER

RE: PECO Energy Company Competitive Default Service Program Bidding
PUC Docket No. A-110550 F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of a Joint Petition for Approval of Competitive Default Service Coordination Agreement which is being filed in accordance with Paragraph 52b of PECO Energy Company's Joint Petition for Settlement of its Application for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation ("Merger Settlement"). In the Petition, the Joint Petitioners request expedited Commission approval by November 1, 2000.

As proof of filing, please date stamp and return the extra copy of this cover letter in the enclosed return envelope.

Sincerely,

Delia W. Stroud
Delia W. Stroud

DWS/rhs

enclosures

cc: Certificate of Service

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00 OCT 19 AM 10:26
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**Before the
Pennsylvania Public Utility Commission**

In Re: PECO Energy Company Competitive
Default Service Program Bidding

Docket No. A-110550-F0147

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**JOINT PETITION FOR APPROVAL OF COMPETITIVE
DEFAULT SERVICE COORDINATION AGREEMENT**

In accordance with Paragraph 52b of PECO Energy Company's ("PECO" or the "Company") Joint Petition for Settlement of its Application for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation ("Merger Settlement"), PECO and The NewPower Company, Inc. ("New Power") (together referred to as the Joint Petitioners) submit for Commission approval their Competitive Default Service Coordination Agreement ("CDS Agreement"). Pursuant to the CDS Agreement, NewPower will provide CDS to a portion of the Company's residential electric customers. The Joint Petitioners respectfully request that by November 1, 2000 the Commission approve the instant Petition for the reasons set forth herein.

**DOCUMENT
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In support of their Petition, the Joint Petitioners submit the following:

1. Paragraph 38 of the Company's Joint Petition for Full Settlement of PECO Energy's Restructuring Plan ("Restructuring Settlement"), which settlement the Commission approved May 14, 1998, required that twenty percent (20%) of all PECO's residential customers, determined by random selection, be assigned to a provider of last resort default supplier other than PECO ("CDS Provider"). The CDS Provider was to be selected by the Commission on the basis of a Commission-approved energy and

capacity market price bidding process. As established by that paragraph, CDS included all customer care functions.

2. On June 22, 2000 the Commission approved PECO's Merger Settlement. Paragraph 52 of that settlement revised the CDS bidding process by requiring that the Company issue a Request For Proposal ("RFP") for electric generation and capacity only, excluding customer care functions. Under Paragraph 52a the Commission was to select a winning bidder by July 1, 2000. The Commission's April 29, 1999 Order establishing the rules for PECO's CDS provided that CDS would be awarded to the qualified bidder with the lowest price.

3. Under Paragraph 52b of the Merger Settlement, in the event no winning bidder was selected under the RFP process described above, the Company agreed to engage in good faith negotiations with a qualified supplier to enter into a bilateral CDS agreement for provision of electric generation supply and capacity to the percentage of PECO's residential customers included in the CDS bid process.

4. The Merger Settlement further required that the CDS Agreement: (1) include a schedule for implementation; (2) not require CDS Customers to pay generation rates in excess of the otherwise applicable shopping credits; and (3) not impose additional costs to PECO as compared to costs PECO would have incurred if the CDS load had been awarded in accordance with the terms of the Restructuring Settlement.

5. On April 6, 2000, the Company issued an RFP for electric generation supply and capacity only, a copy of which RFP is attached hereto as Appendix A.

6. On August 22, 2000 the Commission issued a Secretarial letter stating that the bid it received in response to the April 6, 2000 RFP was non-conforming and directing PECO to proceed with the bilateral CDS negotiations.

7. On August 24, 2000, the Company issued an RFP containing the Company's rules for bilateral CDS agreements, a copy of which is attached hereto as Appendix B. That RFP established the deadline of September 8, 2000 for submission of CDS bids.

8. By that deadline, three bidders submitted generally conforming bids, each to supply the entire CDS load.

9. PECO then entered into separate discussions with each of those three bidders.

10. Based on those discussions, and an evaluation of each bidder's overall bid package, on October 3, 2000, PECO selected NewPower, the qualified bidder offering the lowest CDS price, as the winning bidder to serve the entire CDS load. The Company has negotiated with NewPower the CDS Agreement which is the subject of this Petition. That agreement is attached hereto as Appendix C.

II. CDS Agreement with NewPower

11. The Joint Petitioners' CDS Agreement complies with the requirements set forth in the Company's Restructuring Settlement as modified by its Merger Settlement. Under the CDS Agreement, NewPower will offer Rate R CDS Customers a 2.02% discount off of PECO's shopping credit, and will offer Rate RH customers a 1.02% discount off of the shopping credit.

12. The CDS Agreement has the following additional major components:

- NewPower will provide no less than two percent (2%) of its offered energy supply for CDS from renewable sources as required by Paragraph 38b of the Restructuring Settlement.

- NewPower will provide electric generation supply to CDS Customers at the prices described in Paragraph 11 above, from the period commencing on the first meter reading date occurring after January 1, 2001 through the last meter reading date occurring prior to February 1, 2004. ("CDS Term")

- The Company will assign to CDS 299,300 residential customers, representing approximately twenty two percent (22%) of its total number of residential customers. The customers assigned to CDS will be randomly selected from non-shopping residential customers, meaning those who have not chosen an alternate electric generation supplier ("EGS"). Customers so assigned to CDS shall have the right to opt out of participating in CDS and, at any time during the CDS Term, may also return to PECO or switch to another EGS without penalty or charge.

- PECO will provide consolidated billing for all CDS Customers.

- If on October 15, 2002 the number of CDS Customers served by NewPower as CDS Provider is less than twenty percent (20%) of all of PECO's residential customers as of that date, PECO will perform a further random selection of the number of non-shopping residential customers which, when added to the number of CDS Customers served by NewPower as of October 15, 2002, equals twenty percent (20%) of all PECO's residential customers.

13. In accordance with the Merger Settlement, the CDS Agreement establishes an implementation schedule designed to transfer all CDS Customers as of the respective customer's January 2001 meter reading date. The CDS implementation schedule as proposed is dependent upon expedited Commission approval by November 1, 2000. Such expedited approval complies with Paragraph 52(c) of the Merger Settlement and is required to enable the Joint Petitioners to complete random selection, and customer notification and education in time for initiation of CDS as of the respective customer's January 2001 meter reading date.

14. Paragraph 39 of the Restructuring Settlement provides that "[I]f, on January 1, 2001, less than 35% of all PECO's residential and commercial customers by class are obtaining generation service from an alternate EGS or PECO Supplier affiliate or division (including those customers assigned to . . . CDS pursuant to the competitive bid. . .) then the number of remaining customers, necessary to reach the 35% target. . . shall be assigned an EGS. . . ." Accordingly, in accordance with Paragraph 39A, the Joint Petitioners seek confirmation from the Commission that all 299,300 residential customers assigned to CDS under the CDS Agreement shall be included in calculating the required thirty five percent (35%) market share threshold.

15. Furthermore, the Joint Petitioners seek confirmation from the Commission that: (1) NewPower, by reason of the exercise of its rights and performance of its obligations as a CDS Provider shall not be considered a "public utility" within the meanings of 66 Pa. C.S.A. § 102, but rather shall be subject to those rules and regulations applicable to an EGS within the meanings of 66 Pa. C.S.A. § 2803, as modified by the CDS Agreement; and (2) that the proposed operational procedures

contained in Exhibit A to the CDS Agreement are consistent with those provisions of the competitive safeguards and/or code of conduct set forth in 52 Pa. Code § 54.122.

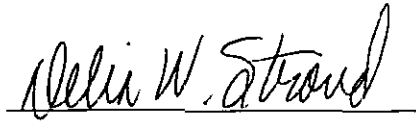
16. The CDS Agreement is contingent upon approval by the Commission without modification. If the Commission rejects the CDS Agreement, the Agreement automatically will terminate and be null and void. If the Commission, in approving the CDS Agreement, should modify any terms or conditions or add any conditions either Joint Petitioner may elect to withdraw from the Agreement by filing a notice thereof with the Commission and other Joint Petitioner by facsimile or overnight delivery served within five business days of entry of the Commission order. Upon the Commission's issuance of a final order approving the Petition and the CDS Agreement without modification, the CDS Agreement shall be implemented and enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission's approval of this Petition and the CDS Agreement unless such implementation and enforcement of the CDS Agreement is stayed or enjoined by the Commission, another regulatory agency, or a court having competent jurisdiction over the matter.

III. Conclusion

Wherefore, the Joint Petitioners, intending to be legally bound, respectfully request that the Commission:

- (1) approve by November 1, 2000 the Joint Petition without modification, including all terms and conditions contained herein, and
- (2) approve, without modification, the CDS Agreement attached hereto as Appendix C.

Respectfully submitted:



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PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

James L. Malone III, Esquire
The NewPower Company, Inc.
10 Glenville Street
Greenwich, CT 06831

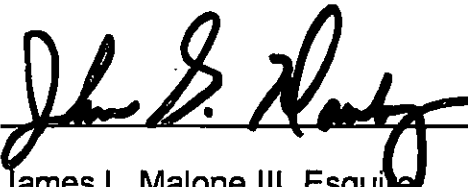
John G. Klauberg
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New York, NY 10019-5389
Attorney for NewPower

John Gallagher
200 N. 3rd Street
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Harrisburg, PA 17108-2105

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SECRETARY'S BUREAU

Respectfully submitted:

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 Attorney for New Power
 Company, Inc.

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APPENDIX A
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**Request For Proposal
PECO Energy Rules for Competitive Default Service
April 6, 2000**

The purpose of this Request for Proposal (RFP) is to provide rules for the qualification of Competitive Default Service ("CDS") bidders, the selection of the winning bidder, and the terms and conditions of the provision of CDS under Issue L, Paragraph 38 of PECO Energy Company's Joint Petition for Settlement of its Electric Restructuring Case, as modified by PECO Energy Company's Joint Petition for Settlement of its Application for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation (Docket A-110550F0147).

Qualification of CDS Bidders

Q1. All interested CDS bidders will prepare a qualification package and submit that package to the PAPUC no later than May 12, 2000, and thereafter, on May 1 of the year prior to the first year of a new CDS term. Notice of the Commission's request for the qualification packages of CDS bidders has been posted in the Wall Street Journal, on the Power Marketer Internet Website and in the Philadelphia Inquirer. Future notices will be posted on or about March 1 of the year prior to the first year of a new CDS term. Copies of the CDS qualification packages will also be submitted by bidders to the Office of Consumer Advocate.

Q2. The qualification package must, at a minimum, include:

- (a) License to operate as an electric generation supplier in the Commonwealth of Pennsylvania;
- (b) FERC certification as a power marketer in the United States of America;
- (c) A description of the CDS bidder's proposed plan to provide the generation necessary to provide CDS;
- (d) A description of the CDS bidder's renewable resources and plan for ensuring that the renewable conditions of the settlement found at Paragraph 38(b) are met;
- (e) Any other information that the CDS bidder believes is relevant to the Commission in its determination of suitability for providing CDS service.

Each CDS, as a qualification for bidding, is required to prove that: it meets or exceeds the Pennsylvania-New Jersey-Maryland ("PJM") Interconnection's

creditworthiness standards for the full amount of the estimated CDS load obligations; and, that it can secure the increased bonding amounts required for CDS.

Q3. To be eligible to bid, an electric generation supplier must meet all applicable obligations that PJM ascribes to a load serving entity and be a signatory of the PJM Reliability Assurance Agreement as amended and/or superseded.

Q4. The CDS bidder's qualification package must include:

(a) A description of any and all indictments or pending litigation by any federal, state or local jurisdiction relating to CDS bidder.

(b) A list of all criminal convictions within the last five years relating to CDS bidder.

(c) A list of all civil penalties, judgments, consent decrees and other sanctions within the last five years, as a result of any violation of any law, rule, regulation or ordinance in connection with its business activities relating to CDS bidder.

(d) A list of all actions occurring within the last five years which have resulted in revocations or suspension of any permit or authority to do business in any jurisdiction relating to CDS bidder.

(e) A list of all actions within the last five years that have resulted in the barring from public bidding related to CDS bidder.

(f) A list of all bankruptcy and other similar proceedings within the last five years related to CDS bidder.

(g) Financial statements adequate to properly present their current and expected future financial condition. At a minimum, income and balance sheets prepared not more than three months prior to the bid should be included. If the CDS is newly formed then the same should be submitted for parent and if necessary grandparent. Partnerships should submit the same information for all participants.

Q5. The CDS bidder's qualification package must include a description, in detail, of any situation in which the CDS bidder or any guarantor (either alone or as part of a joint venture), or a subsidiary of CDS bidder or any guarantor, defaulted or was deemed to be in noncompliance of its contractual obligations to

deliver energy, explaining the situation, its outcome and all other relevant facts associated with the event described. The name, title and telephone number of the principal manager of the customer/client who asserted the event of default or noncompliance must also be listed.

Q6. The CDS bidder's qualification package shall include:

(a) A description of any instances in the last two (2) years in which any domestic affiliate or related entity of the CDS bidder has experienced any event listed in Q4, above associated with the sale of electricity.

(b) A description of any other present facts known to CDS bidder or guarantor that might reasonably be expected to adversely affect its ability to perform any aspect of CDS, including an instance in which any guarantor, or any officer, director, partner or member of the CDS bidder, has experienced any of the events listed in Q4, above and where the event reasonably could be expected to adversely affect the CDS provider's ability to perform any aspect of CDS.

Q7. CDS bidders must:

(a) Present a detailed plan and description of its data exchange capabilities.

(b) Perform functions including switching generation suppliers, call center activities related to generation supply, generation pricing, and related customer inquiries, EDI/EDEWG transactions, disputes and disputes resolution related to electric generation supply, and comply with PECO Energy's Electric Generation Supplier Coordination Tariff (Supplier Tariff).

Q8. PECO EDC will perform the following customer care functions: billing, credit, collections and notices, physical termination, restoration of service after a physical termination, maintenance and repair of PECO EDC-owned meters, reading of non-advanced PECO EDC-owned meters, administration of universal service programs (CAP, LIURP, CARES and Hardship), call center activities related to meter reading, billing and distribution system outages and emergencies, and discontinuance of service.

