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April 9, 2014

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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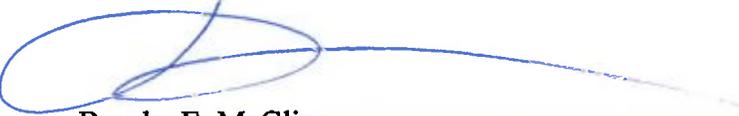
**Re: Petition of PECO Energy Company for Approval of Its Default Service Plan for the
 Period from June 1, 2015 through May 31, 2017
 Docket No. P-2014-2409362**

Dear Secretary Chiavetta:

Enclosed please find PECO Energy Company's Prehearing Conference Memorandum in the above-captioned matter.

If you have any questions regarding this filing, please do not hesitate to contact me at 215.963.5404.

Very truly yours,


Brooke E. McGlinn

BEM/tp
Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT :
SERVICE PROGRAM FOR THE PERIOD : Docket No. P-2014-2409362
FROM JUNE 1, 2015 THROUGH MAY 31, :
2017 :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **PECO Energy Company's Prehearing Conference Memorandum** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

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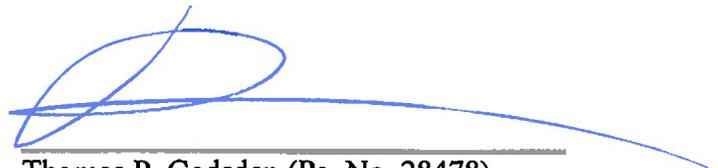
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Counsel for PECO Energy Company

Date: April 9, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2014-2409362
THE PERIOD FROM JUNE 1, 2015 :
THROUGH MAY 31, 2017 :**

**PREHEARING CONFERENCE MEMORANDUM OF
PECO ENERGY COMPANY**

TO ADMINISTRATIVE LAW JUDGE CYNTHIA W. FORDHAM:

Pursuant to the April 3, 2014 Prehearing Order issued by Administrative Law Judge Cynthia W. Fordham (the “ALJ”) and the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.222(d), PECO Energy Company (“PECO” or the “Company”) hereby submits its Prehearing Conference Memorandum in the above-captioned proceeding.

I. PROCEDURAL HISTORY

On March 10, 2014, PECO filed the above-captioned petition (the “Petition”) requesting that the Commission approve its third Default Service Program (the “Program,” or “DSP III”), which is designed to enable PECO to obtain a “prudent mix” of procurement contracts and thereby ensure that its default service customers have access to an adequate and reliable supply of generation at the least cost over time. PECO currently provides default service pursuant to its Commission-approved default service plan that will expire on May 31, 2015 (“DSP II”).¹

¹ See *Petition of PECO Energy for Approval of Its Default Service Program Plan*, Docket No. P-2012-2283641 (Order entered October 12, 2012) (“*October 12 Order*”). In the *October 12 Order*, the Commission approved

The Petition requests that the Commission approve the proposed DSP III, including PECO's procurement plan, contingency plans, and tariff changes to its existing default service rate design for default supply service for the period June 1, 2015 through May 31, 2017, as well as the continuation of PECO's Electric Generation Supplier ("EGS") Standard Offer Program ("Standard Offer Program"). PECO also requests that the Commission specifically find, pursuant to 66 Pa.C.S. § 2807(e)(3.7), that: (1) DSP III includes prudent steps necessary to negotiate favorable generation supply contracts; (2) DSP III includes prudent steps necessary to obtain least cost generation supply on a long-term, short-term and spot market basis; and (3) neither PECO nor its affiliates have withheld from the market any generation supply in a manner that violates federal law. In addition, PECO requests that the Commission affirm PECO's right to recover all of its default service costs in accordance with 66 Pa.C.S. § 2807(e)(3.9) and approve PECO's proposed new supply master agreement ("SMA") as an affiliated interest agreement under 66 Pa.C.S. § 2102.

