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March 5, 2014

VIA e-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for Approval to Procure Tier II Alternative Energy Credits Through Independent Brokers - Docket No. P-2014-


Dear Secretary Chiavetta:

Enclosed for filing please find PECO Energy Company's **Petition for Approval to Procure Tier II Alternative Energy Credits Through Independent Brokers**. Please note that, for the reasons set forth in paragraphs 30 and 31 of the Petition, the Company requests that the Petition be considered by the Commission without referral to the Office of Administrative Law Judge for hearings and that the Commission approve this Petition no later than the public meeting presently scheduled for **May 22, 2014**.

As indicated on the attached Certificate of Service, copies will be provided to all parties to the Default Service Program II proceeding at Docket No. P-2012-2283641.

If you have any questions, please contact me at 215.841.4635.

Very truly yours,


Anthony E. Gay
Associate General Counsel

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL TO PROCURE TIER II : DOCKET NO. P-2014-
ALTERNATIVE ENERGY CREDITS :
THROUGH INDEPENDENT BROKERS**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of **PECO Energy Company's**
Petition for Approval to Procure Tier II Alternative Energy Credits Through Independent
Brokers on the following persons in the matter specified in accordance with the requirements of 52
Pa. Code § 1.54.

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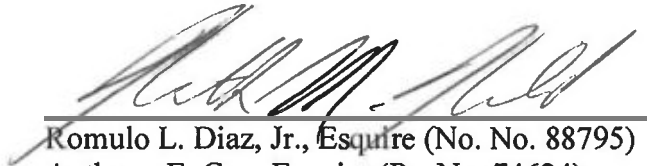
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Counsel for PECO Energy Company

Date: March 5, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL TO : **DOCKET NO. P-2014-**
PROCURE TIER II ALTERNATIVE :
ENERGY CREDITS THROUGH :
INDEPENDENT BROKERS :

PETITION

PECO Energy Company (“PECO” or the “Company”), pursuant to the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. § 1648.1 *et seq.* (“AEPS Act” or the “Act”), hereby petitions the Pennsylvania Public Utility Commission (the “Commission”) to:

(1) approve PECO’s use of independent, third-party brokers to procure all Tier II alternative energy credits (“AECs”) necessary to satisfy PECO’s anticipated remaining Tier II AEPS requirements under the Company’s second default service program (“DSP II”);¹ and (2) confirm PECO’s ability to recover all of its costs associated with such Tier II AEC procurements through PECO’s existing Generation Supply Adjustment (“GSA”) rate. In addition, PECO requests that the Commission grant a waiver, to the extent necessary, of any requirement to conduct an annual request for proposals (“RFP”) process for AECs and certain broker transaction restrictions that were approved in *PECO AEPS III*.²

The Company believes that expanded use of broker transactions for the procurement of Tier II AECs is appropriate because broker transactions are more cost-effective for default service customers than a competitive RFP in light of the market price of Tier II AECs and the declining amount of Tier II AECs required under PECO’s existing default service procurement

¹ *Petition of PECO Energy Co. for Approval of its Default Serv. Program II*, Docket No. P-2012-2283641 (Order entered October 12, 2012) (“*DSP II Order*”).

² *Petition of PECO Energy Co. for Approval to Procure Tier II Alt. Energy Credits and Additional Tier I and Solar Alt. Energy Credits*, Docket No. P-2010-2210975 (Order entered February 14, 2011) (“*PECO AEPS III*”).

design. Under current market conditions, the cost of administering an RFP far exceeds both the value of Tier II AECs that the Company estimates it will require for DSP II default service supply and the estimated broker costs to procure those credits. To ensure competitive pricing for any broker transaction, the Company is proposing to retain broker transaction requirements already approved by the Commission regarding a minimum number of independent bids.

In support of this Petition, PECO states as follows:

I. BACKGROUND

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

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

3. The AEPS Act has several components, including: (1) a timetable and associated yearly percentage requirements which EDCs and EGSs must satisfy, as well as an exemption period (the “Cost Recovery Period”) linked to an EDC’s transition (or stranded cost recovery)

period established under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 *et seq.* (the “Competition Act”); (2) provisions under which EDCs may “bank” AECs for future compliance; and (3) a provision which allows EDCs to fully recover all AEPS-related costs for generation from alternative energy sources and/or AECs from their default service customers pursuant to a Section 1307 surcharge, which is incorporated into PECO’s default service Price-to-Compare (“PTC”).

