

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 5, 2017

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

Re: PECO Energy Company Pilot Plan for an Advance  
Payments Program and Petition for Temporary  
Waiver of Portions of the Commission's  
Regulations with Respect to the Plan  
Docket No. P-2016-2573023

Dear Secretary Chiavetta:

Attached for electronic filing please find the Joint Petition of the Office of Consumer Advocate, the Retail Energy Supply Association, the Bureau of Investigation and Enforcement, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, and the Tenant Union Representative Network for Protective Order, in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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

Harrison W Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
E-Mail: HBreitman@paoca.org

Attachment

cc: Honorable Angela T. Jones, ALJ  
Certificate of Service  
236626

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company Pilot Plan for an	:	
Advance Payments Program and Petition for	:	
Temporary Waiver of Portions of the Commission's	:	Docket No. P-2016-2573023
Regulations with Respect to the Plan	:	

I hereby certify that I have this day served a true copy of the following document, the Joint Petition of the Pennsylvania Office of Consumer Advocate, the Retail Energy Supply Association, the Bureau of Investigation and Enforcement, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, and the Tenant Union Representative Network for Protective Order, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5<sup>th</sup> day of July 2017.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Gina Miller, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
400 North Street  
Harrisburg, PA 17120


SERVICE BY E-MAIL and FIRST CLASS MAIL

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PECO Energy Company  
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Sarah C. Stoner, Esquire  
Daniel Clearfield, Esquire  
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213 Market Street, 8th Floor  
Harrisburg, PA 17101

Patrick M. Cicero, Esquire  
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Robert W. Ballenger, Esquire  
Josie Pickens, Esq.  
Lydia Gottesfeld, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102



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236625

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Pilot Plan for	:	
an Advance Payments Program and	:	
Petition for Temporary Waiver of	:	Docket No. P-2016-2573023
Portions of the Commission's	:	
Regulations with Respect to the Plan	:	

JOINT PETITION OF  
THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE,  
THE RETAIL ENERGY SUPPLY ASSOCIATION,  
THE BUREAU OF INVESTIGATION AND ENFORCEMENT,  
PECO ENERGY COMPANY, DIRECT ENERGY  
THE COALITION FOR AFFORDABLE UTILITY SERVICE AND ENERGY EFFICIENCY  
IN PENNSYLVANIA, AND THE TENANT UNION REPRESENTATIVE NETWORK  
FOR PROTECTIVE ORDER

The Pennsylvania Office of Consumer Advocate (“OCA”), the Retail Energy Supply Association (“RESA”), the Bureau of Investigation and Enforcement (“I&E”), PECO Energy Company (“PECO”), Direct Energy, the Coalition for Affordable Utility Service and Energy Efficiency (“CAUSE-PA”), and the Tenant Union Representative Network (“TURN”) (collectively “Joint Petitioners”), hereby move pursuant to 52 Pa. Code §§ 5.41 and 5.365 of the Commission’s Rules and Regulations, for the entry of a Protective Order to restrict access to proprietary information to be filed or otherwise provided in connection with this proceeding. In support of this Petition, Joint Petitioners state as follows:

1. Joint Petitioners anticipate that they may be required to file with this Commission and/or furnish to the parties nonpublic proprietary information and documents that contain proprietary information within the definition of 52 Pa. Code § 5.365. Such information has been requested during the course of this proceeding and may be used in testimony or for cross-examination purposes. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in

the public interest. If the material is not kept in a proprietary folder in the Secretary's office, then competitors could obtain copies of the information. Also, information not marked proprietary could be publicly released in order or other official documents available on the Commission's website or from the Secretary's office. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

2. Joint Petitioners believe that the litigation of this matter will be facilitated by the adoption, at the earliest possible time, of the Protective Order attached as Exhibit A hereto to govern the treatment of party proprietary materials. This Order would protect all proprietary materials from disclosure to the public or to employees of competitors of producing parties who would use proprietary information to harm competition.


3. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information is known by others and used in similar activities; and the worth or value of the information to the party and to the party's competitors. 52 Pa. Code § 5.365(a)(1)-(3).

4. Limitation on the disclosure of information deemed "confidential material" will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this proceeding. The proposed Protective Order balances the interests of the parties, the public, and the Commission.

5. The attached proposed Protective Order sought by the Joint Petitioners will protect the proprietary nature of competitively valuable information while allowing the parties to use such information for purposes of the instant litigation. The proposed Protective Order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

6. The Joint Petitioners agree that this document may be signed or executed in separate counterparts or signature pages that shall be binding upon the Joint Petitioners and such counterparts shall be considered as one document.

WHEREFORE, for all the reasons set forth above, Joint Petitioners respectfully requests that Your Honor issue the attached Protective Order.