The Petition was served on the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Bureau of Investigation & Enforcement ("I&E"), and counsel to the Pennsylvania-New Jersey-Maryland Interconnection, L.L.C. ("PJM"), as well as all of the EGSs registered in PECO's certificated service territory. As of this date, Answers to PECO's Petition have been submitted by the Philadelphia Area Industrial Energy Users Group ("PAIEUG") on March 27, 2014, the OSBA on March 28, 2014, the OCA on April 1, 2014, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") on April 1, 2014. A Notice of Appearance was filed by OSBA on March 28, 2014.

PECO's DSP II with certain modifications and also directed PECO to submit new proposals for various elements of its proposed retail market enhancements. In response, PECO made a series of compliance filings (December 11, 2012; February 28, 2013; and April 15, 2013), which were approved by a Secretarial Letter issued January 25, 2013, an Order entered February 14, 2013, and an Order entered June 13, 2013, respectively (collectively, "DSP II Orders").

In addition, the following parties filed Petitions to Intervene:

OCA	April 1, 2014
OSBA	March 28, 2014
CAUSE-PA	April 1, 2014
Direct Energy Services, LLC (“Direct Energy”)	April 1, 2014
FirstEnergy Solutions Corp. (“FES”)	April 1, 2014
Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”)	April 1, 2014
NextEra Energy Services, Pennsylvania, LLC and NextEra Power Marketing, LLC (“NextEra”)	March 25, 2014
Noble Americas Energy Solutions LLC (“Noble”)	April 1, 2014
PECO Energy Suppliers Group (“PESG”) ²	April 1, 2014
PAIEUG	March 27, 2014
Retail Energy Supply Association (“RESA”)	April 1, 2014

II. STATEMENT OF ISSUES

The issue before the Commission is whether DSP III is in the public interest and is consistent with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.* (the “Competition Act”), as amended by Act 129 of 2008 (“Act 129”), the Commission’s default service regulations at 52 Pa. Code §§ 54.181-54.189 (“Regulations”), and the Commission’s Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817 (“Policy

² In its Petition to Intervene, PESG stated that it was an ad hoc group of EGSs licensed to serve customers in PECO’s territory. In a subsequent filing on April 8, 2014, PESG identified its members as IDT Energy, Inc. and North American Power and Gas, LLC.

Statement”).³

In the Commission’s final order in its investigation of Pennsylvania’s retail electricity market during DSP II, the Commission adopted an “End State of Default Service” model in which default service providers would begin to procure default service supply using only three-month contracts and spot market-priced contracts.⁴ However, the Commission also concluded that a general pronouncement directing the use of such products for residential and small business customers may raise legal questions concerning compliance with the Competition Act and therefore the Commission intends to seek legislative amendments providing clear authority for default service plans containing such contracts.⁵

In light of its favorable experience under DSP II to date and the absence of amendments to the Competition Act, PECO is proposing limited changes to its default service program and the products previously approved by the Commission in DSP II. The principal components of DSP III are described below.

A. Default Service Procurement Class And Supply Portfolio Design

Under DSP II, PECO conducts competitive procurements of wholesale power and associated services for four different default service customer classes: (i) Residential customers, (ii) Small Commercial customers with less than 100 kW of annual peak demand and lighting customers; (iii) Medium Commercial customers whose annual peak demand is equal to or greater than 100 kW but less than or equal to 500 kW; and (iv) Large Commercial and Industrial

³ See *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011); *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580 (Final Policy Statement entered on September 22, 2011).

⁴ See *Investigation of Pennsylvania’s Retail Elec. Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (“*End State Order*”) at 41.

⁵ *Id.* at 44-46.

customers with annual peak demands greater than 500 kW. PECO is proposing to maintain the same division of default service customers in DSP III as this division continues to reflect the nature of the load requirements of each customer class and the consideration of other factors, including rate stability. As in its prior default service programs, PECO is requesting a waiver, to the extent necessary, from provisions of the Commission's regulations (52 Pa. Code § 54.187(h)-(j)) in order to continue to use the proposed procurement classes.

