

Michael S. Swerling  
Assistant General Counsel  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 215-841-4220

May 19, 2016

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

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**RE: Petition of PECO Energy Company for Approval of its Electric Long Term Infrastructure Improvement Plan and to Establish a Distribution System Improvement Charge for Electric Operations**

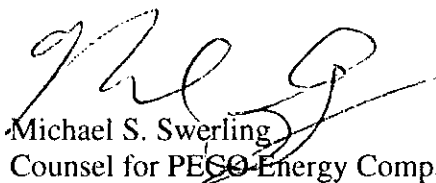
**Docket Nos: P-2015-2471423 and C-2015-2476587**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Revised Prehearing Memorandum* with regard to the matter referenced above. This revised memorandum includes an updated Protective Order (Exhibit B) to reflect revisions agreed upon by the parties during the May 19, 2016 Prehearing Conference before Administrative Law Judges Christopher P. Pell and Darlene Heep.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention in this matter.

Very truly yours,



Michael S. Swerling  
Counsel for PECO Energy Company

cc: Certificate of Service

ms/adz

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company	:	P-2015-2471423
for Approval of its Electric Long-Term	:	C-2015-2476587
Infrastructure Improvement Plan and to Establish	:	
a Distribution System Improvement Charge for Its	:	
Electric Operations	:	

**PREHEARING MEMORANDUM OF PECO ENERGY COMPANY**

**TO ADMINISTRATIVE LAW JUDGES CHRISTOPHER P. PELL AND DARLENE  
HEEP:**

Pursuant to 52 Pa. Code § 5.224, and in response to the May 2, 2016 Prehearing Conference Order, which issued in the above-referenced proceeding, PECO Energy Company (“PECO” or the “Company”) hereby submits this Prehearing Memorandum for consideration by the Honorable Administrative Law Judges, Christopher P. Pell (hereinafter “ALJ Pell” or “Judge Pell”), and Darlene Heep (hereinafter “ALJ Heep” or “Judge Heep”).

**I. INTRODUCTION**

On March 27, 2015, PECO Energy Company (“PECO” or the “Company”) filed the *Petition of PECO Energy Company for Approval of its Electric Long Term Infrastructure Improvement Plan and to Establish a Distribution System Improvement Charge for its Electric Operations*, Docket No. P-2015-2471423.<sup>1</sup> In accordance with the requirements set forth in 66 Pa. C.S. § 1352, PECO submitted a distribution system improvement charge (“DSIC”) proposing to recover \$274.3 million in projected capital investments. These investments consisted of eligible property that would improve and replace portions of PECO’s electric distribution system.

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<sup>1</sup> See *Petition of PECO Energy Company for Approval of its Electric Long Term Infrastructure Improvement Plan*, Docket No. P-2015-2471423 (Filed on March 27, 2015).

In order to qualify for the DSIC, PECO also was required to submit a Long Term Infrastructure Improvement Plan (“LTIP”). According to its LTIP (which was submitted contemporaneously with its proposed DSIC tariff), the Company would proactively implement measures related to: 1) storm hardening and resiliency; 2) underground cable replacements; and 3) Building Substation retirements, including facility upgrades and redesigns.

On April 16, 2015, the Office of Consumer Advocate (“OCA”) filed comments on PECO’s LTIP. While the OCA did not request hearings, it did request additional information to demonstrate that the enhancements, contemplated by the LTIP, would be completed on an accelerated and cost-effective basis. Specifically, the OCA requested a year-by-year comparison of actual to projected expenditures on reliability improvements in the years preceding the proposed LTIP. According to the OCA, this would provide a baseline against which the Commission could measure acceleration of the LTIP enhancements. Additionally, OCA requested that PECO provide avoided cost calculations to demonstrate that the LTIP is cost-effective.

