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April 27, 2017

VIA ELECTRONIC & FIRST CLASS MAIL

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

Re: Petition of PECO Energy Company for Approval of Its Default Service Program (Customer Assistance Program Shopping Plan) (DSP II)
Docket No. P-2012-2283641

Re: Petition of PECO Energy Company for Approval of Its Default Service Program for the Period June 1, 2017 through May 31, 2021 (DSP IV)
Docket No. P-2016-2534980

Dear Secretary Chiavetta:

Pursuant to the April 12, 2017 Prehearing Conference Order of Administrative Law Judge Angela T. Jones, attached is the **Prehearing Conference Memorandum of PECO Energy Company ("Prehearing Memorandum")** in the above-referenced matters.

As evidenced by the attached Certificate of Service, a copy of the Prehearing Memorandum has been served upon Judge Jones and the parties listed on the April 12, 2017 Order. If you have any questions, please contact me directly at 215.841-5974. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Craig Williams", written over a horizontal line.

W. Craig Williams

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM : **Docket No. P-2012-2283641**
(CUSTOMER ASSISTANCE PROGRAM :
SHOPPING PLAN) (DSP II) :

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : **Docket No. P-2016-2534980**
THE PERIOD JUNE 1, 2017 THROUGH :
MAY 31, 2021 (DSP IV) :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Prehearing Conference Memorandum of PECO Energy Company** 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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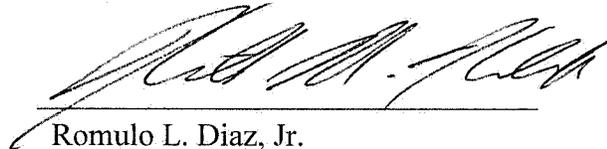
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Dated: April 27, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF ITS	:	
DEFAULT SERVICE PROGRAM	:	DOCKET NO. P-2012-2283641
(CUSTOMER ASSISTANCE PROGRAM	:	
SHOPPING PLAN) (DSP II)	:	
	:	
PETITION OF PECO ENERGY	:	
COMPANY FOR APPROVAL OF ITS	:	
DEFAULT SERVICE PROGRAM FOR	:	DOCKET NO. P-2016-2534980
THE PERIOD JUNE 1, 2017 THROUGH	:	
MAY 31, 2021 (DSP IV)	:	

**PREHEARING CONFERENCE MEMORANDUM OF
PECO ENERGY COMPANY**

INTRODUCTION

Pursuant to the April 12, 2017 Prehearing Order issued by Administrative Law Judge Angela T. Jones (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 proceedings.

I. HISTORY OF THE PROCEEDINGS

In contrast to the majority of other electric distribution companies (“EDCs”) in Pennsylvania, low-income customers enrolled in PECO’s Customer Assistance Program (“CAP”) are not currently eligible to purchase electric generation supply from an electric generation supplier (“EGS”). Over the last five years, PECO’s plan to implement CAP customer shopping in its service territory has been litigated extensively in the above-captioned

default service proceedings. The prior procedural history of those proceedings, which have now been consolidated, is discussed below.

PECO's Second Default Service Program ("DSP II") Proceeding and the Original CAP Shopping Plan. On October 12, 2012, the Commission entered an Opinion and Order approving PECO's DSP II with several revisions, including a directive to PECO to develop a plan to allow its CAP customers to shop for electric generation supply.¹ In accordance with that directive, on May 1, 2013, PECO filed a CAP Shopping Plan (the "Original Plan") to enable CAP customers to purchase generation supply from EGSs that agreed not to charge a price above PECO's Price-to-Compare ("PTC"). The Commission approved the Original Plan, with modifications, in an Opinion and Order entered on January 24, 2014.² Those modifications included, most significantly, the Commission's rejection of PECO's proposed EGS price ceiling.³

In its January 24, 2014 ruling, the Commission concluded that it did not have authority under the Pennsylvania Public Utility Code to limit prices charged by EGSs and also agreed with EGSs opposing the EGS pricing ceiling that such a proposal would limit the diversity of shopping options available to CAP customers.⁴ In addition, the Commission declined to adopt a proposal by the Office of Consumer Advocate ("OCA") to prohibit EGSs from imposing early cancellation or termination fees on CAP customers on the ground that the Commission lacked the legal authority to impose such restrictions on EGSs.⁵

¹ See *Petition of PECO Energy Co. for Approval of its Default Serv. Program*, Docket No. P-2012-2283641 (Opinion and Order entered Oct. 12, 2012), p. 156.

