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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

October 27, 2000

Mr. James McNulty, Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

Subject: PECO Energy Company Compliance Filings for Order Entered At
Docket A-00110550F0147 (Corporate Restructuring & Merger)

Gentlemen:

The Company's merger with Unicom was accomplished on October 20, 2000. Therefore, in accordance with the Commission's Order of June 22, 2000 at A-00110550F0147, we are providing the original and eight copies of the following tariff pages contained in Appendices A and D of the Joint Petition for Settlement:

- Supplement No. 3 to PECO Energy Electric Generation Supplier Coordination Tariff - Pa. PUC No. 1S
- Supplement No. 21 to PECO Energy Electric Service Tariff - Pa. PUC No. 3

The Company respectfully requests Commission approval of these compliance filings on an expedited basis.

Please acknowledge the foregoing on the enclosed copy of this letter. A business reply envelope is enclosed for your convenience.

Sincerely,

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Director
Regulatory & Governmental Affairs

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Certificate of Service

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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 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; by first class mail:

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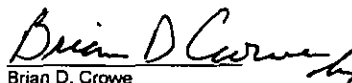
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PECO Energy Company

ELECTRIC GENERATION SUPPLIER COORDINATION TARIFF

COMPANY OFFICE LOCATION

2301 Market Street
Philadelphia, Pennsylvania 19101

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OCT 27 2000
PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Issued: October 27, 2000

Effective: October 28, 2000

**ISSUED BY: K. G. LAWRENCE - President
PECO Energy Distribution Company
2301 MARKET STREET
PHILADELPHIA, PA. 19101**

NOTICE.

LIST OF CHANGES MADE BY THIS SUPPLEMENT

Direct Access Procedures - (1st Revised Page No. 17 & 18) - in accordance with the
Joint Petition for Full Settlement at Docket No. A-110550F0147.

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5. DIRECT ACCESS PROCEDURES

5.1 Customer Enrollment

5.1.1 Generally. The selection of Customers eligible to obtain Competitive Energy Supply shall occur in accordance with the Commission's applicable Orders and Regulations.

(C)

5.1.2 Provision of Customer Lists. The Company shall provide to all EGSs a complete list of all Customer information in electronic format via the Success website or the successor thereto. Said list shall be provided electronically, without charge, to licensed EGSs on June 1, 2000, and shall be updated on August 1, 2000 and quarterly thereafter, until January 1, 2004, unless the Commission shall make a generic determination (whether by Secretarial Letter, Order, Rule or Regulation) that such program shall continue and, if so, under what terms. In the event, however, that the PECO/Unicom merger is not consummated by February 2, 2001, the Company will provide EGSs no additional lists hereunder, unless and until such time as the merger is consummated or the Commission makes the above-described generic determination, at which point the Company will continue to provide lists pursuant to the terms contained herein. Said list shall include all of the information outlined in Rule 5.1.3(a), below, for Customers that do not restrict the release of Customer information pursuant to applicable Commission Secretarial Letters, Orders, Rules or Regulations. The list shall be updated quarterly and shall include individual monthly electric usage and billing demand data at the customer account level for the most recent (12) twelve month period preceding the respective quarter, for which data is available. The lag time for this data shall not exceed (2) two billing cycles.

5.1.3 Data Exchange.

(a) The list of enrolled Customers that the Company provides to all EGSs pursuant to Rule 5.1.2, above, shall be posted on the SUCCESS website and shall include, but is not limited to, the following information about customers that have not restricted the release of Customer information.

- (i) PECO Energy Account Number
- (ii) Billing Route
- (iii) Customer Name
- (iv) Service Address
- (v) Service City
- (vi) Service State Zip

PECO Energy Company

- (vii) Mailing Address
- (viii) Mailing City
- (ix) Mailing State Zip
- (x) Contact Name (applicable to industrial and large commercial Customers only)
- (xi) Contact Address (applicable to industrial and large commercial Customers only)
- (xii) Contact City, State, Zip (applicable to industrial and large commercial Customers only)
- (xiii) Unlisted Phone Number Code
- (xiv) Phone Number
- (xv) Rate Class 1
- (xvi) Rate Code 1
- (xvii) Strata 1
- (xviii) Rate Class 2
- (xix) Rate Code 2
- (xx) Strata 2
- (xxi) Rate Class 3
- (xxii) Rate Code 3
- (xxiii) Strata 3
- (xxiv) Total Rate 1 kWh
- (xxv) Registered Peak Demand
- (xxvi) Load Factor
- (xxvii) Rate 1 Average Monthly kWh
- (xxviii) Meter Use Code
- (xxix) Delivery Date
- (xxx) 12 Individual Months of billing demand (kW) (C)
- (xxxi) 12 Individual Months of Usage (kWh)

(b) The list of enrolled Customers that the Company provides to all EGSs pursuant to Rule 5.1.2, above, shall contain the following information about Customers that have restricted the release of load data:

- (i) PECO Energy Account Number
- (ii) Rate Class
- (iii) Customer Name
- (iv) Service Address

(c) Customers who restrict the release of all of their account information shall not be included in the above described customer list. (C)

5.1.4 Manner of Customer Consent. An EGS that enrolls a Customer in accordance with Rules 5.1.1 or 5.1.2 of this Tariff must ask the Customer whether the Customer consents to the disclosure to all EGSs by the Company of Customer-specific information. The EGS must retain for the period of time required by Rule 4.12 a record (C) Denotes change

PECO Energy Company

Electric Service Tariff

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COMPANY OFFICE LOCATION

2301 Market Street

Philadelphia, Pennsylvania 19101

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For List of Communities Served, See Page 4.

Issued: October 27, 2000

Effective: October 28, 2000

ISSUED BY: K. G. LAWRENCE - President
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2301 MARKET STREET
PHILADELPHIA, PA. 19101

NOTICE.

LIST OF CHANGES MADE BY THIS SUPPLEMENT

CHANGES

Competitive Transition Charge (CTC) (1st Revised Page No. 30) in accordance with the Joint Petition for Full Settlement at Docket No. A-110550F0147.

Nuclear Decommissioning Cost Adjustment Clause (NDCA) (1st Revised Page No. 33) in accordance with the Joint Petition for Full Settlement at Docket No. A-110550F0147.

Universal Service Fund Charge (USFC) (1st Revised Page No. 34) in accordance with the Joint Petition for Full Settlement at Docket No. A-110550F0147.

Rate R-S Renewable Energy Service (2nd Revised Page No. 44 & Original Page No. 44A) in accordance with the Joint Petition for Full Settlement at Docket No. A-110550F0147.

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COMPETITIVE TRANSITION CHARGE (CTC)

Incorporated into the tariff rate schedules is the applicable non-bypassable Competitive Transition Charge (CTC) authorized to recover PECO Energy's approved Transition or Stranded Costs plus a 10.75% return and applicable Pennsylvania Gross Receipts Tax (Pa GRT). Each customer will be charged their full CTC allocable to their use of the transmission and distribution system. As an alternative means of collecting the CTC, individual customers and PECO Energy may mutually agree to a payment schedule that fully collects the same present value without bypass by the customer or overcollection by PECO Energy. For purposes of determining such a payment schedule, the Company will follow the provisions contained in paragraph 25 of the Joint Petition for Full Settlement.

Special Rules for On-Site Generation

To ensure that customers that use on-site generation equipment that operates in parallel with PECO Energy's transmission and distribution system pay their fully allocated share of Transition or Stranded Costs through the Company's CTC/ITC, to be reflected in the Reconciliation set forth below, the Company will follow the following procedure:

1. For all customers served under the Auxiliary Service Rider, PECO Energy will determine annually, following completion of each calendar year during which it is charging a CTC/ITC, whether any such customer purchased at least 10% fewer kilowatt-hours through PECO Energy's transmission and distribution system than the customer purchased during the applicable base year as defined below.
2. Base Year definition: For customers who begin service under the Auxiliary Service Rider on or after January 1, 1997, the base year will be the immediate prior calendar year. For all other Auxiliary Service Rider customers, the base year will be 1996.
3. For all such customers, PECO Energy will then determine the extent to which the reason for the reduction is use of on-site generation equipment. If this cannot be determined using metering data otherwise available to the Company, the customer will be required to provide metering data for its generator, or of its load served by that generator.
4. If the Company determines that the ratio expressed as a percentage between: (1) the amount of the usage difference caused by the on-site generation; and (2) the base year usage, is 10% or more, then the Company will render a separate bill to the customer that is equal to the difference between: (1) the total CTC/ITC amount that the customer would have paid in the just completed calendar year using monthly usage and demand data for the base year (adjusted for any portion that is not related to on-site generation); and (2) the total CTC/ITC amount that the customer did pay in the just completed calendar year.
5. The separate bill will be issued in the first quarter of the new calendar year, and will be due within thirty (30) days of the issuance date printed on the bill.

Alternatively, for existing industrial and commercial customers whose peak load during 1996 was at least four (4) megawatts, and who can document that they were actively self generating or considering self-generation as of December 31, 1996 or earlier, will pay CTC/ITC charges following full start-up of any self-generation facility they install before December 31, 2010 as follows:

- i. PECO Energy will calculate the customer's average billing demand and energy usage for calendar year 1996;
- ii. Using those billing determinants PECO Energy will determine the dollar amount that would be charged where the customer billed for CTC/ITC using the prevailing Rate HT CTC/ITC charges;
- iii. PECO Energy will bill the customer one-third of the dollar amount determined in accordance with step 2.

This provision shall not apply to customers served under the annual reconciliation provision of Rate RS.

(C)

Reconciliation of Transition or Stranded Cost Recovery (CTC/ITC)

The Company shall file an annual reconciliation of the CTC recovery (including ITC recovery) on a rate class specific (i.e. Residential and Commercial/Industrial) in accordance with Paragraph 53 of the Joint Petition for Settlement at Docket No. A-110550F0147) basis in accordance with Section 1307(e) of the Pennsylvania Public Utility Code. The reconciliation during calendar year 2010 will be done quarterly or, if necessary, monthly in order to insure full CTC recovery and termination by December 31, 2010. The reconciliation will include a redetermination of the CTC rates necessary to refund or recover previous over or under recoveries of the Annual CTC Revenue Requirement based upon the difference between CTC revenue from actual usage of the PECO Energy transmission and distribution system by rate class and the assumed level of CTC revenue for the class based upon sales in Appendix E of the Joint Petition for Full Settlement.

(C)

Accordingly, the adjusted CTC rates will be calculated to produce the level of CTC revenue that will make the actual unamortized Transition or Stranded Cost principal balance at the next true-up date equal to the projected balance at that date (as set forth on Sheet 3 of 3 of Appendix E of the Joint Petition for Full Settlement incorporating a 10.75% interest rate and applicable Pa GRT). Sales for each true-up period shall be determined by assuming, as shown in Appendix E of the Joint Petition for Full Settlement, a total sales level in 1999 of 33,569,358 MWH and increasing such sales level for each rate class by 0.8% on an annual basis, unless it is apparent that such methodology would significantly over or under recover the Annual CTC Revenue Requirement for the following year, in which case the Company will propose an adjusted sales level that reflects actual sales and updated sales projections for the following year.

(C)

(C) Denotes Change

PECO Energy Company

NUCLEAR DECOMMISSIONING COST ADJUSTMENT CLAUSE (NDCA)

The NDCA provides for the recovery of nuclear decommissioning costs related to the Company's Ownership Interest in Nuclear Generation as of 12/31/99. The NDCA shall be charged to all customers taking service under this Tariff. The adjustment shall be a cents per kWh charge calculated to the nearest one hundredth of one cent. (C)

The Company's Ownership interest in nuclear generation as of December 31, 1999 consists of the following: (C)

Peach Bottom 1	100%
Peach Bottom 2	42.49%
Peach Bottom 3	42.49%
Salem 1	42.59%
Salem 2	42.59%
Limerick 1	100%
Limerick 2	100%

Formula

The following formula shall be used to determine the NDCA.

$$\text{NDCA} = \frac{\text{PaPUC Authorized Decommissioning Expense Adjustment}}{\text{Total Pennsylvania Jurisdictional Sales for Calculation Year}}$$

Where:

PaPUC Authorized Decommissioning Expense Adjustment

(Adjusted Annual Accrual - Base Accrual) x .95 = the Adjusted Annual Accrual in the Calculation Year less the Base Accrual. The initial amount is 0. (C)

Total Pennsylvania Retail Jurisdictional Sales = total kWh sales under this Tariff for the calculation year including sales for distribution or CTC purposes.

Calculation Year = year in which the Company proposes a change to the NDCA. To the extent a new cost study, performed every five years, indicates the Company requires an adjustment in the rate, the Company shall change the NDCA to reflect such new expense level. In calculating the annual expense the Company shall use the sinking fund methodology.

Adjusted Annual Accrual = accrual necessary to fund the Adjusted Obligation.

Adjusted Obligation = Gross Decommissioning Obligation reduced by \$50 million for ratemaking purposes.

Gross Decommissioning Obligation - The total decommissioning cost obligation as approved by the Commission as expressed in escalated future dollars.

Methodology for Calculating Expense

The base period expense shall be based upon the decommissioning costs set forth in the table below. The Company shall use a sinking fund methodology to determine the appropriate level of decommissioning expense. The assumptions shall be consistent with NRC policy and requirements.

The Base Accrual shall consist of the following levels for each unit. (C)

Peach Bottom 1	\$2,992,000
Peach Bottom 2	2,588,000
Peach Bottom 3	5,976,000
Salem 1	2,651,000
Salem 2	2,509,000
Limerick 1	4,403,000
Limerick 2	8,043,000
Total	\$29,162,000

Frequency of Calculation

The annual expense shall be recalculated every five years. The Company shall adjust the NDCA to reflect the new expense level 60 days after filing the new study and the associated rate calculation with the PaPUC. The first calculation of the NDCA shall be considered to have taken place on January 1, 1998.

Completion of Decommissioning

In the event that the actual expenditures necessary to accomplish full decommissioning of the PECO Interest are less than the full balance in the funds established for such purpose, PECO shall be entitled to a release of such funds to PECO for the purpose of sharing the amount between ratepayers and shareholders. In the event that such release is granted, PECO's shareholders shall be entitled to retain (1) the first \$50 million of the net after-tax amount and (2) 5 percent of the remaining net after-tax amount of the released funds. (C)

(C) Denotes Change

Universal Service Fund Charge (USFC)

PROVISIONS FOR RECOVERY OF USFC

The Variable Distribution Service Charges for applicable service rates shall be adjusted and reconciled in accordance with paragraphs 33 and 34 of the Joint Petition for Full Settlement as modified by paragraphs 35 and 37 of the Settlement at Docket No. A-110550F0147. (C)

(C) Denotes Change

RATE R-S RENEWABLE ENERGY SERVICE

AVAILABILITY.

Electric service in the entire territory of the Company for a customer served under Rate R, Rate R-H, Rate R-T or Rate GS, that has installed a device or devices that are, in PECO Energy's sole judgment, a bona fide technology for use in generating electricity from qualifying renewable energy installations not exceeding 40 kW, and that will be operated in parallel with the Company's system. Qualifying renewable energy installations include solar panels, wind, hydro, biomass, methane field, and fuel cell generation. The customer's equipment must conform to the installation requirements contained in Appendix II of the Company's published "Requirements For Parallel Operation Of Generation." The Company will modify its distribution and transmission facilities as necessary to interconnect with the customer at a single point. A customer will be charged for all modifications, additions or retirements made to provide the interconnection, in excess of \$1000 in accordance with Appendix II of the "Requirements for Parallel Operation of Generation."

(C)

(Not available when the source of supply is service purchased from a neighboring Company under Rate BLI Borderline Interchange Service.)

METERING/BILLING PROVISIONS.

A customer may select one of the following billing and metering options in conjunction with the Applicable Rate R, Rate R-H, Rate R-T or Rate GS charges, whether receiving generation services and selling excess energy to the Company or an EGS.

(C)

(a) A non-ratcheted, bi-directional meter, such as the existing meter at the facility, may be used to record net energy sales to the customer.

(b) Two meters may be installed. One will measure the energy delivered by the Company that the customer uses, and the other will measure the energy delivered to the Company from the customer that is generated by the customer's qualified renewable energy installation.

(c) PECO Energy shall provide such other Qualified Meters on such terms as shall be approved by the Commission.

PECO will also provide metering and/or-billing to a customer contracting for the purchase and/or sale of energy from an EGS providing net metering service. A customer may also arrange for competitive billing from an EGS, and/or Advanced Meter Services from an AMSP.

(C)

If, in any billing month, the amount of energy delivered by the Company that the customer uses is greater than the amount of energy the customer delivered to the Company, then the Company will bill the customer for the difference in all usage based charges on a per kWh basis pursuant to the applicable Rate R, RH, RT or GS rate schedule. If, in any billing month, the amount of energy delivered by the Company that the customer uses is less than the amount of energy the customer delivered to the Company, the Company will not bill the customer for any usage based charges on a per kWh basis and will pay the customer under Option (b) or (c) for the excess using the monthly average PJM billing rate, market clearing price, or its successor. For customers with Rate R-T, and the appropriate metering equipment (Option(c)), the billing will reflect the on-peak and off-peak generation and use and a metering charge under Option (C) will apply. A monthly meter charge shall apply if Option (b) or (c) is selected. A customer may sell any excess energy to an EGS other than PECO Energy at prices agreed upon between the customer and the EGS.

(C)

CURRENT CHARACTERISTICS.

Standard secondary service as defined under the qualifying rate schedule.

(C)

METERING CHARGE: Under Option (a), service under R-S includes no metering charges in addition to any metering or Fixed Distribution Service Charge under the applicable rate schedule. Customers under Options (b) or (c), who receive metering service from an AMSP shall receive as a credit for the meter a portion of the Fixed Distribution Service Charge under their applicable rate schedule. Customers under Rate RT or taking Options (b) or (c) shall only pay the incremental cost over their existing meter charges.

(C)

Option (b) - \$ 4.46

Option (c) - meter cost shall be based upon the net incremental cost of purchasing and installing the new metering equipment as approved by the Commission.

MONTHLY RATE TABLE FOR NET ENERGY USED BY CUSTOMER. (See Applicable Rate R, Rate R-H, Rate RT or Rate GS for charges.)

MINIMUM CHARGE: The minimum charge per month will be the Fixed Distribution Service Charge for the applicable Rate R, Rate R-H, Rate R-T or Rate GS Service and the metering charge if the customer has selected Option(b) or Option(c).

Customers receiving service under metering/billing Option (a): If the renewable energy installation generates more electricity than the customer uses in any billing month, then the customer will not be charged for any energy usage, but the customer will not be paid by the Company for the excess energy delivered to PECO Energy.

(C)

Customers receiving service under metering/billing Option (b) or (c): the customer shall not be charged for any energy received from the Company that is less than the amount delivered to the Company in the billing month but shall be paid an amount for such excess delivered to the Company as described below. If the customer receives more energy from the Company than is delivered to the Company, the customer shall be billed for the excess energy and capacity pursuant to the applicable Rate R, Rate R-H, Rate RT or Rate GS Charges. For customers that deliver more energy to the Company than is received from the Company, PECO will pay for the excess energy using the monthly average PJM market clearing price, or its successor. Customers receiving service in conjunction with Rate R-T shall be paid for excess energy delivered to the Company at the monthly average PJM peak and/or off-peak rates as applicable.

(C)

(C) Denotes Change

PECO Energy Company

RATE R-S RENEWABLE ENERGY SERVICE (continued)

ANNUAL RECONCILIATION PROVISION.

The annual reconciliation provision is limited to 4 MW of qualifying capacity in 2001. The limit shall increase by 2 MW per year thereafter.

(C)

Under this provision energy charges will be subject to annual reconciliation. PECO Energy shall reconcile the monthly usage based charges on a per kWh basis for each calendar year based upon an annual summary bill issued by March 1 each year. The summary bill will identify the reconciliation period total of all monthly net deliveries to the Company and the total of all monthly net deliveries to the customer on a per kWh basis. If the net kWh delivered to the Company from the customer exceeds the net kWh delivered to the customer for the reconciliation period, the Company will refund any overpayment at the applicable per/kWh charge, or credit any outstanding bills at that applicable charge. For customers using Rate R-S in conjunction with Rate R-T, the Company shall reconcile on-peak and off-peak usage separately.

Customers contracting with an EGS for energy and capacity: Charges and/or credits for energy shall be determined pursuant to the customer/EGS agreement.

STATE TAX ADJUSTMENT CLAUSE APPLIES TO THIS RATE.

CONTRACT TERM.

Not less than twelve months.

PAYMENT TERMS.

Standard

(C) Denotes Change



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Direct Dial: 215 841 4257

DOCUMENT October 27, 2000
FOLDER

Via Overnight Delivery

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

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 PECO Energy's response to Green Mountain's Answer and Protest to the Joint Petition for Approval of Competitive Default Service Agreement filed by PECO Energy and New Power in the above-referenced docket.

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

RECEIVED

OCT 27 2000

DWS/jap

enclosures

cc: Certificate of Service (w/enclosures)

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Handwritten initials

DOCKETED

NOV 02 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

IN RE: PECO ENERGY COMPANY COMPETITIVE
DEFAULT SERVICE PROGRAM BIDDING

:
:
: DOCKET NO. A-110550 F0147
:

**PECO ENERGY'S RESPONSE TO GREEN MOUNTAIN'S
ANSWER AND PROTEST TO THE JOINT PETITION FOR APPROVAL OF COMPETITIVE
DEFAULT SERVICE AGREEMENT FILED BY PECO ENERGY AND NEW POWER**

**DOCUMENT
FOLDER**

I. INTRODUCTION

Pursuant to 52 Pa. Code §§ 5.51 and 5.61, PECO Energy Company ("PECO" or "the Company") respectfully requests that the Pennsylvania Public Utility Commission ("Commission") reject and dismiss the Answer and Protest ("Protest") filed by Green Mountain Company ("GME") in the above-captioned proceeding for the reasons stated below.

In its Protest, GME incorrectly claims that the competitive bid process PECO established for the Competitive Default Service ("CDS") Bilateral Agreement was flawed, and that PECO "inappropriately rejected" (Protest at 1) GME's late "amended proposal" which GME asserts is "lower priced" and "environmentally cleaner" (Protest at 1, 4). Accordingly, GME requests that the Commission award it the CDS bid instead of The NewPower Company Inc. ("NewPower") or, alternatively, that the Commission split the CDS bid between GME and NewPower. (Protest at 5, 7). *In reality, however, GME's Protest is nothing more than a losing bidder's unjustified attempt to circumvent a legitimate competitive bid process. As set forth below, PECO advised the three conforming bidders participating in the bilateral process that they had until September 29, 2000 to revise the pricing of their original bid. Both NewPower and a second bidder submitted discounted proposals in full compliance with that deadline. GME, however, did not submit an amended proposal until October 12, 2000, thirteen days after the deadline and nine days after selection of the successful bidder.*

RECEIVED

OCT 27 2000

II. PECO PROPERLY CONSIDERED ALL TIMELY BIDS SUBMITTED PURSUANT TO THE CDS BILATERAL AGREEMENT COMPETITIVE BID PROCESS

On August 24, 2000, PECO issued a Request for Proposal (“RFP”) which established the rules for CDS bilateral negotiations with qualified bidders. By the September 8, 2000 deadline set forth in Section N5 of the RFP, PECO received three conforming bids, each of which was for a three year term and for the entire CDS load. As GME concedes in its Protest (Protest p. 4, fn. 4), its original September 8, 2000 proposal contained no discounts for CDS Customers. Significantly, GME fails to mention that PECO provided all three qualified bidders an opportunity to revise by September 29, 2000 the pricing of their original September 8, 2000 bid. Notably by that deadline, two of the three bidders submitted revised prices containing discounted CDS Rates. Only GME chose not to revise its original pricing by that deadline. Instead, GME waited until October 12, 2000 to submit its “amended proposal”, 13 days after the September 29 deadline, and nine days after a successful, lower-price, conforming bidder had been selected on October 3, 2000.