On April 10, 2015, the OCA filed a Formal Complaint, an Answer to PECO’s DSIC Petition and a Notice of Appearance. In its Formal Complaint, the OCA requested that the Commission hold evidentiary hearings to ensure PECO’s proposed DSIC tariff and rate were not excessive, discriminatory or otherwise contrary to the law, Commission regulations or policy. The OCA’s Answer to PECO’s DSIC Petition stated that it may be contrary to Pennsylvania law and Commission policy. As such, the OCA requested that the Commission deny the Petition as-filed, suspend the proposed DSIC tariff, and conduct a full hearing and investigation.

On April 15, 2015, the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) filed a Petition to Intervene and Answer. PAIEUG claimed that PECO’s DSIC was unjust, unreasonable, and inconsistent with Pennsylvania Act 11.

According to PAIEUG, the DSIC would apply to transmission voltage customers taking service on Rate HT, which is inappropriate from a cost-causation standpoint and in direct contravention of the Commission’s Implementation Order.<sup>2</sup> PAIEUG also reserved the right to investigate PECO’s definition of “distribution revenues” to determine if non-distribution revenues from PECO’s tariff riders have been appropriately excluded from the DSIC calculation.

On April 16, 2015, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Answer. OSBA’s Answer claimed that PECO’s proposal may be unjust, unreasonable and unlawfully discriminatory in contravention of the Public Utility Code, public policy and sound ratemaking considerations. Accordingly, it requested that the Commission suspend and investigate PECO’s proposed DSIC tariff.

On October 22, 2015, the Commission issued an Opinion and Order, which approved PECO’s LTIP, finding that it conformed to the requirements of Act 11 and their Final Implementation Order. While the Order approved PECO’s LTIP, the DSIC was approved subject to two issues that were referred to the Office of Administrative Law Judge for hearing:

- 1. Whether customers taking service at transmission voltage rates should be included under the DSIC charge.*
- 2. If revenues associated with the riders in PECO’s tariff are properly included as distribution revenues.*

On May 2, 2016, a Prehearing Conference Order issued and scheduled a prehearing conference to occur on May 19, 2016 at 10:00 A.M. The Prehearing Conference Order also

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<sup>2</sup> *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Final Implementation Order entered August 2, 2012).

directed the parties to submit a prehearing memorandum on or before noon on Tuesday, May 17, 2016.

## **II. STATEMENT OF ISSUES**

The Commission's October 22, 2015 Opinion and Order in this proceeding, limited the issues to the following:

3. Whether customers taking service at transmission voltage rates should be included under the DSIC charge;
4. If revenues associated with the riders in PECO's tariff are properly included as distribution revenues.

## **III. PROPOSED SCHEDULE AND DISCOVERY MODIFICATIONS**

PECO believes that the issues in this case can be resolved in whole or in large part by settlement or by a stipulation that would eliminate the need for the submission of additional testimony or an evidentiary hearing. Accordingly, PECO proposes that: 1) the parties schedule two or more settlement and/or technical conferences to be held between May 26, 2016 and June 27, 2016; 2) report back to the Administrative Law Judges on the status of their negotiations by June 28, 2016; and 3) if the matter is not, by that time, the subject of a settlement, request that a second Prehearing Conference be held to determine whether the submission of testimony and scheduling of an evidentiary hearing may be required. Even if this matter is not fully resolved by a settlement or stipulation, PECO does not believe that an evidentiary hearing would necessarily be required.

In addition, PECO proposes discovery modifications as Exhibit A hereto. Accordingly, PECO respectfully requests that the Administrative Law Judges approve the proposed discovery modifications.

Furthermore, PECO has submitted to the parties for their consideration a proposed Protective Order, which is attached as Exhibit B hereto. Therefore, PECO respectfully requests that the Administrative Law Judges enter the proposed Protective Order.