Q9. The CDS bidder warrants that all information provided to the Commission for the purpose of qualification is true, timely and accurate.

Q10. PECO EDC will make available general information related to its affected customer classes including the expected number of PLR customers by rate class and rate strata and the number of PLR customers who have previously

selected an EGS. All bidders receiving the data shall provide affidavits that any customer information provided by PECO EDC for the purposes of preparing its CDS bid shall be used for that purpose only. PECO EDC will hold a technical conference on April 12, 2000 and thereafter, on April 1 of the year prior to the first year of a new CDS term, to answer questions related to CDS.

Selection of CDS Provider

S1. On or before May 12, 2000, and thereafter, on May 1 of the year prior to the first year of a new CDS term, bidders will submit bids to the PA PUC for energy and capacity and associated transmission service sufficient to serve twenty percent of PECO's residential, residential heating and residential off peak customers. A copy of the bid package must be served on the Office of Consumer Advocate.

S2. The term of the bid must cover a three year period starting with January 1, 2001 12:00:01am, and thereafter, on January 1 of the first year of a new CDS term. CDS for an individual customer will begin with the customer's first meter read date after January 1, 2001 12:00:01am and continue through the customer's first meter read date after December 31 of the last year of the term of years over which CDS service is bid.

S3. The CDS bidder must submit energy and capacity market pricing bids utilizing the exact block rate structure and rate design including any *proportionality between rates and rate schedules for each affected customer class*; that is, Rates R, RH, OP, and CAP. Any bid deviating from this structure will be rejected. The CDS bidder will set forth a comparison of its rates that conforms to the "residential bill comparisons" data requirement. Comparisons should be tabular and show the difference, on both a dollar and percentage basis, between the CDS' bid price and PECO's comparable rates for each rate category. In any event prices may not exceed PECO Energy's Commission-approved PLR rates.

S4. CDS prices must be of a fixed rate for the term.

S5. PECO's EDC or divisions or PECO's divisional or affiliated EGSs may not bid (either directly or as a partner or participant in any business combination with a bidder) on CDS service.

S6. Any EGS or consortium of EGSs that (1) are not affiliated with PECO EDC, (2) are licensed by the Commission, (3) meet applicable terms, conditions

and standards for CDS and (4) have met the qualifications to be a bidder, may bid to provide CDS.

S7. Not later than July 1, 2000, and thereafter, on July 1 of the year prior to the first year of a new CDS term, the Commission will determine the winning bid and award the right to serve as CDS provider. The bid will be awarded to the qualifying bidder offering the lowest price.

TERMS AND CONDITIONS OF SERVICE

T1. A customer assigned to CDS retains the right to elect a competitive EGS or return to PECO default provider of last resort at any time at no charge pursuant to Commission approved procedures.

T2. On or before October 15, 2000, and thereafter, by October 15 of the year prior to the first year of a new CDS term, the CDS provider will be responsible for notification of customers of their selection in the random lottery, the terms and conditions of CDS including the opportunity to return to PECO default provider of last resort and a check off box to indicate such selection response to be returned to the CDS provider no later than November 15, 2000, and thereafter, no later than November 15 of the year prior to the first year of a new CDS term.

T3. The CDS provider is responsible for all administrative costs of switching the customer to CDS including notification. PECO shall establish, in conjunction with the EDEWG, a standard transaction to support CDS transactions no later than July 1, 2000, and thereafter, no later than July 1 of the year prior to the first year of a new CDS term. The rules and protocols imposed by PECO upon the CDS provider with respect to customers being added to the CDS, switching to the CDS or returning to the CDS shall be identical to the rules and protocols used by PECO with respect to its PLR customers, including not requiring any further notice beyond that which is required by section T2 above, and not requiring a ten-day waiting period.

T4. If a customer returns to the CDS provider for any reason, the customer will receive service from the CDS provider on the same terms and conditions and at the same rate available to other CDS customers.

T5. The CDS provider has an obligation to abide by all applicable regulations including but not limited to: Chapter 54 Electric Generation Customer Choice, Chapter 55 Noncarrier Rates and Practices, Chapter 56 Standards and Billing Practices for Residential Utility Service, and Chapter 57 Electric Service.

T6. The CDS provider shall be required to accept all customers assigned to CDS service.

T7. PECO EDC will make the initial random selection of customers to be assigned to CDS subject to the Commission's review and oversight.

T8. If, on September 1 of each year, the number of residential customers served by the CDS provider has fallen below 17%, a further random selection of customers shall be assigned to CDS service to restore the number of customers for the 20% level.

T9. The further random selection shall be chosen from the customers (not already assigned to CDS service) served by EGSs other than PECO.

T10. Unless otherwise delineated in this document, the CDS provider of last resort will assume all responsibilities and obligations associated with provider of last resort service that are specified by the Commission.

T11. The CDS provider will be subject to all competitive safeguards and code of conduct regulations established by the Commission. Solely for the purpose of applying any code of conduct or related Commission regulations, a CDS will be considered an EDC. No EGS affiliated with the CDS shall condition the sale of electricity upon the customer's agreement to return to PECO as the provider of last resort-default supplier.

T12. As a condition of CDS, the CDS provider will post a security bond of \$2,500,000. The proceeds of the bond will be used to facilitate the reversion of CDS customers to PECO PLR service resulting from a default by the CDS provider. This bond will be in addition to any licensing bond the EGS acting as CDS would have. In the event of a CDS provider default, all CDS customers will receive PLR service from PECO EDC for a period of not less than twelve months from the date of default.

T13. The CDS provider shall be subject to the terms and conditions of the PECO Supplier Tariff and Metering and Billing Specifications approved by the Commission in terms of its interactions with the PECO EDC.

T14. PECO EDC shall establish data protocols and information exchanges which allow the CDS to estimate its load obligations based upon the CDS customer list.

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APPENDIX B

**Request For Proposal
PECO Energy's Rules for Bilateral
Agreements for Competitive Default Service
August 24, 2000**

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P.A.P.U.C.
SECRETARY'S BUREAU

The purpose of this Request for Proposal (RFP) is to provide rules for the qualification of Competitive Default Service ("CDS") bidders, the bilateral negotiations with the qualified bidder, and the terms and conditions of the provision of CDS established by Paragraph 52b of PECO Energy Company's ("PECO Energy" or "Company") Joint Petition for Settlement of its Application for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation (Docket A-110550F0147).

Qualification of CDS Bidders

Q1. All interested CDS bidders must prepare a qualification package and no later than, Friday, September 8, 2000 submit that package either electronically to: cciabattoni@peco-energy.com, or by Federal Express to: Carlo Ciabattoni, Manager, Supplier Administration Group, PECO Energy Company, S4-4, 2301 Market Street, Philadelphia PA 19101. Packages submitted by Federal Express shall be deemed delivered on the day of receipt by PECO Energy.

Q2. The qualification package must, at a minimum, include:

- (a) License to operate as an electric generation supplier ("EGS") in the Commonwealth of Pennsylvania;
- (b) FERC certification as a power marketer in the United States of America;
- (c) A description of the CDS bidder's proposed plan to provide the generation necessary to provide CDS;
- (d) A detailed plan and description of its data exchange capabilities.
- (e) A description of any and all indictments or pending litigation relating to CDS bidder by any federal, state or local jurisdiction.
- (f) A list of all criminal convictions within the last five years relating to CDS bidder.
- (g) A list of all civil penalties, judgments, consent decrees and other sanctions within the last five years, as a result of any violation by CDS bidder of any law, rule, regulation or ordinance in connection with its business activities.
- (h) A list of all actions occurring within the last five years relating to CDS bidder that have resulted in revocations or suspension of CDS bidder's permit or authority to do business in any jurisdiction.

(i) A list of all actions within the last five years that have resulted in barring CDS bidder from public bidding.

(j) A list of all bankruptcy and other similar proceedings within the last five years relating to CDS bidder.

(k) Financial statements adequate to properly present the CDS bidder's current and expected future financial condition. At a minimum, income and balance sheets prepared not more than three months prior to the bid must be included. If the CDS bidder is newly formed then the same should be submitted for its parent. Partnerships should submit the same information for all participants.

(l) Any other information that the CDS bidder believes is relevant in determining its suitability for providing CDS.

Q3. Each CDS bidder must also establish that: it meets or exceeds the Pennsylvania-New Jersey-Maryland ("PJM") Interconnection's creditworthiness standards for the full amount of the estimated CDS load obligations; and, that it can secure the security bond required for a CDS provider, which is a bond for \$2,500,000, or a lesser amount proportionate to the fraction of the full twenty-percent (20%) of customers served by the respective CDS provider. This bond will be in addition to any EGS licensing bond the CDS provider would have. The proceeds of the CDS bond will be used to facilitate the reversion of CDS customers to PECO PLR service resulting from a default by any CDS provider.

Further, each CDS bidder must meet all applicable obligations that PJM ascribes to a load serving entity and be a signatory of the PJM Reliability Assurance Agreement, as amended and/or superseded.

Q4. The CDS bidder's qualification package must also include a description, in detail, of any situation in which the CDS bidder or any guarantor (either alone or as part of a joint venture), or a subsidiary of CDS bidder or any guarantor, defaulted or was deemed to be in noncompliance of its contractual obligations to deliver energy, explaining the situation, its outcome and all other relevant facts associated with the event described. The name, title and telephone number of the principal manager of the customer/client who asserted the event of default or noncompliance must also be listed.

Q5. The CDS bidder's qualification package must also contain:

(a) A description of any instances in the last two (2) years in which any domestic affiliate or related entity of the CDS bidder has experienced any event listed in Q4 above associated with the sale of electricity.

(b) A description of any other present facts known to CDS bidder or guarantor that might reasonably be expected to adversely affect its ability to perform any aspect of CDS, including an instance in which any guarantor, or any officer, director, partner or member of the CDS bidder, has experienced any of the events listed in Q4, above and where the event reasonably could be expected to adversely affect the CDS provider's ability to perform any aspect of CDS.

Q6. CDS bidders must warrant that all information provided to PECO Energy for the purpose of participating in bilateral negotiations is true, timely and accurate.

Bid, Negotiation and Assignment Process

N1. Upon execution by the CDS bidder of the attached confidentiality agreement, PECO EDC will make available general information related to PECO EDC's affected customer classes, including the expected number of PLR customers by rate class and rate strata.

N2. As provided in Q1 above, on or before Friday, September 8, 2000, bidders must submit to Carlo Ciabattoni, Manager, Supplier Administration Group, PECO Energy Company, S4-4, 2301 Market Street, Philadelphia PA 19101, cciabattoni@peco-energy.com, either electronically or by Federal Express, a bid to provide CDS service to the entire twenty percent (20%) of non-shopping residential customers, or to a specified portion thereof. Bids submitted by Federal Express shall be deemed delivered on the date of receipt by PECO Energy.

N3. PECO EDC or divisions thereof or PECO Energy's divisional or affiliated EGSs may not bid (either directly or as a partner or participant in any business combination with a bidder) on CDS.

N4. Any EGS or consortium of EGSs that: (1) are not affiliated with PECO EDC; (2) are licensed by the Commission; (3) meet applicable terms, conditions and standards for CDS; and (4) have met the qualifications to be a bidder, may bid to provide CDS.

N5. PECO Energy will review any bid submitted as provided above, and, on or before Friday, September 15, 2000, will notify a CDS Bidder electronically either: (1) that its bid has been rejected as non-conforming, which notice will identify the reasons therefor; or (2) that PECO Energy will initiate bilateral negotiations with the CDS bidder, which notice will provide the specifics of said

negotiation process.

N6. On or before Monday, October 9, 2000, PECO Energy will file with the Commission for its review and approval any bilateral agreement reached pursuant to this process.

N7. PECO EDC will make the initial random selection of customers to be assigned to CDS, subject to the Commission's review and oversight.

N8. A sufficient time before the initiation of CDS service hereunder, customers will be notified of their selection in the random lottery and of the terms and conditions of CDS.

N9. Each CDS provider shall be responsible for all, or a proportionate share, of the administrative costs of switching the customer to CDS, including notification.

Key Terms and Conditions of CDS

Any bid that does not, at a minimum, fully comply with the following requirements shall be deemed to be a "non-conforming bid":

K1. The CDS bidder must submit energy and capacity market pricing bids for no greater than each rate class' "price to compare" in any given month, meaning the generation shopping credit plus applicable unbundled transmission charge.

K2. The CDS bidder must set forth a comparison of its rates that conforms to the "residential bill comparisons" data requirement. Comparisons must be tabular and show the difference, on both a dollar and percentage basis, between the CDS' bid price and PECO Energy's comparable rates for each rate category. In no event may prices exceed PECO Energy's Commission-approved PLR rates.

K3. Bids must be for terms of one or more full years; partial year terms are unacceptable.

K4. Bids may not contain "re-opener" or contingency clauses that could result in the CDS provider not initiating or discontinuing CDS service to customers, for reasons outside of PECO Energy's control (i.e. an offer contingent upon changes in PJM's business rule).

K5. Bids may not restrict otherwise applicable customer rights under PLR service (i.e. right to switch to another supplier upon 16 days notice prior to meter read date).

K6. Bids may not constitute essentially a wholesale sale to PECO Energy.

K7. Bids must fully comply with all qualification package requirements contained in Section Q above.

K8. A customer assigned to CDS shall retain the right to elect a competitive EGS or return to PECO PLR service at any time at no charge pursuant to Commission-approved procedures.

K9. The CDS provider must accept all customers assigned to it for CDS.

K10. The CDS provider must agree to abide by all applicable Commission rules and regulations, including, but not limited to: Chapter 54 Electric Generation Customer Choice; Chapter 55 Noncarrier Rates and Practices; Chapter 56 Standards and Billing Practices for Residential Utility Service; Chapter 57 Electric Service; PECO Energy's Electric Generation Supplier Coordination Tariff; and competitive safeguards and code of conduct. For the purpose of applying any code of conduct and/or competitive safeguards, a CDS provider shall be considered an EDC.