GME seeks to justify its failure to adhere to the rules by characterizing the deadlines PECO established for its bilateral process as merely “artificial” “moving targets”, which PECO “continuously altered.” (Protest p. 8). This claim is false. PECO established an equitable, workable process, which treated all bidders fairly and equally. In its process PECO set forth clear rules and deadlines which were communicated uniformly to all participants. Throughout the process PECO maintained strict confidentiality and did not discuss the specifics of any bid with the other bidders.

For example, in advance of the September 15, 2000 deadline contained in Section N5 of the August 24, 2000 RFP, PECO notified each bidder electronically on September 14, 2000 that it had received three generally conforming bids and would pursue discussions with all three qualified bidders. The September 14, 2000 e-mail also provided that as a result of conference calls and meetings with each bidder and PECO’s further evaluation of the bids, PECO would select one successful bidder with

whom the Company would negotiate a definitive CDS Bilateral Agreement. (See Exhibit "A" attached hereto).

In advance of the Wednesday September 20 deadline included in that e-mail, PECO held conference calls with each of the three bidders on September 19, 2000. The September 14, 2000 e-mail further provided that PECO would hold a negotiation meeting with each of the three bidders during the week of September 25, 2000. As before, PECO fully complied with that deadline, by concluding meetings with each of the bidders, either in person or by conference call at the bidder's option, by Wednesday September 27, 2000.

As noted previously, PECO also then afforded all bidders the opportunity to revise their CDS price by September 29, 2000, an opportunity of which only GME failed to take advantage. Rather, GME submitted no CDS discount until nine days after being notified by PECO that GME was not the successful bidder.

Conveniently overlooking PECO's and the other two bidders' full compliance with all of these stated deadlines, GME asserts PECO's filing of the CDS Agreement with the Commission on October 18, 2000, rather than by October 9, 2000, is evidence that PECO's deadlines were merely "artificial." What GME fails to acknowledge is that this delay in filing the CDS Agreement was attributable primarily to PECO's having afforded the bidders the above-described opportunity to revise their CDS price, as this additional price revision opportunity in turn delayed PECO's selection of the winning bidder and its initiation of negotiations for a definitive CDS bilateral agreement. That PECO provided such an accommodation to the bilateral CDS bidders in no way renders PECO's established deadlines meaningless as GME would have you believe. Rather, it reflects PECO's efforts to create a workable, equitable process within the extremely tight frame created by the substantial delay in completing the first stage of the CDS process.

Under the first stage, the PUC was to have selected a winning CDS bidder by July 1, 2000. Unfortunately, however, that stage was not completed until August 22, 2000. Consequently, to try to meet the January 1, 2001 date for initiation of CDS service, PECO was compelled to set extremely aggressive deadlines for submission, review, evaluation and negotiation of the bilateral CDS bids. PECO recognized that the tight time frame created difficulties not only for PECO, but also for the bidders. Accordingly, after holding conference calls and meetings with each bidder, PECO allowed them additional opportunities to submit a revised CDS price and to respond to issues that had been raised in the calls and face-to-face meetings. As a result of such accommodations, PECO was not able to render its final decision as to the winning bidder until end of business Tuesday, October 3, 2000.

Contrary to GME's assertion that PECO's refusal to negotiate with GME concerning its October 12, 2000 amended proposal was "improper and unjust" (Protest at 7) and in error, PECO's refusal was the only appropriate response. If you accept GME's argument, a competitive process would have no enforceable end, as participants could continually seek to undercut the then, current winning bidder's offer. The only error committed was by GME in failing to submit a revised CDS price until thirteen days after the September 29, 2000 deadline. To entertain GME's late-filed proposal would undermine the entire bid process and would be patently unfair not only to New-Power, but also to the third bidder, as both had submitted timely discounted bids for the entire CDS load.

III. THE CDS BILATERAL AGREEMENT FILED BY NEWPOWER AND PECO FULLY COMPLIES WITH ALL RENEWABLES REQUIREMENTS

GME would have you believe that "for all practical purposes" PECO "ignored environmental impact" in the CDS bilateral process. (Protest, Footnote 3 at 3). As GME is well aware, however, the memorandum referenced in Footnote 3 of their Protest explicitly provided that "Renewables' provisions of PECO Energy's 1998 Restructuring Settlement will apply to CDS." Moreover, Section

17 of the CDS Agreement NewPower and PECO filed with the Commission requires that not less than two percent of NewPower's energy for CDS customers will be generated from renewable sources as required by the 1998 Restructuring Settlement. In fact, GME itself concedes that "the NewPower Agreement meets the environmental impact criterion set forth by the Commission" (Protest at 3). To suggest, therefore, that NewPower's fully compliant bid is inferior and should be rejected on environmental grounds is erroneous.

IV. IN THE BILATERAL NEGOTIATION PHASE, THE FINAL DECISION IN SELECTING THE CDS SUPPLIER WAS RESERVED TO PECO

The bilateral process as established under Paragraph 52(b) of PECO's Commission-approved June 22, 2000 Merger Settlement contemplated a PECO-established process pursuant to which PECO would enter into good faith bilateral negotiations with qualified suppliers in an attempt to reach a definitive CDS Agreement. The Merger Settlement did not, however, require PECO to enter into a definitive bilateral CDS Agreement. Rather, Paragraph 52(c) acknowledges the possibility that PECO might be unable to reach agreement with any supplier. If, however, any CDS agreement resulted from the bilateral negotiations, PECO committed to file the agreement with the Commission. PECO has fully complied with that requirement and in no way has "attempt[ed] to reduce the Commission's role to that of a mere gesture . . ." (Protest at 6). In contrast to the explicit provision in Paragraph 52a of the Merger Settlement that in the first stage "[t]he winning bidder will be selected by the PUC . . .", the bilateral process description contained in Paragraphs 52b and c in no way suggests the PUC would select the winning bidder in that process. That the Commission's role in this bilateral process was to review any agreement so filed by PECO is reinforced by Paragraph 52c of the Merger Settlement which notes the Commission could modify, reject or fail to approve any filed bilateral CDS agreement. Furthermore, as noted previously, GME was well aware from the September 14, 2000 e-mail sent to all the bidders that PECO, not the PUC, would select one successful bidder with whom

the Company would negotiate a definitive CDS bilateral agreement. Notably, neither GME, nor any bidder, challenged in any way PECO's right to select the winning bidder.

V. IT WOULD BE UNFAIR TO NEWPOWER AND THE OTHER BIDDER FOR THE PUC TO SPLIT THE CDS LOAD BETWEEN NEWPOWER AND GME

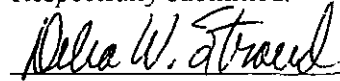
It is erroneous to suggest, as GME does, that because the bilateral process established in the Merger Settlement contemplated there may be more than one agreement the PUC should, in the alternative, modify the CDS Agreement filed by PECO and NewPower "to allow Green Mountain to serve at least a substantial portion of CDS customers." (Protest at 7). Paragraph N2 of the August 24, 2000 RFP provided that bidders could submit bids to serve the entire CDS load or "a specified portion thereof." In the event that PECO only had received qualified bids for portions of the entire CDS load, PECO would have been willing to try to negotiate definitive agreements with more than one bidder so as to cover the entire CDS load. As noted earlier, however, such was not the case in that each of the three qualified bidders submitted bids to serve the entire CDS load. To undo the good faith, equitable process which resulted in NewPower and PECO's filed agreement by retroactively assigning part of the load to GME based on GME's late-filed, amended bid would be grossly unfair not only to NewPower, but also to the third bidder. NewPower's bid was based on serving the entire CDS Customer load. If the Commission were to reduce the load to be served by NewPower, the Commission, in effect, would be changing markedly the economics on which NewPower based its offer. Moreover, any such action would undercut the effectiveness of any future competitive bid process and would penalize those who adhered in good faith to the established rules and deadlines.

VI. CONCLUSION

For all of the foregoing reasons, the Commission should reject GME's "amended proposal" and its efforts to undermine the legitimate CDS process implemented by PECO Energy. Instead, the

Commission should approve as in the public interest the CDS Agreement as filed by PECO Energy and NewPower.

Respectfully submitted:



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EXHIBIT "A"

From: Ciabattoni, C.L. (Carlo)
Sent: Thursday, September 14, 2000 2:13 PM
To: 'clif.payne@greenmountain.com'
Subject: CDS Bilateral Communication

Thank you very much for the Green Mountain Energy_CDS Bilateral bid proposal submitted to PECO Energy on Friday, September 8, 2000. In addition to your bid, PECO Energy received two other generally conforming bid proposals and, for the next stage of the CDS Bilateral Process, will pursue discussions with all three bidders.

This stage of the process will commence with a conference call with each bidder to be held Tuesday or Wednesday of next week (specific date and time to be communicated by the end of business Friday, September 15, 2000). During this conference call PECO Energy will discuss, in detail, specific areas of your bid proposal, including, but not limited to, areas in which more information or clarity is necessary.

Following the conference call, PECO Energy will schedule a negotiation meeting to be held at the PECO Energy offices, located at 2301 Market St., Philadelphia, PA 19101, the week of September 25, 2000 (date and time to be determined during the conference call).

As a result of these calls and meetings and a further evaluation of the bids, PECO Energy will select one successful bidder with whom we will negotiate a definitive CDS Bilateral Agreement that will be submitted to the Pennsylvania Public Utility Commission (PA PUC), on or before Monday, October 9, 2000.

If you have any questions, please feel free to contact me.

Carlo Ciabattoni
Manager, Supplier Administration Group
PECO Energy
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cciabattoni@peco-energy.com

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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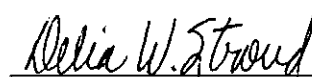
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(215) 841-4252

Dated: October 27, 2000

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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ORIGINAL

October 30, 2000

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120-3265

DOCUMENT
FOLDER

RECEIVED
00 OCT 30 PM 4:23
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SECRETARY'S BUREAU

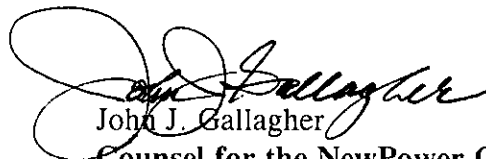
Re: PECO Energy Company Competitive Default Service Program Bidding
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of Answer of The NewPower company, Inc. to the Answer and Protest of Green Mountain Energy Company and Preliminary Motion of the NewPower Company, Inc. in Response to the Answer and Protest of Green Mountain Energy Company. A certificate of Service is also enclosed.

Should you have any questions regarding this filing please contact me at your convenience.

Sincerely,



John J. Gallagher
Counsel for the NewPower Company

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JJG/jtk

Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. A-110550F0147

DOCKETED

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ANSWER OF
THE NEWPOWER COMPANY TO THE
ANSWER AND PROTEST OF
GREEN MOUNTAIN ENERGY COMPANY

Pursuant to 52 Pa. Code § 5.101, The NewPower Company ("NewPower") files this Answer in response to the Answer and Protest filed by Green Mountain Energy Company ("Green Mountain") on October 23, 2000.

DOCUMENT
FOLDER

I. INTRODUCTION

1.¹ It is admitted that PECO Energy Company ("PECO") and NewPower submitted the Competitive Default Service Agreement ("CDS Agreement") to the Public Utility Commission for approval on October 18, 2000. It is denied that approval of this agreement is not in the public interest. It is denied that PECO inappropriately rejected Green Mountain's untimely revised proposal. It is specifically denied that Green Mountain has standing in this matter. After a reasonable investigation, NewPower has no information from which to form a belief as to the allegation concerning Green Mountain's membership in the Mid-Atlantic Power Supply Association ("MAPSA").

¹ Green Mountain failed to number the paragraphs in its Answer as required by Public Utility Commission ("PUC" or "Commission") regulations. 52 Pa. Code § 5.61(a). For ease of reference, the following numbered paragraphs generally correspond to the paragraphs in Green Mountain's Answer and Protest. The headings have been changed to respond to Green Mountain's allegations.

2. Green Mountain's revised proposal is a written document that speaks for itself.

3. a. NewPower denies that the PUC can approve Green Mountain's revised proposal instead of, or in addition to, the PECO-NewPower CDS Agreement. PECO complied with its obligations under the process mandated by prior PUC decisions, and awarded the entire CDS load to NewPower. Green Mountain now seeks to change the PUC-mandated process by requesting that the PUC order PECO to start a new round of bidding and negotiations.

b. By way of further answer, NewPower notes that Green Mountain is inconsistent in its request for relief. This inconsistency could further disadvantage the customers to be served under the CDS Agreement. On page 2 of its Answer, Green Mountain suggests that the PUC should accept Green Mountain's revised proposal as submitted to the PUC. On page 9, however, Green Mountain asks the PUC to order PECO to enter into negotiations with Green Mountain -- negotiations that would result in some sort of hybrid between Green Mountain's revised proposal and the PECO-NewPower contract. Green Mountain's inconsistent request for relief accurately reflects the difficult position that the PUC would occupy if it would unilaterally set aside the PECO-NewPower agreement and attempt to impose another proposal on PECO. The PUC should decline the invitation to put itself in such a problematic situation.

4. It is denied that adoption of Green Mountain's revised proposal will not delay implementation of competitive default service. Green Mountain asserts that it will require modifications in the agreement between PECO and NewPower. Accordingly, there is no guarantee that PECO and Green Mountain will actually reach a mutually satisfactory agreement if given a belated opportunity to do so. Green Mountain's request for additional negotiations, is, per se, a signal that Green Mountain does not contemplate an agreement as beneficial to the CDS customers as that already in place between PECO and NewPower.

II. THE COMMISSION SHOULD NOT ADOPT GREEN MOUNTAIN'S REVISED PROPOSAL

A. THE COMMISSION HAS DETERMINED THAT ENVIRONMENTAL IMPACT IS ONE CRITERION OF SEVERAL TO BE CONSIDERED IN AWARDING THE CDS AGREEMENT

5. a. The Joint Settlement Petition from PECO's merger proceeding is a written document that speaks for itself. Similarly, PECO's April 6, 2000 RFP is a written document that speaks for itself.

b. By way of further answer, NewPower notes that no conforming bids were submitted in response to the April 6, 2000 RFP. PECO subsequently distributed a second RFP, which established minimum requirements for bidders to qualify to participate in the second stage of the auction process. That RFP, not the April 6 RFP, is the relevant document for purposes of evaluating the CDS Agreement submitted for PUC approval.

6. Environmental impact is one of several criteria that PECO was to consider in awarding the CDS Agreement. It is denied that PECO ignored environmental impact for all practical purposes. The CDS agreement evidences that NewPower will satisfy the environmental requirements set forth in the August 24, 2000 RFP. It is also denied that PECO's August 24, 2000 RFP fails to comply with the PUC-mandated selection criteria. It is further denied that PECO failed to comply with the PUC-mandated selection process.

B. GREEN MOUNTAIN'S REVISED PROPOSAL IS NOT SUPERIOR TO THE NEW POWER CDS AGREEMENT

7. a. Green Mountain's revised proposal is a written document that speaks for itself. The PECO-NewPower CDS Agreement is a written document that speaks for itself. It is denied that Green Mountain's revised proposal is superior to NewPower's agreement.

b. By way of further answer, it is denied that the Commission's role at this point in the process is to compare a bid selected through the auction process to an

untimely bid submitted outside that process. It is also denied that Green Mountain can, through its Answer and Protest, begin anew the process to be used in awarding PECO's CDS Agreement. Prior PUC decisions approving Joint Settlement Agreements have already decided this question. See, Commission Order of May 14, 1998 in Docket Nos. R-00973953 and P-00971265; Commission Order of June 22 in Docket No. A-110550F0147. NewPower submits that a PUC decision to award all or part of the CDS service to Green Mountain, based on its revised proposal submitted after NewPower's bid was accepted, raises serious constitutional issues (e.g., due process and impairment of contract rights).

8. NewPower's original bid met the requirements of PECO's August 24, 2000 RFP. Additionally, NewPower submitted a revised bid to PECO by September 20, 2000 as permitted by PECO. According to PECO's Answer in this matter, Green Mountain failed to submit a revised bid to PECO by September 29, 2000. NewPower offered PECO a better proposal than any other bidder who participated in the bid and negotiation process. It is denied that the process previously approved by the PUC permits Green Mountain, or any other disappointed bidder, to begin a new round of bidding after losing out in the bidding process. Green Mountain should not be permitted to exalt itself above a fairly conceived and executed bidding process. It is further denied that the energy actually supplied to PECO for CDS service will be any "cleaner" if Green Mountain, rather than NewPower, is the CDS provider.

9. As previously noted, it is denied that the PUC's role at this point in the process is to compare the merits of competing proposals -- particularly where, as here, one of those proposals was not submitted in compliance with the PUC-approved process for awarding the instant contract.

10. PECO and NewPower submitted an executed contract for PUC approval. It is denied that the PUC's response should be to broker further discussions between PECO and two or more potential bidders. After reasonable investigation, NewPower has no information on which to form a belief as to the truth of the allegation that Green Mountain is prepared to discuss a reasonable division of the CDS function between it and NewPower. It

should be noted in this regard that the NewPower-PECO agreement is contingent on approval without modification by the PUC.

C. GREEN MOUNTAIN'S SERVICE IN PENNSYLVANIA IS IRRELEVANT TO THE PRESENT PROCEEDING

11. NewPower denies that the PUC should consider Green Mountain's revised proposal at all. Therefore, the background of the party submitting the revised bid is completely irrelevant. The PUC should instead consider the background of the parties submitting the contract presently before it: PECO and NewPower. NewPower is certainly capable of carrying out the contract it has executed.

III. THE COMMISSION CANNOT ADOPT GREEN MOUNTAIN'S PROPOSAL

A. THE CONTRACT SUBMITTED FOR APPROVAL WAS AWARDED FOLLOWING THE PROCESS SET FORTH IN TWO COMMISSION-APPROVED SETTLEMENTS

12. The Commission's June 22, 2000 Order at Docket No. A-110550F0147 and the Joint Settlement Petition that this Order approved are written documents that speak for themselves.

13. It is denied that the PUC has legal authority to decide whether PECO must award one or multiple CDS contracts resulting from the second stage of the multi-phase auction process. The process as set forth by the PUC clearly calls for PECO to decide whether it will enter into one or more agreements, with one or more parties, as a result of the bid and negotiation process.

14. PECO and NewPower seek expedited PUC approval of their contract so they can implement it in a timely manner. It is denied that this is the equivalent of requiring the PUC to delegate its authority. The PUC maintains actual authority to approve the contract, which is why PECO and NewPower submitted it to the PUC for its approval.

15. It is denied that the PUC has authority to consider Green Mountain's revised bid. The PUC therefore should not determine that Green Mountain's untimely bid is superior² to the bid PECO selected through the mandated selection process. It is also denied that Green Mountain's bid is superior to NewPower's agreement with PECO. It is specifically denied that the NewPower contract should be rejected or modified for any reason. Finally, it is denied that the Commission should direct PECO to enter into negotiations intended to produce a contract that is some sort of presently-undefined hybrid between Green Mountain's revised proposal and the PECO-NewPower contract.

B. NEITHER PECO NOR GREEN MOUNTAIN HAVE ANY LEGAL RIGHT TO SUBMIT GREEN MOUNTAIN'S REVISED PROPOSAL TO THE PUC

16. After reasonable investigation, NewPower has no information sufficient to form a belief as to the alleged dealings between PECO and Green Mountain.

17. After reasonable investigation, NewPower has no information sufficient to form a belief as to the alleged dealings between PECO and Green Mountain. It is denied that PECO deviated from the PUC-approved process for awarding the CDS contract. Such a characterization is completely false. As stated in the Joint Petition for Approval of the CDS Agreement, PECO awarded the contract on October 3, 2000, although a final agreement was not executed until October 18, 2000. It would have been "improper and unjust" for PECO to consider Green Mountain's revised proposal after PECO awarded the contract to NewPower. PECO has neither any obligation nor any authority to submit a revised bid to the PUC for its consideration. Similarly, a disappointed bidder has no legal authority to submit a revised bid to the PUC for its consideration.

18. It is denied that PECO did not negotiate with all parties who submitted qualifying proposals. It is further denied that PECO has any obligation to negotiate or otherwise consider revised proposals from disappointed bidders, especially after PECO has

² Given Green Mountain's desire to negotiate additional items before reaching an agreement with PECO, it cannot be concluded that Green Mountain's untimely revised bid is "superior" to NewPower's. In all likelihood, it is not.

awarded the contract. It is also denied that Green Mountain has identified any "injustice" for the Commission to "correct." The remaining allegations of this paragraph have already been denied several times.

19. After reasonable investigation, NewPower has no information sufficient to form a belief as to the alleged dealings between PECO and Green Mountain. It is denied that PECO failed to comply with the PUC-approved auction process in any material respect.

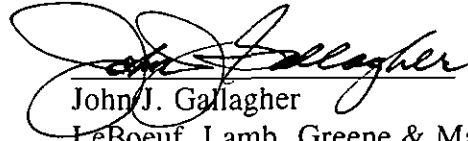
IV. THE PUC SHOULD NOT DISAPPROVE THE CONTRACT BEFORE IT IN HOPES THAT GREEN MOUNTAIN AND PECO CAN NEGOTIATE A "SIMILAR" CONTRACT IF GIVEN ANOTHER OPPORTUNITY TO REACH AN AGREEMENT

20. Green Mountain admits that it will require modifications in the PECO-NewPower contract. Green Mountain further admits that Green Mountain and PECO would need to negotiate some sort of presently undefined hybrid between Green Mountain's proposal and the PECO-NewPower contract currently before the PUC. The PUC should not reject the current contract in hopes that Green Mountain might negotiate a "better" contract. Green Mountain and PECO were unable to reach a mutually satisfactory agreement during the second stage of the auction process. There is no guarantee that they could reach a mutually satisfactory result if given another opportunity to do so. The Commission would be in a very awkward situation if it would approve Green Mountain's proposal but Green Mountain and PECO could not negotiate an agreement that is "similar" to NewPower's agreement.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should deny any of the various types of relief requested by Green Mountain. The Commission should instead approve the instant contract expeditiously.

Respectfully submitted,



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DATE: October 30, 2000

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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DOCUMENT
FOLDER

**PRELIMINARY MOTION OF
THE NEWPOWER COMPANY
IN RESPONSE TO
THE ANSWER AND PROTEST OF
GREEN MOUNTAIN ENERGY COMPANY**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.101, The New Power Company ("NewPower") files this Preliminary Motion in response to the Answer and Protest filed by Green Mountain Energy Company ("Green Mountain") on October 23, 2000.

1. NewPower has standing to file this Preliminary Motion because it is one of the two parties that jointly submitted the instant Competitive Default Service Coordination Agreement ("CDS Agreement") to the Public Utility Commission ("PUC" or "Commission") for approval. NewPower also has standing because it is one of the parties to the CDS Agreement. NewPower was the successful bidder in the auction process established by the Commission for the award of the CDS Agreement.

II. MOTION TO STRIKE THE PROTEST BECAUSE IT IS INSUFFICIENT AS TO FORM

2. Paragraph 38 of the Joint Petition for Full Settlement of PECO Energy's Restructuring Plan ("1998 Joint Petition"), approved by the Commission on May 14, 1998 at

Docket Nos. R-00973953 and P-00971265, established a procedure for the award of a CDS Agreement.

3. This procedure was modified in the Joint Petition for Settlement of PECO's 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 ("2000 Joint Petition"), which was approved by the PUC on June 22, 2000 in Docket No. A-00110550F0147.

4. The process, as revised, was a multi-step auction process. The first step required PECO to issue a Request for Proposal ("RFP"), with bids to be received on or before May 1, 2000. The winning bidder was to be selected by the PUC by July 1, 2000.

5. PECO issued an RFP on April 6, 2000. On August 22, 2000, the PUC issued a Secretarial letter stating that the bid it received in response to the RFP was non-conforming.

6. The second step in the auction process required PECO to negotiate with qualified suppliers to enter into (a) bilateral CDS agreement(s).