#### **IV. WITNESSES**

PECO intends to present direct, rebuttal and surrebuttal testimony of the following witness on an as-needed basis. PECO plans to present this testimony in written form, including exhibits and other related documents. The Company also reserves the right to call additional witnesses and will inform the Administrative Law Judges, and the parties, if and when it determines that additional witnesses will be needed. Based on the issues set for hearing, the Company's proposed witness is as follows:

- 1) **Alan B. Cohn.** Mr. Cohn is the Manager of Regulatory Strategy in PECO's Retail Rates Division. His original Direct Testimony is set forth in PECO Statement No. 2 of PECO's Petition in this proceeding.

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. Accordingly, PECO reserves the right to supplement its witness list.

#### **V. POSSIBILITY OF SETTLEMENT**

PECO views settlement in this case as a distinct possibility. Thereafter, PECO will plan to meet with the parties in person or by telephone conference to attempt to reach a mutually agreeable resolution as described in Section III above.

#### **VI. AMOUNT OF HEARING TIME NEEDED**

The number of days of hearing outlined above is an estimate. The actual number will depend on the scope of the evidence presented by the other parties.

**VII. CONCLUSION**

PECO Energy Company submits this Prehearing Memorandum and respectfully requests that the Administrative Law Judges accept the proposal set forth in Section III, above, for the conduct of further proceedings in this matter as well as the proposed discovery modification and protective order.

Respectfully submitted,

By:  \_\_\_\_\_

Romulo L. Diaz, Jr. (Pa. No. 88795)  
Jack R. Garfinkle (Pa. No. 81892)  
Michael S. Swerling (Pa. No. 94748)  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699  
Phone: (215) 841-4220  
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Romulo.diaz@exeloncorp.com  
Jack.garfinkle@exeloncorp.com  
Michael.swerling@exeloncorp.com

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SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company	:	P-2015-2471423
for Approval of its Electric Long-Term	:	C-2015-2476587
Infrastructure Improvement Plan and to Establish	:	
a Distribution System Improvement Charge for Its	:	
Electric Operations	:	

**CERTIFICATE OF SERVICE**

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

Administrative Law Judge Christopher P. Pell  
Administrative Law Judge Darlene Heep  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
(215) 560-2105 (telephone)  
(215) 560-3133 (fax)  
cpell@pa.gov  
dheep@pa.gov

Tanya J. McCloskey, Esquire  
Erin L. Gannon, Esquire  
Brandon Pierce, Esquire  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1923

Paul T. Diskin, Director  
Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Donald R. Wagner, Esquire



Linda R. Evers, Esquire  
Michael A. Gruin, Esquire  
Stevens & Lee  
111 N. Sixth Street  
Reading, PA 19601  
*(BJ's Wholesale Club, Inc.; Sam's  
East, Inc.; Wal-Mart Store East, LP)*

Charles T. Joyce, Esquire  
Spear Wilderman PC  
230 S. Broad Street, Suite 1400  
Philadelphia, PA 19102  
*(International Brotherhood of  
Electrical Workers Local 614)*

Arthur Z. Schwartz, Esquire  
225 Broadway, Suite 1902  
New York, NY 10007  
*(Pennsylvania Communities  
Organizing for Change)*

J. Barry Davis, Esquire  
City of Philadelphia  
1515 Arch Street, 15<sup>th</sup> Floor  
Philadelphia, PA 19102

Todd S. Stewart, Esquire  
Hawke McKeon & Sniscak LLP  
100 N. Tenth Street  
Harrisburg, PA 17101  
*(Dominion Retail, Inc.)*

Gary A. Jeffries, Esquire  
Dominion Retail Inc.  
501 Martindale Road, Suite 400  
Pittsburgh, PA 15212

Thu B. Tran, Esquire  
Community Legal Services Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102

John W. Norbeck, Esquire  
610 N. Third Street  
Harrisburg, PA 17101  
*(PennFuture)*

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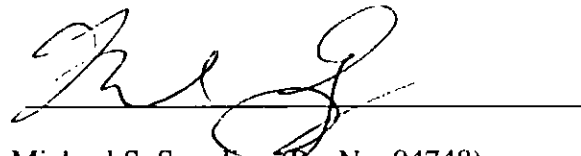
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Charis Mincavage, Esquire  
Adeolu A. Bakare, Esquire  
Elizabeth P. Trinkle, Esquire  
McNees Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
(PAIEUG)