4. On July 17, 2007, Governor Rendell signed into law several amendments to the AEPS Act (*see* 2007, July 17, P.L. 114, No. 35), and on September 25, 2008, the Commission issued final regulations implementing the AEPS Act. *See* 52 Pa. Code §§ 75.61-75.70 (“*AEPS Regulations*”). On October 15, 2008, Governor Rendell signed Act 129 (2008 Pa. Legis. Serv. 819) into law. Among other provisions, Act 129 amended the Competition Act to require EDCs (as default service suppliers, after the end of their Cost Recovery Periods) to procure AECs through competitive processes and a “prudent mix” of contracts. *See* 66 Pa. C.S. § 2807(e)(3.5).

5. Under the AEPS Act as amended, for retail default service generation sales between June 1, 2013 and May 31, 2014, PECO will be required to procure AECs from Tier I resources (e.g., wind, geothermal, biomass) equal to 4.5% of the electricity sold by PECO to retail customers in Pennsylvania, including an amount of AECs from solar photovoltaic (“solar PV”) systems equal to 0.0840% of PECO’s default service retail sales. In addition, PECO will be required to purchase AECs from Tier II resources equal to 6.2% of the electricity sold by PECO to default service customers in Pennsylvania. These percentage requirements increase until 2020, with the Tier I requirement increasing to 8%, the solar PV requirement, as a subset of the Tier I requirement, increasing to 0.5%, and the Tier II requirement increasing to 10%.

6. On March 15, 2007, PECO submitted a Petition³ for approval to voluntarily procure up to 450,000 non-solar Tier I AECs for future AEPS compliance and to recover the costs of that procurement and future AEC procurements pursuant to a Section 1307 surcharge (the “AEPS Surcharge”). On December 26, 2007, the Commission entered an Order in *PECO AEPS I*, approving PECO’s Petition with certain modifications. Subsequently, in March 2008 and January 2009, PECO conducted two procurements in compliance with the Commission’s December 26, 2007 Order. The Commission approved the results of those procurements, and PECO entered into several five-year contracts for a total annual delivery of 452,000 non-solar Tier I AECs.

7. On March 3, 2009, PECO filed a Petition⁴ seeking approval to procure 8,000 solar photovoltaic AECs (“SAECs”) annually over ten years to satisfy a portion of PECO’s solar requirements under the Act. PECO also sought to recover the costs of this solar procurement pursuant to the AEPS Surcharge approved in *PECO AEPS I*. On August 28, 2009, the Commission entered an Order in *PECO AEPS II* unanimously approving PECO’s Petition with certain modifications. PECO conducted its first SAEC procurement during the fall and winter of 2009-2010 and entered into several ten-year contracts, after Commission approval, to procure 8,000 SAECs annually.

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

⁴ *Petition of PECO Energy Co. for Approval to Procure Solar Alt. Energy Credits*, Docket No. P-2009-2094494 (Order entered August 28, 2009) (“*PECO AEPS II*”).

8. On June 2, 2009, the Commission entered an Order approving a comprehensive settlement (the “Settlement”) of PECO’s first Default Service Program.⁵ As provided in the Settlement, twenty-five percent (25%) of PECO’s residential load – the PECO Share – would be served through forward block energy contracts procured by PECO and balanced through the spot energy markets administered by PJM Interconnection, L.L.C. *See* Settlement, ¶ 18. The settlement included a specific provision addressing AEPS procurements:

With respect to the PECO Share, PECO will satisfy the associated AEPS obligations by applying AECs from its residential customers’ share of AECs from PECO’s separate AEC procurements and competitively procuring any additional AECs required to meet the PECO Share’s AEPS requirements. PECO will submit a separate petition to the Commission for approval of its procedures for such separate AEC procurements. Such separate procedures will also address purchases and sales of AECs should a full requirements service supplier fail to deliver AECs or should a situation arise in the future whereby PECO has excess AEC inventory and is unable to apply the inventory to default service obligations before the inventory would expire.

Settlement, ¶ 43. The Settlement also required PECO to include a 5-year, 50 megawatt (“MW”) block energy contract (expiring December 31, 2015) in the PECO Share. Settlement, ¶ 18.

9. On November 17, 2010, in compliance with the Settlement and the *DSP I Order*, PECO filed a Petition in *PECO AEPS III* describing PECO’s proposed RFP process for the annual procurement of AECs to serve the PECO Share, including a Form Alternative Energy Credits Purchase and Sale Agreement (“Form AEC Agreement”) for use with any successful supplier.

⁵ *Petition of PECO Energy Co. for Approval of its Default Serv. Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009) (“*DSP I Order*”).

10. The Petition also described PECO's proposal for the purchase of additional AECs PECO may require for AEPS compliance and sale of excess AECs PECO may possess through independent third-party auctions and brokers experienced in the purchase and sale of AECs. This alternate process, PECO explained, would be appropriate where annual procurements do not obtain sufficient AECs for AEPS Act compliance or where the outstanding AEC requirements are such that "an entire RFP process would not be cost-effective for default service customers." Petition ¶ 21.