K11. Each CDS provider must agree to perform the following functions: switching generation suppliers, call center activities related to CDS electric generation supply, CDS electric generation pricing, and related customer inquiries, EDI/EDEWG transactions, disputes and disputes resolution related to CDS electric generation supply.

Obligations of PECO Energy

O1. PECO EDC shall perform the following customer care functions: billing, credit, collections and notices, physical termination, restoration of service after a physical termination, maintenance and repair of PECO EDC-owned meters, reading of non-advanced PECO EDC-owned meters, administration of universal service programs (CAP, LIURP, CARES and Hardship), call center activities related to meter reading, billing and distribution system outages and emergencies, and discontinuance of service.

O2. PECO EDC shall establish data protocols and information exchanges which allow each CDS provider to estimate its load obligations based upon the respective CDS provider's customer list.

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SECRETARY'S BUREAU

**COMPETITIVE DEFAULT SERVICE
COORDINATION AGREEMENT**

This Competitive Default Service Coordination Agreement (this "Agreement"), dated October 18, 2000, is entered into by and between PECO Energy Company, a Pennsylvania corporation and electric distribution company (the "Company"), and The New Power Company, Inc., a Delaware corporation (the "CDS Provider"). (Each individually referred to as a "Party" and collectively as the "Parties"). All terms used in this Agreement that are not otherwise defined herein shall have the meaning provided in the Electric Generation Supplier Coordination Tariff of PECO Energy Company (the "Supplier Tariff").

Background: WHEREAS,

- A. The Company acts as the default provider of last resort for electric customers in its service territory;
 - B. On August 24, 2000, the Company issued a Request for Proposal for Bilateral Agreements for Competitive Default Service ("CDS"), issued pursuant to the Company's Joint Petition for Settlement of its Electric Restructuring Case, dated April 29, 1998, as modified by its Joint Petition for Settlement of A Plan of Corporate Restructuring and Merger, dated March 23, 2000;
 - C. CDS Provider submitted to the Company a bid to provide CDS to the CDS Customers (as defined in Section 5 below);
 - D. The Company has selected CDS Provider as the winning bidder to provide CDS;
- and

- E. The Parties wish to set forth herein the terms and conditions pursuant to which CDS Provider shall provide CDS.
- F. NOW, THEREFORE, in consideration of the mutual covenants, representations and agreements hereinafter set forth, the Parties, intending to be legally bound, hereby agree as follows:
1. The Parties acknowledge that the approval of this Agreement without modification by the Pennsylvania Public Utility Commission (the "Commission") is a condition precedent to the Parties' respective obligations hereunder, and the Parties shall cooperate in good faith to promptly secure such approval. Such approval also shall include a confirmation by the Commission that: (i) the 299,300 residential customers assigned to CDS in accordance with the provisions of Section 5 of this Agreement shall be included in calculating the required thirty-five percent (35%) market share threshold as set forth in Paragraph 39 of the Company's April 29, 1998 Restructuring Settlement; (ii) the CDS Provider shall not, by reason of the exercise of its rights and the performance of its obligations under this Agreement, be considered a "public utility" within the meaning of 66 Pa. C.S.A. §102, but rather shall be subject to those rules and regulations applicable to an "Electric Generation Supplier" and "electric supplier" within the meaning of 66 Pa. C.S.A. §2803, as may be modified by this Agreement; and (iii) the proposed operational procedures for the CDS Provider set forth in Exhibit A hereto are consistent with those provisions of the competitive safeguards and/or code of conduct set forth in 52 Pa. Code § 54.122. In the event that the

Commission has not rendered such approval on or before November 1, 2000, but subsequently does issue such approval, (i) the date for commencement of the CDS Term, as specified in Section 4 hereof, (ii) the date provided herein under Section 6 by which CDS Customers must be notified of their selection for CDS, and (iii) the dates specified in Section 7 with respect to a failure by the CDS Provider to enroll certain CDS Customers, shall each be extended on a day-for-day basis until such Commission approval is received. Notwithstanding the foregoing, in the event that the Commission has not so approved this Agreement on or before November 30, 2000, the CDS Provider shall have the right, exercisable within 20 business days of such date upon the furnishing of written notice to the Company, to terminate this Agreement. Furthermore, if the Commission rejects this Agreement, this Agreement shall be deemed to automatically terminate. In either of such cases, such termination shall be without liability of either Party to the other, provided that the failure to achieve such Commission approval or the rejection by the Commission, as the case may be, shall not be the result of a breach by either Party of a covenant or other obligation of it under this Agreement.

2. Throughout the CDS Term (as defined below), on behalf of the CDS Provider, the Company agrees to perform those customer care functions listed on Exhibit B hereto, as well as any additional customer care functions the Commission may require the Company to provide for or on account of the CDS Customers.
3. Throughout the CDS Term, the CDS Provider agrees to perform those customer care functions listed on Exhibit B hereto, as well as any additional customer care

functions the Commission may require the CDS Provider to provide for the CDS Customers.

4. Throughout the CDS Term, the CDS Provider shall provide electric generation supply to CDS Customers at the prices identified in Exhibit C attached hereto ("CDS Prices"). The "CDS Term" means, with respect to each CDS Customer, the period commencing on the first meter reading date occurring after January 1, 2001 applicable to such CDS Customer (as may be extended as contemplated by Section 1 hereof due to any delay in the satisfaction of the condition precedent with respect to Commission approval of this Agreement subsequent to November 1, 2000, as described therein) and continuing through the last meter reading date occurring prior to February 1, 2004 applicable to such CDS Customer. Any delay in the commencement of the CDS Term shall not result in an extension of the scheduled expiration date of such term.

5. Not later than October 24, 2000, the Company shall cause 299,300 residential customers (rate classes R, RH, OP and CAP) who are then receiving generation supply service from the Company (i.e., non-shopping customers) to be selected for assignment to the CDS Provider ("CDS Customers"). CDS Customers shall be drawn exclusively from a list provided in advance to the CDS Provider, which list shall be prepared by the Company and certified by it to be accurate and complete, of all of the Company's non-shopping residential customers, pursuant to a random selection process employed by a neutral, independent third party who has expertise in the use of established statistical procedures for random selection (the "Statistical Expert"). The Parties intend that the use of such selection process

is designed to result in a selection of customers that is generally proportionate among rate classes, load sizes and other similar customer characteristics when compared to the Company's existing pool of non-shopping residential customers, provided that the Parties acknowledge that there is no guarantee that the actual results of such random selection process will achieve such a result. Prior to the commencement of the selection process, the Company agrees to provide the CDS Provider with the same information as is provided to the Statistical Expert. Representative(s) of the CDS Provider shall be entitled to review with the Statistical Expert the methodology and procedure he or she shall use to perform the random selection process prior to such selection and to observe the implementation of the selection process by the Statistical Expert. Not later than 1 business day following the selection by the Statistical Expert, the Company shall provide to the CDS Provider a comprehensive list, certified by the Company to be accurate and complete, showing the detailed account information (including account number and rate class) for all 299,300 accounts that were selected by the Statistical Expert. The CDS Provider shall have 5 business days from the receipt of the list described in the foregoing sentence to verify the accuracy of the records of the Company and the Statistical Expert with respect to the implementation of such selection process. Such 5 business day verification period shall not extend the dates set forth in Section 6 below with respect to mailing notices to the CDS Customers unless such verification process results in the need for the reselection of such customers due to an error in the selection process.

6. Not later than 20 days after the selection of CDS Customers pursuant to Section 5 above, such CDS Customers shall be notified in writing by the CDS Provider of their selection for CDS, provided that the CDS Provider shall stagger the mailing of such notices over a period of approximately 5 business days with the objective of attempting to stagger the number of calls the Company and/or the CDS Provider may receive with respect to such notices. The notice shall include: (1) the CDS Terms and Conditions (defined below) and (2) a card with a negative check-off box that enables the customers assigned to CDS to opt out of CDS by so indicating on the card and returning to the CDS Provider within 14 days from the date of the last mailing of such notices. Not later than 5 business days after the expiration of the opt out period described in the preceding sentence, the CDS Provider shall submit to the Company a flat file consisting of all account numbers for assigned customers who have chosen to opt out of CDS. The "CDS Terms and Conditions" shall be prepared by the Company in such a manner as to educate CDS Customers about CDS. Not later than 5 days after the selection of CDS Customers pursuant to Section 5 above, (i) the CDS Provider shall provide the Company with a draft of its proposed notice and (ii) the Company shall provide the CDS Provider with a copy of its proposed CDS Terms and Conditions. Each Party shall have 3 days to review and approve such items, provided that such approvals shall not be unreasonably withheld.

7.

(a) The Parties shall diligently pursue all of the actions required of them to enable the Parties to satisfy the timelines set forth in this Agreement. In

the event the CDS Provider encounters logistical difficulties or events beyond its control with respect to enrolling CDS Customers within the time period contemplated by this Agreement, the Parties agree to work cooperatively to resolve any such difficulties as soon as reasonably possible and, to the extent applicable, take such actions as provided in this Section 7. The CDS Provider at all times shall not give preference to any group or groups of customers or rate classes in effecting the enrollment of CDS Customers.

- (b) If notwithstanding each Party's diligent efforts to enroll all the CDS Customers effective as of the respective customers' first meter reading date on or after January 1, 2001 (such date, i.e., January 1, 2001, is subject to extension as provided in Section 1), a CDS Customer's enrollment is delayed beyond such meter reading date, and such delay in enrollment is not the result of a legal impediment preventing or prohibiting the commencement of enrollment for CDS Customers (as further described in Section 8 below) or other event beyond the control of the CDS Provider, then the CDS Provider shall, as soon as reasonably possible once such CDS Customer is enrolled in CDS, credit (in its CDS charges) any CDS Customer whose enrollment in CDS has been so delayed for the amount of lost savings such customer would otherwise have realized as a result of this Agreement if such customer had been timely enrolled in CDS; provided however, that if such delay in enrollment is a result of the Company's failure to comply with the terms of this Agreement or the

Supplier Tariff, the Company, and not the CDS Provider, shall be required to credit any such CDS Customers with such lost savings. Any payments or credits to a CDS Customer pursuant to this Section 7(b) shall terminate as of the earlier of (i) the date such CDS Customer is enrolled in CDS or (ii) the date as of which such CDS Customer receives a payment from the CDS Provider reflecting such customer's projected lost savings pursuant to Section 7(d) below.

- (c) If a delay in the enrollment of a CDS Customer which is not the result of a failure on the part of the Company results in such customer not being enrolled for CDS effective as of such customer's first meter reading date on or after March 1, 2001 (such date, i.e., March 1, 2001, is subject to extension as provided in Section 1), such delay in enrollment shall not be considered a default under this Agreement so long as the CDS Provider shall pay to the Company, with respect to each such CDS Customer, as liquidated damages and not as a penalty, 50 cents per day per customer for each day after such meter reading date that such customer remains on Default PLR Service (as defined below). The CDS Provider shall pay any amounts due pursuant to this Section 7(c) to the Company within 20 days after the end of the month in which such amounts become due.
- (d) If a delay in the enrollment of a CDS Customer which is not the result of a failure on the part of the Company results in such customer not being enrolled for CDS effective as of the customer's first meter reading date on or after May 1, 2001 (such date, i.e., May 1, 2001, is subject to extension

as provided in Section 1): (A) the CDS Provider shall pay to each such CDS Customer that is not yet enrolled in CDS, as liquidated damages and not as a penalty, the projected lost savings such CDS Customer would have realized as a result of this Agreement over the entire CDS Term (less any amount of lost savings previously received by such customer in accordance with Section 7(b) above), such amount to be determined based on average kWh levels, the Company's then applicable shopping credit and the savings percentage reflected on Exhibit C for the applicable rate class of the affected CDS Customer; and (B) any such customers shall no longer be considered CDS Customers for purposes of this Agreement and such customers shall remain on the Company's Default PLR Service.

- (e) In the event that as of the first meter reading date after May 1, 2001 (such date, i.e., May 1, 2001, is subject to extension as provided in Section 1) less than 85% of the CDS Customers (adjusted to reflect any customers that have notified the Company or the CDS Provider of their desire to switch to an EGS or to return to Default PLR Service) have been enrolled in CDS, the CDS Provider shall be deemed to be in default and the Company shall have the right to be reimbursed for its actual, direct damages resulting from the delay in switching over such customers and shall be entitled to draw upon the Surety Bond as contemplated pursuant to Section 18(a), and in such event, the CDS Provider shall no longer owe the Company the liquidated damages specified pursuant to Section 7(c) above.

(f) The Company shall periodically report to the Commission on the status of the enrollment by the CDS Provider of the CDS Customers. Such reports shall be furnished by the Company to the CDS Provider for its review and consultation prior to submission to the Commission.

8. If, notwithstanding each Party's diligent efforts to effect the implementation of this Agreement, the commencement of the enrollment of CDS Customers has been prevented or prohibited as of the last meter reading date prior to April 1, 2001 (other than as a result of a breach by a Party of its obligations under this Agreement), as a result of a preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by any governmental, regulatory or administrative agency or commission, or any law or executive order promulgated or enacted by any governmental authority, then such Party shall have the right, exercisable within 10 business days of such date upon the furnishing of written notice to the other Party, to terminate this Agreement. In such case, such termination shall be without liability of either Party to the other and the CDS Provider shall be entitled in such event, if the Surety Bond as defined in Section 18(a) shall have been furnished and/or the Escrow Account as defined in Section 18(b) funded, to terminate the Surety Bond and to the return of all collateral in the Escrow Account without delay.

9. The CDS Provider shall provide CDS during the CDS Term to each CDS Customer until the earlier of: (1) the date any such CDS Customer switches to another EGS, including any affiliated or divisional EGS of the CDS Provider, or returns to default provider of last resort service ("Default PLR Service") provided

by the Company; (2) the date on which the account with respect to such CDS Customer becomes inactive; or (3) the end of the CDS Term with respect to such CDS Customer.