7. The August 22, 2000 Secretarial letter directed PECO to proceed with bilateral negotiations. On August 24, 2000, PECO issued a second RFP to (a) provide rules for the qualification of CDS bidders; (b) explain the bid, negotiation, and assignment process; and (c) state the key terms and conditions of the agreement. Bids were due on or before September 8, 2000.

8. Three (3) bidders submitted timely bids conforming to the bid requirements established by PECO's second RFP. These bidders included NewPower and Green Mountain.

9. According to PECO's Answer, upon receipt of the three timely bids, PECO entered into separate preliminary negotiations with each qualified bidder. PECO fulfilled its obligation to engage in good faith negotiations with all qualifying bidders.

10. As a part of this negotiation process, PECO's Answer indicates that PECO gave each of the three successful bidders an additional opportunity, by September 29, 2000, to submit a revised bid setting forth their best prices for the CDS service. NewPower and the third bidder took advantage of this opportunity and submitted revised bids. NewPower's revised bid offered lower CDS prices. Green Mountain, however, did not submit a revised bid. As a consequence, as of the close of business on September 29, 2000, NewPower's bid prices for CDS were less than the PECO standard CDS prices, but Green Mountain's bid prices were not.

11. On October 3, 2000, PECO selected NewPower as the winning bidder to serve the entire CDS load.

12. PECO and NewPower negotiated the terms of the CDS agreement between October 3 and October 18, 2000. The final Competitive Default Services Coordination Agreement was executed and filed with the Commission on October 18, 2000, pursuant to the process established in the 1998 and 2000 Joint Petitions.

13. According to PECO's Answer, Green Mountain attempted to submit a "revised proposal" to PECO on October 12, 2000, twelve days after the September 29, 2000 revised bid deadline and nine days after PECO began its final negotiations with NewPower, having notified Green Mountain that its original bid would not be considered unless PECO was unable to reach agreement with the selected bidder.

15. On October 23, 2000, Green Mountain submitted its Answer and Protest. This Answer and Protest included numerous averments of fact not appearing of record.

16. No verification was included in or attached to Green Mountain's Answer and Protest.

17. Green Mountain has failed to satisfy the requirements of 52 Pa. Code § 1.36(a) which provides that Answers "containing an averment of fact not appearing of record

in the action . . . shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association."

18. Green Mountain's Answer and Protest should be stricken as insufficient as to form because no verification was included or attached to said pleading.

III. MOTION TO DISMISS THE PROTEST BECAUSE IT IS INSUFFICIENT AS TO SUBSTANCE

19. Paragraphs 1 through 18 are incorporated by reference as fully as if set forth herein.

20. Green Mountain's Answer and Protest admits that PECO followed the process required by the 1998 and 2000 Joint Petitions. It argues that PECO should have taken additional steps not required by that process. It asks the PUC to permit Green Mountain to "game" the bid process by requiring PECO to accept the fatally late, revised proposal of Green Mountain as the CDS Agreement for PECO, instead of, or in addition to, the agreement submitted by PECO and NewPower.

21. Green Mountain cites no statute, regulation, Commission Order, or other authority that requires PECO to permit disappointed bidders to submit a new untimely bid following rejection of their initial bids and the selection of a successful bidder.

22. Under the process previously approved by this Commission for the award of PECO's CDS Agreement, PECO has neither the obligation nor the legal right to consider untimely revised proposals from disappointed bidders. PECO identified and began the final negotiations with NewPower nine days before Green Mountain submitted its untimely revised bid.

23. Contrary to Green Mountain's assertions, it would have been "improper and unjust" for PECO to consider an untimely new bid following its selection of a successful bidder through the prescribed bid and negotiation process. (Protest, at __.) Each bidder had an opportunity to present its best and final offer to PECO by September 29, 2000. Thereafter,

PECO determined that NewPower presented the best offer to PECO during the bid process. PECO informed the three bidders of its selection on October 3, 2000. NewPower's rights would be prejudiced if Green Mountain were permitted to cause the start a new round of bidding by submitting an untimely proposal following the rejection of its initial bid and the selection of NewPower's bid. If such were permitted, it would undermine the integrity of a fair and properly sequenced bid and award process.

24. The prior decisions of the PUC, approving the 1998 and 2000 Joint Petitions, established the process to be used by PECO in awarding the CDS Agreement. Green Mountain admits that the Mid-Atlantic Power Supply Association ("MAPSA") represented its interests in the merger proceedings. (Protest, at 1, note 1.) PECO and the three successful bidders followed the PUC-sanctioned process. Not having been selected because, among other things, its bid prices were higher than NewPower's, Green Mountain now belatedly proposes that a different process should be used. This "revised" bid process would allow Green Mountain, alone, to review all competing bids and then to top those bids by the barest of pricing margins. This surely would make a mockery of the bid process. Green Mountain should not be permitted at this late date to tilt the bid selection process in order to be awarded the PECO CDS Agreement.

25. Requesting expeditious PUC review of the October 18, 2000 contract between PECO and NewPower is not the equivalent of the PUC delegating its decision-making authority. The cases cited by Green Mountain in its Protest do not establish that the PUC's review of a contract must be a lengthy, drawn out process, particularly where, as here, the parties are under an obligation to begin promptly to take steps to prepare to carry out the contract. (Protest, at 6.)

26. Not satisfied to stand in the shoes of the successful bidder, Green Mountain admits that it has no intention of entering into an agreement identical to that entered into by NewPower and PECO. Green Mountain states that it is "prepared to enter into a similar contract . . . with minimal modifications . . . which would be discussed upon

Commission direction that PECO negotiate a contract reflecting the terms of the GME amended proposal." (Protest, at 9.) Given Green Mountain's demonstrated disregard for the bid process, the PUC should not risk delaying CDS service to the 299,300 selected PECO customers by further delaying when such Philadelphia area customers might actually benefit from the lower CDS prices to be offered by NewPower. Also, considering the difficulty that other utilities have had finding bidders for default service, the PUC should not jeopardize PECO's contract with NewPower in the hope that Green Mountain and PECO can reach a mutually satisfactory agreement if given a second chance to do so.

27. Green Mountain's Protest is legally insufficient in that it fails to state a basis for the PUC to set aside the successful bid of NewPower and award all or some of the CDS service to Green Mountain pursuant to the terms of its revised bid.

IV. MOTION TO DISMISS THE PROTEST BECAUSE IT DOES NOT INDICATE, ON ITS FACE, THE STANDING OF THE PARTY TO PARTICIPATE IN THE PROCEEDING

28. Paragraphs 1 through 27 are incorporated by reference as fully as if set forth herein.

29. Green Mountain alleges that "There can be no question of Green Mountain's standing given the direct impact of the proposed agreement on Green Mountain." (Protest, at 1, fn. 1.) In fact, the proposed agreement has no impact on Green Mountain. Green Mountain does not claim to be a ratepayer or customer of PECO or NewPower. Green Mountain is merely a disappointed bidder for a contract.

30. Green Mountain does not have standing in this case as a disappointed bidder for a contract. The requirement for awarding the CDS Agreement through a multi-step auction process stems from PUC-approved Joint Petitions for Settlement. Since this process was sanctioned by a state agency, the law concerning public contracts applies to this case. A disappointed bidder for a government contract does not have standing to challenge the decision

to award that contract to another bidder and the same conclusion should apply to the facts here. See, e.g., R. S. Noonan v. York School District, 400 Pa. 391, 162 A.2d 623 (1960); J.P. Mascaro & Sons, Inc. v. Bristol Township, 95 Cmwlt. Ct. 376, 505 A.2d 1071 (1986).

31. Alternatively, if the law concerning public contracts does not apply to PECO's contract with NewPower, it is axiomatic that Green Mountain lacks standing to maintain this action. There is no legal basis for a disappointed bidder to challenge the award of a private contract before the PUC. Green Mountain cites no statute or case law suggesting that a disappointed bidder has greater standing to seek relief where the contract being awarded is private rather than public.

32. Accordingly, Green Mountain's Answer and Protest should be dismissed because Green Mountain has not established that it has standing to participate in this matter.

V. CONCLUSION

For all of the reasons stated above, NewPower respectfully requests that the Answer and Protest of Green Mountain be stricken and/or dismissed. NewPower continues to request that this Honorable Commission review and approve the CDS Agreement in an expeditious manner.

Respectfully submitted,



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DATE: 10/30/00

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

00 OCT 30 PM 4:23

RECEIVED

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

Docket No. A-110550F014

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of October, 2000, served a true and correct copy of the Answer of The NewPower company, Inc. to the Answer and Protest of Green Mountain Energy Company and Preliminary Motion of the NewPower Company, Inc. in Response to the Answer and Protest of Green Mountain Energy Company, upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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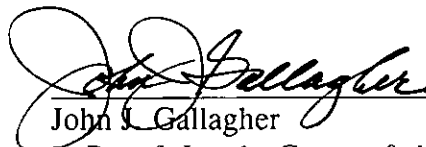
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Gallagher", written over a horizontal line.

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DATE: October 30, 2000

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October 31, 2000

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120-3265

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

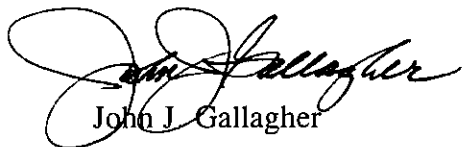
Dear Secretary McNulty:

It has come to my attention that the Affidavit attached to the Answer of The NewPower Company, filed yesterday in the above-referenced matter, was a facsimile rather than an original. Enclosed please find an original Answer and affidavit, together with three (3) copies of the same.

It has also come to my attention that the paragraphs in the Preliminary Motion, filed yesterday by The NewPower Company in the above-referenced matter, were not numbered consecutively. Enclosed please find an original and three (3) copies of a corrected version of the Preliminary Motion.

Should you have any questions regarding this filing please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/jtk
Enclosures
All Parties on Service List

19

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. A-110550F0147

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PRELIMINARY MOTION OF
THE NEWPOWER COMPANY
IN RESPONSE TO
THE ANSWER AND PROTEST OF
GREEN MOUNTAIN ENERGY COMPANY

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.101, The New Power Company ("NewPower") files this Preliminary Motion in response to the Answer and Protest filed by Green Mountain Energy Company ("Green Mountain") on October 23, 2000.

1. NewPower has standing to file this Preliminary Motion because it is one of the two parties that jointly submitted the instant Competitive Default Service Coordination Agreement ("CDS Agreement") to the Public Utility Commission ("PUC" or "Commission") for approval. NewPower also has standing because it is one of the parties to the CDS Agreement. NewPower was the successful bidder in the auction process established by the Commission for the award of the CDS Agreement.

II. MOTION TO STRIKE THE PROTEST BECAUSE IT IS INSUFFICIENT AS TO FORM

2. Paragraph 38 of the Joint Petition for Full Settlement of PECO Energy's Restructuring Plan ("1998 Joint Petition"), approved by the Commission on May 14, 1998 at

Docket Nos. R-00973953 and P-00971265, established a procedure for the award of a CDS Agreement.

3. This procedure was modified in the Joint Petition for Settlement of PECO's 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 ("2000 Joint Petition"), which was approved by the PUC on June 22, 2000 in Docket No. A-00110550F0147.

4. The process, as revised, was a multi-step auction process. The first step required PECO to issue a Request for Proposal ("RFP"), with bids to be received on or before May 1, 2000. The winning bidder was to be selected by the PUC by July 1, 2000.

5. PECO issued an RFP on April 6, 2000. On August 22, 2000, the PUC issued a Secretarial letter stating that the bid it received in response to the RFP was non-conforming.

6. The second step in the auction process required PECO to negotiate with qualified suppliers to enter into (a) bilateral CDS agreement(s).

7. The August 22, 2000 Secretarial letter directed PECO to proceed with bilateral negotiations. On August 24, 2000, PECO issued a second RFP to (a) provide rules for the qualification of CDS bidders; (b) explain the bid, negotiation, and assignment process; and (c) state the key terms and conditions of the agreement. Bids were due on or before September 8, 2000.

8. Three (3) bidders submitted timely bids conforming to the bid requirements established by PECO's second RFP. These bidders included NewPower and Green Mountain.

9. According to PECO's Answer, upon receipt of the three timely bids, PECO entered into separate preliminary negotiations with each qualified bidder. PECO fulfilled its obligation to engage in good faith negotiations with all qualifying bidders.

10. As a part of this negotiation process, PECO's Answer indicates that PECO gave each of the three successful bidders an additional opportunity, by September 29, 2000, to submit a revised bid setting forth their best prices for the CDS service. NewPower and the third bidder took advantage of this opportunity and submitted revised bids. NewPower's revised bid offered lower CDS prices. Green Mountain, however, did not submit a revised bid. As a consequence, as of the close of business on September 29, 2000, NewPower's bid prices for CDS were less than the PECO standard CDS prices, but Green Mountain's bid prices were not.

11. On October 3, 2000, PECO selected NewPower as the winning bidder to serve the entire CDS load.

12. PECO and NewPower negotiated the terms of the CDS agreement between October 3 and October 18, 2000. The final Competitive Default Services Coordination Agreement was executed and filed with the Commission on October 18, 2000, pursuant to the process established in the 1998 and 2000 Joint Petitions.

13. According to PECO's Answer, Green Mountain attempted to submit a "revised proposal" to PECO on October 12, 2000, twelve days after the September 29, 2000 revised bid deadline and nine days after PECO began its final negotiations with NewPower, having notified Green Mountain that its original bid would not be considered unless PECO was unable to reach agreement with the selected bidder.

14. On October 23, 2000, Green Mountain submitted its Answer and Protest. This Answer and Protest included numerous averments of fact not appearing of record.

15. No verification was included in or attached to Green Mountain's Answer and Protest.

16. Green Mountain has failed to satisfy the requirements of 52 Pa. Code § 1.36(a) which provides that Answers "containing an averment of fact not appearing of record

in the action . . . shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association."

17. Green Mountain's Answer and Protest should be stricken as insufficient as to form because no verification was included or attached to said pleading.

III. MOTION TO DISMISS THE PROTEST BECAUSE IT IS INSUFFICIENT AS TO SUBSTANCE

18. Paragraphs 1 through 17 are incorporated by reference as fully as if set forth herein.

19. Green Mountain's Answer and Protest admits that PECO followed the process required by the 1998 and 2000 Joint Petitions. It argues that PECO should have taken additional steps not required by that process. It asks the PUC to permit Green Mountain to "game" the bid process by requiring PECO to accept the fatally late, revised proposal of Green Mountain as the CDS Agreement for PECO, instead of, or in addition to, the agreement submitted by PECO and NewPower.

20. Green Mountain cites no statute, regulation, Commission Order, or other authority that requires PECO to permit disappointed bidders to submit a new untimely bid following rejection of their initial bids and the selection of a successful bidder.

21. Under the process previously approved by this Commission for the award of PECO's CDS Agreement, PECO has neither the obligation nor the legal right to consider untimely revised proposals from disappointed bidders. PECO identified and began the final negotiations with NewPower nine days before Green Mountain submitted its untimely revised bid.

22. Contrary to Green Mountain's assertions, it would have been "improper and unjust" for PECO to consider an untimely new bid following its selection of a successful bidder through the prescribed bid and negotiation process. (Protest, at __.) Each bidder had an opportunity to present its best and final offer to PECO by September 29, 2000. Thereafter,

PECO determined that NewPower presented the best offer to PECO during the bid process. PECO informed the three bidders of its selection on October 3, 2000. NewPower's rights would be prejudiced if Green Mountain were permitted to cause the start a new round of bidding by submitting an untimely proposal following the rejection of its initial bid and the selection of NewPower's bid. If such were permitted, it would undermine the integrity of a fair and properly sequenced bid and award process.

23. The prior decisions of the PUC, approving the 1998 and 2000 Joint Petitions, established the process to be used by PECO in awarding the CDS Agreement. Green Mountain admits that the Mid-Atlantic Power Supply Association ("MAPSA") represented its interests in the merger proceedings. (Protest, at 1, note 1.) PECO and the three successful bidders followed the PUC-sanctioned process. Not having been selected because, among other things, its bid prices were higher than NewPower's, Green Mountain now belatedly proposes that a different process should be used. This "revised" bid process would allow Green Mountain, alone, to review all competing bids and then to top those bids by the barest of pricing margins. This surely would make a mockery of the bid process. Green Mountain should not be permitted at this late date to tilt the bid selection process in order to be awarded the PECO CDS Agreement.

24. Requesting expeditious PUC review of the October 18, 2000 contract between PECO and NewPower is not the equivalent of the PUC delegating its decision-making authority. The cases cited by Green Mountain in its *Protest* do not establish that the PUC's review of a contract must be a lengthy, drawn out process, particularly where, as here, the parties are under an obligation to begin promptly to take steps to prepare to carry out the contract. (Protest, at 6.)

25. Not satisfied to stand in the shoes of the successful bidder, Green Mountain admits that it has no intention of entering into an agreement identical to that entered into by NewPower and PECO. Green Mountain states that it is "prepared to enter into a similar contract . . . with minimal modifications . . . which would be discussed upon

Commission direction that PECO negotiate a contract reflecting the terms of the GME amended proposal." (Protest, at 9.) Given Green Mountain's demonstrated disregard for the bid process, the PUC should not risk delaying CDS service to the 299,300 selected PECO customers by further delaying when such Philadelphia area customers might actually benefit from the lower CDS prices to be offered by NewPower. Also, considering the difficulty that other utilities have had finding bidders for default service, the PUC should not jeopardize PECO's contract with NewPower in the hope that Green Mountain and PECO can reach a mutually satisfactory agreement if given a second chance to do so.

26. Green Mountain's Protest is legally insufficient in that it fails to state a basis for the PUC to set aside the successful bid of NewPower and award all or some of the CDS service to Green Mountain pursuant to the terms of its revised bid.

IV. MOTION TO DISMISS THE PROTEST BECAUSE IT DOES NOT INDICATE, ON ITS FACE, THE STANDING OF THE PARTY TO PARTICIPATE IN THE PROCEEDING

27. Paragraphs 1 through 26 are incorporated by reference as fully as if set forth herein.

28. Green Mountain alleges that "There can be no question of Green Mountain's standing given the direct impact of the proposed agreement on Green Mountain." (Protest, at 1, fn. 1.) In fact, the proposed agreement has no impact on Green Mountain. Green Mountain does not claim to be a ratepayer or customer of PECO or NewPower. Green Mountain is merely a disappointed bidder for a contract.

29. Green Mountain does not have standing in this case as a disappointed bidder for a contract. The requirement for awarding the CDS Agreement through a multi-step auction process stems from PUC-approved Joint Petitions for Settlement. Since this process was sanctioned by a state agency, the law concerning public contracts applies to this case. A disappointed bidder for a government contract does not have standing to challenge the decision

to award that contract to another bidder and the same conclusion should apply to the facts here. See, e.g., R. S. Noonan v. York School District, 400 Pa. 391, 162 A.2d 623 (1960); J.P. Mascaro & Sons, Inc. v. Bristol Township, 95 Cmwlth. Ct. 376, 505 A.2d 1071 (1986).

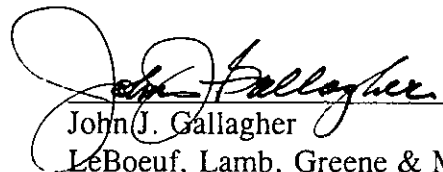
30. Alternatively, if the law concerning public contracts does not apply to PECO's contract with NewPower, it is axiomatic that Green Mountain lacks standing to maintain this action. There is no legal basis for a disappointed bidder to challenge the award of a private contract before the PUC. Green Mountain cites no statute or case law suggesting that a disappointed bidder has greater standing to seek relief where the contract being awarded is private rather than public.

31. Accordingly, Green Mountain's Answer and Protest should be dismissed because Green Mountain has not established that it has standing to participate in this matter.

V. CONCLUSION

For all of the reasons stated above, NewPower respectfully requests that the Answer and Protest of Green Mountain be stricken and/or dismissed. NewPower continues to request that this Honorable Commission review and approve the CDS Agreement in an expeditious manner.

Respectfully submitted,



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DATE: October 31, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

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ANSWER OF
THE NEWPOWER COMPANY TO THE
ANSWER AND PROTEST OF
GREEN MOUNTAIN ENERGY COMPANY

Pursuant to 52 Pa. Code § 5.101, The NewPower Company ("NewPower") files this Answer in response to the Answer and Protest filed by Green Mountain Energy Company ("Green Mountain") on October 23, 2000.

I. INTRODUCTION

1.¹ It is admitted that PECO Energy Company ("PECO") and NewPower submitted the Competitive Default Service Agreement ("CDS Agreement") to the Public Utility Commission for approval on October 18, 2000. It is denied that approval of this agreement is not in the public interest. It is denied that PECO inappropriately rejected Green Mountain's untimely revised proposal. It is specifically denied that Green Mountain has standing in this matter. After a reasonable investigation, NewPower has no information from which to form a belief as to the allegation concerning Green Mountain's membership in the Mid-Atlantic Power Supply Association ("MAPSA").

¹ Green Mountain failed to number the paragraphs in its Answer as required by Public Utility Commission ("PUC" or "Commission") regulations. 52 Pa. Code § 5.61(a). For ease of reference, the following numbered paragraphs generally correspond to the paragraphs in Green Mountain's Answer and Protest. The headings have been changed to respond to Green Mountain's allegations.

2. Green Mountain's revised proposal is a written document that speaks for itself.

3. a. NewPower denies that the PUC can approve Green Mountain's revised proposal instead of, or in addition to, the PECO-NewPower CDS Agreement. PECO complied with its obligations under the process mandated by prior PUC decisions, and awarded the entire CDS load to NewPower. Green Mountain now seeks to change the PUC-mandated process by requesting that the PUC order PECO to start a new round of bidding and negotiations.

b. By way of further answer, NewPower notes that Green Mountain is inconsistent in its request for relief. This inconsistency could further disadvantage the customers to be served under the CDS Agreement. On page 2 of its Answer, Green Mountain suggests that the PUC should accept Green Mountain's revised proposal as submitted to the PUC. On page 9, however, Green Mountain asks the PUC to order PECO to enter into negotiations with Green Mountain -- negotiations that would result in some sort of hybrid between Green Mountain's revised proposal and the PECO-NewPower contract. Green Mountain's inconsistent request for relief accurately reflects the difficult position that the PUC would occupy if it would unilaterally set aside the PECO-NewPower agreement and attempt to impose another proposal on PECO. The PUC should decline the invitation to put itself in such a problematic situation.

4. It is denied that adoption of Green Mountain's revised proposal will not delay implementation of competitive default service. Green Mountain asserts that it will require modifications in the agreement between PECO and NewPower. Accordingly, there is no guarantee that PECO and Green Mountain will actually reach a mutually satisfactory agreement if given a belated opportunity to do so. Green Mountain's request for additional negotiations, is, per se, a signal that Green Mountain does not contemplate an agreement as beneficial to the CDS customers as that already in place between PECO and NewPower.

II. THE COMMISSION SHOULD NOT ADOPT GREEN MOUNTAIN'S REVISED PROPOSAL

A. THE COMMISSION HAS DETERMINED THAT ENVIRONMENTAL IMPACT IS ONE CRITERION OF SEVERAL TO BE CONSIDERED IN AWARDING THE CDS AGREEMENT

5. a. The Joint Settlement Petition from PECO's merger proceeding is a written document that speaks for itself. Similarly, PECO's April 6, 2000 RFP is a written document that speaks for itself.

b. By way of further answer, NewPower notes that no conforming bids were submitted in response to the April 6, 2000 RFP. PECO subsequently distributed a second RFP, which established minimum requirements for bidders to qualify to participate in the second stage of the auction process. That RFP, not the April 6 RFP, is the relevant document for purposes of evaluating the CDS Agreement submitted for PUC approval.

6. Environmental impact is one of several criteria that PECO was to consider in awarding the CDS Agreement. It is denied that PECO ignored environmental impact for all practical purposes. The CDS agreement evidences that NewPower will satisfy the environmental requirements set forth in the August 24, 2000 RFP. It is also denied that PECO's August 24, 2000 RFP fails to comply with the PUC-mandated selection criteria. It is further denied that PECO failed to comply with the PUC-mandated selection process.