Elizabeth Rose Triscari, Esquire  
Daniel G. Asmus, Esquire  
Office of Small Business Advocate  
300 N. Second Street, Suite 202  
Harrisburg, PA 17101

Johnnie E. Simms, Esquire  
Pennsylvania Public Utility Commission  
BI&E Legal Technical  
P.O. Box 3265  
Harrisburg, PA 17105-3265

I hereby certify that the foregoing statements made by me are true and correct. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.



Michael S. Swerling (Pa. No. 94748)  
Counsel for PECO Energy Company  
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Philadelphia, PA 19101-8699  
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Fax: (215) 568-3389  
Michael.swerling@exeloncorp.com

May 17, 2016


**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company	:	P-2015-2471423
for Approval of its Electric Long-Term	:	C-2015-2476587
Infrastructure Improvement Plan and to Establish	:	
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Electric Operations	:	

**VERIFICATION**

I, Michael S. Swerling, hereby declare that I am Assistant General Counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts sets 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: May 17, 2016

  
\_\_\_\_\_  
Michael S. Swerling (Pa. No. 94748)  
Counsel for PECO Energy Company  
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Philadelphia, PA 19101-8699  
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**EXHIBIT A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company	:	P-2015-2471423
for Approval of its Electric Long-Term	:	C-2015-2476587
Infrastructure Improvement Plan and to Establish	:	
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**PROPOSED DISCOVERY PROCEDURE MODIFICATIONS**

1. When an interrogatory, request for production, request for admission or motion is served after 12:00 p.m. on a Friday or the day before a holiday, the appropriate response period is deemed to start on the next business day.

2. The response period for replying to written interrogatories, requests for production and requests for admissions is seven (7) calendar days of receipt. Responses may be served electronically but hard copies must follow by first-class mail, unless otherwise agreed to by the parties.

3. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the discovery within three (3) calendar days of receipt and in writing within five (5) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

4. Motions to dismiss objections and to compel response shall be filed with the Commission and served on the Administrative Law Judge and the other parties within three (3) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within three (3) calendar days after filing of the motion.

5. If the objections are not resolved, counsel will alert the Administrative Law Judges by e-mail of the need for a ruling, and a conference call will be scheduled. The Administrative Law Judges will make a ruling over the telephone and not reduce it to writing unless requested to do so.

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6. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.

7. Requests for admission shall be deemed admitted unless objected to within five (5) calendar days of receipt or answered within ten (10) calendar days of receipt.

8. Discovery requests, motions to compel and responses are to be served electronically, with hard copies to follow by first-class mail.

9. Any discovery-related pleading such as objections, motions or answers served on a Friday or the day before a holiday recognized by the Commission will be deemed to have been served on the following business day for purposes of tracking due dates.

## EXHIBIT B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company	:	P-2015-2471423
for Approval of its Electric Long-Term	:	C-2015-2476587
Infrastructure Improvement Plan and to Establish	:	
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Electric Operations	:	

**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.

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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. A "Restricted Person" shall not include an expert for the Office of Small Business Advocate or Office of Consumer Advocate.

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 (other than an expert or expert firm retained by the Office of Small Business Advocate or Office of

Consumer Advocate), 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. Counsel for the Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Protective Order.

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: \_\_\_\_\_, 2016

\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge

\_\_\_\_\_  
Darlene Davis Heep  
Administrative Law Judge

**APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company : P-2015-2471423  
for Approval of its Electric Long-Term : C-2015-2476587  
Infrastructure Improvement Plan and to Establish :  
a Distribution System Improvement Charge for Its :  
Electric Operations :

**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: \_\_\_\_\_

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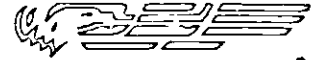


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Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120