11. As part of the alternate process, the Company proposed to establish price thresholds based on publicly available price benchmarks and not engage in any transaction that would exceed the applicable price threshold by more than 10%. If brokers are used, the Company further proposed to seek bids from at least three brokers and require that any participating broker certify that all bids offered are from different, independent parties. In addition, for bids at or above \$10,000, PECO proposed to require brokers to certify that the bids are from parties who are not affiliates of PECO. Petition ¶ 22.

12. PECO did not propose to submit prices for approval by the Commission before participating in auctions or broker transactions. However, PECO indicated that it would provide the Commission with the available price benchmarks, a summary of the procurement process, and the results of any purchases or sales conducted within 10 days of the completion of any such purchases or sales. PECO also agreed to post the transaction date and final prices and quantities on PECO's AEPS website, www.peco.com/AEPS. In addition, PECO stated that it would not procure more than 10% of its projected outstanding AEC requirements for a Reporting Year through auctions or brokers if more than 30 days remained between the time PECO becomes

aware of an AEC shortfall and the last day of that AEPS Reporting Year (i.e., May 31). Petition ¶ 24.

13. On February 14, 2011, the Commission entered an Order in *PECO AEPS III* approving: (1) PECO's proposed RFP process, subject to the addition of language setting forth the geographic eligibility requirements for AECs; (2) the Form AEC Agreement as an affiliated interest agreement pursuant to 66 Pa. C.S. § 2102, subject to the same geographic eligibility addition; and (3) the Company's proposal to purchase additional AECs through independent third-party auctions and brokers. The Commission found that AEC procurement through auctions or brokers, in combination with procurement of AECs pursuant to short-term and long-term contracts, was consistent with the "prudent mix" of contracts required by 66 Pa. C.S. § 2807(e)(3.5). *PECO AEPS III Order*, p. 14.

14. On January 13, 2012, PECO filed a Petition⁶ requesting that the Commission approve its default service plan for the DSP II period. As part of that Petition, the Company proposed to: (1) phase out the PECO Share; and (2) eliminate the AEPS Surcharge and incorporate all of its AEPS compliance costs into a single cost recovery mechanism – the GSA. The Commission approved both proposals in the *DSP II Order*.

III. PROCUREMENT OF NECESSARY TIER II AECS THROUGH BROKERS

15. In May 2011 and January 2012, PECO conducted two Tier II procurements in compliance with the RFP process approved in *PECO AEPS III*. The Commission approved the results of those procurements, and PECO entered into several contracts for a total delivery of 615,000 Tier II AECs. The Company incurred costs of approximately \$23,000 per RFP for the

⁶ *Petition of PECO Energy Co. for Approval of its Default Serv. Program II*, Docket No. P-2012-2283641 (filed January 12, 2012).

services of an RFP monitor. The average weighted price per Tier II AEC for the January 2012 RFP was approximately \$0.08.

16. Based on prior broker transactions undertaken in accordance with *PECO AEPS III*, the Company estimates that the cost of utilizing a broker in purchasing AECs would be approximately 2% to 2.5% of the dollar value of each transaction.

17. The Company currently estimates that it will require 213,000 Tier II AECs for the next three Reporting Years, broken down as follows:

- 2013-2014: 130,000
- 2014-2015: 70,000
- 2015-2016: 13,000

The sharp decline in requirements relates to the phase-out of the PECO Share. As PECO's own block purchases are phased out, default service customers are served increasingly by "full requirements" wholesale suppliers, who must provide the AECs required to satisfy AEPS requirements for the default service load they serve. Tier II AECs are required in the 2015-2016 Reporting Year only to satisfy AEPS requirements associated with the single 50 MW block energy contract remaining in the PECO Share and expiring on December 31, 2015.

18. Based on its most recent Tier II AEC purchases in 2012, PECO estimates that the current market price for Tier II AECs is \$0.08/AEC. Therefore, the Company expects that the total purchase cost for all 213,000 Tier II AECs will be \$17,360.

19. The Company believes that it is not cost-effective for default service customers to incur an additional estimated \$23,000 in RFP costs to obtain Tier II credits valued at only \$17,360. Obtaining the same number of credits from a broker, on the other hand, is expected to

cost approximately \$434 in broker fees (i.e., 2.5% of \$17,360, the projected cost of the Tier II AECs).

20. For this reason, the Company is proposing to utilize the broker transaction process approved by the Commission in *PECO AEPS III* for all of its anticipated Tier II AEPS requirements for AEPS Reporting Years 2013-2014, 2014-2015 and 2015-2016 without conducting any annual RFP procurement.

