



An Exelon Company

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March 22, 2017

VIA OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. PECO; Docket No. C-2015-2511928**

Dear Ms. Chiavetta:

Enclosed for filing is PECO Energy Company's Prehearing Memorandum in the above-captioned docket. Copies have been served on the parties of record as specified in the Certificate of Service.

If you have any questions, feel free to contact me directly at (215) 841-4220.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael S. Swerling".

Michael S. Swerling
Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

PECO Energy Company

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Docket No. C-2015-2511928

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PREHEARING MEMORANDUM OF PECO ENERGY COMPANY

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

Pursuant to 52 Pa. Code § 5.222(c), and in response to the February 14, 2017 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 Deputy Chief Administrative Law Judge, Christopher P. Pell (hereinafter “ALJ Pell” or “Judge Pell”).

I. INTRODUCTION

The allegations in the Complaint are based on a fundamentally flawed legal theory and are contrary to basic notions of fairness. PECO’s maximum allowable operating pressure (“MAOP”) practices have complied with industry standards in place prior to 1970, when the Federal Gas Safety Regulations were adopted, and the Federal Gas Safety Regulations since their adoption. Instead, the Complaint attempts to retroactively apply new requirements to PECO, which are not specified in the Federal Gas Safety Regulations¹ – that PECO verify the MAOP of its medium pressure distribution systems with records documenting pipe design, pressure tests or the five-year highest actual operating pressures before July 1, 1970. Nor, are these requirements

¹ There are no applicable Pennsylvania safety regulations regarding the establishment of or verification for MAOP. Even I&E relies on 52 Pa. Code § 59.33, which generally adopts the Federal Gas Safety regulations.

applicable to PECO for purposes of record-keeping under Section 192.517(a), which applies solely to transmission facilities.

Since the adoption of the Federal Gas Pipeline Safety Regulations more than 45 years ago, PECO has consistently designed, operated and maintained its medium pressure natural gas distribution system according to the safest, most reliable and conservative procedures, standards and practices, which align with and exceed federal requirements. For example, PECO's conservative operations are reflected in MAOPs that are set at levels equal to or below those permitted under the safety regulations. PECO's Normal Operating Pressures also are substantially below MAOP and reflect the minimum pressures needed to supply customer loads.

In particular, the Complaint's insistence that PECO reduce the MAOPs of its medium pressure distribution system to what have been its longstanding Normal Operating Pressures, will compromise PECO's ability to reliably serve all of its customers. PECO would be forced to choose between either reducing operating pressures and placing over 27,500 customers at risk of a supply curtailment (during peak periods in the winter), or avoiding a non-compliance order. Moreover, PECO would be prevented from adding new customers to its distribution system unless it undertook an expensive, lengthy and customer-intrusive effort to reestablish MAOP at a preliminary estimated cost of \$50 million. This effort could cause extended periods of customer interruptions while the new MAOPs were being reestablished throughout PECO's medium and low pressure distribution systems.

II. PROCEDURAL HISTORY

A. Formal Complaint of I&E

On November 4, 2015, the Pennsylvania Public Utility Commission's ("Commission's") Bureau of Investigation and Enforcement ("I&E") filed a Formal Complaint in this proceeding.

The Complaint alleged that PECO failed to comply with the MAOP requirements in the Federal Gas Pipeline Safety Regulations. In particular, I&E alleged that PECO operated segments of its steel and plastic pipelines in its medium pressure gas distribution system at pressures exceeding MAOP because PECO cannot substantiate or verify the MAOP of the pipelines in those systems with design calculations, pressure test records, or documentation of the highest actual operating pressure for the five years before July 1, 1970. In addition, I&E alleges that PECO failed to ensure that MAOP did not exceed MAOP plus 6 p.s.i. because PECO: 1) did not account for pressure buildup or losses at 72 regulator stations; and 2) sets its regulator station relief valves at 6 psig over the MAOP.

Moreover, the Complaint requested that the Commission order PECO to: 1) establish MAOP in its medium pressure system based on operating pressure records from June 25, 2009, to June 25, 2014; 2) modify its procedures for MAOP record retention, calculations, and verification to comply with the Code of Federal Regulations, Public Utility Code, and the Commission's regulations; 3) ensure its regulator station procedures detail relief and regulator capacity calculations; 4) establish a well-documented engineering procedure to annually review station configurations and relief calculations; 5) make any and all regulator procedures comply with 49 C.F.R. § 192; and 6) pay a \$790,000.00 civil penalty, which cannot be recovered through rates.