B. GREEN MOUNTAIN'S REVISED PROPOSAL IS NOT SUPERIOR TO THE NEW POWER CDS AGREEMENT

7. a. Green Mountain's revised proposal is a written document that speaks for itself. The PECO-NewPower CDS Agreement is a written document that speaks for itself. It is denied that Green Mountain's revised proposal is superior to NewPower's agreement.

b. By way of further answer, it is denied that the Commission's role at this point in the process is to compare a bid selected through the auction process to an

untimely bid submitted outside that process. It is also denied that Green Mountain can, through its Answer and Protest, begin anew the process to be used in awarding PECO's CDS Agreement. Prior PUC decisions approving Joint Settlement Agreements have already decided this question. See, Commission Order of May 14, 1998 in Docket Nos. R-00973953 and P-00971265; Commission Order of June 22 in Docket No. A-110550F0147. NewPower submits that a PUC decision to award all or part of the CDS service to Green Mountain, based on its revised proposal submitted after NewPower's bid was accepted, raises serious constitutional issues (e.g., due process and impairment of contract rights).

8. NewPower's original bid met the requirements of PECO's August 24, 2000 RFP. Additionally, NewPower submitted a revised bid to PECO by September 20, 2000 as permitted by PECO. According to PECO's Answer in this matter, Green Mountain failed to submit a revised bid to PECO by September 29, 2000. NewPower offered PECO a better proposal than any other bidder who participated in the bid and negotiation process. It is denied that the process previously approved by the PUC permits Green Mountain, or any other disappointed bidder, to begin a new round of bidding after losing out in the bidding process. Green Mountain should not be permitted to exalt itself above a fairly conceived and executed bidding process. It is further denied that the energy actually supplied to PECO for CDS service will be any "cleaner" if Green Mountain, rather than NewPower, is the CDS provider.

9. As previously noted, it is denied that the PUC's role at this point in the process is to compare the merits of competing proposals -- particularly where, as here, one of those proposals was not submitted in compliance with the PUC-approved process for awarding the instant contract.

10. PECO and NewPower submitted an executed contract for PUC approval. It is denied that the PUC's response should be to broker further discussions between PECO and two or more potential bidders. After reasonable investigation, NewPower has no information on which to form a belief as to the truth of the allegation that Green Mountain is prepared to discuss a reasonable division of the CDS function between it and NewPower. It

should be noted in this regard that the NewPower-PECO agreement is contingent on approval without modification by the PUC.

C. GREEN MOUNTAIN'S SERVICE IN PENNSYLVANIA IS IRRELEVANT TO THE PRESENT PROCEEDING

11. NewPower denies that the PUC should consider Green Mountain's revised proposal at all. Therefore, the background of the party submitting the revised bid is completely irrelevant. The PUC should instead consider the background of the parties submitting the contract presently before it: PECO and NewPower. NewPower is certainly capable of carrying out the contract it has executed.

III. THE COMMISSION CANNOT ADOPT GREEN MOUNTAIN'S PROPOSAL

A. THE CONTRACT SUBMITTED FOR APPROVAL WAS AWARDED FOLLOWING THE PROCESS SET FORTH IN TWO COMMISSION-APPROVED SETTLEMENTS

12. The Commission's June 22, 2000 Order at Docket No. A-110550F0147 and the Joint Settlement Petition that this Order approved are written documents that speak for themselves.

13. It is denied that the PUC has legal authority to decide whether PECO must award one or multiple CDS contracts resulting from the second stage of the multi-phase auction process. The process as set forth by the PUC clearly calls for PECO to decide whether it will enter into one or more agreements, with one or more parties, as a result of the bid and negotiation process.

14. PECO and NewPower seek expedited PUC approval of their contract so they can implement it in a timely manner. It is denied that this is the equivalent of requiring the PUC to delegate its authority. The PUC maintains actual authority to approve the contract, which is why PECO and NewPower submitted it to the PUC for its approval.

15. It is denied that the PUC has authority to consider Green Mountain's revised bid. The PUC therefore should not determine that Green Mountain's untimely bid is superior² to the bid PECO selected through the mandated selection process. It is also denied that Green Mountain's bid is superior to NewPower's agreement with PECO. It is specifically denied that the NewPower contract should be rejected or modified for any reason. Finally, it is denied that the Commission should direct PECO to enter into negotiations intended to produce a contract that is some sort of presently-undefined hybrid between Green Mountain's revised proposal and the PECO-NewPower contract.

B. NEITHER PECO NOR GREEN MOUNTAIN HAVE ANY LEGAL RIGHT TO SUBMIT GREEN MOUNTAIN'S REVISED PROPOSAL TO THE PUC

16. After reasonable investigation, NewPower has no information sufficient to form a belief as to the alleged dealings between PECO and Green Mountain.

17. After reasonable investigation, NewPower has no information sufficient to form a belief as to the alleged dealings between PECO and Green Mountain. It is denied that PECO deviated from the PUC-approved process for awarding the CDS contract. Such a characterization is completely false. As stated in the Joint Petition for Approval of the CDS Agreement, PECO awarded the contract on October 3, 2000, although a final agreement was not executed until October 18, 2000. It would have been "improper and unjust" for PECO to consider Green Mountain's revised proposal after PECO awarded the contract to NewPower. PECO has neither any obligation nor any authority to submit a revised bid to the PUC for its consideration. Similarly, a disappointed bidder has no legal authority to submit a revised bid to the PUC for its consideration.

18. It is denied that PECO did not negotiate with all parties who submitted qualifying proposals. It is further denied that PECO has any obligation to negotiate or otherwise consider revised proposals from disappointed bidders, especially after PECO has

² Given Green Mountain's desire to negotiate additional items before reaching an agreement with PECO, it cannot be concluded that Green Mountain's untimely revised bid is "superior" to NewPower's. In all likelihood, it is not.

awarded the contract. It is also denied that Green Mountain has identified any "injustice" for the Commission to "correct." The remaining allegations of this paragraph have already been denied several times.

19. After reasonable investigation, NewPower has no information sufficient to form a belief as to the alleged dealings between PECO and Green Mountain. It is denied that PECO failed to comply with the PUC-approved auction process in any material respect.


IV. THE PUC SHOULD NOT DISAPPROVE THE CONTRACT BEFORE IT IN HOPES THAT GREEN MOUNTAIN AND PECO CAN NEGOTIATE A "SIMILAR" CONTRACT IF GIVEN ANOTHER OPPORTUNITY TO REACH AN AGREEMENT

20. Green Mountain admits that it will require modifications in the PECO-NewPower contract. Green Mountain further admits that Green Mountain and PECO would need to negotiate some sort of presently undefined hybrid between Green Mountain's proposal and the PECO-NewPower contract currently before the PUC. The PUC should not reject the current contract in hopes that Green Mountain might negotiate a "better" contract. Green Mountain and PECO were unable to reach a mutually satisfactory agreement during the second stage of the auction process. There is no guarantee that they could reach a mutually satisfactory result if given another opportunity to do so. The Commission would be in a very awkward situation if it would approve Green Mountain's proposal but Green Mountain and PECO could not negotiate an agreement that is "similar" to NewPower's agreement.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should deny any of the various types of relief requested by Green Mountain. The Commission should instead approve the instant contract expeditiously.

Respectfully submitted,



John J. Gallagher

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DATE: October 30, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. A-110550F0147

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of October, 2000, served a true and correct copy of the foregoing documents on behalf of The NewPower Company, Inc., upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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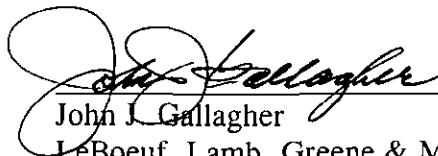
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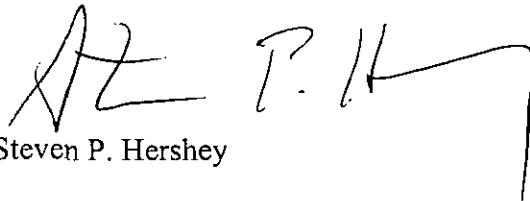
Re: PECO Energy Company Competitive Default Service Program
Bidding; PUC Docket No. A-110550 F0147

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three copies of Green Mountain Energy Company's Reply to the Response of PECO to Green Mountain's Answer and Protest filed 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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Docket No. ~~A-11050 F0147~~

A-110550 F0147

**REPLY OF GREEN MOUNTAIN ENERGY COMPANY
TO THE RESPONSE OF PECO TO
GREEN MOUNTAIN'S ANSWER AND PROTEST**

Green Mountain Energy Company (Green Mountain or GME) files the following Reply to PECO Energy's Response pursuant to 52 Pa. Code §§ 5.62 and 5.63.

As set forth in greater detail below, PECO's response to Green Mountain's Answer and Protest challenges Green Mountain with regard to only one issue. That one issue in dispute is a question of fact issue¹ which should be resolved only after full evidentiary hearing and recommended decision. This Commission could, however, determine without such a hearing, that PECO's submission of only one of the conforming proposals inappropriately reserved to PECO effective decision-making in this matter.

I. PECO Does Not Dispute Key Elements
Of Green Mountain's Answer and Protest.

PECO has not challenged the ultimate superiority of the Green Mountain proposal submitted to PECO on October 12. As set forth in Green Mountain's Answer and Protest, Green Mountain has set its price for all CDS customers at a 2% discount from the shopping credit. By

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¹ This issue of fact could be dispositive of this matter unless, as set forth below, the Commission determines that the public interest required all qualifying/conforming proposals to have been submitted for Commission review.

contrast, the average discount offered by New Power is 1.83%.² Those numbers remain undisputed.

PECO has not disputed Green Mountain's statement that 98% of the power provided to CDS customers by Green Mountain will be generated by sources that are cleaner than 98% of the power provided by New Power.³

PECO does not claim that Green Mountain is anything but an established, qualified supplier of electricity in Pennsylvania. Indeed, the number of customers served by Green Mountain far exceeds the number of customers served by New Power, a newcomer to the Pennsylvania market. In fact, PECO overlooks the fact that experience in the retail electric marketplace was one of the criteria by which PECO was to evaluate all qualifying proposals.

PECO has not disputed that the Green Mountain proposals have each conformed to the requirements of PECO's Request for Proposals.

Finally, PECO directly confirms that, as set forth in Green Mountain's Answer and Protest, the deadlines "imposed" by PECO changed several times to meet the exigencies of the process created by PECO. Clearly, PECO determined that it would be in the public interest to treat those deadlines flexibly in order to ensure the best price and terms for CDS customers and other participants. For example, PECO states that the proposed CDS Agreement was filed on October 18, 2000, rather than on the PECO original deadline of October 9, 2000 (which, as set forth below, itself violated this Commission's October 1 deadline), primarily because PECO had afforded bidders an opportunity to revise their bids. PECO Response at 3. PECO further notes that the first

² The PECO/New Power filings at the Commission have been strikingly different from their public statements. Attached as Exhibit A to this Reply is a copy of an NBC10 internet posting based on information from PECO. PECO has already announced, prior to Commission decision, that New Power will provide the CDS function and they guarantee a 2% savings.

³ These figures apply to calendar year 2001. The percentage will fall by 0.5% in each subsequent year as the requirement for provision of renewable power to CDS customers increases.

stage of the process was to have been completed by July 1, 2000, but was not completed until August 22, 2000. PECO Response at 4.

In addition, PECO changed other deadlines, including one imposed by the Commission:

- 1) Pursuant to PECO's August 24 RFP, the deadline for the bidder qualification package was due by September 8. That deadline was extended to September 28, 2000, to allow for revised pricing bids.
- 2) The deadline for comments on the coordination agreement was September 29, but was extended by PECO to October 2 and then to October 3.
- 3) Paragraph 52b of the Merger Settlement Agreement required that any CDS bilateral agreements which resulted from the negotiations with PECO were to have been submitted to the Commission on or before October 1, 2000. PECO submitted the proposed agreement with New Power to the Commission on October 18, 2000.

II. PECO Mistakenly Claims That It Conducted Bilateral Negotiations With Green Mountain.

The one challenge offered by PECO to Green Mountain's Answer and Protest goes to the issue of whether or not PECO refused to negotiate with Green Mountain.⁴ PECO claims that it treated all bidders even-handedly and that it conducted negotiations with all bidders that submitted generally conforming proposals.

Green Mountain cannot speak for the other bidders, but asserts emphatically that there were no good faith bilateral negotiations concerning GME's proposals, discussions designed merely to clarify the terms of the RFP prepared by PECO and the terms of GME's initial proposal to ensure mutual understanding of those terms – nothing more. Green Mountain's amended

⁴ PECO never claims that it negotiated with Green Mountain concerning its amended proposal.

proposal was ignored by PECO – there were no discussions whatever between PECO and Green Mountain concerning that proposal – even though it was delivered to PECO six days before negotiations were completed between PECO and New Power. The question of whether or not there were good faith negotiations between Green Mountain and PECO has now been raised by PECO as a central issue which can likely only be resolved in formal evidentiary hearings.

III. PECO Speculates Improperly Concerning The Impact Of Dividing The CDS Function Among Suppliers.

Without citing any basis for its statement, PECO speculates that providing New Power with less than 100% of the CDS function would “markedly” change the economics on which New Power based its offer. PECO Response at 6. Whether the statement is true or not, it is not relevant to the question of whether or not PECO conducted good faith negotiations with Green Mountain or to the question of whether the Green Mountain proposal would best serve the public interest. The actual truth of PECO’s statement, if it is relevant, would have to be determined after evidentiary hearings.⁵

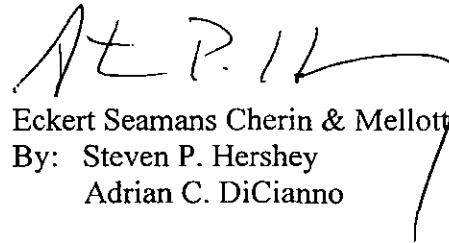
Green Mountain’s 2% discount stands whether it is allowed to serve all, half, or even only one-third of the CDS customers.

⁵ As is common in this type of filing, New Power’s proposed contract with PECO is conditioned on the Commission’s approval of that agreement without modification. Joint Petition at 6; Joint Petition, Appendix C at 2.

IV. Conclusion.

For all of the foregoing reasons as well as those set forth in Green Mountain's Answer and Protest, the Commission should find that the public interest is best served by Green Mountain's proposal. The Commission should award the CDS function to Green Mountain under the terms set forth in its amended proposal, which adopts the operational terms of the agreement between PECO and New Power. In the alternative, the Commission should apportion the CDS customers among the bidders in a reasonable fashion. If the Commission believes that evidentiary hearings are required to resolve the factual dispute concerning the good faith negotiations between PECO and Green Mountain, Green Mountain would not oppose such hearings.

Respectfully submitted,



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Green Mountain Energy Company

VERIFICATION

I, A. Clifton Payne, Jr., President, Mid-Atlantic Region of Green Mountain Energy Company, 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).

November 2, 2000



EXHIBIT A

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Consumer Alert: PECO customers encouraged to make switch

PHILADELPHIA Oct. 31 - PECO Energy says it will pay some of its customers to switch to another energy carrier. NBC10's Tracy Davidson tells us who is eligible for the program on the Consumer Alert.

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Tracy Davidson

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SOMETIME THIS MONTH, twenty percent of PECO customers will be randomly selected by PECO to be served by an alternative power company. Letters will go out to customers telling them they've been chosen to change their energy provider.

Here's why:

Under the 98 restructuring agreement to allow energy choice, the [INTERNET](#) Public Utility Commission mandated that by January 2001, thirty five percent of PECO's customers have to be using another energy provider.

The problem is, since energy choice has become available, only sixteen percent of PECO's customers have opted for a switch to another company. So **INTERNET** PECO has to randomly choose customers to use another energy company. For this program the company selected will be "The New Power Company."

If you're chosen, you'll receive a letter in the mail in about a month. You can choose to stay with PECO. But if you agree to a switch, you're guaranteed a two percent savings over the life of the three-year contract.

If you're not selected, you cannot opt in to this program, but if you want you can change to another provider.

For more information on this program, call PECO at 1-800-494-4000.

If you're selected for this program you'll get a letter in about a month and the switch will be made so you're using "The New Power Company" by January.

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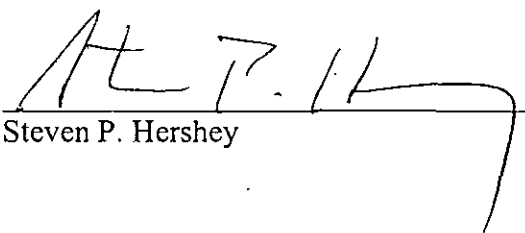
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November 3, 2000

By Express Mail

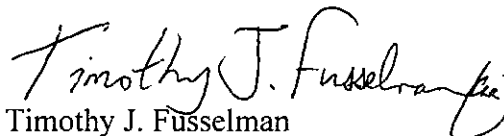
James S. McNulty, Secretary
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Re: PECO Energy Company CDS Program, Docket No. A-110550 F0147

Enclosed for filing please find an original and 14 copies of the Answer of Shell Energy Services Company, L.L.C. to the Joint Petition for Approval of Competitive Default Service Provider Agreement. Please date/time stamp and return two copies of this Petition in the enclosed self-addressed, stamped enveloped.

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

Very truly yours,



Timothy J. Fusselman
Senior Counsel
Natural Resources Legal Department
Legal Services - U.S.

cc: Certificate of Service

NOV 3 2000

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

**ANSWER OF SHELL ENERGY SERVICES CO., L.L.C.
TO THE JOINT PETITION FOR APPROVAL OF
COMPETITIVE DEFAULT SERVICE AGREEMENT**

ORIGINAL

1. Pursuant to 52 Pa. Code §§ 5.51 and 5.61, Shell Energy Services Co., L.L.C. ("Shell Energy") files its Answer to the Joint Petition for Approval of Competitive Default Service ("CDS") Coordination Agreement ("Proposed Agreement") filed by PECO Energy Company ("PECO") and The New Power Company, Inc. ("New Power") on October 18, 2000.

I. Answer and Proposal to Address CDS Process Flaws

2. The CDS bilateral process is flawed, resulting in a Proposed Agreement that is not in the public interest because: (a) the bilateral CDS bidding and contracting process should not have progressed until the Commission had ruled on Shell Energy's Petition for Reconsideration regarding its CDS RFP bid in this docket¹; (b) at the request of one bidder, a hasty "price rebid" was allowed by PECO very late in the process and with insufficient time to react appropriately to the detriment of Shell Energy as a qualified bidder; (c) there were no meaningful negotiations with Shell Energy as a qualified bidder; and (d) Shell Energy's bilateral bid should have been

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¹ On October 24, 2000, the Commission accepted a Staff recommendation to deny the Petition and declined to rule on our stay request. Shell Energy currently is reviewing that decision. Because of the direct and continuing impact of the CDS bilateral process and the resultant Proposed Agreement on Shell Energy's interest as a CDS RFP bidder and, in turn, qualified bidder in the bilateral process, Shell Energy has standing to file this Answer to protect its interests. Moreover, Shell Energy was a party to the PECO restructuring proceedings and, as such, has the right to address the interpretation and application of settlement agreements and provisions reached in those proceedings.

presented to the Commission for a determination of the best manner to provide CDS, including the possibility of multiple CDS providers.² These CDS flaws are discussed in Section II below.

3. The CDS program and bilateral bidding process is mired in confusion and is currently the subject of pending and potentially on-going regulatory challenges.³ Our efforts to date as the only participant in the CDS RFP and a CDS bilateral bidder demonstrate that Shell Energy has an important stake in the entire CDS process and its results. Indeed, as PECO Energy often notes in its October 27, 2000 Response to the GME Answer ("Response")⁴, Shell Energy is a qualified bidder in the bilateral process and followed the bidding (and price rebidding) rules set by PECO Energy, including the timely submission of a discounted bid.⁵ Because of the lack of meaningful bilateral negotiations and the potentially discriminatory price rebid, however, Shell Energy and PECO had no opportunity to arrive at the most advantageous proposal, including price, for the benefit of residential customers.

4. Despite these infirmities, Shell Energy desires to move the CDS process forward so that PECO's consumers enjoy a more robust and competitive CDS. Shell Energy also desires to be competitive in this process and, therefore, offers to the CDS customers what should have resulted through meaningful negotiations with PECO. Shell Energy agrees to:

² Green Mountain Energy Company's ("GME") October 22, 2000 Answer and Protest to the Joint Petition for Approval of Proposed Agreement ("GME Answer") provides an overall criticism of the bidding process and lack of meaningful negotiations, and the option of multiple CDS providers to bring more competitors to CDS service.

³ See Shell Energy's Petition for Reconsideration as well as the Answer and Protest of Green Mountain Power.

⁴ On October 31, 2000, New Power filed an Answer to the GME Answer and a related Preliminary Motion.

⁵ PECO Response at 2, 4. We appreciate PECO's efforts to maintain Shell Energy's confidentiality in its Response. Shell Energy is, in fact, the third qualified bidder in this process.

(a) offer a 2.0% discount from all of PECO's applicable residential shopping credits (thereby meeting GME's competitive offer and surpassing the overall average rate discounts found in the Proposed Agreement);

(b) accept the terms and conditions found in the Proposed Agreement (except those that impact the start date of service and the specific financial instrument to cover liquidated damages);

(c) begin the provision of CDS no later than April 1, 2001;

(d) begin the provision of competitive EGS service to residential customers no later than March 31, 2001; and

(e) if awarded CDS provider status, make CDS customers to be served by Shell Energy whole for the difference between then-current PECO rates and Shell Energy's 2.0% discount until Shell Energy commences the provision of CDS.

5. Furthermore, in the interest of putting aside the issues surrounding the CDS process, Shell Energy is ready and willing to discuss a division of the CDS function among qualified bidders that followed PECO's bidding rules. The Commission should mandate this discussion or otherwise order a division of the CDS function among such bidders, with Shell Energy serving a substantial portion of CDS customers. In any event, Shell Energy's provision of CDS would comport with points (a) - (e) outlined above in Paragraph 4.⁶

6. There is good cause and support for this approach. As PECO admits, the Commission has the obligation to review any filed bilateral CDS agreement and may reject, modify or fail to approve any such agreement.⁷ The Commission's review of the prudence of the Proposed

⁶ The Commission also could condition approval of the Proposed Agreement on Shell Energy serving a substantial portion of CDS customers under the terms outlined above.

⁷ PECO Response at 5.

Agreement and whether it is in the public interest requires an examination of how that agreement was developed and whether that process resulted in the "best deal" for consumers, especially when the appropriateness of that bidding process is challenged. In order to make this determination, the Commission must at least review the bidding process and the proposals from qualified bidders that followed PECO's bilateral bid rules.⁸ As PECO correctly describes, Shell Energy is the other of two qualified bidders that "adhered in good faith to the established [CDS bilateral] rules and deadlines", including rushed -- but timely -- submission of a discounted "price rebid."⁹

7. There is nothing preventing the Commission from accepting Shell Energy's proposal. Indeed, the Commission has an obligation and complete authority to address the infirmities with the CDS process -- and ensure that the CDS process results in prudent CDS agreements that are in the public interest -- by adopting Shell Energy's proposal. Furthermore, the Commission has the authority to condition acceptance of the ultimate CDS agreements on Shell Energy serving part of the contemplated CDS load.¹⁰ In this way, the Commission can introduce more competition into the provision of CDS, ensuring benefits for the true winners in the CDS process -- PECO's ratepayers.

⁸ We note that PECO unilaterally imposed these rules and the various bid submission deadlines, and simply presented a series of CDS agreement terms that, as it became clear, were not negotiable.

⁹ PECO Response at 6.

¹⁰ PECO's Unicom Merger Settlement and the Commission's June 22, 2000 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). Without seeking Commission authorization, PECO unilaterally decided that only one supplier should provide CDS. Multiple suppliers of CDS will benefit consumers by ensuring a diversity of supply and greater competition for the provision of CDS.