² See *Petition of PECO Energy Co. for Approval of its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered Jan. 24, 2014) ("*DSP II Order*").

³ *DSP II Order*, p. 14.

⁴ *Id.*

⁵ *Id.* at 16-17.

Appeal of the DSP II Order and Subsequent Remand to the Commission. The OCA, the Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania (“CAUSE-PA”) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN”) appealed the portions of the *DSP II Order* that rejected a ceiling on prices that EGSs could charge PECO CAP customers and a prohibition against early cancellation or termination fees. In an Opinion and Order entered July 14, 2015, the Commonwealth Court determined that the Commission had the authority to impose rules that limit the terms of offers to CAP customers from EGSs to ensure adequately-funded, cost-effective and affordable universal service programs.⁶ However, the Commonwealth Court affirmed the Commission’s decision to authorize shopping for PECO’s CAP customers without pricing restrictions notwithstanding the Commission’s acknowledgement of data appearing to show that nearly two-thirds of CAP customers in the service territory of another EDC, PPL Electric Utilities Corp. (“PPL”), paid prices for generation supply above the PTC.⁷ The Commonwealth Court further concluded that record evidence supported the Commission’s finding that an EGS price ceiling would be anti-competitive and limit the choices available to PECO’s CAP customers, but found that there was a statutory basis and sufficient record evidence to support the OCA’s proposed prohibition against early termination and cancellation fees.⁸ As a result, the Commonwealth Court remanded the case to the Commission for further proceedings

⁶ See *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa., et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1103-1104 (2015) (“*CAP Shopping Order*”).

⁷ See *id.*, 120 A.3d at 1107 (“Simply put, the PUC was not persuaded that Petitioners’ evidence provided a substantial reason to justify limiting competition by imposing a price ceiling on EGSs as part of the PECO CAP Shopping Plan. Similarly, Petitioners failed to convince the PUC that customer education programs are inadequate (i.e., not a reasonable alternative to price regulation) to the task of ensuring that CAP participants, and by extension non-CAP participants, benefit from the opportunity to shop for their EGS.”) (citations omitted).

⁸ *Id.* at 1106-1108.

to approve a “rule revision to the PECO CAP Shopping Plan that would impose such a prohibition.”

On December 4, 2014, during the appeal of the *DSP II Order*, the Commission considered and approved PECO’s proposed default service program for the period June 1, 2015 through May 31, 2017 (“DSP III”), as modified by a joint petition for partial settlement.⁹

In response to the Commonwealth Court’s remand after a further appeal of the *DSP II Order* to the Supreme Court of Pennsylvania,¹⁰ the Commission issued a Secretarial Letter on May 11, 2016 (“May 11 Secretarial Letter”), directing PECO to file a rule revision (the “CAP Rule Revision”) to its Original Plan in the DSP II docket to implement CAP customer shopping during DSP III. To that end, on September 1, 2016, PECO filed its proposed CAP Rule Revision to allow CAP customers to shop for electric generation supply without pricing restrictions and with the protection of a prohibition against early cancellation or termination fees.¹¹

Relationship of the Company’s DSP IV Proceeding to the DSP II Original Plan. On March 17, 2016, PECO filed its petition for approval of the Company’s fourth default service program for a two-year period beginning on June 1, 2017 (“DSP IV”). During the DSP IV proceeding, a witness for CAUSE-PA proposed an alternative CAP shopping platform based on PECO’s existing Standard Offer Program (the “CAP-SOP Proposal”). The CAP-SOP Proposal,

⁹ See *Petition of PECO Energy Co. for Approval of its Default Serv. Plan for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Opinion and Order entered Dec. 4, 2014) (“*December 2014 Order*”). PECO’s DSP III continued PECO’s Standard Offer Program, in which default service residential customers who do not participate in CAP and small commercial customers contacting PECO’s customer service center are encouraged to select among a group of EGSs who have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below PECO’s applicable PTC at the time of the offer.