10. Throughout the CDS Term, any CDS Customer shall be entitled to switch to another EGS or return to Default PLR Service at any time without penalty or charge. Once such customer makes such a switch, such customer cannot return to CDS. Upon the expiration of the CDS Term, the Parties agree to cooperate in good faith to ensure a reasonably smooth transition of CDS Customers to any new provider of CDS, any EGS or back to Default PLR Service, as the case may be.
11. The procedures for data exchanges between the Company and the CDS Provider shall be as provided in the Supplier Tariff and as generally described in Exhibit D attached hereto.
12. If, as of October 15, 2002, the number of CDS Customers is less than twenty percent (20%) of the sum of all residential customers currently receiving distribution service from the Company (including residential customers receiving CDS or service from another EGS), the Company shall allocate to the CDS Provider that number of the Company's residential customers that are then receiving Default PLR Service which, when added to the number of CDS Customers as of October 15, 2002, provides for a total number of CDS Customers equal to twenty percent (20%) of the sum of all residential customers currently receiving distribution service from the Company (including residential customers receiving CDS or service from another EGS). The CDS Provider shall notify

such new CDS Customers of their selection pursuant to a schedule agreed upon by the Parties. The selection and notice procedures used with respect to such new CDS Customers shall be substantially similar to those specified in Sections 5 and 6 hereof with respect to the initial selection of CDS Customers.

13. The CDS Provider shall separately account in its books and records for the CDS Customers vis-a-vis any other customers the CDS Provider may be serving as an EGS. CDS Customers shall have different Dun's numbers (Dun's+4) from those used by the CDS Provider for its other customers. The CDS Provider shall separately schedule its load requirements with the Company and shall use different mailboxes on the SUCCESS website with respect to CDS Customers vis-a-vis any other customers the CDS Provider may be serving as an EGS.
14. The Company shall provide Consolidated EDC Billing with respect to all CDS Customers and the CDS Provider shall submit its customer charges to the Company in accordance with the Competitive Billing Specifications Rider to the Supplier Tariff. The Company shall use the same procedures and apply the same standard of care with regard to billing services and customer care for the CDS Provider as it does for any EGS that has elected Consolidated EDC Billing. The CDS Provider shall not be entitled to any credits as may be contemplated by Appendix J of the Company's April 29, 1998 Restructuring Settlement. Notwithstanding the provisions of Sections 11 and 15 of the Competitive Billing Specifications Rider, delinquent CDS Customers shall not be converted to separate EDC/EGS Billing, nor will the collection policies provided therein apply. Regardless of any such customer delinquency or the length thereof, the Company

shall continue to pay the CDS Provider the amounts due to it in respect of the supply of generation service to such customer. Relevant provisions of the Supplier Tariff and this Agreement shall remain in effect following the end of the CDS Term in order to facilitate final billing and collection of amounts due under this Agreement.

15. Pursuant to Chapter 56 regulations, only the Company shall be entitled to terminate service to CDS Customers for failure to pay CDS charges. Furthermore, Rule 14 of the Supplier Tariff shall not apply with respect to CDS Customers. The CDS Provider may not discontinue service to CDS Customers and the Company will not give effect to any drop transaction submitted by the CDS Provider.
16. Notwithstanding any language in Rule 19.5 of the Supplier Tariff to the contrary, the CDS Provider shall not have the right to terminate service hereunder because of a change in applicable rules, regulations, tariffs or orders.
17. Consistent with Paragraph 38b of the Company's April 29, 1998 Restructuring Settlement, during the first year of the CDS Term not less than two percent (2%) of the energy provided by the CDS Provider to supply CDS Customers shall be generated from renewable resources (including solar, wind, sustainable biomass (including landfill gas but excluding incineration of municipal solid waste) geothermal or ocean power), and during each successive year of the CDS Term such percentage shall be increased by one-half percent (0.5%); provided, that the CDS Provider shall be entitled to petition the Commission for relief from the

provisions of this Section 17 in the event that the CDS Provider can establish that the cost of providing power from such renewable resources increases the cost of the total quantity of energy supplied for CDS by more than two percent (2%).

18. Grant of Security Interest; Remedies.

Sections 12.4, 12.5, 12.6 and 12.7 of the Supplier Tariff shall not apply to this Agreement and, instead, are replaced in their entirety with the following:

- (a) The CDS Provider grants to the Company a surety bond in the amount of two and a half million dollars (\$2.5 million) (the "Surety Bond") in a form reasonably satisfactory to the Company to secure its payments, charges, costs, expenses and liabilities resulting from, or in any way related to, the CDS Provider's failure to perform its obligations hereunder. The Surety Bond must be provided to the Company no later than 10 business days after the satisfaction of the condition precedent set forth in Section 1 with respect to the approval by the Commission of this Agreement. Upon, or at any time after, the occurrence of a Default (other than a Material CDS Provider Default as defined below) by the CDS Provider under this Agreement, the Company shall be entitled to draw on the Surety Bond to the extent necessary to pay or reimburse the Company for any actual damages or losses reasonably documented by the Company and suffered by it as a result of such Default by the CDS Provider. In the event of a Material CDS Provider Default by the CDS Provider, the Company may elect to effect an early termination of this Agreement and in such case it shall be entitled to draw on the full amount of the Surety Bond or any

remaining portion thereof as liquidated damages pursuant to and in accordance with Section 18(b)(i).

- (b) To further secure the Company in the event of a Material CDS Provider Default, the CDS Provider agrees to fund an escrow account in the amount of fifty million dollars (\$50 million), as may be adjusted on an annual basis pursuant to the adjustment mechanism specified in Exhibit E hereto (the "Escrow Account"). The Escrow Account shall be funded by the CDS Provider no later than 10 business days after the satisfaction of the condition precedent set forth in Section 1 with respect to the approval by the Commission of this Agreement. The escrow agent shall pay interest or other earnings accruing on the Escrow Account to the CDS Provider at least quarterly. The Parties shall agree on the form of the escrow agreement for the Escrow Account within 7 business days of the date of this Agreement. Upon the request of the CDS Provider at any time during the CDS Term, the Company shall permit the CDS Provider to substitute as security for the Escrow Account a letter of credit issued by a commercial bank or other independent financial institution having a rating of at least A- by Standard and Poor's or A3 by Moody's (the "Letter of Credit") or a corporate guaranty from a party having a credit rating for its senior unsecured debt of at least BBB by Standard and Poor's or Fitch's or Baa2 by Moody's (the "Guaranty"), in either case for a term corresponding to the remaining period of the CDS Term, in an amount equal to the amount of the Escrow Account at the time of substitution (and subject to

the annual adjustment required by Exhibit E) and containing other material terms and conditions that shall be reasonably acceptable to the Company, provided that the Escrow Account shall be maintained and shall remain in effect until such time as any substitution therefor takes effect.

- (i) Upon the occurrence of a Material CDS Provider Default by the CDS Provider, the Company may elect, to the extent such Material CDS Provider Default shall be continuing and upon 5 days written notice to the CDS Provider, to effect an early termination of this Agreement. In such case, the Company shall be entitled to draw, as liquidated damages and not as a penalty, on the outstanding balance at such time of the Escrow Account (or, if applicable, the Letter of Credit or the Guaranty) and the Surety Bond, free from any claim or right of any nature whatsoever of the CDS Provider. Such damages shall constitute the Company's sole and exclusive remedy with respect to such Material CDS Provider Default and no other remedy shall be available to the Company pursuant to Rule 16.4 of the Supplier Tariff or otherwise. A "Material CDS Provider Default" means any of the following events shall have occurred and be continuing with respect to the CDS Provider:
- (1) a Default pursuant to Rule 16.2(b), 16.2(c), 16.2(d) or 16.2(e) of the Supplier Tariff;

- (2) withdrawal by the CDS Provider under the circumstances described in Section 20 below (other than a withdrawal resulting from a material breach by the Company of its obligations under the Supplier Tariff or this Agreement);
- (3) failure by the CDS Provider to contribute additional funds to the Escrow Account, or otherwise post the requisite additional collateral in favor of the Company, if and to the extent required pursuant to the adjustment mechanism set forth on Exhibit E (except to the extent the amount of such additional funds is the subject of a good-faith dispute between the Parties), subject to the notice and cure provisions of Rule 16.3 of the Supplier Tariff; or
- (4) the unexcused and repeated failure of the CDS Provider to comply with the material terms of this Agreement or the Supplier Tariff (including Defaults pursuant to Rule 16.2(a) of the Supplier Tariff, except those resulting from events or circumstances that are not within the control of the CDS Provider, such as a change in law or regulation that renders the CDS Provider ineligible to perform its obligations under this Agreement (other than a change in law or regulation that is petitioned for or actively sought by the CDS Provider with the objective of reducing or eliminating its obligations hereunder)) and that has a material adverse effect on the Company;

provided that the Company shall provide written notice of such failure to the CDS Provider and the CDS Provider, in addition to any cure period provided in Rule 16.3 of the Supplier Tariff, shall have 10 days to cure any such failure.

- (c) THE PARTIES ACKNOWLEDGE THAT DAMAGES WITH RESPECT TO A MATERIAL CDS PROVIDER DEFAULT HEREUNDER ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION 18 CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS SUFFERED BY THE COMPANY AS A RESULT OF A MATERIAL CDS PROVIDER DEFAULT AND SUCH DAMAGES SHALL CONSTITUTE THE COMPANY'S SOLE AND EXCLUSIVE REMEDY THEREFOR.
- (d) Notwithstanding the foregoing Section 18(b), upon the occurrence of a Default that does not qualify as a Material CDS Provider Default, the Company's sole and exclusive remedy shall be as contemplated by Rule 16.4 of the Supplier Tariff, including the right to draw on the Surety Bond pursuant to, and to the extent permitted under, Section 18(a).
- (e) If requested by the Company, the CDS Provider shall deliver to the Company: (1) within 120 days following the end of each fiscal year, a copy of the CDS Provider's annual report containing audited consolidated

financial statements for such fiscal year; and (2) within sixty (60) days after the end of each of its first three fiscal quarters each fiscal year, a copy of the CDS Provider's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statement shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to delay in preparation or certification, such delay shall not be considered a breach of this obligation by the CDS Provider so long as the CDS Provider diligently pursues the preparation, certification and delivery of the statements.

19. To the extent either Party is prevented by Force Majeure (as defined below) from carrying out, in whole or in part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of such Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused for the duration of such Force Majeure from the performance of its obligations hereunder to the extent such performance is prevented thereby. Notwithstanding the foregoing, a Party's obligation to make payments of amounts due hereunder shall not be suspended or excused by reason of Force Majeure. "Force Majeure" means an event or circumstance which prevents a Party from performing its obligations under this Agreement, which event or circumstance was not anticipated, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which by the exercise of due diligence the

Claiming Party is unable to overcome or avoid. As to the CDS Provider, Force Majeure shall include any interruption, loss or deterioration of electric distribution services of the Company and/or the PJM Independent System Operator, and/or their electric lines, equipment, or systems. Force Majeure shall not include: (1) the CDS Provider's inability to economically procure electric generation supply; (2) the loss or failure of the CDS Provider's electric generation supply; or (3) the CDS Provider's ability to sell electric generation supply at a price greater than the CDS Prices.

20. Rule 13.3 of the Supplier Tariff is replaced in its entirety with the following provision: Except if such withdrawal is the result of a material breach by the Company of its obligations under the Supplier Tariff or this Agreement, the CDS Provider shall provide the Company with at least 90 days' notice of any withdrawal and the CDS Provider's withdrawal from providing CDS shall constitute a Material CDS Provider Default of its obligations under this Agreement, as set forth in Section 18 hereof. Upon any such withdrawal, the Company shall be entitled to draw upon the Surety Bond and Escrow Account (or Letter of Credit or Guaranty, as the case may be) in accordance with the provisions of Section 18 of this Agreement.

21. Rule 16.2 of the Supplier Tariff shall be deemed to be amended for purposes of this Agreement by adding the following to the list of material breaches by the CDS Provider: (f) CDS Provider's failure to post or maintain the required Surety Bond or fund or maintain the Escrow Account (or maintain the Letter of Credit or Guaranty, as the case may be) in accordance with Section 18 hereof. Without

modifying Rule 16.2(d) and 16.2(e) of the Supplier Tariff with respect to their application to the CDS Provider, Rule 16.2 also shall be deemed to be amended for purposes of this Agreement by adding two situations (enumerated as subsections (g) and (h)) where the Company will be considered to have been in material breach by substituting "Company" in each place where the term "EGS" appears in Rule 16.2(d) and (e). Rule 16.2 is further deemed to be amended by adding the following situation (enumerated as subsection (i)): (i) the failure of either the Company or the CDS Provider to pay when due any undisputed amounts owing to the other Party under the Supplier Tariff or this Agreement.

22. In the event of the termination of this Agreement by the CDS Provider following a Default by the Company, or as otherwise provided in Section 8 of this Agreement, the CDS Provider shall be entitled, if the Surety Bond shall have been furnished and/or the Escrow Account funded (or the Letter of Credit or Guaranty furnished, as the case may be), to terminate the Surety Bond and to the return of all collateral in the Escrow Account (or the release and extinguishment the Letter of Credit or the Guaranty, as the case may be), in each case without delay.

23. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT, THE SUPPLIER TARIFF OR OTHERWISE TO THE CONTRARY, NEITHER PARTY (NOR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, PARTNERS, MANAGERS OR EMPLOYEES) SHALL BE LIABLE TO EACH OTHER OR TO ANY OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT

LIMITATION LOST PROFITS OR REVENUE) IN CONNECTION WITH OR WITH RESPECT TO THIS AGREEMENT, THE SUPPLIER TARIFF OR OTHERWISE; PROVIDED THAT, EXCEPT AS PROVIDED IN SECTION 7 WITH RESPECT TO DELAYS IN THE ENROLLMENT OF CDS CUSTOMERS AND IN SECTION 18(b) WITH RESPECT TO A MATERIAL CDS PROVIDER DEFAULT, A PARTY SHALL NOT BE LIMITED FROM SEEKING ACTUAL, DIRECT DAMAGES TO WHICH THEY MAY BE ENTITLED.

24. Each Party hereto agrees to use reasonable good faith efforts to mitigate any damages it may suffer as a result of a Default by the other Party.