II. Bilateral CDS Process Flaws

8. As highlighted above, the CDS bilateral bid process is flawed and subject to challenge. First, Shell Energy was the only bidder to step forward and respond to the initial PECO CDS RFP. The bilateral bidding process should not have been allowed to begin until the Commission had ruled on Shell Energy's Petition for Reconsideration regarding its RFP response. As stated in that Petition:

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.

9. The bilateral process continued and other proposals were made and one was executed, namely, the Proposed Agreement. As stated in our Petition for Reconsideration, although the Commission disagrees, Shell Energy asserts that it met the bid requirements set out in the initial CDS RFP. This highlights the harm caused by the continuation of the bilateral process to Shell Energy's CDS RFP bid and its Reconsideration Petition. The existence of other bidders in the bilateral process could have influenced the Commission's decision regarding the Petition for Reconsideration. Injunctive relief and further review of the Commission's decision to proceed with the process could be warranted.

10. Second, the bilateral bidding rules changed at the eleventh hour without sufficient time for bidders to react appropriately. At the request of one of three "finalists" and qualified bidders to change its price bid, PECO announced only by e-mail on September 25, 2000 (received by Shell Energy at 6:36 p.m.) a "rebidding" of the CDS price terms -- a substantial and very late

change in the process by any account.¹¹ Shell Energy did not request this rebid; based on the GME Answer, we suppose GME also did not request this rebid. Critically, bidders were only allowed until noon, on September 28 (then extended to noon, September 29) -- about 36 hours to react, analyze and respond. This late and rushed price rebid provided an undue and strategic advantage to the bidder that requested to change its price at the expense of other competing bidders.

11. The requesting bidder obviously deliberated, ran pricing models, and cleared its revised, discounted price with its management and power supply personnel prior to making the request to change its price bid. Responding bidders had little or no such opportunity to deliberate. This element of surprise was a factor -- if not the key factor -- in the bidder's decision to request a "price rebid." With only about 36 hours to respond, the eleventh hour rebid provided insufficient time for other bidders to fully analyze any potential price rebidding strategy. The requesting bidder's gamesmanship was allowed by PECO. Shell Energy offered an additional discount, but could have offered a further discount (as it does herein) if had been provided sufficient time to analyze its options, seek management approval, and respond to PECO.

12. Finally, we strongly agree with Green Mountain's characterization that there were no meaningful negotiations between PECO and the qualified bidders regarding the CDS bilateral bids.¹² Indeed, Green Mountain's description of PECO's "take it or leave" approach toward bilateral agreement formulation -- where PECO proposed the terms and merely clarified those terms -- tracks Shell Energy's experience with the CDS bilateral process. PECO dictated the

¹¹ The e-mail stated in part "PECO Energy Company has recently been approached with a question, as to the possibility of entertaining, the submission of revised pricing related to the bid proposals"

¹² Green Mountain Answer and Protest at 2, 7. PECO's Unicom Merger Settlement and the Commission's June 22, 2000 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).

terms, the rules, the timing, the price “re-bid”— indeed, all of the “rules of engagement”— except for the choice of a conference call or a face-to-face meeting to receive PECO's explanation of its dictated terms. For example, PECO rejected, at least three times, requests by Shell Energy to discuss CDS implementation alternatives, the reasons therefore, and meaningful options that could benefit residential customers. Even if PECO would have disagreed with all of Shell Energy's proposals, there was no opportunity provided for meaningful dialogue and potential compromise.

III. Conclusion

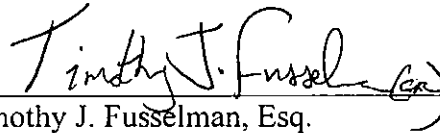
13. As a matter of policy, PECO should not be allowed to pick its competitors. Even the most junior observer of Pennsylvania's electric restructuring process would note that allowing PECO to be the sole arbiter of which CDS proposal(s) is in the public interest is tantamount to letting the wolf watch the hen house. PECO's contention that the Commission should not be to approve the CDS agreement and thereby select the winning bidder(s) flies in the face of the Commission's jurisdiction and the significant importance of the CDS program in bringing additional competition to the state of Pennsylvania.

14. At the very least, the Commission must carefully review the CDS bidding process and PECO's administration of that process. That review will reveal critical flaws in the process and raise serious doubts regarding the validity of the resultant Proposed Agreement.

15. Our conclusion is that the flawed CDS bilateral process could not and did not result in a CDS agreement that is in the public interest. Despite this, in the interest of providing CDS benefits to consumers, Shell Energy desires to move the CDS process forward. Therefore, the Commission should convene brief discussions or otherwise order a division of the CDS function

among qualified bidders that followed PECO's bidding rules, with Shell Energy serving a substantial portion of CDS customers under the terms outlined above.

Respectfully Submitted,

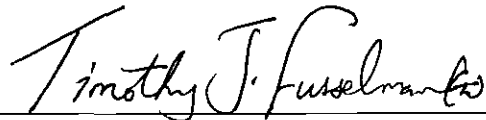
Handwritten signature of Timothy J. Fusselman in cursive, with a horizontal line underneath and a circled 'ea' at the end.

Timothy J. Fusselman, Esq.
Senior Counsel
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Shell Oil Company
P.O. Box 576
Houston, TX 77010

Dated: November 3, 2000

VERIFICATION

In accord with 52 Pa. Code Section 1.36(a), Timothy J. Fusselman deposes and states that he is counsel for Shell Energy Services Co., L.L.C., that he is authorized to make this verification on its behalf, and that the facts set forth in the foregoing document are true and correct to the best of his knowledge, information and belief, made pursuant to 18 Pa. C.S. § 4904(b) relating to unsworn statements to authorities.

A handwritten signature in cursive script that reads "Timothy J. Fusselman". The signature is written in black ink and is positioned above a horizontal line.

Timothy J. Fusselman

Dated: November 3, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be 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.

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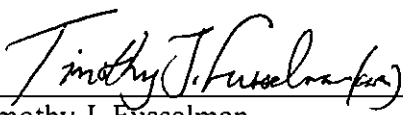
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Timothy J. Fusselman

Dated: November 3, 2000

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November 6, 2000

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**In Re: PECO Energy Company Competitive Default
Service Program Bidding
Docket No. A-11050 F0147**

James J. McNulty, Esquire
Secretary
Pennsylvania Public Utility Commission
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SECRETARY'S BUREAU

Dear Mr. McNulty:

A-110550 F0147

Enclosed for filing are an original and three copies of the Answer of Green Mountain Energy Company to the Preliminary Motion of the New Power Company, Inc., together with a Certificate of Service.

Please note the enclosure of a separate Verification which was inadvertently omitted from Green Mountain Energy Company's Answer and Protest to the Joint Petition for Approval of Competitive Default Service Agreement.

Please call me if you have any questions about this filing.

Very truly yours,

RHOADS & SINON LLP

By: *James H. Cawley*
James H. Cawley

cc: Service List

81

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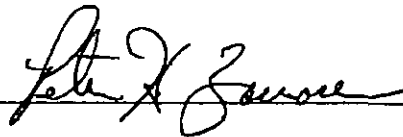
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KIM L. SNELL-ZARCONI

*ALSO ADMITTED TO THE FLORIDA BAR

ORIGINAL

VERIFICATION

I, Peter H. Zamore, Vice President, General Counsel & Secretary of Green Mountain Energy Company, hereby state that the facts set forth in the foregoing *Answer and Protest of Green Mountain Energy Company* 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).



November 6, 2000

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. A-11050 F0147

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**ANSWER
OF GREEN MOUNTAIN ENERGY COMPANY
TO THE PRELIMINARY MOTION OF THE NEW POWER COMPANY, INC.**

Green Mountain Energy Company (“Green Mountain”) files the following Answer to The New Power Company, Inc.’s (“New Power”) Preliminary Motion pursuant to 52 Pa. Code § 5.101(d).

**DOCUMENT
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I. Summary.

New Power’s Motion (actually comprising three separate motions: to strike Green Mountain’s Answer and Protest because it lacked a verification; to dismiss for failure to state a sufficient legal basis for rejecting the Joint Petition in favor of a sharing arrangement; and to dismiss for lack of Green Mountain’s standing to protest) should be denied because:

- PECO’s selective treatment of deadlines—enforcing some while ignoring others—was clearly arbitrary and capricious. A fair and consistent application of the deadlines imposed by the 1998 and 2000 Joint Petitions requires that they all be treated as either mandatory or directory. Thus, if the October 1, 2000 deadline for PECO’s filing of a negotiated CDS agreement with the Commission was merely directory, then PECO’s September 28, 2000 deadline (not contained in either the 1998 or 2000 Joint Petitions) for final submission of best and final offers was merely directory as well.
- PECO’s RFP did not “fix” the relative importance of the evaluation factors prior to opening the proposals. In fact, PECO did not even provide the evaluation factors in the RFP, but instead partially provided them orally in the “negotiation” process and completely listed them in writing only on September 22, 2000.
- PECO, on the very eve of its self-imposed award deadline, imposed a new, major requirement not fixed in the RFP—a \$50 million security

requirement, contrary to the Commission's \$5 million security limit in the PECO CDS Rules in order to prevent a barrier to entry.

- PECO's RFP did not provide for separate "discussion" (with all offerors) and "contract negotiation" (with only one offeror) phases. The two-phase process employed was contrary to ¶ 52(b) of the 2000 Joint Petition, which required a single-phased process ("the Company agrees to engage in good faith negotiations with qualified suppliers to enter into a bilateral CDS agreement or agreements").
- PECO's RFP provided no timetable or deadlines (or any rules for determining them) for the submission of final and best offers, with the result that PECO could, and did, arbitrarily decide what offers were timely and what offers were not (specifically, that Green Mountain's revised offer was untimely).
- The Commission allowed PECO to make important public interest decisions without adequate standards and guidance from the Commission as to how the evaluation process was to be conducted and without adequate Commission oversight of that process. As a result, the Commission has no way of knowing whether the process was fairly conducted, and it lacks the factual predicates to certify that the public interest was served.
- PECO so fashioned and conducted the selection process that the Commission is essentially presented with a *fait accompli*, with no adequate opportunity to assess the validity of the evaluation process because of the urgent necessity for its decision.
- Green Mountain is unquestionably an aggrieved party and therefore has standing to protest the Joint Petition.
- Green Mountain has corrected its inadvertent omission of a verification by filing one herewith.

Consequently, Green Mountain has been denied due process of law and the direct, immediate, and pecuniary benefits of being awarded the right to provide competitive default service pursuant to the 1999 and 2000 Joint Petitions.

As required by 52 Pa. Code § 5.61(b), Green Mountain answers each of New Power's allegations seriatim as follows:

1. Admitted in part and denied in part. It is admitted that New Power has standing to file its preliminary motion, and it has other claimed rights, only to the extent of the validity of the process by which New Power claims to have acquired such standing and rights in that New Power was not a party to the underlying proceeding. As more fully set forth below, that process was fatally flawed, and the Competitive Default Service (“CDS”) Coordination Agreement submitted to the Commission on August 18, 2000 as an attachment to the Joint Petition of New Power and PECO Energy Company (“PECO”) at the above-captioned docket must be rejected.

II. The Motion to Strike Green Mountain’s Answer and Protest for Insufficiency of Form Must Be Denied for Mootness.

2. Denied as stated. By way of further answer, for the reasons set forth below, ¶ 38 of the *Joint Petition for Full Settlement of PECO Energy’s Restructuring Plan*, approved by the Commission on May 14, 1998 at Docket Nos. R-00973953 and P-00971265 (“1998 Joint Petition”), established an incomplete procedure for the selection of a provider of last resort default supplier for 20% of PECO’s residential customers beginning January 1, 2001. Paragraph 38 of the 1998 Joint Petition provided in part that:

(a) The provider of last resort for 20% of all of PECO’s residential customers would be “selected on the basis of a Commission-approved energy and capacity market price bidding process.” ¶ 38(a).

(b) “Terms and conditions of CDS shall be established, maintained, and modified by the Commission.” ¶ 38(c).

(c) “The Commission will develop qualifications for an EGS to bid on CDS, including creditworthiness and increased bond amount.” ¶ 38(c).

(d) “By January 1, 1999, the Commission will issue final standards for PECO governing the responsibilities and obligations of the competitively determined provider of last resort in PECO service territory.” ¶ 38(d).

Also by way of further answer and in order to place events in chronological context, it is important to note that the Commission at its October 19, 1998 Public Meeting adopted a tentative order (in the same dockets as the 1998 Joint Petition) that released for comments proposed PECO Rules for Competitive Default Service. After the receipt of extensive comments, the Commission on December 17, 1998 adopted another tentative Opinion and Order that permitted reply comments and convened a PECO CDS Collaborative. The members of the collaborative submitted proposed rules to the Commission on February 26, 1999. These proposed rules were the subject of a Final Order entered April 29, 1999. *Re: PECO Joint Petition For Full Settlement Competitive Provider of Last Resort Paragraph 38*, Docket Nos. R-00973953 and P-00971265, 1999 Pa. PUC LEXIS 54.

The Commission addressed the bonding issue as follows in its Final Order:

Although discussed at length, the collaborative was unable to reach a consensus on the increased bonding amounts required by Paragraph 38. *Setting the bonding amount at a level sufficiently high to cover a default during a PJM system peak may limit the number of potential bidders. That is, the bond may act as a barrier to entry which we can not endorse.* Moreover, there is an administrative cost of switching the CDS customers back to PECO PLR service.

To solve the dual problems associated with a CDS default at a system peak, we have developed the following language which will be included at T16: *“As a condition of CDS, the CDS provider will post a security bond of \$5,000,000. 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.”*

1999 Pa. PUC LEXIS 54 at *18-*19 (emphasis added).

Although the Commission entered its Opinion and Order on April 29, 1999, it directed its staff “to prepare the Notice of the Commission’s request for the qualification packages of CDS bidders” for public posting on or before *March 1, 2000*, nearly a year

hence, and it directed PECO to convene a technical conference on or about April 1, 2000. Ordering ¶¶ 3 & 4.

Annex A to the Opinion and Order contained the PECO Energy Rules for Competitive Default Service that provided for the bid process for the selection of a CDS provider by the Commission. Annex A ¶ Q1 required public posting of notice on or before March 1, 2000, and “qualification packages” (Annex A ¶ Q1) or “bids” (Annex A ¶ S1) were to be submitted no later than May 1, 2000. A winning bid was to be determined by the Commission no later than July 1, 2000. Annex A ¶ S7. No provision was made for a failure of this process. The \$5,000,000 maximum bond requirement was included in Annex A ¶ T16 with the language above-quoted.

It must also be noted that the Commission’s April 29, 1999 order did meet the January 1, 1999 deadline for the issuance of PECO CDS final standards set forth in ¶ 38(d) of the 1998 Joint Petition.

3. It is admitted that the 1998 Joint Petition was modified in the *Joint Petition for Settlement of PECO’s 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* (“2000 Joint Petition”), which was approved by the Commission on June 22, 2000 at Docket No. A-00110550F0147.¹ By way of further answer, ¶ 52 (relating to Competitive Default Service) provided in part that:

¶ 52(a): PECO was required by April 1, 2000 to issue a Request for Proposal (“RFP”) for CDS requiring bids to be received on or before May 1, 2000, with the winning bidder to be selected by the Commission by July 1, 2000.

¹ It should be noted that, pursuant to the Commission’s April 29, 1999 Opinion and Order, the CDS selection process was well underway by the entry date of this order.

¶ 52(b): “In the event no winning bidder is selected through the RFP process, the Company 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 for provision of electric generation supply and capacity to the twenty percent (20%) of PECO’s residential customers included in the CDS auction. *** Any CDS bilateral agreement(s) resulting from these negotiations shall: ... and (4) shall be filed with the Commission on or before October 1, 2000. Unless expressly provided herein, the CDS provisions in Paragraph 38 of the 1998 Electric Restructuring Settlement shall remain in effect.”

¶ 52(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. ... PECO shall assign said percentage of such customers among eligible suppliers in accordance with Commission-approved procedures.”

¶ 52(d): “Notwithstanding the above, in the event that, by September 1, 2000, a CDS provider has not been selected pursuant to either Sections 53[sic].a. or b., above, the Company shall, pursuant to the process set forth in Section 53[sic].c., above, assign the percentage of customers necessary to reach the 35% market share threshold.”

4. It is admitted that, under PECO's first RFP, bids were to be received on or before May 1, 2000 and the winning bidder was to be selected by the Commission by July 1, 2000.

5. It is admitted that PECO issued an RFP on April 6, 2000. By way of further answer, the RFP required bids to be submitted to the Commission no later than May 12, 1999, i.e., 11 days after the May 1 deadline required by Annex A ¶¶ Q1 and S1 of the Commission's April 29, 1999 Opinion and Order and by ¶ 52(a) of the 2000 Joint Petition. It is further admitted that on August 22, 2000 (almost two months after the Commission was required to select the winning bidder), the Commission issued a Secretarial Letter stating that it rejected as non-conforming a second bid that it had received. The Secretarial Letter also directed PECO, pursuant to ¶ 52(b) of the 2000 Joint Petition, "to engage in good faith negotiations with qualified suppliers to enter into a bilateral CDS agreement or agreements with one of [sic] more suppliers for the provision of electric generation and capacity to the twenty percent of PECO's residential customers included in the CDS auction." No further guidance was given to PECO as to the evaluation factors, the weights to be given to each of those factors, or the selection process it was to employ.

6. Admitted in part and denied in part. It is admitted that, under the process created by PECO after its first RFP failed to attract a conforming bid, PECO issued a second RFP and undertook a "negotiation" process which purported to comply with ¶ 52(b) of the 2000 Joint Petition (which required PECO to negotiate with qualified suppliers to enter into one or more bilateral CDS agreements). It is denied that either the second RFP or PECO's "negotiation" process was authorized or required by the Commission's April 29, 1999 Opinion and Order, by ¶ 38 of the 1998 Joint Petition, or by ¶ 52 of the 2000 Joint Petition.

7. It is admitted that the Commission's August 22, 2000 Secretarial Letter directed PECO to proceed with bilateral negotiations pursuant to ¶ 52(b) of the 2000 Joint Petition.

It is further admitted that on August 24, 2000, PECO issued a second RFP which purported to (a) provide rules for the qualification of CDS offerors; (b) explain the proposal, negotiation, and assignment process; and (c) state the key terms and conditions of the agreement, with offers due on or before September 8, 2000, and with PECO's recommendation to the Commission due on or before October 9, 2000 (RFP ¶ N6) (eight days after the deadline set forth in ¶ 52(c) of the 2000 Joint Petition).

It is denied, however, that PECO was authorized or required to adopt an RFP process or the RFP process that it employed. It is further denied that PECO's RFP provided complete rules for qualification of CDS offerors, adequately and fully explained the negotiation process, stated complete key terms and conditions for an agreement to provide CDS, or stated the evaluation factors and weights for those evaluation factors that would be applied. Indeed, the RFP by its terms makes clear that it did not fully explain the negotiation process:

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.*

Aug. 24, 2000 RFP ¶ N5 (emphasis added).

By way of further answer, although the Commonwealth procurement process does not directly apply in this context, it is obvious that PECO attempted to follow the "competitive sealed proposals" procedure set forth in Section 513 of the Commonwealth Procurement Code, 62 Pa. C.S. § 513, after the failure of the Commission's "competitive

sealed bidding” process (see 62 Pa. C.S. § 512 (relating to competitive sealed bidding). Since almost all Commonwealth agencies, including the Commission, must follow the Act’s procedures for their own procurement purposes, the fairness of its requirements cannot be questioned, even when used for comparison purposes. Section 513 provides (emphasis added):

§ 513. Competitive sealed proposals.

(a) Conditions for use.—When the contracting officer determines in writing that the use of competitive sealed bidding is either not practicable or advantageous to the Commonwealth, a contract may be entered into by competitive sealed proposals.

(b) Request for proposals.—Proposals shall be solicited through a request for proposals.

(c) Public notice.—Public notice of the request for proposals shall be given in the same manner as provided in section 512(c) (relating to competitive sealed bidding).

(d) Receipt of proposals.—Offerors shall submit their proposals to ensure that their proposals are received prior to the time and date established for receipt of the proposals. Proposals shall be submitted in the format required by the request for proposals. Proposals shall be submitted in the format required by the request for proposals. Proposals shall be opened so as to avoid disclosure of their contents to competing offerors.

(e) Evaluation.—*The relative importance of the evaluation factors shall be fixed prior to opening the proposals. A Commonwealth agency is required to invite its comptroller to participate in the evaluation as a nonvoting member of any evaluation committee.*

(f) Discussion with responsible offerors and revision of proposals.—*As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements and for the purpose of obtaining best and final offers. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.*

(g) Award of contract.—The responsible offeror whose proposal is determined in writing to be the most advantageous to the purchasing agency, *taking into consideration price and all evaluation factors*, shall be selected for contract negotiation.

(h) Contract negotiation.—After selection, the purchasing agency shall proceed to negotiate a contract with the selected offeror.

By way of further answer, it is apparent that PECO failed in vital respects to follow these well-established rules, fatally tainting the entire process:

- PECO’s RFP did not “fix” the relative importance of the evaluation factors prior to opening the proposals. § 513(e). In fact, PECO did not even provide the evaluation factors in the RFP, but instead (as more fully described in ¶ 9 below) partially provided them orally in the “negotiation” process (i.e., after September 8, 2000) and completely listed them in writing only on September 22, 2000. Even more detrimental to Green Mountain (as also more fully described in ¶ 9 below), PECO, on the very eve of its self-imposed award deadline, imposed a new, major requirement not “fixed in the RFP—a \$50 million security requirement. This last minute exorbitant requirement was clearly not a fixed evaluation criteria prior to receiving all of the proposals and should not have been utilized by PECO as a basis for choosing the winning CDS provider.
- To Green Mountain’s knowledge, neither the PUC’s comptroller nor any other Commission employee participated in the evaluation with PECO’s evaluation committee to ensure the fairness of the process (including that “price and all evaluation factors” were taken into consideration as required by § 513(g)) and to protect the public interest. § 513(e).
- Delineation of the “discussion” was not “provided” in the RFP, most importantly that there was to be a “best and final offers” stage. Further, the RFP did not provide for separate “discussion” (with all offerors) and “contract negotiation” (with only one offeror) phases. § 513(f). The two-phase process employed was contrary to ¶ 52(b)

of the 2000 Joint Petition, which required a single-phased process (“the Company agrees to engage in good faith negotiations with qualified suppliers to enter into a bilateral CDS agreement or agreements”). In addition, the RFP provided no timetable or deadlines (or any rules for determining them) for the submission of final and best offers, with the result that PECO could, and did, arbitrarily decide what offers were timely and what offers were not (specifically, that Green Mountain’s revised offer was untimely). That all three “offerors” were equally kept in the dark is no answer to this requirement; ill treatment of all is not compliance.

8. Upon information and belief, it is admitted that three offerors submitted timely (i.e., by the submission deadline of September 8, 2000) proposals conforming to the proposal requirements established by PECO’s second RFP. It is further admitted that these offerors included New Power and Green Mountain.

9. It is denied that, “upon receipt of the three timely bids, PECO entered into separate preliminary negotiations with each qualified bidder.” It is further denied that “PECO fulfilled its obligation to engage in good faith negotiations with all qualifying bidders.” On the contrary, the discussions that occurred between PECO and Green Mountain between September 8, 2000 and October 3, 2000 centered upon clarifications of the terms of Green Mountain’s initial proposal, the terms of PECO’s RFP, and, as described below, changes to the terms and evaluation criteria imposed and imparted by PECO after September 8, 2000. These additional terms and evaluation criteria were not included within PECO’s second RFP. Indeed, on September 20, 2000, PECO’s C. L. Ciabattoni e-mailed Green Mountain’s Clif Payne that he (Ciabattoni) was “capturing some of the items that were discussed yesterday, concentrating on *the items that were not*

explicitly identified in the PECO CDS 'Request for Proposal' (e.g. random allocation process) but will be part of the PECO CDS program. ... I can't commit to having an agenda or selection criteria to you in time for your meeting...." (emphasis added).