As described in detail in the Petition, PECO is proposing to maintain the basic procurement strategy established in DSP II, which utilizes short time periods between the solicitation and delivery of supply products, as well as fixed-price full requirements, load-following contracts. The following table summarizes the proposed procurement plan for each customer class:

Residential	Small Commercial	Medium Commercial	Large Commercial and Industrial
<ul style="list-style-type: none"> • 96% of the load is supplied by a mix of products representing a transition to: <ul style="list-style-type: none"> - 40% 1-year fixed-price full requirements products with delivery periods that overlap on a semi-annual basis - 60% 2-year fixed-price full requirements products with delivery periods that overlap on a semi-annual basis • The other 4% of the default service load initially is supplied by the pre-existing five-year block energy product purchased in DSP I and associated spot purchases; this block product expires on December 31, 2015, at which time the supply for this portion of the load is replaced by fixed-price full requirements products spanning four years and five months (approximately 3% of the supply) and spot purchases (approximately 1% of the supply) • All products are procured approximately 2-4 months before the start of delivery of that product 	<ul style="list-style-type: none"> • 100% one-year fixed-price full requirements products • Delivery periods overlap on a semi-annual basis • All products are procured approximately 2-4 months prior to delivery 	<ul style="list-style-type: none"> • 100% six-month fixed-price full requirements products • No overlapping delivery periods • All products are procured approximately 2-4 months prior to delivery 	<ul style="list-style-type: none"> • 100% spot-priced full requirements products • No overlapping delivery periods. • All products are procured 4 months prior to delivery.

With respect to the Residential Class, PECO has reduced the block and spot supply purchases initiated in DSP I and, by the end of DSP II, PECO will be procuring only a small amount of around-the-clock energy (50 MW) under a long-term block contract, which expires on December 31, 2015. As shown above, this remaining block energy contract will be replaced in DSP III with a four-year, five-month full requirements product split into two tranches (corresponding to about 3.2% of residential default service load), with the remaining portion of the default service residential customer supply (approximately 1%) procured directly from the

energy markets operated by PJM.

PECO has proposed the same procurement strategy approved by the Commission in DSP II for its Small Commercial, Medium Commercial, and Large Commercial and Industrial Classes.⁶

B. Competitive Bid Solicitation Process And Contingency Plans

PECO proposes to procure its full-requirements default service products through a fair, non-discriminatory, and competitive request for proposals (“RFP”) process conducted by an independent third-party evaluator. PECO also proposes that NERA Economic Consulting, Inc. (“NERA”) serve as the independent third-party evaluator for PECO’s default supply solicitations, as it has done in DSP I and DSP II. Finally, PECO proposes contingency plans to cover supply deficiencies resulting from either a supplier default or the receipt of insufficient bids to fill its competitive solicitations.

C. Supplier Master Agreement

As envisioned by the Commission in the *End State Order*, PECO is proposing to use the most recent version of the uniform SMA developed through the Office of Competitive Market Oversight (“OCMO”) procurement working group. As part of the EDC-specific sections of the uniform SMA, PECO is proposing to revise the allocation of responsibility for PJM meter error correction charges and generation deactivation charges during DSP III. If the Commission directs any changes in the final uniform SMA, PECO will address such changes in a supplemental filing.

⁶ For the Medium Commercial class, PECO is proposing to maintain the DSP III supply portfolio for that entire customer class pending the completion of advanced meter infrastructure (“AMI”) deployment for all Medium Commercial PECO customers (including testing and implementation of related back-office and other information technology systems). This approach is intended to avoid additional risks and costs to customers as well as potential premiums in supplier bids to cover uncertainty in Medium Commercial customer load associated with AMI deployment. To the extent necessary, PECO is requesting a waiver of provisions of the *End State Order* (at 31-32) relating to advanced meters for these customers as part of the Commission’s approval of DSP III.