¹⁰ CAUSE-PA and TURN requested review of the *CAP Shopping Order* by the Pennsylvania Supreme Court, but that request was denied on April 5, 2016. *Coalition for Affordable Util. Servs. And Energy Efficiency in Pa. v. Pa. P.U.C.*, 136 A.3d 983 (Pa. Apr. 5, 2016).

¹¹The CAP Rule Revision includes a plan for collection of data in consultation with the Commission’s Office of Competitive Market Oversight (“OCMO”) for analysis of CAP shopping experiences and future evaluations and recommendations.

supported by the OCA and TURN (together with CAUSE-PA, the “CAP-SOP Advocates”), would permit CAP shopping after June 1, 2017 subject to additional CAP-specific program rules, including a ceiling on the prices EGSs would be permitted to charge based on the PTC. Several parties to the DSP IV proceeding were able to achieve a joint settlement (“Settlement”) that extended the DSP IV term from two years to four years and resolved all other issues except the implementation of CAP shopping in PECO’s service territory, which was reserved for briefing and decision.

On December 2, 2016, CAUSE-PA and TURN (jointly), the OCA and the Retail Energy Supply Association (“RESA”) filed comments on PECO’s CAP Rule Revision in the DSP II docket, and subsequently filed reply comments on December 12, 2016. In their comments, both CAUSE-PA/TURN and the OCA asserted that the Commission should address the CAP Rule Revision in PECO’s DSP IV proceeding and impose pricing limitations to maintain affordable and cost-effective service for CAP customers. RESA generally supported PECO’s CAP Rule Revision, but proposed two operational changes related to the electronic data interchange protocol employed in the CAP enrollment process and to eliminate the notice and entry/exit requirements for EGSs serving CAP customers in PECO’s Electric Generation Supplier Coordination Tariff. RESA also opposed the CAP shopping limitations proposed by CAUSE-PA/TURN and the OCA.

Meanwhile, on December 8, 2016, the Commission entered an Opinion and Order approving PECO’s DSP IV, as modified by the Settlement, and concluding that CAP shopping issues should not be addressed as part of DSP IV but instead in PECO’s DSP II docket in

accordance with the May 11 Secretarial Letter.¹² The *December 2016 Order*, however, granted CAUSE-PA/TURN's request that the Commission incorporate the DSP IV record in the DSP II proceeding and allow TURN to fully participate.¹³ The Commission also emphasized that it would fully address CAP customer shopping in PECO's service territory in the DSP II proceeding where PECO's CAP Rule Revision was pending Commission review and approval.¹⁴

Following petitions for reconsideration and/or clarification of the DSP IV *December 2016 Order* by the CAP-SOP Advocates, the Commission consolidated the DSP II and DSP IV proceedings and referred the consolidated proceeding to the Office of the Administrative Law Judge to address the CAP shopping issues raised in both dockets.¹⁵ Subsequently, those issues were assigned to the ALJ.¹⁶

In addition to the foregoing proceedings, PECO notes that the Commission approved a version of the CAP-SOP Proposal for PPL's low-income customers in PPL's most recent default service proceeding.¹⁷ In that proceeding, PPL initially recommended that the Commission develop a statewide CAP shopping approach through a stakeholder collaborative or rulemaking in light of the shopping experience of PPL's CAP customers. In support of that recommendation, PPL presented data showing that, over a 34-month period (January 2013-October 2015), a large portion of its CAP customers that purchased electric generation supply

¹² See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2019*, Docket No. P-2016-2534980 (Opinion and Order entered Dec. 8, 2016) (the "*December 2016 Order*"), pp. 34-36, 61-63, 65, 67.

¹³ *Id.*, pp. 61-63, 67.

¹⁴ *Id.*, p. 62.

¹⁵ *Id.*, p. 23.

¹⁶ See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2019*, Docket No. P-2016-2534980 (Opinion and Order entered Mar. 16, 2017) ("*March 2017 Order*"), pp. 20-22.