B. Answer of PECO

On December 21, 2015, PECO filed an Answer stating that in 1970, PECO established the MAOPs for its medium pressure distribution systems in accordance with newly adopted regulations established by the U.S. Department of Transportation ("USDOT") in its August 19, 1970 final rule. PECO has operated without a MAOP incident throughout the ensuing 46 years,

during which time the Commission's Gas Safety Division ("GSD") engaged in active oversight and performed audits of the PECO system. In 2015, the GSD for the first time claimed that PECO did not comply with MAOP regulations. The Complaint proposes a comprehensive overhaul of PECO's operations to set new MAOP levels for its entire system with no resulting enhancement to safety. As previously stated, PECO would be forced to choose between either reducing operating pressures and placing over 27,500 customers at risk of a supply curtailment (during peak periods in the winter), or avoiding a non-compliance order. Furthermore, the Complaint provides no legal authority to support the proposition that a pipeline operator has an obligation to create and maintain records before the effective date of the original Federal Gas Pipeline Safety Regulations.

PECO's medium pressure gas distribution systems were already in service at the time of the USDOT's August 1970 final rule and the Company already had adopted industry-accepted practices, procedures and policies in place for the design, construction, testing, operation and maintenance of that system that align with and exceed federal requirements. In doing so, PECO had long followed and continues to follow the practice of conservatively operating its medium pressure gas distribution systems at Normal Operating Pressures that are substantially below MAOP because they are limited to the minimum pressures needed to supply customer loads. PECO also calculates the relief capacity and associated set-points for its regulator stations to not exceed MAOP plus 6 p.s.i. as permitted under section 192.201(a)(2)(ii) of the Federal Gas Pipeline Safety Regulations.

In any event, PECO's medium pressure distribution systems operate at between 12 and 60 psi. Accordingly, Section 192.619(a)(2) of the Federal Gas Pipeline Safety Regulations, which requires pressure testing for pipes that operate at 100 psi or more, does not apply to the

steel pipelines in PECO's medium pressure distribution systems because they operate at pressures below 100 p.s.i. Rather, the steel lines in these systems are subject to the leak test requirements of 49 C.F.R. § 192.509, which are not used for determining MAOP and have no relevance under 49 C.F.R. § 192.619(a)(2). Unlike records for strength tests, which must be retained for the useful life of the pipe under 49 C.F.R. § 192.517(a), leak test records must be kept for only five years under 49 C.F.R. § 192.517(b). Similarly, records documenting leak tests of plastic pipelines, which are performed pursuant to 49 C.F.R. § 192.513, also must be kept for five years under 49 C.F.R. § 192.517(b).

Pursuant to Sections 192.619 and 192.621, PECO's records provide detailed information on the practices and procedures used to design, construct, and test all of the pipelines in that system. That information (which was provided to GSD), when combined with the safe operating history of the system, provides more than an adequate basis for substantiating the MAOP of the pipelines. Moreover, PECO engaged a third-party consultant, EN Engineering, to perform an analysis of PECO's MAOP. EN Engineering reviewed PECO's existing records, procedures, standards and data and determined that PECO's existing MAOP levels are appropriate. According to EN Engineering's analysis, PECO has been running its system at the lowest possible pressures needed to meet customer demands.

Accordingly, Safety is fully addressed by PECO's practices, procedures and standards and there is no public safety enhancement to be gained from the requested relief. PECO has consistently designed, operated and maintained, its medium pressure natural gas distribution systems according to the safest, most reliable and conservative procedures, standards and practices, which align with and exceed federal requirements.

C. Hearing Notice

On February 13, 2017, a Hearing Notice issued in this case, which scheduled a Prehearing Conference for March 28, 2017.

D. Prehearing Conference Order

On February 14, 2017, ALJ Pell issued a Prehearing Conference Order directing the parties to submit Prehearing Memoranda on or before March 22, 2017.