Some, but not all, of PECO's evaluation factors ("Bid Evaluation Criteria") were first revealed to Green Mountain in the clarification discussions following the submission of proposals. A complete list of these factors was first given in writing to Green Mountain via an attachment to an e-mail on September 22, 2000. *See Attachment A* hereto. These were:

- Customer Price (equal to or below the PECO "Price to Compare")
- Reliability related to the delivery of energy supply
- Experience in the retail electric marketplace
- Financially sound creditworthiness review
- Liability provisions
- Technical competency

Very significantly, PECO never revealed the weights for these evaluation factors, despite the fact that Green Mountain's Payne repeatedly asked for them and pushed PECO *very* hard to reveal them.

Also very significantly, PECO for the first time in the September 22 e-mail attachment indicated that, as a term of the Coordination Services Agreement, it would require "a liquidated damages provision to cover PECO Energy's supply liability in the event of CDS provider's default."

Then, on September 25, 2000, PECO, purportedly at the suggestion of one of the offerors, e-mailed Green Mountain that it had "decided it would reconsider any revisions

to the pricing portions of the CDS proposals” initially submitted by the three offerors. Revised pricing would be considered if submitted to PECO by September 28, 2000.

On September 26, 2000, PECO for the first time provided the details of its previously-described “liquidated damages provision.” By e-mail it presented “a slightly revised CDS Agreement” which included “a reference to a Solvent Parent Guarantee in Section 14 and in Section 14A the provision that the Surety Bond and Letter of Credit or Solvent parent Guarantee must be provided by the CDS Provider within 2 business days of the Commission’s approval of the CDS Agreement.”

Straining to deal with this new requirement, and seeking to include these issues in a negotiation, Green Mountain’s Payne e-mailed PECO’s Ciabattoni on September 29, 2000, expressing Green Mountain’s appreciation for PECO’s desire to manage its supply risk and suggesting that practical alternatives to the \$50 million requirement might be found if PECO would discuss the issue with Green Mountain. PECO never responded to this offer to negotiate the issue.

Late in the afternoon of September 29, 2000 (i.e., on the Friday before the scheduled Monday award date), PECO e-mailed Green Mountain the following bombshell:

PECO Energy has determined a \$50 million amount for the Letter of Credit or Solvent Parent Guaranty. This calculation uses market pricing for Unforced Capacity in place of the PJM LLC deficiency rate for Unforced Capacity.

PECO Energy request [sic] acknowledgment from you as to your interest in continued participation in the PECO Energy Competitive Default Services (CDS) Bilateral process given this \$50 million Letter of Credit or Solvent Parent Guaranty.

Please respond to me, electronically, by Monday, October 2, 2000 at 12 Noon Eastern Standard Time (EST). PECO Energy will notify the

successful bidder by Monday, October 2, 2000 at 5:00 p.m. Eastern Standard Time (EST).

On the following Monday, October 2, PECO sent two e-mails to Green Mountain. The first indicated that PECO had once again extended a deadline, this time to extend the deadline until October 3 for a communication of “interest in continued participation” in the process “given the \$50 million Letter of Credit.” The second provided “the methodology and the calculations, which comprise the \$50 million amount that PECO Energy has attached to the Letter of Credit (‘LOC’) or Solvent Parent Guarantee (‘SPG’).”

The next day, October 3, Green Mountain’s Payne e-mailed PECO’s Ciabattone in an attempt to understand and respond to the changing requirements for CDS selection. Payne specifically tried to indicate that Green Mountain understood PECO’s concern about supply risk, but suggested that there might be other ways to meet that need which would be discussed in a negotiation.

10. It is admitted, as already noted, that PECO on September 25, 2000 indicated to Green Mountain that revised pricing would be considered if submitted to PECO by September 28, 2000. It is admitted that Green Mountain did not revise its pricing prior to that date. Except for PECO’s Response to Green Mountain’s Answer and Protest, Green Mountain has no information from which to form a belief as to the allegation that “NewPower and the third bidder took advantage of this opportunity and submitted revised bids” and that New Power’s revised offer contained lower CDS prices than Green Mountain’s.

11. It is admitted that on October 3, 2000, PECO selected New Power as the winning offeror to serve PECO’s entire CDS load. By way of further answer, on October

3, PECO informed Green Mountain in a telephone call of its decision to negotiate with another offeror. Despite repeated requests to PECO by Green Mountain's Payne for an explanation of the reasons for PECO's rejection of Green Mountain's proposal, PECO consistently refused to provide either an oral or a written explanation.

By way of further answer, as set forth in Green Mountain's Answer and Protest, Green Mountain on October 12, 2000, submitted an amended proposal with a price for all CDS customers at a 2% discount from the shopping credit, which PECO refused to consider. By contrast, the average discount offered by New Power is 1.83%.

12. It is admitted that between October 3 and 18, 2000, PECO and New Power negotiated the terms of a CDS Coordination Agreement, and, further, that this agreement was filed with the Commission on October 18, 2000, including ¶ 18(b) thereof providing for an escrow account of \$50 million. Such filing was 17 days beyond the deadline required by ¶ 52(c) of the 2000 Joint Petition and nine days beyond the deadline required by ¶ N6 of PECO's second RFP.

13. It is admitted that, as noted, Green Mountain submitted its revised pricing on October 12, 2000, and that PECO refused to consider it.

14. It is admitted that Green Mountain filed its Answer and Protest on October 23, 2000. The Answer and Protest is a written document that speaks for itself.

15. It is admitted that no verification was attached to Green Mountain's Answer and Protest. By way of further answer, Green Mountain has corrected this oversight by filing a verification herewith.

16. It is admitted that Green Mountain failed to satisfy the requirement of 52 Pa. Code § 1.36(a), which requires such a verification. It is denied, however, that New

Power or any other party to this proceeding was in any way prejudiced by this technical oversight. Even if the Commission grants New Power's Motion to Strike, 52 Pa. Code § 5.101(f) provides that Green Mountain "has the right to file an amended pleading within 10 days of service of the order." In any event, the oversight has been corrected and the issue is moot.

17. It is denied that Green Mountain's Answer and Protest should be stricken as to form, the inadvertent omission of a verification having been corrected.

III. Green Mountain's Answer and Protest Establishes A Substantial Basis for Modification or Rejection of PECO's and New Power's Joint Petition.

18. This paragraph requires no answer.

19. through 23.² It is emphatically denied that Green Mountain's Answer and Protest admits that PECO followed the process required by the 1998 and 2000 Joint Petitions. On the contrary, that pleading is replete with objections describing how PECO did not follow the required process.

It is denied that the PECO's second RFP and "negotiation" process were authorized or required by any law, regulation, or Commission order. It is further denied that PECO had no obligation or legal right to consider Green Mountain's revised pricing offer. On the contrary, Green Mountain's revised offer was timely, did not undermine the integrity of the selection process, and did not seek either "to cause the start of a new round of bidding" or to "review all competing bids and then to top those bids."

It is denied that "[t]he prior decisions of the PUC, approving the 1998 and 2000 Joint Petitions, established the process to be used by PECO in awarding the CDS

² Because ¶¶ 19-23 posit substantially the same allegations, Green Mountain addresses all five paragraphs together.

Agreement. . . . PECO and the three successful bidders followed the PUC-sanctioned process.”

By way of further answer and as more fully stated and described in ¶¶ 7 and 9 above, PECO was not authorized or required to adopt an RFP process or the RFP process that it employed. Further, PECO’s RFP failed to provide complete rules for qualification of CDS offerors, to adequately and fully explain the negotiation process, to state complete key terms and conditions for an agreement to provide CDS, or to state the evaluation factors and weights for those evaluation factors that would be applied.

In Part IV of its Response to Green Mountain’s Answer and Protest, PECO unabashedly states that, while the winning bidder was to be selected by the Commission under PECO’s first RFP, thereafter the “right to select the winning bidder” was “a PECO-established process.” Grudgingly, PECO acknowledges the Commission’s authority “to review any agreement” filed by PECO. In contrast, PECO only filed its Joint Petition on October 18 but requested that the Commission approve it and the proposed CDS agreement by November 1 without modification. Paragraph 16 of the Joint Petition states that the agreement is contingent upon approval by the Commission without modification. If the Commission “should modify any terms or conditions or add any conditions,” either PECO or New Power may elect to withdraw from the agreement.

Just as “[t]he power to select those who make public decisions is too vital a part of our scheme of government to be delegated to private groups,” *Hetherington v. McHale*, 458 Pa. 479, 485, 329 A.2d 250, 253 (1974), so is the power to select those who provide public utility service too vital to be delegated to PECO alone. And just as the Commission may not delegate “its authority to answer certain legal questions to a public

utility, thereby allowing the company sought to be regulated to assume the role of regulator,” *Woodland Road Ass’n v. Pa. Pub. Util. Comm’n*, 487 A.2d 1030, 1032 (Pa. Cmwlth. 1985), it may not delegate its authority over a CDS evaluation process so as to permit an incumbent electric distribution company choose its competitor. Moreover, “[t]here is a strong policy against delegating power to regulate prices to a private body.” *Pennsylvania Coal Mining Ass’n v. Insurance Dep’t*, 471 Pa. 437, 450, 370 A.2d 685, 692 (1977) (citing *Olin Mathieson Chemical Corp. v. White Cross Stores*, 414 Pa. 95, 99, 199 A.2d 266, 268 (1964)). And, while there is no unconstitutional delegation “[w]here proposals by a private party must be reviewed and approved by a regulatory agency before they become effective,” *id.*, the review afforded surely must be meaningful and not, as has occurred here, a “mere gesture.”

For the following reasons, a violation of the non-delegation rule has occurred which can only be remedied if the Commission conducts a thorough review of the Joint Petition under its *de novo* power to accept, reject, or modify the CDS agreement in whole or in part:

- The Commission allowed PECO to make important public interest decisions without adequate standards and guidance from the Commission as to how the evaluation process was to be conducted and without adequate Commission oversight of that process. As a result, the Commission has no way of knowing whether the process was fairly conducted, and it lacks the factual predicates to certify that the public interest was served.
- PECO’s selective treatment of deadlines—enforcing some while ignoring others—was clearly arbitrary and capricious. A fair and consistent application of the

deadlines imposed by the 1998 and 2000 Joint Petitions requires that they all be treated as either mandatory or directory. Thus, if the October 1, 2000 deadline for PECO's filing of a negotiated CDS agreement with the Commission was merely directory, then PECO's September 28, 2000 deadline (not contained in either the 1998 or 2000 Joint Petitions) for final submission of best and final offers was merely directory as well.

- PECO so fashioned and conducted the selection process that the Commission is essentially presented with a *fait accompli*, with no adequate opportunity to assess the validity of the evaluation process because of the urgent necessity for its decision.

Consequently, Green Mountain has been denied due process of law and the direct, immediate, and pecuniary benefits of being awarded the right to provide competitive default service pursuant to the 1999 and 2000 Joint Petitions.

24. Admitted in part and denied in part. It is admitted that the Commission's review of the proposed CDS Coordination Agreement is not a violation of the non-delegation rule. It is denied that Green Mountain ever suggested that the Commission's review "must be a lengthy, drawn out process." By way of further answer, Green Mountain's assertion in Part III(A) of its Answer and Protest was that the non-delegation rule would be violated if the Commission's reviewing role were reduced to "a mere gesture," as is more fully set forth in answer to the previous numbered paragraph.

25. It is denied that acceptance of Green Mountain's proposal will delay the implementation of CDS, and that Green Mountain is unwilling to adopt the proposed operational requirements and timelines of the proposed CDS Coordination Agreement. By way of further answer, Green Mountain expressly stated in Parts I (third paragraph),

II(B) n.7, and III(A) (last paragraph, last sentence) of its Answer and Protest that it stands ready to adopt the proposed operational requirements of the proposed agreement and to adhere to the timelines contained in that contract. In light of Green Mountain's promise to adhere to the established timelines, New Power's lachrymose response decrying Green Mountain's mention in Part IV of the possible need for "minimal modifications" is an unwarranted and baseless exaggeration.

26. For the foregoing reasons, it is therefore denied that Green Mountain's Answer and Protest is legally insufficient for failure to state a basis for setting aside PECO's recommendation and awarding all or some of the competitive default service to Green Mountain pursuant to the terms of its revised offer.

IV. Because Green Mountain's Interest in the Joint Petition Is Direct, Immediate, and Pecuniary, Its Standing to Protest the Joint Petition Cannot Be Reasonably Or Plausibly Questioned.

27. This paragraph requires no answer.

28. It is denied that the proposed CDS Coordination Agreement attached to the Joint Petition has no impact on Green Mountain. On the contrary, PECO's arbitrary selection process and capricious conduct of that process, together with the Commission's virtual *carte blanche* delegation of vital questions of public policy to PECO (an entity regulated by the Commission) has deprived Green Mountain of due process of law and the direct, immediate, and pecuniary benefits of being awarded the right to provide competitive default service pursuant to the 1999 and 2000 Joint Petitions.

For the reasons set forth below, it is denied that Green Mountain is merely a "disappointed bidder" for a contract.

29. It is denied that Green Mountain lacks standing to challenge the Joint Petition based on public contracts jurisprudence applicable to “disappointed bidders.” It is further denied that either the CDS selection process or the proposed CDS Coordination Agreement is directly governed by public contract law principles simply because the “auction process stems from PUC-approved Joint Petitions for Settlement” and “was sanctioned by a state agency.”

By way of further answer, as noted above, the Commonwealth procurement process does not directly apply in this context, but the provisions of the Commonwealth Procurement Code, 62 Pa. C.S. § 101 *et seq.*, provide a useful paradigm for comparison purposes. For example, Section 1711(a), 62 Pa. C.S. § 1711(a), eliminates the need for a protestant to gain standing by alleging the fiction of taxpayer status (the protestant need only demonstrate that he is aggrieved). Case law prior to the enactment of the Code in 1998, including the two decisions cited by New Power, *R. S. Noonan, Inc. v. York Sch. Dist.*, 400 Pa. 391, 162 A.2d 623 (1960), and *J. P. Mascaro & Sons, Inc. v. Bristol Twp.*, 505 A.2d 1071 (Pa. Cmwlth. 1986), held that only a taxpayer has standing to seek to enjoin the award of a public contract to anyone other than the lowest responsible bidder. *See also Lasday v. Allegheny County*, 499 Pa. 434, 453 A.2d 949 (1982) (a taxpayer who is also a disappointed bidder may still challenge a public contract award). Of course, Green Mountain is a Pennsylvania taxpayer, which PECO tacitly acknowledged by finding its proposal conforming (since only licensed EGSs were eligible, and all EGSs must pay, *inter alia*, the Utilities Gross Receipts Tax to maintain their EGS license).

Most importantly, however, PECO is not a purchasing government entity, and the CDS Coordination Agreement is not a public contract involving the expenditure of

Commonwealth or municipal tax revenues or procurement funds by a governmental entity. Rather, that agreement provides for the rates, terms, and conditions for an energy and capacity supplier to serve an initial block of PECO's customers. The CDS "auction" is merely the process of determining the supplier and establishing the rates, terms, and conditions, including "coordinating" service with PECO. The Joint Petition that Green Mountain has protested is the procedural means to obtain the approval of the process and the agreement by the Commission, since the entire matter is within its jurisdiction under the Public Utility Code. In short, rather than being a public contract letting, this is an electric competition dispute wholly within the jurisdiction of the Commission.

As a party³ aggrieved by the supplier selection process, Green Mountain has standing to oppose that approval under Section 701 of the Public Utility Code, 66 Pa. C.S. § 701.⁴ Moreover, it is well established that the Commission is not bound to apply to its administrative proceedings the traditional principles of judicial standing for appellate purposes, such as those set forth in *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). See, e.g., *Pennsylvania Natural Gas Ass'n v. T.W. Phillips Gas & Oil Co.*, 75 Pa. PUC 598 (1991); *Appalachian Gas Sales, Inc. v. Philadelphia Electric Co.*, 67 Pa. PUC 246 (1988) ("Unlike standing to appeal, which is determined by the application of guidelines pronounced by the appellate courts,

³ Green Mountain, having been an associational party to the PECO-Unicom merger proceeding and having taken part in the PECO CDS selection process at the same docket number, is party under 52 Pa. Code § 1.8 because it is "[a] person who appears in a proceeding before the Commission who has a *direct interest* in the subject matter of the proceeding." (Emphasis added.).

⁴ 66 Pa. C.S. § 701, provides in relevant part: "The commission, or any person, corporation, or municipal corporation *having an interest in the subject matter*, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." (Emphasis added.).

standing before an administrative agency is primarily within the discretion of the agency ... to be exercised in each individual case.”).

30. Substantially for the reasons stated in the previous numbered paragraph, it is denied that Green Mountain lacks standing “to challenge the award of a private contract before the PUC.” By way of further answer, as a party aggrieved by the CDS supplier selection process, Green Mountain has standing to oppose the approval of the Joint Petition that includes an agreement between the winning energy and capacity supplier and PECO.

31. For the reasons stated in the previous two numbered paragraphs, it is denied that Green Mountain’s Answer and Protest should be dismissed for lack of standing.

WHEREFORE, for the foregoing reasons, the Preliminary Motion of The New Power Company, Inc. should be denied.

Respectfully submitted,


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MELLOTT, LLC

By: Steven P. Hershey
Adrian C. DiCianno

Of Counsel:

Peter H. Zamore
Vice President, General Counsel & Secretary
GREEN MOUNTAIN ENERGY COMPANY

Dated: November 6, 2000

Attachment A

-----Original Message-----

From: Ciabattoni, C.L. (Carlo) [mailto:cciabattoni@peco-energy.com]

Sent: Friday, September 22, 2000 1:52 PM

To: 'clif.payne@greenmountain.com'

Subject: PECO CDS Conference Call Information

Importance: High

Clif,

The attached document has been compiled as a result of the conference calls this past week with all of the CDS bidders. PECO wants to ensure that all of the CDS bidders have an accurate and consistent representation of these items as we move forward in the negotiation process.

If you have any questions regarding the items represented here please give me a call.

Thank you,
Carlo Ciabattoni
Manager, Supplier Administration Group
PECO Energy
(215) 841-4210
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<<CDS POINTS TO COVER IN E.doc>>

(See attached file: CDS POINTS TO COVER IN E.doc)

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ITEMS DISCUSSED DURING NEGOTIATION PROCESS WITH COMPETITIVE DEFAULT SERVICE (CDS) BIDDERS

Customer Notification

- **Customers will be notified by CDS provider of their selection and will be provided a card with negative check off to enable them to “opt out” of participating in CDS program (PECO recommendation to stagger mailings).**

Customer Initial Selection

- **Number of customers randomly allocated will be calculated as a percentage of all residential customers shopping and non shopping.**
- **The calculated number of customers will be drawn from a pool consisting of non-shopping customers only.**
- **As part of the initial CDS customer allocation process PECO will allocate a percentage of all residential customers somewhat above the 20% referred to in the CDS Request for Proposal.**
- **This will be done in an attempt to offset the number of non-shopping customers that may choose to “opt out” of participation in the CDS program after they have been randomly assigned.**
- **The CDS provider will receive the percentage of customers in the non-shopping pool minus the number of customers that choose not to participate in the program and there will be no replenishment to the customer pool once the process is complete.**

Customer Switching

- **If a customer is assigned to the CDS program and then decides to shop and switches to an Electric Generation Supplier (EGS) then subsequently decides to return to Provider of last Resort (PLR) the customer will return to PECO PLR service not to the CDS provider.**

Billing Provision and Related Billing Items

- **The billing provision for the PECO CDS Bilateral program will be EDC Consolidated billing, customer charges to be submitted by the CDS provider must accommodate a bill ready billing environment in accordance with the Competitive Billing Specification Rider of the PECO Energy Electric Generation Coordination Tariff.**
- **PECO Energy will pay the CDS provider their undisputed "CDS" charges per section 10 of the "Billing Specification Rider" in the Electric Generation Coordination Tariff. Under the terms of the "Billing Specification Rider" of the Electric Generation Coordination Tariff, PECO Energy bears the risk of all uncollectible accounts in the CDS program therefore the Appendix "J" credit contained in the PECO Energy Restructuring Settlement does not apply to the CDS provider.**
- **PECO Energy will be able to terminate customers for failure to pay CDS charges as these charges are deemed regulated charges under the CDS program**

Coordination Services Agreement Terms

- **Will include a liquidated damages provision to cover PECO Energy's supply liability in the event of CDS provider's default.**
- **Any force majeure provision will comport with applicable tariff provisions.**
- **There will be no out or reopener clauses related to changes in rules, regulations, tariffs and market prices.**

Renewable Energy

- **"Renewable" provisions of 1998 PECO Energy Restructuring Settlement will apply to CDS.**

Bid Evaluation Criteria

- **PECO Energy will be concentrating primarily on the following areas during the bid evaluation process:**
 - **Customer Price (equal to or below the PECO "Price to Compare")**
 - **Reliability related to the delivery of energy supply**
 - **Experience in the retail electric marketplace**
 - **Financially sound creditworthiness review**
 - **Liability provisions**
 - **Technical competency**

VERIFICATION

I, Peter H. Zamore, Vice President, General Counsel & Secretary of Green Mountain Energy Company, hereby state that the facts set forth in the foregoing *Answer to the Preliminary Motion of The New Power Company, Inc.* 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).



November 6, 2000

CERTIFICATE OF SERVICE

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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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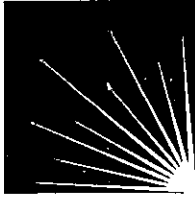
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November 8, 2000

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Re: Docket No. A-11050 F0147

Dear Secretary McNulty:

A-11050 F0147

Enclosed for filing please find an original and three (3) copies of the Answer and Protest of Clean Air Council to the Joint Petition For Approval of Competitive Default Service Agreement in the above-referenced docket. A Certificate of Service is also enclosed.

Thank you for your attention to this matter.

DOCUMENT
FOLDER

Sincerely,

Michael Fiorentino, Esq.
Joseph Otis Minott, Esq.

Enclosure

cc: John M. Quain, Chairman
Robert K. Bloom, Commissioner
Nora Meade Brownell, Commissioner
Aaron Wilson, Jr., Commissioner
Terrance J. Fitzpatrick, Commissioner
Certificate of Service

SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. A-11050 F0147

A-110550. F0147

ANSWER AND PROTEST OF CLEAN AIR COUNCIL
TO THE JOINT PETITION FOR APPROVAL OF
COMPETITIVE DEFAULT SERVICE AGREEMENT

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1. Pursuant to 52 Pa. Code §§5.51 and 5.61, Clean Air Council filed 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 of October 18, 2000.

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2. Clean Air Council possesses standing in this matter by virtue of being a signatory (as a member of the Environmentalists) to the Joint Petition for Settlement in the PECO Restructuring at Docket No. R-00973953 which established the Competitive Default Supply (CDS) program and being a signatory to the Merger Settlement in Docket No. A-110550F0147 which revised the CDS program. As a public interest organization recognized for its advocacy of renewable power, Clean Air Council has a stake in the successful implementation of a CDS program due to the program's renewable energy requirement.

3. There is no question that the Public Utility Commission has retained the authority to select the supplier that will provide CDS in the PECO service territory. In

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the Merger Settlement approved by Commission Order on June 22, 2000, Paragraph 52a indicates that the Commission will select the winning bidder. The Council contends that PECO's role in this process is properly to assess the qualified bidders and make a recommendation to the Commission. PECO should not fail to submit qualified bids for Commission consideration.

4. Furthermore, Clean Air Council is concerned about the allegations made in the October 23, 2000 Protest of Green Mountain Energy Company that PECO conducted the CDS process without requisite fairness. If rolling deadlines or anything less than full good faith negotiations occurred, then Green Mountain may have been prejudiced in the process. Such an outcome is contrary to the public interest. PECO should not be permitted to choose its competitors. The Commission should carefully evaluate the fairness of this bid process before making a determination on the Joint Petition.