25. In addition to the provisions of Rule 19.4 of the Supplier Tariff, the CDS Provider may assign its interest in this Agreement to a wholly-owned affiliate upon 30 days' prior written notice to the Company; provided that the Company is reasonably satisfied that the various security obligations provided by Section 18 hereof remain in place or adequate substitutions are made therefor to the reasonable satisfaction of the Company and such assignment does not materially adversely affect the Company's operations or its ability to perform, or the cost of performing, its obligations under this Agreement; and provided further, that the CDS Provider shall provide, at its sole cost and expense, any notification to CDS Customers of such assignment as may be required.

26. Representations, Warranties and Covenants.
 - (a) The CDS Provider hereby represents, warrants and covenants as follows:

- (i) the CDS Provider is in compliance, and will continue to comply, with all applicable obligations, requirements, rules and regulations, as established by the Supplier Tariff and the Company's Electric Service Tariff (in this latter case, to the extent such tariff is referenced in the Supplier Tariff) that are applicable to the CDS Provider as a result of serving customers located in the Company's service territory;
 - (ii) the CDS Provider agrees to comply with: (A) those provisions of the standards of conduct applicable to licensees as set forth in 52 Pa. Code § 54.43; and (B) the competitive safeguards and/or code of conduct set forth in 52 Pa. Code § 54.122, consistent with the operational procedures relating thereto set forth in Exhibit A hereto; and
 - (iii) the CDS Provider is licensed by the Commission to provide electric supply to customers in Pennsylvania and has satisfied, and will continue to satisfy, all other Commission requirements applicable to the CDS Provider.
- (b) The Company hereby represents, warrants and covenants that the customer information furnished to the CDS Provider and the Statistical Expert by the Company shall be complete and accurate and set forth a complete list of all of the Company's non-shopping residential customers as provided in Section 5 hereof.

(c) Each Party hereby represents, warrants and covenants to the other Party as follows:

- (i) each Party's performance of its obligations hereunder has been duly authorized by all necessary action on the part of such Party and does not, and will not, conflict with, or result in a breach of, such Party's charter documents or bylaws or any indenture, mortgage, other agreement or instrument, or any statute or rule, regulation, order, judgment or decree of any judicial or administrative body to which such Party is a party or by which such Party or any of its properties is bound or subject; and
- (ii) this Agreement is a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights generally or by general principles of equity.

27. Each Party shall provide notice to the other Party at such time that it learns that any of the representations, warranties, or covenants in this Agreement have been violated.

28. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effectuate the purpose and intent of this Agreement. In addition, the Parties acknowledge that the CDS Prices do not reflect a margin or allowance for any additional cost,

expense or obligation that may be incurred by the CDS Provider in the event that, pursuant to Section 3 or Section 16, any such cost, expense or obligation may be imposed on the CDS Provider during the CDS Term. If any such cost, expense or obligation is so incurred, the Company shall, upon the reasonable request of the CDS Provider and at the CDS Provider's sole expense, reasonably cooperate with the CDS Provider to attempt to reduce or ameliorate such additional cost, expense or obligation, including supporting or participating in a petition or other filing to the Commission seeking to modify the rules pertaining to, or eliminate the effect of, such cost, expense or obligation or to permit the recovery by the CDS Provider of all or a portion thereof, provided that such support or participation shall not require the Company to take or support a position that would be in conflict with, or otherwise violate, any Commission approved order, settlement or other agreement that applies to the Company.

29. Any notice or request made to or by either Party regarding this Agreement shall be made to the representative of the other Party as indicated below.

To the Company:

PECO Energy Company
2301 Market Street/S4-4
Philadelphia, PA 19101
Attn.: Carlo Ciabattoni
Title: Manager, Supplier Administration Group
Telephone: (215) 841-4210
Facsimile: (215) 841-4728
Internet E-Mail: cciabattoni@peco-energy.com

To the CDS Provider:

The New Power Company, Inc.
1 Manhattanville Road
Purchase, NY 10577-2100
Attn.: Monty Dolph
Title: Vice-President
Telephone: (914) 697-5123
Facsimile: (914) 697-2412
Internet E-Mail: mdolph@newpower.com

All notices required to be made hereunder shall be in writing and shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the business day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next business day). Notice by overnight mail or courier shall be deemed to have been received two (2) business days after it was sent. A Party may change its address by providing notice of same in accordance herewith.

30. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
31. The Supplier Tariff, as modified hereunder to apply to the CDS Provider and as the same may be amended from time to time, is incorporated herein by reference and made a part hereof. In the event of a conflict between the terms of this Agreement and the terms of the Supplier Tariff, the terms of this Agreement shall control.

32. If the date on which a notice is due or a prescribed action is required to take place falls on a day that is not a business day, the date on which such notice or action shall be due shall be extended until the next succeeding business day.
33. Except as otherwise required by law or regulation, each Party shall notify the other Party prior to making or issuing any press release concerning the execution, filing or nature of this Agreement and coordinate the issuance of the same, provided that the nature and content of any such press release shall be within the discretion of the issuing Party.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Company and CDS Provider have caused this Agreement to be executed by their respective authorized officials.

RECEIVED
OCT 19 AM 10:27
F.A.P.U.C.
SECRETARY'S BUREAU

PECO ENERGY COMPANY

By: Ellen M. Cavanaugh October 18, 2000
Name: Ellen M. Cavanaugh Title: Vice-President, Electric Supply & Transmission Date:

THE NEW POWER COMPANY, INC.

By: _____
Name: **Marc Manly** Title: **General Counsel** Date:

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Company and CDS Provider have caused this Agreement to be executed by their respective authorized officials.

RECEIVED
OCT 19 AM 10:27
PA.P.U.C.
SECRETARY'S BUREAU

PECO ENERGY COMPANY

By: _____
Name: Ellen M. Cavanaugh Title: Vice-President,
Electric Supply
& Transmission Date: _____

THE NEW POWER COMPANY, INC.

By: Marc Manly _____
Name: Marc Manly Title: General Counsel Date: 10/18/2000

EXHIBIT E

Annual Adjustment Formula for Required Amount in Escrow Account, Letter of Credit, or Guaranty, as applicable

As of December 3, 2001 and December 2, 2002 (the "Adjustment Date"), the amount required to be maintained in the Escrow Account (or, if applicable, guaranteed by the Guaranty or reflected in the Letter of Credit) pursuant to Section 18 of the Agreement shall be recalculated in accordance with the formula set forth below. Such recalculation shall become effective no later than five business days after such recalculation, at which time the CDS Provider shall either post any additional collateral required or a distribution shall be made to the CDS Provider of any collateral in the Escrow Account in excess of the recalculated required amount (or, if applicable, the amount guaranteed by the Guaranty or reflected in the Letter of Credit shall be adjusted). An example of such recalculation is attached hereto as Attachment 1 to Exhibit E. Notwithstanding the foregoing, or the results of any calculation from the formula below, in no event shall the amount required to be maintained in the Escrow Account (or, if applicable, guaranteed by the Guaranty or reflected in the Letter of Credit) pursuant to Section 18 of the Agreement exceed fifty million dollars (\$50,000,000) or fall below ten million dollars (\$10,000,000).

$$\text{Amount (\$) Required for Escrow} = \text{MCF} - \text{RER}$$

Where:

CDS Customer List = a snapshot of the number and strata of customers being served by the CDS Provider, and used in the calculations of future energy supply ("L", as defined below) and PJM capacity obligations ("ICAP", as defined below). The values associated with the CDS Customer List shall be determined as follows: For the December 3, 2001 determination, the CDS Customer List shall be the actual list of customers receiving CDS from the CDS Provider as of December 3, 2001; and for the December 2, 2002 determination, the CDS Customer List shall be the actual list of customers receiving CDS from the CDS Provider as of December 2, 2002, plus the additional customers who were selected in the supplemental assignment pursuant to Section 12 of the Agreement.

MCF = Market Cost Forecast (\$) - the estimated all-in market cost to provide energy plus related services to all CDS Customers for the remaining full calendar years (*i.e.*, both 2002 and 2003, or just 2003, as the case may be) contained within the term of the Agreement, determined pursuant to the following formula:

$$\text{MCF} = [(\text{FP} \times \text{LFP} + \text{BA} + \text{AS}) \times \text{L} \times \text{LLA}] + \text{ICAP}$$

FP = Forward price (\$/MWH) - broker price for a standard block of 7 x 24 firm energy at the PJM western hub, for the remaining full calendar years (*i.e.*, both 2002 and 2003, or just 2003, as the case may be) contained within the term of the Agreement. This price shall be the mid-market number between bid and ask values solicited by a representative of the Company from Prebon (or another mutually acceptable broker) at 10 AM EST on the

Adjustment Date. The CDS Provider shall have the option to call the broker simultaneously to confirm the "bid" and "ask" numbers received by the Company.

LFP = Load Following Premium (ratio) - a ratio representing the difference in energy price to serve load with a residential load shape compared to that for the standard block of energy used to determine FP, calculated as: $LFP = LTC / ATC$

The Load Following Premium looks back 24 months from the date of determination and calculates the additional cost to serve the scheduled hourly CDS load at actual hourly PECO zone Locational Marginal Price (LMP) compared to the price to serve a flat load at the same PECO zone LMPs. Because actual CDS customer load data is not available for this 24 month look back, the hourly load shapes used in this calculation will be as defined in "LH", the same as those used to calculate future CDS load responsibility "L", as defined below.

LTC = Average load-weighted hourly LMP for the PECO zone (\$/MWH) - To determine LTC: (i) calculate the cost of serving the modeled CDS load from the PJM spot market at the hourly LMP for the PECO zone for each hour of the previous 24 months by multiplying the hourly load (in MW) times the PECO zone LMP (\$/MWH) for the same hour; (ii) sum all amounts calculated in (i) above; and (iii) divide the total dollars by the total hourly loads. The result will be the load weighted average LMP in \$/MWH.

ATC = Around the Clock average PECO zone LMP for the same hours used in LTC calculation (\$/MWH) - the simple arithmetic average of hourly PECO zone LMPs for the same 24 month period used to determine LTC above.

BA = Basis Adjustment (\$/MWH) - the average difference over the past 24 months between the hourly LMP for the PJM western hub and the PECO zone, load weighted and including the same hours and load weighting methodology as for LTC, above.

AS = Ancillary Services cost (\$/MWH) - the average cost of ancillary services billed to the Company by PJM over the past 12 months, adjusted for any rate changes announced by PJM. AS is calculated as the sum of ancillary service charges (\$) to the Company for the Company's Default PLR Service load over the most recent 12 months for which data is available, divided by the total Default PLR Service load (MWH) for the same period.

ICAP - Capacity Obligations according to the PJM Reliability Assurance Agreement (\$) - ICAP is calculated as the product of the total capacity obligation of the customers in the CDS Customer List (MW-days) for the remaining full calendar years (i.e., both 2002 and 2003, or just 2003, as the case may be) contained within the term of the Agreement and the market price for ICAP. The market price for ICAP shall be the mid-market number between bid and ask values solicited by a representative of the Company from broker TFS (or a mutually agreeable replacement) at 10 AM EST on the Adjustment Date. The CDS Provider shall have the option to call the broker simultaneously to confirm the "bid" and "ask" numbers received by the Company.

L = forecast of volume of energy to serve CDS Customers (MWH) - The volume of energy expected to be delivered to CDS Customers for the remaining full calendar years (i.e., both 2002 and 2003, or just 2003, as the case may be) contained within the term of the Agreement, calculated as: $L = LR + LRH$

LH = forecast of volume of energy to serve CDS Customers in individual hours (MWH) - The volume of energy expected to be delivered to CDS Customers during a particular hour, calculated as: $LH = LR(\text{hourly}) + LRH(\text{hourly})$ This string of hourly values is needed in the calculation of **LTC** and **BA**, as defined above.

LLA = Standard line loss adjustment factor for all residential customers, used to account for the difference between forecast retail sales "**L**" and the associated wholesale energy supply requirement. **LLA** shall be applied in a manner consistent with Section 6.5 of the Supplier Tariff.

RER = Retail Estimated Revenue (\$) - the expected generation service charges that would be collected from CDS Customers based on the Company's filed "price to compare" for the remainder of the term of the Agreement, adjusted for Gross Receipts Tax and excluding the portion of the price to compare associated with PJM Network Transmission Service. **RER** shall be calculated as: $RER = [LR \times PCR] + [LRH \times PCRH]$

LR = load forecast for CDS Rate R customers - **LR** is a forecast based on normal temperatures. It is calculated by summing the forecast loads for all Rate R customers in the CDS Customer List. The forecast load for each customer is calculated by applying 30 year historical average hourly temperatures for the Philadelphia region (supplied by the NOAA or other mutually acceptable source) into the appropriate PECO strata energy forecast model. **LR** summed over all customers and across all hours is used in the calculation of **L**.

LRH = load forecast for CDS Rate RH customers - **LRH** is a forecast based on normal temperatures. It is calculated by summing the forecast loads for all Rate RH customers in the CDS Customer List. The forecast load for each customer is calculated by applying 30 year historical average hourly temperatures for the Philadelphia region (supplied by the NOAA or other mutually acceptable source) into the appropriate PECO strata energy forecast model. **LRH** summed over all customers and across all hours is used in the calculation of **L**.

PCR = PECO Energy Price for Rate R customers - the expected generation service rate for Default PLR Service customers in Rate R, based on the unbundled unit rates (cents/kWh) contained in the Summary of Unbundled Revenue section of Appendix A to the Company's Electric Restructuring Settlement approved in Docket Nos. R-00973953

and P-00971265 on May 14, 1998, adjusted to remove the Gross Receipts Tax (GRT) component.

Such rates are as follows:

Rate R	Year	Generation (cents/kwh)	Adjusted to remove GRT @ 4.4% (cents/kwh)
	2002	5.09	4.87
	2003	5.14	4.91

PCRH = PECO Energy Price for Rate RH customers - the expected generation service rate for Default PLR Service customers in Rate RH, based on the unbundled unit rates (cents/kWh) contained in the Summary of Unbundled Revenue section of Appendix A to the Company's Electric Restructuring Settlement approved in Docket Nos. R-00973953 and P-00971265 on May 14, 1998, adjusted to remove the Gross Receipts Tax (GRT) component.