¹⁷ See *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Prior June 1, 2017 through May 31, 2022*, Docket No. P-2016-2526627 (Opinion and Order entered Oct. 27, 2016) ("*PPL DSP IV Order*"), pp. 53-56, 66, 69-71.

from EGSs paid prices above PPL's PTC.¹⁸ Thereafter, the parties to PPL's default service proceeding reached a joint settlement ("PPL DSP IV Settlement") that resolved all issues but the appropriate limitations, if any, on PPL CAP customers' ability to shop for electric supply from an EGS. With respect to this contested issue, PPL, the OCA, the Commission's Bureau of Investigation and Enforcement and CAUSE-PA entered into a "Joint Litigation Position" that, among other things, supported a form of the CAP-SOP Proposal ("PPL CAP-SOP") as an interim measure to mitigate the adverse impacts of unrestricted CAP shopping in PPL's service territory. RESA, in turn, strongly opposed the PPL CAP-SOP.

On October 27, 2017, the Commission approved the PPL DSP IV Settlement and adopted the Joint Litigation Position.¹⁹ In the *PPL DSP IV Order*, the Commission concluded that its decision to approve the PPL CAP-SOP was consistent with the *CAP Shopping Order* because the data regarding the shopping experiences of PPL CAP customers provided a substantial reason to justify CAP shopping limitations.²⁰ Specifically, the Commission reasoned:

The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers' limited allocation of CAP credits and also affects non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act. We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity.²¹

¹⁸ See *id.*, pp. 25-27.

¹⁹ See *id.*, pp. 23, 53-56, 66, 69-71.

²⁰ See *id.*, pp. 34-35, 43-56.

²¹ *PPL DSP IV Order.*, p. 54.

Following denial of its petition for reconsideration of the *PPL DSP IV Order*,²² RESA appealed to the Commonwealth Court on February 27, 2017 (the “PPL CAP-SOP Appeal”).²³

II. STATEMENT OF ISSUES

The principal issue before the ALJ in this proceeding is whether the CAP-SOP Proposal should be adopted as part of PECO’s revised CAP shopping plan. As discussed in detail in the Company’s Reply Brief and Reply to Exceptions submitted in the DSP IV proceeding, this alternative CAP shopping platform is inconsistent with the *CAP Shopping Order* because it limits the prices EGSs may charge PECO’s CAP customers. Because PECO’s CAP customers have never shopped, the CAP-SOP Advocates rely on the shopping experience of CAP customers in other EDCs’ service territories who paid more than the applicable PTC to support the CAP shopping limitations reflected in the CAP-SOP Proposal. However, as explained in Section I above, the Commission was not persuaded by this argument in the DSP II proceeding. Rather, as the Commission made clear in the May 11 Secretarial Letter, the proper time for consideration of programmatic changes is after actual data on PECO CAP customer shopping experiences have been collected under the CAP Rule Revision. With this actual data, the Commission will have a complete and sufficient basis to address recommended shopping limitations for PECO’s CAP customers in the future in a manner consistent with the *CAP Shopping Order*.

Because this proceeding involves the application of the *CAP Shopping Order* to a CAP-SOP shopping framework, which is also at issue in the PPL CAP-SOP Appeal, PECO and several other parties to this proceeding have agreed to file a joint motion to hold this proceeding

²² *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. and Procurement Plan for the Prior June 1, 2017 through May 31, 2022*, Docket No. P-2016-2526627 (Opinion and Order entered Jan. 27, 2017), pp. 17-18.

²³ *Retail Energy Supply Ass’n v. Pa. P.U.C.*, 230 C.D. 2017 (Petition for Review filed Feb. 27, 2017).

in abeyance pending the resolution of the PPL CAP-SOP Appeal (the “Joint Motion”).

III. WITNESSES

As previously noted, the implementation of CAP shopping in PECO’s service territory has been discussed by various parties on the record and in briefs or comments submitted in both the PECO DSP II and DSP IV proceedings. In the event that the ALJ determines not to hold this proceeding in abeyance pending the resolution of the pending appeal of the *PPL DSP IV Order*, PECO believes that the submission of an additional round of direct and rebuttal testimony would be appropriate to provide a single, consolidated record for the ALJ to address and decide, in a Recommended Decision, the CAP shopping issues consolidated in this proceeding. PECO requests that all testimony and exhibits submitted in accordance with the proposed schedule set forth in Section VI, below, be deemed supplemental to the testimony presented in the DSP IV record.