5. The Council believes the public interest is well-served by a competitive default supplier that brings the cleanest possible energy generation to its customers because of the environmental benefits that provision of such supply confers. Therefore, Clean Air Council also supports the introduction of cleaner power with less environmental impact into the Pennsylvania market. It is clear from Green Mountain's proposal that the non-renewable components of its supply to CDS customers (which constitutes 98% of said supply) will be generated by sources which are environmentally cleaner than the non-renewable 98% of New Power's supply. New Power's non-

renewable CDS supply is simply “grid power” purchased from the power pool. The Commission should consider the environmental impact of the supply of all qualifying bidders when evaluating their proposals.

6. Moreover, Clean Air Council supports the position proffered by Green Mountain Energy Company to divide PECO’s CDS customers between New Power and Green Mountain if necessary. Clean Air Council contends that the entrance of multiple CDS suppliers into the market will enhance competition. Clean Air Council supports the concept of multiple suppliers because it increases the quantity of renewable supply in the Pennsylvania market.

7. As indicated in the Merger Settlement, the Commission explicitly retains the authority to reject or modify the agreement set forth in the Joint Petition. The Commission should, therefore, evaluate all qualifying proposals to serve CDS customers to determine the best way to meet the public interest in competition and a cleaner environment.

Conclusion

For the foregoing reasons, Clean Air Council urges the Commission to reject the proposed agreement offered by New Power and PECO because it is not in the public interest, or in the alternative, to modify the Joint Petition so as to include Green Mountain

Energy Company as a qualified supplier which would receive a significant share of
PECO's CDS customers.

Respectfully submitted,

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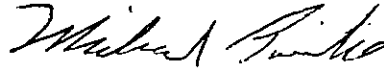
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Attorneys for Clean Air Council

Dated: November 8, 2000

VERIFICATION

In accordance with 52 Pa. Code Section 1.36(a), I, Michael Fiorentino, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. It is understood that the statements contained herein are made pursuant to 18 Pa. C.S. 4904(b) relating to unsworn falsification to authorities.



Michael Fiorentino

Dated: November 8, 2000

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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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1922-1980

DIRECT DIAL NO.
(717) 231-6608

FILE NO.

**In Re: PECO Energy Company Competitive
Default Service Program Bidding
Docket No. A-11050 F0147**

110550

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

Dear Mr. McNulty:

Enclosed for filing are the original verifications to Green Mountain's Answer and Protest of Green Mountain Energy Company and to its Answer to the Preliminary Motion of the New Power Company, Inc. These originals replace the facsimile copies attached to the originals of both pleadings.

Please call me if you have any questions about these filings.

Very truly yours,

RHOADS & SINON LLP

By: 
James H. Cawley

YORK:

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VERIFICATION

I, Peter H. Zamore, Vice President, General Counsel & Secretary of Green Mountain Energy Company, hereby state that the facts set forth in the foregoing *Answer to the Preliminary Motion of The New Power Company, Inc.* 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).



November 6, 2000

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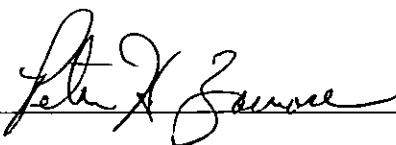
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VERIFICATION

I, Peter H. Zamore, Vice President, General Counsel & Secretary of Green Mountain Energy Company, hereby state that the facts set forth in the foregoing *Answer and Protest of Green Mountain Energy Company* 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).



November 6, 2000

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November 14, 2000

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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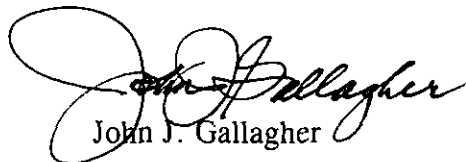
Re: PECO Energy Company Competitive Default Service Program Bidding
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of The New Power Company, Inc. to the Answer and Protest of Shell Energy Services Company, L.L.C. A certificate of Service is also enclosed.

Should you have any questions regarding this filing please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/jtk

Enclosures

cc: All parties on certificate of service
Marc Manly, Esq.
James L. Malone, III, Esq.

32

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: PECO Energy Company
Competitive Default Service
Program Bidding

Docket No. A-110550F0147

DOCUMENT
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DOCKETED
NOV 16 2000

ANSWER OF
THE NEW POWER COMPANY, INC. TO THE
ANSWER AND PROTEST OF
SHELL ENERGY SERVICES COMPANY, L.L.C.

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1. NOW COMES The New Power Company, Inc. ("New Power"),
by and through its counsel, to file this Answer in response to the Answer¹ filed
by Shell Energy Services Co., L.L.C. ("Shell") on November 3, 2000.

**I. PECO Complied with Mandatory Procedures for Awarding the
Proposed Contract**

2. It is denied that the CDS auction process is flawed and that the
Proposed CDS Agreement is not in the public interest. By way of further
answer, it is denied that PECO failed to comply with the auction process as set
forth in the Joint Settlement Petitions approved by the Public Utility

¹ Although Shell's filing is titled as an Answer, the introductory paragraph
cites regulations relating to protests, 52 Pa. Code § 5.51, as well as answers. 52
Pa. Code § 5.61. This document therefore treats Shell's filing as both an
Answer and a Protest. This approach is also reasonable because Shell has no
clear basis for filing an "Answer" to a petition for approval of a contract
between two other parties.

Commission (“PUC”) in PECO’s restructuring and merger proceedings. To the extent that Shell disputes the CDS process set forth in those documents, the matter has already been adjudicated and cannot be re-litigated in the guise of contesting a contract awarded through the PUC-approved process. It is further denied that the auction process should have been delayed while Shell continued its litigation concerning earlier stages in the auction process. The public interest favors timely implementation of a CDS program. PECO and its customers should not be held in limbo indefinitely. The PUC rejected Shell’s claims and specifically advised PECO to proceed with the second phase of the auction process. It is further denied that Shell’s bid during the second phase of the auction process should have been presented to the PUC for its consideration. Finally, it is denied that the PUC’s role at this point in the process is to determine “the best manner to provide CDS, including the possibility of multiple CDS providers.” Consistent with the process set forth in the Joint Settlement Petitions, PECO selected one CDS provider, entered into a contract with that bidder, and submitted that contract to the PUC.

3. It is denied that the CDS program and bidding process “is mired in confusion and is currently the subject of pending and potentially on-going regulatory challenges.” It is further denied that Shell has standing in this matter. Shell is merely a disappointed bidder in an auction process. Such parties do not have standing to challenge the award of a contract to another qualifying bidder. Shell’s participation in earlier stages of the bidding process is irrelevant for purposes of determining its standing in the instant matter. It is

denied that PECO did not engage in meaningful negotiations with all qualifying bidders. It is also denied that the second phase of the auction process involved a “potentially discriminatory price rebid.” All bidders had an equal opportunity to participate in the auction process and the result was that New Power submitted the best bid.

4. PECO and New Power have submitted a contract to the PUC. It is denied that the PUC’s response should be to broker a new round of negotiations between PECO and potential bidders. What Shell “agrees to” is irrelevant for purposes of deciding the matter currently before the PUC. Considering that Shell does not agree to all of the terms and conditions agreed-to by PECO and New Power, it is unclear whether PECO and Shell could arrive at a mutually satisfactory agreement if given another opportunity to do so. The contract currently before the Commission is contingent on PUC approval of the contract, as submitted. The PUC should not jeopardize the contract before it in hopes that PECO could arrive at a “better” agreement with some other supplier at some point in the future. The public interest favors expeditious implementation of a CDS program. Approving the instant contract would promote that interest.

5. It is denied that the PUC should give any weight to what Shell is “ready and willing to discuss.” A contract has been submitted to the PUC pursuant to a PUC-approved process. That contract calls for a single provider to be the CDS supplier for PECO. PECO had the authority to decide whether to

contract with multiple suppliers or one provider. The PUC should not second-guess that decision. The PUC is not a “super board of directors” for utilities.

6. It is denied that the PUC’s role at this point in the process is to review all of the bids submitted to PECO, determine “the ‘best deal’ for consumers” and select a CDS provider(s). PECO followed the process required by the Joint Settlement Petitions approved by the PUC. Under these circumstances, the PUC need not and should not undertake some kind of fishing expedition to determine “how the agreement was developed.” It is denied that PECO was required to enter into a contract with multiple CDS providers. As a result, the claim that there is “good cause and support” for that approach is irrelevant.

7. It is denied that the PUC can accept Shell’s proposal rather than the contract that has been submitted for PUC approval. It is denied that there were any “infirmities” in the bidding process. Even if there were any “infirmities,” it is denied that the appropriate remedy would be for the PUC to approve Shell’s proposal and order PECO to enter into a contract with Shell. It is specifically denied that PECO was required to obtain PUC approval before deciding to award the CDS contract to one provider. The Joint Settlement Petitions specifically allow PECO to contract with a single CDS provider. Other entities’ preferences for multiple providers cannot be substituted for PECO’s judgment, properly exercised under the Petitions approved by this Commission.

II. Second Denial of Alleged Procedural Flaws in the Auction Process

8. It is denied that there were any flaws in the auction process.

Shell has already litigated its allegations regarding the first phase of the auction process, and should not be permitted to re-litigate those claims here. As argued above, the entire auction process should not be held captive to Shell's continued litigation concerning earlier phases of the auction process.

9. As admitted in Shell's Answer and Protest, the claims made in this paragraph have already been rejected by the PUC. They cannot be re-litigated in this proceeding. Most of Shell's paragraph 9 constitutes speculation as to why the PUC rejected Shell's claims in that litigation. Such speculation is irrelevant; the only fact that matters is that Shell's claims were rejected by the PUC. The last sentence of Shell's paragraph 9 constitutes a threat of litigation to which no response is necessary in a pleading.

10. It is denied that PECO failed to follow the process mandated by the PUC in its orders approving the Joint Settlement Petitions in the restructuring and merger proceedings. All bidders had an opportunity to submit bids, and Shell admits that it submitted a revised proposal. Shell is merely a disappointed bidder with no standing to complain that the party awarding the contract chose another bidder.

11. It is denied that New Power was in an advantageous position relative to other bidders in the second phase of the auction process. It is further

denied that the bidders who had already submitted bids needed extensive additional time to submit revised bids. Shell's argument seems to be that it could have offered PECO an even better deal than it did, if it had been given more time to do so² and if it knew exactly what other bidders were bidding. It is hard to see why PECO and New Power should be prejudiced because Shell did not offer its "best deal." PECO gave bidders a second opportunity to submit bids, in order to obtain the best deal for PECO's customers. PECO should not be punished because the time frame for submitting revised bids was inconvenient for such a large company as Shell.

12. It is denied that PECO failed to comply with the second phase of the auction process, as established by the PUC-approved auction process.

III. Conclusion

13. It is denied that Shell's policy arguments merit any consideration whatsoever. PECO followed the required auction process and awarded the contract to New Power, applying the criteria mandated by the PUC-approved Joint Settlement Petitions. Shell's allegations in this paragraph represent an attempt to re-litigate the process that has already been established.

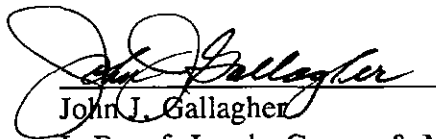
² Even now, Shell requests additional time to negotiate a deal with PECO. In paragraph 4(b), Shell states that it is not willing to accept certain terms in the contract negotiated by PECO and New Power. In paragraph 15, Shell asks this Commission to "convene brief negotiations." In paragraph 5, Shell states that it is "ready and willing to discuss a division of the CDS function." At some point, the bidding and negotiating must cease and PECO must be permitted to enter into an agreement with a CDS provider.

14. It is admitted that the PUC should monitor compliance with its prior orders, but it is denied that PECO did not comply with the PUC's orders in awarding the CDS Agreement.

15. It is denied that the proposed CDS Agreement is not in the public interest. It is also denied that the second phase of the auction process was flawed. It is further denied that the appropriate remedy for any of Shell's allegations is to "convene brief discussions or otherwise order a division of the CDS function among qualified bidders." Finally, it is denied that these "discussions" should have the preordained conclusion that Shell will serve "a substantial portion of CDS customers under the terms outlined above."

For all of the foregoing reasons, the Commission should deny any of the various types of relief requested by Shell. The Commission should instead approve the instant contract expeditiously.

Respectfully submitted,



John J. Gallagher
LeBoeuf, Lamb, Greene & MacRae, LLP
Suite 300, 200 North Third Street
P.O. Box 12105
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(717) 232-8199

DATE: November 14, 2000

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. A-110550F0147

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CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of November, 2000, served a true and correct copy of the Answer of The New Power company, Inc. to the Answer and Protest of Shell Energy Services Company, L.L.C., upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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(Counsel for Councilman David Cohen)

John M. Quain, Chairman
Pennsylvania Public Utility Commission
Room 104, North Office Building
P.O. Box 3265.
Harrisburg, PA 17105-3265

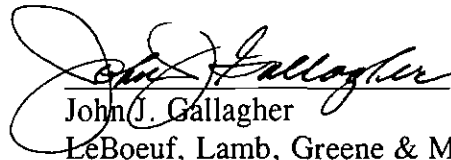
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Robert K. Bloom, Commissioner
Pennsylvania Public Utility Commission
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Respectfully submitted,



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November 14, 2000

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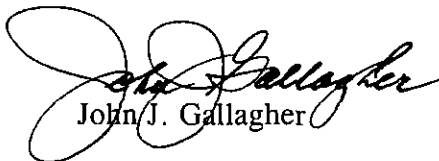
Re: PECO Energy Company Competitive Default Service Program Bidding
Docket No. A-110550F0147

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of the Answer of The New Power Company, Inc. to the Answer and Protest of Clean Air Council. A certificate of Service is also enclosed.

Should you have any questions regarding this filing please contact me at your convenience.

Sincerely,


John J. Gallagher

JJG/jtk

Enclosures

cc: All parties on certificate of service
Marc Manly, Esq.
James L. Malone, III, Esq.

12

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: PECO Energy Company
Competitive Default Service
Program Bidding

Docket No. A-110550F0147

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ANSWER OF
THE NEW POWER COMPANY, INC.
TO THE ANSWER AND PROTEST OF
CLEAN AIR COUNCIL

DOCKETED
NOV 16 2000

COMES NOW The New Power Company ("New Power"),
and through its counsel, to file this Answer in response to the Answer and
Protest filed by Clean Air Council ("CAC") on November 8, 2000.

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SECRETARY'S BUREAU

1. Admitted.
2. It is denied that CAC has standing to protest the instant contract.
3. It is denied that the Public Utility Commission ("PUC") has "retained the authority to select the supplier that will provide CDS in the PECO service territory." It is denied that PECO's role is merely to assess the qualified bidders and make a recommendation to the PUC. It is further denied that PECO is required to submit all qualified bids to the PUC for its independent evaluation. The Joint Settlement Petition from PECO's merger proceeding is a

written document that speaks for itself. Similarly, the Joint Settlement Petition from PECO's restructuring proceeding is a written document that speaks for itself. At this point, under the process established in those documents, the PUC's role is to review the contract submitted by PECO and its selected supplier of competitive default service. The Joint Settlement Petitions did not make the PUC a "super board of directors" with the responsibility of reviewing bids and ordering PECO to enter into a contract with the bidder selected by the PUC.

4. It is denied that CAC's "concerns" merit any consideration by the PUC. PECO complied with the process established in the Joint Settlement Petitions approved in its restructuring and merger proceedings. Contrary to the averments of CAC, the public interest favors approval of the instant contract because it will result in PECO customers receiving competitive default service as of January 1, 2001. It is unclear whether Green Mountain Energy Company ("Green Mountain") - or any other potential supplier of competitive default service - could ever enter into a mutually acceptable CDS agreement with PECO. The PUC should not jeopardize the contract between PECO and New Power in the hope that some other company might be able to enter into a "better" contract with PECO.

5. New Power's bid complied with the environmental requirements set by PECO in the August 24, 2000 RFP. Environmental impact is one of several criteria that PECO was to consider in awarding the CDS

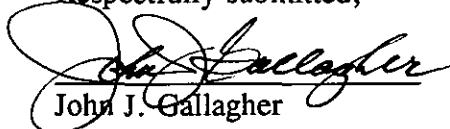
Agreement. PECO did consider this factor and selected New Power. It is denied that the PUC's role at this point in the process is to act as a "super board of directors" second-guessing PECO's judgment as to the "best" proposal submitted to it during the second phase of the auction process.

6. It is denied that the PUC can, or should, award the PECO CDS contract to multiple suppliers, now that PECO and New Power have entered into a contract. By way of further answer, the Joint Settlement Petitions explicitly provide for the possibility that PECO could select one supplier rather than multiple suppliers of competitive default service. CAC suggests that this provision be ignored and PECO be required to enter into contracts with multiple providers. Regardless of CAC's policy preferences, the instant contract is consistent with the Joint Settlement Petitions. Finally, New Power notes that the CDS Agreement submitted for PUC review is contingent on PUC approval of the contract as submitted.

7. PECO and New Power submitted an executed contract for PUC approval. It is denied that the PUC's role at this point in the process is to compare competing bids and order PECO to enter into a contract with the bidder preferred by CAC. The public interest favors timely implementation of a CDS agreement, and this can be achieved by expeditious approval of the instant contract.

For all of the foregoing reasons, the Commission should dismiss the Protest of CAC and approve the instant contract.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of November, 2000, served a true and correct copy of the Answer of The New Power company, Inc. to the Answer and Protest of Clean Air Council, upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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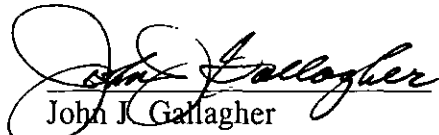
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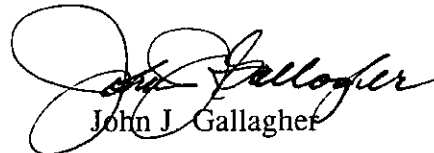
Re: PECO Energy Company Competitive Default Service Program Bidding
Docket No. A-110550F0147

Dear Secretary McNulty:

It has come to my attention that the Answer of The New Power Company, Inc. to the Answer and Protest of Shell Energy Services Company, L.L.C., filed yesterday, did not include an affidavit. Attached please find a substitute copy with an affidavit. A Certificate of Service is also enclosed.

Please contact me if you have any questions or concerns about the enclosed.

Sincerely,


John J. Gallagher

JJG/jtk

Enclosures

cc: All parties on certificate of service
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James L. Malone, III, Esq.

42

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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CERTIFICATE OF SERVICE

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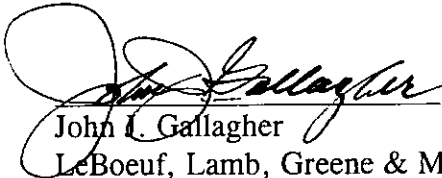
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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. A-110550F0147

DOCKETED

NOV 20 2000

**ANSWER OF
THE NEW POWER COMPANY, INC. TO THE
ANSWER AND PROTEST OF
SHELL ENERGY SERVICES COMPANY, L.L.C.**

**DOCUMENT
FOLDER**

1. NOW COMES The New Power Company, Inc. ("New Power"), by and through its counsel, to file this Answer in response to the Answer¹ filed by Shell Energy Services Co., L.L.C. ("Shell") on November 3, 2000.

I. PECO Complied with Mandatory Procedures for Awarding the Proposed Contract

2. It is denied that the CDS auction process is flawed and that the Proposed CDS Agreement is not in the public interest. By way of further answer, it is denied that PECO failed to comply with the auction process as set forth in the Joint Settlement Petitions approved by the Public Utility

¹ Although Shell's filing is titled as an Answer, the introductory paragraph cites regulations relating to protests, 52 Pa. Code § 5.51, as well as answers. 52 Pa. Code § 5.61. This document therefore treats Shell's filing as both an Answer and a Protest. This approach is also reasonable because Shell has no clear basis for filing an "Answer" to a petition for approval of a contract between two other parties.

Commission ("PUC") in PECO's restructuring and merger proceedings. To the extent that Shell disputes the CDS process set forth in those documents, the matter has already been adjudicated and cannot be re-litigated in the guise of contesting a contract awarded through the PUC-approved process. It is further denied that the auction process should have been delayed while Shell continued its litigation concerning earlier stages in the auction process. The public interest favors timely implementation of a CDS program. PECO and its customers should not be held in limbo indefinitely. The PUC rejected Shell's claims and specifically advised PECO to proceed with the second phase of the auction process. It is further denied that Shell's bid during the second phase of the auction process should have been presented to the PUC for its consideration. Finally, it is denied that the PUC's role at this point in the process is to determine "the best manner to provide CDS, including the possibility of multiple CDS providers." Consistent with the process set forth in the Joint Settlement Petitions, PECO selected one CDS provider, entered into a contract with that bidder, and submitted that contract to the PUC.

3. It is denied that the CDS program and bidding process "is mired in confusion and is currently the subject of pending and potentially on-going regulatory challenges." It is further denied that Shell has standing in this matter. Shell is merely a disappointed bidder in an auction process. Such parties do not have standing to challenge the award of a contract to another qualifying bidder. Shell's participation in earlier stages of the bidding process is irrelevant for purposes of determining its standing in the instant matter. It is

denied that PECO did not engage in meaningful negotiations with all qualifying bidders. It is also denied that the second phase of the auction process involved a "potentially discriminatory price rebid." All bidders had an equal opportunity to participate in the auction process and the result was that New Power submitted the best bid.

4. PECO and New Power have submitted a contract to the PUC. It is denied that the PUC's response should be to broker a new round of negotiations between PECO and potential bidders. What Shell "agrees to" is irrelevant for purposes of deciding the matter currently before the PUC. Considering that Shell does not agree to all of the terms and conditions agreed-to by PECO and New Power, it is unclear whether PECO and Shell could arrive at a mutually satisfactory agreement if given another opportunity to do so. The contract currently before the Commission is contingent on PUC approval of the contract, as submitted. The PUC should not jeopardize the contract before it in hopes that PECO could arrive at a "better" agreement with some other supplier at some point in the future. The public interest favors expeditious implementation of a CDS program. Approving the instant contract would promote that interest.

5. It is denied that the PUC should give any weight to what Shell is "ready and willing to discuss." A contract has been submitted to the PUC pursuant to a PUC-approved process. That contract calls for a single provider to be the CDS supplier for PECO. PECO had the authority to decide whether to

contract with multiple suppliers or one provider. The PUC should not second-guess that decision. The PUC is not a “super board of directors” for utilities.

6. It is denied that the PUC’s role at this point in the process is to review all of the bids submitted to PECO, determine “the ‘best deal’ for consumers” and select a CDS provider(s). PECO followed the process required by the Joint Settlement Petitions approved by the PUC. Under these circumstances, the PUC need not and should not undertake some kind of fishing expedition to determine “how the agreement was developed.” It is denied that PECO was required to enter into a contract with multiple CDS providers. As a result, the claim that there is “good cause and support” for that approach is irrelevant.

7. It is denied that the PUC can accept Shell’s proposal rather than the contract that has been submitted for PUC approval. It is denied that there were any “infirmities” in the bidding process. Even if there were any “infirmities,” it is denied that the appropriate remedy would be for the PUC to approve Shell’s proposal and order PECO to enter into a contract with Shell. It is specifically denied that PECO was required to obtain PUC approval before deciding to award the CDS contract to one provider. The Joint Settlement Petitions specifically allow PECO to contract with a single CDS provider. Other entities’ preferences for multiple providers cannot be substituted for PECO’s judgment, properly exercised under the Petitions approved by this Commission.

II. Second Denial of Alleged Procedural Flaws in the Auction Process

8. *It is denied that there were any flaws in the auction process.*

Shell has already litigated its allegations regarding the first phase of the auction process, and should not be permitted to re-litigate those claims here. As argued above, the entire auction process should not be held captive to Shell's continued litigation concerning earlier phases of the auction process.