D. Alternative Energy Portfolio Standards Act Requirements

PECO proposes to continue to satisfy most of its requirements under the Alternative Energy Portfolio Standards (“AEPS”) Act, 73 P.S. § 1648.1, *et seq.*, by requiring each full-requirements default service supplier to transfer Tier I and Tier II alternative energy credits (“AECs”) to PECO corresponding to PECO’s AEPS obligations associated with the amount of default service load served by that supplier. PECO proposes to continue to allocate AECs obtained through its prior AEPS procurements approved by the Commission towards suppliers’ AEPS obligations under the SMA in accordance with the percentage of load served by each supplier. PECO will retain a percentage of its AECs to meet the AEPS requirements associated with the remaining block energy portion of its residential customer load served by PECO until December 31, 2015. PECO will also buy and sell AECs as required to meet AEPS requirements and manage its inventory of AECs obtained in prior procurements as previously authorized by the Commission.

E. Rate Design And Tariff Changes

PECO proposes to recover default service costs through its existing Generation Supply Adjustment (“GSA”) mechanism. PECO will continue to adjust the cost of generation supply on a quarterly basis for customers with load requirements up to 500 kW, but is proposing a semi-annual reconciliation of the over or under collection component of the GSA for the Residential, Small Commercial and Medium Commercial classes to replace the existing quarterly reconciliation mechanism to improve price signals to customers.

PECO is also proposing limited tariff changes related to the recovery of costs incurred by PECO to implement any additional retail market enhancements directed by the Commission during DSP III, as well as costs associated with the retail opt-in program suspended during DSP

II.

F. Retail Market Enhancements

During DSP II, PECO implemented a variety of programs to support EGSs and expand retail choice. These programs include PECO's Standard Offer Program, a new/moving customer referral program, use of an EGS selected through a competitive bid process to provide the commodity service associated with PECO's time-of-use pilot offering, referral of former PECO Wind customers to interested EGSs that could provide "green energy" product offerings, and a seamless moves collaborative. PECO proposes to continue offering the Standard Offer Program from June 1, 2015 to May 31, 2017. Consistent with PECO's existing tariff and the DSP II Orders, the Company further proposes to continue to recover Standard Offer Program costs through an EGS participant fee of \$30 per enrolled customer, with any remaining costs recovered in the following manner: (1) fifty percent from EGSs through a 0.2% Purchase of Receivables discount; and (2) fifty percent from residential and small commercial default service customers via the GSA.⁷

G. Affiliate Relations

PECO requests that the Commission approve the *pro forma* SMA as an affiliated interest agreement as required under 66 Pa.C.S. §§ 2102 and 2807(e)(3.1). The Commission's Regulations and Policy Statement permit affiliates of default service suppliers to participate in competitive procurements. Because PECO's affiliates may participate in the proposed procurements, advance approval of the *pro forma* SMA as an affiliated interest agreement is

⁷ The Commission is currently reviewing program design and cost recovery mechanisms for additional retail market enhancements proposed by PECO in separate proceedings. See *PECO Energy Company's Plan for Accomplishing Seamless Moves and Instant Connects, Investigation of Pennsylvania's Retail Elec. Market: End State of Default Service*, Docket No. 1-2011-2237952 (filed Dec. 18, 2013); *PECO Energy Company's Compliance Filing Regarding Customer Account Number Access for EGSs, EDC Customer Account Number Access Mechanism for EGSs*, Docket No. M-2013-2355751 (filed Dec. 18, 2013).

appropriate.

III. WITNESSES

As previously explained, on March 10, 2014, PECO submitted its Petition along with the direct testimony and accompanying exhibits of the following witnesses:

- **Brian D. Crowe** – Mr. Crowe is Vice President, Energy Acquisition, for PECO. Mr. Crowe’s business address is 2301 Market Street, Philadelphia, PA, 19103 and his telephone number is (215) 841-4141. His testimony provides an overview of PECO’s Program, including PECO’s proposed litigation schedule for these proceedings and customer notice.
- **John J. McCawley** – Mr. McCawley is Director of Energy Acquisition for PECO. Mr. McCawley’s business address is 2301 Market Street, Philadelphia, PA, 19103 and his telephone number is (215) 841-4141. He describes PECO’s proposed default service procurement, implementation, and contingency plans for DSP III, including the use of the new SMA and additional proposed initiatives to enhance retail competition.
- **Scott G. Fisher** – Mr. Fisher is a Principal of the NorthBridge Group, an economic consulting firm. Mr. Fisher’s business address is 30 Monument Square, Suite 105, Concord, MA, 01742 and his telephone number is (781) 266-2646. Mr. Fisher provides an expert evaluation of PECO’s proposed procurement plan as well as a review of “lessons learned” under DSP II, which includes a quantitative analysis of the prices obtained in PECO’s DSP II default service supply solicitations.

- **Dr. Chantale LaCasse** – Dr. LaCasse is a Senior Vice President of NERA. Dr. LaCasse’s business address is 1255 23rd St. N.W., Washington, D.C., 20037 and her telephone number is (202) 466-9218. Dr. LaCasse testifies regarding the procedures for PECO’s procurements and proposed changes in DSP III, as well as the role and responsibilities of NERA as the proposed independent evaluator.
- **Alan B. Cohn** – Mr. Cohn is PECO’s Manager of Regulatory Strategy. Mr. Cohn’s business address is 2301 Market Street, Philadelphia, PA, 19103 and his telephone number is (215) 841-4141. Mr. Cohn discusses PECO’s existing GSA and proposed improvements in default service cost recovery.

In addition, PECO may present additional witnesses in rebuttal of the direct testimony of other parties. However, such witnesses cannot be identified until other parties file their testimony and the issues raised in that testimony have been evaluated.

IV. DISCOVERY

PECO will work with the other parties and the ALJ to develop a reasonable schedule for ongoing discovery. In addition, PECO proposes that the ALJ approve the Protective Order attached hereto as Appendix “A,” which is similar to the Protective Order entered in PECO’s DSP II proceeding. PECO also proposes modifications to the Commission’s discovery regulations, as shown in Appendix “B.” The proposed modifications are identical to modifications approved in PECO’s DSP II proceeding.

V. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, PECO hereby designates the following individual for the service list in this proceeding:

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Parties are requested to also serve documents on the following attorneys as a courtesy:

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VI. PROPOSED SCHEDULE

PECO will cooperate with the ALJ and other parties in order to facilitate the orderly conduct and disposition of this proceeding. To that end, PECO has consulted with the other parties in this proceeding and proposes the following schedule, which integrates revisions from the parties' consultation:

March 10, 2014	Petition Filing
April 10, 2014	Prehearing Conference

June 5, 2014	Other Parties' Direct Testimony Due
June 26, 2014	Rebuttal Testimony Due
July 9, 2014	Surrebuttal Testimony Due
July 15-18, 2014	Oral Rejoinder and Hearings
August 5, 2014	Initial Briefs
August 19, 2014	Reply Briefs
September 30, 2014	Recommended Decision
October 20, 2014	Exceptions
November 3, 2014	Reply Exceptions
December 4, 2014	Commission Order

All proposed dates for submission of testimony and briefs are for “in-hand” delivery, which may be satisfied by an e-mail or fax copy of the relevant documents. The OSBA noted that its witness is not available on the first day of hearings commencing July 15, 2014 and requested that the OSBA witness be scheduled to appear on one of the other proposed hearing dates. PECO does not oppose this request.

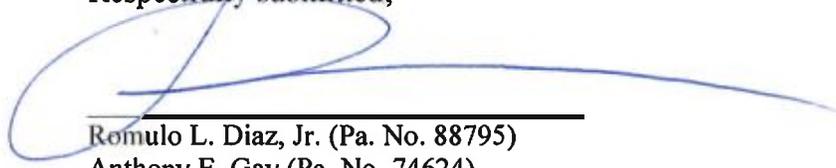
VI. POSSIBILITY OF SETTLEMENT

PECO intends to engage in settlement discussions with the other parties in this proceeding in order to facilitate an effective and timely implementation of DSP III.