In accordance with this procedure, PECO intends to present the Supplemental Direct Testimony of John J. McCawley, who is employed by the Company as Director of Energy Acquisition, to address the issues identified in the *March 2017 Order*, namely, PECO’s CAP Rule Revision; (2) the CAP-SOP Proposal; and (3) “all issues relating to the ability of CAP customers to shop for electric generation supply in PECO’s service territory.”²⁴ Mr. McCawley submitted direct and rebuttal testimony in the Company’s DSP IV proceeding regarding the CAP-SOP Proposal. It is anticipated that Mr. McCawley would also submit Supplemental Rebuttal Testimony to respond to the Supplemental Direct Testimony of other Parties. PECO may present additional witnesses in rebuttal to the Supplemental Direct Testimony of other parties. However, such witnesses cannot be identified until other parties file that testimony and

²⁴ See March 2017 Order, p. 21.

the issues raised therein have been evaluated.

IV. SERVICE LIST

Pursuant to 52 Pa. Code § 1.55, PECO hereby designates the following entry 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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In addition, PECO notes that several of the parties identified on the Service List attached to the April 12, 2017 Prehearing Order participated in the DSP II proceeding but did not actively participate in litigation of PECO's CAP Shopping Plan in DSP II (or DSP IV) and may no longer be represented by counsel designated at the outset of the DSP II proceeding. Therefore, PECO proposes that the Service List be revised to reflect the parties to the DSP IV proceeding and parties who appear at the Prehearing Conference.

V. DISCOVERY

In PECO's DSP IV proceeding, ALJ Cynthia W. Fordham issued a Protective Order on

May 26, 2016, a copy of which is attached as Exhibit “A” hereto. PECO has conferred with the parties to the DSP IV proceeding and no party has objected to the continued use of the Protective Order. Therefore, PECO respectfully requests that the ALJ confirm that the Protective Order will continue to apply.

VI. PROPOSED SCHEDULE

PECO will cooperate with the ALJ and the other parties in order to facilitate the orderly conduct and disposition of this proceeding. Subject to the forthcoming Joint Motion,²⁵ PECO proposes the following schedule, which is the product of discussion and an agreement with the parties to the DSP IV proceeding:

May 1, 2017	Prehearing Conference
May 12, 2017	Filing of Joint Motion
June 1, 2017	Answers to Joint Motion Due
August 1, 2017	Supplemental Direct Testimony Due (All Parties)
September 12, 2017	Supplemental Rebuttal Testimony Due
October 18-20, 2017	Oral Rejoinder and Evidentiary Hearings
December 20, 2017	Main Briefs
February 5, 2018	Reply Briefs

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.

²⁵ In the event that the Joint Motion is granted, PECO’s proposed schedule for the submission of supplemental testimony, hearings and briefing would be moot.

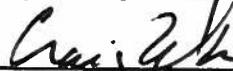
VII. POSSIBILITY OF SETTLEMENT

PECO intends to engage in settlement discussions with the other parties in this proceeding in order to facilitate an effective and timely implementation of its revised CAP shopping plan.

VIII. CONCLUSION

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

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: April 27, 2017

EXHIBIT A

PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2016-2534980
THE PERIOD FROM JUNE 1, 2017 :
THROUGH MAY 31, 2019 :**

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. 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.

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.

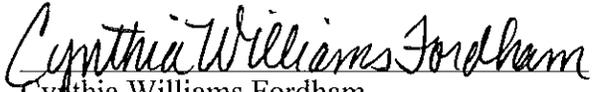
15. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 15 above, shall be sealed for all purposes, 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.

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: May 26, 2016


Cynthia Williams Fordham
Administrative Law Judge

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS : DOCKET NO. P-2016-2534980
DEFAULT SERVICE PLAN FOR THE :
PERIOD FROM JUNE 1, 2017 :
THROUGH MAY 31, 2019 :**

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: _____