Such rates are as follows:

Rate RH	Year	Generation (cents/kwh)	Adjusted to remove GRT @ 4.4% (cents/kwh)
	2002	4.20	4.02
	2003	4.23	4.04

Exhibit E-1: Annual Adjustment Formula - Example of December 2001 Calculation

Input assumptions for this example:

CDS Customer List	
ICAP obligation for CDS customers (MW)	450
ICAP Market Price - broker quote (\$/MW-day)	70
FP (Forward Price) - broker quote (\$/MWH)	35
LTC (Load-weighted LMP) (\$/MWH)	45
ATC (Average LMP) (\$/MWH)	40
BA (Basis Adjustment)	1.2
AS (Ancillary Services Rate) (\$/MWH)	1.50
LLA (Line Loss Adjustment)	1.0935
LR (Load Forecast for CDS Rate R Customers) (MWH/year)	1000000
LRH (Load Forecast for CDS Rate RH Customers) (MWH/year)	600000
PCR (PECO Energy Price) -- year 2002 (\$/MWH)	48.7
PCR (PECO Energy Price) -- year 2003 (\$/MWH)	49.1
PCRH (PECO Energy Price) -- year 2002 (\$/MWH)	40.2
PCRH (PECO Energy Price) -- year 2003 (\$/MWH)	40.4

Calculations:

$L = LR + LRH$ (MWH) - 2 years	3,200,000
$LFP = LTC / ATC$ (ratio)	1.125
ICAP = ICAP obligation x broker rate (\$)	22,995,000
(450 MW x 365 days/year x \$70/MW-day* 2 years)	

MCF (Market Cost Forecast) (\$) **170,223,840**
 $\{[(FP \times LFP) + BA + AS] \times L \times LLA\} + ICAP$

RER (Retail Estimated Revenue) (\$)	146,160,000
= LR(year 2002)*PCR(year 2002)	48,700,000
+ LR(year 2003)*PCR(year 2003)	49,100,000
+ LRH(year 2002)*PCRH(year 2002)	24,120,000
+ LRH(year 2003)*PCRH(year 2003)	24,240,000

Amount Required for Escrow (MCF - RER) (\$) **\$ 24,063,840**

ORIGINAL

Exhibit A

Operational Procedures

- (1) The CDS Provider shall prohibit disclosure of customer specific billing history or load information regarding CDS Customers to personnel of the CDS Provider or any company controlled by it or under common control ("affiliate"), vendors or agents who are engaged in marketing activities for EGS generation supply service.
- (2) Any marketing materials distributed in the Company's service territory by the CDS Provider or any of its affiliates that include an offer to provide EGS services will include a disclaimer distinguishing the provision of CDS from other services offered to such customers by the CDS Provider or its affiliates.
- (3) The CDS Provider will promptly refer requests from CDS Customers for information about electric generation suppliers to the Company.
- (4) The billing and customer care employees of the CDS Provider who perform such functions relating to CDS shall function independently from personnel performing those functions for its EGS or any affiliate.
- (5) The CDS Provider will formally adopt and implement the provisions in the Code of Conduct and this Exhibit A as company policy and will take appropriate steps to train and instruct its employees of their content and application.

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Customer Care Functions

Customer Care Functions to be performed by the Company

- Preparation of Terms and Conditions for CDS Service
- Billing
- Credit
- Collections and notices
- Physical termination
- Maintenance and repair of Company-owned meters
- Reading of non-advanced Company-owned meters
- Administration of universal service programs (CAP, LIURP, CARES and Hardship)
- Call center activities related to meter reading, billing, switching requests, distribution system outages and emergencies, and discontinuance of service

Customer Care Functions to be performed by the CDS Provider

- Notifying CDS Customers of their selection for enrollment in CDS
- Responding to switch or service termination requests from the Company with respect to CDS Customers
- Call center activities related to CDS electric generation supply and pricing and CDS Customer inquiries directly related thereto
- EDI/EDEWG transactions
- Dispute resolution related to CDS electric generation supply

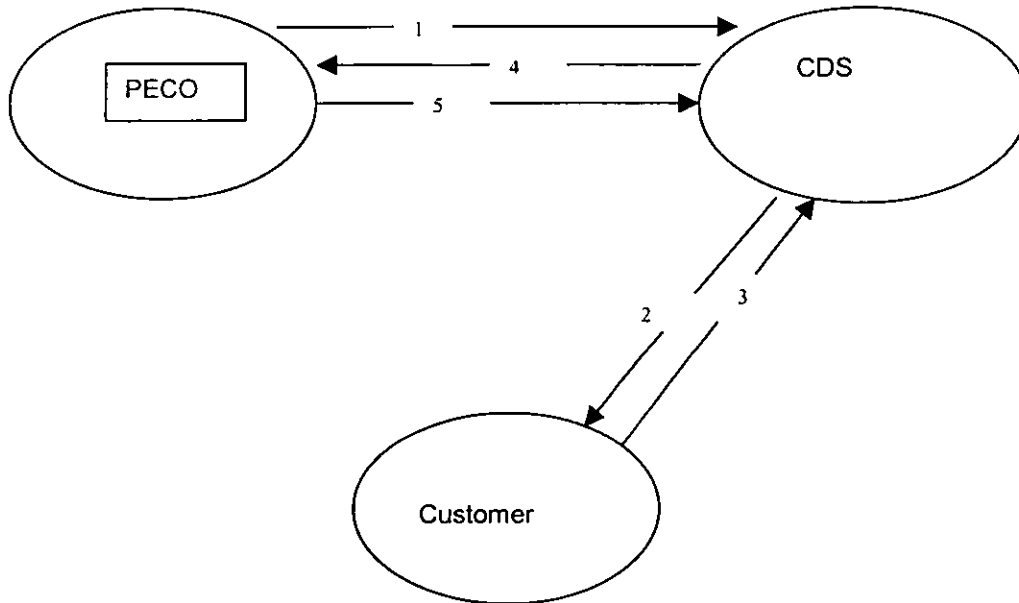
CDS Prices

The CDS Price for a CDS Customer is determined by rate class as a percentage discount from the Company's "shopping credit" with respect to its retail customers during the applicable month of the CDS Term. The percentage discount, grouped by rate class, is shown on the table below.

Rate Class	Percentage Discount
Rate Class R	
up to 500 kWh	2.02%
over 500 kWh – Winter	2.02%
over 500 kWh – Summer	2.02%
Rate Class R – CAP 1 & CAP 2	
up to 500 kWh	2.02%
over 500 kWh	2.02%
Rate Class RH	
up to 600 kWh – Winter	1.02%
over 600 kWh – Winter	1.02%
up to 600 kWh – Summer	1.02%
over 600 kWh – Summer	1.02%
Rate Class RH – CAP 1 & CAP 2	
up to 500 kWh – Winter	1.02%
over 500 kWh – Winter	1.02%
up to 500 kWh – Summer	1.02%
over 500 kWh – Summer	1.02%
Rate Class OP	
All kWh	1.02%

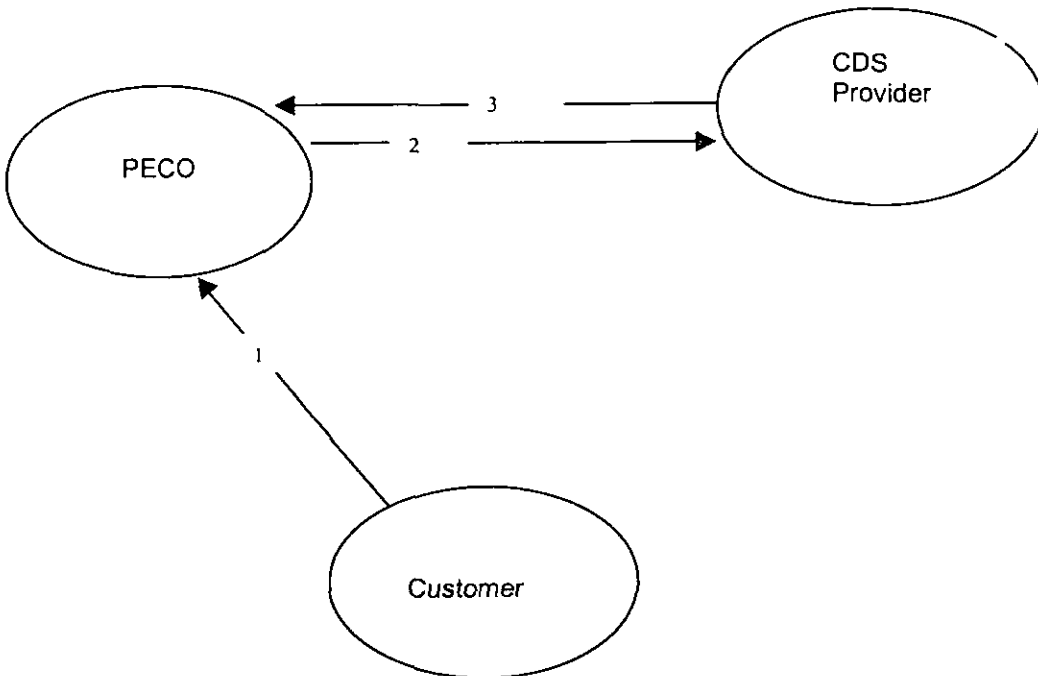
As of the date of this Agreement, the CDS Prices resulting from the above table are as follows:

Rate Class	CDS Price (¢/kWh)		
	2001	2002	2003
Rate Class R			
up to 500 kWh	5.438	5.438	5.487
over 500 kWh – Winter	5.438	5.438	5.487
over 500 kWh – Summer	6.085	6.085	6.134
Rate Class R – CAP 1 & CAP 2			
up to 500 kWh	5.467	5.467	5.487
over 500 kWh	5.438	5.438	5.487
Rate Class RH			
up to 600 kWh – Winter	5.711	5.711	5.751
over 600 kWh – Winter	3.227	3.227	3.256
up to 600 kWh – Summer	5.711	5.711	5.751
over 600 kWh – Summer	6.404	6.404	6.453
Rate Class RH – CAP 1 & CAP 2			
up to 500 kWh – Winter	5.711	5.711	5.771
over 500 kWh – Winter	2.752	2.752	2.781
up to 500 kWh – Summer	5.711	5.711	5.751
over 500 kWh – Summer	5.701	5.701	5.751
Rate Class OP			
All kWh	1.712	1.712	1.732

Exhibit D***Initial Assignment to CDS Provider***

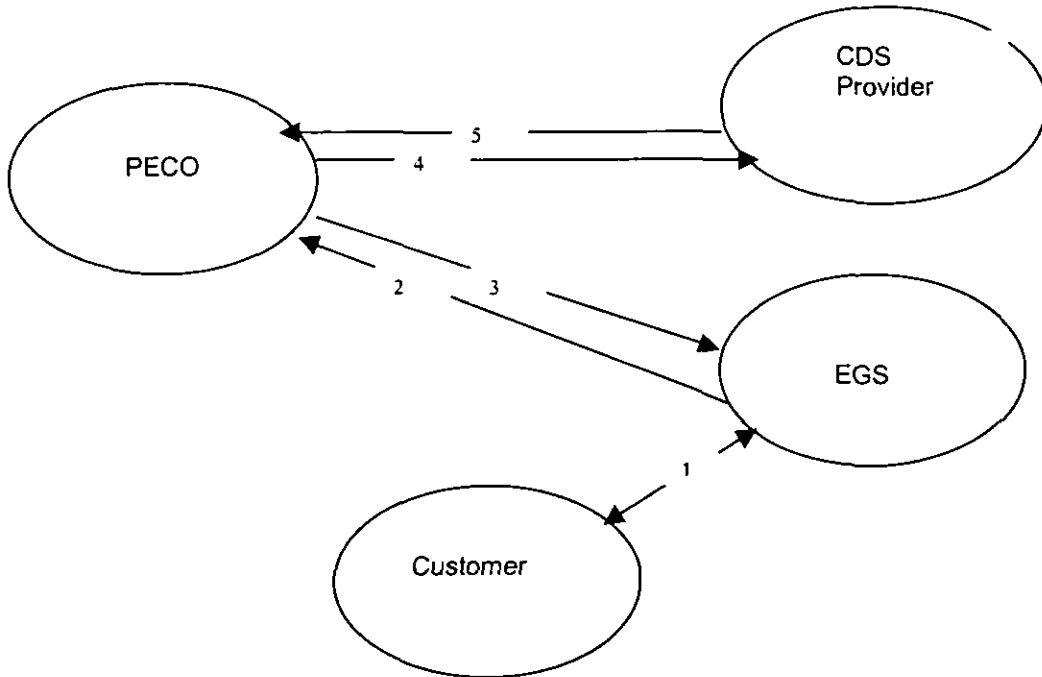
1. PECO provides a flat file of randomly selected accounts to CDS Provider. This list will include all non-shopping customers. Customers pending enrollment (16 day rolling switching rule) will not be included. The list will be the same file layout of the current Eligible Customer List.
2. The CDS Provider will send a letter to customers notifying them that they have been assigned to the CDS Provider for Generation Service. The customer will have an "opt out" period.
3. Customer will respond to the CDS Provider. The Customers that "opt out" will not be replaced by other candidates and will remain with PECO for PLR Service.
4. CDS Provider to send 814 Enrollments per the current rolling switching rules for non-opt out customers to PECO.
5. PECO will generate an 814 Enrollment Response to the CDS Provider indicating the estimated start date (based on first meter read after CDS Provider period begins). If a customer is currently shopping with a supplier, or has a supplier pending, the response will indicate the enrollment is rejected.