VII. CONCLUSION

WHEREFORE, PECO Energy Company respectfully submits this Prehearing Conference Memorandum.

Respectfully submitted,



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For PECO Energy Company

Dated: April 9, 2014

APPENDIX A

PROPOSED PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : **DOCKET NO. P-2014-2409362**
THE PERIOD FROM JUNE 1, 2015 :
THROUGH MAY 31, 2017 :

PROTECTIVE ORDER

IT IS ORDERED THAT:

1. This Protective Order is hereby GRANTED and shall establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Such materials are referred to in this Order as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. For purposes of this Protective Order there are two categories of Proprietary Information: “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” protected material. A producing party may designate as “CONFIDENTIAL” those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party or its clients to the risk of competitive disadvantage or other business injury. A producing party may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party determined that a heightened level of confidential protection with respect to those materials is appropriate. The parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL” protected material.

4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

5. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
- iii. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party; or
- iv. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party's positions in this docket.

6. Information deemed "HIGHLY CONFIDENTIAL" protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of "HIGHLY CONFIDENTIAL" protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:

- i. A statutory advocate, or an attorney for a statutory advocate, pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
- ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
- iii. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
- iv. A person designated as a Reviewing Representative for purposes of HIGHLY CONFIDENTIAL protected material pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

7. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information pursuant to Paragraph 11. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services or advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent (excluding any person under Paragraph 6.i or 6.ii), or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than \$10,000 or constituting more than a 1% interest in a business establish a significant motive for violation.

8. If an expert for a party, another member of the expert’s firm or the expert’s firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, that expert must: (1) identify for the parties each Restricted Person and all personnel in or associated with the expert’s firm that work on behalf of the Restricted Person; (2) take all reasonable steps

to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way adversely affect the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties' or their customers' interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. Reviewing Representatives qualified to receive "HIGHLY CONFIDENTIAL" protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material.

10. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

11. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in paragraph 6 (i) through (iii) above, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is

reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above with respect to those materials. If no agreement is reached, the party seeking to have a person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

12. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

13. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information.

14. The Commission and all parties, including the statutory advocates and any other agency or department of state government will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 *et seq.*) until such time as the information is found to be non-proprietary.

15. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

17. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

18. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.

19. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, a providing party may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the receiving party shall certify in writing to the providing party that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the receiving party shall certify in writing to the providing party that no copies of materials containing the Proprietary Information have been retained.

Date: _____, 2014

Cynthia W. Fordham
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS : **DOCKET NO. P-2014-2409362**
DEFAULT SERVICE PLAN FOR THE :
PERIOD FROM JUNE 1, 2015 :
THROUGH MAY 31, 2017 :

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____
(the receiving party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____

APPENDIX B

PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2014-2409362
THE PERIOD FROM JUNE 1, 2015 :
THROUGH MAY 31, 2017 :**

PECO PROPOSED DISCOVERY PROCEDURE MODIFICATIONS

1. Answers to written interrogatories are to be served in-hand within ten (10) calendar days of service of the interrogatories.
2. Objections to interrogatories are to be communicational orally within three (3) days of service; unresolved objections are to be served on the Administrative Law Judge in writing within five (5) days of service of the interrogatories.
3. Motions to dismiss objections and/or direct the answering of interrogatories are to be filed within three (3) calendar days of service of written objections.
4. Answers to motions to dismiss objections and/or directing the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.
5. Responses to requests for documents production, entry for inspection, or other purposes are to be served in-hand within ten (10) calendar days of service.
6. Requests for admission are deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
7. When an interrogatory, request for production, request for admission or motion is served after 12:00 p.m. on a Friday or the day before a holiday, the appropriate response period is deemed to start on the next business day.

8. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
9. Pursuant to 52 Pa. Code §5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the Administrative Law Judge, although a certificate of service may be filed with the Commission's Secretary.
10. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.