II. STATEMENT OF ISSUES

Based on the pleadings, the issues are as follows:

- A. Does Section 192.619 of the Federal Gas Pipeline Safety Regulations require a natural gas distribution company (“NGDC”) like PECO to create or maintain records to substantiate the established MAOP of its medium pressure gas distribution pipeline systems?
- B. Do the Federal Gas Pipeline Safety Regulations create a legal obligation for an NGDC like PECO to create or maintain records of activities that occurred in the five years before 1970 (the effective date of the Federal Gas Pipeline Safety Regulations)?
- C. Does section 192.619(a)(2) of the Federal Gas Pipeline Safety Regulations (which provides that, if a steel pipe is intended to operate at 100 p.s.i. or more, one of the factors that limits the MAOP is a pressure level calculated as a percentage of a post-construction pressure test) apply to the steel pipelines in an NGDC’s (like PECO’s) medium pressure gas distribution systems,² which operate at pressures below 100 p.s.i.?
- D. Does Section 192.517(a) of the Federal Gas Pipeline Safety Regulations (which requires that operators maintain for the life of the pipeline records of strength tests performed on higher pressure steel pipelines operating at a hoop stress³ of 30 percent or more of specified minimum yield strength (“SMYS”) or operating at a hoop stress less than 30 percent of SMYS, but higher than 100 p.s.i.) apply to the steel pipelines in an NGDC’s (like PECO’s) medium pressure gas distribution systems, which operate at pressures below 100 p.s.i.?
- E. Does Section 192.509 of the Federal Gas Pipeline Safety Regulations (which requires pipelines (except for service lines and plastic pipelines) that operate at pressures below

² PECO’s medium pressure distribution systems operate between 12 and 60 psi.

³ Hoop stress is the stress in a pipe wall, acting circumferentially in a plan perpendicular to the longitudinal axis of the pipe and produced by the pressure of the fluid in the pipe.

100 p.s.i. be subject to leak tests) apply to an NGDC's (like PECO's) medium pressure gas distribution systems, which operate at pressures below 100 p.s.i.?

- F. Does Section 192.517(b) of the Federal Gas Pipeline Safety Regulations (which requires that operators maintain records of leak tests for five years) apply to the steel pipe in an NGDC's (like PECO's) medium pressure gas distribution systems, which operate at pressures below 100 p.s.i., and to the plastic pipe in an NGDC's (like PECO's) medium pressure distribution systems?
- G. Do the Federal Gas Pipeline Safety Regulations require an operator to develop and maintain records for the life of medium pressure distribution facilities or in the absence of such records require their recreation?
- H. Do the Federal Gas Pipeline Safety Regulations support the Complaint's proposed remedy to require that NGDCs (like PECO) reduce the MAOPs of the pipelines in its medium pressure gas distribution systems?
- I. Does the Complaint violate fundamental principles of federal and state constitutional and administrative law and fairness by attempting to implement a new MAOP Verification policy that seeks to impose new substantive legal obligations on NGDCs (like PECO) without a rulemaking process, including an opportunity for public notice and comment?
- J. Does the Complaint violate fundamental principles of federal and state constitutional and administrative law and fairness by attempting to retroactively apply a new MAOP Verification policy on NGDCs (like PECO), when its medium pressure gas distribution systems were installed decades ago?
- K. Does the Complaint violate fundamental principles of federal and state constitutional and administrative law and fairness by attempting to assess a civil penalty or impose a compliance order on PECO without providing fair notice of the requirements of a new MAOP Verification policy?

III. PROPOSED PROCEDURAL SCHEDULE

PECO proposes the following schedule for this proceeding:

Prehearing Conference:	March 28, 2017
Direct Testimony of Complainant:	August 29, 2017
Rebuttal Testimony of PECO:	November 29, 2017
Surrebuttal Testimony of Complainant:	January 19, 2018

Hearings: (Including oral rejoinder outlines due February 20, 2018)	February 27 and February 28, 2018
Close of the Record:	February 29, 2018
Main Briefs:	April 17, 2018
Reply Briefs:	May 29, 2018

PECO further proposes that all dates for submission of testimony and briefs be satisfied with an electronic (email attachment or electronic file transfer) or fax copy thereof being provided on the due date, with hard copies to be delivered the next day via overnight delivery.

IV. DISCOVERY

PECO proposes adoption of the Commission's existing discovery regulations (as set forth in 52 Pa. Code § 5.321, *et seq.*) without modification for this proceeding. In addition, PECO submits a proposed Protective Order, which is attached as Exhibit A. The Protective Order facilitates the discovery process by allowing confidential and proprietary documents to be produced without any undue delay. Therefore, PECO respectfully requests that ALJ Pell approve the Protective Order set forth in Exhibit A.