Customer Notifies PECO to Drop CDS Provider

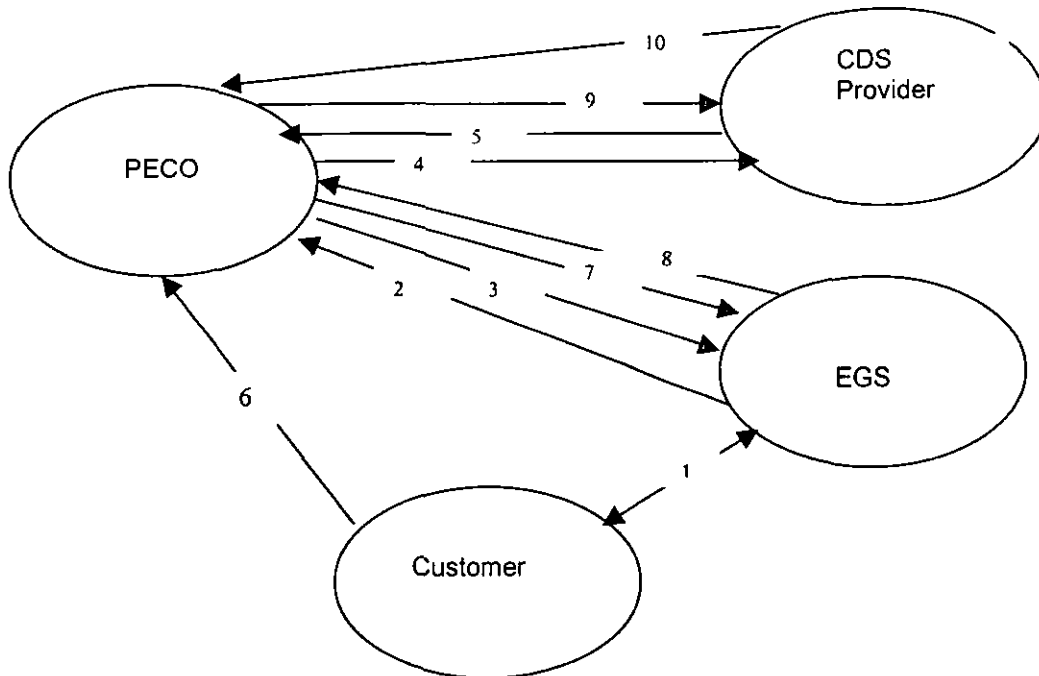


1. Customer calls PECO to drop out of CDS after CDS Provider enrolls customer.
2. PECO sends an 814 Drop to CDS Provider (will follow rolling switching rules).
3. CDS Provider sends 814-Drop Response to PECO

Customer Selects EGS



1. EGS and Customer communicate regarding enrollment
2. EGS sends 814 Enrollment Request to PECO
3. PECO sends 814 Enrollment Response to EGS
4. PECO sends 814 Drop to CDS Provider
5. CDS Provider sends 814-Drop Response to PECO

Customer Selects EGS - with Rescission

1. EGS and Customer communicate regarding enrollment
2. EGS sends 814 Enrollment Request to PECO
3. PECO sends 814 Enrollment Response to EGS
4. PECO sends 814 Drop to CDS Provider
5. CDS Provider sends 814-Drop Response to PECO
6. Customer calls PECO to rescind
7. PECO sends 814-Drop Request to EGS
8. EGS sends 814-Drop Response to PECO
9. PECO sends 814 Reinstatement to CDS Provider
10. CDS Provider sends 814 Reinstatement Response to PECO

Certificate of Service

I hereby certify that I have this day served the foregoing document on the following in the matter of PECO Energy Company's Competitive Default Service Program Bidding.

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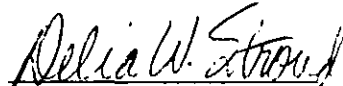
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(215) 841-4252

Dated: October 18, 2000

DATE: October 19, 2000
SUBJECT: A-110550F0147
TO: Law Bureau
FROM: James J. McNulty, Secretary

LAF

DOCKETED
OCT 25 2000

**DOCUMENT
FOLDER**

Application of PECO Energy Co., Pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code, for Approval of (1) a Plan of Corporate Restructuring, Including the Creation of a Holding Company; and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation.

Attached is a copy of a Joint Petition for Approval of Competitive Default Service Coordination Agreement with Request for Expedited Treatment, filed by PECO Energy Company and The NewPower Company, Inc., in connection with the above docketed proceeding.

This matter is assigned to your Bureau for appropriate action.

Attachment

cc: FUS

laf

ECKERT SEAMANS CHERIN & MELLOTT, LLC

213 Market Street
Eighth Floor
Harrisburg, PA 17101

Address correspondence to:
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Harrisburg, PA 17108-1248

Telephone: 717.237.6000
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Philadelphia

Haddonfield, NJ

Washington, D.C.

BY HAND DELIVERY

October 23, 2000

James McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PECO Energy Company Competitive Default Service Program
Bidding; PUC Docket No. A-110550 F0147

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Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of Green Mountain Energy Company's Answer and Protest to the Joint Petition for Approval of Competitive Default Service filed by PECO and New Power in this docket.

As proof of filing, please date stamp and return the extra copy of this cover letter in the enclosed return envelope.

Sincerely,

Steven P. Hershey

SPH:cat
Enclosures

cc: Certificate of Service List (w/enc.)

DOCUMENT
FOLDER

82

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

In Re: PECO Energy Company Competitive)
Default Service Program Bidding)

Docket No. A-11050 F0147

**ANSWER AND PROTEST OF GREEN MOUNTAIN ENERGY COMPANY
TO THE JOINT PETITION FOR APPROVAL OF
COMPETITIVE DEFAULT SERVICE AGREEMENT**

DOCKETED

OCT 25 2000

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I. INTRODUCTION.

Pursuant to 52 Pa. Code §§5.51 and 5.61, Green Mountain Energy Company (Green

Mountain or GME) files this Answer and Protest to the Joint Petition for Approval of Competitive Default Service Coordination Agreement filed by PECO Energy Company (PECO) and The New Power Company, Inc. (New Power) which was filed with the Commission on October 18, 2000.¹ Approval of the proposed agreement between New Power and PECO is not in the public interest because PECO has inappropriately rejected a proposal submitted by Green Mountain which sets a lower price and provides for power which is environmentally cleaner.

As set forth in greater detail below, Green Mountain's proposal offers service at 2% below the shopping credit for all CDS customers served under rates R, RH and OP. By contrast, the proposed New Power agreement has a weighted average for those same customers, which is only 1.83% below the shopping credit. In addition, while both Green Mountain and New Power propose to ensure that 2% of the power supplied is from renewable sources², there is a substantial difference in the remaining 98% of the power provided. New Power promises only to provide PJM system power. Under Green Mountain's proposal to PECO, the remaining 98% of

¹ Green Mountain is a party to the above-referenced proceeding through the prior intervention of MAPSA, an association of which Green Mountain is a member. There can be no question of Green Mountain's standing given the direct impact of the proposed agreement on Green Mountain.

DOCUMENT
FOLDER

the power provided would be from sources that are substantially cleaner than the system-wide power, coming from hydro and gas-fired sources.

There is nothing preventing the Commission from accepting the Green Mountain proposal. Under the Phase II process adopted by the Commission, PECO was obligated to negotiate in good faith with qualifying suppliers and submit to the Commission the results of those negotiations. See ¶52(b), Joint Petition for Settlement For Approval Of (1) A Plan of Corporate Restructuring, Including The Creation of a Holding Company And (2) The Merger Of The Newly Formed Holding Company and Unicom Corporation at Docket Number A-110550F0147 (the "Joint Petition") and the Commission's June 22, 2000 Opinion and Order Approving the Settlement. PECO has determined that Green Mountain is a qualifying supplier, yet it refused to negotiate with Green Mountain concerning its current proposal and refused to submit Green Mountain's proposal to the Commission. The Commission is free to rectify this error by considering Green Mountain's proposal.

Acceptance of Green Mountain's proposal will not delay the implementation of CDS, because Green Mountain stands ready to adopt the proposed operational requirements of the contract between PECO and New Power and adhere to the timelines contained in that proposed contract.

² Both Green Mountain and New Power also commit to increasing the renewable energy increment by 0.5% per year after 2001 as required at Paragraph 38b of the PECO Restructuring Settlement.

II. THE COMMISSION SHOULD ADOPT GREEN MOUNTAIN'S PROPOSAL.

A. The Commission Has Determined that Environmental Impact is an Important Selection Criterion.

PECO's April 6, 2000 RFP, which had been mandated by the Commission, required a "description of the CDS bidder's renewable resources and plan for ensuring that the renewable conditions of the settlement found at Paragraph 38(B) are met." Paragraph 38 required CDS suppliers "to provide in 2001 at least 2.0% of its offered energy for CDS service from renewable resources." Express inclusion of a minimum renewables requirement underscores the public policy justification for changing the way power is made by including renewable regeneration.

The mere fact that the New Power agreement meets the environmental impact criterion set forth by the Commission does not mean that environmental impact is no longer a factor for comparison of competing proposals. The renewables requirement is identical to the price requirement in that a minimum threshold is required: 2% from renewables and price no greater than default service. The benefits of varying environmental characteristics of generation between two proposals must be weighed just as one must weigh price differences between two suppliers, each of which meet the minimum price requirements.³

³ It is apparent that PECO ignored environmental impact for all practical purposes. Although PECO's RFP was based on the Commission's RFP, there is at least one critical difference: PECO deleted reference to the minimum requirement for renewables. In fact, PECO's RFP lacks a single mention of the renewables requirement. Nor was it included as one of the six primary selection criteria in a memorandum circulated by PECO following the submission of bids.

B. GME's Proposal is Superior to the New Power CDS Agreement.

GME's proposal,⁴ attached as Exhibit 1 to this Response, is superior to the New Power CDS Agreement in both price and environmental impact. GME's proposal offers a rate 2% below PECO's shopping credit to all classes of CDS customers. New Power offers a rate that is only 1.83% (as a weighted average) below the shopping credit to PECO's Rate R, Rate RH, and Rate OP CDS customers.⁵ Based on the price included in its amended proposal, GME should be chosen as the CDS provider and awarded a percentage of PECO's customers as such.

Alternatively, and at the very least, the Commission should grant GME the right to serve a substantial portion of PECO's customers based on the price of its bid alone.

GME's amended proposal is also superior to the New Power Agreement in environmental impact. While both New Power and GME offer a supply that is 2% renewable in conformance with the requirements of Paragraph 38b of PECO's April 29, 1998 Restructuring Settlement, the remaining 98% of Green Mountain's supply, from hydro and natural gas sources, is significantly cleaner than the power provided on the grid.⁶ By contrast, 98% of the New Power supply is simply drawn from the PJM grid and will not be as environmentally clean as GME's supply.

This combination of a superior price discount and reduced environmental impact mandates that the Commission determine that the GME proposal provides greater benefit to the customers and to the public and that GME should be selected to provide CDS service.

⁴ As described in more detail below, the attached Green Mountain proposal is identical to the original proposal submitted to PECO, except that the price has been revised from the default service rate to 2% below the default service rate.

⁵ New Power offers a rate 2.02% below the shopping credit to Rate R customers, but only a 1.02% discount to Rate RH and OP customers, resulting in a weighted discount of 1.83%. This discount is less than Green Mountain's 2% discount across the board.

⁶ As with all of Green Mountain's electricity products sold in Pennsylvania and other states, this environmental content is delivered by assuring that on an annual basis, electricity with the required environmental characteristics is delivered into the electricity grid serving the consumer in an amount matching the consumer's annual demand. This feature is described fully at Green Mountain's web site, found at www.greenmountain.com.

In the alternative, Green Mountain is prepared to discuss a division of the CDS function between it and New Power, thus taking a step to foster development of a more competitive market with multiple CDS suppliers.⁷

C. Green Mountain's Service in Pennsylvania is Exemplary.

In considering Green Mountain's proposal, it should consider Green Mountain's experience in Pennsylvania. It is the ONLY company providing service to residential customers in all eight major regulated Pennsylvania service territories. Unlike many marketers, it continued to serve its existing customers, and offered service to new customers, during the high power cost period last summer. Green Mountain was instrumental in the construction (including early development activities and a long-term purchase contract) of a wind farm in Pennsylvania, which is one of the largest wind farms in the eastern United States. It is a major marketer of service to residential customers in Pennsylvania and has been providing service since the state opened to full-scale competition. No other company can claim these accomplishments.

⁷ Adoption of the Green Mountain proposal will not present PECO with significant administrative burdens related to the provision of service by multiple CDS suppliers. GME accepts the operational terms of the proposed PECO/New Power Agreement.

III. THE COMMISSION IS FREE TO ADOPT GREEN MOUNTAIN'S PROPOSAL.

A. The Commission Must Consider All Qualifying Proposals And Reserve To Itself the Final Decision in Selecting the Competitive Default Supplier.

The Joint Petition and the Commission's June 22, 2000 Opinion and Order provide that in the event a winning bidder is not selected through the RFP/bidding process, PECO "agrees to engage in good faith negotiations with qualified suppliers to enter into a bilateral CDS agreement or agreements between PECO and one or more suppliers." ¶52(b).

The Joint Petition therefore contemplates that there may be more than one agreement. That is, PECO need not determine a single "best" bid, in contrast to the Phase I bidding process. In this way, the Commission has reserved for itself the ability to determine which proposal, or combination of proposals, best advances the public interest.⁸

PECO's attempts to reduce the Commission's role to that of a mere gesture (approval in a very short period of time) is little different from acting as though the Commission had delegated authority to PECO to make a decision which directly affects both customers and alternative suppliers. Such delegation is improper. *Woodland Road Association v. Pennsylvania Public Utility Commission*, 87 Pa.Cmwlth. 497, 487 A.2d 1030, 1985 Pa.Commwlth.LEXIS 879, (1985). See also *Pennsylvania Public Utility Commission v. Harchelroad Trucking Company*, 1977 Pa.PUC LEXIS 103, 51 PA.PUC 30 (1977), *Hetherington v. McHale et al.*, 458 Pa. 479, 329 A.2d 250 1974 Pa. LEXIS 747 (1974).