  
Lauren M. Burge  
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Bureau of Investigation & Enforcement

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Daniel Clearfield, Esquire  
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DIRECT ENERGY  
RESA

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CAUSE-PA

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Robert W. Ballenger, Esquire  
PA Attorney I.D. # 93434  
Josie Pickens, Esquire  
PA Attorney I.D. # 309422  
Lydia Gottesfeld, Esquire  
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TURN, *et al.*

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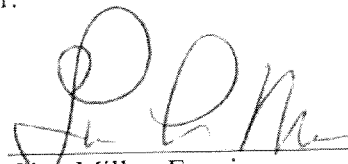
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PECO Energy Company



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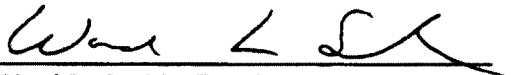
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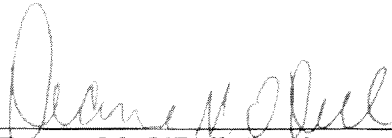
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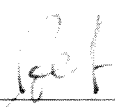
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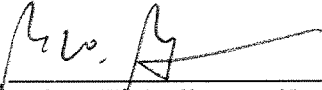
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Pilot Plan for	:	
an Advance Payments Program and	:	
Petition for Temporary Waiver of	:	Docket No. P-2016-2573023
Portions of the Commission's	:	
Regulations with Respect to the Plan	:	

**PROTECTIVE ORDER**

Upon consideration of the Motion for a Protective Order that was filed by Joint Petitioners on July \_\_, 2017;

**IT IS ORDERED THAT:**

1. The Joint Petition is hereby granted with respect to all materials and information identified in Paragraphs 2 – 3 below:

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in this proceeding, which are believed by the Parties to be of a proprietary or confidential nature and which are so designated by being stamped "Confidential Material." Such materials will be referred to below as "Proprietary Information."

3. This Protective Order applies to materials the Parties designate as "Confidential" which include materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury. Such materials include pricing, costing and market-sensitive materials, pricing or costing models, generation information, current or forecasted generation costs, and cash flow models/forecasts.

4. That Proprietary Information shall be made available to counsel for the Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument or for the purposes of discussing settlement in this proceeding. To the extent required for participation in this proceeding, counsel for a Party may afford access to Proprietary Information to outside experts (included below as a "reviewing representative") subject to the conditions set forth in the Protective Order.

5. Information deemed as "Confidential," shall be made available to a "Reviewing Representative" who is a person who has signed a Non-Disclosure Certificate and who is:

- (i) An attorney who has made an appearance in this proceeding for a party;
- (ii) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) an expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;
- (iv) employees or other representatives of a Party appearing in this proceeding with significant responsibility for this docket.

6. However, the Reviewing Representative may not be a "Restricted Person." For the purpose of this Protective Order, "Restricted Person" shall mean an officer, director, stockholder, partner, or owner of any competitor (or an affiliate thereof) of the Parties or an employee of such an entity if the employee's primary duties involve marketing or pricing of the competitor's products or services; 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 violation of 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 establishes a significant motive for violation.

7. 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, said expert must: (1) identify for the Parties each Restricted Person and each expert or consultant; (2) make reasonable attempts 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 jeopardize 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 jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Pennsylvania Public Utility Commission ("Commission").

8. Proprietary Information shall be treated by the Parties and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9(a). Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall they 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.

9. Reviewing Representatives may not use information 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 4 above, the party shall seek agreement from

the Party providing the Proprietary Information. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 4 above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

10. (a) Counsel of record for the Parties to this agreement are deemed to have executed a Non-Disclosure Certificate and, by receipt of the Proprietary Information, agree to abide by the terms of this Protective Order. A Reviewing Representative other than counsel of record shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Stipulated Protective Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate (or is deemed to have executed such an agreement), the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Counsel for the Office of Consumer Advocate and Bureau of Investigation and Enforcement ("I&E") may share Proprietary Information with the Consumer Advocate or I&E Director, respectively, without obtaining a Non-Disclosure Certificate from the Consumer Advocate or I&E Director, provided, however, that the Consumer Advocate otherwise abides by the terms of this Protective Order. A copy of each 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 Stipulated Protective Agreement.



11. That the Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “Confidential.” 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 Proprietary Information shall be served upon the parties hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “Highly Confidential Protected Material.”

12. That the Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act as set forth at 65 P.S. Section 66.1(2) until such time as the information is found to be non-proprietary.

13. That 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 Parties agree that they shall not seek to enter into the record any Proprietary Information without first notifying the party providing the Proprietary Information and seeking that party's agreement to admission. If the data is entered into the record, the Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

14. That 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 Protective Order or pursuant to an order of the Commission or a court.

15. That 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.

16. That the Parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

17. That parties agree that information provided pursuant to this Agreement shall be used only for purposes of this proceeding and will not be used for any other purposes nor in any other proceeding. Also, 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 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 the event that the party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the Parties, the party shall certify in writing to the other Party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Hon. Administrative Law Judge Angela T. Jones

**APPENDIX A**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Pilot Plan for an :  
Advance Payments Program and Petition for :  
Temporary Waiver of Portions of the : Docket No. P-2016-2573023  
Commission's Regulations with Respect to the :  
Plan :

**NON-DISCLOSURE CERTIFICATE**

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_ of  
\_\_\_\_\_ (the retaining party). The undersigned has  
read and understands the Protective Order and the required treatment of Proprietary Information.  
The undersigned agrees to be bound by and comply with the terms and conditions of said  
Protective Order.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (Printed)

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
EMPLOYER