V. WITNESSES

PECO intends to present testimony of the following witness on an as-needed basis. PECO plans to present rebuttal testimony in written form, including exhibits and other related documents. The Company also reserves the right to call additional witnesses and will inform ALJ Pell and I&E if and when it determines that additional witnesses are needed. Based on the current allegations in the Complaint, the Company's proposed witness is as follows:

David Bonner, P.E.
Principal Engineer
PECO Energy Company
2301 Market Street, S9-1
Philadelphia, PA 19103

VI. POSSIBILITY OF SETTLEMENT

Counsel for I&E and counsel for the Company have been engaged in discussions about the possibility of settlement. Discussions at the prehearing conference may help outline the elements of a potential settlement and provide a framework for future discussions. Thereafter, PECO will plan to meet with I&E in person or by telephone conference to attempt to reach a mutually agreeable resolution, subject to approval by ALJ Pell and the Commission.

VII. 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 I&E's evidence and will be better determined at the close of discovery. PECO reserves the right to present additional evidence at hearing, if it determines, in the course of preparing for hearing, that additional evidence is necessary to present its case.

VIII. SERVICE LIST


The following individuals should be added to the service list and receive all pleadings filed in this proceeding:

Romulo L. Diaz, Jr.
Jack R. Garfinkle
Michael S. Swerling
Assistant General Counsel
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
Phone: (215) 841-4220
Email: michael.swerling@exeloncorp.com

IX. CONCLUSION

PECO respectively requests the entry of a scheduling order and protective order based upon the terms set forth above.

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
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Phone: (215) 841-4220
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Romulo.diaz@exeloncorp.com
Jack.garfinkle@exeloncorp.com
Michael.swerling@exeloncorp.com

EXHIBIT A

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MAR 22 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

PECO Energy Company

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Docket No. C-2015-2511928

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. 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.

14. 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.

15. 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 14 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.

16. 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.

17. 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.

18. 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: _____, 2017

Christopher P. Pell
Administrative Law Judge

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

PECO Energy Company

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: Docket No. C-2015-2511928
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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: _____

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

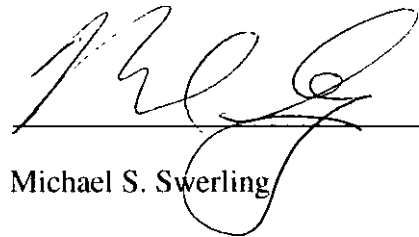
v.

PECO Energy Company

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: Docket No. C-2015-2511928
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VERIFICATION

I, Michael S. Swerling, hereby declare that I am the Assistant General Counsel for PECO Energy Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Prehearing Memorandum are true and correct 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.



Michael S. Swerling

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Docket No. C-2015-2511928

CERTIFICATE OF SERVICE

I, Michael S. Swerling, hereby certify that I have this day served copies of PECO's Prehearing Memorandum on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA FIRST CLASS & ELECTRONIC MAIL

Deputy Chief Administrative Law Judge Christopher P. Pell
Pennsylvania Public Utility Commission
400 North Street, Second Floor
Harrisburg, PA 17120
(717) 787-7304 (telephone)
(717) 787-04781 (fax)
dsalapa@pa.gov

Michael L. Swindler, Deputy Chief Prosecutor
Heidi L. Wushinsle, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265
(*Counsel for I&E*)

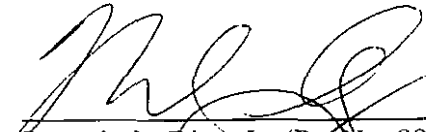
March 22, 2017

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Respectfully submitted,



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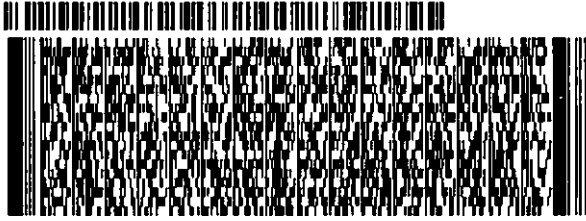
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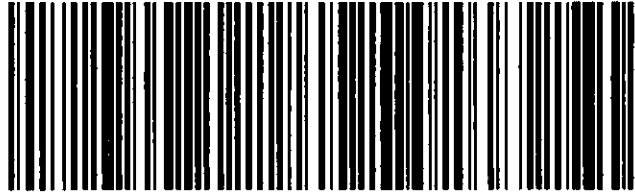
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