The Commission should review both the proposed New Power contract and Green Mountain's proposal and determine that the Green Mountain proposal provides superior benefits to the public. The New Power proposed contract should be rejected. In the alternative, the

⁸ The fact that New Power's proposal seeks to serve the entire CDS load does not preclude the Commission from instead dividing the load among several qualifying suppliers. The Commission is clearly empowered to accept a proposal, or condition acceptance of a proposal on the supplier's agreement to modifications, such as serving a

contract should be modified to allow Green Mountain to serve at least a substantial portion of CDS customers. In that case, the Commission should direct PECO to enter into a contract with Green Mountain under the terms set forth in the Green Mountain amended proposal and on operational terms consistent with the proposed New Power contract.

B. PECO Has Improperly Failed to Submit Green Mountain's Proposal to the Commission.

On September 14, 2000, GME was notified by PECO that its original proposal was in conformance with the requirements of PECO's August 24, 2000 RFP. PECO acknowledges in its Joint Petition that there were other conforming proposals submitted in response to its Request for Proposals and that PECO entered into discussions with each of those three parties, one of whom was GME. Joint Petition at 3. These discussions merely clarified PECO's RFP requirements, by filling in the details, rather than comprising good faith negotiations intended to elicit the best proposal from each of the qualifying suppliers.

On October 3, 2000, PECO notified Green Mountain that it would no longer consider Green Mountain's proposal and instead would enter negotiations with another supplier. Failure to negotiate with GME clearly contrasts with the lengthy negotiations with New Power and is inconsistent with the requirement that PECO "negotiate" with all qualified suppliers. In response to PECO's action, GME promptly submitted an amended proposal, which PECO refused to consider. PECO admittedly continued extensive negotiations with New Power while ceasing all discussions with GME. It was both improper and unjust for PECO to continue negotiations with one party while refusing to consider the amended proposal submitted by GME.

Both PECO's RFP and the public interest require PECO to negotiate with all parties who submitted qualifying proposals. The Commission must now correct this injustice and consider

lesser proportion of the load than contemplated. PECO and New Power acknowledge this authority by reference to a Commission action that would modify terms or conditions.

GME's proposal instead of permitting an incumbent utility to choose its own competitors. Upon consideration of the GME proposal it will be clear to the Commission, as it would have been to PECO had it properly considered the proposal, that GME's terms are superior to the New Power Agreement.

PECO has claimed in conversations with GME that it followed strict deadlines in choosing a CDS supplier and that submission of GME's amended proposal failed to meet those deadlines. However, PECO's attempted justification for its failure to negotiate is a red herring. PECO's "deadlines" for choosing a CDS supplier are both self-imposed and moving targets. PECO has continuously altered its schedule throughout the CDS process. For example, PECO originally anticipated submitting a qualifying proposal to the Commission on October 9, 2000 for review and approval. PECO/New Power did not file this Joint Petition until October 18, 2000. Artificial deadlines cannot be relied upon by PECO as a reason for refusing to consider GME's amended proposal.

IV. IN ORDER TO EXPEDITE THE REVIEW AND IMPLEMENTATION PROCESS, GREEN MOUNTAIN IS PREPARED TO SUBSTANTIAL-
LY ADOPT THE NEW POWER CONTRACT AND TO INITIATE CDS
SERVICE ON JANUARY 1.

The New Power contract contains detailed provisions presumably negotiated over a period of weeks. Although Green Mountain has had limited opportunity to review the terms of the contract, in order to expedite the process, Green Mountain is prepared to enter into a similar contract (including adherence to the timelines specified in that agreement) with minimal modifications (none of which would be made to the operational terms) which would be discussed upon Commission direction that PECO negotiate a contract reflecting the terms of the GME amended proposal.

V. CONCLUSION.

For all of the foregoing reasons, the Commission should reject the proposed contract and direct that Green Mountain Energy Company shall provide the CDS supply function. In the alternative, the Commission should modify the proposed contract with New Power. Under that modification, Green Mountain should be permitted to serve a substantial portion of CDS customers under the terms of the Green Mountain amended proposal.

Respectfully submitted,

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Green Mountain Energy Company

Green Mountain Energy Company
-
**Amended Proposal for Bilateral
Agreement for Competitive Default Service**
-

October 12, 2000

This document provides an amended response from the Green Mountain Energy Company (Green Mountain) to PECO Energy's Request for Proposal (RFP) which provides rules for the qualification of Competitive Default Service ("CDS") bidders, the bilateral negotiations with the qualified bidder, and the terms and conditions of the provision of CDS established by Paragraph 52b of PECO Energy Company's ("PECO Energy" or "Company") Joint Petition for Settlement of its Application for Approval of (1) A Plan of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation (Docket A-110550F0147).

Qualification of Green Mountain Energy Company

Q2. Qualifications include:

Green Mountain is licensed to operate as an electric generation supplier ("EGS") in the Commonwealth of Pennsylvania. Please see Exhibit Q2a

Green Mountain is certified as a power marketer in the United States of America. Please see Exhibit Q2b

(c) Green Mountain plans to provide the generation necessary to provide CDS by purchasing load-following full requirements electricity service, including capacity, transmission and all other necessary services, to meet the electricity requirements of up to 300,000 CDS customers for the term of our bid. Green Mountain has in this manner successfully provided for the electricity requirements of up to approximately 60,000 residential customers in Pennsylvania since the inception of residential retail choice in the state. Green Mountain is near concluding negotiations with a current supplier to extend the supplier's full requirements service for Green Mountain to cover the CDS customers' electricity requirements. Green Mountain has obtained satisfactory indicative pricing from this supplier, but has not yet committed to purchase this additional service in an attempt to obtain further price reductions.

Green Mountain will also provide for the delivery into the PJM grid on an annual basis sufficient MWh of its EcoSmartsm energy blend to match the annual electricity requirements of the CDS customers. Green Mountain will increase the renewable component of its EcoSmartsm blend for the CDS customers to meet the RPS requirements set forth in the final Settlement referred to in the RFP. The non-renewable component of EcoSmartsm energy blend comes from natural gas and large hydro sources.

(d) Green Mountain Energy is L2 certified to conduct EDI for Dual billing in the state of Pennsylvania. We're currently actively involved in EDEWG as well as other markets EDI

groups. In 1998 GMTN held one of the Co-Chair positions with in EDEWG and was one of the first suppliers to accurately complete testing for the market opening. In 1999 Green Mountain participated in the conversion from EDI version 3070 to 4010 and was among the first to complete testing in all territories. Green Mountain's activities in PA received recognition from the PUC for our help in the conversion from 3070 to 4010. If the need exists GMTN is also capable of communicating using other flat file formats, but prefers EDI.

Possible processes to move these customers to GMTN's service.

Peco supplies a flat file of customer data for sign up and enrollment. Specific data will be discussed later.

GMTN will convert the flat file into our backend format.

Upon conversion the data will be submitted to our billing system and CIS for account setup.

At the same time that the account set up is occurring GMTN will send all necessary legal documentation to the customer either via electronic means (email) or paper (U.S. mail).

Within 24 hours GMTN will generate an internal enrollment request and map the internal format through Sterling Commerce GENTRAN to the EDI 814 Enrollment Request and send it via either VAN or the Internet (using GISB) to PECO.

PECO will process the enrollments according to their internal systems requirements and respond within 24 hours of receipt.

All successful responses will be processed through GENTRAN and submitted to the billing system to complete the service account set up.

All further communications should be per normal operations with GMTN.

With the large number of enrollments that would be sent out in one document GMTN would consider breaking these enrollments into separate files if PECO wishes.

PECO sends a modified version of an EDI 814 Enrollment Response

GMTN will need to identify this transaction via ASI segment using a new code (TBD).

Upon receipt of this EDI document GMTN will convert it into an internal format for processing.

After conversion GMTN will proceed to setup the account in our CIS and billing system.

At the same time GMTN will fulfill any required materials either via electronically (email) or paper (U.S. Mail).

After the account is set up GMTN will respond with a modified 814 Enrollment request. This request would have any additional data required (rates, supplier account numbers, etc).

Billing scenarios for the transferred customers

Bill Ready EDC Consolidated

GMTN will initiate testing with PECO upon notification of acceptance of this proposal.

L1 data will be prepared, upon notification of proposal acceptance, to submit test data for the 810

Bill Ready Invoice and arrange to perform L2 testing of Bill Ready with PECO

Upon completion of testing all customers enrolled in the above scenarios will be enrolled using

EDC Consolidated Bill Ready billing option in the enrollment EDI.

After the enrollment processing is complete GMTN will perform all billing calculations and

return the bill ready date via EDI within 48 hours of receiving the 867 usage from PECO.

Dual Bill

GMTN is currently certified to conduct Dual Billing in PECO territory.

Our internal process for conducting dual billing is as follows: upon receipt of the 867 GMTN converts the EDI into our backend data format. The Usage data is sent to our outsourced billing system. This billing system uploads and processes usage on a daily basis.

After the bills are calculated the billing system generates a bill stream that is sent to a fulfillment vendor for printing and mailing.

(e) Green Mountain has no indictments or pending litigation relating to any federal, state or local jurisdiction.

(f) Green Mountain has no criminal convictions within the last five years.

(g) Green Mountain entered into an Assurance of Voluntary Compliance with the Pennsylvania Attorney General on September 15, 1999. Green Mountain has been advised by counsel that the Assurance of Voluntary Compliance does not constitute a consent decree or a sanction.

(h) Green Mountain has no actions that have occurred within the last five years that have resulted in revocations or suspension of its permit or authority to do business in any jurisdiction.

(i) Green Mountain has had no actions within the last five years that have resulted in it being barring from public bidding.

(j) Green Mountain has had no bankruptcy or other similar proceedings within the last five years.

(k) Green Mountain's current financial condition is presented in financial statements in Exhibit Q2k.

(l) Green Mountain is one of the industry's leading brands for residential customers, which features electricity that is dramatically cleaner than system power. We currently serve over 100,000 customers in Pennsylvania, New Jersey, and California, with plans to expand to new states. Our existing customers in Pennsylvania have already supported the construction of new wind turbines and a solar facility.

Q3. Qualifications include:

Green Mountain has successfully written over \$16 million in bonds and letters of credit related to security requirements associated with our business. Our most recent balance sheet statements included in this application show our substantial current assets including a significant cash balance. We are confident in our ability to secure whatever appropriate level of bond is required to secure the portion of the default service bid that we might successfully secure during the bidding process.

Green Mountain is a signatory of the PJM Reliability Assurance Agreement, as amended and/or superceded. Green Mountain meets all the applicable obligations that PJM ascribes to a load servicing entity through its wholesale generation supplier agreements.

Q4. Qualifications include:

Green Mountain has not defaulted or been deemed to be in noncompliance of its contractual obligations to deliver energy.

Q5. Qualifications include:

(a) In the last two (2) years, no domestic affiliate or related entity of Green Mountain has experienced any event listed in Q4 above associated with the sale of electricity.

(b) Green Mountain knows of no facts that might reasonably be expected to adversely affect its ability to perform any aspect of CDS, including an instance in which any guarantor, or any officer, director, partner or member of the CDS bidder, has experienced any of the events listed in Q4, above and where the event reasonably could be expected to adversely affect the CDS provider's ability to perform any aspect of CDS.

Q6. Qualifications include:

Green Mountain warrants that all information provided to PECO Energy for the purpose of participating in bilateral negotiations is, or will be when provided, true, timely and accurate.

Assignment Process

N8. Green Mountain agrees to collaborate with PECO to notify customers of their selection in the random lottery and of the terms and conditions of CDS prior to the initiation of CDS service hereunder.

N9. Green Mountain will fund the administrative costs of switching the customers for which it is responsible to CDS, including notification.

Bid Terms

Green Mountain will provide CDS for 20% of non-shopping residential customers.

K1. Green Mountain's market pricing bid is included in Exhibit K1.

K2. Green Mountain's prices are 2% below PECO Energy's Commission -approved PLR rates for all rate classes. Please see Exhibit K2.

K3. Green Mountain's bid is for a three-year term beginning January 1, 2001.

K4. N/A

K5. Green Mountain's bid does not restrict otherwise applicable customer rights under PLR service.

K6. N/A

K7. Green Mountain's bid complies with all qualification package requirements contained in Section Q above.

K8. A customer assigned to Green Mountain shall retain the right to elect a competitive EGS or to return to PECO PLR service at any time at no charge pursuant to Commission-approved procedures.

K9. Green Mountain will accept all customers randomly assigned to it for CDS.

K10. Green Mountain agrees to abide by all applicable Commission rules and regulations, including, but not limited to: Chapter 54 Electric Generation Customer Choice; Chapter 55 Noncarrier Rates and Practices; Chapter 56 Standards and Billing Practices for Residential Utility Service; Chapter 57 Electric Service; PECO Energy's Electric Generation Supplier Coordination Tariff; and competitive safeguards and code of conduct; to the extent actions required to be taken thereunder are not agreed to be taken by PECO Energy.

K11. Green Mountain agrees to perform the following functions: switching generation suppliers, call center activities related to CDS electric generation supply, CDS electric generation pricing, and related customer inquiries, EDI/EDEWG transactions, disputes and disputes resolution related to CDS.

Other Bid Conditions

1. Green Mountain's bid is conditioned on PECO satisfying the obligations and timelines as outlined in sections N and O of the RFP.

2. The bilateral negotiation process will include, but not be limited to, the following topics:
 - Pro-rata processing of partial payments
 - Reimbursement for non-payment
 - Settlement terms
 - Bill design and layout, including use of Green Mountain name and logo
 - Account transfer without re-enrollment
 - Identification of the business contacts, working relationships, and roles and responsibilities of PECO and Green Mountain (beyond those identified in sections N and O of the RFP)
 - Agreement on developmental timelines
 - Content and format of customer notification and terms and conditions

PROPRIETARY INFORMATION

Docket Number A-110550 F-0147

Name of Document Exhibit K1 and K2

Date Document Received 10-23-2000

DOCUMENT CONTAINS

PROPRIETARY INFORMATION

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of 52 Pa. Code §1.54:

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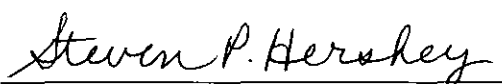
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Dated: October 23, 2000