21. The Company would retain key broker transaction safeguards to ensure competitive prices, namely: (1) seeking bids from at least three brokers; and (2) requiring brokers to certify that all bids offered are from different, independent parties. PECO would also continue to provide the Commission with price benchmark information, a summary of the procurement process, and the results of any purchase conducted within 10 days of the purchase as well as post the transaction date and final prices and quantities on PECO's AEPS website, www.peco.com/AEPS. In light of its experience to date, PECO does not propose to continue to establish price thresholds based on publicly available benchmarks as the use of multiple brokers and independent bid certifications ensure that PECO receives a market-based price.

22. To allow for this expanded use of cost-effective broker transactions, the Company requests that the Commission waive the requirement that PECO procure no more than 10% of its projected outstanding AEC requirements for a Reporting Year through auctions or brokers.

23. In addition, to allow for greater competition in broker transactions, the Company requests that the Commission waive the requirement that any bids at or above \$10,000 be from parties who are not affiliates of PECO. As noted earlier, the total purchase cost of all Tier II AECs is projected to be \$17,360, and the \$10,000 limitation might foreclose competitive bids

from affiliates. Under no circumstances will the Company accept a bid at or above \$20,000 from an affiliate.

24. The Company will also continue to utilize its Commission-approved Form AEC Agreement with any successful bidder, including an affiliate.⁷

25. The Company will maintain its “prudent mix” of AEC procurement contracts by utilizing the Company’s proposed Tier II broker transactions and continuing to: (1) obtain Tier I AECs (including SPAECs) and Tier II AECs pursuant to short-term full requirements contracts with default service suppliers; (2) obtain Tier I AECs (including SPAECs) directly through existing long-term contracts; and (3) obtain AECs pursuant to the auction and broker transactions authorized in *PECO AEPS III*, as necessary.

IV. COST RECOVERY

26. The AEPS Act provides that all direct and indirect costs for alternative energy and/or AECs purchased by an EDC for compliance with the AEPS Act are recoverable on “a full and current basis pursuant to an automatic energy adjustment clause” under Section 1307, as a cost of generation supply. 73 P.S. § 1648.3(a)(3); *see also AEPS Regulations*, § 75.67(d) (providing for recovery of compliance costs).

27. In the *DSP II Order*, the Commission approved PECO’s proposal to recover all of its AEPS compliance costs through the GSA.

28. PECO requests that the Commission confirm the Company’s ability to recover all costs related to, and in compliance with, the broker process approved by the Commission in this proceeding through the GSA. The costs of the Tier II AECs for the PECO Share will be

⁷ A copy of the Form AEC Agreement approved by the Commission in *PECO AEPS III* is attached as Exhibit 1.

collected in the same manner as other AEPS compliance costs for residential default service customers. In addition, any other costs associated with the purchase of Tier II AECs necessary for compliance (i.e., as part of any contingency procurements under DSP II) will be collected from residential, commercial, and industrial default service customers consistent with PECO's existing tariff and the *DSP II Order*.

V. NOTICE

29. PECO has served a copy of this Petition on all parties to its DSP II proceeding. PECO will provide such additional notice as directed by the Commission.

VI. PROCEDURAL SCHEDULE

30. In *PECO AEPS III*, PECO served its petition on all parties to the DSP I proceeding. Although the matter was initially assigned to the Office of Administrative Law Judge, the matter was referred back to the Commission when no party contested the Petition.

31. In light of this earlier non-opposition, the Company has shared this Petition with all parties to the DSP II proceeding and has received no objections. Therefore, the Company requests that this Petition be considered by the Commission without referral to the Office of Administrative Law Judge for hearings and that the Commission approve this Petition no later than the public meeting presently scheduled for May 22, 2014 to facilitate Tier II procurement for the 2013-14 AEPS reporting year.

VII. CONCLUSION

Based upon the foregoing, PECO respectfully requests that the Commission approve this Petition and enter an order providing:

1. That PECO is permitted to procure all Tier II AECs necessary to satisfy PECO's anticipated Tier II AEPS requirements for AEPS Reporting Years 2013-2014, 2014-2015 and 2015-2016 through independent, third-party brokers as described herein;
2. That any requirement to conduct an annual RFP for AECs and the volume and the affiliate restriction on broker transactions approved in *PECO AEPS III* are waived in light of PECO's continuing restrictions on broker transactions; and
3. That PECO may continue to recover all of its costs associated with such Tier II AEC procurements through the GSA in accordance with its existing tariff and the *DSP II Order*.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: March 5, 2014