9. As admitted in Shell's Answer and Protest, the claims made in this paragraph have already been rejected by the PUC. *They cannot be re-litigated in this proceeding.* Most of Shell's paragraph 9 constitutes speculation as to why the PUC rejected Shell's claims in that litigation. Such speculation is irrelevant; the only fact that matters is that Shell's claims were rejected by the PUC. The last sentence of Shell's paragraph 9 constitutes a threat of litigation to which no response is necessary in a pleading.

10. It is denied that PECO failed to follow the process mandated by the PUC in its orders approving the Joint Settlement Petitions in the restructuring and merger proceedings. All bidders had an opportunity to submit bids, and Shell admits that it submitted a revised proposal. Shell is merely a disappointed bidder with no standing to complain that the party awarding the contract chose another bidder.

11. It is denied that New Power was in an advantageous position relative to other bidders in the second phase of the auction process. It is further

denied that the bidders who had already submitted bids needed extensive additional time to submit revised bids. Shell's argument seems to be that it could have offered PECO an even better deal than it did, if it had been given more time to do so² and if it knew exactly what other bidders were bidding. It is hard to see why PECO and New Power should be prejudiced because Shell did not offer its "best deal." PECO gave bidders a second opportunity to submit bids, in order to obtain the best deal for PECO's customers. PECO should not be punished because the time frame for submitting revised bids was inconvenient for such a large company as Shell.

12. It is denied that PECO failed to comply with the second phase of the auction process, as established by the PUC-approved auction process.

III. Conclusion

13. It is denied that Shell's policy arguments merit any consideration whatsoever. PECO followed the required auction process and awarded the contract to New Power, applying the criteria mandated by the PUC-approved Joint Settlement Petitions. Shell's allegations in this paragraph represent an attempt to re-litigate the process that has already been established.

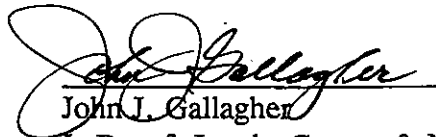
² Even now, Shell requests additional time to negotiate a deal with PECO. In paragraph 4(b), Shell states that it is not willing to accept certain terms in the contract negotiated by PECO and New Power. In paragraph 15, Shell asks this Commission to "convene brief negotiations." In paragraph 5, Shell states that it is "ready and willing to discuss a division of the CDS function." At some point, the bidding and negotiating must cease and PECO must be permitted to enter into an agreement with a CDS provider.

14. It is admitted that the PUC should monitor compliance with its prior orders, but it is denied that PECO did not comply with the PUC's orders in awarding the CDS Agreement.

15. It is denied that the proposed CDS Agreement is not in the public interest. It is also denied that the second phase of the auction process was flawed. It is further denied that the appropriate remedy for any of Shell's allegations is to "convene brief discussions or otherwise order a division of the CDS function among qualified bidders." Finally, it is denied that these "discussions" should have the preordained conclusion that Shell will serve "a substantial portion of CDS customers under the terms outlined above."

For all of the foregoing reasons, the Commission should deny any of the various types of relief requested by Shell. The Commission should instead approve the instant contract expeditiously.

Respectfully submitted,



John J. Gallagher
LeBoeuf, Lamb, Greene & MacRae, LLP
Suite 300, 200 North Third Street
P.O. Box 12105
Harrisburg, PA 17108-2105
(717) 232-8199

DATE: November 14, 2000

AFFIDAVIT

STATE OF CONNECTICUT)
) SS:
COUNTY OF FAIRFIELD)

James L. Malone III, being duly sworn according to law, deposes and says that he is Vice-President, Law & Government Affairs, of The New Power Company; that he is authorized to and does make this Affidavit for it; and that the facts set forth in the foregoing document are true and correct, or are true and correct to the best of his knowledge, information and belief; and that he expects the said The New Power Company to be able to prove the same at any hearing hereof.

James L. Malone III

Sworn to and subscribed
before me this 14th day of
November, 2000.

Laura Haytman
Notary Public

LAURA HAYTMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES SEP. 30, 2003

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November 15, 2000

VIA HAND DELIVERY

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-3265

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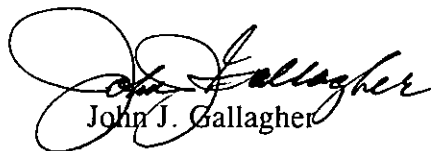
Re: PECO Energy Company Competitive Default Service Program Bidding
Docket No. A-110550F0147

Dear Secretary McNulty:

It has come to my attention that the Answer of The New Power Company, Inc. to the Answer and Protest of Clean Air Council, filed yesterday, did not include an affidavit. Attached please find a substitute copy with an affidavit. A Certificate of Service is also enclosed.

Please contact me if you have any questions or concerns about the enclosed.

Sincerely,


John J. Gallagher

JJG/jtk

Enclosures

cc: All parties on certificate of service
Marc Manly, Esq.
James L. Malone, III, Esq.

43

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

Docket No. A-110550F0147

DOCKETED

NOV 20 2000

ANSWER OF
THE NEW POWER COMPANY, INC.
TO THE ANSWER AND PROTEST OF
CLEAN AIR COUNCIL

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COMES NOW The New Power Company ("New Power") by
and through its counsel, to file this Answer in response to the Answer
Protest filed by Clean Air Council ("CAC") on November 8, 2000.

1. Admitted.
2. It is denied that CAC has standing to protest the instant contract.
3. It is denied that the Public Utility Commission ("PUC") has "retained the authority to select the supplier that will provide CDS in the PECO service territory." It is denied that PECO's role is merely to assess the qualified bidders and make a recommendation to the PUC. It is further denied that PECO is required to submit all qualified bids to the PUC for its independent evaluation. The Joint Settlement Petition from PECO's merger proceeding is a

written document that speaks for itself. Similarly, the Joint Settlement Petition from PECO's restructuring proceeding is a written document that speaks for itself. At this point, under the process established in those documents, the PUC's role is to review the contract submitted by PECO and its selected supplier of competitive default service. The Joint Settlement Petitions did not make the PUC a "super board of directors" with the responsibility of reviewing bids and ordering PECO to enter into a contract with the bidder selected by the PUC.

4. It is denied that CAC's "concerns" merit any consideration by the PUC. PECO complied with the process established in the Joint Settlement Petitions approved in its restructuring and merger proceedings. Contrary to the averments of CAC, the public interest favors approval of the instant contract because it will result in PECO customers receiving competitive default service as of January 1, 2001. It is unclear whether Green Mountain Energy Company ("Green Mountain") - or any other potential supplier of competitive default service - could ever enter into a mutually acceptable CDS agreement with PECO. The PUC should not jeopardize the contract between PECO and New Power in the hope that some other company might be able to enter into a "better" contract with PECO.

5. New Power's bid complied with the environmental requirements set by PECO in the August 24, 2000 RFP. Environmental impact is one of several criteria that PECO was to consider in awarding the CDS

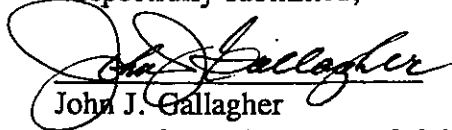
Agreement. PECO did consider this factor and selected New Power. It is denied that the PUC's role at this point in the process is to act as a "super board of directors" second-guessing PECO's judgment as to the "best" proposal submitted to it during the second phase of the auction process.

6. It is denied that the PUC can, or should, award the PECO CDS contract to multiple suppliers, now that PECO and New Power have entered into a contract. By way of further answer, the Joint Settlement Petitions explicitly provide for the possibility that PECO could select one supplier rather than multiple suppliers of competitive default service. CAC suggests that this provision be ignored and PECO be required to enter into contracts with multiple providers. Regardless of CAC's policy preferences, the instant contract is consistent with the Joint Settlement Petitions. Finally, New Power notes that the CDS Agreement submitted for PUC review is contingent on PUC approval of the contract as submitted.

7. PECO and New Power submitted an executed contract for PUC approval. It is denied that the PUC's role at this point in the process is to compare competing bids and order PECO to enter into a contract with the bidder preferred by CAC. The public interest favors timely implementation of a CDS agreement, and this can be achieved by expeditious approval of the instant contract.

For all of the foregoing reasons, the Commission should dismiss the Protest of CAC and approve the instant contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Gallagher", written over a horizontal line.

John J. Gallagher

LeBoeuf, Lamb, Greene & MacRae, LLP

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DATE: November 14, 2000

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of November, 2000, served a true and correct copy of the foregoing, upon the participants listed below, in accordance with the requirements of 52 Pa Code § 1.54:

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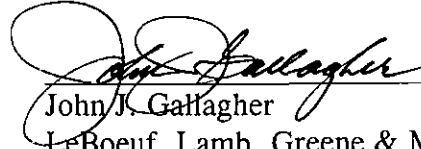
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Delia W. Stroud
Assistant General Counsel
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(Counsel for PECO Energy Company)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Gallagher", is written over a horizontal line.

John J. Gallagher
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(717) 232-8199



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Harvey B. Dikter
Susan Sciamanna Foehl
Vilna Waldron Gaston
Gregory Golazeski
John C. Halderman
Mary McFall Hopper
Conrad O. Kattner
Kristopher Keys
Jeffrey J. Norton
Mark B. Peabody
Roslyn G. Pollack
H. Alfred Ryan
Wendy Schermer
Richard S. Schlegel
Jenny P. Shulbank
Ward L. Smith
Delia W. Stroud
Ronald L. Zack
Assistant General Counsel

Direct Dial: 215 841 4257
November 17, 2000

Via Hand Delivery

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

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SECRETARY'S BUREAU

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 PECO Energy's response to the Answer and Protest of the Clean Air Council to the Joint Petition for Approval of Competitive Default Service Agreement filed by PECO Energy and New Power in the above-referenced docket.

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/jap

cc: John M. Quain, Chairman – Hand Delivery
Nora Mead Brownell, Commissioner– Hand Delivery
Aaron Wilson, Jr., Commissioner– Hand Delivery
Terrance J. Fitzpatrick, Commissioner– Hand Delivery
Robert K. Bloom, Commissioner– Hand Delivery
Patricia Burket, Law Bureau – Hand Delivery
Tanya McCloskey, Office of Consumer Advocate – Hand Delivery
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: PECO ENERGY COMPANY COMPETITIVE
DEFAULT SERVICE PROGRAM BIDDING

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ANSWER OF PECO ENERGY COMPANY
TO THE ANSWER AND PROTEST OF CLEAN AIR COUNCIL

1. PECO Energy Company ("PECO" or "the Company") files this Answer in response to the Answer and Protest filed by Clean Air Council ("CAC") on November 8, 2000, in the above-captioned proceeding.

2. It is denied that CAC has standing to protest the Competitive Default Services ("CDS") Agreement filed by PECO and the New Power Company, Inc. ("New Power") on October 18, 2000.

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3. It is denied that the Public Utility Commission ("PUC" or "the Commission") has "retained the authority to select the supplier that will provide CDS in the PECO service territory." By way of further answer, PECO states that Paragraph 52a of the Commission-approved Merger Settlement referenced by CAC refers to the first stage of the CDS process, not to the bilateral process which is described in Paragraphs 52b and 52c of that document. In marked contrast to Paragraph 52a's explicit provision that in the first stage "[t]he winning bidder will be selected by the PUC . . .", the bilateral process established by Paragraphs 52 b and c contemplated a PECO-designed and administered process in which PECO would attempt to negotiate a definitive CDS Agreement. It is denied that PECO's role is merely to "assess the

qualified bidders and make a recommendation to the PUC.” It is further denied that PECO is required to submit all qualified bids to the PUC for its independent consideration. On the contrary, under the process established in the Merger Settlement, the PUC’s role is to review any CDS Agreement filed by PECO Energy and its selected CDS provider.

4. It is denied that CAC’s “concerns” merit any consideration by the PUC. PECO Energy complied with the process established in the Merger Settlement. The process PECO Energy established treated all bidders equally. Throughout the process, PECO Energy maintained strict confidentiality and did not discuss the specifics of any bid with the other bidders. PECO Energy set forth clear rules and deadlines which were communicated uniformly to all participants. All participants were afforded the equal opportunity to hold conference calls and/or face-to-face meetings with PECO Energy at their option. Contrary to the averments of CAC, the public interest favors approval of the PECO/New Power CDS Agreement, as it will provide all PECO CDS customers discounted rates as of January 2001.
5. In full compliance with PECO’s Commission-approved 1998 Electric Restructuring Settlement, Section 17 of the filed PECO/New Power CDS Agreement requires that not less than two percent of New Power’s energy for CDS Customers will be generated from renewable resources. To suggest, therefore, that New Power’s fully compliant bid is inferior and should be rejected on environmental grounds is erroneous.
6. It is denied that the PUC can, or should, award the PECO CDS contract to multiple suppliers after PECO and New Power have executed a CDS Agreement. By way of further answer, the

Merger Settlement does not require that PECO reach a definitive CDS Agreement with any supplier. Moreover, the document explicitly provides for the possibility that PECO Energy could, in any event, select one supplier, rather than multiple suppliers, of competitive default service.

7. It is denied that the PUC's role is to "evaluate all qualifying proposals." Rather, the Commission's role is to review the executed CDS Agreement filed by PECO Energy and New Power. The public interest favors timely implementation of CDS by approving the filed CDS Agreement, which provides discounted rates to all CDS Customers.

For all of the foregoing reasons, the Commission should dismiss the Answer and Protest of CAC and approve, as in the public interest, the CDS Agreement filed by PECO and New Power.

Respectfully submitted:



Delia W. Stroud, Esquire
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delia.stroud@exeloncorp.com

November 17, 2000

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VERIFICATION

I, Delia W. Stroud, hereby declare that I am an attorney with PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: November 17, 2000

Delia W. Stroud

Delia W. Stroud

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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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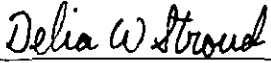
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ORIGINAL

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 PECO Energy's response to the Answer of Shell Energy to the Joint Petition for Approval of Competitive Default Service Agreement filed by PECO Energy and New Power in the above-referenced docket.

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/jap

- cc: John M. Quain, Chairman – Hand Delivery
- Nora Mead Brownell, Commissioner– Hand Delivery
- Aaron Wilson, Jr., Commissioner– Hand Delivery
- Terrance J. Fitzpatrick, Commissioner– Hand Delivery
- Robert K. Bloom, Commissioner– Hand Delivery
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

IN RE: PECO ENERGY COMPANY COMPETITIVE :
DEFAULT SERVICE PROGRAM BIDDING : DOCKET NO. A-110550 F0147

RESPONSE OF PECO ENERGY COMPANY TO THE ANSWER OF SHELL ENERGY
COMPANY, L.L.C. TO THE JOINT PETITION FOR APPROVAL OF COMPETITIVE
DEFAULT SERVICE AGREEMENT.

1. Pursuant to 52 Pa. Code §§ 5.51 and 5.61, PECO Energy Company ("PECO Energy" or "the Company") files its Response to the Answer¹ of Shell Energy Services Company, L.L.C. ("Shell Energy") filed November 3, 2000, in the above-captioned proceeding.

DOCKETED

I. PECO ENERGY'S BILATERAL CDS PROCESS COMPLIED WITH THE **NOV 29 2000**
RESTRUCTURING AND MERGER SETTLEMENT REQUIREMENTS

2. It is denied that PECO Energy's CDS bilateral process was flawed, rather the process complied with Commission-approved Restructuring and Merger Settlement requirements. It is further denied that the bilateral process should have been delayed until the Public Utility Commission ("PUC" or "Commission") ruled on Shell Energy's Petition for Reconsideration. By way of further answer, the Company notes that in an August 22, 2000 Secretarial Letter, the Commission: (i) rejected as non-conforming Shell Energy's CDS bid submitted pursuant to PECO Energy's April 6, 2000 Request for Proposal ("RFP"); and (ii) directed PECO Energy to proceed with the bilateral CDS stage. By way of further answer, the Commission on November 1, 2000 denied Shell Energy's Petition for Reconsideration and Shell Energy should not be allowed to

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¹ As Shell Energy cited both the regulations relating to protests (52 Pa. Code §5.51) and to answers (52 Pa. Code §5.61) Shell Energy's "Answer" is an "Answer and Protest."

relitigate those claims here. It is further denied that the price rebid opportunity provided uniformly to all three bidders “acted to the detriment of Shell.” It is further denied that PECO Energy conducted “no meaningful negotiations” with Shell Energy. PECO Energy held with each of the three bidders conference calls and/or face-to-face meetings, at the bidder’s option, to enable PECO Energy to evaluate the respective bids and select a winning bidder. It is further denied that PECO Energy should have presented Shell Energy’s bid to the Commission. Rather, the CDS bilateral process established under Paragraph 52(b) of PECO Energy’s Commission-approved June 22, 2000 Merger Settlement contemplated a PECO Energy-established process pursuant to which PECO Energy would enter into good faith bilateral negotiations in an attempt to reach a definitive CDS Agreement. Under the Merger Settlement provisions, PECO Energy was not required to enter into a CDS Agreement, but committed to file with the Commission any CDS Agreement which did result. PECO Energy has fully complied with that requirement. By way of further answer, the Company avers that Shell Energy was well aware from a September 14, 2000 e-mail sent to all the bidders that PECO Energy, not the PUC, would select one successful bidder with whom the Company would attempt to negotiate a definitive, bilateral CDS agreement. Notably, during the process, neither Shell Energy nor any bidder challenged in any way PECO Energy’s right to select the winning bidder.

3. It is denied that the CDS program and bilateral bidding process “is mired in confusion and the subject of pending and potentially on-going regulatory challenges.” Rather, Shell Energy and Green Mountain’s challenges each amount to no more than a losing

bidder's efforts to undermine a legitimate bilateral competitive bid process. As stated in Paragraph 2 above, it is also denied that the uniformly provided price rebid opportunity was "potentially discriminatory" to Shell Energy and that Shell Energy "had no opportunity to arrive at the most advantageous proposal, including price. . . ." On the contrary, given that Shell Energy had submitted CDS bids to PECO Energy's April 6, 2000, Request for Proposal ("RFP") as well as to PECO Energy's August 24, 2000 RFP, Shell Energy had over five months to offer meaningful discounted rates for CDS Customers, an opportunity it repeatedly declined to exercise.²

4. As to Shell Energy's "desire to be competitive" in this process, it had ample opportunity during the competitive bidding process to offer its most competitive bid. The bid offered by Shell Energy during the process was not, however, as competitive as New Power's winning bid. Furthermore, that Shell Energy now belatedly offers CDS Customers a 2% discount off of PECO Energy's shopping credit is irrelevant for the purposes of approving the PECO/New Power CDS Agreement filed with the PUC. Moreover, as evidenced by the exceptions Shell Energy listed in Paragraph 4, subsection (b) of its Answer, unlike with PECO Energy and New Power, it is uncertain whether PECO Energy and Shell Energy even would be able to reach a definitive CDS Agreement under any circumstances.

5. It is denied that the Commission should "mandate" that PECO Energy enter into further discussions with Shell Energy or "order a division of the CDS function." As

²Shell Energy only offered a discount of .06¢ off of the shopping credit for Rate R customers with loads of over 500 kWh in the summer.

contemplated by Paragraphs 52 (b) and (c) of the Merger Settlement, in the bilateral CDS stage, PECO Energy was not required to enter into any definitive CDS Agreement, much less multiple agreements. If, however, PECO Energy did reach a definitive CDS Agreement, the PUC's role in the bilateral stage was to modify, reject or approve any agreement so filed. In an effort to increase the likelihood of success for the CDS bilateral process, PECO Energy allowed bidders to submit bids to serve the entire CDS load or "a specified portion thereof" (Paragraph N2 of the August 24, 2000 RFP). In the event PECO Energy had received qualified bids only for portions of the CDS load, the Company would have been willing to try to negotiate definitive agreements with more than one bidder so as to cover the entire CDS load. That, however, was not the case, as each of the bidders submitted bids to serve the entire CDS load. To undo the good faith, equitable process which resulted in New Power and PECO Energy's filed agreement by retroactively dividing the load among all the bidders would be grossly unfair to New Power and would undercut the effectiveness of any future bid process.

6. It is denied that the Commission's proper role in the bilateral CDS process is to "review the bidding process and the proposals from qualified bidders that followed PECO Energy's bilateral bid rules." Rather, as stated in Paragraph 5 above, the Commission role is to accept, modify or reject the filed CDS Agreement PECO Energy negotiated in its bilateral process. Furthermore, even if the Commission were to review all three bids timely provided pursuant to PECO Energy's bilateral bid rules, the Company submits that the PUC would select New Power's bid as the one most favorable for the CDS Customers, as New Power's bid was the only bid providing a meaningful discount to all

the CDS Customers.

7. For reasons stated in Paragraph 5 above, it is denied that the Commission can accept Shell Energy's belated proposal rather than the CDS Agreement filed by PECO Energy and New Power. It is further denied that there were any "infirmities" in the CDS process. Under the Merger Settlement, PECO Energy was not required to reach any definitive CDS agreement and was specifically permitted to negotiate a contract with only one bidder. Moreover, the Merger Settlement did not require that PECO Energy receive PUC approval before selecting one winning bidder.

II. FURTHER DENIAL OF BILATERAL CDS PROCESS FLAWS

8. For reasons stated previously, it is denied that the CDS bilateral bid process was flawed. Furthermore, Shell Energy's Petition for Reconsideration concerning the Commission's actions in the first stage of the CDS process was denied and Shell Energy should not be allowed to relitigate those claims here.
9. As stated above, Shell Energy should not be permitted to relitigate here its claims concerning the first CDS stage, which the Commission has already rejected.
10. It is denied that "the bidding rules changed at the eleventh hour without sufficient time for bidders to react appropriately." By way of further answer, PECO Energy notes that Shell Energy had over five months to consider the pricing for its CDS bid.

11. It is denied that the price rebid opportunity provided uniformly to all three bidders who had already submitted proposals provided “an undue and strategic advantage” to New Power “at the expense” of Shell Energy. It is further denied that Shell Energy did not have “sufficient time to analyze its options, seek management approval and respond to PECO Energy.” As noted in Paragraph 3 above, Shell Energy had submitted bids in response to both the April and the August RFPs and accordingly had over five months to “analyze its options” and “seek management approval.” Shell Energy’s real issue is not any lack of time. Rather, Shell Energy seems to be claiming that because it now knows someone offered a better deal, it should be given the chance to go back and rebid.
12. It is denied that PECO Energy did not conduct “meaningful negotiations” with Shell Energy. As noted in Paragraph 2, PECO Energy held conference calls and/or face-to-face meetings, at the bidder’s option, with each bidder to enable PECO Energy to evaluate the respective bids and select a winning bidder. It is admitted that PECO Energy established the “rules of engagement” for the bilateral CDS bid process. As contemplated in the Merger Settlement, the bilateral process was to be established and administered by PECO Energy. As for Shell Energy’s claim that PECO Energy refused to “discuss CDS implementation alternatives” and “meaningful options that could benefit residential customers,” PECO submits that it did refuse to entertain Shell Energy’s request for delaying the initiation of the CDS program beyond January, 2001, a request that Shell Energy repeats in Paragraph 5 of its Answer. The delay requested by Shell Energy hardly constitutes an “implementation alternative” that would “benefit

...customers”.

13. It is denied that Shell Energy’s “policy” position has any relevance to PECO Energy and New Power’s Joint Petition. The PECO Energy -established bilateral process under which PECO Energy selected the winning bidder fully complies with the Merger Settlement.
14. For reasons stated previously, it is denied that the bilateral CDS process was flawed.
15. It is denied the CDS Agreement is not in the public interest. For reasons stated above, it is further denied that an appropriate remedy for any of Shell Energy’s allegations is to “divide” the CDS function among the bidders.

For all of the foregoing reasons, the Commission should deny all of the various types of relief requested by Shell Energy and should instead approve, as in the public interest, the CDS Agreement as filed by PECO Energy and New Power.

Respectfully submitted:



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November 17, 2000

VERIFICATION

I, Delia W. Stroud, hereby declare that I am an attorney with PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: November 17, 2000

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